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Celebrating human rights : papers from the Bicentennial Symposium on Human Rights

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Celebrating Human Rights

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Edited by Margaret Collins Weitz

Weitz

Celebrating Human Rights
Papers from the Bicentennial Symposium on Human Rights

Co-Sponsored by Suffolk University and the Boston Strasbourg Sister City Association

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PREFACE

This volume contains essays from the Bicentennial Symposium on Human Rights held at Suffolk University in November 1989 as well as remarks from the related Round Table on Human Rights held at Boston City Hall. Both events were cosponsored by Suffolk University and the Boston/Strasbourg Sister City Association. Both events are part of an ongoing program that endeavors to further cultural and academic links between the two cities.

It is most fitting that the first major academic project undertaken by the two cities was a symposium, a bicentennial event marking the two hundredth anniversary of the French Revolution and the Declaration of the Rights of Man as well as the American Bill of Rights for, as the following essays reveal, there has been an ongoing dialogue over human rights between the two nations.

The essays place the concept of human rights in its historical context: the paper detailing the Council of Europe's activities and the

comments from the Roundtable at City Hall focus upon current concerns about human rights in specific areas. Thus readers of these essays have the opportunity to follow the two centuries old commitment to human rights of both France and the United States and examine its relevance today.

The Symposium developed from a suggestion of Professor Jean-Paul Jacqué, then President of Strasbourg University II, with whom I spoke in the summer of 1988 while serving as Professor-in-Residence at the Council of Europe. He was one of a number of academics and administrators I contacted to discuss possible ways of furthering academic exchanges among faculty members of our twinned cities. Professor Jacqué proposed a bicentennial symposium on human rights and offered to send several speakers from the University of Strasbourg to participate in the event. Upon my return I discussed the project with Michael R. Ronayne, Dean of the College of Arts and Sciences of Suffolk University, and Ann Collier, President of the Boston/Strasbourg Sister City Association (BSSCA). Both readily gave their assent and assured their cooperation. Their assistance—and that of others too numerous to mention—made an undertaking of this scope possible. Two members of the steering committee who devoted much time and effort were Caroline Eades, then Cultural and Scientific Attaché of the French Cultural Services in Boston, and Lia Poorvu, Vice-President of the BSSCA. James D. Williams, then Executive Director of Mayor Flynn's Human Rights Commission, organized the Roundtable. Arrangements for the Strasbourg guests were handled by Delta Leeper of the Mayor's Office of Business and Cultural Development, Rosemary Sansone, Director. Rachel Walters was largely responsible for typing the manuscript while Fred Marchant helped with the editing and Cindy Lucio supervised production. Publication of the papers from the two events was financed by Dean Ronayne and The President's Office. To them and to all those who contributed to the success of the Human Rights Symposium and Round Table I would like to express my sincere gratitude.

Margaret Collins Weitz, Symposium Chair

Historical Introduction

David L. Robbins

In early November of 1989, French and American scholars gathered at Suffolk University in Boston to celebrate both the bicentennial of the French Revolution and the human rights so forcefully advocated by many revolutionaries. This assembly represented a notable conjuncture of time and place, as delegates from "la patrie de la liberté" celebrated at the "cradle of the American Revolution" while, in Eastern and Central Europe, human rights were being born anew. Such a time, in such a place, provided an ideal occasion for reexamination—through cross-cultural comparison, rediscovery, and reevaluation—of how the events and pronouncements of the eighteenth century revolutions have shaped the events of our time, and of how the events of our time are reshaping, revitalizing, and renewing the heritage passed down to us from the events and pronouncements of the eighteenth-century revolutions. And at the center of these inquiries lay the protean form of the

French Revolution, shifting its shape in response to every minute alteration in time or in angle of observation.

In 1889, on the hundredth anniversary of the Revolution, a world's fair was held in Paris. As a centerpiece for this fair, a new landmark was erected on the Paris skyline by an engineer named Gustave Eiffel. Eiffel's tower, designed to symbolize the triumph and progressive achievements of the Revolution, was "a benevolent colossus, planted with spread legs in the middle of Paris."[1] For the painter Robert Delaunay, who painted it over thirty times, the "Red Tower" became an obsession, an objectification of the Revolution itself, bestriding with its four feet the four corners of the world and addressing its message to the universe in a babel of tongues from the radio mast first installed in 1909.[2] And for "a mass audience; millions of people, not [just] the thousands who went to the salons and galleries," this colossus became the "master-image"[3] of a new age, metaphorically embodying the potential of an emerging democratic society.

A century later, at the bicentennial, the colossus of the Revolution looms even more prominently over Europe, not only as cultural symbol, but as the heart of a new political order. At present, in 1989 and 1990, the central values of the French Revolution—liberty, equality, and fraternity—are in the process of being systemically internalized all over Europe in an unprecedented fashion. In the states and societies of Eastern Europe democracy and socialism, two fundamentally compatible products of the French Revolution, are becoming reacquainted, and Eastern Europeans join their Western and Central European brethren in enthusiastic pursuit of fraternal federation as a single democratic European Community. In Soviet President Gorbachev's words, this "revolution of the mind" is restructuring Europe "as a commonwealth of democratic states" in "an entirely new era."[4]

But even to eighteenth-century contemporaries, the French Revolution was colossal in its proportions and in its significance. In its own era, the French Revolution was different things at different times, and many things to many people at any given time.

One may argue, for example, that the revolutionary activity in

France was an outgrowth of the American Revolution of 1775-83. French troops had, after all, spent some time in the American colonies as allies of the rebels; and some, though by no means all, had returned sympathetic to their ideas. American ideas and exploits were also given effective and favorable publicity in metropolitan France during and after the armed conflict, not least by American spokesmen of the caliber of Benjamin Franklin and Thomas Jefferson.

But the fact remains that the French Revolution was actually begun in 1786-87 by individuals who had very little sympathy for American revolutionary ideology or activities, as a reactionary counter-offensive against the monarchy by various aristocratic factions, in a manner and a language that owed far more to traditional French conflicts between parlementaires and the crown than to American inspiration. Then, through the rapid politicization of society and the erosion of legitimacy and legitimate authority, the initiative passed, almost before they realized it, out of the hands of the new frondeurs. By 1788, the assault on the status quo was being led by "enlightened" Physiocratic reformers, who envisioned a society in which traditional privileges and monopolies had been replaced by "free trade" in ideas, commodities, and personnel. France, they believed — indeed, any nation that aspired to enlightenment and civilization — had to be reorganized to bring it into conformity with the universal natural laws which, according to the Physiocrats, governed economics, society, and politics. In such a society, they argued, careers would be opened to talent, a much more widespread individual control of property would greatly increase creative energy and production, and educated, energetic, and able people (as they considered themselves) would rise to positions of responsibility.

The central statement of many of these "enlightened" claims was approved in August, 1789, by the self-proclaimed National Constituent Assembly (which began life in May, 1789, as a traditional Estates General, called by the king to address the kingdom's severe financial difficulties). The Declaration of the Rights of Man and of the Citizen, passed on August 26, 1789, incorporated much language that the reformers had learned from the reactionary aristocrats who had so stridently denounced the monarchy in 1786 and 1787 for having

trespassed on their traditional "rights," "franchises," and "liberties" (we would call them "privileges"). But the example of the American patriots, and the pronouncements of Rousseau's disciples in France, also had substantial influence; the substantive catalog of "rights" and "liberties" contained in the Declaration is quite different from the one proposed by the noble insurgents of 1786-87. In what we would term classic "liberal" fashion, it itemized many areas of an individual's political and economic life that the reformers believed should be proof from any interference, whether by the government or by another individual. Economic guarantees, on the other hand, such as an assured minimum share or amount necessary for an individual's or a family's well-being, were lacking from the document. Thus, the emphasis of the Declaration was on individual, political, and "negative" rights, as opposed to those which might be termed social, economic, cultural, "collective," or "positive."

Many of the individuals who wrote and voted for the Declaration were willing to work with the monarchy, indeed envisioned a "despotisme légal" as their natural ally in suppressing traditional aristocratic and clerical privileges, and as the perfect "referee" in maintaining a "level playing field" thereafter in free social, economic, and professional competition. By 1792, when the Bourbons had proved themselves intractable, inept, or both, some of these aristocratic and middle-class reformers had unwillingly to seek an alternative locus for executive power, and many others were forced by political and military emergencies to accept a republican solution far more democratic, and much less concerned about education and/or property as a necessary pre-condition for political participation, than they had ever envisioned.

In August of 1792, the national Legislative Assembly, established in 1791 as the new constitutional monarchy's parliament, was forced by military exigency, food shortages, the clumsy obstructionism of the royal family, and consequent popular risings in and around Paris, to dissolve itself. A republic (normally termed by historians the First French Republic, 1792-1804) was declared, and the Legislative Deputies, who owed their seats to an electoral system heavily weighted to favor property, gave way to a Convention, elected by a broad popular suffrage, whose mandate was to prepare a constitution for the new

French politics, in convincing the left of the morality of state power in securing "collective rights" and, in direct proportion, in heightening the suspicions and conservatism of the "liberal" center regarding both.

Valerie Epps[16] agrees with Hoffmann in many ways in her comments on "The Declaration of the Rights of Man and the Citizen and the American Constitution and Declaration of Independence: Eighteenth-Century Instigators of Human Rights." In particular, she joins Hoffmann in emphasizing the need to move beyond the individualistic concerns of the 1789 Declaration and toward ensuring a "wider inclusiveness" in "the benefits that flow from our collective efforts...benefits that we now call human rights, civil, political, economic, social, and cultural." On the other hand, Epps rejects Zoller's assertion that the successful breach of the immunities of national sovereignty by international human rights advocates could actually undermine the ability of national governments to protect human rights. Instead, argues Epps, expanded use of international treaties and of the doctrine of "international responsiblity for injury of aliens"[17] to enforce preservation of citizens' rights by governments represents a promising effort to "turn another corner of the revolution" by establishing a universal "minimum acceptable standard" for respect of human rights.

Part II provides a commentary by Dr. Francis Rosenstiel[18] on "New Council of Europe Images in a Changing Europe." The Council, says Rosenstiel, was founded in 1949 as "the European and international flagship for human rights." He discusses the efforts of both the European Community and the Council to develop within and around the Council new federal governmental institutions and a federal parliament, with a view toward — and beyond — the upcoming E.C. consolidations of 1992. Rosenstiel also describes the Council's emerging "dialogue for democratization" with Eastern Europe, aimed at construction of "an all-European democratic space governed by the rule of law and the principles of the European Convention on human rights...and [of] the European Social Charter."[19] Finally, he surveys the Council of Europe's efforts to work with the nations of the third world through a "democratic assistance network." If these initiatives succeed, muses Rosenstiel in his conclusion, one may well wonder if the next century might not truly usher in an "Age of Democracy" in which "sovereignty has...become homeless."

Elisabeth Zoller[13] begins Part I with observations on "The Distinction between Man and the Citizen in the Declaration of 1789: Past Significance and Contemporary Relevance." She examines the tensions that exist between the concept of "natural rights" and that of "civil rights" granted by the state. Then she goes on to discuss, in a penetrating and original way, two propositions that at first appear paradoxical, but when skillfully explicated reveal their power and perverse inner logic. First, that "government, and government alone, can 'secure,' 'preserve.' enforce human rights," but that, consequently, "the more we extend the rights of man internationally, the more we diminish the rights of the citizen domestically."

Yves Jeanclos analyzes[14] the social and legal significance and importance of the Declaration in 18th-century France. Jeanclos stresses the influence of indigenous French liberalism, particularly that of Montesquieu, over American tutelage in the formulation of the Declaration of the Rights of Man and of the Citizen in 1789. From here, he proceeds to amplify Zoller's insistence on the symbiotic relationship between government power and the preservation of rights, by reminding us, again in a form that appears superficially paradoxical, that "the Declaration of 1789 is interested...[in] the concept of man versus the state, or rather man in the state." He then undertakes to examine the economic consequences of this Janus-faced solicitude, illustrating for us how the Constituent Assembly, in attempting to protect "the new man...*homo oeconomicus*" not only "from all judicial and economic chains, but also...against his own penchant for economic submissiveness," succeeded instead only in "smothering" him.

Stanley Hoffmann[15] offers "A Comparison of the French and American Conceptions of Human Rights." In his analysis, he reprises Zoller's distinction between the "rights of man," or "natural rights," and the "rights of citizens," or "civil rights." He then proceeds to trace the historical association of the "natural rights" tradition, from Montesquieu through the French Revolution and down to the present, primarily with concern for individual and political rights; and that of the "civil rights" tradition, from Rousseau through the Revolution and down to the present, primarily with concern for economic and social rights. Hoffmann illustrates the practical, long-term consequences of these associations in

agreement on the need to give priority to a more urgent task."[12]

It should not surprise us, then, that a document of such universally-acknowledged centrality to the Revolution and its significance should also constitute an important point of departure for the authors whose observations are included in this collection. Yves Jeanclos, for example, asserts simply that: "The Universal Declaration of the Rights of Man adopted the 10th of December 1948 by the General Assembly of the United Nations is a continuation of the Declaration of 1789." Elizabeth Zoller disagrees, saying that the 1948 U.N. Declaration hedges, and the 1789 Declaration does not, on the question of whether human beings possess natural rights ("rights of man") anterior to being granted civil rights ("rights of the citizen"). Valerie Epps also disagrees, but in a different way. She argues that the 1948 Declaration goes well beyond the enumeration of individual and political rights to be found in the 1789 Declaration, and well beyond anything that is implied therein, by introducing economic, social, and collective rights. Thus, she says, the 1948 U.N. Declaration is no mere "continuation" of the 1789 Declaration, but an important expansion on it, by which we "turn another corner of the revolution and begin to deemphasize our rights as individuals in order to pursue some of our collective rights." Without specifically mentioning the 1948 Declaration, Stanley Hoffmann endorses Epps's position that the recognition of economic, social, and cultural "collective" rights represents not an extension of the 1789 Declaration, but a portentous expansion beyond it. He insists, however, that such "collective" rights are neither less "real" than the individual ones catalogued in 1789 nor any less "protections against arbitrariness." And, similarly, Francis Rosenstiel also stresses the need to move beyond "the indispensable civil and political rights" recognized in 1789 to guarantee "economic and social rights" for "those second-class citizens...for whom [political rights] have still little point as long as the basic needs of life are not satisfied."

Such is the nature of the lively debate to be found in the articles that follow. These papers attempt to articulate some of the many ways in which the French Revolution and its principal political/cultural artifact, the Declaration of the Rights of Man and of the Citizen, are connected with the dramatic events and tendencies in contemporary Europe and the world.

way, during the tenure of Bonaparte's nephew as Napoleon III in the authoritarian Second Empire (1851-1871). On the other hand, there was public acceptance of at least part of the Revolutionary tradition under each of the successive republican governments established in France since 1815: the Second (1848-51), dominated by liberals, who favored the early reformist and Directory eras of the Revolution; the Third (1871-1940), the Fourth (1945-1958), and the Fifth (1958-present), where centrist liberals have shared power with socialists, who successfully insisted on the rehabilitation of the radical republicans of 1792-95.

As one of the most important ideological statements of the French Revolution, the Declaration of the Rights of Man and of the Citizen has been a point of departure for generations of influential Revolutionary historians. Jules Michelet, a left-wing liberal, in 1846 asserted that it embodied "the true genius of the Revolution." (1846)[7] Moderate socialist Albert Mathiez called it "a magnificent page of public law, the source of all the political progress which was to be achieved in the world in the following century (1922)[8]." To maverick Marxist Georges Lefebvre, it was "the 'act of decease' of the Old Regime" (1957); to moderate Alfred Cobban, "the death-warrant...of the ancien régime" (1963); and to leftist stalwart Albert Soboul, "the catechism of the new order." (1973)[9] Comparative historian R.R. Palmer, a centrist, regarded the Declaration as "the chief single document of the Revolution of the Western World" (1959); and, thirty years later, cultural historian Mona Ozouf illustrates the political and symbolic importance of the Declaration for its contemporaries and for ours by citing accounts of a French Revolutionary procession that began with "the Declaration of the Rights of Man, written on stone tablets as the Decalogue of the Hebrews is represented to us, though it is no match for our Declaration."[10] Even the nineteenth-century authoritarian Thomas Carlyle, no friend of the Revolution, acknowledged the Declaration to have been "the true paper basis of all paper Constitutions."[11] Likewise, although J.M. Thompson, a moderate rightist, described the document as a "double-edged weapon" (1943), he never attempted to contest its central significance; nor, almost a half-century later, does contemporary historian Marcel Gauchet, despite his characterization of the Declaration as "an unfinished draft...[that] grew out of the needs of the situation...[and was] interrupted at the beginning of the session of August 27, 1789, by unanimous

another conviction, that the French Revolutionary political system was in advance of those to be found in the rest of Europe. Such political superiority entailed, in the opinions of many Frenchmen, a French obligation to remove from their neighbors, by force if necessary, any self-imposed or externally-imposed shackles which impeded their "modernization" along French Revolutionary lines—an obligation, in Rousseau's classic phrase, "to force them to be free."

As a result, under the Directory France was involved in, and virtually paralyzed by, an unending series of wars. When the military tide turned dramatically against France, in 1798, the Directory was repeatedly challenged by military strongmen and their troops, as Roman emperors had so often been by Roman legionaries. In 1799, Napoleon Bonaparte, one of several erstwhile claimants to the position, emerged as France's new military dictator.

Napoleon, a talented administrator with a military temperment, reimposed substantial central administrative and economic controls, substituted his own authority for the political infighting of the Revolutionary period, and set about codifying certain legal guarantees made since 1789 by various Revolutionary governments or documents.[6]

Assessment of the relative merits and/or importance of the various personalities, phases, and achievements of the Revolutionary era (1789-1815) has been the subject of heated, polarized, and highly polemical debate for two centuries. Conclusions, generally, can be correlated to the observer's position in the political spectrum, with the liberal center generally endorsing the opinions and actions of the Revolution's Physiocratic reformist periods (1789-92, 1795-99), the socialist left generally favoring those of the radical republican era (1792-95), and the authoritarian right finding acceptable, if anything, only those of the Napoleonic ascendancy (1799-1815).

The predominating opinions in any particular subsequent French historical epoch have depended primarily on what persuasions held political authority during that time. Generally, there was widespread criticism and repudiation of the Revolution in the reaction that accompanied the Bourbon Restoration (1815-30) and, in a more measured

republic. The polarization and radicalization of that body and of the Paris sections by the economic and military disasters of 1793, produced a new revolutionary leadership with a different agenda. Rationing and price controls were substituted for "free market" principles to protect the small consumer and the small producer, regulations of the sort that various Eastern European states are even now attempting to preserve to protect what they regard as basic human "economic rights," even as they undertake reanimation of a market economy. Centralized control of the economy was restored for purposes of national defense. Both steps constituted as much a move back toward the economic principles of the pre-1789 monarchical regime as they did a move forward toward socialism.

The extreme measures undertaken by the government and its allies in 1793 and 1794 (admittedly in response to extreme circumstances), along with a turning of the military tide (to a large degree as a result of the extreme measures), produced a reaction in the Convention and in the country that resulted in the restoration to power of Physiocratic republican survivors. A shift in national economic and political policies back toward their priorities also resulted, particularly under the Directory (1795-99) created when the Convention, under Thermidorian control, finally produced its constitution for the First Republic.

Like their predecessors, however, the leaders of the Directory inherited a strong sense of the Revolution's (and France's) responsibility to the rest of Europe. In the Declaration of Rights of Man, the members of the self-proclaimed National Constituent Assembly had attempted to compensate for their imperfect mandate by asserting the correctness of the principles on which they were basing their constituent activities for all men, all times, and all countries. Such pretensions inspired immediate claims by many of France's universal responsibility to bring revolutionary liberation to all men in all countries: "Each man has two countries, his own and France."[5]

Inextricably mixed in this sense of duty to export the Revolution to the rest of Europe were two elements. There was, to be sure, a clear sense of the European states as a culturally united community that needed encouragement toward political unification. But more instrumental was

Part III consists of a selection of comments from the "Round Table on Human Rights," held on Wednesday, November 8, 1989, at Boston City Hall, in connection with the Bicentennial Symposium on Human Rights co-sponsored by the Boston/Strasbourg Sister City Association and by Suffolk University.

There is, of course, much more in this volume than any summary can hope to encapsulate, as you now have the opportunity to discover. If you undertake that mental odyssey, you will encounter important new questions, and new answers, about two of the pivotal phenomena of our time: the French Revolution of two hundred years ago, and the struggle that it set in motion to realize the revolutionaries' vision of universal human rights.

NOTES

[1] Robert Hughes, *The Shock of the New,* New York, Knopf, 1980, p. 10.

[2] Hughes, pp. 10, 36-37.

[3] Hughes, pp. 9, 11, 36.

[4] Gorbachev speech during visit to Pope John Paul II, November 30, 1989, reported in Boston Globe, December 1, 1989, p. 1.

[5] Popular revolutionary maxim, quoted by Elisabeth Zoller.

[6] Napoleon's dubious "reforms" included strengthening of public authority to appropriate private property, and recision of an abolition of slavery in the French colonies.

[7] Jules Michelet, *History of the French Revolution,* Chicago, University of Chicago Press, 1967, p. 232.

[8] Albert Mathiez, *The French Revolution,* New York, Grosset and Dunlap, 1964, p. 60.

[9] Georges Lefebvre, *The French Revolution,* Volume I, New York, Columbia University Press, 1962, p. 130; Alfred Cobban, *A History of Modern France,* Volume I, London, Penguin, 1966, p. 164; Albert Soboul, *The French Revolution 1787-1799,* New York, Vintage, 1975, p. 176.

[10] R.R. Palmer, The Age of the Democratic Revolution, Volume I, Princeton, N.J., Princeton University Press, 1969, p. 488; Mona Ozouf, Festivals and the French Revolution, Cambridge, Harvard University Press, 1988, p. 67.

[11] Thomas Carlyle, *The French Revolution,* Volume I, London, Dent, 1926, p. 176.

[12] J.M. Thompson, *The French Revolution,* Oxford, Blackwell, 1985, p. 89; Marcel Gauchet, in *Critical Dictionary of the French Revolution,* Francois Furet and Mona Ozouf, eds., Cambridge, Belknap, 1989, pp. 818, 822.

[13] Professor of Law, University of Strasbourg.

[14] Professor of Law, University of Strasbourg.

[15] Douglas Dillon Professor of French Civilization at Harvard University.

[16] Professor of Law, Suffolk University.

[17] Especially in the era following the accords on human rights contained in the 1975 Helsinki CSCE Final Act.

[18] Head of Research and Planning, Council of Europe, Strasbourg.

[19] The European Convention on Human Rights was approved in 1950, two years after the U.N.'s Declaration of Universal Human Rights, and the European Social Charter was ratified in 1975.

I

PAPERS FROM THE BICENTENNIAL SYMPOSIUM ON HUMAN RIGHTS

The Distinction Between Man and the Citizen in the Declaration of 1789: Past Significance and Contemporary Relevance

Elisabeth Zoller

Who on earth still refers to the Declaration by its full and complete title: Declaration of the Rights of Man and of the Citizen? Isn't that heavy and clumsy for our modern ears?

It is now commonplace to refer to "human rights," or the "Declaration," or even for those who are in too much of a hurry to utter complete words, to the D.D.H.C...to say nothing of those who satisfy themselves with: "Read my lips..." Human rights go indeed without saying. Such an editing process is understandable, but disquieting. Understandable because "human rights" sounds better. It's short, sweet, and to the point. Everybody knows what it means. But it is disquieting because there must have been a reason for the Revolutionaries to

distinguish between the rights of man and the citizen.

Take for instance Article 11 on free speech: "The free communication of thoughts and of opinions is one of the most precious rights of man; accordingly, every citizen may speak, write and publish freely...." Should this article be construed as ruling out for man—as opposed to the citizen —the right to speak, write, and publish freely?" I am not presumptuous enough to try and solve the problem. But I shall endeavour to set it out by explaining why the distinction was important in 1789 and why it is no less important two centuries later.

The genius of the French people was to spell out "the **natural** rights, inalienable and sacred, of man." Their genius was no less illuminating than that of the American people who, thirteen years before, had already asserted that "men are endowed... with certain inalienable rights."

It does not matter where these rights originate from. Whether they are given to man by his "Creator"—as the Americans believe—or by the "Supreme Being"—as the French put it—the most important point is that men are born with them; they belong to them by nature; they are not acquired, but inherent. Here lies the reason why the French and the American Revolutions must be brought together in terms of political significance. True, the course of events was different in the two countries; so were the end results. But the starting point was the same.

Let us put this starting point into perspective, first in relation to the XVIII century, and the second to contemporary world. The assertion that men are created with inalienable rights was a bold inovation in world history. Nothing similar had existed before; nothing could be compared to it. Both the Declaration of Independence of 1776 and the French Declaration of 1789 were genuine revolutionary deeds at that time.

Some people contend that this analysis is a rather expedient view of world history; that liberty had existed before; that Ancient Greece and Roman law embodied provisions vesting human beings with rights of liberty, rights of property, and so forth.... With all due respect, these analogies miss the point. They fail to take into account that the rights of

antiquity were rights of the citizen; not rights of man.

Nothing was more foreign to the Ancient world than the idea that men were born with a right to life, a right to liberty. The Greeks believed that man could be free among his peers only. Man in a state of nature had not rights. His rights came into being with the political association of the *polis,* that is to say, the City. This is so true that the word *homo* in Latin precisely designated man without rights, i.e., the slave. In contrast to the slave, there was the citizen, the member of the City. And the citizen only was a possible depository of human rights. In Roman law there was no way to claim rights if one could not say: *Civis romanus sum*...I am a Roman citizen. Hence the revolution made in 212 A.D. when Caracalla extended Roman citizenship to the inhabitants of the Roman Empire. But despite the Edict of Caracalla, the man himself had no legal entitlements by nature. Citizens alone were endowed with human rights. There is no doubt that the bold innovation embodied in the American and in the French Declarations originates in the writings of philospohers of the Age of Enlightenment and in the works of the School of Natural Law. But 1776 and 1789 were the very first time legal documents set out the principle that men are born with inalienable rights, regardless of the rights they may be granted as citizens of a state.

Let us turn now to the contemporary world. Most people—especially in the West—believe in good faith that the idea that men are born with inalienable rights is now universally recognized. Most human rights activists believe that protection of human rights raises problems of enforcement, and not problems of recognition. These people are living in a dream world of their own. There are many states which do not recognize that men are born with rights. There are still many societies where individuals are deemed to have rights as citizens only not as men as such.

Such is the case in socialist states, and in particular in the Soviet Union. Since the 1917 revolution, the Soviet Union has had three constitutions: in 1924, 1936 and 1977. The last, the constitution of October 7, 1977, was amended on December 1, 1988 as a result of the changements introduced by "perestroika." Fifty-five articles—out of 174—have been modified. More articles are likely to be amended in the

near future as a consequence of pressing demands for a new form of federalism. But none of the amendments made in 1988, or contemplated for 1990, deal with the articles which are the most relevant for our topic. None of these amendments concern the 36 articles of the Constitution dealing with human rights in the Soviet Union. There are indeed 36 articles addressing human rights in the Soviet Constitution, i.e., articles 33 to 69.

Five address equal protection of the law while the others deal with fundamental rights and freedoms. The list as well as the substance of these rights is impressive. It includes many more rights than the Bill of Rights or the French Declaration. But all without exception, are granted and recognized to citizens, not to man in general.

One may feel tempted to say, "So what?". I submit that this is of the utmost importance. Where men are born with inherent rights, there are virtually no limits to them. All of these rights necessary to the pursuit of happiness are "self-evident" —and this is the lodestar of the American Declaration—provided that the exercise by each man of his natural rights does not injure anyone else. The rights of man have no frontier, so to speak. Such is not the case with the rights of the citizen.

Where rights are bestowed upon citizens only, there are several limits to them. First the rights are not self-evident; they are citizenship-oriented, meaning that only those rights which are necessary for the edification and the preservation of the City should be recognized. Second, since man has no right by nature, there are obviously no natural rights. Rights are artificial, man-made. They are created, they come into being with the law, i.e., with the State. This means that in the absence of natural rights, the line dividing the private and the public sphere is blurred. Having no natural right, man has no ground to claim a sphere of privacy which the City should not encroach upon. Man is entitled to claim a sphere of privacy only insofar as such a claim is compatible with the requirements of the State. If only for these two reasons, I think that Burke was quite wrong when he called the French Declaration "paltry and blurred sheets of paper about the rights of man." He had an excuse though, for the totalitarian state had not yet come into being at that time.

I hope to have convinced you of the importance of the distinction between the rights of man and the rights of the citizen. I would venture to say that the fundamental departure between States on human rights issues began with this distinction. It has such dramatic consequences that the Universal Declaration on Human Rights itself had to find a wording in order to avoid taking sides. Nowhere in the Declaration of 1948 may one find the plain phrase used in the Declaration of Independence or in the French Declaration; i.e., that all men are created equal, or all men are born and remain free and equal in rights. The Universal Declaration proclaims a long list of human rights as a common standard of achievement for all people and all nations. But we don't know whether the recipient of these rights is man, or the citizen. The choice is not made and the Declaration uses the ambiguous wording: "All human beings are born free and equal" or "Everyone has the right to life, liberty and the security of person."

Until the States all over the world operate on the constitutional premise that men are born with rights, that rights are inherent and belong by nature to the human being, the political differences existing between them will remain. That is why one should take cum grano salis the common forcast that we are witnessing the end of the ideologies.

I have thus far tried to explain the difference to be made between the rights of man and the rights of the citizen. I am now turning to the second point of my talk, i.e., the reconciliation between them in the French Declaration.

It is commonplace to say that the French Declaration equated natural rights with civil rights, that the French revolutionaries stated urbi et orbi the rights to be recognized and enforced everywhere for everyone. In other words no other notion is more firmly in mind than the universal scope and value attached to the Declaration. There is little doubt that the Declaration of 1789 was the beacon of human rights for many nations in the XIXth century with France regarded as the country of human rights. The old saying: "Each man has two countries, his own and France" still holds good in certain parts of the world. This is precisely what Burke blamed the National Assembly for: it passed laws for the rest of the world as if it could be possible to make laws regardless

of the past and the specificities of each country. Burke told the French revolutionaries: "You began ill, because you began by despising every thing that belonged to you. You set up your trade without a capital."

I am not convinced that the National Assembly had a worldwide project in mind—at least in 1789. And I wonder whether the universal value of the Declaration has not been overestimated, in particular following the analysis of the German philosophers.

That the National Assembly did not confuse natural rights and civil rights is quite clear in Article 2: "The purpose of every political association is the preservation of the natural and indefeasible rights of man." The natural rights—which are in the Declaration: liberty, property, security and resistance to oppression—are preserved, that is to say, enforced, in a political association. This is exactly the same idea that pervades the Declaration of Independence: "to secure these rights—which are life, liberty and the pursuit of happiness—governments are instituted among men."

Both statements are crucial. They put into the limelight a point that is overlooked more often than not, which is that, without governments, there would be no effective rights. Without governments, rights would be just bones, not meat. It is useful to emphasize this point as many human rights supporters have a tendency to believe that the most dangerous enemy of human rights is government, that is to say, the state. Many people believe that if there were no police and no army, we would have no torture, no capital punishment, and even no war. Without States, without government, we would live in barbarism. As Hobbes recalled, it is man himself, not the State who is the villain: *homo homini lupus.*

Government, and government alone, can "secure," "preserve," "enforce" human rights. Only government can set—as the French Declaration put it—"the limits to the exercise of natural rights of each man." Without these limits, man would live in a jungle: the natural right of liberty could be exercised by some men in such a way as to deprive others of the enjoyment of the same right. As George Washington put it in his Farewell Address of 1796: "The unity of government which constitutes you one people is a main pillar... of that very liberty which

you highly prize." There is nothing to add to this profound observation. We may perhaps give a concrete example to illustrate the point. No piece of legislation illustrates this idea better than United States antitrust laws. The antitrust laws were enacted to protect competitors and consumers from the unilateral or concerted exercise of market power. This is a typical example where action by the Government—under the form of legislation—is necessary to secure and preserve the natural rights of other men. The State has to intervene as an umpire between conflicting rights. In that case, if there were no government, we would have no rights, except for those of us strong enough to enforce their own rights, perhaps at gun-point.

Clearly therefore, the true, real human rights can only be those of the citizen. Human rights are elusive to grasp without being transformed into civil rights, that is to say, without—as the French Declaration indicates—their limits set by the law (article 4) and their affectiveness guaranteed by a public force (article 12). Therefore, the most important step is accomplished by what Bracton called the *constitutio libertatis,* in other words, by the enactment of a Constitution. The Constitution is the cornerstone of liberty and its best guarantee. This is precisely what article 16 of the Declaration says: "Any society in which the guarantee of rights is not assured...lacks a constitution." Here again we find considerable similarity between the views of the National Assembly and the Founding Fathers. Looking at the *Federalist,* we come across the same idea. I am referring to the letter in which Hamilton commented upon the opening of the American Constitution ("We, the people...do **ordain** and **establish** this Constitution") as follows: "Here is a better recognition of popular rights than volumes of those aphorisms which... would sound much better in a treatise of ethics than in a constitution of government." The only French Constitution which may be considered as having trusted Hamilton so to speak, is the Constitution of the Third Republic which refrained to allude in any manner to the Declaration of 1789 and which, despite this omission, established the most liberal government ever to rule the country. The importance of a constitutional enactment as a requisite for any human rights enforcement mechanism leads me to my third and final set of remarks.

The French Government celebrated the Bicentennial of the French

Revolution with a huge and spectacular parade on the Champs Elysées. Some of you may have watched it on the television since it was broadcast worldwide to millions. The parade was deemed to illustrate the universal value of the human rights set forth in the Declaration. Indeed to give more force to the idea, the parade did not include just French people; but people from all over the world. Whether it was good or bad is a matter of personal judgement; whether it was meaningful or not is a question for lawyers. Such is the point that I would like to comment upon.

Human rights in recent years have emerged as an international cause. Few issues have given rise to more controversies, particularly, in this country, in regard to the political and economic drawbacks deriving from human rights being placed on a foreign policy agenda. Any human rights policy raises difficult questions in terms of opportunity. But the questions are no less intricate in terms of substance. Which human rights shall be promoted?

Most western international lawyers agree that there is a hard core of basic human rights which are universally recognized. I think this is a sound view insofar as it is based upon a comparison between the American Declaration of Independence, the French Declaration of 1789, the Universal Declaration of 1948, the European Convention on Human Rights of 1950 and the American Convention on Human Rights of 1969. I wonder however if it would not be more appropriate to refer to humanitarian rather than human rights. Indeed the more we extend the rights of man internationally, the more we diminish the rights of the citizen domestically. This may sound like a paradox. But I will argue my case on a recent and extremely important dispute between Europe and the United States. I am referring to the so-called Soering case recently decided by the European Court of Human Rights which in my opinion is a litmus test of the difficulty of reconciling sovereignty and human rights protection.

A German citizen, Jens Soering, 22, fled to Britain after the 1985 double murder of his girlfriend's parents — William Haysom, 72, a retired steel executive, and Nancy Astor Haysom, 53. Both died of multiple and massive stab and slash wounds. In a rare unanimous

decision by the full Court, representing the 23 Members of the Council of Europe, the judges refused to authorize the extradition of Soering from Britain to the United States to stand trial. The court ruling said:

> "Having regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offense, the the applicants's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by article 3."

This article of the European Convention states: "No one shall be subjected to torture or to inhumane or degrading treatment or punishment."

The Soering case is a good example of conflicting sovereignties in respect of which unilateralism is seemingly not the most appropriate way. Human rights protection and enforcement are indeed closely linked to sovereignty. What is sovereignty? Sovereignty is what the French Declaration calls "the general will" (article 6) or, if you prefer, what is decided "by the representatives of good people of (State X), assembled in full and free convention." This is the actual wording—forgive the irony—of the 1776 Virginia Bill of Rights.

What is the "general will," if not democracy—that is to say—a government of the people, by the people and for the people. On such premises, if the general will of a democratic state considers certain punishments better fitted to certain crimes than others, on what grounds would the general will of another democratic state prevail and say: "Sorry, but you're wrong?" If the general will of a nation-state considers due process of law as the best guarantee against cruel and unusual punishments, on what grounds—in the name of what—could the general will of another nation-state assert: "Your due process of law actually amounts to cruel and inhumane treatment?"

Such questions—to which answers are barely conceivable—raise in my opinion very serious problems. What is at stake is the very foundation of our constitutional systems, the *constitutio libertatis*. It would not make sense for the so-called international human rights to turn into a threat for democracies by precluding citizens securing and preserving the rights of man as they see fit. Should such a result be possible, international human rights would separate the rights of man from the rights of the citizen, or to put it another way, natural rights from civil rights, in complete contrast to the close connection established between them by the French Declaration and by the Declaration Independence.

In the Declaration of 1789, natural rights and civil rights are reconciled by the general will, that is to say, by what the Americans call "The People"—as your Constitution begins: "We, the people..."—and by what the French call "The Nation...." Article 2 of the Declaration lays down the foundation of the democratic state: "The principle of all sovereignty remains in essence in the Nation." The general will is the voice of the law because the law is "the expression of the general will." It is solely the general will and not international commands, that can set the limits to the exercise of natural rights of each man (article 4).

I would venture to say that the constitutional ideas of the Founding Fathers and of the National Assembly—at least on this point—follow very similar channels.

In conclusion, the distinction between the rights of man and the rights of the citizen is the cornerstone of our constitutional law and of democracy. Let us be careful that an increasingly uniformizing world does not jeopardize our constitutional heritage. Until the international community has reached a sweeping agreement on a world "common house," the rights of man are bound to remain the rights of the citizen. French revolutionaries too, were "wise men," in their own way.

The Declaration of the Rights of Men and Citizens: Juridical Meaning and Importance in France During the 18th Century

Yves Jeanclos

Assembled in May 1789 to resolve the financial crisis of the monarchy, the Estates-General transformed itself on 9 July 1789 into a National Constituent Assembly, whose first great text would be the Declaration of the Rights of Man and the Citizen on 26 August 1789.

From the beginning, they put themselves in the intellectual sphere. The Constituents deified their new text by declaring in the Preamble, " ... under the auspices of the Supreme Being." In such a way, in the face of a French monarchy, pregnant with a religious fervor that enveloped the lifestyle of the people and the institutions of the state, the National Constituent Assembly reminded all of the existence of certain "sacred rights," the violation of which would promise severe penalties. The

authors of the Declaration, who demanded a return to nature and a better way of life, hoped to open new paths leading to the "welfare of all." They also gave the impression that they wished to reach a new harmony between religion and nature, and between the traditional monarchy and a renovated, but not revolutionized political system.

The Declaration of 1789 did not establish these rights: it "exposed" them, it "declared " them, it "recognized" them. The language is strong and clear. The Declaration does not impose the rights that it elaborates; it simply states them and serves as a reminder to all of these fundamental rights. The Declaration does not express legal norms for immediate application. It presents the "simple and uncontestable principles", that is to say, the fundamentals of life in society for the "French people", for the "citizens." The Declaration assumes that these social and legal bases could not possibly be cause for disagreement among men because they are necessarily acceptable to all. These fundamental rights must serve as references for all the activities of the state or its associated institutions. For this reason, the Declaration imposes itself upon legislative and executive powers in 1789 as it does in this day and age. Furthermore, in 1982, a decision of the Constitutional Council recalls that, "...the French people approved these texts conferring a constitutional value to the principles and the rights proclaimed; in 1789 ...." Consequently, a certain recourse was authorized against any encroachment of these values because nothing, "...shall prevent the legislator, in the exercise of his competence and out of respect for the principles and rules of the constitutional value, from imposing these same principles on the organs of state."

Whatever the political, social or economic disturbances, whatever the military adventures and the hegemonic undertakings of the Revolutionaries and their first successors, the Declaration of 1789 is an easily exportable text since it is directed less at the French people than it is at the free men of the world. It should be noted that the Universal Declaration of the Rights of Man adopted the 10th of December 1948 by the General Assembly of the United Nations is a continuation of the Declaration of 1789.

A debate occurred at the end of the 19th century on the ideological

and geographical origins of the Declarations of 1789: influence of the political and judicial system of England?; influence of the young American republic and its judicial arsenal of 1776 and 1787?; or the result of a slow maturation of the ideas from the school of natural laws and the school of French philosophers prevalent in France during the 18th century. Without entering into this discussion, where each of the parties will triumph in its own right, let us content ourselves with addressing the legal significance of the then new text in order to better understand its importance in the transformation of the institutions of the public and private law in France. In the first part of this paper I will examine the Declaration of 1789, which provides the necessary materials to found a state of law in the France of the 18th century. In the second part, the guarantee of legal and judicial process and the recognition of individual liberties during this same time frame will be analyzed.

I. The creation of a state of law in France: (A) The Declaration proposes an objective organization of public powers. (B) The citizen is given a participatory role.

A. **The Objective Organization of Public Powers:**

1. **The Law**

a) **The Declaration of 1789 analyzes the nature of the law.**

According to article 6, "the law is the expression of the general will." The new law affirms itself in rejecting the laws of the king, the laws of a single man and not of a community. The law of 1789 emanates from the ensemble of human society and not from a council of nobles. The law, an expression of the general will, is defined by Rousseau in the Social Contract.

In article 4 of the Declaration of the Rights of Man of 1793 insists upon the "free and singular" character of the expression of the general will.

The law is the pinnacle of the social organization. The Constitution of 1791 (title III, chapter II, section I, article 3) states: "there is no

authority in France superior to that of the law." Otherwise defined, the law is interpreted by Locke and then by Montesquieu, as the foundation and the motor of life in society.

The law has a novel character in 1789. It is opposed to the unfair policies of the king and his lords. The law assumed an impersonal character—without taking legal or geographic specificities into consideration. Article 6 states: "...it must be the same for all" and each man must be considered individually, whatever his socio-political, geographic or economic status. The law is the manifestation of legal equality and cannot but affirm social integration. The law would not be founded upon inequality.

b) **The Declaration of 1789 Generates the Law:**

The Declaration of 1789 tried very hard to determine the origin of creation. The law is elaborated and accepted either by the ensemble of citizens, directly, by popular vote (art. 6) or by the representatives of these citizens: "...all citizens have the right to participate personally or by designated representative" in the political process. This implies a regime founded upon a National Sovereignty in full accord with the Declaration of the Rights of Man. Article 3 states that "the principle of all sovereignty rests essentially in the nation." There exists a direct liaison between the corps of the nation and the law that it formulates. The legislative corps that is the product of the general will eventually generate the law. According to Locke, "the legislative power is the only supreme power." For Montesquieu, an invasion of the political component by the legislative must be avoided. Furthermore, the nation, having delegated representative powers to a political body, bestows a dual function upon its political leaders who are also tasked with the creation of the law. On one hand, the law has a positive aspect, tied to its common utility (art. 1), which rejects the particular utility (art. 12). It has, as its objective, the conservation of the natural and imprescriptible laws of man—the maintenance of liberty for example. Above all, the law is intended to bring "good will" to all members of the social corps (preamble) consistent with the American Declaration of Independence also seeking good will (preamble). The law supports liberty (see Declaration of 1789, art. 4) and redirects it in such a way that it does not

have the power to do any harm to others. On the other hand, the law has a negative aspect as far as social life is concerned since it fixes the bounds of natural laws. As a result, social law impedes human nature. According to article 4: in fine: "these boundaries can only be determined by the law." In the exercise of the law some individual liberties are limited but not individual rights themselves, as evidenced by the Constitution of 1791 and 1958, (art. 34) The law fixes the rules and determines the fundamental principles in a certain number of categories without passing judgement on a number of other principles, without need of clarification (Constitution of 1958, art. 37).

Furthermore, the law organizes man's life in society while the Constitution organizes political life in society.

2. **The Constitution:**

a. The writing of the constitution gives satisfaction to the popular demand of the people realized in 1789. Historical records show that the inhabitants of numerous provinces in France, belonging to the three social orders, demanded a constitution. For example, in the Cahiers of Vézelise, in the Vosges, one finds the demand: "Let there be a good constitution!" The constitution was repeatedly called for by the Constituents of the Estates General, who, in taking the "Tennis Court Oath" on June 20, 1789, promised "not to adjourn until the constitution had been written." The constitution is a demand destined to provide a fundamental understanding of the structure of a political system to all the French people. It must be global in scope with only a few laws addressing the mechanism for the accession to or succession of the throne. This particular demand echoed the ideas of the American Constitution of 1787 which established a constitution, "... in view of forming a more perfect union...and...to improve the general well-being of all.

A national constitution was sought by those who voted for the Decrees of 4,7,8 and 11 August, 1789 which abolished the feudal system. According to article 10: "...it is more advantageous to the provinces than the privileges that some enjoy." It must be enforced as soon as possible. According to the Declaration of 4,7,8 and 11 August

(article 19), "the National Assembly will immediately assume, according to the constitution, the responsibility for writing and enacting the law." The importance of this action is soon recognized by a nation which affirmed its desire to oversee and maintain a constitution.

The indispensability of a constitution is proclaimed in the first phrase of the preamble of the Constitution of 1791: "The National Assembly, wanting to establish the French Constitution...."

b. **The Constitution of France must be coherent with the political, social and economic changes that have taken place.**

It must be the result of a collective effort from "the members of all social strata" according to the preamble of the Declaration of 1789. It must come from the nation, then, according to article 3, "the principle of all sovereignty resides essentially in the nation" and not in the king as it was in the past. Its major preoccupation concerns simple and uncontestable principles according to the preamble of the Declaration of 1789. We are also reminded of these same principles in the Constitution on the principles that the French people have come to recognize and declare."

According to article 7 of the Declaration of 1789, the Constitution must respect the proposition which wishes to organize a harmonious civil society, far removed from "arbitrary order." Article 16 calls for a society in which the guarantee of rights would be assured, that is, according to article 2, a society in which everyone could exercise his natural and imprescriptible rights. According to article 16, this constitution must establish the separation of powers, that is to say a rejection of despotism—the concentration of all powers in the hands of a single man. The constitution must organize a balance of power between the executive and the legislative branches of government. In order to avoid any overlap or interference amongst these powers, the constitution must be rigid in application of the separation of powers.

The Constitution of 1791 organizes public powers according to title II, article 2. The French Constitution is representative—the representatives are the Legislative Corps and the king—that is the legislative

power and the executive power, but not the judicial power as in the United States. According to section I, article 3 of the Constitution of 1787 of the United States of America: "The judicial power of the United States will be conferred upon the Supreme Court." The Declaration of 1789 is interested not only in the abstract concepts of the law and of the constitution, but also upon the concept of man verses the state, or rather man in the state. The Declaration shows man as a participant in a direct or indirect manner (by representation) in the political life of the state. The Declaration demands a prominent position for man in the functioning of the state.

B. **The Subjective Participation of the Citizen in the Life of the State by Exercise of his Administrative Functions and Through his Financial Support:**

1. **The citizens and the functioning of the state.**

a. **The decree of 4, 7, 8, and 11 August:** "abolished the feudal regime" implying the end of the exercise of administrative functions according to faith or social status. This implies the end of the practice of "the venality of offices," that is the buying and selling of administrative functions as though they were merchandise (Loyseau) and over which the executive had little or no power.

The abolitionist decree of the Declaration of Independence of the United States of America in 1776 affirms that the king, "...appointed judges who paid for their offices and who were dependent upon the king's wishes for the duration of their terms."

Articles 6 and 7 of the Decree of 4, 7, 8, and 11 August 1789 call for the suppression of municipal offices and for justice: "the venality of judiciary and municipal offices is suppressed immediately (art. 7).

Meanwhile, the Constituents, took a realistic approach and adopted provisional measures allowing for such offices to continue in the exercise of their judicial and administrative functions until such time as a replacement could be found. Article 4 of the decree of 4, 7, 8 and 11 August states, "...and nevertheless the officers currently occupying

judicial posts shall continue in their functions until such time that a new judicial order has been established by the National Assembly. In addition, according to article 7, "...and nevertheless the officers currently occupying municipal posts shall continue in their functions until such time that..."

To suppress an outmoded system that is rejected by the population and its theorists is good...to create a new system even, better, but more difficult. With this as their mission, the Constituents proceeded to establish:

b) **Free and Equal Access to Public Offices**

The Decrees of 4, 7, 8 and 11 August 1789 affirm, (art. 11) that: "All the citizens, without distinction by birth or social status, could be admitted to all offices whether ecclesiastic, civil, or military..." The test is repeated, almost word for word, in article 6 of the Declaration of 1789: "All citizens are equally eligible for all public offices and dignities."

The criterion for recruitment of servants of the state is thus no longer dependent upon social status or an order of society as was the case under the Ancien Régime. The new criterion for recruitment is merit; that is to say competence, founded upon veritable professional qualifications. According to article 6 of the Declaration of 1789, it is clear that the civil servants will be recruited, "...according to their capacities and without other distinctions than their vitues and talents." According to article 1 of the Constitution of 1791, the enactment of this new dimension for the selection of public servants will take place in the following year for the offices of the church, and then for the organization of the judiciary and administrative posts, by means of elections. The law of July 12, 1790, concerning the Civil Constitution of the Clergy, (title II: "nomination of offices," art. 1) specifies that: "Effective the day of publication, there will be no bishop or priest in office, except by manner of election." Beyond the principle of election rest special criteria:

- To be elected bishop, one must have been one must have exercised his religious functions for a minimum of 15 months.

- To be elected priest, one must have been a vicar for at least five years.

- According to the laws of 16-24 August 1790, (title III, art. 3) concerning organization of the judiciary:

- A justice of the peace must be 30 years of age, no experience is required.

- An ordinary judge must be 30 years of age and have served at least five years as a judge or lawyer.

- A judge of the Court of Cassation must be 30 years of age and have practiced the law for at least 10 years.

Consequently, the recruitment for different administrative, judicial and ecclesiastic functions was based upon election. There were certain prerequisites to run for a judicial or ecclesiastic office.

As in 1789-1791, are the basis for competence and capacity to occupy public officials set forth in the Constitution of 1946 and the statute law concerning public office of 1959.

The objective of this revolution in the function of public services was to offer a gratuity to the citizens of the state. The Declaration of 1789, (art. 7) notes that: "Justice shall be rendered freely which implies that it shall be financed by the collective resources of the state."

2. **Citizens and the Financing of the State:**

The reason for the convocation of the Estates-General in 1789, which rapidly became the National Constituent Assembly, was the catastrophic situation of the royal finances. The financial problems of the state were first addressed as an assembly.

a. **Passage of the Principle of Imposing Contributions:**

The Decrees of 4, 7, 8, and 11 August 1789, (art. 9) decided that "the

financial privileges, personal or real, in the form of subsidies, are abolished forever" and, according to article 10, "all the particular privileges of the provinces, principalities, countries, cantons, cities, and communities of inhabitants, either financial or of any other nature are abolished forever." This signifies that from this time on, the entire French nation would participate in the financing of the state.

According to article 13 of the Declaration of 1789, "a common contribution is indispensable." The term "contribution" appeals to the desire that each citizen, contribute according to his financial means as a veritable tribute *cum tribuere,* in deference to the situation of the past in which the king imposed *in ponere,* a tax on the head of each of his subjects. According to the Declaration of 1789, (art. 14) this contribution is accepted by each who will "consent to it voluntarily." From now on, the citizen is active and not passive in the affairs of the state. He knows that he participates in the life and the survival of the state, since he participates as well in "...the composition of public forces" and to "the expenditures of the administration" (art. 13). Article 14 states the necessity of a public contribution.

Certainly the financial contribution must be divided among all the citizens and weighed in an equal manner upon each one, but in proportion to his contributive capacities. In article 9 of the decree of August 4, 1789, "the perception of distribution will be made on all citizens in the same format according to their wealth." This is explained in article 13 which specifies "equal distribution amongst all citizens according to their faculties," which implies that there must be a relationship between the revenue collected and the wealth and well-being of the individual.

The Decrees of November 23, and December 1 of 1790 which initiate a financial contribution, specify very clearly (art. 1) that "a financial contribution will be determined by equal proportions on all taxable properties and according to the individual's net revenue." Thus in a consistent manner, those who finance the budget of the state are called upon to control the receipts and expenditures of state to avoid its dilapidation.

b. **Control of State Finances:**

The Declaration of 1789 responded to the financial needs of the state by the open Decree of August 4, 1789 which published the expenditures for the financing of the clergy and other public services, including teaching, medical and social assistance (art. 4). According to article 14 "All citizens have the right to voice themselves through their representatives, the need for public contribution. This includes an understanding of the quantity, the method of collection and the duration of taxation."

Title V, article 1 of the Constitution of 1791 proposes practical and realistic measures concerning public contributions: "The public contributions will be deliberated and fixed each year by the Legislative Corps." This is known as the principle of annuities of the receipts of the state. According to the Constitution of 1791 (title III, chapter 3, section 1), it is then the responsibility of the Legislative Corps to "fix public expenditures, establish public contributions and determine the method of equitable division of public contributions...[and] to monitor the employment of all public revenues."

In addition, the citizens, by means of their representatives in the Legislative Corps, are themselves tasked to determine the receipts and the expenditures of the state, and to control their use. This was a major victory over the king and his officers.

Under normal circumstances, from that day on finances would no longer be a problem for the state. This did not, however take into account a lack of confidence in the assignats, new paper money created as a result of the Laws of 19/21/12 1789. The lack of confidence in the new currency stimulated a lack of confidence in the economy which would eduse new problems in the finances of the state.

It is nonetheless this system of free consent to taxes and just of the financial contribution to the state which forms the basis for today's current system of taxation in France.

II. THE GUARANTEE OF LIBERTY

If civil liberties need to be protected by a judicial arsenal then economic liberty requires all the attention of the newly formed state.

A. **Protection of Civil Liberties:**

1. **Liberty as a Functional Right.**

a. **Under the Pressure of the American philosophers.**

Numerous authors in 18th century France supported the concept of freedom. "Man lives in irons," said certain authors, "he must be freed of them." Man chained to a feudal system of personal debts is not free; a diminished being, he is reduced to invisible liberty and real and visible submission.

Montesquieu, Voltaire, and Rousseau all pleaded for the recognition of man's freedom in society, while admitting a certain framework for this liberty in society.

Brought to France by the French verterans who fought in the armies of George Washington during the Revolutionary War, the Declaration of Independence in 1776 states: "We hold these truths to be self-evident: That all men are created equal, that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty & the pursuit of happiness...." This text was questioned by the French Constituents, who voluntarily accepted the right to life, and who debated among themselves the right to happiness, but who enthusiastically supported the "right to liberty."

b. **Liberty, Pivot of the New Society.**

"Liberty is already the policy!" According to the Declaration of 1789, (art. 1): "Men are born and live freely and with equal rights," a beneficial formula, sweeping away personal ties of subordination — economic or even legal dependence. From now on, there must be no more variance in degrees of freedom for men, as this would be

inconsistent with nature. Consequently, all the inhabitants of France must be ipso jure free. Sadly, slavery existed under the French monarchy. Therefore, the Decree of September 29, 1791 acknowledged freedom for all who lived on metropolitan territory; stricto sensu including servants of Afro-American origin. According to the first article, "Every individual is free as long as he is in France." Consequently, the political and legal liberty for all those who resided in France was acknowledged, but not for those who lived in the colonies, which did not acknowledge freedom. For example, in the Decree of February 1794, slavery of blacks in the colonies was abolished—a decree that was promptly nullified by Napoleon Bonaparte in 1802, for both political and personal reasons.

Political and legal freedom did not exist on all French territory until the adoption of the Constitution of 1848, (chapter III, art. 6).

According to the Declaration of 1789, (art. 4): "Freedom consists in the ability to do anything that is not harmful to others." Freedom is at once an aspiration of the most diversified potential expression of human will; at the same time, there is a limitation of this same will for social reasons. It finds as other rights, "certain boundaries... which assure the enjoyment of these same rights to other members of society." In other words, there are limits to the exercise of individual liberties (art. 5).

Liberty gives man a range of physical as well as intellectual rights:

- The right to freedom of passage which implies the disappearance of domestic customs fees, the easing of controls, but also the capacity to resist oppression (art. 2).

- Freedom of expression and communication: according to article 10, "No one shall be afraid to express his opinions or practice his own faith." This was a revolution in values for a French society founded on the principles of cujus regis and cujus religio — that is to say, that nothing could be considered French unless it smacked of the monarchy or represented the philosophies of the Catholic Church. From then on,

non-Catholics—Protestants, reformists and Jews—were citizens distinct from the rest with equal rights quaranteed by several laws posterior to the original Declaration. Each man had the right to speak, write and publish freely according to article 11 and therefore to diffuse the fruits of his thought freely as delineated in the laws concerning industrial property and literature of 1790-1791. Man is therefore a free being in body and spirit, but he cannot exercise these rights unless he generates other complimentary rights and assures ther proper establishment for public order.

2. **Protection of Individual Liberty:**

The Declaration of 1789 delineates very clearly what it is supposed to monitor. Article 2 states that, there are "the conservation of natural and imprescriptible reights of man"—which implies a certain control in the exercise of these rights. The declaration clearly reminds us that it concerns a political association that necessarily signifies the abandonment of rights to the profit of the community. This constitutes a necessary limitation in the exercise of these rights. Respect of the law is demanded of all who benefit from these rights. In case of any deviation from this pact with society, appropriate penalties are to be imposed.

a. **Legal Principles of the New Society:**

The gratuity of the justice system, announced by the Decree of August 4, 1789 (art. 7) is presented as providing easy access for the plaintiff, as a peaceful recourse for solving differences among men. Realistically (and according to the laws of 16/24 August 1790) justice would be simple and "less costly," as far as the organization of the new justice system was concerned since it would be difficult to arrive at a free system of justice in a rapid manner. Provisions included:

- Equality of all under penal law: According to the Declaration of 1789, (art. 6): There will be no more judicial privileges tied to social status. Ecclesiastics, nobles or members of the Third Estate will receive equal treatment under the law.

- Legality of offenses and their penalties: (art. 7 & 8). "No man can be accused...except in cases determined by the law." Consequently, no one can be considered to have committed an offense, unless it is considered as such by the law and there is a prescribed penalty for the offense under the law.

The Declaration of 1789 sought to protect the individual against the arbitrariness of the king and his officers—an arbitrariness which became, over the course of time, less an element of equitable treatment by the king's judges than an element of repression. Article 8 of the Declaration specifies that "no one will be punished except by virtue of an established and legally promulgated law."

This principle of legality of offenses and of penalties is reinforced by the principle of non-retroactivity of penal law. It concerns a penal law "established and promulgated after the occurance of the offense" (art. 8). This principle was destined to avoid a political qualification under cover of a judicial qualification. It protected those who, until their day in court, were not considered offenders. It is explicit in article 14 of the Declaration of 1793: "The law which punishes offenders who committed an offense before the existence of the law shall be considered tyrannical; the effect of retroact as applied to the law, shall itself be considered a crime." This is viewed by the Penal Code of 1810 as a fundamental element in all accusations (art. 4): "No violation, no crime, no offense can be punished by sentencing under a law which did not exist before said offenses were committed."

Legality of arrest and of preventive detention: Article 7 of the Declaration of 1789 opposes this practice laid down in the Criminal Ordinance of 1670 and its discreet, often secret procedures. The new provision requires that the accusation, arrest and preventive detention not take place except in cases determined by law and according to prescribed forms. It is intended as a form of protection for a person suspected of a crime, but perhaps not quilty.

Guarantees accorded to the accused: These guarantees consist of a presumption of innocence and oblige respect of personal rights without imposing undue hardship.

Defense of the accused by a third party: The requirements for the accusation, the presence of a judge (October 1789) are reinforced by the fact that many "notable citizens," of high value and integrity, had perhaps been thwarted by the legal assistance of a lawyer.

b. **New Characteristics of Offenses and Penalties:**

These may be viewed as much as a means of penal repression as a means of applying specific penalties.

The Constituents accepted the necessity of a sentence. The sentence must permit reparations for damages caused to the victim and to society and help in the rehabilitation of the delinquent. This is specified in the Declaration of 1789 (art. 8): "The law must only establish penalties that are strictly and necessarily required." The Constituents had some difficulty in agreeing upon the nature of the penalty: the Code of Offenses and Penalties of 1791 required that the penalty take place soon after the offense (art. 5) "in a public place of the city" where the crime was committed.

The Constituents wanted to protect themselves against the arbitrary justice of the Ancien Régime and they proposed the principle of penalties appropriate to the offense (art. 8): "The law must only establish penalties strictly and evidently necessary." They was no power of interpretation left to the judge, no arbitrariness, that is, no capacity to determine what is against individuals, (art. 8). Finally, in reaction to earlier societies, the authors of these legal texts required the principle of the personality of penalties, which rejects all condamnations falling on the family of the guilty party (Law of 16/24 August 1790, title II art. 18).

B. **The Guarantee of Economic Liberty:**

Having brought greater liberty to man, the Constituents were not content simply to recognize the validity of fundamental political and legal rights. They also undertook the proclamation of certain rights of an economic nature permitting the "fulfillment" of the individual: (1) the right to property and (2) rights tied to economic productivity.

1. **Property Values:**

a. **Their Fundamental Place in Civil Society:**

Since the 18th century, there has been uncontestably in France, a movement to reject systems of feudal origin that conflicts with land ownership. After numerous theoretical debates, the great 18th century judicial expert Pothier (Treaty of Domaine) declassified feudal property and arrived at the reunification of French property—only he who holds the domain can be the true property owner, because it is he who exploits the earth.

For their part, the philosophes contended, in the spirit of Voltaire, that "property doubles the force of man; "this is to say, that man produces more and better quality when he controls the rights to the land—such is the thesis of the Physiocrats. They triumph even today in countries which follow the Marxist line by placing all land under state control and rejecting attempts at privatization and individual exploitation (for example, the Soviet Union).

The revolutionaries accepted this analysis which satisfied popular demands documented in public records. Additionally, after having suppressed the rights of lords to the land and its wealth by the Decrees of 4, 7, 8 and 11 August 1789, in the Declaration of 1789 (art. 2) they declared that property is a natural and inalienable right of man, a tangible right, second in priority only to liberty. Perhaps they imagined the ties would be established between property and the right to vote; between property and the right to citizenship as those which appeared in the Constitution of 1791.

b. **Protection of Property:**

Since property is a fundamental right of the individual, it must be protected in the most careful manner. In effect, according to article 17 of the Declaration of 1789, property is an "inviolable and sacred right" which certainly contradicts the confiscation of the goods of the clergy. According to the Decrees of 2/4 November 1789: "The National Assembly decrees that all ecclesiastical possessions are at the disposition of the nation" and then later, orders the confiscation of the goods of expatriates, for political reasons.

The Declaration of 1789 meanwhile forsaw an exception to the principle of inviolabilty: expropriation for state necessity. Article 17 speecifies that this procedure can only be employed in the interests of "public necessity," that is, when it is clear that the national collectivity has a pressing need for the property. In such an expropriation, the owner shall receive "a proper and just indemnity." Fifteen years later, in 1804, article 545 of the Civil Code transformed "necessity" into "public usefulness," giving even greater power of expropriation to the state. As seen in the nationalization of several enterprises in 1982, the Constitutional Council continues to recognize the constitutional right to property.

Finally, concerning the rights of an author to property, article 544 of the Civil Code seems to subscribe to the same view, since it affirms that "property is the right to possess and dispose of things in a most absolute manner." Additionally, in specifying the legal bounds the Code insists that "one does not make a prohibitive use of property by means of the laws or regulations." From now on, owners see their rights to property use subject to restrictions according to the desires of the legislators or the executive; praticularly by the introduction of legislation pertaining to the classification of land into zones for agricultural or commercial exploitation.

2. **Rights Related to Economic Production:**

To improve productivity, obtain happiness, assure liberty, and political and legal equality, homo novus, the new man, must be freed from all political and legal ties with his fellow men.

a. **Official Rupture with Social Economic Ties:**

The Decree of August 4, 1789 abolished the feudal system and brought about a parcelization of man. Already, in 1776, Turgot proclaimed the freedom to exercise all types of work and all types of commerce, whatever the legal and social condition of the actor. By this edict, accepted with difficulty and then revoked by the royal powers, Turgot sought to stimulate the French economy by suppressing the old fashioned cadres and corporations of workers.

The Decree of Allarde of 2/17 March 1791 proclaimed the suppression of the rights of mastery and jurande thereby according economic liberty to each citizen. Article 7 states: "From April 1, 1791, it will be the right of each citizen to make any negotiation, to exercise any profession, art or job that he finds suitable," under reserve of payment for a patent. This text permits one to work in the economic sector of choice, without organizational or production controls.

b. **The Interdiction of Solidarity:**

The Constituents agreed not only to free man from all judicial and economic chains, but also to protect him from his penchant for economic submissiveness. This is the object of the Law of Chapelier (of 14/17 June 1791), which pronounced a general interdiction of "all types of corporations of citizens of the same state and profession" (art. 1). This principle of interdiction is one of the foundations on which the new French society will be constructed. According to the Preamble of the Constitution of 1791, it concerns one of the fundamental principles of the French constitution. Going even further in the protection of economic liberty, the law forbade all concerted cessation of work, price fixing, all attempts to reconstitute corporations because these actions would go, according to article 4, "against the principles of liberty and of the constitution" and would be declared "unconstitutional and dangerous to the liberty and rights of man."

Passing from an advisory to a threatening role, the Constituents specify in article 8 of the same law, that "all troops composed of artisans, workers...would be held...seditious, and...dissipated by means of public force." In addition, they created a situation isolated on the economic producer, who will find himself deprived of the liberal society in the 19th century. This exagerated protection isolated and therefore weakened the employee in the face of competition and the employer. It was not until 1864 that freedom of coalition, that is the right to strike was accorded French workers — and only in 1884 was the right to form unions recognized.

In their desire to protect *homo oeconomicus*, the Revolutionaries smothered him instead.

(Translated by James Foggo)

A Comparison of the French and American Conceptions of Human Rights

Stanley Hoffmann

I have chosen to deal with some of the ambiguities of the democratic heritage. If one looks at the Declarations of Human Rights as they were adopted in various American States, then in the U.S. Bill of Rights and also the French Declarations—not only that of 1789, but the later ones—one finds a number of ambiguities and sometimes contradictions, which the speakers whom you have heard have already pinpointed. Let me mention three of them. One has to do with an ambivalence which came out very strongly in the exchange between Professors Epps and Zoller; if you like, the division between rights of man and rights of citizens. Secondly, the ambivalence or the split or conflict between the conception of human rights focusing primarily on individual and political ones and the later conception of economic and social rights. And the third one, which I gather has also been talked about, is the problem of the national

protection of human rights versus the status of human rights in international law and international affairs. Frankly, of the three it is the first one that has interested me most because as a student of French political history and also of ideologies, I have to reflect from time to time on where the main differences are between the American conception and the French one.

What I am struck by, if I go back for instance, to documents, the French documents of 1789, the Declaration of the Rights of Man and Citizen in August of 89, but also the famous brochure of Siéyès *(What is the Third Estate?)* which in a sense contains the philosophy behind the Declaration, what I am struck by is the heterogeneity of the French conception, which has had an enormous importance for the rest of French history in the 19th century. From the French Revolution up, I would say, to the controversies which have marked its celebration in France in 1989, there existed two very different traditions, a split which one does not find to the same extent, it seems to me, either in England or in the United States. If I wanted to simplify, I would say that out of English constitutional history and out of the American Revolution there came a single liberal tradition, and a liberalism which was later sometimes in conflict with socialism when it developed in England—liberalism which in the United States, as Hartz remarked in his classic book of 1955, was never really challenged fundamentally either on its left or on its right. Whereas what came out in the French case was a split between a liberalism which turned out to be quite conservative and a more radical democratic tradition which was sometimes not entirely liberal. It is a split which has plagued French political history, not only because liberalism was in a sense divided into two often rival doctrines, each one attacking the other, but also because both of them were also almost always besieged by a very strong socialist and later communist challenge on the left, and a traditionalist counter-revolutionary or reactionary one on the right, which I will not deal with.

When one reads the French texts of 1789, especially if one reads them after having, let us say, read Paine or looked at the American Declaration, what is striking is their ambiguity. Go back to the Siéyès brochure and you will find on the one hand everything that one also finds in the American texts, or much of what you find there: a recognition of

natural rights which are the rights of individuals, which are supposed to be inalienable and indestructible, but at the same time you will find another element, which is the notion of the sovereignty of the nation, of the ability of the law to define the scope of those supposedly indestructible and inalienable freedoms. From the beginning, there was a fundamental ambivalence in statements which reflected both the liberalism of Montesquieu, and of the other 18th century French liberal believers in natural rights, but also the completely different tradition of Rousseau; and it makes for an extremely unhappy marriage.

Where do these two traditions clash? Both, of course, believe that government has to be based on consent and in that respect they are both revolutionary and both opposed to the old regime. Both are fundamentally—despite many interpretations of Rousseau which I think wrong—individualist in the sense that the purpose of the community is not to impose its customs or its mores on helpless individuals. In both instances the purpose of political association is supposed to be the promotion of the individual, but it is a completely different conception of the individual. In the liberal tradition it is pretty much the individual who has to be protected from the state, and in the rousseauistic tradition it is, to go back to Professor Zoller's remarks, the individual who can only fulfil himself through the state. In one case, we find the barriers opposed by individual rights to any attempt from any source to override them. In the other case, there is the conception of citizenship as the expression of the general will, which can override individual rights if they stand against the common good. So there are indeed already in Siéyès three points of conflict with the sort of liberalism which we associate with the American Bill of Rights and with the sort of liberalism that Americans seem to absorb with their mother's milk. One is precisely this conflict between individual rights and general or collective will. The second one, (very striking in Siéyès), is the distrust towards representative government. Government has to be based by on consent, and unfortunately in a large country like France or England or the United States, it cannot be direct democracy: however much Rousseau liked the idea of small communities, in France it has to be representative government, but the whole mood in Siéyès is one of distrust of the representatives. He distrusts them precisely because they might confiscate the general will. And he is extremely critical of the

British system of government both because it still allows the aristocracy to have a house of its own, the House of Lords, and because it is so easy for representatives who are elected but into whose hands the public abdicates, so to speak, after they are elected, to substitute their own will for the common will. That is not at all the spirit of liberalism, the liberalism of a Burke or a Mill for whom the representative is elected not only because he represents the people but because he has (and it is a he) a certain independence of his own.

The third point of cleavage has to do with the relationship between public interest and private interest. Political liberalism goes hand in hand with economic liberalism. One of the things which were done in 1789 and in the years that followed was the abolition of all regulations, all restrictions to trade and industry, all possibilities indeed of forming collective associations that could be seen as in restraint of trade or industry. In other words, there is in liberalism—and you find this in the Federalist papers also—an assumption that while sometimes the full play of private interests can create problems because it leads to factions and to conflict, nevertheless it is inevitable and indeed can be beneficial if the institutions manage to balance those private interests and to extract what is common to them. Whereas in what I would call the French rousseauistic and democratic tradition there is a very strong assumption that the state as the expression of the common good can regulate economic affairs if it is so needed and indeed can for instance even override property rights. Robespierre in his project of a declaration of rights did not include a right to property, property was a social good that could be regulated for the social good. And there was also the assumption, derived from Rousseau, that the public good was superior to all private interests, which were seen with considerable distrust.

Out of this came, it seems to me, two very different traditions, which went in different directions. From the rousseauistic side came the rather radical Jacobin French democracy. I do not say that terror came out of it, because I think that terror was to a large extent was circumstantial. On the other hand, once you start with the notion of a public good that can override all rights and all private interests, the danger of what is sometimes called in French discussions *dérapage* can develop, because who defines the common good? If there is somebody who knows

what the common good is, like Rousseau's legislator who is supposed to enlighten people about what it is they really want, then that danger becomes very real indeed. And if you then find yourself in a minority opposed to the common good, as Rousseau had warned, you are in the wrong and you can be forced to be free, which can lead you to the guillotine. So it is a tradition which is in some ways radical and democratic indeed, that is more equalitarian and protective of the poor, let us say, than a purely liberal tradition, but it is one which is not really liberal when all is said and done—except insofar as a basic principle of liberalism is government based on consent, but that is all. On the other hand there was a liberal tradition in France which became increasingly conservative, precisely because it became animated by the fear of a rebirth of Jacobinism. It became increasingly concerned with building a representative government that could filter the popular will in such a way that the popular will could never really be too disruptive. Hence, indeed, the theory of representation which made of the representative pretty much the captor of popular sovereignty, and a whole arsenal of governing devices that are supposed to see to it that government remains in the hands of those who know and those who own, people with degrees and people with wealth. So instead of having a sort of middle-of-the-road liberalism as you did in America and in England, France got very conservative liberalism, for which liberalism meant the defense of individual rights against the state, the state being indeed the enemy, because one is always afraid that the state will be captured either by a tyrant coming out of the past or by the workers moving toward the future; and France also got a radical tradition which is beautifully democratic on paper but which in not necessarily very liberal.

It has always been rather difficult to reconcile these traditions. The two biggest attempts at reconciling it in the French case was the Third Republic but even in the Third Republic with its parliamentary government, its two houses, its quite independent deputies, there were still elements from rousseauism left. It was indeed parliament which was to define the common good, at the expense of the executive, and there was no protection of individual rights comparable to the one that exists in American jurisprudence since the French, precisely because of their rousseauistic tradition, have always been extremely suspicious of *le gouvernement des juges,* substituting their will on the pretext of inter-

preting the constitution for the will of the majority as expressed in parliament. It is only in recent years with the somewhat surprising and unexpected development of the Constitutional Council in France, that this distrust towards a judicial protection of rights against even a democratic majority, has begun to fade and only within fairly sharp limits anyhow. So you have this first ambivalence about whose rights are we really talking about. It is the rights of the community of individuals wanting the common good with the assumption that every person when he wants the common good, thinks the same or else he is a deviant. Or is it an individualism which tries to protect individual rights against the enemy, the state, but needless to say in practice works very often to the advantage of the privileged?

This leads, then, to the second ambivalence or tension, which is between individual and political rights, the rights which have been stressed primarily by liberalism, and economic and social rights. Economic and social rights have not been not so much part of the radical democratic or Jacobin tradition, precisely because that is a tradition that does not emphasize rights, it emphasizes law, the capacity of the law to regulate the duties and possibilities of the individuals. It is has been, it seems to me, at least in the French case, largely a contribution of French social democracy, of such socialists as Blanc in the middle of the 19th century, and above all at the turn of the century, of Jaurès; that most interesting, underrated and understudied French political thinker. The notion being that what the workers needed is not so much a revolution, but a step beyond the limited accomplishments of the French Revolution, and just as the French Revolution has created, for individuals, political and civil rights that gave them the vote on the hand and defense against arbitrariness on the other, the time had come now through political action and in a democratic manner, to move beyond and to obtain economic and social rights. It was the skill of social democrats like Blanc or Jaurès to present this as a mere extension of the movement which had started with the enlightenment, but it really was not just an extension, because after all, the civic and individual rights that had been recognized during and after the revolution were rights of individuals: the right to speak, the right to form groups, the right to practice one's religion, the right to a fair trial, etc.; whereas economic and social rights were rights to groups, and there are always tensions between the two

notions. Hence, the very strong resistance to economic and social rights on the part of the whole French right, whether in its reactionary form, or its conservative liberal form. On the right giving such rights, whether it is indeed the right to strike or the right to form unions, or the right of whole or partial communities to organize, was seen as a possible infringement of the individual rights that had been recognized. As one still sees in many textbooks, the two kinds of rights were very sharply differentiated, with the difference being that individual and political rights are really rights against the state, whereas economic and social rights are rights that can only exist if the state creates them, and provides the means without which, for instance, it is pointless to talk about a right to full employment, or a right to social security, or, like the constitution of 1946 in France, a right to leisure and retirement and rest.

It seems to me, personally, that this is an artificial opposition because one can also look at economic and social rights as rights against: they are also protections, they too are protections against arbitrariness, but not always the arbitrariness of the state, it can be the arbitrariness of employers, or the arbitrariness of the market, and conversely individual and political rights are not just negative rights against the state. As Professor Zoller quite correctly pointed out, even the creation of those rights supposes an intervention of the state, a right to a fair trial supposes a judicial system which the state has to organize, so it seems to me that the distinction of the two types of rights along the lines of negative liberty versus positive liberty, as Isaiah Berlin once defined it, is quite artificial. There are certainly tensions between individual and collective rights. And it is quite true that many of the collective rights can not be enforced if the state simply does not have the resources necessary to make them meaningful. However, in both cases it is a mix of negative and positive. I emphasize this, because in this country there is still very often, in discussions, the assumption that economic and social rights are not really rights; that they are merely a sort of legislative fantasy, but that the only true fundamental rights are rights like the right to vote or to free speech, or to a free press, or of religion.

This brings me precisely to the last problem, which is the problem of national versus international protection of human rights. It is one which interests me a great deal, as somebody who spent eight years

studying law and then left it with a certain amount of relief, because I was more attracted by the political problems of the world, but also with regret because it is a splendid school of logical thinking. Also as a student of international relations, I find nothing more interesting and important than the gradual erosion of sovereignty, and the gradual erosion of the notion that what happens within borders is of no business to outsiders. When one thinks of the erosion of sovereignty, of the creation of international norms either by customs or by treaties which make of the way in which human beings are treated by their government a subject for international legitimate concern, one can not but be struck by how far one still has to go. One of the reasons why one still has so much distance to cover, is that even among those who do recognize the need for an international protection of human rights, even among those who acknowledge the limits of sovereignty and the fact that governments should not be able to treat their people as if they were cattle to whom anything can be imposed as long as it is within the principle of domestic jurisdiction. There are still sharp disagreements on what constitutes, in fact, the legitimate rights that can be protected. It is very clear, if one reads American treatises on the subject, that for many American commentators, it is still and only the individual and political rights, not the economic and social ones. The fact that a government like the Soviet government, (I am talking about the pre-perestroika Soviet Union), pushed so much the notion of economic and social rights, did not, needless to say make Americans more enthusiastic about them, because since economic and social rights are rights that can only be created by, and have to be financed by, governments, they always seem to be extraordinarily fragile and revokable, which I don't think they need to be. They too have to be protected including, incidentally, against being revoked by their own governments. There is a difference between a government simply granting out of its own wisdom, let us say a social security system to its people, and a government that enshrines this into a code of rights, that it can not abolish. So the American dislike or distrust of economic and social rights as being essentially gadgets that an authoritarian or a totalitarian government can always revoke does not strike me as necessarily justified. So one obstacle is this fact that there is still, despite all the conventions that have been signed, no total agreement on what constitutes legitimately, the scope of the rights for which international protection can be sought.

A second obstacle, obviously, is that when it comes to enforcement the international community at this stage lacks effective means. A government that does want to massacre its students can do so. A government that does want to create a gulag, whether it's an authoritarian or totalitarian government to use a famous and totally absurd distinction, can do so. And until one has international regimes with genuine enforcement power, which means something like an embyonic world government, the problem will continue. What we have at present is some extremely promising outlines of what a future international regime might be in Europe, thanks to institutions like the Council of Europe, thanks also, within the European community, to some of the work done by the European court of justice. But it so happens that this is something which develops precisely in that part of the world where the violations of human rights are the least severe, and in those areas where they are severe and constant, the international or regional regimes for the protection of human rights remain extremely fragile. It is not surprising, but this is after all, I would say, almost the heart of sovereignty. The heart of sovereignty today seems to me not so much the issue of national security. No government, let us face it, is really able to assure the security of its citizens in a world of nuclear weapons, subversion, terrorism and so on. What is left of sovereignty is the capacity of governments to treat their citizens in a certain way, and therefore when we talk about an international protection of human rights we ought to be clear about what it is we are talking about. We are talking about controlling and if possible, changing political regimes, not the easiest thing in the world to do from the outside. And this is why, given the weakness of international regimes, a human rights policy in the world still requires above all in addition to that of those international regimes the action of governments willing to take the cause of human rights into their hands. In this respect, I must say that I find the attitude of the United States government in recent years, to be precise in the last nine years, to be quite regrettable, insofar as we have had rhetoric and very little else. These are some of the ambiguities I wanted to point out.

The Declaration of the Rights of Man and the Citizen and the American Constitution and Declaration of Independence: Eighteenth Century Instigators of Human Rights

Valerie Epps

Recently we celebrated the bicentennial of the American Constitution. And the year 1976 marked the two hundredth anniversary of the Declaration of Independence. Many scholarly articles were written to celebrate these documents and events. Papers were presented at panels and symposia, history was reenacted in television docu-dramas, cannons were fired, fireworks exploded and glittering social events dotted the country and swelled the coffers of the fashion industry. On a much smaller and quieter level there were the few voices of critical appreciation, a few cries that everything in the garden was not lovely now or then, and some eloquent reminder that the whole panoply of heaven as mapped out by the Framers had either totally disregarded entire segments of society or, worse perhaps, recognized their existence only within

particular institutions, such as slavery. I think it is fair to say that the occasion of our bicentennial celebrations were not used much at all to examine the shortcomings of our system of government or to reflect on how we might indeed "form a more perfect union" or "promote the general welfare" etc., not just in the sense of refining the balancing mechanisms of our tripartite system of government, but, more broadly, in ensuring a wider inclusiveness in both governance the benefits that flow from our collective efforts. In general the benefits that we now call human rights, civil, political, economic, social and cultural.

It may be that all national and international celebrations tend towards a blinkered euphoria, full of joyful euphemism, extolling the brilliance of the men who created the particular documents or institutions that are the immediate focus of the festivities, but I think that whenever we are presented with revered documents we had better examine them critically rather than accepting them as delivered tenets applicable for all time. The examination might start with looking at the underlying assumptions of the age that produced the documents; the extent to which we do or do not agree with those assumptions; what was forgotten or never even considered; and what our own age may too unwittingly persuade us to accept.

At the same time, it is fair to add that most revered documents, particularly political documents that have survived for sometime, have an apparent genius not only for pinpointing and resolving the particular crisis that provoked them but also for sowing the seeds of new lines of thought which, if conditions are propitious, can revolutionize our thinking about both the mechanisms of governance, including both the appropriate players in the systems, and the ends to be sought, and including visions of the minimum conditions necessary to achieve whatever is viewed as the just society.

What I hope to do very briefly is to examine historically the legal stage for the development of the concept of human rights and then look at the historical conditions that produced both the American Declaration of Independence and Constitution and the French Declaration of the Rights of Man and the Citizen. After that I shall discuss the underlying assumptions of the documents, mention who and what was ignored or

passed over and finally join the celebration, to some extent and with some caution, by examining the new notions expressed in those documents and pointing out which of these have borne fruit and which we should hope will continue to do so.

The Original Notion of International Legal Rights Which Resulted in the Exclusion of Individual Human Rights.

The idea of human rights refers to those rights attached to individuals by virtue of their personhood. It has been been a long time coming, but we are privileged to live when the longed-for aspiration towards rights attached to the individual as a person are finally becoming accepted, at least as a legitimate concept both domestically and internationally. This is not to say that the idea is accepted or practiced by all governments, but that the work to create acceptable norms is well underway and the pressure to conform to those norms is considerable.

Let me first step back and describe very briefly the conceptual frameworkwhich resulted in the idea of human rights. The traditional notion of the appropriate realm of international law was that the international legal regime only covered relationships between sovereign states. Such things as the law of treaties and the rules of warfare were clearly covered by international law, but the treatment by a sovereign state of its own citizens was perceived as beyond the scope of international regulation — an area to be left entirely to the internal, domestic, legal system of particular countries. Lry us imagine that regime A tortures its prisoners. International law responds by saying, "Well, that's interesting but the regulation of such internal activities is beyond the scope of international law!" The exclusion of the individual was entirely understandable since it thrived symbiotically with the notion of an all-powerful ruler.

There was one recognized area of international law that offered individual protection while at the same time preserving the fiction that only states can assert international legal rights. That area was articulated in the doctrine known as international responsibility for injury to aliens which proclaimed that when an individual travelled abroad to another country, the host country had an obligation to ensure that the treatment

of the foreigner complied with minimum international standards. If the treatment violated those minimum standards the foreigner's nation could claim a remedy from the host nation. The doctrine maintained the fiction of excluding individual rights from the realm of international law by insisting that only the state, not the individual could sue and only the state was entitled to a remedy — the injury to the individual was in fact viewed as an injury to the home state, i.e. the divine, sovereign power. Conversely, if the host state treated its own citizens in the same way that the foreigner had been treated there was no remedy because only the home state had a right to sue and clearly the homestate was not going to, and could not, sue itself at the international level. At the domestic level, of course, the all-powerful sovereign would have made quite sure that such maltreatment was beyond redress. Although this doctrine did maintain the general notion of the limited nature of international law, it nonetheless began to develop a body of law relating to minimum acceptable standard applicable to individuals which was later to prove a fruitful background in the human rights movement.

Other early developments came through treaties. Under international law any state was deemed capable of limiting its sovereignty by agreement with other states. A state could therefore agree, by treaty with other states, that it would not maltreat its citizens in specified ways. These treaties would then be binding and enforceable by the other states, parties to the treaties. Early examples are those treaties abolishing slavery or protecting ethnic and religious minorities. If slavery was practiced or the minorities were not protected, the other states, as parties to the treaties, could seek redress. Of course, the injury would once again be seen as committed against the other state treaty partners, not against the enslaved or discriminated against minorities.

The basic genius and revolutionary ideas embodied in documents such as the Declaration of the Rights of Man and the Citizen or the American Declaration of Independence and Constitution is that they begin to recognize that individuals have rights, largely civil and political rights, simply because they are human beings.

The Historical Conditions Leading to the Adoption of the United States Declaration and Constitution and the French Declaration.

Let me step back a little to describe the American situation first. It grew out of rebellion against non-representative government but the revolution not immediately produce a blue-print for a unified, pluralistic government guarding certain broad rights for all persons. The basic distrust of strong governmental tyranny almost precluded the creation of a constitution for a centralized government. The states were often practically at war with each other. The economy was in ruins. There was no common currency, and flooding some states with paper money had simply led to endless devaluations and an almost total distrust of any form of exchange other than actual goods. The unpaid Revolutionary Veterans were becoming mutinous. Poverty was rife and groups of farmers were ready to overthrow their own state governments; Massachusetts Shay's Rebellion being a local example. Madison and Hamilton emerged as the saviors of the day.

The historical conditions out of which the various French Declarations and Constitutions grew at the end of the eighteenth century had many similarities with the American conditions, but of course the tyranny was home grown and not of foreign import. The economy was in ruins and financial crisis loomed, thanks in no small part to the profligacy of the monarchy, clerics, and nobles. Abject poverty abounded. Jefferson, the U.S. Minister in Paris, described the situation thus:

> "Of twenty millions of people supposed to be in France, there are nineteen million more wretched, more accursed in every circumstance of human existence, than the most conspicuously wretched individual of the whole United States."

The contrast between the glittering town life of the nobility with the grinding poverty of the peasants was extreme. A contemporary observer stated: "You move at once from beggary (in mud cabins) to profusion (in theatres)." Wheat and bread riots broke out. A revolutionary mob stormed the Srasbourg Town Hall. The National Assembly had rapidly

moved towards a radical mode, renouncing the privileges of aristocracy, Church, provinces and municipalities. The peasant revolution interrupted the Assembly's work in August of 1789, but the Declaration of the Rights of Man and the Citizen was finally proclaimed on August 26, 1789. Of course it did not immediately produce the government and society to which it aspired.

France had supported America during the American Revolution, probably more from long-standing hostility with England than with principled sympathy with the rebellion. Jefferson, who was serving at the time in Paris, sent Madison, at his request and in order to aid him in drafting the Constitution, two trunks of English French and Latin books on natural law and republican movements. Madison, who had requested these books to aid him in drafting the U. S. Constitution, began to outline that document by drawing on Voltaire, Montesquieu and Rousseau. Ultimately his draft, after various modifications, formed the structure of our present U.S. Constitution. Perhaps it is only fair to consider also the Bill of Rights together with the Constitution, even though it did not go into effect until 1791 and was not part of the original Constitution. Even prior to the Constitution Jefferson's Declaration of Independence had announced the "right" and duty of the "people to throw off Despotic Governments and establish a Free and Independent State."

Central Themes of the American and French Founding Documents

A perception of the need for a centralized government with broad powers along with a fundamental distrust of centralized government are often claimed as the main motivating forces behind the U.S. Constitution. The limitation on the powers of the three branches and the mechanisms through which they work together is often regarded as the genius of the Constitution. While both these elements were certainly guiding forces, and revolutionary in their day, it must be remembered that the Tenth Amendment made it clear that the states, or the people, retained all they had not surrendered — that is, that there were other sources of all-encompassing power, namely the states or the people. What the people were thought to have retained has only become apparent through two hundred years of interpretation. It would appear that they have retained negative rights, rights not to have the government do certain things to the individual.

In the United States, the mode of interpretation through the mechanism of judicial supremacy—that is the judiciary arrogating to itself the power to be the final interpreter of the scope of the powers of the three branches of government—came about largely by historical chance and probably through the personal animosities of the Chief Justice of the Supreme Court and the President of the day and not through any overriding sense of the Framers that such was the best system. I happen to think that judicial supremacy has worked fairly well in the American context, not because of any pristine sense that this is the best principle devised by man but rather because of the particular social and political history of the United States itself and the numerous shortcomings in the personnel of the legislature and the executive.

Limitation on central government was to be effected by a tripartite system of government with various mechanisms for checking each others powers, with separate powers to some extent but with overlapping powers in other significant enterprises. The powers of the legislature, executive, and judiciary were spelled out, and limitations were specifically placed upon state power. The people, as such, do not receive much mention except that they were to elect their representatives in the House. "They," of course, meant white, male property owners. Limited black suffrage was not contemplated until the Fifteenth Amendment of 1870, and female enfranchisement did not take place until 1920. The notion of equal participation, one person—one vote, based on personhood alone, did not emerge until the 1960's. It is salutary to remember that as Jefferson noted in his discussion of the wording of the Declaration of Independence that: "The clause... reprobating the enslaving the inhabitants of Africa was struck out in complaisance to South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who on the contrary still wished to continue it." Indians are specifically referred to as "merciless...savages."

The Constitution then is largely power-granting, power-dividing and mechanistic in its approach. It is not, largely, a manifesto of declared rights—except perhaps the general great right to live under a government as devised by the Constitution, admittedly not an insignificant right.

The Declaration had been more ambitious perhaps, declaring "that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of Happiness" and that governments are instituted to secure these rights and derive their powers from the consent of the governed. Although the Declaration has some inclusive language such as "mankind," and "people," history has made it clear that "men" meant, until recently, only men, not women, and more specifically white, educated, and propertied men. But, even taking the Declaration, the Constitution and the Bill of Rights together there are very few positive promises. These documents do not ensure that you will not sleep on the streets, or go hungry, or be educated, or have a job. Shelter, food, training, work and nurturing—perhaps the bedrock of daily existence—are either not mentioned or, if mentioned, spoken of in the context of assumed existence and given protection from governmental intrusion. The Fourth Amendment is a useful example: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

The First Amendment may come closest to a quasi-guarantee. "Congress (and now by application, the States) shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." Admittedly it is again couched in terms of a negative—the government shall not interfere with religion, speech, press, assembly; but that negative is the deliberate choice that these areas are better left unregulated by government and will it is hoped ultimately produce a more just society. The tyranny of the majority, permissible under the Constitution, has made sure that the just society has been a long time coming, and the later Fourteenth Amendment's guarantee of equal protection of the laws has, until recently, only tempered that injustice in relatively small areas of our corporate life. The large areas of education and employment and even voting were left to regulation by the majority until very recently, and even in those areas it is the equality of opportunity that is now seen as the goal, not equality of the fruits of the corporate enterprise. More generally, the notion of equality in the distribution of goods, services, care, leisure and so on, is

not mentioned in the Constitution except in so far as the legislature is empowered to engage in some form of redistribution if it sees fit.

To return to the French Declaration, much can be said in a post-deconstructionist-feminist era of the meaning of "Man and Citizen" and whether it excluded at least half the population, but it was made clear by later Constitutions that even the most generous definition of the eligibility for suffrage was restricted to French males over the age of twenty-one years. It was not until after World War II that French women received the vote. But the Declaration had begun the great march toward universal suffrage. In its own way, even with respect to the scope of suffrage, the Declaration was revolutionary. The notion that all adult men might participate in electing rulers was almost unthinkable at the end of the eighteenth century.

The Declaration is a grand general document, leaving muchunclear about its intentions and the practicalities of implementation, but it sowed the seeds for further refinement and spurred the forming of the various Constitutions, setting up the mechanism of government, just as our own Declaration did. The Declaration does proclaim the "natural, inalienable and sacred rights of man" and proclaims the end sought to be the "happiness of all." Some of the more radical themes may be summarized: "Men are born and remain free and equal in rights"; and "the imprescriptible rights of liberty, property, security and resistance to oppression" are proclaimed. Sovereignty is seen as emanating from the people. Law can only forbid actions harmful to society. Law is the expression of the representative will. Arrest can only occur in accordance with the law. Freedom of opinion, even religious opinion is protected. Freedom to "speak, write and print" is announced. Property is an inviolable and sacred right and can only be taken for public necessity on payment of just indemnity.

As in the American Declaration and the Constitution, perhaps the most fundamental change advocated in the French Declaration is the notion that the power to govern emanates from the people. In a world dependent on natural law concepts, the bedrock belief in the divine ordering of authority was turned on its head. The divine originator remained, but was seen as vesting power in the individual. Criminal Law

was limited in its own realm, first by being restricted to forbidding action harmful to society and second by only being legitimate in so far as it expressed the will of the people. The idea of equality of right under the law was similarly revolutionary, coming as it did against a backdrop of the rigidly defined estates and the various privileges attached to rank. Renunciation of arbitrary arrest, subjecting arrest-power to authorization by law, was radical in an age when the powers of of the clerics and nobility were virtually unfettered. Freedom of speech and press guaranteed the individuals right to express ideas, political and nonpolitical.

The specific preservation of property has often been regarded as the ultimate bourgeois triumph in an otherwise largely egalitarian document, but it was certainly unclear at the time of the 1789 Declaration what property would mean and the main thrust of the provision was to denounce arbitrary expropriation without compensation by non-representative rulers.

The French Declaration paid very little attention to the mechanisms of government, in the same way that our own Declaration of Independence largely ignored questions of implementation. But just as our Declaration led to a Constitution, so the French Declaration aided the formation of the various succeeding Constitutions and set in motion the overarching principle that government springs from the people, that is, that individuals have rights and that government is excluded from certain areas of human endeavor.

But if there were shortcomings in these eighteenth-century documents, let me conclude by celebrating one or two of the revolutionary ideas that have borne fruit and which, we should hope will continue to bear fruit.

Beginning to Build on the Revolutionary Themes of the American and French Founding Documents

The idea that individuals (though only very recently, encompassing a much broader constituency to include adult men and women of most religious, ethnic and racial backgrounds), have a right to participate equally in government was, and is, a revolutionary concept. Moving

from the Divine Right of Kings towards a form of participatory democracy has been a truly revolutionary. Freedom of speech, religion, and assembly is another great revolutionary notion which continues to bear fruit. We do of course restrict this freedom on both sides of the Atlantic in what we call national security matters. In America we specifically forbid the overthrowing of the government by force of arms, a nice irony given the history of the founding of the United States. Laws passed through the representative system and enforced by an independent and impartial judiciary were also revolutionary and again form a great block of our civil and political human rights. We were given participatory political rights and rights of freedom of conscience in certain areas. Those rights are surely worth celebrating. They flowed from the great revolutionary concept that government springs from the people not from a preordained order.

The newer human rights in the areas of economic, social, and cultural concerns have yet to emerge fully. The recognition of individualism and property rights in the American founding documents flowered into the most rampantly free enterprize system known to mankind. This has certainly brought many benefits, but has also hampered some more recent struggles on the human rights agenda, such as the right to food, which found expression in President Roosevelt's "freedom from want."

If we look at some of the rights proclaimed in the 1948 Universal Declaration of Human Rights such as "the right to a standard of living adequate for the health and well-being" of a person and his family, "including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond...control...," we shall see that we have, as yet, a long way to go in ensuring these rights. It may be that we need to turn another corner of the revolution and begin to deemphasize our rights as individuals in order to pursue some of our collective rights. At the same time, however, we can thank the framers of the Declarations and Constitutions on both sides of the Atlantic for daring to give voice to the idea that people, as people, have certain inalienable rights.

II

THE COUNCIL OF EUROPE

The New Council of Europe: Images in a Changing Europe

Francis Rosenstiel

The Boston/Strasbourg Sister City Association organization, and Suffolk University have undertaken this symposium at a most appropriate moment. Indeed we all acknowledge that the democratic heritage of the Declaration of Human Rights is a challenge which never ends. Moreover, President Kennedy's famous words in Berlin, *"Ich bin ein Berliner"* have acquired a new dimension.

In today's landscape of international organizations, the Council of Europe most recently became the clearest testimony of the spectacular emergence of what one could call the new paneuropean consensus for democracy. A friend of mine, Professor Pierre Legendre, likes to say that "Democracy is the government of the reference." The permanence of the human rights reference enshrined both in the Council's Statute, and the European Convention of Human Rights, has ultimately acquired

a magnetic effect, at this moment, for countries like Hungary, Poland, Yugoslavia, if not the U.S.S.R. itself, after having been utilized in many cases as an absolute taboo and a political deterrent for several decades. For an organisation which closed its doors to both Franco and Salazar, as well as to the Greek colonels in the sixties, this also implies that there is no need for us in 1989 to renegociate our own democratic and pluralistic values in order to adapt ourselves to the sweeping acceleration of history throughout Eastern Europe. The new situation also reflects the fact that a growing number of countries consider their own future in the double perspective of the emergence of an ever more integrated Europe and at the same time of an irreversible claim for transideological democratization. It is most striking that 1989 not only marks the bicentennial of the French Revolution but also that it has become the year when anything seems possible throughout European continent.

Contrary to what intellectuals and lawyers generally cherish and require for their own mental, if not scientific comfort, it so happens that recent times raise many more questions than they answer. Never have peoples and governments, from China to East-Germany and Czechoslovakia, felt so deeply the unescapable and often uncontrollable force of popular aspirations. The question then arises: Shall we soon see the evidence of Reason challenge the evidence of Force? Even if there should be an answer to this disquieting question, no genuine politician would ever dare disclose it. Ambiguity may therefore still remain a useful prerequisite for security.

The spectacular evolution we are confronted with thus requires a permanent orchestration of all democratic forces on both sides of the Atlantic and the institution of a genuine dialogue for democratization within the appropriate organisations among which the Council of Europe as the European and international flagship for Human Rights can and will play a prominent role. This wish was recently expressed by our 23 member governments. Recognition of the evidence might take decades but, even though belated, it should always be considered as politically up-to-date.

Let us remember the atmosphere of economic, political and

institutional desolation which prevailed in Europe before the Council of Europe was created in 1949. This came in the wake of Churchill's appeal in 1946 and the 1948 Congress of Europe held in The Hague, and against the overall background of the United States's pressing appeal for increased cooperation among Europeans.

The signing of the Council of Europe's statute and European Convention of Human Rights in 1949 and 1950, would have been totaly inconceivable without the devastating and gloomy background of fascism, nazism and the Second World War. The Council of Europe symbolises, therefore, a European consensus to reject any form of totalitarianism regardless of cosmetic disguise. But the Council has also shown itself to be an agreeable image of an all-European, common democratic space governed by the rule of law and the principles of the European convention of Human Rights and sanctioned by the appropriate mechanisms set up to this effect. Concepts such as national sovereignty and non-interference in domestic affairs have indeed undergone radical mutations both in substance and perception, even since the signature of the Helsinki CSCE final Act in 1975, both in substance and perception. Open boarders and the communications revolution have confirmed this irreversible trend. Today, knowledge and criticism have frequently replaced blind faith and unreliable interpretors of alleged good and evil states.

A strange and new question shakes the world: Aren't we all Europeans today?

Coming back briefly to the structure of Council of Europe, let me note that it consists of a Committee of Ministers with 23 member states and a parliamentary assembly of some 170 members chosen from national parliaments. The current Secretary General is Mme Catherine LaLumière, (who was elected by the Parliamentary Assembly for a five year term in May 1989; a former French Minister for European Affairs). The Council of Europe, founded 40 years ago to further the widest possible European unity, cannot step away from this historic emergence of new democracies in Europe. At a time when the Council of Europe has fullfilled one of its statutory aims by bringing together all the existing pluralist parliamentary democracies of Europe, new prospects

for action have arisen, and with them new responsibilities for dialogue and cooperation, provided that the countries of Eastern Europe genuinely embark upon the course of domestic reform and democratisation.

Mainly since 1985, the Council of Europe gradually developed contacts with certain Eastern European countries, first at the interparliamentary level and subsequently at the intergovernmental level. Both organs of the Council of Europe, (although at different paces), have shown the same openness towards Eastern Europe.

On the parliamentary level, contacts and visits by a number of delegations including the Soviet Supreme, have led to the granting of a special guest status to the legislative assemblies of Hungary, Poland, the Soviet Union and Yugoslavia, and brought about the visit of President Mikhail Gorbachev on 6 July of this year.

On the intergovernmental level, the movement began with the adoption of Resolution (85) three on the European cultural identity, which asserted the readiness of the governments of the Council of Europe member countries to cooperate with the countries of Eastern Europe in the cultural field. Following visits by the Secretary General to Hungary and Poland in 1987 and 1988, cooperation programmes were agreed upon with those countries. Yugoslavia, as a party to the European cultural convention since 1987, is in a different situation. Following the meeting in Strasbourg on July 6, 1989 between Gorbatchev and the Bureau of the Committee of Ministers, a contact group was set up to examine possible areas of cooperation between the Council of Europe and the Soviet Union. This contact group's first meeting was held in Strasbourg in September 1989; a second meeting took place in mid-October in Moscow of the same year.

These various actions fit into the framework defined by the Committee of Ministers in the Political Declaration of May 5, 1989 (date of our 40th anniversary), stating the readiness of the Council of Europe to develop contacts and to extend cooperation with countries of Eastern Europe, taking into account any developments conducive to improved implementation of the principles of human rights and pluralist democracy. Cooperation, "should lead to the promotion of human

rights, the rapprochement of individuals and groups across frontiers and the finding of solutions to the challenges of society today, thus contributing to awareness of Europe's cultural identity and of the heritage Europeans share in the values of democracy and freedom."

In this respect, the Council of Europe is prepared "to engage in an open and practical dialogue with European non-member countries on the respect and implementation at national and international level of the principles of human rights and pluralist democracy enshrined in the Council of Europe's statute, the European Convention on Human Rights and the European Social Charter."

Among many other initiatives, the Secretary General has also announced an important international interdisciplinary colloquy in 1990 on the challenging theme of "The Common European House"; it being clearly understood that for us this can only be a common house of democracies. This Colloquy follows earlier encounters of such as the 1981 colloquy on transatlantic relations, the 1984 Orwell colloquy and colloquies on democratisation in Latin America and cultural identities in the North-South dialogue.

As was recently stressed by our Secretary General before the Parliamentary Assembly: "within the political framework outlined by the declaration of May fifth, the Council of Europe activities should develop according to three priority areas: human rights and democracy, cultural identities and major problems of society." Among such subjects the Secretary General hightlighted one interdisciplinary project likely to mobilize the energy of all. It concerns human rights for those second class citizens whom we cannot but call the poor (of whom there are still many in our societies and for whom the indispensable civil and political rights have still little point for as long as the basic needs of life are not satisfied). Therefore within the Council of Europe framework, the actual home of human rights, the place of economic and social rights must be enlarged: Secretary General Catherine Lalumière phrased it, ennobled. Most of the directives set forth on May 5 (1989) by our member governments have been reviewed and implemented in terms of political priority at the Committee of Foreign Ministers meeting on November 16 of that same year. At this occasion clear orientations were

given with respect to areas of cooperation with the USSR, Hungary and Poland, the two latter countries having signed at this occasion the european cultural convention, thus marking an important step in the development of our relations with Eastern Europe as a whole. Ministers took note of Hungary's request to joint the Council of Europe which they took as striking evidence of the current process of reform and democratisation in that country. They also heard an announcement of the Foreign Minister of Poland concerning the intention of his country to become a member of the Council of Europe after a period of adaptation. They expressed themselves in favour of examining the possibilities of cooperation between the Council of Europe and the Soviet Union and of the accession of this country to certain Council of Europe Conventions.

Furthermore we could—where circumstances allow and if the countries concerned are interested—organize services and exchanges of expertise on specific subjects; for instance in the vast area of law; didn't President Gorbatchov himself speak in Strasbourg of a European legal area? Work of this kind is under way with Hungary and Poland. The know-how which we possess in the field of law, human rights—the machinery of democracy—must be made available to a greater number. This is not only true in Europe's geographical area, but also in our relations with developing countries, showing interest in the democratization process. Two years ago, we initiated the European Campaign for North-South interdependence and solidarity which recently laid down proposals for action in the field of human rights and democracy, in the direction of clarifying and supplementing the provisions of the African charter on human rights and preparing the establishment of an African court of Human Rights.

The North-South Campaign also led to the forthcoming creation in Lisbon of a European Center for global interdependence and solidarity.

The development by the Council of Europe of a kind of democratic assistance network based on the principles of the Statute and the Human Rights Convention goes together with the Strasbourg-Conference process existing since 1983 and which consists in bringing regularly together parliamentary representatives of existing pluralistic democraties from

non-European OECD countries like the United States, Canada, Australia, New Zealand, Japan but also from Israel, Asia and Latin America for instance.

The present challenge to the Council of Europe is considerable, unexpected and definitely stimulating. A new era is in front of us, on both sides of the Atlantic; an Atlantic which ought to become the interior lake of a future common house of democracies liberated from anxieties, fears and possibly illusions.

At a time when one often refers (with some romanticism) to the undefined common heritage of mankind one may wonder if sovereignity has not become homeless. Taking into account our common values and references, watching the crowds in Leipzig and listening to the cry for liberty in Prague, let us hope that this end-of-the-century may initiate the Age of Democracy.

III

ROUNDTABLE DISCUSSION ON HUMAN RIGHTS

ROUNDTABLE DISCUSSION ON HUMAN RIGHTS

SPEAKER	TOPIC
James D. Williams Executive Director, Boston Human Rights Commission	Moderator
Rev. Joseph Washington Mayor's Senior Advisor on Equal Rights	Race, Racism and Discrimination
Quoc Minh Tran Boston Human Rights Commission	Repatriation Policy and its Effects on Southeast Asian Political Asylum Seekers
Elaine Taber Executive Director Women's Commission	Women's Rights
Mekonnen Meshesha Executive Director Ethiopian Family Center	Issues around Immigration and Race
Valerie Epps, Professor Suffolk University	Criminal Punishment and the Death Penalty
Yves Jeanclos, Professor University of Strasbourg	International Law
Elisabeth Zoller, Professor University of Strasbourg	International Issues

Comments from the Roundtable Discussion on Human Rights

James D. Williams

When the Boston/Strasbourg Sister City Association began planning for the Bicentennial of the Declaration of the Rights of Man, the city of Boston was approached and asked if we would like to participate on a local level in the symposium. This seemed to be an excellent opportunity to have people from the local area express their broad and general ideas on various aspects of Human Rights that we in this city work with on a regular basis. In the hallway there is an exhibit by artist Allen Lutz of Strasbourg. This is yet another expression of the commonality between Boston and Strasbourg in conjunction with the Sister City Association.

My topic is broad and sweeping. The black historian W.E.B. DuBois, Harvard's first recipient of a Ph.D. degree said, "The color line in America is the problem of the twentieth century." Gunnar Myrdal in his classic work said that the problem of the twentieth century in the United States is race.

In 1968 after the riots the President commissioned a group called the Kerner Commission and they decided that the greatest problem in the United States then was race. We live in two Americas, one, the "haves" and one, the "have nots." Recently we were informed that instead of things getting better between the races in the United States, they have literally gotten worse. I must say that based upon my travels world-wide I think that race is a problem wherever you are. It seems that the darker your skin color is, the more of the world's burden you carry. Certainly the United States is a country built upon slavery. It took an amendment to our Constitution to give us equality in the United States. And while that's on paper I'm not certain that that is in actuality now because many African-Americans, as well as people of color in general, are still discriminated against. It is still very difficult in the a United States live in the kind of housing that you seek no matter how much money you make. It took seventeen years for a gay rights bill to be passed in this great Commonwealth which says something about our law makers. Who would ever think that it would take seventeen years for people of different sexual preference to be treated like everybody else.

Recently David Dinkins was elected mayor of New York City, a Democratic city. Ever since we began voting in the United States, New York City has Democratic city. However, a young political upstart (given his record) gave Dinkins a very hard time in winning the race. Many people who traditionally vote Democratic in our two-party system voted Republican because David Dinkins is an African-American.

Finally let me say that until we eliminate the kind of dual system that exists in a country such as South Africa, the rise of racial violence

and racism and discrimination throughout the free world will continue. Because when we allow that to happen to one person in another country, we're giving tacit approval for it to happen throughout the world.

Quoc Minh Tran

Discrimination against Asians is very diverse. I'm going to focus on the subject of human rights violations against the refugees, especially the Southeast Asian refugees. As you know, because of brutal wars and repressive governments, more than two million Southeast Asian refugees have fled their homelands since April '75—by boat and in numerous cases, by foot. These refugees travel to Thailand and other countries in the region like Hong Kong and Malaysia. The Thai government has vacillated in its response to these arrivals, at times reacting with apparent compassion and other times with callousness and abuses. To deal with this huge number of asylum seekers the United Nations convened an international conference of 65 nations in July '79, to seek solutions to what has become an international humanitarian crisis. However, by 1982, it became apparent that the resolutions made by the '79 Geneva conference had all failed. The first resolution, whereby the international community agreed to resettle the refugees was not fully honored. Apparently, this policy is incompatible with any human rights standards. The second policy implemented by the Thai government in early 1987 aims at preventing all boat people carrying especially the enemies from landing on Thai shores. The third resolution, of which the Vietnamese has agreed to stop the boat people from fleeing and also to implement an orderly departure program, has come to a halt. So the situation once again presents an international humanitarian crisis. The U.N. has reconvened a series of conferences to seek another solution.

Elaine Taber

I believe that the subject of human rights for women is also very broad. Here are several topics of concern. Firstly, we have to recognize that the past eight years have been absolutely devastating for women in

this country. We had a president who called himself a "pro-family" president but after his eight years in office, more women were thrown into poverty than ever before. The largest number of poor families in the United States today are headed by poor women and the largest number of poor in this country today are children under twelve. It's hard to understand how policies that have removed the small safety net we had before could be considered "pro-family." But then as you know he's a very skilled communicator. In the city of Boston things are not that bad because we have some policies that really are "pro-family." However, there's still a huge disparity between the lives of women in this city and the lives of men. Women as wage earners earn a whole lot less than men. And women who are at home are unpaid labor. Either way, this forces women to live a life of poverty unless they're supported by a family member or a spouse.

I can remember about ten years ago when women earned 59 cents for every dollar a man earned. That has changed in the past ten years and I think we're now up to 67 cents. And while I don't want to diminish that that is an improvement, it's still awfully hard when you need to pay your bills to try to apply that 67 cents in the same way that men can use their whole dollar. In fact, I can remember a time when I was working with a friend and every night in a sort of a joke we would say to each other, well, another day, another 59 cents. In a way it was a way for us to remember that we needed to keep working to try to improve conditions for women and to just try to have a sense of humor about it because without that it's really hard to keep going. I wanted to talk about employment conditions for women because it's confusing when you consider the fact that discrimination is illegal yet women earn less than men. I think we need to take a broader look at equal pay which is the whole concept of pay equity. What that means is that people should be paid a salary based on the level of responsibility of their job, the skills needed to do the job, to look at the job in a race- and gender-free way and to assign a value to them. Here in the city of Boston, we are about to reclassify all 53 odd thousand city jobs that haven't been classified since the fifties and we're conducting a pay equity study to do just this, to look at jobs in a race and gender neutral way and assign them a value and translate that into a salary. Consider the fact that parking lot attendants earn much more than childcare workers. But I refuse to

believe that people care more about their cars than they do about their children. However historically women have been childcare workers and men have been parking lot attendants, and there's really no other way to try to understand why men and women are earning different salaries.

We need more employment policies that include childcare beyond maternity leave. We also need leaves for people who have to take care of their elderly parents. We need leaves for people who adopt children rather than give birth to them. We need a whole set of employment supports that will really be "pro-family."

Another right that I wanted to speak to is violence. One place where you would assume women have the right to safety is in their home. Yet that is probably the most dangerous place for a woman to be. The whole issue of domestic violence is really mind-boggling. We have made some gains in the whole domestic violence arena as far as the laws but again, there is so much leeway left to the courts, that until we see more judges who are women or more male judges who tend to understand these issues in a broader spectrum, we're not going to see some of these laws translated into action. It's going to take a lot more than the laws. It really requires a complete change in behavior. The violence in the street and the violence at home are all part and parcel of the same thing. The difficult part is changing the attitudes, I think that starts with children. We need to start changing some of those attitudes starting in grade school with the very young.

Mekonnen Meshesha

The center serves mostly African refugees and mostly African migrants, particularly in the state of Massachusetts. Today I want to talk about the rise in immigration. Black immigrants come from Haiti, Ethiopia, Angola, South Africa and so on. In 1988, 36 percent of the world refugees were Africans. Wherever we go we blacks are oppressed. Even on our continent, when our masters leave us, they don't leave us. They planted their masters and we'll suffer day in and day out with no stopping. It is really racism. Even if we want to report descrimination, the lack of language is our handicap. We can't go anywhere.

My work is not confined to America. I travel all over the world, particularly to Europe and Africa. There is a large anti-black group in Germany. We had a nice working relationship until two, three years ago but recently for some reason, some individuals have come out against bringing any more black refugees to Germany. The same thing is true in Sweden. Sweden took in a lot of refugees. Now they see too many black people. What I am trying to say here is let's see reality. If we are really concerned about human rights, let's advocate for equal rights, for human rights.

Valerie Epps

What I see as the overarching theme of all speakers here today is the issue of violence. Violence. One person against another, whether it be on the basis of race, of gender, of ethnic background, or on what we are prepared to pay people in relation to type of work they perform. Professor Zoller is correct when she states that the definition of a refugee under international law does not include people who are suffering economic hardship. What this should demonstrate to us is not that millions of people are wrongly claiming refugee status, but rather the poverty of international law. The difficulty is I think that we've essentially shrouded ourselves or covered ourselves over with this narrow definition of what we're going to accept as a refugee persecution on the basis of political opinion and so forth and so on. Nobody else counts and so we spend millions of hours and resources and money putting people through a process to decide whether they do or not fall within this particular definition. We have to recognize that if you look around the world today you will see that people are on the move. They are on the move because they want to better their conditions of living. Some of them are on the move because of political repression in one form or another. A lot more are on the move because, although persecution is part of the picture, they also want some of the economic goods of this world. Now what we've done in the world—and we do it in microcosm in the United States—is to ensure that we have a world where you either come from a rich country or you come from a poor country, and the divide is getting worse and not better. Consequently the number of refugees is not going to diminish. Another thing has happened

that has radically transformed the refugee situation is the media. Even people from very poor countries now have access to media that shows them what other parts of the world are like. And poor people are just like us. If they see something that looks more comfortable and a better way of living, they're going to want to go there.

We witness daily the migration of East Germans into West Germany. West Germany at the moment is welcoming these people. The East German government is sitting there wondering whether it's going to close the borders or what it's going to do. Of course there is a large issue of political repression there. But sooner or later the West Germans will say enough is enough. We can't take all these people, which is what a lot of the wealthy countries do. If we ask, "Are we going to have an open border, are we going to have everybody coming in, anybody who wants to come in, come in?" Everyone from every country says "no" to open borders. "We can't do that. Because if we have that system pretty soon we've got chaos." So it seems to me that we have to think of long-term projects about redistribution of wealth. No one wants to think about that. They particularly do not want to think about it in the United States because in the United States we have almost a god-given belief that "you get what you deserve and that you deserve what you get" and what we have witnessed, as many of the speakers have noted here today, in the United States is an increasing divide in the United States between the rich and the poor. It's now estimated that 23 percent of the population in New York City lives below the poverty line. Do we care? No, we don't care and that's the truth of the matter and we won't care until the riots come. And this is the sad fact of history particularly in the United States. Nothing will happen until you burn the houses down and then people will take a little bit of notice for a short period of time. Ellen Goodman had a most interesting column in *The Boston Globe*. She was talking about the paltry attempt of Congress to increase the minimum wage which it now looks will happen too late. But she said, "What about a maximum wage?" What about somebody suggesting that it is obscene for people like Reagan to go to Japan and be paid.

In any event, we certainly don't have a common consensus that maximum pay is somehow proper, nor do we have any real sense of progressive taxation. In fact, Bush almost managed to get through a

reduction in the capital gains tax. He didn't quite manage to because people had different agendas but we don't have any real sense of the justice of redistributing wealth in some way or another. We don't have it as our own national policy and we certainly don't have it as an international policy. Now, sooner or later, things may get bad enough in this country with the divide between the rich and the poor that we finally will decide to do something. When we have to step over too many homeless people before we can get in our apartments, it'll become too much of a problem. When the crime rate skyrockets even more than it does at the moment, we may begin to take notice. One of the things we, continue to do, is to call for the death penalty. I happen to think it's extremely misguided. Here are a couple of arguments against it. One is that when we execute murderers, it's the only occasion in our criminal law system where we do to the offender what the offender has in fact done to the victim. So we kill the killer. We don't rape the rapist. We don't assault the assaulter. We don't rob the robber. And it's the only occasion on which we insist on the "eye for the eye." This is an argument that you don't often hear and one that I think is worth thinking about. Another argument that often strikes me as a good argument is that if you ask most people who are in favor of the death penalty, "Right, let's take a rotating turn at being the executor, it's your turn this month, will you do it?" A great number of them will say, "Oh, no, I won't do it, I can't do that." And I think that if in your heart of hearts you know that you would not do it as a matter of principle, then I think it's extremely difficult to make out a moral argument that you are willing to delegate the job to somebody else. The people who undertake such tasks usually have extremely low intelligence, and very little education. We essentially make them do our dirty work.

Well, this has been a broad-ranging discussion of issues but as I said, I see the unifying theme of violence. If I was to be asked what can we do about this; where lie the solutions to this: that presents a very big topic. I happen to think that international solutions are solutions that need to be looked at first. Clearly, in the refugee area, the only way you're going to get a solution of any description is by an internationally concerted effort to resettle people in one way or another and secondly to make both political conditions and economic conditions in the home countries from which the refugees have fled more palatable. So those

two things have to go on. In terms of the treatment of women, I think our attitude towards women is part and parcel of what we are prepared to do to any group that we can gain sway over. I noticed that Ms. Taber talked about equal pay. I think we also need to look very much at the issue of equal pay across the board. I don't know why a law professor should make more money than somebody who cleans the floors. But nobody wants to hear that as an economic argument, particularly in the American context. However I think as long as we stratify our society on race lines, on gender lines, on class lines, on economic lines, we will have violence and will not find the solutions we seek.

Caroline Eades, speaking for Yves Jeanclos

Professor Jeanclos understands English and can answer questions in English, but he felt it would be better for me to translate his brief remarks on the connection between human rights and the issue of security. He said that most of the speakers talked about refugees but he would like to emphasize that most people cannot leave their countries. Therefore there is a connection between human rights and security in Europe. The best example is the Helsinki process, called "Confidence-Building Measures and Security." It has been in effect since 1975 with the participation of 35 countries, including the United States and Canada. There are several interconnected measures. First, confidence-building measures in the military fields and then measures in favor of human rights. The Western countries say: Give freedom of thought, freedom of movement, of travel, to your inhabitants and then we will be willing to discuss armament limitations and restrictions, even total troop withdrawal from European soil. And as you know, this is the Soviet demand. Well, the question is, is it really healthy to link negotiations for arms control with the issues of man's freedom? Now, for the first time, there is a project for a summit in 1991 in Moscow focusing specifically on human rights issues.

There have been quite a number of associations in the eastern world, in Eastern Europe, on the implementation of the Helsinki Agreement, but they were not generally supported by the authorities. I'm thinking of the Soviet Union and Czechoslovakia. However,

international pressures led to positive results in the field of human rights, more for economical reason than for military reason. The countries in the Soviet Bloc, accepted the principle of the freedom of man, of human rights.

Elisabeth Zoller

It is a daunting task to try to comment on the problems raised by the speakers at this forum. We came here, Professor Jeanclos and I, to celebrate in Boston, our sister city, the Bicentennial of the French Revolution, and in particular, the Bicentennial of the French Declaration of the Rights of Man. After having heard these comments, I would be tempted to say there is still a lot to do. We haven't gone very far. And many problems remain.

These problems have been addressed on two different levels. First the international level, and second, on the domestic level. Comments have been made on the international plane, especially in relation to the refugee question. No matter how sad, how regretful states' policies towards refugees are, they are not against the law. Whether we like it or not, neither the Geneva Convention of 1950 nor the protocol of 1967 compel a state to accept thousands and thousands of refugees no matter how well-founded their fear of persecution may be. Granting refuge to thousands of refugees is not a matter of law. It is a matter of charity.

Now let me turn to the domestic issues. Domestic problems were raised, especially by the two first speakers. Here I would like to elaborate and develop somewhat on what my colleague Professor Epps said. She accurately said that the most striking feature of the papers presented on human rights was that of violence; violence that exists in our societies, and especially in the American society. She said that American society is an extremely violent society. That is true. For a European it is certainly the most striking feature of this society. It is very violent, very competitive, and harsh. It is almost like a jungle in certain respects. But the violence that you have here in the United States is the price that you pay for your liberty.

I mean by that, that since liberty is the most important ideal of American society, there can be no law. The more you enact statutes and the more you draft laws, the less free people are. You can compare women's rights. I listened very carefully to what Elaine Taber told us about the rights of women in the United States. For every example that she mentioned as an infringement of women's rights, I was thinking, but in France we have a law for that. There is a law against that. We have law that provides equal pay for equal work. She also mentioned child ca e, parental leave. We have statutes, we have laws that compel private c mpanies to grant parental leave or contribute to social security, which i cludes family allowances. It may be a very general observation, but I thi k there is some truth in it. The more you want to be free, the less re ulated you must be. And the violence that exists—and is rather shocking in this country—is to some extent the price you pay for your liberty.

In Europe these problems are not as acute as they are in this country, probably because we have more laws. Not only do we have laws at the domestic level, but we also have a European Convention on Human Rights. And we also have economic and social rights that are guaranteed to every European worker. I don't think that Congress in this country is ready to pass laws that will set limits, particularly to the sovereign rights retained by states because you are a federal state. And then there is the problem with the federal system. I'm also not convinced that in the name of free enterprise, Congress is ready to pass laws that will regulate the economic sector the way it is regulated in Europe. In other words, I think that there are good grounds to believe that human rights—and especially the rights of the minorities—are better guaranteed in a welfare state than in a free state. There must be a balance between what the law says and what the society is. The laws must match the society. And certainly the status of women in France is the product of centuries of history, not the product of the laws, so to speak.

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