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# By What Right Do We Invoke Human Rights? \*

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SCIENTISTS the world over are united by a common purpose, ideally to discover Nature's secrets and put them to use for human benefit. Albert Szent-Györgyi, the discoverer of vitamin C, has said: "I feel closer to a Chinese colleague than to my own postman."

When a scientist who has committed no crime is imprisoned, we feel like the minister freeing the prisoners in *Fidelio* when he sings: "Es sucht der Bruder seine Brüder"; he or she is one of our brothers or sisters, and we feel a duty to appeal for his or her release. In doing so, we are now on strong legal grounds established by the United Nations Universal Declaration of Human Rights of 1948 and the conventions and covenants that followed it. They have the force of international law and are backed by courts and commissions to which individuals can appeal.

What do they say?

The International Covenant on Civil and Political Rights of 1966 "recognizes that these rights derive from the inherent dignity of the human person."

Its articles include the following:

- Everyone has the right to life, liberty and security of the person.
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- All are equal before the law.

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- No one shall be subjected to arbitrary arrest, detention or exile.
- Everyone has the right to freedom of thought, conscience and religion.
- Everyone has a right to freedom of opinion and expression.<sup>1</sup>

Despite their many infringements, the enshrinement of these and other essential rights in international law is one of the great achievements of our civilisation.

In large part, we owe their formulation to the great jurist Hersch Lauterpacht, professor of international law in the University of Cambridge from 1937 to 1954. In 1945 he published a seminal book, *An International Bill of the Rights of Man*, which became the basis of much that is in the United Nations Declaration and the Conventions that followed it.<sup>2</sup>

According to him,

The idea of the inherent rights of man, ultimately superior to the state itself, is the continuous thread in the historical pattern of legal and political thought. In antiquity, their substance has been a denial of the absoluteness of the State and its unconditional claim to obedience; the assertion of the value and freedom of the individual as against the State; the view that the power of the State and of its ruler is derived ultimately from the assent of those who compose the political community; the insistence that there are limits to the power of the State to interfere with man; the right to do what he considers his duty.<sup>3</sup>

Freedom's first conditions, the rule of law and equality before the law, stem from antiquity.

Aeschylus' *Oresteia*, written in 458 B.C., makes Pallas Athene, the goddess of Wisdom, admonish Athenians:

Hold fast such upright fear of the law's sanctity,  
And you will have a bulwark of your city's strength.

They were her own laws and they provided for trial by jury.

Thucydides reports that Pericles, the Athenian statesman, said in his funeral speech commemorating the fallen in the first year of the Peloponnesian War against the Spartans:<sup>4</sup> "Our constitution is called a democracy because power is in the hands . . . of the whole people.

. . . Everyone is equal before the law." In fact this was true only of male citizens, and it excluded women, barbarians and slaves, but the principle survived and inspired future generations.

Plato and Aristotle were elitists. Plato advocated rule by the few wise over the stupid many, and Aristotle apparently approved of some men being born free and others as slaves, each to his station in life.

The Stoics took the next step by distinguishing natural law from men's law, where natural law meant the universal moral conscience common to all, an intuitive notion of what is meant by justice and goodness, by which the laws of states can be judged. This law applied to all human beings, because they all bore within them a spark of the creative fire.

The Roman emperor Marcus Aurelius was a Stoic philosopher. In his *Meditations*, written in about 170 A.D., he favoured a polity in which there is the same law for all, a polity with equal rights and freedom of speech, and a kingly government that respects most of all the freedom of the governed.<sup>5</sup> These lofty thoughts did not hinder him from persecuting the Christians, but again, his thoughts inspired future generations. Epictetus, another Stoic philosopher of the first and second century A.D. and himself a slave in Rome, taught, not surprisingly, that slaves are the equals of other men, because all alike are the sons of God, thus anticipating Christian doctrine. St. Thomas Aquinas thought that God himself was subject to the law of nature.

The first step towards enshrining human rights in the laws of a state was Magna Carta, which King John of England granted in 1215 under duress from his barons. It assured freedom from arbitrary imprisonment, for which we are still fighting in many countries today and, less well known, also freedom to travel:

Article 39. No freeman shall be captured or imprisoned or dispossessed or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by the lawful judgement of his peers or by the law of the land.

Article 42. Everyone shall henceforth be permitted . . . to leave our kingdom and to return in safety and security, by land or by water. . .

Article 63. Wherefore we wish . . . that the men in our kingdom shall have and hold all the aforesaid liberties rights and grants well and in peace freely and quietly, fully and completely, for themselves and their heirs from us and our heirs. . . <sup>6</sup>

This did not prevent many of King John's successors trampling on the provisions of Magna Carta, but it provided laws to which their subjects were able to appeal.

After Magna Carta and up to the present day most concepts of human rights and their incorporation into law originated in the English-speaking world.

In 1628 Parliament presented King Charles I, who had disregarded Magna Carta at his peril, with a Petition of Rights that re-asserted the freedom from arbitrary imprisonment and added freedom from arbitrary taxation.

The lords spiritual and temporal, and commons in their present parliament assembled, concerning divers rights and liberties of the subject . . . do therefore humbly pray your most excellent majesty that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax or such like charge without common consent by and of parliament; nor be called to make answer, take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained....<sup>6</sup>

On the other hand, there was to be no nonsense about freedom of religion. In 1629 the Commons resolved that "whosoever shall bring in innovation of religion, or by favour or countenance seek to extend or introduce popery or Arminianism, or other opinion disagreeing from the true and orthodox church, shall be reputed a capital enemy to this kingdom and commonwealth."<sup>6</sup>

The seventeenth-century Dutch jurist Hugo Grotius first attempted to make natural law, inherent in the human conscience, independent of divine law as written in the Bible, the foundation for an international law. He postulated that "natural law would be valid, even if we were to concede, which we cannot concede without the utmost wickedness, that there is no God, or that the affairs of man are of no concern to Him."

In the 1640s, at the time of the Great Rebellion against King Charles I, the Levellers were a radical party within the Parliamentarians. One of them, Richard Overton, may have been the first to translate natural law into natural rights. In his pamphlet "An Arrow

Against All Tyrants," directed against Charles 1, he wrote: "For by natural birth, all men are equally... borne to like propriety,\*\* liberty and freedom... everyone equally and alike to enjoy his birthright and privileges."<sup>7, 8</sup> These were revolutionary ideas for which he suffered imprisonment.

The greatest seventeenth-century protagonist of human rights was the English philosopher John Locke, whose *Essay Concerning the True, Original, Extent and End of Civil Government*, published in London in 1689, overthrew the belief in the divine right of kings and put in its place a notion of the natural rights of man, rights that are universal and essential to all men, rights without which life is intolerable. They are the rights to life, liberty, and property.

He wrote:

It having been shown:

1. That Adam had not either by natural Rights of Fatherhood or by positive Donation from God, any such Authority over his Children, or Dominion over the World as is pretended.
2. That if he had, his Heirs (i.e. Kings), yet, had no Right to it. To understand Political Power right . . . we must consider what State Men are naturally in, and that is, a State of Perfect Freedom (i.e. not subject to authority). That State of Nature has a Law of Nature to govern it, which obliges everyone: And Reason, which is that Law, teaches all Mankind, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty and Possessions.

These principles did not hinder him from justifying the American settlers' seizures of the native Indians' lands, on the grounds that the Indians were hunters, not farmers, whence their land was not their property.

In the eighteenth century Tom Paine extended Locke's natural rights to man's "intellectual rights, and also the rights of acting as an individual for his own comfort and happiness which are not injurious to the rights of others. Every civil right has for its foundation some natural right pre-existing in the individual."<sup>9</sup> Tom Paine's revolutionary talk and writing inspired the American Declaration of Independence of 1776, the American Bill of Rights, and the French Declaration of the Rights of Man and of the Citizen of 1791.

\*\*By propriety was meant property in its widest sense.

Other inspiration came from Montesquieu's *Spirit of the Laws*, first published in 1745. Montesquieu advocated a separation of the powers of the judiciary, the legislature, and the executive, trial by jury, and a two-party system, so that one party has the power to keep the other in check. He defined liberty as "the right to do anything which the law permits" and political liberty of the citizen as "that security of mind which derives from each person's view of his own security; and to enjoy that liberty, government must be such that no citizen fears another citizen." Montesquieu favoured freedom of speech not as a natural right—I found no mention of such rights—but as a safety valve. Writings that satirize the government should be allowed, because "they satisfy the general malice, console discontents, diminish envy of those in high places, give people patience to bear their own sufferings and make people laugh at them."<sup>10</sup>

In Congress in Philadelphia on 4 July 1776 the thirteen United States of America declared unanimously:

We hold that these truths are self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among them are life, liberty and the pursuit of Happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.<sup>1</sup>

The Declaration failed to insert the word "white" between "all" and "men," because in fact none of these noble rights applied to their black slaves, for reasons Montesquieu had stated in this sarcastic passage thirty-one years earlier:

The peoples of Europe, having exterminated the peoples of America, were bound to enslave those of Africa in order to exploit other countries. Sugar would be far too dear if the plant producing it was not cultivated by slaves. Besides . . . it is virtually impossible to feel compassion for people who are black from hand to foot and who have such flattened noses. And . . . how could it have come into the mind of God, who is a very wise being, to put a soul, still less a good soul, into an all black body? It is impossible to suppose that these people are human because, if we took them to be human, one would begin to believe that we ourselves are not Christians. Small-minded spirits exaggerate the injustice done to the Africans because, if this were really as bad

as is said, would it not have entered the minds of European princes, who conclude so many useless treaties, to conclude one in favour of compassion and pity?<sup>10</sup>

In 1795 Condorcet echoed these views when he wrote: "There should not be different races, one destined to govern, the other to obey, one to lie, the other to be deceived; one must recognize that all have the same right to declare their interests, and that none of the powers established by them and for them is to have the right to hide any of these powers from them."

Condorcet anticipates Lord Acton's dictum that democracy consists in preventing revolution by timely reform. Decisions should be made by the majority of the people, but they must not infringe the rights of the individual, which he defines, following Locke, as the freedom to develop his faculties, dispose of his possessions and look after his needs.<sup>11</sup>

Article I of The Bill of Rights of 15 December 1791, formulated chiefly by James Madison, stated that: "Congress shall make no law requesting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, and to petition the Government for a redress of grievances."<sup>1</sup> Madison failed to anticipate that the free exercise of religion could make people try to bring about the prophesied end of the world by spreading poison gas, or that free speech would be abused to incite to racial hatred.

The Declaration of the Rights of Man and of the Citizen was adopted by the French National Assembly in 1791; it was inspired by the American Bill of Rights, but did not make these rights absolute.

The representative of the peoples of France . . . considering that ignorance, neglect or contempt of human rights are the sole causes of public misfortune and corruption of Government, have resolved to set forth . . . these natural . . . inalienable rights

1. Men are born, and always continue free and equal in their rights.
7. No man should be accused, arrested or imprisoned except as determined by law.
10. No man ought to be molested on account of his opinions, provided that his avowal of them does not disturb the public order established by law.
11. The unhindered communication of thoughts and opinions



being one of the most precious rights of man, every citizen may speak, write and publish freely, provided he can be held responsible for the abuse of this liberty, as determined by law.<sup>1</sup>

Sadly the Declaration failed to prevent the terror that followed.

Nineteenth-century liberal thought derived most inspiration from John Stuart Mill's essay *On Liberty*, first published in 1858.<sup>12</sup> In accordance with the intellectual climate of the day, he based his plea neither on the dignity of man nor on his inherent natural rights, but on utility and material progress:

I regard utility as the ultimate appeal on all ethical questions, but it must be utility in the largest sense, grounded on the interests of man as a progressive being. . . . This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it. Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong.

About freedom of expression Mill has this to say:

We have now recognised the necessity for the mental well-being of mankind (on which all their other well-being depends) of freedom of opinion, and freedom of the expression of opinion, on four distinct grounds; which we will now briefly recapitulate.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real heart-felt conviction, from reason or personal experience.

The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

Mill lashed out against Calvinism, which today has lost much of its power, but if we substitute *the state* for God, his words apply with equal force to life in this century and the next. According to Calvin, the one great offence of man is self-will, but Mill objects strongly:

All the good of which humanity is capable, is comprised in obedience. You have no choice; thus you must do, and no otherwise: "whatever is not a duty, is a sin." Human nature being radically corrupt, there is no redemption for any one until human nature is killed within him. To one holding this theory of life, crushing out any of the human faculties, capacities, and susceptibilities, is no evil: man needs no capacity, but that of surrendering himself to the will of God: and if he uses any of his faculties for any other purpose but to do that supposed will more effectually, he is better without them.

It is not by wearing down into uniformity all that is individual in themselves, but by cultivating it and calling it forth, within the limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation; and

as the works partake the character of those who do them, by the same process human life also becomes rich, diversified, and animating. . . . In proportion to the development of his individuality, each person becomes more valuable to himself, and is therefore capable of being more valuable to others.

Mill was one of the most prominent champions of the rights of women in the nineteenth century:

A person should be free to do as he likes in his own concerns; but he ought not to be free to do as he likes in acting for another, under the pretext that the affairs of the other are his own affairs. This obligation is almost entirely disregarded in the case of the family relations, a case, in its direct influence on human happiness, more important than all others taken together. The almost despotic power of husbands over wives needs not be enlarged upon here, because nothing more is needed for the complete removal of the evil, than that wives should have the same rights, and should receive the protection of law in the same manner, as all other persons; and because, on this subject, the defenders of established injustice do not avail themselves of the plea of liberty, but stand forth openly as the champions of power.

Mill's plea was not generally heeded nor acted on in Britain until well into this century and is still being ignored in most countries of the world today. His powerful essay on *The Subjection of Women* is much less well known than that *On Liberty*, which deals with men.

Mill's justification of human rights on the grounds of utility for all, rather than for the individual, has been criticised, because utility for all has often been invoked to justify repression of individual liberty, but since his essay is devoted entirely to the rights of the individual, this criticism hardly detracts from its merits.

The contemporary philosopher A. Gewirth has added the important rider that human rights must be justified demands *in relation to other people*,<sup>13</sup> i.e., they must not harm the legitimate claims of others.

Human rights have now been given the force of law in covenants adopted by the Council of Europe in 1950 and by the General Assembly of the United Nations in 1966, by the American Convention of 1969, and by the African Charter of 1981. In 1984, the United Nations also adopted a Convention against Torture and other Cruel,

### Inhuman or Degrading Treatment or Punishment.

As a schoolboy I believed that torture had gone out in Europe, at any rate, with the Inquisition. Later I learnt that Lenin revived it and Hitler followed suit. To my horror I have since come to realise that it is still being practised by many so-called civilized states. In London the Medical Foundation for the Victims of Torture helps their rehabilitation and the Redress Trust tries to obtain redress for them. The Trust has supplied me with a list of states where there is widespread, constant use of torture, or of states occasionally practising torture, or of states practising cruel, inhuman or degrading treatment or punishment.

### COUNTRIES WITH WIDESPREAD, CONSTANT USE OF TORTURE, E.G., ELECTRIC SHOCK, SEMI-SUFFOCATION, FOOT BEATING, SEXUAL ASSAULT

Algeria*	Liberia
Angola	Mexico*
Bangladesh	Myanmar (Burma)
Bosnia-Herzegovina	Pakistan
China	Papua New Guinea
Colombia*	Peru*
Ecuador*	Saudi Arabia
Egypt*	Somalia*
Equatorial Guinea	Sri Lanka
Guatemala*	Sudan*
Haiti (perhaps no longer)	Tunisia*
India	Turkey*
Indonesia (and East Timor)*	Venezuela*
Iran	Yemen*
Iraq	Zaire
Israel*	

\*Signatories to the UN Convention against Torture 1984. Since this article was written, Turkey and Israel have outlawed torture, though according to the London Independent, "physical pressure" is still permitted in Israel.

The abuse of psychiatry for the mental degradation of political prisoners has now ceased in Eastern Europe, but it is still being practiced in Cuba.

STATES FROM WHICH THERE ARE NO REPORTS OF INHUMAN  
TREATMENT OF SUSPECTS, OR WHERE CRUEL, INHUMAN OR  
DEGRADING PUNISHMENT FORMS ONLY A MINORITY

Belgium  
Denmark  
Finland  
Ireland  
Liechtenstein  
Luxembourg

Netherlands  
New Zealand  
Norway  
Sweden  
Switzerland

In the face of these glaring violations of human rights I feel heartened that most of the world's scientific academies are resolved to defend the rights of our scientific colleagues wherever they have been infringed, but I find it tragic that just when the gradually evolving concept of human rights has at last been given the force of international law, the concept of human duties should have fallen into unprecedented disrepute, threatening the disintegration of our society and with it the collapse of our most precious heritage, European civilisation, which gave birth to the very concept of human rights. It is time to fight the fashionable notion that self-fulfilment, the development of one's personality and fulfilment of one's wishes at no matter what cost to one's family, friends, colleagues and community, should be man's or woman's ultimate aim. Immanuel Kant's fundamental insight that the essence of morality consists in treating other people as ends in themselves rather than means, and the old-fashioned virtues, love, loyalty, honesty, sense of duty and compassion, which hypocrisy has brought into disrepute, are in bad need of revival, and deserve to be upheld along with human rights.

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