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## THE HISTORICAL DEVELOPMENT OF HUMAN RIGHTS

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**T**his note is not meant to be an original work of thought. The compellingly attractive concept of democratic education, the supposedly only means to safeguard against threats to freedoms, and the open-ended debate on what should constitute the core of free education, all lead us to search in wonder for those rights that every human being by virtue of being human should be educated on. All education, if but democratic, must be concerned with these rights for it to be qualified « free ».

The following, then, is a brief overview of the historical development of human rights. A confident grasp of this knowledge will certainly give us some useful hints for the better ordering of our society.

The Declaration of Human Rights of 1948 was a historical milestone in the mankind's long strenuous quest for universal brotherhood, and a better protection of human dignity and respect. Human rights are the mainspring of a human society where all can participate in the major decisions concerning them, and where all can enjoy the full development of their personality. Solemnly proclaimed in declarations, and reaffirmed in treaties and constitutions, yet human rights have many a time been betrayed, time and

again held up to ridicule, and placed outside the mainstream of the powerful states' foreign policies.

Human rights have not come out of the western modern societies, as our world of make-believe has led people to think. A close reading of history reveals that older societies have made significant contributions to the development of human rights, although the conceptualization of human rights owes much to the modern societies.

The earliest attempt to establish human rights can be traced back to the appearance of written laws, if written laws were but an expression of human endeavor to protect individuals from the arbitrariness of power. An indication of this is the Code of Hammurapi<sup>1</sup> of 1700 B.C., which contained clauses that sought to protect the individual against the arbitrary use of power, and the weak from the strong.

The law, however, is a double-edged sword, it being not only the perfect antidote to, but also the primary source of arbitrariness. The deep distrust of the laws made by humans led people to look for higher principles that may help them to correct unjust human laws. In the 13<sup>th</sup> century B.C., Moses<sup>2</sup> delivered to his people in search for the Promised Land, the Laws as personally revealed to him by Yahweh<sup>3</sup>. And in the 5<sup>th</sup> century B.C.,

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1. Hammurapi (1792-1750 BC) was the sixth ruler of a line of Amorite kings, who had established themselves at the city of Babylon around 1900 BC. Hammurapi is most celebrated for his so-called law-code. Although it was not intended to function like a modern law-code, its statement of traditional or contemporary practice in all areas of civil and criminal law was an assertion of Hammurapi's role as the champion of justice. One copy of the text, written in Akkadian cuneiform on a large stela, is now in the Musée du Louvre, Paris. *See, generally, [iraqipages.com/iraq\\_mesopotamia/hammurapi.htm](http://iraqipages.com/iraq_mesopotamia/hammurapi.htm)*

2. Hebrew liberator, leader, lawgiver, prophet, and historian, Moses lived in the thirteenth and early part of the twelfth century, B.C. Some scholars refer the constituent parts of the name Moses to the Coptic *mo* (water) and *uses* (saved). Nowadays, the view tracing the name back to the Egyptian *mesh* (child), is widely patronized by Egyptologists. *See, generally, The Catholic Encyclopaedia at [www.newadvent.org/cathen/10596a.htm](http://www.newadvent.org/cathen/10596a.htm).*

3. Yahweh is the name, in Hebrew, of God. Yahweh means "He Who is".

*Antigone*<sup>1</sup> of Sophocles proclaimed the supremacy of divine laws over man-made laws. A century later, Plato looked for the principles of justice and otherness<sup>2</sup>, and Aristotle for that of equity<sup>3</sup>. In the 3<sup>rd</sup> century B.C., Meng-Tzu<sup>4</sup> stressed the principle of humanness as such. Christianity proclaimed the principles of love, charity, and equality of all before God without any exception or distinction<sup>5</sup>.

It was not, however, until the 13<sup>th</sup> century that founding human rights texts were written. In 1215, appears the true pre-cursor of all modern human

1. Sophocles was born about 495 B.C. and died in 406 B.C. He is thus an older contemporary of Socrates (469-399 B.C.), and was already sixty-seven years old when Plato was born (in 428 B.C.). Sophocles is said to have written 120 plays; only seven of them survive. One of these seven is *Antigone*. Answering Creon who asks her "And thou didst indeed dare to transgress that law?", Antigone says: "Yes, for it was not Zeus that had published me that edict; not such are the laws set among men by the Justice who dwells with the gods below; nor deemed I that they decrees were of such force, that a mortal could override the unwritten and unfailing statutes of heaven. For their life is not of to-day or yesterday, but from all time, and no man knows when they were first put forth".

2.. See, generally, *The Republic*.

3. See *Nichomachean Ethics*, Bk V (« On Justice »).

4. Chinese philosopher (372-289 B.C.), Meng Tzu or, in Latinized form, Mencius, based his entire system of thought on the concept of *jen*, meaning "humaneness", "humanity", "benevolence", etc. To this basic doctrine he added the concept of *i*, meaning "righteousness," or "duty". Meng Tzu believed that the "humaneness" that you show to individuals should in some way be influenced by the type of personal relationship you have to that person. One displayed *jen* to a person based on that person's position (as well as your own) and the obligations you owe to that person, so that you owe more *jen* to your immediate family than you do, say, to the Prime Minister of Canada. *I*, then, means that we have obligations to people that arise from social relations and social organization, not because there is some divine law mandating these obligations. Meng Tzu developed a very early form of what was to be called in modern times the "social contract". Unlike Confucius, Meng Tzu believed that if a ruler failed to bring peace and order about, then the people could be absolved of all loyalty to that ruler and could, if they felt strongly enough about the matter, revolt. See, generally,

[www.wsu.edu:8080/~dee/CHPHIL/MENCIUS.HTM](http://www.wsu.edu:8080/~dee/CHPHIL/MENCIUS.HTM)

5. See, on equality and freedom, Galatians, 3, 5 ; I Corinthians, 7. See also Romans, 13 ; I Timothy, 2, 6 ; I Peter, 2 ; Matthew, 5, 22.

rights declarations, the Magna Carta<sup>1</sup>, which was written in French by English émigrés who rose in revolt against their king John. Magna Carta, which established for the first time a very significant constitutional principle, namely, that the power of the king could be limited by a written grant, is often thought of as the corner-stone of liberty and defense against arbitrary and unjust rule<sup>2</sup>. This movement was taken further by other documents, such as (a) the Petition of Right of 1628, setting out the rights and liberties of the subjects as opposed to the prerogatives of the crown, *i.e.*, Charles I; (b) the Habeas Corpus Act of 1679 responding to abusive detention of persons without legal authority, recognizing to every detained the right to be brought before a judicial authority which decides on the legitimacy of this detention, and (c) the Bill of Rights<sup>3</sup> of 1689 which set out strict limits on the Royal Family's legal prerogatives by making them subject to laws passed by parliament. These British documents helped establish the principles of equality and of the rule of law which changed the world for the better of all mankind.

The philosopher John Locke<sup>4</sup> by defending the principle that the social contract does not eliminate the natural laws of individuals, and that there must be a separation between the State and God — the things which are the State's must be rendered unto the State, and the things which are God's must be rendered unto God — opened the way to the first modern text on human

1. The Magna Carta constitutes a list of grievances and demands drawn by the English barons who rose in revolt against King John. It forbade the king from levying any new taxes without the consent of the Great Council of the realm. Essentially a feudal document, the Magna Carta reflected the interests of only a small portion of the English people, and made little mention of the rights of serfs who comprised the vast majority of the population. *See, generally, [www.bl.uk/collections/treasures/magna.html](http://www.bl.uk/collections/treasures/magna.html)*

2. Article 39 of Magna Carta states as follows : « No free man shall be arrested or imprisoned or dispossessed or outlawed or exiled or in any way victimized, neither will we attack him or send any one to attack him, except by the lawful judgment of his peers or judgment of the law of the land ». Article 40 states : « To no one will we sell, to no one will we refuse or delay, right or justice ».

3. The Bill of Rights was one of three very important laws made at this time. The other two were the 1689 Toleration Act which promoted religious toleration, and the 1694 Triennial Act, which prevented the King from dissolving Parliament at his will, and held that general elections had to be held every three years.

4. *See, generally, his Letter Concerning Tolerance (1689).*

rights, the Virginia Bill of Rights<sup>1</sup> of May 1776 which was elaborated on a new land, America. It was substantially renewed in the Declaration of Independence<sup>2</sup> of 4 July 1776, which holds « 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 and the pursuit of happiness », and « that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed ».

Thus dawned on the 18<sup>th</sup> century, with the philosophers of Enlightenment<sup>3</sup>, the idea of founding a new society governed by and through democratic means, and ensuring to all citizens equality in law, security, and the pursuit of happiness — witness the emergence of a legal system relatively independent vis-à-vis the political one, and the democratically passed body of norms and rules susceptible of claim against the sovereign.

Far more significant than the American Declaration of Independence, which actually inspired the French Revolution, was the French Declaration of the Rights of Man and Citizen of August 27<sup>th</sup>, 1789. Drawing on the ideas of Rousseau<sup>4</sup> and other Enlightenment thinkers, the French National

1. Even before Congress declared independence, the process of creating new governments was well under way. Meeting in what they called a “full and free convention,” the “representatives of the good people of Virginia” voted this declaration of rights. It was, the convention declared, to serve as the “basis and foundation of government.” The declaration was drafted by George Mason - though Patrick Henry wrote the article on religious freedom. See, generally, [www.nv.cc.va.us/home/nvsageh/Hist121/Part2/VaBillofRights.htm](http://www.nv.cc.va.us/home/nvsageh/Hist121/Part2/VaBillofRights.htm)

2. The Declaration of Independence, approved by the Continental Congress on July 4, 1776, is a statement of the principles that two days earlier had led Congress to vote for the independence of the 13 American colonies from Great Britain.

3. The Enlightenment is a philosophic movement of the 18th century marked by an emphasis on rationalism, and a rejection of traditional social, religious, and political ideas.

4. Born in Geneva, Switzerland, on June 28, 1712, and died at Ermenonville (28 miles north-east of Paris) on July 2, 1778. Rousseau’s ideas about education and politics have profoundly influenced modern educational and political theory. Among his famous works are: *Discours sur les sciences et les arts* (1750) ; *Discours sur l’origine et les fondements de l’inégalité parmi les hommes* (1753) ; *Lettre à d’Alembert* (Amsterdam, 1758) ; *Julie ou la nouvelle Heloïse* (1761) ; *Du Contrat social* (1762) ; *Emile ou de l’éducation* (1762). For a general account on Rousseau’s biography. See

Assembly exalted the idea of laws democratically passed as supreme, the sovereign will of a monarch no longer being able to override all legal restrictions.

The Declaration of 1789 is thought of as the real founding human rights text, it being of a universal value<sup>1</sup>. Having not a normative value though, the Declaration of 1789 was solemnly reaffirmed in the Preamble of the Constitution of October 27<sup>th</sup>, 1946<sup>2</sup>. The Preamble of the Constitution of October 4<sup>th</sup>, 1958, which is still in force, is but a reference to the Declaration of 1789 confirmed and completed by the Preamble of the Constitution of 1946. In 1793, a new text places more emphasis than the Declaration of 1789 on economic and social rights<sup>3</sup>. This Declaration, which was attached to the Constitution of 1793, was ratified in a referendum, but never put into operation. It was suspended for the duration of the war, and then replaced by a new constitution in 1795.

The outright exploitation of man by man during the expansion of capitalism throughout the 19<sup>th</sup> century, which ran in parallel with colonial conquest, was to show that the concept of human rights in terms of individual rights only, has its limitations. No sooner was the advent of the Soviet Russia in 1917, after clearing away the debris of the tsarist regime

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*[oregonstate.edu/instruct/phl302/philosophers/rousseau.html](http://oregonstate.edu/instruct/phl302/philosophers/rousseau.html); [www2.lucidcafe.com/lucidcafe/library/96jun/rousseau.htm](http://www2.lucidcafe.com/lucidcafe/library/96jun/rousseau.htm) ;*

*[www.utm.edu/research/iep/r/rousseau.htm](http://www.utm.edu/research/iep/r/rousseau.htm)*

1. The Preamble of the Declaration sets forth « the natural, inalienable, and sacred rights of man ». It stresses the civil and political rights, and their effective practice; for « ignorance, neglect or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments ». Article 1 states that « Men are born free and equal in rigottes ». And Article 2 states that « The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression ».

2. The same process was followed later, after 1948, when the United Nations called upon all the nations to incorporate the UDHR in their respective constitution.

3. Article 21 states that « Society owes maintenance to unfortunate citizens, either in procuring work for them or in providing the means of existence for those who are unable to labor ». And Article 22 places emphasis on education which « is needed by all. Society ought to favor with all its power the advancement of the public reason, and to put education at the door of every citizen ».

from the pond of power, than the socio-economic rights were proclaimed. Liberal democracies eventually bowed to disadvantaged social class pressure, and increasingly extended the range of human rights as to reach collective rights<sup>1</sup>, thus taking into account the social dimension of the human being. The French League For the Rights of Man and Citizen was founded in Paris in 1898, at the height of the Dreyfus affair<sup>2</sup>, to defend the principles of the French Revolution, defining itself as an opposition force to every kind of injustice whatsoever. The League's objective found an echo in the League's Complement to the Declaration of Human Rights<sup>3</sup> of July 1936, calling for the establishment of an « economic democracy ».

Not until the adoption by the General Assembly of the United Nations of the Universal Declaration of Human Rights<sup>4</sup> on December 10<sup>th</sup>, 1948, « a

1 The concept of « collective rigottes » here, is not equivalent to that of « group rigottes ». It only refers to those rights, namely, economic, social and cultural rights, the fulfillment of which commands their placement within a collective entity.

2. Captain Dreyfus, a French army officer and a Jew, was accused of spying and wrongly found guilty by the army. This political and legal affair, which divided opinion in France between 1894 and 1906, was the original reason for the founding of the League; it campaigned for Dreyfus' acquittal and reinstatement, and above all, for the rights of the individual, and for justice, against reason of State and anti-semitism. See, generally, Oriol, P., *J'accuse ! Emile Zola et l'affaire Dreyfus* (Librio, 1998).

3. The Complement to the Declaration of the Rights of Man and Citizen written in 1936 by the League For the Rights of Man and Citizen.

4. G.A. res. 217A (III), U.N. Doc. A/811 at 71 (1948). The Universal Declaration of Human Rights was presented to the United Nations General Assembly at the Palais de Chaillot in Paris, and was adopted on December 10<sup>th</sup>, 1948, by 48 Member States (Afghanistan, Argentina, Australia, Belgium, Burma, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iraq, Iran, Lebanon, Liberia, Luxembourg, Mexico, The Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam, Sweden, Syria, Turkey, United Kingdom, United States of America, Uruguay, Venezuela). Eight Member States abstained (Byelorussia, Czechoslovakia, Poland, Saudi Arabia, Ukraine, South Africa, The USSR and Yugoslavia) and two were absent during the vote. [When the Declaration was adopted, there were only fifty-eight Member States of the United Nations]. The UDHR marks the successful culmination of mankind's quest for a better world, as embodied in at least seven founding texts :



common standard achievement for all peoples and all nations », did collective rights draw level with individual rights. The UDHR constitutes a body of principles placing the individual within the legal, moral, political, and social framework of the human family. By expressing the will to have the State relax its grip on the individual, the UDHR echoed with the first expression of a shared vision of a more equitable and just world. Yet these proclaimed principles were but a dove of hope, a basis for the conclusion of

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- *The Roosevelt Declaration of Four Freedoms* (commonly known as the « Four Freedoms Speech », referring to President Franklin Roosevelt's speech before the Congress on January 6th, 1941), namely, Freedom of Speech and Expression, Freedom of Worship, Freedom from Want, and Freedom from Fear, declares that freedom is the existence of human rights everywhere;
  - *The Atlantic Charter* (signed in August 1941 by the United States and Great Britain) made known the common principles on which both countries based their hopes for a better future for the world, and reaffirmed the right of all peoples and all nations to the four freedoms ;
  - *The Declaration of the United Nations* (December 1st, 1942), signed by the allies, affirmed their belief that a complete victory against their foes was essential in order to preserve human rights and justice in their own countries and for all nations ;
  - *The Declaration of Philadelphia* (the International Labor Organization Constitution of May 1944) set forth the concerns of Member States and their citizens regarding human rights ;
  - *The draft agreement of the Dumbarton Oaks Conference* of October 7th, 1944, which became the Charter of the United Nations, states that the respect of human rights and fundamental freedoms depends on the return of peace ;
  - *The Act of the Inter-American Conference on the Problems of War and Peace*, commonly called the Chapultepec Conference (February 21– March 8 1945), where 21 States of the American Continent met, affirmed the equality of all rights for all men whatever their race or their religion ;
  - *The San Francisco Conference* adopted the Charter of the United Nations on June 26th, 1945. The Charter reaffirms the faith of the peoples of the United Nations in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and their determination to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.

international treaties that would protect specific rights. In 1966, eighteen years after its adoption, the UDHR was completed by two Covenants, one codifying the civil and political rights<sup>1</sup>, the other codifying the economic, social, and cultural rights<sup>2</sup>, and one protocol guarantying their application. What is usually referred to as the International Bill of Human Rights includes the Universal Declaration of Human Rights, the two International Covenants of 1966, and the Optional Protocol<sup>3</sup>.

The reason it took the world community so long to adopt the two Covenants is that human rights were caught in the quicksand of the Cold War, during which ideological bargaining scaled down the realization of an international order of peace and justice. For the liberal democracy camp, civil and political rights were of prime importance, thus allowing the expansion of capitalism. On the other hand, the popular democracy camp opposed the ideology of the « free individual » which may actually lead to exploitation and alienation, and claimed that the economic, social and cultural rights were what take first place. The world had to wait the advent in 1960s of a new East-West climate of détente for the principles contained in

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1. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23rd, 1976.

2. International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* January 3rd, 1976.

3. According to Article 68 of the United Nations Charter (June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* October 24th, 1945), the Economic and Social Council (ECOSOC), which is the United Nations organ facilitating international cooperation on standards-making and problem-solving in economic and social issues, establishes the Commission on Human Rights. At its first session, the General Assembly gave mandate to the Commission to draft a declaration on human rights and fundamental freedoms. An eight-member drafting committee, chaired by Mrs. Eleanor Roosevelt, with Mr René Cassin representing France, Mr Peng-chun Chuang representing China, and Mr Charles Malik representing Lebanon, began work on it. The drawing up of an International Bill of Human Rights was charged to the Commission, which met in 1947 at Lake Success, New York, and in 1948 in Geneva. The Bill was to include a Universal Declaration of Human Rights embodying general principles of human rights, and a Covenant containing specific rights and their limitations, called Covenant on Human Rights.

the UDHR to be translated into fact. Yet unable to agree on a single Covenant, each opposing camp got a vote on its own covenant.

Since the adoption of the principles proclaimed by the UDHR, the international society has been on the move to wider protection of the human dignity, the irreducible element of human rights- witness the bitter struggle for peace, and fight against colonialism, apartheid, racial and sexual discrimination, slavery, engaged by the United Nations and its specialized agencies, as well as non-governmental organizations such as Amnesty International and the International Federation of the Human Rights Leagues<sup>1</sup>.

Although all human rights were meant to constitute one body of rights, the world of today sows the seeds of the dichotomy between the civil and political rights on one hand, and the economic, social and cultural rights on the other. Most of the interventions as well as the humanitarian interventions that the United Nations has been applying around the world for restoring international peace and security, were but driven by its willingness to protect civil and political rights. Apart from the case of Somalia where the United Nations authorized, in December 1992, Operation Restore Hope the origin and the basis of which was clearly the protection of economic and social rights, the world community has not yet witnessed in practice the collective human rights drawing level with the individual human rights.

Nevertheless I ask : What would human rights education mean to the billions of human beings whose life is still gripped with suffering,

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1. The UDHR and the two Covenants have inspired more than 60 international human rights instruments, which together constitute a comprehensive system of legally binding treaties for the promotion and protection of human rights. Shining examples of this are the International Convention on the Elimination of All Forms of Racial Discrimination (G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* January 4th, 1969) which was a ground-breaking treaty defining and condemning racial discrimination. The Convention on the Elimination of All Forms of Discrimination against Women (G.A. res. 34/180. 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* September 3rd, 1981) which specifies measures for the advancement and empowerment of women in private and public life, particularly in the areas of education, employment, health, marriage and the family, and the Convention on the Rights of the Child (G.A. res. 44/25, Annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* September 2nd, 1990) which protects children, *inter alia*, from economic and sexual exploitation.

maltreatment, and exclusion ? What would human rights education mean to the 1.3 billion of human beings living with less than one dollar a day, the 35000 infants dying every day because of malnutrition, or still the billion of illiterate adults, women in majority ? And what would human rights education mean to the victims of the September 11<sup>th</sup> attack, of the 130 major conflicts occurred since 1945 claiming the death of more than 2100 humans a day, of the massacres of the detainees in Latin America jails, of the « disappearances » in Algeria and Morocco, of the physical and sexual abuse suffered by women in Iran and Afghanistan, and of the detention and elimination of political prisoners and human rights activists around the world ?

What of any possible explanation can human rights education think for all the peoples of the United Nations when globalization of the economy means wealth and rights to some, and tyranny and misery to others ?

If happiness is that toward which all individuals and societies aim, and if the development of individuals and societies constitutes a right that can only be asserted by the indivisibility of all human rights, happiness, then, beyond mere education, must be a right that every human being, by virtue of being human, is entitled to claim.