

Statement of Essential Human Rights

By A COMMITTEE APPOINTED BY THE AMERICAN LAW INSTITUTE *

PREAMBLE

UPON the freedom of the individual depends the welfare of the people, the safety of the state and the peace of the world.

In society complete freedom cannot be attained; the liberties of the one are limited by the liberties of others, and the preservation of freedom requires the fulfillment by individuals of their duties as members of society.

The function of the state is to promote conditions under which the individual can be most free.

To express those freedoms to which every human being is entitled and to assure that all shall live under a government of the people, by the people, for the people, this declaration is made.

ARTICLE 1

FREEDOM OF RELIGION

Freedom of belief and of worship is the right of every one.

The state has a duty to protect this freedom.

* The cultures or countries represented, besides the United States, are the Arabic, British, Canadian, Chinese, French, pre-Nazi German, Italian, Indian, Latin American, Polish, Soviet Russian, and Spanish. The members of the committee are: William Draper Lewis, chairman; Ricardo J. Alfaro, George M. Barakat, Percy E. Corbett, Julio A. del Vayo, Noel T. Dowling, Kenneth Durant, John R. Ellingson, Hu Shih, Manley O. Hudson, C. Wilfred Jenks, Charles E. Kenworthy, Henri Laugier, Karl Loewenstein, K. C. Mahindra, Roland S. Morris, John E. Mulder, Ernst Rabel, Ludwik Rajchman, David Riesman, Jr., Warren A. Seavey, Angelo P. Sereni, Paul Weill, Quincy Wright, and George M. Wunderlich. Judge Hudson is doubtful about the phrasing in some places, and Professor Seavey is not in agreement with the essential character of the rights stated in Articles 11 to 15, relating to social rights.

Comment

Provisions for establishing a right comparable to that in this Article are contained in the current or recent constitutions of fifty-two countries.

This Article on belief and worship covers not only organized religion but also individual religious opinions and philosophic systems.

"Freedom of worship" covers religious services under the leadership of a minister or without it, and individual worship. It does not include all practices claimed to be of a religious nature—such, for example, as run counter to hygienic regulations.

Article 5 expresses the right "to form with others associations of a . . . religious . . . character." Articles 1 and 5 together, therefore, imply the right of the individual to join and leave religious organizations. Article 3 states the right to "freedom of expression." Consequently, Articles 1 and 3 together imply the right of free communication among religious authorities, and between religious authorities and the faithful.

The duty of the state expressed in this Article and in succeeding articles involves some or all of the following steps:

- (1) to abstain from enacting laws which impair the right,
- (2) to prevent its governmental agencies and officials from performing acts which impair the right,
- (3) to enact laws and provide suitable procedures, if necessary, to prevent persons within its jurisdiction from impairing the right, and
- (4) to maintain such judicial, regulatory and operative agencies as

may be necessary to give practical effect to the right.

With respect to this Article the duty of the state involves the protection, for example, of churches and other establishments devoted to religious purposes. It restrains the state from forcing the individual to participate in religious ceremonies or rites or to join any religious sect, communion, or organization.

ARTICLE 2

FREEDOM OF OPINION

Freedom to form and hold opinions and to receive opinions and information is the right of every one.

The state has a duty to protect this freedom.

Comment

Provisions for establishing freedom to hold opinions are contained in the current or recent constitutions of seven countries. Moreover this freedom is implied in the freedom of expression, for which see Article 3.

The term "opinion" is used in its widest sense. In order that the freedom to form and hold opinions may be enjoyed, the individual must be free to receive opinions expressed by others by any means of communication such as books, newspapers, pamphlets, or radio.

ARTICLE 3

FREEDOM OF SPEECH

Freedom of expression is the right of every one.

The state has a duty to refrain from arbitrary limitation of this freedom and to prevent denial of reasonable access to channels of communication.

Comment

Provisions for establishing a right comparable to that in this Article are

contained in conjunction with the right to freedom of opinion in current or recent constitutions of fifty-five countries.

This Article protects freedom of expression, whatsoever may be the means employed. The term "expression" is used as of wider coverage than "speech." It includes the freedom of the individual to speak, write, use the graphic arts, the theatre, or any other art form to present his ideas. In this sense freedom of expression embraces the basic "freedom of the press" in its classic meaning of the right of the individual to print and distribute his ideas.

In conjunction with Article 2, which protects the individual's right to receive information and opinions, this Article protects the freedom of the press as an institution for gathering and disseminating information and opinions.

The duty of the state "to refrain from arbitrary limitation on this freedom" restrains the state from the use of arbitrary censorship on expression in any of the forms listed above. The duty of the state "to prevent denial of reasonable access to channels of communication" means that if, through physical limitations or other circumstances, the ordinary channels—such as the mails, the telephone, the telegraph, the radio—are limited, the state where necessary must exercise its controlling or regulatory power to insure to the individual such opportunity of use as is practicable.

ARTICLE 4

FREEDOM OF ASSEMBLY

Freedom to assemble peaceably with others is the right of every one.

The state has a duty to protect this freedom.

Comment

Provisions for establishing a right comparable to that in this Article are

contained in the current or recent constitutions of forty-seven countries.

This Article protects assemblies for political, economic, religious, social, cultural and other purposes. It includes indoor and outdoor private and public meetings, as well as parades and processions. In the interests of public safety and convenience, a state may make requirements as to time and place of meetings. In the fulfillment of its duty the state may have to make provisions for police at meetings and against the breaking up of public meetings.

ARTICLE 5

FREEDOM TO FORM ASSOCIATIONS

Freedom to form with others associations of a political, economic, religious, social, cultural, or any other character for purposes not inconsistent with these articles is the right of every one.

The state has a duty to protect this freedom.

Comment

Provisions for establishing a right comparable to that in this Article are contained in the current or recent constitutions of thirty-nine countries.

This Article recognizes man's fundamental instinct for and protects his vital need for group activity. It expresses the right to exercise in association with others the essential freedoms stated in the other articles and such other rights as are recognized by law.

Only such association as does not infringe the essential rights of others is "not inconsistent with these articles." Thus, political association that involves the attainment of ends by free elections and by the democratic principle of majority rule is protected, but political association that aims at totalitarianism and the destruction of the political rights of others is prohibited.

The state may prescribe reasonable requirements governing the establishment and supervision of associations. Thus it may require associations to be registered, to declare their purposes, and to register the names of their members and responsible officers.

ARTICLE 6

FREEDOM FROM WRONGFUL INTERFERENCE

Freedom from unreasonable interference with his person, home, reputation, privacy, activities, and property is the right of every one.

The state has a duty to protect this freedom.

Comment

Provisions for establishing elements of the right defined in this Article are contained in the current or recent constitutions of forty-nine countries.

This Article imposes a duty upon the state to take measures to prevent the use of force and falsehoods by individuals or groups of individuals which would interfere with the safety, honor, and welfare of others. It sanctions and requires the state to organize such police force and to impose such criminal or civil liability or both, against the offenders, as may be necessary to give to the people within the borders of the state a reasonable degree of security against the aggressions and frauds of others.

ARTICLE 7

FAIR TRIAL

Every one has the right to have his criminal and civil liabilities and his rights determined without undue delay by fair public trial by a competent tribunal before which he has had opportunity for a full hearing.

The state has a duty to maintain ade-

quate tribunals and procedures to make this right effective.

Comment

Provisions, in varying degrees of fullness, for establishing a right comparable to that in this Article are contained in the current or recent constitutions of fifty countries.

The Article states the basic requirements for orderly and just procedure not only for the protection of individuals against arbitrary action by government or by public officials but also for the settlement of disputes among individuals themselves. It implies that in all matters which affect him, any human being is entitled to access to a competent tribunal and a procedure which will insure fairness of determination.

"Public trial" means that there shall be an opportunity for some members of the public to be present and that the proceedings can properly be reported by those who have witnessed them.

A "competent tribunal" is one which, whether a court or an administrative agency, is empowered by the law of the state to entertain an action.

The requirement of a "fair trial" provides protection against trial which, although public and before an otherwise competent tribunal, may proceed under such pressures that justice cannot be done. This would be true for example where public opinion is so hostile that a local tribunal would be unduly affected by the hostility, or where the tribunal itself, although competent, is unduly biased or has been corrupted. It also protects against improper methods of trial, as where rational procedures are not used or where obvious errors have led to an improper result. Customary trial procedures of civilized communities must be used as a standard to discover whether, in view of all the circumstances of the particular case, a

fair trial is accorded. No displacement of traditional methods of punishment for contempt is intended.

The requirement for a "full hearing" makes certain that the person whose rights or liabilities are being determined shall have a reasonable opportunity to present his side of the case. It does not mean that a hearing, formal or informal, must necessarily be had; it does mean that either party on demand may have one, the extent of which will depend upon the sound discretion of the tribunal. In a criminal proceeding, a "full hearing" implies that a person must be informed in advance of the charge against him, be permitted the assistance of counsel, and be given a reasonable time to prepare for the hearing.

ARTICLE 8

FREEDOM FROM ARBITRARY
DETENTION

Every one who is detained has the right to immediate judicial determination of the legality of his detention.

The state has a duty to provide adequate procedures to make this right effective.

Comment

Provisions, in varying degrees of fullness, for establishing a right comparable to that in this Article are contained in the current or recent constitutions of thirty-four countries.

This Article implies that no one can be detained except pursuant to law, and provides a check on arbitrary arrest as well as a release from unlawful detention.

"Immediate" determination means not only that he shall have access without delay to a competent tribunal but also that the tribunal shall promptly decide the question. Whatever the character of the tribunal may be, it is indispensable that the determination be

"judicial" in the sense of the judicial tradition of responsibility, independence, and impartiality.

The statement of the right does not include a statement of the grounds on which a person may be taken into custody and held for trial; that will depend upon the laws and legal system in the particular state.

ARTICLE 9

RETROACTIVE LAWS

No one shall be convicted of crime except for violation of a law in effect at the time of the commission of the act charged as an offense, nor be subjected to a penalty greater than that applicable at the time of the commission of the offense.

Comment

Provisions, in varying degrees of fullness, for establishing a right comparable to that in this Article are contained in the current or recent constitutions of thirty countries.

This Article assumes that the law has defined certain acts or omissions to be crimes with sufficient particularity so that the definition can be used as a standard to determine guilt. The Article prohibits *ex post facto* or retroactive laws.

ARTICLE 10

PROPERTY RIGHTS

Every one has the right to own property under general law. The state shall not deprive any one of his property except for a public purpose and with just compensation.

Comment

Provisions in varying degrees of fullness for establishing a right comparable to that in this Article are contained in the current or recent constitutions of fifty countries.

This Article recognizes that to be free, man must have the right to acquire, use, and dispose of a large variety of things. It would violate the Article for the state to curtail unreasonably, in view of conditions existing at any given time, the number and variety of things which could be the subject of private ownership.

The second sentence preserves the protections traditionally granted to rights in specific property in connection with the state's exercise of its power of eminent domain.

ARTICLE 11

EDUCATION

Every one has the right to education.

The state has a duty to require that every child within its jurisdiction receive education of the primary standard; to maintain or insure that there are maintained facilities for such education which are adequate and free; and to promote the development of facilities for further education which are adequate and effectively available to all its residents.

Comment

Provisions, in varying degrees of fullness, for establishing a right comparable to that in this Article are contained in the current or recent constitutions of forty countries.

This Article makes primary education compulsory for "every child" within the jurisdiction of a state. The age limits within which the individual is to be considered a "child" are left to reasonable interpretation in the light of local physiological and other conditions. Existing constitutions usually fix the lower limits at six or seven, and the upper limits variously at twelve, fourteen, sixteen, and eighteen. The Article does not make attendance at school compulsory although the great majority

of children will be able to meet the requirements only by attendance at a public or private school.

The phrase "to maintain or insure that there are maintained facilities for such [primary] education which are adequate and free" does not prohibit education at home and permits special arrangements necessary to meet special conditions, as for the mentally and physically incapacitated. The expression "adequate and free" does not prohibit private schools from charging tuition or other fees. It does, however, impose upon the state the duty of insuring that there are maintained schools at which each child has the opportunity to receive a primary education free.

The Article does not prescribe the extent to which schools and other educational facilities for "further education" may be provided by the state or by churches, endowed institutions, or other voluntary bodies; the nature of the public control, if any, exercised over privately provided schools; the conditions under which privately provided schools may receive financial assistance from the state; or the status of universities. It does impose on the state the responsibility of insuring that adequate educational facilities are provided by either public or private action, a responsibility which would include the duty of providing such facilities itself whenever they are not effectively provided in some other manner. Thus the Article, while affirming the responsibility of the state, allows unlimited variety in the means by which the responsibility is discharged.

The phrase "to promote the development of facilities" recognizes the inevitability of gradualness in the implementation of the right to education; the interpretation of the phrase "adequate and effectively available" will vary with local conditions from either a quantitative or qualitative standpoint. Facili-

ties adequate at one stage of social and economic development will cease to be adequate as further progress becomes possible.

ARTICLE 12

WORK

Every one has the right to work.

The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity for useful work.

Comment

Provisions for establishing this right are contained in current or recent constitutions of nine countries.

This Article does not require the state to furnish work to the individual unless private enterprise fails to provide him the opportunity to work and unless he has no opportunity to earn a living as an independent worker, for example, an artisan, farmer, shop-keeper, or member of a profession.

The phrase "useful work" excludes mere relief work which has no positive social value from being regarded as an adequate fulfillment of the duty of the state.

ARTICLE 13

CONDITIONS OF WORK

Every one has the right to reasonable conditions of work.

The state has a duty to take such measures as may be necessary to insure reasonable wages, hours, and other conditions of work.

Comment

Provisions for establishing a right comparable to that in this Article are found in the current or recent constitutions of eighteen countries. Comprehensive international labor standards have been evolved by representatives of

governments, management and labor at the annual meetings of the International Labor Conference and are contained in the 67 international Conventions and 66 Recommendations embodied in the International Labor Code.

This Article applies particularly, though not exclusively, to persons employed by others. Standards to determine what are "reasonable wages, hours, and other conditions" necessarily depend on prevailing economic conditions. Wages to an adult insufficient to maintain a family of average size at a level essential to health as determined by objective statistical studies are not reasonable.

The phrase "other conditions of work" includes such matters as rest periods, holidays, and protection against accident and disease incidental to the work.

ARTICLE 14

FOOD AND HOUSING

Every one has the right to adequate food and housing.

The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity to obtain these essentials.

Comment

Food has not been dealt with in constitutional instruments hitherto. Nutrition policies have developed very rapidly since 1936. The United Nations Conference on Food and Nutrition, at which 44 states were represented, recommended that governments should recognize and embody in a formal declaration or agreement their obligation to their respective peoples and to one another to raise levels of nutrition and standards of living, to improve the efficiency of agricultural production and distribution, and to co-operate, so far as may be possible, with

other nations for the achievement of these ends. An Interim Commission of representatives of 44 nations, meeting at Washington, D. C., has been entrusted with the preparation of a plan for a permanent international organization for the furtherance of these objects.

The current or recent constitutional instruments of eleven countries state or imply a right to adequate housing.

This Article insures the individual the "opportunity to obtain" food and housing. The state is not required to provide food or housing unless the individual cannot under existing conditions obtain them by his own efforts.

It may be sufficient for the state to protect its residents against diseased or unwholesome food and to insure a continuous flow of food at prices within their reach. With respect to housing, it may be sufficient for the state by the exercise of its regulatory power to insure that adequate housing shall be available at prices within the reach of all its residents.

What is "adequate food and housing" must be determined at any given time in the light of developing knowledge and of the material and technical resources within a country. Like Article 11 on education, this Article recognizes the inevitability of gradualness in the implementation of the right to adequate food and housing.

Should conditions make it physically impossible for the time being for an individual to be insured or supplied with adequate food and housing, he would be entitled only to what is reasonable under the circumstances.

ARTICLE 15

SOCIAL SECURITY

Every one has the right to social security.

The state has a duty to maintain or insure that there are maintained com-

prehensive arrangements for the promotion of health, for the prevention of sickness and accident, and for the provision of medical care and of compensation for loss of livelihood.

Comment

Provisions concerning social security are contained, generally in the form of provisions concerning social insurance, in the current or recent constitutions of twenty-seven countries. A further precedent for the provisions of this Article is afforded by the Declaration of Santiago de Chile, 1942, adopted by representatives of the twenty-one American Republics and of Canada.

The duties imposed upon the state by this Article are to see that resources of society are organized:

- (1) to raise standards of health
- (2) to prevent sickness and accident
- (3) to provide medical care wherever needed, including maternity cases
- (4) to provide for the financial support of persons deprived of earnings who lack means of livelihood, including the involuntarily unemployed and their dependents, the aged, widows and orphans.

The wording of the Article leaves full scope to private initiative, in countries where this is considered desirable, to accept as much of the responsibility as it can and will. The Article allows diversity of types of organization and of standards of protection provided the essential right stated in the Article is reasonably secured.

ARTICLE 16

PARTICIPATION IN GOVERNMENT

Every one has the right to take part in the government of his state.

The state has a duty to conform to

the will of the people as manifested by democratic elections.

Comment

The right stated in this Article is embodied in the constitutions of all countries having a democratic constitutional form of government. All such constitutions provide for an elected representative body to determine national policies.

This Article requires the government of the state to be a government of the people, by the people, for the people. It defines one procedure as indispensable to secure such government, namely "democratic elections." Except for requiring this procedure, the Article leaves the state free to mold its political order in conformity with such standards, techniques, or institutions as may correspond with its national traditions and requirements. Every known variety of democratic government satisfies the requirements of this Article. No authoritarian or dictatorial form of government does satisfy them.

"The right to take part in the government" includes specifically the right to vote in "democratic elections" and by implication the right to be a candidate for and to hold office. The exercise of the right is, therefore, limited to "his state"—the state of which the individual is a citizen. However, the experience of all organized communities and particularly of free self-governing communities shows that the right to take part in government includes the right to express support of and opposition to office holders and policies, and to form political associations. These rights are guaranteed by Articles 3 and 5 to every one, alien as well as citizen. The use of the word "his" state in this Article does not by implication deny these rights to any one.

"Democratic elections" means electoral procedures and practices that

guarantee the honest translation of "the will of the people" into representative institutions. Since the will of the people changes and evolves, elections must be recurrent. The specification of elections does not exclude the use of supplementary means of determining the will of the people such as the initiative, recall and referendum, town meetings, and popular polls.

ARTICLE 17

EQUAL PROTECTION

Every one has the right to protection against arbitrary discrimination in the provisions and application of the law because of race, religion, sex, or any other reason.

Comment

Provisions for establishing a right comparable to that in this Article are contained in the current or recent constitutions of forty-seven countries.

This Article protects the right of every one to equal treatment by the state. The protection from "arbitrary discrimination" applies to the substantive provisions of the law and also to their administration by executive or judicial authority. The Article accomplishes what is partially achieved in the United States Constitution by the statement that no person shall be denied "the equal protection of the laws."

The determination of what is "arbitrary discrimination" depends to some extent on the national traditions and the sense of justice of the public in the particular country. Barring an individual or group from the exercise of any right stated in the preceding articles on the grounds of who they are (e.g. women, negroes, Catholics) as distinguished from what they have done

(e.g. criminals or mental incompetents), would constitute "arbitrary discrimination."

ARTICLE 18

LIMITATIONS ON EXERCISE OF RIGHTS

In the exercise of his rights every one is limited by the rights of others and by the just requirements of the democratic state.

Comment

No general article in this form is contained in existing constitutions. Limitations on the exercise of rights are included in the statement of each right in practically all constitutions except that of the United States. The limitations on all rights granted in the preceding articles are expressed in this supplementary Article.

The Article forbids any person from abusing his rights, whether because of hereditary status, official position, economic power, or other condition.

The Article recognizes the general relativity of rights. Any right can be abused by so exercising it that it deprives another individual or the state of important rights. Thus, freedom of religion does not permit practices such as human sacrifice, nor in countries where the prevailing standards profoundly disapprove, of practices such as polygamy. Freedom of speech does not forbid the state from adopting reasonable laws forbidding libel and slander; nor does it permit blasphemy or utterances tending to promote panic, mob violence, insurrection, or war. The organization of parties seeking to establish a dictatorship is not consistent with freedom of assembly or association because it would tend to destroy the rights of others.