

# AN INQUIRY INTO THE CONSTITUTIONAL RIGHT TO LIBERTY

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Among the rights which a person enjoys and of which he may not be deprived without due process is liberty.<sup>1</sup> In a leading Philippine case, *Rubi v. Provincial Board*,<sup>2</sup> liberty as guaranteed by the Constitution was defined to include "the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare." In accordance with this case therefore, the rights of the citizens to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, are all deemed embraced in the concept of liberty.

The Supreme Court in the same case, however, gives the warning that liberty as understood in democracies, is not license. Implied in the term is restraint by law for the good of the individual and for the greater good, the peace and order of society and the general well-being. No man can do exactly as he pleases. Every man must renounce unbridled license. In the words of Mabini as quoted in the same case, "liberty is freedom to do right and never wrong; it is ever guided by reason and the upright and honorable conscience of the individual."

Since the liberty to be safeguarded is, as pointed out by Chief Justice Hughes, liberty in a social organization,<sup>3</sup> it implies the absence of arbitrary restraint not immunity from reasonable regulations and prohibitions imposed in the interest of the community.<sup>4</sup> For as Linton<sup>5</sup> points out—

"\* \* \* to belong to a society is to sacrifice some measure of individual liberty, no matter how slight the restraints which the society consciously imposes. The so-called free societies are not really free. They are merely those societies which encourage their members to express their individuality along a few minor and socially acceptable lines. At the same time they condition their members to abide by innumerable rules and regulations, doing this so subtly and completely that these members are largely unconscious that the rules exist. If a society has

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<sup>1</sup> Art. III, Sec. 1, Clause 1.

<sup>2</sup> 39 Phil. 660

<sup>3</sup> *West Coast Hotel v. Parrish*, 300 U.S. 379.

<sup>4</sup> *Chicago, B. & O. Ry. Co. v. McGuire*, 219 U.S. 549.

<sup>5</sup> *The Individual, Culture, and Society*, p. 17.

done its work of shaping the individual properly, he is no more conscious of most of the restrictions it has imposed than he is of the restraints which his habitual clothing imposes on his movements."

The above statement from Linton, however, is to be viewed only in the sense that the liberty of the citizens may in the interest of public health, public order or safety, of general welfare, in other words through the proper exercise of the police power, be regulated. The individual as Justice Cardozo points out has still left that "domain of free activity that cannot be touched by government or law at all, whether the command is specially against him or generally against him and others."<sup>6</sup> In every case as may be seen in the exercise of governmental power, in so far as it may affect property and security, the problem is one of harmonizing or adjusting the rights of the individual guaranteed by the Constitution and the community or general welfare. Necessarily then in times of stress, whether occasioned by internal disorder, fear from external aggression, or economic insecurity, the field of liberty may contract with the expansion of state power occasioned by the gravity and urgency of its needs.

Rightfully the above doctrine in the *Rubi* case stresses not only the negative concept of liberty which is absence of restraint but likewise its positive significance which is the enlargement of opportunity. For liberty has come to mean more than just the right to be let alone. Now it has a positive meaning as well, opportunity or capacity or ability to do something, freedom to achieve. It is in the latter sense that Laski identifies liberty with the "eager maintenance of that atmosphere in which men have the opportunity to be their best selves"<sup>7</sup> or "the absence of restraint upon the existence of those social conditions which in modern civilization are the necessary guarantees of individual happiness."<sup>8</sup> This view considers liberty as identical with the opportunity for the growth and the unfolding of human personality.

This broad guaranty of liberty is implemented by specific pledges and immunities which may be classified under two headings:

(1) Freedom of belief, whether secular or religious, freedom of expressing such beliefs, and freedom to associate with others of a like persuasion; and

(2) Personal freedom which includes the constitutional rights of the accused as an assurance that such liberty of the person may not lightly be interfered with by state action.

Liberty in both general and specific senses is fully protected in the Universal Declaration of Human Rights. Thus it starts with:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood."<sup>9</sup>

<sup>6</sup> Paradoxes of Legal Science, 98.

<sup>7</sup> *Grammar of Politics*, 142.

<sup>8</sup> *Liberty in the Modern State*, 49.

<sup>9</sup> Art. I.

It is implemented with this further declaration—

“Everyone has the right to life, liberty and the security of person.”<sup>10</sup>

And then the specific pledges of freedom follow:

“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”<sup>11</sup>

“No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.”<sup>12</sup>

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”<sup>13</sup>

“No one shall be subjected to arbitrary arrest, detention or exile.”<sup>14</sup>

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”<sup>15</sup>

“Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

“No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.”<sup>16</sup>

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attack upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”<sup>17</sup>

“Every one has the right to freedom of movement and residence within the borders of each state.

“Everyone has the right to seek and to enjoy in other countries from persecution.”<sup>18</sup>

“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”<sup>19</sup>

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<sup>10</sup> Art. 3.

<sup>11</sup> Art. 4.

<sup>12</sup> Art. 5.

<sup>13</sup> Art. 8.

<sup>14</sup> Art. 9.

<sup>15</sup> Art. 10.

<sup>16</sup> Art. 11.

<sup>17</sup> Art. 12.

<sup>18</sup> Art. 13.

<sup>19</sup> Art. 16.

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worships and observance."<sup>20</sup>

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."<sup>21</sup>

"Everyone has the right to freedom of peaceful assembly and association.

"No one may be compelled to belong to an association."<sup>22</sup>

Likewise liberty both in its general connotation and specific freedoms is found in many state constitutions. The Philippines,<sup>23</sup> the United States,<sup>24</sup> and the draft constitution of India<sup>25</sup> speak of liberty. The Constitutions of Austria of 1934,<sup>26</sup> Belgium of 1931,<sup>27</sup> Luxembourg of 1868,<sup>28</sup> Monaco of 1911,<sup>29</sup> Roumania of 1938,<sup>30</sup> Nicaragua of 1939,<sup>31</sup> safeguard "individual liberty."

"Personal liberty" is the term employed in the Constitutions of the Free City of Danzig of 1920,<sup>32</sup> Finland, 1919,<sup>33</sup> Greece, 1911,<sup>34</sup> Ireland, 1937,<sup>35</sup> Turkey, 1924,<sup>36</sup> Ecuador, 1929,<sup>37</sup> Venezuela, 1936,<sup>38</sup> Afghanistan, 1931,<sup>39</sup> and Iraq, 1924.<sup>40</sup> The Constitution of Czechoslovakia of 1920,<sup>41</sup> and of Syria of 1930<sup>42</sup> and of Lebanon of 1926,<sup>43</sup> guarantee "personal freedom." Other phrases employed are

<sup>20</sup> Art. 18.

<sup>21</sup> Art. 19.

<sup>22</sup> Art. 20.

<sup>23</sup> Art. III; Sec. 1, par. 1.

<sup>24</sup> First Amendment and Fourteenth Amendment.

<sup>25</sup> Sec. 15.

<sup>26</sup> Art. 19.

<sup>27</sup> Art. 7.

<sup>28</sup> Art. 12.

<sup>29</sup> Art. 6.

<sup>30</sup> Art. 12.

<sup>31</sup> Art. 109.

<sup>32</sup> Art. 73.

<sup>33</sup> Art. 6.

<sup>34</sup> Art. 4.

<sup>35</sup> Sec. 40.

<sup>36</sup> Art. 72.

<sup>37</sup> Art. 151, par. 4.

<sup>38</sup> Art. 32, par. 5.

<sup>39</sup> Art. 11.

<sup>40</sup> Art. 7.

<sup>41</sup> Art. 107.

<sup>42</sup> Art. 7.

<sup>43</sup> Art. 8.

"personal inviolability,"<sup>44</sup> "liberty of the person,"<sup>45</sup> "inviolability of person,"<sup>46</sup> "right to liberty and to individual security,"<sup>47</sup> "individual security and liberty,"<sup>48</sup> "right to liberty."<sup>49</sup>

Likewise constitutional provisions against slavery and involuntary servitude abound. The phraseology employed by the constitutions of the United States, Philippines, and Japan is "prohibition against slavery and involuntary servitude except as a punishment for a crime."<sup>50</sup> Some European constitutions provide that a person can neither be bought nor sold within their jurisdiction and all bought persons or slaves are free the moment they set foot therein.<sup>51</sup> The Constitution of Argentina categorically states that "there shall be no slaves in the Argentine nation."<sup>52</sup> Colombia has a similar provision.<sup>53</sup> Bolivia<sup>54</sup> announced that slavery does not exist in that country; so does Chile<sup>55</sup> with the further statement that whoever sets foot in its soil becomes free. Costa Rica<sup>56</sup> affirms that every man is free in the Republic; no one who enjoys the protection of its laws shall be a slave. Slavery is forbidden in the United States of Mexico.<sup>57</sup> In Venezuela<sup>58</sup> it is forever forbidden. The draft constitution of India<sup>59</sup> prohibits traffic in human beings and other similar forms of forced labor.

The protection to freedom afforded by procedural guarantees is a feature embodied in many constitutions. Likewise, there has been widespread recognition of the freedoms of conscience and of religion, of speech and of the press, of assembly and of association.<sup>60</sup>

There has been a variance in the phraseology, as above shown, and even more so in the meaning attached to such freedoms. As Laski<sup>61</sup> points out—

"All of us, moreover, are well aware that the idea of liberty is differently conceived in different countries. Amer-

<sup>44</sup> Art. 8 of Constitution of Esthonia of 1920 and Art. 8 of Constitution of Portugal of 1933.

<sup>45</sup> Art. 114 of Constitution of Germany of 1919.

<sup>46</sup> Art. 28, Constitution of Yugoslavia of 1946.

<sup>47</sup> Art. 122 of Constitution of Brazil of 1937.

<sup>48</sup> Art. 30 of Constitution of Honduras of 1936.

<sup>49</sup> Art. 13 of Constitution of Japan of 1947.

<sup>50</sup> Art. XIII, Constitution of the United States; Art. VI, Sec. 1, par. 13, Constitution of the Philippines; Art. 18, Constitution of Japan.

<sup>51</sup> Art. 191 of Constitution of Albania of 1928; Art. 61 of Constitution of Bulgaria of 1879; Art. 18 of Constitution of Greece of 1911.

<sup>52</sup> Art. 15.

<sup>53</sup> Art. 18, Constitution of 1886.

<sup>54</sup> Art. 5, Constitution of 1938.

<sup>55</sup> Art. 10, par. 1, Constitution of 1925.

<sup>56</sup> Art. 27, Constitution of 1871.

<sup>57</sup> Art. 2, Constitution of 1917.

<sup>58</sup> Art. 32, Constitution of 1936.

<sup>59</sup> Art. 17.

<sup>60</sup> See Fernando, *International Bill of Human Rights*, pp. 19-20.

<sup>61</sup> *Liberty in the Modern State*, 6.

icans insist that no one can enjoy liberty; the denial of "free enterprise" is incompatible with the achievement of liberty. In Great Britain, the idea of liberty generally denies the Russian outlook, on the one hand, and the Americans on the other. There are countries, Egypt, for example, or Saudi Arabia, where a very small ruling class means by liberty the maintenance of its power and wealth, and has no sort of interest in extending the benefits of liberty to the great mass of the peoples; it is, indeed, almost true to say that, in both Egypt and Saudi Arabia, outside a narrow circle of privileged people, ordinary men and women have no more idea of freedom than did most of the slaves of ancient Greece or Rome. Their lives are conditioned to a poverty so profound that the thing of which, overwhelmingly, they are compelled to think is how they can satisfy the primary impulses to gain food and shelter. The idea of liberty, as it is debated by social philosophers, involves discussion of experience and concepts far too complex ever to have entered into their lives. The observer can easily be led to report that they are wholly indifferent to it, and that an attempt to arouse them from their present inertia would involve an unreasonable effort."

As to a specific freedom, no clearer example of such contrast exists than in the Philippine and American view on the one hand and the Russian concept on the other of the implications of freedom of speech and of the press. Both the Philippines and the United States prohibit the Congress of each from making any law "abridging the freedom of speech or of the press." Under the fourteenth amendment to the American constitution, no person may be deprived by any state of life, liberty or property. As construed by the American Supreme Court, the liberty in said provision covers freedom of the press and of speech. It is thus valid under prevailing constitutional theory in the United States to make use of the freedom thus guaranteed to criticize the government even in the intemperate and immoderate terms. The limits to freedom of speech does not arise unless there is a clear and present danger of a substantial nature. Likewise, under the accepted constitutional doctrines, freedom of speech and of the press implies freedom from censorship or previous restraint. The Philippines in the main adheres to that view.<sup>62</sup>

It is not so, however, in Soviet Russia, notwithstanding the fact that on paper, liberty of speech and of the press is likewise guaranteed. Thus article 125 of the Constitution of Soviet Russia of 1936 reads as follows:

"Article 125: In accordance with the interest of the working people, and in order to strengthen the socialist system, the citizens of the USSR are guaranteed by law:

- (a) Freedom of speech;
- (b) Freedom of the press;

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<sup>62</sup> Cf. Fernando and Quisumbing—Fernando, Freedom of Expression, in 23 Phil. Law Journal 801.

- (c) Freedom of assembly and meetings;
- (d) Freedom of street processions and demonstrations.

"These rights of citizens are insured by placing at the disposal of the working people and their organizations printing shops, supplies of paper, public buildings, the streets, means of communication and other material requisites for the exercise of these rights."

The very constitutional provision makes clear that the existence of the freedom of speech and of the press must be in accordance with the interests of the working people and in order to strengthen the socialist system. Criticism of socialism as the basis of the government of the Soviet Union is, therefore, prohibited. Much less could there be any tolerance for the advocacy of any change in the existing governmental structure. The freedom of speech and of the press is not freedom to speak against the present Russian government. It is not freedom to move against the existing socialist order but freedom of moving within the order.

What could freedom of the press embrace then under the Russian system? It is supposed to give access to the people as a whole to newspapers, journals, books, and printed materials of all kinds, the prices of which are made as low as possible to attain this objective. Likewise, freedom of the press also means the availability to the people of the press itself, that is, printing facilities, as well as opportunities to write and to learn to write. The Russians likewise point to the system of universal education which has been instituted and to the encouragement given to the masses to express their views within the limits of the freedom allowed them. From which, they are led to believe that such freedom has reality and significance as opposed to the American concept of freedom, the exercise of which may be conditioned upon one's financial ability. To prevent the use of the press in a manner contrary to the provisions of the constitution, Soviet Russia has always maintained a censorship, the existence of which is not by her deemed incompatible with the exercise of the freedom of speech and of the press.<sup>63</sup>

The above difference is an expression of the cleavage existing between the Western view and the Soviet view of the relation of the individual to the community of which he forms part. The Western democracies are traditionally individualistic. There is no unit of existence except the individual and for him and by him and through him the state exists. Not its welfare but his happiness is the paramount concern. In the event of a clash of interests therefore between the individual and the state, the individual cannot be ignored. This view, however, is mitigated by the realization that it is an individual in society who is being protected. The Soviet view is precisely the opposite. The individual is subordinate to the community. The emphasis is on the collective character of rights and obligations. Individual liberty, Soviet brand, is supposed to be attained only through perfect harmony between the individual and the collectivity.

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<sup>63</sup> Fernando, *International Bill of Human Rights*, pp. 21-22.

And such perfect harmony is obtained by the individual yielding to the claims of the collectivity. It cannot see how individual and collective interest could clash. As Vishinsky points out any contrast of the individual civil rights with the state is alien to Socialist public law.<sup>64</sup> And where the two interests conflict, society always takes precedence over the individual.

It would not advance any the cause of human rights in general and liberty in particular to insist on an either-or alternative, extreme collectivism or extreme individualism. Man, as Aristotle pointed out, is a political animal. He lives and has his being in society, his growth, his development, his very existence depends upon its being so. The collectivity of which he is a member, call it group or association, has needs of its own. Those needs demand satisfaction. When satisfied, its welfare is thus furthered and the furtherance of the individuals who compose the collectivity likewise benefit. In that sense the interest of the individual is identical with the interest of the group of which he forms a part. Nonetheless, there is an element of his personality which is not merged in the society of which he is a constituent unit. Enrichment and growth of his personality, therefore, would not necessarily be served by the promotion of group welfare. Times there may be when the group may be the means of frustrating his individuality. At such times he has the choice of submission or of defiance. Either way his personality is minimized. He may rightfully insist, therefore, that he should not be confronted with such an alternative either of which would diminish his integrity as an individual.

This is to recognize the double aspects of man's personality, one, as a member of a group and the other, as a being isolated and aloof from it. It is to realize the fact that any attempt to aid and foster the growth and development of human personality is not reduced to a mechanical choice of emphasizing either the group or the individual. Only in this way can respect and deference for a human being as such be fitly achieved. But while liberty may, as Hobhouse points out, rest on a corresponding act of control, the true opposition is between the control that cramps the personal life and the spiritual order and the control that is aimed at securing the external and material conditions of their free and unimpeded development.<sup>65</sup>

What is of the permanent essence of freedom, as Laski points out, is that the personality of each individual should be so unhampered in its development, whether by authority or by custom, that it can make for itself a satisfactory harmonization of its impulses. Where restraint becomes an invasion of liberty is where the given prohibition acts so as to destroy that harmony of impulses which comes when a man knows that he is doing something it is worth while to do. Restraint frustrating the life of spiritual enrichment is evil.<sup>66</sup>

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<sup>64</sup> Law of the Soviet State, pp. 562-563.

<sup>65</sup> Cited in Cardozo, *op. cit.*, p. 108.

<sup>66</sup> Cited in Cardozo, *op. cit.*, p. 109.

It is in the above sense that the concept of liberty as guaranteed by the Constitution is to be understood. And as thus understood while governmental restraint is allowable in proper cases, it should not be carried so far as to deprive an individual of the free play of thought, of opinion, and of action. He is not to be deprived of that opportunity for the development of his personality. That should be the test with reference to the validity of statutes and ordinances imposing restraints.