

A COMPARATIVE STUDY OF THE FRENCH CONSTITUTION — FROM INDIVIDUAL RIGHTS AND FUNDAMENTAL FREEDOMS PERSPECTIVE

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"For forty years I have been a consistent friend of France and her brave army; all my life I have been grateful for the contribution France has made to the culture and glory of Europe, and above all for the sense of personal liberty and the rights of man which has radiated from the soul of France."

— WINSTON CHURCHILL

I. Introduction

Recent events in Hungary,¹ Tibet,² and South Africa³ once again focused attention on constitutionalism. Even on the American continent,⁴ it seems paradoxical to note a sustained, if not really continuous, erosion of human rights.⁵ This is not to mention the blatant attacks against fundamental freedoms in Cuba apparently done in the guise of the so-called "democratic processes."⁶

During this era which ushered in a new deal for the individual, these events are indeed lamentable, to say the least. A new school of legal thought has proposed that the individual be made the proper subject of international law.⁷ In line with the principles enunciated in the United Nations Charter,⁸ the General Assembly of the United Nations has proclaimed what is known as the Universal Declaration of Human Rights embodying the most

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¹ Newsweek, July 25, 1955, p. 34, Look, December 25, 1955, pp. 23-24, Time, July 25, 1955, p. 38, Time, December 17, 1956, p. 38, Time, April 29, 1957, p. 29.

² INTERNATIONAL COMMISSION OF JURISTS, THE QUESTION OF TIBET AND THE RULE OF LAW, Geneva, pp. 1-208 (1959); BULLETIN OF THE INTERNATIONAL COMMISSION OF JURISTS, No. 10, pp. 37-40, January 1960, regarding the United Nations Resolution on Tibet dated October 21, 1959.

³ NEWSLETTER OF THE INTERNATIONAL COMMISSION OF JURISTS, January 1959, p. 6.

⁴ Life (International), March 28, 1960, pp. 29-30.

⁵ "Our progress in degeneracy appears to me to be pretty rapid. As a nation we begin by declaring that 'all men are created equal.' We now practically read it, 'All men are created equal, except Negroes.'" — Abraham Lincoln quoted in REYNOLDS, COURTROOM, p. 278 (1957).

⁶ The Philippine Herald, January 3, 1959; The Sunday Herald, January 4, 1959; The Manila Times, January 6, 1959; The Evening News, January 17, 1959; The Evening News, January 21, 1959.

⁷ Kelsen, PRINCIPLES OF INTERNATIONAL LAW 96-100 (1952).

⁸ Article 1, par. 3, United Nations Charter.

important, if not altogether imperative, of the individual rights and fundamental freedoms.⁹ A further step in this direction has in fact been taken with the drafting of the covenants on the same subject.¹⁰

Notwithstanding all these developments, it is a sad commentary to observe that human rights are not given due respect, much less proper observance.¹¹ It is with this problem in mind that the writer proposes to make an analytical and comparative study of the representative state constitutions of the world from the perspective of individual rights and fundamental freedoms.

Scope. — The French Constitution of 1958 is the basic subject of this inquiry. For this choice, there are manifold reasons, some of which deserve mention here. Aside from its recent adoption under auspicious circumstances,¹² the present French Constitution represents the continental system. In the raging ideological conflict between the Soviet Bloc and the Western Powers, France occupies a pivotal position,¹³ both politically and geographically. While the cultural heritage of France¹⁴ gives color to this choice, French tradition in "liberty, equality and fraternity"¹⁵ lends dignity to it.

⁹ The Universal Declaration of Human Rights was proclaimed by the Representatives of the United Nations on December 10, 1948.

¹⁰ YEARBOOK ON HUMAN RIGHTS, 1952, pp. 424-430; YEARBOOK ON HUMAN RIGHTS, 1953, pp. 370-371.

¹¹ See *supra* notes 1, 2, 3, 4 and 5.

¹² Newsweek, April 26, 1960, p. 30.

"The constitutional texts of the Fifth Republic, as well as the numerous organic laws which amplify them, were prepared and perfected under quasi-clandestine conditions. Insofar as the Constitution itself was concerned, exegetes have access only to the draft published by the Government and the observations of the Consultative Constitutional Committee, also made public. The minutes of the discussions of the Consultative Constitutional Committee and of the Council of State have not been published. Research and cultivation of the preparatory papers of the texts governing the institutions of the Fifth Republic could be of interest to historians. Jurists can only confine themselves to the letter of the published documents in order to define their meaning and scope." — Malezieux, *The Fifth Republic*, 8 AM. J. COMP. L. 219 (Spring 1959).

¹³ *Id.* at 27-31; Philippines Free Press, Editorial, p. 8, May 21, 1960.

Speaking before the House of Commons on March 23, 1933, Winston Churchill said:

"If Europe has enjoyed peace this year, it has been under the shield of France. Be careful not to break that shield. It is perhaps not the broad basis on which we should like to see the harmony of Christendom stand, but is a shield...." — THE ELOQUENCE OF WINSTON CHURCHILL, p. 86 (1957).

On October 24, 1955, before the same august body, he uttered the following words:

"We all know the French are pacific. They are quite as pacific as we are. They want to be left alone, as we do, and, I would add, as the people of Soviet Russia also wish to be left alone. But the French seem much nearer to the danger than we are. There is no strip of salt water to guard

For comparative study, the present state constitutions of the United States of America, Argentina, and Indonesia have been selected to represent the American, Latin-American and Asiatic varieties, respectively.¹⁶ The inclusion of the Constitution of the Union of the Soviet Socialist Republics has reference to the ideological struggle referred to earlier.¹⁷ Although the reason for including in this work the Constitution of the Philippines is obvious, it may be stated that reappraisal and possibilities for improvement have something to do with it.

Of course, as the emphasis is laid on individual rights and fundamental freedoms, the text of the Universal Declaration of Human Rights,¹⁸ as well as the draft covenants on the subject,¹⁹ will receive due consideration.

Approach. — Basically, the treatment is analytical and comparative. However, when the occasion demands it, resort may be had to the historical method. This is especially so when there is a necessity to consider the background of the provision under study. On the whole, legal principles are to be viewed in the light of social, economic, political and other allied factors.

In the limelight will always be the human individual hemmed, on one side, by his so-called fundamental rights and freedoms, and, on the other, by the ugly forces constantly encroaching on those human rights.

their land and their liberties. We must remember that they are the only other great European country that has not reverted to despotism or dictatorship in one form or another." — *Id.*

Of France, Charles de Gaulle has this to say:

"The emotional side of me tends to imagine France like the princess in the fairy stories or the Madonna in the frescoes, as dedicated to an exalted and exceptional destiny... In short. France cannot be France without greatness." — *Newsweek*, April 25, 1960, p. 31.

¹⁴ "Many ask themselves the question: Is France finished? Is that long and famous history, adorned by so many manifestations of genius and valor, bearing with it so much that is precious to culture and civilization, and above all to the liberties of mankind — is all that now to sink for ever into the ocean of the past, or will France rise again and resume her rightful place in the structure of what may one day be again the family of Europe? ... I declare to you my faith that France will rise again. While there are men like General de Gaulle and all those who follow him — men like General Giraud, that gallant warrior whom no prison can hold, while there are men like those to stand forward in the name and in the cause of France, my confidence in the future of France is sure." — WINSTON CHURCHILL, Mansion House, London, November 10, 1942.

¹⁵ *Id.* See *infra* note 24.

¹⁶ The Constitution of the United States of America was ratified in 1788, while those of Argentina and Indonesia were adopted in 1949 and 1950, respectively.

¹⁷ See *supra* note 12.

¹⁸ See *supra* note 8.

¹⁹ See *supra* note 9.

Definitions of terms. — For the sake of convenience and to avoid unnecessary repetition in this work, a definition of basic terms is in order.

"French Constitution" shall stand for the Constitution of the French Republic adopted by the referendum of September 28, 1958 and promulgated on October 4, 1958.

"Constitution of 1946" means the Constitution of the French Republic adopted by the National Constituent Assembly and approved by the French people on October 27, 1946.

By "Declaration of Rights of 1789" is meant the Declaration of the Rights of Man and of the Citizen of August 26, 1789.

"Universal Declaration" shall be understood to mean the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly on December 10, 1948.

"American Constitution" means the Constitution of the United States of America adopted in 1788.

"Argentine Constitution" represents the Constitution of the Argentine Republic adopted in 1949.

"Indonesian Constitution" shall mean the Constitution of the Republic of Indonesia promulgated on August 15, 1950.

"Philippine Constitution" shall represent the Constitution of the Philippines adopted in 1935.

"Russian Constitution" means the Constitution of the Union of Soviet Socialist Republics adopted in 1936.

II. Brief Historical Background

A country of western Europe, France has for its boundaries the English channel on the north-west, the Bay of Biscay on the west, the Pyrenees on the south, the Mediterranean on the south-east, and the southern part of her eastern frontier is based upon the crest lines of the Maritime, Cottian and Graian Alps, passing the east of Mt. Blanc along the eastern scarp of the Chablais to the south shore of the lake of Geneva. Leaving to Switzerland Geneva and its district and a strip along the northwestern shore of the lake, the frontier goes along the Jura ridge to the Doubs river. After leaving the Doubs, it bends west bringing Switzerland at Perrentruy to the north-western foot of the Jura bending back again it goes to the vicinity of Busle and along the Rhine to a point east of Lauterburg. Leaving the Rhine, the frontier runs west-north-west to the north side of the Strait of Dover. In its course, it leaves most of the Saar valley outside, runs along the French side of the Ardennes, bends northward down the Meuse to give France the fortress of Givet, and then cuts across the slopes of Hainault

and the Flemish plain to the sea a few miles north-east of Dunkirk.²⁰

France's location on the map has an important bearing upon the history of the French people. This is so because the history of a people is determined by the land which they inhabit. It has been said of France that geographically she occupies a very happy position between continent and ocean. Situated at one extremity of that indented peninsula known as Europe, France is on three sides closely united to the body of the continent — at once and equally a maritime and a land power. If her position between north and south made her from earliest times the meeting-place of peoples, she has also had the task of defending on the north and east her very extended land frontier and her long sea-coast. As a consequence, French governments have ever been torn between two essential but not always irreconcilable policies.²¹

From the founding of Marseilles by the Greeks from Asia Minor about 600 B.C. to the 18th century, the land now known as France was a scene of conquests, absolute monarchies, feudalism and short-lived empires. After brief stays at the pinnacle of sovereign power, the monarchy suffered decay now and then.²²

In 1788, the nobles and the magisterial aristocracy of the provinces gave the signal for revolt. Louis XVI was forced to summon the States-General to meet. Anarchy ensued; Paris captured her bastille and the towns and villages captured their bastilles of feudalism. Amidst the joy of social liberation, Louis XVI regained his personal popularity but failed to take advantage of it. Above all, he sought to profit by the dissension that characterized the Assembly during the Declaration of Rights and later of the Constitution. At this time, public opinion was disquieted by the king's hesitation in ratifying the decrees and the Constitution.²³

Having failed to come to an understanding with the king, the Assembly ended by working alone, and turned its power of control into an instrument of strife rather than one of cooperation. It inaugurated its legislative work by issuing the Declaration of the Rights of Man and of the Citizen.²⁴ On this basis, the As-

²⁰ 9 THE ENCYCLOPAEDIA BRITANNICA, 581 (14th Ed., 1936).

²¹ *Id.* at 611.

²² *Id.* at 611-635.

²³ *Id.* at 636-637.

²⁴ *Id.* at 637.

"The Declaration was inspired by all the philosophy of the 18th century and by Rousseau's *Contract Social*. It set forth ideas of the Sovereign right of the Nation, and of the natural and imprescriptible rights of liberty, equality, ownership, voting and control of legislation and taxation, trial by jury, the vindication of the ideal and the dignity of mankind. Lacking the support of historical precedents, such as were to be found in England or the American colonies, the Assembly took as the basis for its labors

sembly founded a new regime. Assuming to itself the right of sovereignty, the nation proceeded to delegate it in accord with Montesquieu's theory of the separation of powers.²⁵

Prior to 1875, the government of France in modern times was successively the monarchy, dating from the eighth century, which was overthrown in 1782; the "First Republic" which lasted for twelve years (Republic, Directoire, Consulate); the Napoleonic Empire from 1804 to 1814; the restored monarchy under the Bourbon dynasty which continued until 1830; the constitutional monarchy under the Orleans branch of the House of Bourbon, overthrown in 1848; and the "Second Republic" under Louis Napoleon Bonaparte, which began in 1848 and which was converted into the "Second Empire" in 1852 and continued until 1870. After the Germans occupied France in 1870, an assembly, elected by universal suffrage to conclude peace, named Thiers as "chief executive power of the French Republic" and it was that "Third Republic" which adopted the three Constitutional Acts of 1875.²⁶

From 1875 until 1940, the Third Republic operated under the three constitutional laws. On June 22, 1940 the German Army having occupied about three-fifths of France, an armistice was signed with Germany and, two days later, with Italy. On July 10, 1940, the National Assembly, meeting at Vichy, passed a constitutional law empowering Marshal Petain to promulgate a new Constitution. Twelve "Constitutional Acts" were passed during 1940, 1941 and 1942. At the same time, the French National Committee, which had been constituted in London on September 26, 1941, acted as a Government for the French territories under its control. In 1944, the Provisional Government, established the previous year in Algiers, moved to France. Elections were held in October, 1945 and a new Constitution was adopted by the National Constituent Assembly on September 28, 1946 and approved by popular vote on October 13, 1946.²⁷ This Constitution of 1946 reaffirmed "the rights and freedoms of man and of citizen ordained by the Declaration of Rights of 1789 and the fundamental principles recognized by the laws of the Republic."²⁸

Confronted with grave problems, internally and concerning her African possessions, threatening her national existence, France practically had to summon back to the highest public office her

the tradition of all the great political thinkers. And it is this very universality that, despite its omissions, has made of that work a magnificent chapter of public right and the source of all the political progress that has since been achieved in the world." — *Id.*

²⁵ *Id.*

²⁶ 2 PEASLEE, CONSTITUTIONS OF NATIONS, (2nd ed., 1956).

²⁷ *Id.*

²⁸ Preamble, par. 1, Constitution of 1946.

wartime hero²⁹ and in due time had to adopt in 1958 the present French Constitution.³⁰ In the French Constitution, the French people again proclaimed "its attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble of the Constitution of 1946."³¹

III. The Rule of Law

In a "Working Paper" for the International Congress of Jurists convened at New Delhi in 1959, the Rule of Law has been said to be a convenient term to summarize a combination of ideals and practical legal experience concerning which there is over a wide part of the world, although in embryonic and to some extent in inarticulate form, a consensus among all jurists. Two ideals are said to underlie this conception of the Rule of Law. In the first place, it implies, without regard to the content of law, that all power in the State should be derived from and exercised in accordance with the law. Secondly, it assumes that the law itself is based on respect for the supreme value of human personality.³²

The "Working Paper" concludes the discussion of the fundamental nature of the Rule of Law with the following definition:³³

The principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.

In an article entitled "The Rule of Law as Understood in France", two leading French writers on the subject stated:³⁴

Must it be said that law in the formal sense is in France the only source of legality, the only manifestation of the "Rule of Law"? This must be answered in the affirmative, but at the same time with certain qualifications which will be developed later. The judge, like the administrator, is subject to the law in a formal sense, since his function is precisely to ensure application of the law. But it is equally a part of his function to supplement possible gaps in the law. Such is the sense of article 4 of the Civil Code: "The judge who shall refuse to judge, on the pretext of the silence, the obscurity, or the inadequacy of the law, may be prosecuted as one guilty of denial of justice." A judge, and especially an administrative judge,

²⁹ See *supra* note 12.

³⁰ See *supra* notes 12 and 13.

³¹ Preamble, par. 1, French Constitution.

³² NEWSLETTER OF THE INTERNATIONAL COMMISSION OF JURISTS, January 1959, p. 8. Also JOURNAL OF THE INTERNATIONAL COMMISSION OF JURISTS, 23 (Spring-Summer 1959).

³³ *Id.* at 8-9.

³⁴ 7 AM. J. COMP. L. 149 (Spring, 1958).

may be called upon to fill the gaps in the law. This is the significance of the jurisprudence of the Conseil d'Etat respecting the "general principles of law." But when the judge applies general principles, he interprets the presumed will of the legislator and does not create law. Likewise, it would be possible to make a comparison with custom, which is also a rule of unwritten law. The solution is identical: custom can supplement the law but is not allowed to derogate therefrom, much less to abrogate it. French public law does not recognize nonobservance as a means to abrogate the laws; there exists no custom *contra legem*.

In sum, law written and voted conformably to the Constitution constitutes the supreme law, and the creative power of jurisprudence operates only within the context of the law, interpreting the presumed will of the legislator, and only so far as such will is not explicitly expressed.

Such concept is easily discernible in the French Constitution.⁸⁵ In one provision, it is stated that the Government may, in order to carry out its program, ask Parliament to authorize it, for a limited period, to take through ordinances, measures that are normally within the domain of law.⁸⁶ Considering the applicability of the Declaration of Rights of 1789,⁸⁷ it is significant to note that "the law is an expression of the common will" and "all citizens have a right to concur, either personally or by their representatives, in its formation."⁸⁸

This rule constitutes the basic assumption in practically every constitutional government. Under the Indonesian Constitution, it is expressly provided that "the Government promotes the welfare of Indonesia and especially takes care that the Constitution, the laws and other regulations are executed"⁸⁹ and that "the laws are inviolable."⁴⁰ In the Argentine Constitution, it is declared that "the people do not deliberate nor govern except through their representatives and authorities created by this Constitution"⁴¹ and that "this Constitution, the laws of the Nation dictated by Congress in consequence thereof, and the treaties with foreign powers are the supreme law of the nation . . ."⁴²

Both in the American and Russian Constitutions, the rule of law prevails, at least, in letter. The American Constitution expressly proclaims that "this Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties

⁸⁵ Articles 38, 41, 46, 53, 61 and 62.

⁸⁶ Article 38, par. 1, French Constitution.

⁸⁷ Preamble, French Constitution.

⁸⁸ Article 6, Declaration of Rights of 1789.

⁸⁹ Article 82, Indonesian Constitution.

⁴⁰ Article 95, par. 2, Indonesian Constitution. Also Articles 98, 99, 100, 117, 118, 129 and 145, Indonesian Constitution.

⁴¹ Article 14, Argentine Constitution.

⁴² Article 22, Argentine Constitution. Also Articles 30, 32, 35, 81 and 83, Argentine Constitution.

made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land . . ."⁴³ It is the duty of every citizen of the USSR to abide by the Constitution of the Union of Soviet Socialist Republics and observe the laws.⁴⁴ The bill of rights embodied in the Philippine Constitution professes attachment to the rule of law when it announces that "no person shall be deprived of life, liberty, or property without due process of law . . ."⁴⁵

At least, in principle, it may be said that adherence to the rule of law is universal among constitutional governments. It has to be expected, however, that in actual practice, variance in the application and observance of the principle may take place as a result of various and varied factors.

IV. Instruments of Restraint on the Powers of Government

In the concept of state and the form of government, as well as in the political traditions and ideals of a people, may be found the instruments of restraint on the powers of government. This is governmental power as against individual liberty. On this subject, specific provisions of a particular constitution may also be examined.

Concept of State. — Although not stated in explicit terms, the French people have proclaimed their attachment to individual liberty and freedom as the reason for the existence of the state.⁴⁶ This is specially so with the declaration that "its principle is government of the people, by the people and for the people."⁴⁷

The same principle underlies the Argentine Constitution and also the American Constitution, although it may be noted that in both it is merely implied.⁴⁸

A categorical statement on this point is found in the Indonesian Constitution. It has been expressly provided therein that "the independent and sovereign Republic of Indonesia is a democratic, constitutional State of unitary structure" and "the sovereignty of the Republic of Indonesia is vested in the people . . ."⁴⁹

The same explicitness may be noted in the Philippine Constitution wherein it is expressly provided that "the Philippines is a

⁴³ Article VI, par. 2, American Constitution. Also Articles I, Sec. 1; II, Sec. 1, par. 8; VI, par. 3, American Constitution.

⁴⁴ Article 113, Russian Constitution. Also Articles 14, par. (d), 112 and 113, Russian Constitution.

⁴⁵ Article III, Sec. 1, par. 1; Philippine Constitution. Also Articles V, VI, VII, VIII, XII and XIV, Philippine Constitution.

⁴⁶ Preamble, par. 1, French Constitution.

⁴⁷ Article 2, par. 5, French Constitution.

⁴⁸ Preamble, Argentine Constitution; also Preamble, American Constitution.

⁴⁹ Article 1, Indonesian Constitution. Also Articles 43, par. 1, and 124

republican state" and "sovereignty resides in the people and all government authority emanates from them."⁵⁰

In the Russian Constitution, it is stated in unmistakable terms that "the Union of Soviet Socialist Republics is a socialist state of workers and peasants."⁵¹

Form of Government. — France is a Republic with a "government of the people, by the people and for the people."⁵² Under the provisions on amendments, it is expressly provided that "the republican form of government shall not be subject to amendment."⁵³

While "the Argentine Nation adopts for its government the representative, federal, republican form,"⁵⁴ it has been expressed "that the people of the component States throughout Indonesia desire the formation of a Unitary Republic."⁵⁵

As stated earlier, the Philippines has adopted a republican form of government with sovereignty residing in the people and all government authority emanating from them.⁵⁶

Under the American Constitution, "the United States shall guarantee to every State in this Union a Republican Form of Government."⁵⁷

In the Russian Constitution, it is expressly provided that "the Union of Soviet Socialist Republics is a federal state, formed on the basis of a voluntary union of equal soviet socialist republics . . ."⁵⁸ with the right freely to secede from the USSR reserved to every Union Republic.⁵⁹

Political Traditions and Ideals. — The motivations of a people which have served as their beacon light in the darkest hour of history and as their guiding spirit for so long can give an inkling as to the extent of power such people concede to the government. With the exception of France and possibly Russia which have evolved their political ideals and traditions practically all on their own, the four other countries here considered have undergone such varying degrees of struggle against foreign dominations as to provide a crucible to forge their ideals and traditions through. To consider this subject comprehensively would require extensive space which is not warranted in this work. Just to have a glimpse

⁵⁰ Article II, Sec. 1, Philippine Constitution.

⁵¹ Article 1, Russian Constitution.

⁵² Article 2, French Constitution. Also Article 5.

⁵³ Article 89, par. 5, French Constitution.

⁵⁴ Article 1, Argentine Constitution.

⁵⁵ Opening Statement, par. 1, Indonesian Constitution.

⁵⁶ See *supra* note 50.

⁵⁷ Article IV, Sec. 4, American Constitution.

⁵⁸ Article 13, Russian Constitution.

⁵⁹ Article 17, Russian Constitution.

into this aspect of a particular constitutional system, only those ideals and traditions which have found explicit recognition in the written constitution shall be dealt with.

In consonance with its motto "Liberty, Equality, Fraternity",⁶⁰ France subscribes to the Declaration of Rights of 1789 that "the purpose of all civil associations is the preservation of the natural and imprescriptible rights of man" which "are liberty, property, security, and resistance to oppression."⁶¹ Since liberty is understood to consist in the power of doing whatever does not injure another,⁶² and since the law is an expression of the common will,⁶³ the law ought to prohibit only actions hurtful to society.⁶⁴ What is not prohibited by the law shall not be hindered, and no one should be compelled to do what the law does not require.⁶⁵ In fact, such traditions have been expressly recognized both in the Constitution of 1946⁶⁶ and in the French Constitution.⁶⁷

Like the Argentine,⁶⁸ the Indonesian⁶⁹ and the American⁷⁰ Constitutions, the Philippine Constitution expresses such ideals and traditions in its preamble.⁷¹ While the emphasis of these four constitutions, including the French Constitution, is on the political,⁷² the Russian Constitution stresses more on the economic.⁷³

Specific Provisions. — These instruments of restraint are specifically exemplified by the bills of rights and the doctrine of separation of powers embodied in the particular constitutions. Such is true with the French Constitution,⁷⁴ as well as the American,⁷⁵ Argentine,⁷⁶ Indonesian,⁷⁷ and Philippine Constitutions.⁷⁸ A similar observation to a certain extent may be made on this subject concerning the Russian Constitution.⁷⁹

Especially of the French Constitution, the following observation has been made:⁸⁰

⁶⁰ Article 2, par. 3, Constitution of 1946.

⁶¹ Article 2, Declaration of Rights of 1789.

⁶² Article 4, Declaration of Rights of 1789.

⁶³ Article 6, Declaration of Rights of 1789.

⁶⁴ Article 5, Declaration of Rights of 1789.

⁶⁵ *Id.*

⁶⁶ Preamble, par. 14.

⁶⁷ Preamble, French Constitution.

⁶⁸ Preamble, Argentine Constitution.

⁶⁹ Preamble, Articles 35 and 146, Indonesian Constitution.

⁷⁰ Preamble, American Constitution.

⁷¹ Preamble, Philippine Constitution.

⁷² See *supra* notes 68 to 71.

⁷³ Articles 2, 4, 131 and 133, Russian Constitution.

⁷⁴ Preamble, Articles 49, 50 and 68, French Constitution.

⁷⁵ Article I, Sec. 7, Sec. 8 (18), Sec. 9 (2) and (3), American Constitution.

⁷⁶ Articles 36, 52 and 53, Argentine Constitution.

⁷⁷ Articles 47, 52, 63, 72, 106 and 139, Indonesian Constitution.

⁷⁸ Articles III, VI, Sec. 20 (2), Secs. 2 and 10, Philippine Constitution.

⁷⁹ Articles 30 to 56, 65, 110, 118 to 133, Russian Constitution.

⁸⁰ 8 AM. J. COMP. L. 226 (Spring 1959).

The very precise separation between the methods of selection of the Parliament and of the President of the Republic brings our system close to a presidential regime. The same is true of the fact that it is the President of the Republic who names the Premier and the other ministers. It is true that General de Gaulle has asserted that the Government will not be responsible to the President of the Republic, as in a presidential regime. But the text of the Constitution does not forbid such a practice (article 8). Therefore, the successors of General de Gaulle, who will naturally not be bound by his declarations, may adopt a policy very close to that of a presidential regime. The rigorous separation of powers, with the prohibition directed against members of Parliament combining their position as such with ministerial functions (article 23) is completely compatible with a presidential regime, under which the secretaries of State are not only political figures but the direct collaborators of the President. Also significant from this standpoint is the possibility that the President of the Republic may delegate his powers to the Premier (article 21).

It may be stated that, in addition to the instruments of restraint mentioned above, the principle of the rule of law is itself a limitation on the powers of government.

V. Individual Rights and Fundamental Freedoms

Each of these rights and freedoms being an institution in itself deserves to be treated separately.

Personal Security. — More than any other right, the right of an individual to personal security stands foremost. The reason is obvious — the personal security of the individual is the very foundation of his right to self-preservation and constitutes the key to the enjoyment of all other freedoms and rights.

Under the French system, the right to personal security receives more extensive consideration in the Declaration of Rights of 1789 than in the French Constitution itself. In the latter, it is merely provided that "no one may be arbitrarily detained"⁸¹ and that "laws shall establish the regulations concerning civil rights and the fundamental guarantees granted to the citizens for the exercise of their public liberties . . ."⁸² A more detailed treatment is contained in the Declaration of Rights of 1789.⁸³ As earlier stated, it is the purpose of all civil associations to preserve the natural and imprescriptible rights of man, among which are liberty and security.⁸⁴ Most of the other provisions concern the rights of an accused person.⁸⁵

⁸¹ Article 66, French Constitution.

⁸² Article 34, French Constitution.

⁸³ See Article 2, 7, 8, 9, 12 and 13, Declaration of Rights of 1789.

⁸⁴ See *supra* note 61.

⁸⁵ See *supra* note 83.

The same may be said of the American,⁸⁶ Argentine,⁸⁷ Indonesian,⁸⁸ Philippine,⁸⁹ and Russian⁹⁰ Constitutions. It may be noted that a more extensive treatment is found in the subsequent amendments rather than in the original text of the American Constitution.⁹¹ Of these six constitutions, it may be said that the Indonesian Constitution is the most advanced in that it provides expressly that "everyone has the right of freedom of movement and residence within the borders of the State" and "everyone has the right to leave the country and — being citizen or resident — to return thereto."⁹² For this matter, the Russian Constitution stands out prominently in still going farther in affording "the right of asylum to foreign citizens persecuted for defending the interests of the working people, or for scientific activities, or for struggling for national liberation."⁹³ This approximates the standard laid down by the Universal Declaration on the subject of asylum.⁹⁴

Equal Protection. — The French Constitution expressly provides that "all citizens shall be equal before the law, whatever their origin, their race and their religion."⁹⁵ Under the Fourteenth Amendment, the American Constitution guarantees to all persons within its jurisdiction the equal protection of the laws.⁹⁶ The same equal protection clause is found in the Philippine Constitution.⁹⁷

Substantially, the same provisions are contained in the Argentine,⁹⁸ Indonesian,⁹⁹ and Russian¹⁰⁰ Constitutions. This is especially significant considering the provisions on the subject contained in the Universal Declaration.¹⁰¹

It is also significant to note that only the French Constitution expressly imposes the corresponding duties as a consequence of such equality.¹⁰²

⁸⁶ Article I, Sec. 9, pars. 2 and 3; Article IV, Sec. 2, par. 2; Third, Fourth, Fifth, Sixth, Eight Thirteenth and Fourteenth Amendments, American Constitution.

⁸⁷ Articles 20, 29 and 30, Argentine Constitution.

⁸⁸ Articles 9, 10, 11, 12, 13, 14, 15, 16 and 107, par. 2, Indonesian Constitution.

⁸⁹ Article III, Sec. 1, pars. 1, 3, 4 and 11 to 20, Philippine Constitution.

⁹⁰ Articles 127-129, Russian Constitution.

⁹¹ See *supra* note 86.

⁹² Article 9, Indonesian Constitution.

⁹³ Article 129, Russian Constitution.

⁹⁴ Article XIV, Universal Declaration.

⁹⁵ Article 77, par. 3, French Constitution.

⁹⁶ Also Article IV, Sec. 2, and the Fifteenth Amendment, Sec. 1, American Constitution.

⁹⁷ Article III, Sec. 1(1); also Article VI, Sec. 22(1).

⁹⁸ Articles 8, 28 and 31, Argentine Constitution.

⁹⁹ Articles 7, 8, 25 and 37, Indonesian Constitution.

¹⁰⁰ Articles 122 and 123, Russian Constitution.

¹⁰¹ Articles I, II and VI, Universal Declaration.

¹⁰² See *supra* note 95.

Freedom of Speech and of the Press. — As invoked by the French Constitution,¹⁰³ the Declaration of Rights of 1789 provides that "the unrestrained communication of thoughts or opinions being one of the most precious rights of man, every citizen may speak, write and publish freely, provided he be responsible for the abuse of this liberty, in cases determined by law."¹⁰⁴

In both the American and Philippine Constitutions, it is expressly provided that no law shall be passed abridging the freedom of speech and of the press.¹⁰⁵ The Philippine Constitution goes further by providing that "the privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise."¹⁰⁶

Similar provisions are contained in the Argentine, Indonesian and Russian Constitutions.¹⁰⁷ However, a significant limitation imposed upon the exercise of such freedom is contained in the Russian Constitution in that such an exercise has to be "in conformity with the interests of the working people, and in order to strengthen the socialist system." Moreover, control by the government of the facilities necessary for the enjoyment of this freedom practically renders the same ineffectual, if not entirely nugatory.¹⁰⁸

A standard has been proclaimed in the Universal Declaration to the effect that "everyone has the right to the 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."¹⁰⁹

Freedom of Assembly and Petition. — This is a corollary to the freedom of expression.

It has been recognized that everyone has the right to freedom of assembly and association as well as the right not to belong to an association.¹¹⁰

A limited scope of such freedom is provided for in the French Constitution.¹¹¹ This is understandable in view of the broad and comprehensive provisions on freedom embodied in the Declaration of Rights of 1789.¹¹²

¹⁰³ See *supra* note 28.

¹⁰⁴ Article 11, Declaration of Rights of 1789; also Article 34, French Constitution.

¹⁰⁵ First Amendment, American Constitution; Article III, Sec. 1(8), Philippine Constitution.

¹⁰⁶ Article III, Sec. 1(5), Philippine Constitution.

¹⁰⁷ Articles 15, 23 and 26, Argentine Constitution; Articles 17 and 19, Indonesian Constitution; Article 125, Russian Constitution.

¹⁰⁸ See Article 125, Russian Constitution.

¹⁰⁹ Article XIX, Universal Declaration.

¹¹⁰ Article XX, Universal Declaration.

¹¹¹ Article 4 provides in part as follows: "Political parties and groups shall be instrumental in the expression of the suffrage. They shall be formed freely and shall carry on their activities freely. x x x"

¹¹² See Articles 2, 4, 5 and 11, Declaration of Rights of 1789.

In the Indonesian Constitution, this freedom is recognized but made subject to regulation by law.¹¹³ Under the Argentine Constitution, all inhabitants of the Nation are guaranteed the enjoyment of the right of assembling, of making petitions to the authorities, and of associating for useful purposes, in accordance with the laws which regulate the exercise thereof.¹¹⁴ The limitations imposed upon the exercise of the freedom of speech and of the press under the Russian Constitution are also imposed upon the exercise of the freedom of assembly and petition.¹¹⁵

Broader guarantees for the enjoyment of this freedom are provided for in the American and Philippine Constitutions to the effect that "no law shall be passed abridging the right of the people peaceably to assemble and petition the Government for redress of grievances."¹¹⁶ The Philippine Constitution further provides that "the right to form associations or societies for purposes not contrary to law shall not be abridged."¹¹⁷

Freedom of Religion. — A recognition of this freedom is generally made in the French Constitution.¹¹⁸ Both in the Declaration of Rights of 1789 and in the Constitution of 1946, this is implicitly recognized to the effect that "no man is to be interfered with . . . because of his religious opinions, provided his avowal of them does not disturb public order as established by law"¹¹⁹ and "no one may suffer in his work or his employment because of . . . his beliefs."¹²⁰

On this subject, the American and Philippine Constitutions, on one hand, and the Russian Constitution, on the other, converge on the principle of separation between church and state in their effort to guarantee the freedom of worship. The American Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"¹²¹ and that "no religious Test shall ever be required as Qualification to any office or public trust under the United States."¹²² The Philippine Constitution declares that "no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exer-

¹¹³ Articles 20, 21 and 22, Indonesian Constitution.

¹¹⁴ Article 26, Argentine Constitution.

¹¹⁵ See *supra* note 108.

¹¹⁶ Article III, Sec. 1(8), Philippine Constitution. See the First Amendment, American Constitution.

¹¹⁷ Article III, Sec. 1(6), Philippine Constitution.

¹¹⁸ Article 34, French Constitution.

¹¹⁹ Article 10, Declaration of Rights of 1789.

¹²⁰ Preamble, par. 5, Constitution of 1946.

¹²¹ First Amendment, American Constitution.

¹²² Article VI, par. 3, American Constitution.

cise of civil or political rights."¹²³ As a further guarantee, it is provided that cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious purposes shall be exempt from taxation,¹²⁴ and no public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit or support of any priest preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium.¹²⁵ In the Russian Constitution, it is provided that "in order to ensure to citizens freedom of conscience, the church in the USSR is separated from the state, and the school from the church" and that freedom of religious worship and freedom of anti-religious propaganda is recognized for all citizens."¹²⁶

A different set-up is recognized in the Argentine Constitution wherein "the Federal Government supports the Roman Catholic Apostolic Church"¹²⁷ and "to be eligible to the office of President or Vice-President of the Nation, a person . . . must belong to the Catholic Church . . . "¹²⁸ At any rate, there is the same guarantee to the individual of enjoying the right "of freely professing their religion."¹²⁹

The Indonesian Constitution takes the middle ground on the matter of religious freedom. It provides that "everyone is entitled to freedom of religion, conscience and thought."¹³⁰ Declaring that "the State is based on the belief in the Divine Omnipotence," it provides that "the State guarantees the freedom of every resident to profess his own religion and to worship according to his religion and belief."¹³¹ Considering the various and varied religious denominations existing in Indonesia, a rather complicated, if not altogether delicate, arrangement is instituted when it is expressly provided in the fundamental law that "the authorities shall give equal protection to all recognized religious denominations and organizations" and "aid in any form given by the authorities to ministers of religion and to religious denominations or organizations shall be rendered on the basis of equality."¹³²

¹²³ Article III, Sec. 1(7), Philippine Constitution.

¹²⁴ Article VI, Sec. 22(3), Philippine Constitution.

¹²⁵ Article VI, Sec. 23(3), Philippine Constitution.

¹²⁶ Article 124, Russian Constitution.

¹²⁷ Article 2, Argentine Constitution.

¹²⁸ Article 77, Argentine Constitution.

¹²⁹ Article 26, Argentine Constitution.

¹³⁰ Article 18, Indonesian Constitution.

¹³¹ Article 43, pars. 1 and 2, Indonesian Constitution.

¹³² *Id.*, par. 3.

After passing over the above provisions on religious freedom, it may be worthwhile to consider the following proclamation on the subject as contained in the Universal Declaration:¹³³

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, worship and observance.

Property Rights. — At this crucial stage in the struggle for world supremacy between two conflicting ideologies, it may be relevant to consider this subject from a comparative point of view. This is especially so considering that the pivotal issue in the conflict simmers down to the economic aspect.

Firstly, let us consider the French position. The Declaration of Rights of 1789 provides that "the right to property being inviolable and sacred, no one shall be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous indemnity."¹³⁴ Possibly in line with this declaration, the French Constitution provides that laws shall determine the fundamental principles of property rights.¹³⁵ Obviously, such requirement of "evident public necessity, legally ascertained, and on condition of a previous indemnity" is more partial to individual liberty than the requirement of "public use," "just compensation" and "due process" under the American and Philippine Constitutions.¹³⁶

It may be observed that the property rights provisions embodied in the Argentine and Indonesian Constitutions are imposed with the element of "social function."¹³⁷ But this is much milder compared to the communistic provisions on property rights contained in the Russian Constitution.¹³⁸ In fact, Article 6 of the latter constitution expressly provides as follows:

Art. 6. The land, its mineral wealth, waters, forests, mills, factories, mines, rail, water and air transport, banks, communications, large state-organized agricultural enterprises (state farms, machine and tractor stations, and the like), as well as municipal enterprises and the bulk of the dwelling houses in the cities and industrial localities, are state property, that is, belong to the whole people.

On this point, it may be concluded that while the French, American and Philippine Constitutions stress on liberty, the Russian, Argentine and Indonesian Constitutions emphasize on the economic.

¹³³ Article XVIII, Universal Declaration.

¹³⁴ Article 17, Declaration of Rights of 1789.

¹³⁵ Article 34, French Constitution.

¹³⁶ Fifth Amendment, American Constitution; Article III, Sec. 1(1) and (2), Philippine Constitution.

¹³⁷ Articles 26, 38, 39 and 40, Argentine Constitution; Articles 15, 26, 27 and 28, Indonesian Constitution.

¹³⁸ Articles 5, 6, 7, 8, 9, 10, 12 and 131, Russian Constitution.

Such difference in emphasis notwithstanding, it is significant to note that, with the exception of the Russian Constitution, these constitutions have at least lived up to the standard set forth by the Universal Declaration that "everyone has the right to own property alone as well as in association with others" and "no one shall be arbitrarily deprived of his property."¹³⁹ The extent of enjoyment of such freedom may vary in degree, under a particular constitution, but the principle undoubtedly remains the same.

Social Rights. — While older constitutions have not given emphasis to express acknowledgment of social rights, the contrary is true with respect to recently adopted ones. The American Constitution hardly contains any express provision on this subject. It may be that this matter has been left to the states members of the union to attend to. In the Philippine Constitution, there is the so-called social justice provision.¹⁴⁰ The provisions on the subject contained in the Russian Constitution must have been rendered necessary, if not indispensable, by the communistic system adopted therein concerning the economic scheme. This is obvious from the frequent reference made to the right to work as well as to the other supposed privileges of the working class.¹⁴¹ While a sketchy provision is contained in the French Constitution, a broader treatment is contained in the Constitution of 1946 regarding the rights of workers and the conditions necessary for the development of the individual and the family.¹⁴² A much more comprehensive treatment is embodied in the Argentine and Indonesian Constitutions.¹⁴³ In the Indonesian Constitution, it is even provided that "the raising of the people's prosperity is an object of continuous concern of the authorities, who shall at all times aim at ensuring to everyone a standard of living worthy of human dignity for himself and his family" and "the authorities shall promote social security and social guarantees, and particularly the securing and guaranteeing of favourable conditions of labor, the preventing and combating of unemployment and the establishing of old-age provisions and the care for widows and orphans."¹⁴⁴ It may be observed that these provisions contained in the Argentine, French and Indonesian Constitutions practically approximate those embodied in the Universal Declaration.¹⁴⁵

¹⁴⁰ Article II, Sec. 5, Philippine Constitution.

¹⁴¹ Articles 118, 119 and 120, Russian Constitution.

¹⁴² Preamble, pars. 6, 7, 8, 10 and 11, Constitution of 1946.

¹⁴³ See Articles 26, 27, 28, 37 and 40, Argentine Constitution; also Articles 28, 29, 31, 36, 37, 39 and 42, Indonesian Constitution.

¹⁴⁴ Articles 36 and 37, Indonesian Constitution.

¹⁴⁵ See Articles XV, XCI, XXII, XXIII, XXIV and XXV, Universal Declaration.

Cultural Rights. — The observations generally made concerning social rights are applicable to cultural rights. In this connection, however, it is to be noted that the French Constitution provides that "the Nation shall guarantee equal access of children and adults to education, professional training, and culture" and "the establishment of free, secular, public education on all levels, shall be a duty of the State."¹⁴⁶

Under the Argentine and Philippine Constitutions, the role of the family in the education of the youth is expressly recognized.¹⁴⁷ Compared to the provision on this subject embodied in the French Constitution,¹⁴⁸ a narrower scope of free public education is provided for in the Argentine and Philippine Constitutions.¹⁴⁹ Similar to that adopted in the latter two constitutions,¹⁵⁰ the Russian Constitution provides for a slightly modified system.¹⁵¹ The Indonesian scheme apparently admits its formative stage.¹⁵² Quite prominent is the silence of the American Constitution on this subject.¹⁵³

A more explicit recognition of the individual right to cultural development is found in the Universal Declaration.¹⁵⁴ This is rather significant if human rights are to be observed for, then, we cannot afford to neglect the training and shaping of the personality and mind of the human individual. As a standard for this new tendency, it may be convenient to reproduce the provisions.

ARTICLE XXVI. Everyone has the right of education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for the human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

While recognizing the right of everyone freely to participate in the cultural life of the community, to enjoy the arts and to share

¹⁴⁶ Preamble, par. 13, Constitution of 1946.

¹⁴⁷ Article 37, Argentine Constitution; Article II, Sec. 4, Philippine Constitution.

¹⁴⁸ See *supra* note 146.

¹⁴⁹ See Articles 5, 17, 26 and 27, Argentine Constitution; Article XIV, Secs. 4 and 5, Philippine Constitution.

¹⁵⁰ See *supra* notes 147 and 149.

¹⁵¹ Article 121, Russian Constitution.

¹⁵² See Articles 30, 40 and 41, Indonesian Constitution.

¹⁵³ The observations made with respect to social rights is also true here.

¹⁵⁴ See Articles XXVI, XXVII and XXIX, Universal Declaration.

in scientific advancement and its benefits, the Universal Declaration has gone farther in that "everyone has the right to the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is the author."¹⁵⁵ For this right, the Universal Declaration has imposed the correlative duty which everyone has to the community in which alone the free and full development of his personality is possible. Such duty is defined to the effect that in the exercise of his rights and freedoms everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.¹⁵⁶

VI. Conclusion and Recommendations

Conclusion. — The distinguishing mark of a constitutional system is the guarantee of individual rights and fundamental freedoms against encroachment by a governmental power. However, this does not preclude the existence of a framework wherein the interest of the State is held higher than that of the individual. In other words, even if there is a constitutional guarantee of individual rights, there still remains the possibility that the individual is considered to exist for the State. In the strict sense of the word, it is fortunate that in the six constitutions considered in this work no such system exists, at least on letter. It may be pertinent to note that notwithstanding declarations purportedly for the protection of individual rights and freedoms under the Russian Constitution, the individual only exists for the community or cooperative interest.¹⁵⁷ In this connection, it may not be amiss to state that where the individual is made to exist only for the State or for the community interest, such guarantees proclaimed in the fundamental law are more apparent than real, if not wholly illusory.¹⁵⁸

There can be no question that the experience and maturity of a nation affect the guarantees provided for in its constitution for individual rights and fundamental freedoms. This factor may be negated or, at least, beclouded by the fact that at the time of the adoption of a constitution, the people are not totally free but subject to certain limitations, if not direct pressure, from without.¹⁵⁹ In the case of the Indonesian Constitution, it may be noted that while no such restriction or pressure was present at the time of the adoption of the same, greater power has been granted to the

¹⁵⁵ Article XXVII, Universal Declaration.

¹⁵⁶ Article XXIX, Universal Declaration.

¹⁵⁷ Articles 125, 126 and 131, Russian Constitution.

¹⁵⁸ *Id.*

¹⁵⁹ See *supra* discussion on political traditions and ideals.

government which, in most instances, have the effect of derogating individual rights. For such tremendous grant of power in favor of the government, justification may be found in the fact that the country is still under-developed politically, economically and socially.¹⁶⁰ Even in the case of the Philippine Constitution, certain individual freedoms are affected in the pursuit by the government of the so-called social justice program and the protection of the laboring class and the working women and minors.¹⁶¹ There is no denying the fact that under this set-up individual rights and freedoms have suffered a setback and their guarantees are curtailed to a considerable extent. The wisdom or lack of it with respect to this provision both in the Indonesian and Philippine Constitutions can only be properly judged by time and experience.

The elements of intolerance and highly nationalistic tendencies in the Indonesian Constitution are understandable in the light of the country's experience under the Dutch regime. The same may be true with respect to the attempt in the Indonesian Constitution to favor as much as possible all religious sects which goes even to the extent of giving aid to them on equal basis.¹⁶² The Argentine set-up which adopts the Catholic religion as the religion of the State is also understandable.¹⁶³ The same may be said of the separation of Church and State in the case of the Philippine Constitution.¹⁶⁴ History and experience have something to do in all these cases.

In the case of the Indonesian Constitution, there is no obvious derogation of religious freedom under the fundamental law provisions. There is, however, a potential danger in this respect. With regard to the Argentine Constitution, whatever may be said as to the religious freedom of the individual, this has to suffer with the State adopting a particular religion and even vowing to support it.¹⁶⁵ As far as the Philippine experience is concerned, the separation between Church and State has worked well thus far, with some minor disturbing incidents during recent years.

The influence of former regimes has tremendous impact upon the guarantees set up in the country's constitution. This may be either positive or negative. In the case of the Philippine Constitution, the American influence has a positive effect while that of Spain, negative. The Dutch influence has also been negative as far as the Indonesian set-up is concerned.¹⁶⁶ It may therefore be

¹⁶⁰ See *supra* note 55.

¹⁶¹ See *supra* note 140.

¹⁶² See *supra* notes 130 and 131.

¹⁶³ See *supra* notes 127, 128 and 129.

¹⁶⁴ See *supra* notes 123, 124 and 125.

¹⁶⁵ See *supra* note 127.

¹⁶⁶ See *supra* note 49.

said that the effect which a particular regime may have upon the country depends upon whether the latter's experience with such regime is happy or unhappy.

Especially considering the state of the national mind at the time of the framing of the fundamental law, the political ideals of a people have much to do with respect to the guarantees provided for in the constitution. It may be observed that during the adoption of the Philippine Constitution, the ideals which fired the imagination and mind of the Filipino people were those of liberty and freedom as inspired and influenced by the French Revolution and the American Declaration of Independence. With respect to the Indonesian Constitution, at the time of its adoption, the Indonesians were engrossed with unity and security. In short, what was uppermost in their minds was national survival. This explains the considerable grant of governmental powers to the executive to the extent of derogating some of the individual rights and fundamental freedoms.

As to the Argentine Constitution, the primary objectives of the Peron regime as publicly proclaimed therein concerned the lot of the masses which were considered possible of achievement through tremendous grant of power to the executive department of the government. It may be said, however, that the Argentine Constitution has not completely relegated to the background civil and political rights.

Coming to the Russian Constitution, the considerations which were uppermost in the mind of the Russian people at the time the USSR was established were the principles of dialectic materialism. The Russian experiment sets a typical example of a system where the national ideals are focused upon the economic welfare of the community. Even individual political and civil rights are almost completely relegated to the background in favor of economic rights which, in themselves, are geared to the promotion of the community interests.¹⁶⁷

Under the American, Argentine, French, Indonesian and Philippine systems, it does not mean that there are no economic guarantees to the individual.¹⁶⁸ The difference between these systems, on one hand, and the Russian system, on the other, lies only in the degree of emphasis.

The attitude which a people may have toward religion has great effect upon individual freedom. Under the Argentine Constitution, the State has adopted the Roman Catholic Apostolic Church as its religion.¹⁶⁹ It has even proclaimed that the State supports the

¹⁶⁷ See *supra* note 157.

¹⁶⁸ See *supra* note 127.

¹⁶⁹ See *supra* notes 140 and 141.

Catholic religion.¹⁷⁰ A reverse effect is achieved in the Philippine Constitution where the principle of separation between Church and State is observed.¹⁷¹ The Indonesian framework has taken the middle course.¹⁷²

Under the Russian Constitution, there is freedom of religious worship and of anti-religious propaganda.¹⁷³ The latter freedom may be dangerous to the former inasmuch as a slight abuse, or even a mere emphasis, of the freedom of anti-religious propaganda may be fatally detrimental to the freedom of conscience and religious worship. This, again, may be traced to the Russian experience with the Orthodox Church under the old regime, that Church being the only vestige of the former regime.

In a sense, it may be said that the promotion or restriction of the individual's freedom to worship varies directly with the attitude adopted in the fundamental law of the respective countries.

There can be no real difference in the guarantee of each of the individual rights and fundamental freedoms, speaking strictly. The differences lie in the variance in political, social, economic and cultural conditions of the countries concerned. Furthermore, these guarantees can only be fully understood and appreciated when construed in those contexts and backgrounds. The wisdom or lack of it in each case properly remains for determination in the future under those conditions and not apart from them. This does not mean that no standard can be set up for the present determination of the effectiveness of each constitutional guarantee for an individual right or a fundamental freedom. It is only suggested that certain conditions should be taken into account in determining the effectiveness of each right or freedom.

Apparently, there is a conflict between political and civil rights, on one hand, and social and economic rights, on the other. This conflict is more apparent than real. It is submitted that a harmonization of these rights and interests, both political and economic, as suitable to the peculiar circumstances obtaining, will likely prove to be to the best interest and greater happiness of mankind with more adequate guarantees for these rights and freedoms.

As to form, guarantees to individual liberties may be express or implied. Such guarantees may be declared in the preamble or opening statement of a constitution or in the main body thereof. In the latter case, the same may be included in one portion of the fundamental law or may be scattered all over. The differences in this aspect may be due to style and convenience. In whatever

¹⁷⁰ See *supra* note 127.

¹⁷¹ See *supra* notes 123, 124 and 125.

¹⁷² See *supra* notes 130, 131 and 132.

¹⁷³ See *supra* note 126.

form, the fact of guarantee remains for individual freedoms and rights. However, preference has been expressed in favor of providing the guarantees in the body rather than in the preamble of a constitution.

A more important question concerns whether there should be express provision in order that a right or freedom can be considered guaranteed. This subject properly calls for different approaches from different schools of legal thought. Judging from the present attitude toward this matter, it is the view of the writer that it is better that such right or freedom be recognized either expressly or impliedly in the fundamental law.

As noted earlier, the French Constitution contains scanty provisions on fundamental freedoms and individual rights. It has relied on the Constitution of 1946, particularly the preamble thereof, and the Declaration of Rights of 1789, both of which have been invoked and reaffirmed by reference in the preamble of the French Constitution.¹⁷⁴ One reason for this may be found in the fact that at the time of its framing and adoption, the French people were engrossed with national survival.¹⁷⁵ They may have relied on their long-cherished traditions of liberty, equality and fraternity.¹⁷⁶ This is unlike the five other constitutions here considered where the guarantees are contained in their body or amendments thereto.¹⁷⁷ Even in these five constitutions, the said guarantees are scattered all over without obvious organization. A possible exception to this may be made of the Philippine Constitution¹⁷⁸ — a tribute to the craftsmanship of the framers.

Regardless of the obvious variance in emphasis between liberty and economic security, it is heartening to note that the rule of law has been universally accepted. Of course, the execution of laws and the implementation of programs under the fundamental law involve the human element. This is where the training and background of the people come in. It is in this perspective that the determination can be had, namely, whether a government is one of laws or one of men. The right choice of men to carry out the fundamental law as well as the regulations promulgated thereunder is one factor which should not be overlooked if the rule of law is to prevail.

Recommendations. — In its espousal of the libertarian cause for the individual, the French Constitution could have done better

¹⁷⁴ See *supra* note 31.

¹⁷⁵ See *supra* notes 12, 29 30.

¹⁷⁶ See *supra* note 15.

¹⁷⁷ The Argentine, Indonesian, Philippine and Russian Constitutions have embodied these guarantees in their body while the American Constitution has them mostly in the amendments thereto.

¹⁷⁸ See Article III, Philippine Constitution.

if it had expressly embodied the guarantees for fundamental rights. It should not have relied too much upon the traditions of France and should have avoided mere reference to the Constitution of 1946 and the Declaration of Rights of 1789.

With respect to form, it is true not only with the French Constitution but also with any other constitution that an express recognition of human rights and fundamental freedoms is better appreciated when put in the proper form and place in the fundamental law. This suggestion, of course, assumes that such guarantees are expressly provided for.

Concerning the substantive aspect, it is suggested that the limited scope of each of the Constitutions here considered be expanded to cover the widest possible field of human rights and fundamental freedoms. In this connection, it may be noted that not one of the six constitutions treated in this work has lived up to the standard set by the Universal Declaration. This does not of course mean that the suggested coverage of guarantees in a constitution should be limited merely to the confines of the proclamations made in the Universal Declaration. The latter document, although purportedly of a comprehensive application, suffers from a decided defect or disadvantage of trying to reconcile the many problems of different races, peoples, ideologies, creeds and cultures. A careful perusal of the Universal Declaration easily reveals this fact. A constitution may therefore adopt as much as possible all the guarantees proclaimed in the Universal Declaration and even go much further than that by embodying more guarantees which may be permitted or required by the peculiar conditions existing in a particular country.

It may be pertinent to consider that authoritative writers have admitted that the Universal Declaration has no binding legal force.¹⁷⁹ At most, it has only a moral preponderance upon the legal systems of the different countries not excluding the members of the United Nations Organization. The only way practicable therefore to secure the strict observance of and respect for human rights and fundamental freedoms is to have the same embodied in the fundamental law of each state. Other ways may be employed toward the same end. But, certainly, it is of paramount importance that a further step than mere proclamation in the Universal Declaration be taken if this world has to be made a happy place to live in, where peace-loving peoples are secure in their fundamental freedoms and rights.

¹⁷⁹ Labrador, *The Universal Declaration of Human Rights*, 28 PHIL. L. J., 830-836 (October 1953). Also Bebr., *International Protection of Human Rights and Freedoms*, PHIL. L. J. 312-344 (July 1954).

In this connection, it may be also observed that this step brings us nearer to the realization of a one world government, a goal which may not be attained during our time. But years from now, when the time becomes ripe for such a worthwhile innovation as this, future generations will remember that we have done our share in steadfastly pushing this dream one step farther toward reality.