

...ly a Jewish problem<sup>46</sup> was a pretext  
 ...the problem by ignoring it. None  
 ...solution of the Jewish problem, first  
 ...minority in Germany, then to  
 ...borders, and finally to gather them  
 ...to extermination camps, was an  
 ...world how really to "liquidate"  
 ...stateless. After the war it turned  
 ...considered the only insoluble one,  
 ...a colonized and then conquered  
 ...problem of the minorities nor the  
 ...other events of the twentieth cen-  
 ...merely produced a new category of  
 ...number of the stateless and right-  
 ...And what happened in Palestine  
 ...of hundreds of thousands was then  
 ...ing many millions of people. Since  
 ...refugees and the stateless have  
 ...newly established states on earth  
 ...ion-state.

...though only a Nazi author dared to express  
 ...when there is no longer a Jewish question;  
 ...the refugee question will be much sim-  
 ...blem," in *Zeitschrift für Politik*, Bd. 29,

In other words, man had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference to some larger encompassing order, when he disappeared again into a member of a people. From the beginning the paradox involved in

sovereign self-government. their guarantee and become an inalienable part of the right of the people to so that it seemed only natural that the "inalienable" rights of man would find the prince) was not proclaimed by the grace of God but in the name of Man, in matters of government. The people's sovereignty (different from that of sovereign in matters of law as the people was proclaimed the only sovereign because all laws were supposed to rest upon them. Man appeared as the only goal. No special law, moreover, was deemed necessary to protect them their establishments; Man himself was their source as well as their ultimate and undeducible from other rights or laws, no authority was invoked for Since the Rights of Man were proclaimed to be "inalienable," irreducible against the new sovereignty of the state and the new arbitrariness of society.

that human rights had to be invoked whenever individuals needed protection Therefore throughout the nineteenth century, the consensus of opinion was by government and constitution, but by social, spiritual, and religious forces. rights which until then had been outside the political order and guaranteed not emancipated society, men were no longer sure of these social and human equality before God as Christians. In other words, in the new secularized and no longer secure in the estates to which they were born or sure of their meant to be a much-needed protection in the new era where individuals were declaration were only half aware. The proclamation of human rights was also Beyond this, there was another implication of which the framers of the now come of age.

indicated man's emancipation from all tutelage and announced that he had bestowed upon certain strata of society or certain nations, the declaration be the source of Law. Independent of the privileges which history had then on Man, and not God's command or the customs of history, should was a turning point in history. It meant nothing more nor less than that from The declaration of the Rights of Man at the end of the eighteenth century

*The Perplexities of the Rights of Man*

*The Decline of the Nation-State and the End of the Rights of Man*

the declaration of inalienable human rights was that it reckoned with an "abstract" human being who seemed to exist nowhere, for even savages lived in some kind of a social order. If a tribal or other "backward" community did not enjoy human rights, it was obviously because as a whole it had not yet reached that stage of civilization, the stage of popular and national sovereignty, but was oppressed by foreign or native despots. The whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to insure them. As mankind, since the French Revolution, was conceived in the image of a family of nations, it gradually became self-evident that the people, and not the individual, was the image of man.

The full implication of this identification of the rights of man with the rights of peoples in the European nation-state system came to light only when a growing number of people and peoples suddenly appeared whose elementary rights were as little safeguarded by the ordinary functioning of nation-states in the middle of Europe as they would have been in the heart of Africa. The Rights of Man, after all, had been defined as "inalienable" because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them. Or when, as in the case of the minorities, an international body arrogated to itself a nongovernmental authority, its failure was apparent even before its measures were fully realized; not only were the governments more or less openly opposed to this encroachment on their sovereignty, but the concerned nationalities themselves did not recognize a nonnational guarantee, mistrusted everything which was not clear-cut support of their "national" (as opposed to their mere "linguistic, religious, and ethnic") rights, and preferred either, like the Germans or Hungarians, to turn to the protection of the "national" mother country, or, like the Jews, to some kind of interterritorial solidarity.<sup>47</sup>

47. Pathetic instances of this exclusive confidence in national rights were the consent, before the second World War, of nearly 75 per cent of the German minority in the Italian Tyrol to leave their homes and resettle in Germany, the voluntary repatriation of a German island in Slovenia which had been there since the fourteenth century, or, immediately after the close of the war, the unanimous rejection by Jewish refugees in an Italian DP camp of an offer of mass naturalization by the Italian government. In the

The stateless people whose national rights was identically entailed the latter. To reform, the more they tended their own national communities insist on their nationality attempts to lump them together single group of refugees or violent group consciousness Poles or Jews or Germans,

Even worse was that all of Man, all attempts to arrive by marginal figures—by a presence or professional philanthropy professional idealists. The government showed an uncanny similarities for the prevention of culture of any importance could liberal or radical parties in their program a new declaration the second World War have fundamental rights, which were attempts to find a way out of driven them. On the contrary of the powers that be for an human rights in any elementary

The failure of all responses growing body of people forced with the proclamation of a new Never before had the Rights of the American revolutions as the practical political issue. During

face of the experience of European people interpret this behavior simply as another example of their elementary rights if these were birth. See Eugene M. Kulisher, *op. cit.*

rights was that it reckoned with an  
exist nowhere, for even savages lived  
d or other "backward" community  
sly because as a whole it had not yet  
age of popular and national gover-  
native despots. The whole question  
and inextricably blended with the  
the emancipated sovereignty of the  
e able to insure them. As mankind,  
ved in the image of a family of  
that the people, and not the indi-

on of the rights of man with the  
-state system came to light only  
people suddenly appeared whose  
ed by the ordinary functioning of  
they would have been in the heart  
ad been defined as "inalienable"  
ndent of all governments; but it  
acked their own government and  
no authority was left to protect  
rantee them. Or when, as in the  
arrogated to itself a nongovern-  
en before its measures were fully  
re or less openly opposed to this  
e concerned nationalities them-  
arantee, mistrusted everything  
ional" (as opposed to their mere  
d preferred either, like the Ger-  
of the "national" mother coun-

rights were the consent, before the second  
the Italian Tyrol to leave their homes and  
island in Slovenia which had been there  
the war, the unanimous rejection by Jew-  
ization by the Italian government. In the

*The Decline of the Nation-State and the End of the Rights of Man*

The stateless people were as convinced as the minorities that loss of  
national rights was identical with loss of human rights, that the former inevi-  
tably entailed the latter. The more they were excluded from right in any  
form, the more they tended to look for a reintegration into a national, into  
their own national community. The Russian refugees were only the first to  
insist on their nationality and to defend themselves furiously against at-  
tempts to lump them together with other stateless people. Since them, not a  
single group of refugees or Displaced Persons has failed to develop a fierce,  
violent group consciousness and to clamor for rights as—and only as—  
Poles or Jews or Germans, etc.

Even worse was that all societies formed for the protection of the Rights  
of Man, all attempts to arrive at a new bill of human rights were sponsored  
by marginal figures—by a few international jurists without political experi-  
ence or professional philanthropists supported by the uncertain sentiments of  
professional idealists. The groups they formed, the declarations they issued,  
showed an uncanny similarity in language and composition to that of soci-  
eties for the prevention of cruelty to animals. No statesman, no political fig-  
ure of any importance could possibly take them seriously; and none of the  
liberal or radical parties in Europe thought it necessary to incorporate into  
their program a new declaration of human rights. Neither before nor after  
the second World War have the victims themselves ever invoked these fun-  
damental rights, which were so evidently denied them, in their many at-  
tempts to find a way out of the barbed-wire labyrinth into which events had  
driven them. On the contrary, the victims shared the disdain and indifference  
of the powers that be for any attempt of the marginal societies to enforce  
human rights in any elementary or general sense.

The failure of all responsible persons to meet the calamity of an ever-  
growing body of people forced to live outside the scope of all tangible law  
with the proclamation of a new bill of rights was certainly not due to ill will.  
Never before had the Rights of Man, solemnly proclaimed by the French and  
the American revolutions as the new fundament for civilized societies, been a  
practical political issue. During the nineteenth century, these rights had been

face of the experience of European peoples between the two wars, it would be a serious mistake to inter-  
pret this behavior simply as another example of fanatic nationalist sentiments; these people no longer felt  
sure of their elementary rights if these were not protected by a government to which they belonged by  
birth. See Eugene M. Kulischer, *op. cit.*

invoked in a rather perfunctory way, to defend individuals against the increasing power of the state and to mitigate the new social insecurity caused by the industrial revolution. Then the meaning of human rights acquired a new connotation: they became the standard slogan of the protectors of the underprivileged, a kind of additional law, a right of exception necessary for those who had nothing better to fall back upon.

The reason why the concept of human rights was treated as a sort of stepchild by nineteenth-century political thought and why no liberal or radical party in the twentieth century, even when an urgent need for enforcement of human rights arose, saw fit to include them in its program seems obvious: civil rights—that is the varying rights of citizens in different countries—were supposed to embody and spell out in the form of tangible laws the eternal Rights of Man, which by themselves were supposed to be independent of citizenship and nationality. All human beings were citizens of some kind of political community; if the laws of their country did not live up to the demands of the Rights of Man, they were expected to change them, by legislation in democratic countries or through revolutionary action in despotisms.

The Rights of Man, supposedly inalienable, proved to be unenforceable—even in countries whose constitutions were based upon them—whenever people appeared who were no longer citizens of any sovereign state. To this fact, disturbing enough in itself, one must add the confusion created by the many recent attempts to frame a new bill of human rights, which have demonstrated that no one seems able to define with any assurance what these general human rights, as distinguished from the rights of citizens, really are. Although everyone seems to agree that the plight of these people consists precisely in their loss of the Rights of Man, no one seems to know which rights they lost when they lost these human rights.

The first loss which the rightless suffered was the loss of their homes, and this meant the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world. This calamity is far from unprecedented; in the long memory of history, forced migrations of individuals or whole groups of people for political or economic reasons look like everyday occurrences. What is unprecedented is not the loss of a home but the impossibility of finding a new one. Suddenly, there was no place on earth where migrants could go without the severest restrictions, no

country where they would find a new community of their own to do with any material problems but of political organization for so long a time considered reached the stage where who organized closed communities nations altogether.<sup>48</sup>

The second loss which the rightless suffered was the loss of legal protection, and this did not happen in all countries. Treaties of refuge woven a web around the earth in every country to take his legal status. For instance, a German citizen who had a mixed marriage abroad became no longer caught in it finds himself last war stateless people were aliens who were still indirectly national agreements).

By itself the loss of government was more than the loss of a home. Civilian refugees, those who, for political reasons, were persecuted and this practice, though never has functioned well enough through the centuries. The trouble arose because those persecuted were far too numerous to be destined for exceptional cases. For the right of asylum, which was granted to refugees which were not only because of what they unchanged

48. The few chances for reintegration open to Spanish refugees, for instance, were welcomed in the early twenties, adopted a quota system for the country received, so to speak, the right to its numerical part in the total population.

*The Decline of the Nation-State and the End of the Rights of Man*

country where they would be assimilated, no territory where they could find a new community of their own. This, moreover, had next to nothing to do with any material problem of overpopulation; it was a problem not of space but of political organization. Nobody had been aware that mankind, for so long a time considered under the image of a family of nations, had reached the stage where whoever was thrown out of one of these tightly organized closed communities found himself thrown out of the family of nations altogether.<sup>48</sup>

The second loss which the rightsless suffered was the loss of government protection, and this did not imply just the loss of legal status in their own, but in all countries. Treaties of reciprocity and international agreements have woven a web around the earth that makes it possible for the citizen of every country to take his legal status with him no matter where he goes (so that, for instance, a German citizen under the Nazi regime might not be able to enter a mixed marriage abroad because of the Nuremberg laws). Yet, whoever is no longer caught in it finds himself out of legality altogether (thus during the last war stateless people were invariably in a worse position than an enemy aliens who were still indirectly protected by their governments through international agreements).

By itself the loss of government protection is no more unprecedented than the loss of a home. Civilized countries did offer the right of asylum to those who, for political reasons, had been persecuted by their governments, and this practice, though never officially incorporated into any constitution, has functioned well enough throughout the nineteenth and even the twentieth centuries. The trouble arose when it appeared that the new categories of persecuted were far too numerous to be handled by an unofficial practice destined for exceptional cases. Moreover, the majority could hardly qualify for the right of asylum, which implicitly presupposed political or religious convictions which were not outlawed in the country of refuge. The new refugees were persecuted not because of what they had done or thought, but because of what they unchangeably were—born into the wrong kind of race

<sup>48</sup> The few chances for reintegration open to the new migrants were mostly based on their nationality: Spanish refugees, for instance, were welcomed to a certain extent in Mexico. The United States, in the early twenties, adopted a quota system according to which each nationality already represented in the country received, so to speak, the right to receive a number of former countrymen proportionate to its numerical part in the total population.

extend individuals against the new social insecurity caused by the loss of human rights acquired a program of the protectors of the right of exception necessary for the rights was treated as a sort of right and why no liberal or radical urgent need for enforcement in its program seems obvious: citizens in different countries—the form of tangible laws the were supposed to be independent beings were citizens of some their country did not live up to the expected to change them, though revolutionary action in moved to be unenforceable—passed upon them—whenever any sovereign state. To this of the confusion created by human rights, which have with any assurance what these rights of citizens, really are. Right of these people consists one seems to know which

or the wrong kind of class or drafted by the wrong kind of government (as in the case of the Spanish Republican Army).<sup>49</sup>

The more the number of rightless people increased, the greater became the temptation to pay less attention to the deeds of the persecuting governments than to the status of the persecuted. And the first glaring fact was that these people, though persecuted under some political pretext, were no longer, as the persecuted had been throughout history, a liability and an image of shame for the persecutors; that they were not considered and hardly pretended to be active enemies (the few thousand Soviet citizens who voluntarily left Soviet Russia after the second World War and found asylum in democratic countries did more damage to the prestige of the Soviet Union than millions of refugees in the twenties who belonged to the wrong class), but that they were and appeared to be nothing but human beings whose very innocence—from every point of view, and especially that of the persecuting government—was their greatest misfortune. Innocence, in the sense of complete lack of responsibility, was the mark of their rightlessness as it was the seal of their loss of political status.

Only in appearance therefore do the needs for a reinforcement of human rights touch upon the fate of the authentic political refugee. Political refugees, of necessity few in number, still enjoy the right to asylum in many countries, and this right acts, in an informal way, as a genuine substitute for national law.

One of the surprising aspects of our experience with stateless people who benefit legally from committing a crime has been the fact that it seems to be easier to deprive a completely innocent person of legality than someone who has committed an offense. Anatole France's famous quip, "If I am accused of stealing the towers of Notre Dame, I can only flee the country," has assumed a horrible reality. Jurists are so used to thinking of law in terms of punishment, which indeed always deprives us of certain rights, that they may find it even more difficult than the layman to recognize that the deprivation of legality, *i.e.*, of *all* rights, no longer has a connection with specific crimes.

49. How dangerous it can be to be innocent from the point of view of the persecuting government became very clear when, during the last war, the American government offered asylum to all those German refugees who were threatened by the extradition paragraph in the German-French Armistice. The condition was, of course, that the applicant could prove that he had done something against the Nazi regime. The proportion of refugees from Germany who were able to fulfill this condition was very small, and they, strangely enough, were not the people who were most in danger.

This situation illustrates the human rights. No matter how the pursuit of happiness, according to the law, liberty, protection before the law, (as the French would say according to the French); no matter how ambiguous formulation like the right to property like unqualified right to property in the twentieth century has driven outside the law of citizens whose loss does not occur during the war is deprived of freedom, all citizens during an emergency, happiness, but nobody would ever say of human rights has taken place in the world granted (though hardly enjoyed) rightlessness.

The calamity of the rightless is the loss of the right to live and the pursuit of happiness, or the right of opinion—formulas which were once the basis of communities—but that they no longer exist ever. Their plight is not that they are oppressed; it exists for them; not that they are oppressed. Only in the last stage of their life to live threatened; only if they are not found to "claim" them, not if they started their extermination of Jews (the status of second-class citizen) of the living by herding them into camps before they set the gas chambers on fire on the ground and found out to their satisfaction the people. The point is that a condition exists before the right to live was challenged.

The same is true even to an iron rule of freedom which is sometimes considered as a law. There is no question that those who have more freedom of movement than a law of freedom more freedom of opinion in the

*The Decline of the Nation-State and the End of the Rights of Man*

This situation illustrates the many perplexities inherent in the concept of human rights. No matter how they have once been defined (life, liberty, and the pursuit of happiness, according to the American formula, or as equality before the law, liberty, protection of property, and national sovereignty, according to the French); no matter how one may attempt to improve an ambiguous formulation like the pursuit of happiness, or an antiquated one like unqualified right to property; the real situation of those whom the twentieth century has driven outside the pale of the law shows that these are rights of citizens whose loss does not entail absolute rightlessness. The soldier during the war is deprived of his right to life, the criminal of his right to freedom, all citizens during an emergency of their right to the pursuit of happiness, but nobody would ever claim that in any of these instances a loss of human rights has taken place. These rights, on the other hand, can be granted (though hardly enjoyed) even under conditions of fundamental rightlessness.

The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion—formulas which were designed to solve problems *within* given communities—but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them. Only in the last stage of a rather lengthy process is their right to live threatened; only if they remain perfectly "superfluous," if nobody can be found to "claim" them, may their lives be in danger. Even the Nazis started their extermination of Jews by first depriving them of all legal status (the status of second-class citizenship) and cutting them off from the world of the living by herding them into ghettos and concentration camps; and before they set the gas chambers into motion they had carefully tested the ground and found out to their satisfaction that no country would claim these people. The point is that a condition of complete rightlessness was created before the right to live was challenged.

The same is true even to an ironical extent with regard to the right of freedom which is sometimes considered to be the very essence of human rights. There is no question that those outside the pale of the law may have more freedom of movement than a lawfully imprisoned criminal or that they enjoy more freedom of opinion in the internment camps of democratic countries

Wrong kind of government (as in

increased, the greater became deeds of the persecuting gov- And the first glaring fact was some political pretext, were no about history, a liability and an they were not considered and w thousand Soviet citizens who World War and found asylum ne prestige of the Soviet Union belonged to the wrong class), but human beings whose very especially that of the persecuting innocence, in the sense of com- their rightlessness as it was the

for a reinforcement of human ical refugee. Political refugees, to asylum in many countries, ne substitute for national law. ence with stateless people who en the fact that it seems to be of legality than someone who ous quip, "If I am accused of see the country," has assumed g of law in terms of punish- in rights, that they may find it nize that the deprivation of action with specific crimes.

view of the persecuting government ment offered asylum to all those Ger- in the German-French Armistice. The had done something against the Nazi able to fulfill this condition was very most in danger.



than they would in any ordinary despotism, not to mention in a totalitarian country.<sup>50</sup> But neither physical safety—being fed by some state or private welfare agency—nor freedom of opinion changes in the least their fundamental situation of rightlessness. The prolongation of their lives is due to charity and not to right, for no law exists which could force the nations to feed them; their freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow.

These last points are crucial. The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective. Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion. Privileges in some cases, injustices in most, blessings and doom are meted out to them according to accident and without any relation whatsoever to what they do, did, or may do.

We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation. The trouble is that this calamity arose not from any lack of civilization, backwardness, or mere tyranny, but, on the contrary, that it could not be repaired, because there was no longer any "uncivilized" spot on earth, because whether we like it or not we have really

50. Even under the conditions of totalitarian terror, concentration camps sometimes have been the only place where certain remnants of freedom of thought and discussion still existed. See David Rousset, *Les Jours de Notre Mort*, Paris, 1947, *passim*, for freedom of discussion in Buchenwald, and Anton Ciliga, *The Russian Enigma*, London, 1940, p. 200, about "isles of liberty," "the freedom of mind" that reigned in some of the Soviet places of detention.

started to live in One World. could the loss of home and po from humanity altogether.

Before this, what we must o thought of as a general chara tyrant could take away. Its los (and man, since Aristotle, has power of speech and thought), man, again since Aristotle, has is one who by definition lives i some of the most essential chara extent the plight of slaves, wh human beings. Slavery's fund not that it took liberty away (v but that it excluded a certain c of fighting for freedom—a fig the desperate conditions of mo concentration-camp life). Slave when one people defeated and was bad enough), but when slave were "born" free and others slave had deprived his fellow-men o crime was attributed to nature. to say that even slaves still belong labor was needed, used, and exp humanity. To be a slave was after society—more than the abstract human. Not the loss of specific ri ing and able to guarantee any rig has befallen ever-increasing num all so-called Rights of Man with human dignity. Only the loss of

The right that corresponds to among the human rights cannotteenth century because they presu "nature" of man—whereby it m



*The Decline of the Nation-State and the End of the Rights of Man*

started to live in One World. Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether.

Before this, what we must call a "human right" today would have been thought of as a general characteristic of the human condition which no tyrant could take away. Its loss entails the loss of the relevance of speech (and man, since Aristotle, has been defined as a being commanding the power of speech and thought), and the loss of all human relationship (and man, again since Aristotle, has been thought of as the "political animal," that is one who by definition lives in a community), the loss, in other words, of some of the most essential characteristics of human life. This was to a certain extent the plight of slaves, whom Aristotle therefore did not count among human beings. Slavery's fundamental offense against human rights was not that it took liberty away (which can happen in many other situations), but that it excluded a certain category of people even from the possibility of fighting for freedom—a fight possible under tyranny, and even under the desperate conditions of modern terror (but not under any conditions of concentration-camp life). Slavery's crime against humanity did not begin when one people defeated and enslaved its enemies (though of course this was bad enough), but when slavery became an institution in which some men were "born" free and others slave, when it was forgotten that it was man who had deprived his fellow-men of freedom, and when the sanction for the crime was attributed to nature. Yet in the light of recent events it is possible to say that even slaves still belonged to some sort of human community; their labor was needed, used, and exploited, and this kept them within the pale of humanity. To be a slave was after all to have a distinctive character, a place in society—more than the abstract nakedness of being human and nothing but human. Not the loss of specific rights, then, but the loss of a community which is able to guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people. Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity.

The right that corresponds to this loss and that was never even mentioned among the human rights cannot be expressed in the categories of the eighteenth century because they presume that rights spring immediately from the "nature" of man—whereby it makes relatively little difference whether this

...not to mention in a totalitarian  
...fed by some state or private  
...changes in the least their funda-  
...which could force the nations to  
...they have it at all, gives them no  
...final enjoys as a matter of course;  
...dom, for nothing they think mat-  
...amental deprivation of human  
...the deprivation of a place in the  
...actions effective. Something  
...justice, which are rights of citi-  
...nity into which one is born is  
...ng no longer a matter of choice,  
...unless he commits a crime, his  
...at he does or does not do. This  
...of people deprived of human  
...to freedom, but of the right  
...they please, but of the right to  
...most, blessings and doom are  
...without any relation whatso-  
...right to have rights (and that  
...ged by one's actions and opin-  
...ganized community, only when  
...could not regain these rights  
...the trouble is that this calamity  
...ardness, or mere tyranny, but,  
...because there was no longer any  
...we like it or not we have really  
...on camps sometimes have been the only  
...tion still existed. See David Rousseff, *Les*  
...tion in Buchenwald, and Anton Cilia,

nature is visualized in terms of the natural law or in terms of a being created in the image of God, whether it concerns "natural" rights or divine commands. The decisive factor is that these rights and the human dignity they bestow should remain valid and real even if only a single human being existed on earth; they are independent of human plurality and should remain valid even if a human being is expelled from the human community.

When the Rights of Man were proclaimed for the first time, they were regarded as being independent of history and the privileges which history had accorded certain strata of society. The new independence constituted the newly discovered dignity of man. From the beginning, this new dignity was of a rather ambiguous nature. Historical rights were replaced by natural rights, "nature" took the place of history, and it was tacitly assumed that nature was less alien than history to the essence of man. The very language of the Declaration of Independence as well as of the *Déclaration des Droits de l'Homme*—"inalienable," "given with birth," "self-evident truths"—implies the belief in a kind of human "nature" which would be subject to the same laws of growth as that of the individual and from which rights and laws could be deduced. Today we are perhaps better qualified to judge exactly what this human "nature" amounts to; in any event it has shown us potentialities that were neither recognized nor even suspected by Western philosophy and religion, which for more than three thousand years have defined and redefined this "nature." But it is not only the, as it were, human aspect of nature that has become questionable to us. Ever since man learned to master it to such an extent that the destruction of all organic life on earth with man-made instruments has become conceivable and technically possible, he has been alienated from nature. Ever since a deeper knowledge of natural processes instilled serious doubts about the existence of natural laws at all, nature itself has assumed a sinister aspect. How should one be able to deduce laws and rights from a universe which apparently knows neither the one nor the other category?

Man of the twentieth century has become just as emancipated from nature as eighteenth-century man was from history. History and nature have become equally alien to us, namely, in the sense that the essence of man can no longer be comprehended in terms of either category. On the other hand, humanity, which for the eighteenth century, in Kantian terminology, was no

more than a regulative idea, has become a concrete situation, in which "humanity" is no longer ascribed to nature or history, but to a specific group of people who have rights, or the right of every individual to be guaranteed by humanity itself. This is a new and undeniable. For, contrary to the best intentions, the new declarations of human rights are not to be understood that this idea of a natural law which still operates in terms of relations between sovereign states; and, in a world where nations does not exist. Furthermore, the law is eliminated by the establishment of a government is indeed within the realm of reality it might differ considerably from the minded organizations. The crisis of the age is a specialty of totalitarian regimes where the right is equivalent to being governed by the parts. (Hitler's motto that "Rights are only the vulgarized form of a law" is a good example where and which in practice we are living under conditions that are still effective in terms of a law which identifies what is the individual, or the family, or the state, is inevitable once the absolute and the law of nature have lost their authority. This is solved if the unit to which the law applies is the individual. For it is quite conceivable, and indeed a possibility, that one fine day a new law will conclude quite democratically that for humanity as a whole it would be better. Here, in the problems of factuality, we are faced with the oldest perplexities of political philosophy, not only so long as a stable Christian faith is a political and philosophical problem. "Not man, but a god, must be the

more than a regulative idea, has today become an inescapable fact. This new situation, in which "humanity" has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible. For, contrary to the best-intentioned humanitarian attempts to obtain new declarations of human rights from international organizations, it should be understood that this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and, for the time being, a sphere that is above the nations does not exist. Furthermore, this dilemma would by no means be eliminated by the establishment of a "world government." Such a world government is indeed within the realm of possibility, but one may suspect that in reality it might differ considerably from the version promoted by idealistic-minded organizations. The crimes against human rights, which have become a specialty of totalitarian regimes, can always be justified by the pretext that right is equivalent to being good or useful for the whole in distinction to its parts. (Hitler's motto that "Right is what is good for the German people" is only the vulgarized form of a conception of law which can be found everywhere and which in practice will remain ineffectual only so long as older traditions that are still effective in the constitutions prevent this.) A conception of law which identifies what is right with the notion of what is good—for the individual, or the family, or the people, or the largest number—becomes inevitable once the absolute and transcendent measurements of religion or the law of nature have lost their authority. And this predicament is by no means solved if the unit to which the "good for" applies is as large as mankind itself. For it is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically—namely by majority decision—that for humanity as a whole it would be better to liquidate certain parts thereof. Here, in the problems of factual reality, we are confronted with one of the oldest perplexities of political philosophy, which could remain undetected only so long as a stable Christian theology provided the framework for all political and philosophical problems, but which long ago caused Plato to say: "Not man, but a god, must be the measure of all things."

*The Decline of the Nation-State and the End of the Rights of Man*

law or in terms of a being created  
 "natural" rights or divine com-  
 ings and the human dignity they  
 n if only a single human being  
 man plurality and should remain  
 n the human community.  
 med for the first time, they were  
 d the privileges which history had  
 w independence constituted the  
 beginning, this new dignity was  
 ights were replaced by natural  
 and it was tacitly assumed that  
 ce of man. The very language of  
 of the *Déclaration des Droits de*  
 "self-evident truths"—implies  
 ch would be subject to the same  
 and from which rights and laws  
 better qualified to judge exactly  
 ny event it has shown us poten-  
 n suspected by Western philoso-  
 thousand years have defined and  
 he, as it were, human aspect of  
 ver since man learned to master  
 rganic life on earth with man-  
 and technically possible, he has  
 per knowledge of natural pro-  
 ence of natural laws at all, na-  
 w should one be able to deduce  
 ntly knows neither the one nor  
 ust as emancipated from nature  
 v. History and nature have be-  
 that the essence of man can no  
 n Kantian terminology, was no

These facts and reflections offer what seems an ironical, bitter, and belated confirmation of the famous arguments with which Edmund Burke opposed the French Revolution's Declaration of the Rights of Man. They appear to buttress his assertion that human rights were an "abstraction," that it was much wiser to rely on an "entailed inheritance" of rights which one transmits to one's children like life itself, and to claim one's rights to be the "rights of an Englishman" rather than the inalienable rights of man.<sup>51</sup> According to Burke, the rights which we enjoy spring "from within the nation," so that neither natural law, nor divine command, nor any concept of mankind such as Robespierre's "human race," "the sovereign of the earth," are needed as a source of law.<sup>52</sup>

The pragmatic soundness of Burke's concept seems to be beyond doubt in the light of our manifold experiences. Not only did loss of national rights in all instances entail the loss of human rights; the restoration of human rights, as the recent example of the State of Israel proves, has been achieved so far only through the restoration or the establishment of national rights. The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships—except that they were still human. The world found nothing sacred in the abstract nakedness of being human. And in view of objective political conditions, it is hard to say how the concepts of man upon which human rights are based—that he is created in the image of God (in the American formula), or that he is the representative of mankind, or that he harbors within himself the sacred demands of natural law (in the French formula)—could have helped to find a solution to the problem.

The survivors of the extermination camps, the inmates of concentration and internment camps, and even the comparatively happy stateless people could see without Burke's arguments that the abstract nakedness of being nothing but human was their greatest danger. Because of it they were regarded as savages and, afraid that they might end by being considered beasts,

51. Edmund Burke, *Reflections on the Revolution in France*, 1790, edited by E. J. Payne, Everyman's Library.

52. Robespierre, *Speeches*, 1927. Speech of April 24, 1793.

they insisted on their national identity as their only remaining and real source of natural, their preference for nationalization that natural rights are not to be feared that natural "inalienable rights of a naked savage,"<sup>53</sup> and therefore a source of agony. Because only savages are left, the minimum fact of their humanity is lost more desperately when they are given nationality once gave them. This seems to attest to the fact that

If a human being loses his humanity, the implications of the inborn and natural are the situation for which the concept of man. Actually the opposite is the case: a man has lost the very quality which would treat him as a fellow-man. The concept is difficult to destroy the legal personhood taken upon himself the responsibility to determine his fate, than of a man's human responsibilities.

Burke's arguments therefore are based on the general human condition of man in local communities. Regardless of the situation, justice or injustice, they are those aspects of human existence that are the outcome of the human artifice. If we inhabit an unchanged nature, if we have abundance or frugality they die without leaving any trace in the common world, then these rights are a peculiar state of nature. Certain rights, indeed, belong to the most e-

53. Introduction by Payne to Burke, *op. cit.*

*The Decline of the Nation-State and the End of the Rights of Man*

they insisted on their nationality, the last sign of their former citizenship, as their only remaining and recognized tie with humanity. Their distrust of natural, their preference for national, rights comes precisely from their realization that natural rights are granted even to savages. Burke had already feared that natural "inalienable" rights would confirm only the "right of the naked savage,"<sup>33</sup> and therefore reduce civilized nations to the status of savagery. Because only savages have nothing more to fall back upon than the minimum fact of their human origin, people cling to their nationality all the more desperately when they have lost the rights and protection that such nationality once gave them. Only their past with its "entailed inheritance" seems to attest to the fact that they still belong to the civilized world.

If a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man. This is one of the reasons why it is far more difficult to destroy the legal personality of a criminal, that is of a man who has taken upon himself the responsibility for an act whose consequences now determine his fate, than of a man who has been disallowed all common human responsibilities.

Burke's arguments therefore gain an added significance if we look only at the general human condition of those who have been forced out of all political communities. Regardless of treatment, independent of liberties or oppression, justice or injustice, they have lost all those parts of the world and all those aspects of human existence which are the result of our common labor, the outcome of the human artifice. If the tragedy of savage tribes is that they inhabit an unchanged nature which they cannot master, yet upon whose abundance or frugality they depend for their livelihood, that they live and die without leaving any trace, without having contributed anything to a common world, then these rightsless people are indeed thrown back into a peculiar state of nature. Certainly they are not barbarians; some of them, indeed, belong to the most educated strata of their respective countries;

33. Introduction by Payne to Burke, *op. cit.*

an ironical, bitter, and belated which Edmund Burke opposed rights of Man. They appear to an "abstraction," that it was of rights which one transmits e's rights to be the "rights of an of man." According to Burke, within the nation," so that neither concept of mankind such as a of the earth," are needed as a

pt seems to be beyond doubt in ly did loss of national rights in e restoration of human rights, oves, has been achieved so far ment of national rights. The assumed existence of a human r when those who professed to ith people who had indeed lost —except that they were still e abstract nakedness of being tions, it is hard to say how the ased—that he is created in the hat he is the representative of sacred demands of natural law and a solution to the problem. the inmates of concentration tively happy stateless people abstract nakedness of being Because of it they were re- by being considered beasts,

ce, edited by E. J. Payne, Everyman's

nevertheless, in a world that has almost liquidated savagery, they appear as the first signs of a possible regression from civilization.

The more highly developed a civilization, the more accomplished the world it has produced, the more at home men feel within the human artifice—the more they will resent everything they have not produced, everything that is merely and mysteriously given them. The human being who has lost his place in a community, his political status in the struggle of his time, and the legal personality which makes his actions and part of his destiny a consistent whole, is left with those qualities which usually can become articulate only in the sphere of private life and must remain unqualified, mere existence in all matters of public concern. This mere existence, that is, all that which is mysteriously given us by birth and which includes the shape of our bodies and the talents of our minds, can be adequately dealt with only by the unpredictable hazards of friendship and sympathy, or by the great and incalculable grace of love, which says with Augustine, "*Volo ut sis* [I want you to be]," without being able to give any particular reason for such supreme and unsurpassable affirmation.

Since the Greeks, we have known that highly developed political life breeds a deep-rooted suspicion of this private sphere, a deep resentment against the disturbing miracle contained in the fact that each of us is made as he is—single, unique, unchangeable. This whole sphere of the merely given, relegated to private life in civilized society, is a permanent threat to the public sphere, because the public sphere is as consistently based on the law of equality as the private sphere is based on the law of universal difference and differentiation. Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organization insofar as it is guided by the principle of justice. We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.

Our political life rests on the assumption that we can produce equality through organization, because man can act in and change and build a common world, together with his equals and only with his equals. The dark background of mere givenness, the background formed by our unchangeable and unique nature, breaks into the political scene as the alien which in its all too obvious difference reminds us of the limitations of human activity—which are identical with the limitations of human equality. The reason why

highly developed political of modern nation-states, so often to eliminate as far as possible and differentiations which by discrimination because they cannot act and change at will. "alien" is a frightening symbol of reality as such, and indicates that cannot act and in which, there Negro in a white community along with his right to equality human; all his deeds are now "Negro" qualities; he has become man. Much the same thing happens political qualities and have no doubt, wherever public life and wherever a civilization succeeds dark background of difference punished, so to speak, for having the creator of the world.

The great danger arising from side the common world is that of tion, on their natural givenness tremendous equalizing of difference some commonwealth and yet in the human artifice, they become the same way as animals belong involved in the loss of human instant when a person becomes sion, without a citizenship, will identify and specify himself—but his own absolutely unique within and action upon a common

The danger in the existence of ously, their ever-increasing nature artifice, the world which is the

highly developed political communities, such as the ancient city-states or modern nation-states, so often insist on ethnic homogeneity is that they hope to eliminate as far as possible those natural and always present differences and differentiations which by themselves arouse dumb hatred, mistrust, and discrimination because they indicate all too clearly those spheres where men cannot act and change at will, i.e., the limitations of the human artifice. The "alien" is a frightening symbol of the fact of difference as such, of individuality as such, and indicates those realms in which man cannot change and cannot act and in which, therefore, he has a distinct tendency to destroy. If a Negro in a white community is considered a Negro and nothing else, he loses along with his right to equality that freedom of action which is specifically human; all his deeds are now explained as "necessary" consequences of some "Negro" qualities; he has become some specimen of an animal species, called man. Much the same thing happens to those who have lost all distinctive political qualities and have become human beings and nothing else. No doubt, wherever public life and its law of equality are completely victorious, wherever a civilization succeeds in eliminating or reducing to a minimum the dark background of difference, it will end in complete petrification and be punished, so to speak, for having forgotten that man is only the master, not the creator of the world.

The great danger arising from the existence of people forced to live outside the common world is that they are thrown back, in the midst of civilization, on their natural givenness, on their mere differentiation. They lack that tremendous equalizing of differences which comes from being citizens of some commonwealth and yet, since they are no longer allowed to partake in the human artifice, they begin to belong to the human race in much the same way as animals belong to a specific animal species. The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general—without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself—and different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance.

The danger in the existence of such people is twofold: first and more obviously, their ever-increasing numbers threaten our political life, our human artifice, the world which is the result of our common and co-ordinated effort

...dated savagery, they appear as  
...villization.  
...the more accomplished the  
...feel within the human artifice—  
...not produced, everything that  
...human being who has lost his  
...struggle of his time, and the  
...part of his destiny a consistent  
...can become articulate only in  
...qualified, mere existence in all  
...e, that is, all that which is mys-  
...s the shape of our bodies and  
...deal with only by the unre-  
...r by the great and incalculable  
...to *voluntas* [I want you to be]."  
...a for such supreme and unsur-  
...ghly developed political life  
...e sphere, a deep resentment  
...fact that each of us is made as  
...the sphere of the merely given,  
...permanent threat to the pub-  
...sistently based on the law of  
...of universal difference and  
...s involved in mere existence,  
...ization insofar as it is guided  
...all; we become equal as mem-  
...o guarantee ourselves mutu-



in much the same, perhaps even more terrifying, way as the wild elements of nature once threatened the existence of man-made cities and countrysides. Deadly danger to any civilization is no longer likely to come from without. Nature has been mastered and no barbarians threaten to destroy what they cannot understand, as the Mongolians threatened Europe for centuries. Even the emergence of totalitarian governments is a phenomenon within, not outside, our civilization. The danger is that a global, universally interrelated civilization may produce barbarians from its own midst by forcing millions of people into conditions which, despite all appearances, are the conditions of savages.<sup>54</sup>

54. This modern expulsion from humanity has much more radical consequences than the ancient and medieval custom of outlawry. Outlawry, certainly the "most fearful fate which primitive law could inflict," placing the life of the outlawed person at the mercy of anyone he met, disappeared with the establishment of an effective system of law enforcement and was finally replaced by extradition treaties between the nations. It had been primarily a substitute for a police force, designed to compel criminals to surrender.

The early Middle Ages seem to have been quite conscious of the danger involved in "civil death." Excommunication in the late Roman Empire meant ecclesiastical death but left a person who had lost his membership in the church full freedom in all other respects. Ecclesiastical and civil death became identical only in the Merovingian era, and there excommunication "in general practice [was] limited to temporary withdrawal or suspension of the rights of membership which might be regained." See the articles "Outlawry" and "Excommunication" in the *Encyclopedia of Social Sciences*. Also the article "Friedlosigkeit" in the *Schweizer Lexikon*.



TOTA

Normal men  
possible.