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THE BILL

OF SOCIAL RIGHTS

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The English text of this book goes to press on the very eve of the author's return to France. He cannot leave this country, whose hospitality and freedom he has enjoyed during five tragic years, without acknowledging his deep indebtedness to the United States of America, to its people, to the Rockefeller Foundation, to Columbia, Harvard and Rutgers Universities, where he had the opportunity of teaching, and especially to his American students, whose open-mindedness and active initiative were the most encouraging of his contacts with American life.

The author is convinced that the large-scale development of cultural relations between the United States and France will be of benefit to the entire world. It will be the duty of all French scholars who have had the advantage of working in the United States to cooperate in this movement.

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FIRST PART

INTRODUCTION

I.

PRELIMINARY CONSIDERATIONS

"The world of yesterday is gone. A new world is being shaped in the course of the present conflict.... The new world, the people's century, can be born alive or dead. It will be born alive, in victory, freedom and hope, if we prove ourselves worthy of the new free world we seek." "The present war is a world revolution,".... and this revolution "will be without any doubt the most profound and universal which any of us can imagine." In the world of tomorrow, "every man should have an opportunity to share in the ownership of both personal and productive property, such as a home, a farm and economic enterprise. Every member and family of the human race shall have the right to steady employment and the right to earn an income sufficient to provide the necessities of life and growth. Industrial democracy is fundamental to successful political democracies, and labor should, therefore, be given an increasing responsibility for, and participation in, industrial management. Voluntary or-

ganizations, farm organizations, labor organizations, professional groups and consumer organizations . . . should be integrated into some form of national economic council to plan, in cooperation with government, for maximum production and consumption and for the abolition of unemployment. In each industry, an industrial council should be established, representative of management, labor and consumer for democratic direction of industries toward these same ends."

We took these quotations from rather unexpected sources,¹ which belong neither to C.I.O., A.F.L. and I.L.O. circles nor generally to "liberals," "new-dealers" and related groups. The necessity for a world-wide "New Deal," for a basic change after this war in the economic and social structure, is so obvious that it cannot be denied by any individual or group, who is not blind and deaf to the actual problems and facts or does not have vested interests to protect.

Who, indeed, would dare to doubt, after all the tragic experience and suffering the common man has gone through during this war, that new solutions must be found? It is the first duty of those who are not on the battle fronts to work with the sweat of their brows to discover new ways of life and new forms of democracy.

The weaknesses and failures of democracies during the period between the two world wars consisted in too great a conservatism in their thought, in the absence of a thoroughgoing courageous effort to discover new political symbols, techniques and institutions for resol-

¹ Programs of the National Farmers' Union, of the Federal Council of Churches, of some religious writers, etc.

ving urgent problems posed by deep and rapid changes in a social structure disrupted by the turmoil of the actual economy and technology. They did not succeed in preventing the second world war, because they lost in the speed-race and did not defend themselves with sufficient directness and strength, either against internal detractors or against external enemies, who were allied.

The weakness of democracies was rooted in their failure to risk enough; it was not that they risked too much. Democracy is a heroic struggle which has to be renewed without interruption and relaxation against powerful obstacles. Those obstacles vary and can in certain epochs become particularly resistant and menacing for democratic values. The stronger they become, the more intense are the efforts needed to dominate them and to remove them by new and creative democratic methods fitted to historic circumstances and conjunctures.

To win the peace after winning the war, the democracies need badly to liberate the dynamic driving force of democratic principles from becoming petrified by retarding symbolic formulas, techniques and institutions crystallized at the end of the 18th century. A rejuvenated democratic enthusiasm, a new democratic creative inspiration, a reinforced democratic faith are needed in order to be able to rebuild the world of tomorrow on the basis of the highest democratic value—that of human liberty.

The strongest obstacles to this now lie in the economic sphere. Against "economic feudalism," private industrial autocracies and arbitrary technocratic powers,

liberty, equality, and fraternity have to be realized with all energy and force in the economic field, as they were in the political field, in a struggle which has already continued for 150 years. Today, true political democracy is no longer possible without parallel "industrial," "economic," "social," and "international" democracies. Democracy in the world of tomorrow will be social as well as political democracy, or it will not be at all.

To curb the tremendous new obstacles in the way of democratic values, to replace outworn democratic symbols and belated techniques with appealing and creative ones capable of vigorous action in the present circumstances, a new Bill of Rights must first be elaborated, accepted and realized. It will probably take various forms, according to the conditions and traditions of different countries. But it is universally needed throughout the world of tomorrow; and this world is already, and will be even more in the near future, so closely interconnected in all its parts that the leading principles of a new Bill of Rights cannot help but be more or less similar.

It is these leading principles which the draft of the bill formulated in this book (see Part II) emphasizes. Thus, at first elaborated to serve as a blueprint for the working out of a new constitution for the IVth French Republic, this draft, with some modifications in details, seems to the author to represent a possible pattern of discussion for every sector of the world of tomorrow.

The new Bill of Rights, in the author's profound conviction, has to be a *Bill of Social Rights*; it is a Bill

of Rights of *workers* and *consumers*, complementing their rights as *citizens* and serving as a basis for economic democracy. The analysis of the difference and inter-relation between "worker," "consumer," "citizen," not to forget "common man" as such, and their particular spheres, will follow (see Paragraph 6), as well as an explanation of the term "social right." But first we have to examine the already long series of antecedents to the Bill of Social Rights and some other important topics.

II.

THE ANTECEDENTS

Projects of new Bills of Rights are now widely under consideration. Never were the rights guaranteeing human liberty, individual as well as collective, so much denied and profaned as by the totalitarian regimes. Never, after their proclamation, were those rights as much threatened as in the XXth century by the interference and conspiracy of industrial feudalism and financial oligarchy, by the absolutism of private profit, and the blind propensity toward technocracy or "managerial" dictatorship.

In view of new menaces and new obstacles, new rights must be proclaimed and effectively enforced. The struggle for democracy is a daily, an hourly battle, a heroic and perpetual struggle continually requiring new inspirations and enthusiasms. The Bills of Rights are important steps in those battles and inspirations, and thus cannot be neglected. This fact is being more

and more widely recognized at this moment of intense preparation for a lasting democratic peace.

In the United States, we have before us several important texts which have already been widely diffused throughout the entire world. In his speech of June 7, 1941, the late President Franklin D. Roosevelt proclaimed the famous "four essential freedoms" as cornerstones of the world of tomorrow. Among them are found, side by side with freedom of speech and expression and freedom of every person to worship God "in his own way," "*freedom from want*" and "*freedom from fear*," which have international and national applications. These national applications imply, according to Roosevelt: "Equality and opportunity for youth and for others. Jobs for those who can work. Security for those who need it. The ending of special privileges for the few. The preservation of civil liberties for all. The enjoyment of the fruits of scientific progress in wider and constantly rising standards of living."

The United States National Resources Planning Board, inspired by these principles and further developing them, in January, 1943, published a draft of a "New Bill of Rights." "The term 'planning' in the United States and Canada is most often used to designate the effort to coordinate national economic and social policies in a way consistent with general national purposes."¹ The draft is based on this limited interpretation of planning; its nine points are as follows: "1. The right to work usefully and creatively through

¹ See Lewis L. Lorwin, *Postwar Plans of the United Nations*, (New York, 1943), p. 6 and ff.

the productive years; 2. The right to fair pay, adequate to command the necessities and amenities of life in exchange for work, ideas, thrift and other socially valuable service; 3. The right to adequate food, clothing, shelter and medical care; 4. The right to security with freedom from fear of old age, want, dependency, sickness, unemployment and accident; 5. The right to live in a system of free enterprise, *free from compulsory labor, irresponsible private power, arbitrary public authority and unregulated monopolies*; 6. The right to come and go, to speak or be silent, free from the spying of secret political police; 7. The right to equality before the law, with equal access to justice in fact; 8. The right to education for work, for citizenship, and for personal growth and happiness; and 9. The right to rest, recreation, and adventure, the opportunity to enjoy life and take part in an advancing civilization."

This draft, one of the most important so far prepared, did not, unfortunately, have the immediate success which it deserved. Opposition toward it in Congress was so strong that the necessary appropriations for the continuation of the National Resources Planning Board were refused, and it ceased to exist in 1944.

Despite this obstruction, President Roosevelt in his speech of January 12, 1944, accepted for his own all the essential points of the "New Bill of Rights" and reformulated them in his own words. Roosevelt said: "We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. 'Necessitous men are not

free men. People who are hungry and out of a job are the stuff of which dictatorships are made.... We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all, regardless of nation, race and creed.

"Among these are: The right to a useful and remunerative job in the industries or shops or farms or mines of the nation; the right to earn enough to provide adequate food and clothing and recreation; the right of every farmer to raise and sell his products at a return which will give him and his family a decent living; the right of every business man, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad; the right of every family to a decent home; the right to adequate medical care and the opportunity to achieve and enjoy good health; the right to adequate protection from the economic fears of old age, sickness, accident and unemployment; the right to a good education.

"All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being."

The 26th session of the *International Labor Conference*, during its meeting in April, 1944, at Philadelphia, approved a kind of draft of a new bill of economic and social rights; this draft is included in the "Declaration concerning the aims and purposes of the International Labor Organization." Its major prin-

ciples represent a combination of the guarantees already proclaimed as long ago as in the "Labor Charter," contained in Article 427, Section XIII of the Treaty of Versailles, 1919, as well as the new American suggestions. The "Philadelphia Draft" is formulated as follows:

"The maintenance of full employment and the raising of standards of living; the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being and, as a means to the attainment of this end, the provision under adequate guarantees for all concerned of facilities for training and the transfer of labor, including migration for employment and settlement; the application of policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and the assurance of a minimum living wage to all in need of such protection; the effective recognition of the right of collective bargaining, the cooperation of management and labor in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the initiation and application of social and economic measures; the extension to the whole population of social security measures providing a basic income in case of inability to work or to obtain work, and providing comprehensive medical care; the provision of adequate protection for the life and health of workers in all occupations; provision for child welfare and maternity protection, and the provision of adequate nutrition, housing and

facilities for recreation and culture; the assurance of equality of educational and vocational opportunity."²

Two workers' delegates to the conference, Robert J. Watt (U.S.A.) and Jef Rens (Belgium), pointed out with particular clarity in their speeches the general spirit, without concealing the obvious lacks, of this draft. "We propose," said Mr. Watts, "economic democracy to this great International Labor Conference as the road to social justice, because we believe that only through enlightened self-government can man attain justice, political, economic or social." Mr. Rens was more explicit, emphasizing that workers "would have preferred a more striking document, more direct, with a clearer appeal to the masses of workers. The text, as it is presented to us, meets these requirements less well than the famous declarations of President Roosevelt.... If the economic system under the exclusive responsibility of the employers cannot assure social progress and thus advance social justice, the workers must be associated with responsibility for and control of the economic system. Suitable bodies must be set up, nationally and internationally, to secure the participation of the workers" not only in the social and administrative policy but in economic management itself.³

If the declaration prepared by the I.L.O. has something of the character of a program of future inter-

² See International Labor Conference, *Report I, 26th Session: Future Policy, Program and Status of the I.L.O.*, Montreal, 1944, and *A New Era, The Philadelphia Conference and the Future of the I.L.O.* (Discussions and Comments), Montreal, 1944.

³ See *A New Era*, op. cit., pp. 20, 85, 88.

national conventions, a project of "Additions to the Declaration of Rights of Man and Citizen" elaborated by the "French League of Rights of Man" as early as July, 1936, has a more direct bearing, and is more appealing and forceful. Among the texts of the pre-war period it seems to us to be one of the most important, and one that has retained all of its timeliness to the present hour. Its most striking points are as follows:

"The Bill of Rights of Man and Citizen has established political democracy. But social evolution has posed new problems, and the progress of sciences and of techniques permits new solutions. Thus the principles of the Bill of Rights now serve to establish an economic democracy by suppressing all special privileges in the social field.

"The first of the rights of man is the right to live. The right to live implies the right of the mother to all the consideration, care and supplies which her social role requires; the right of the child to all the prerequisites of his full physical and moral development; the right of woman to complete freedom from exploitation and domination by man; the right of old men, sick men and invalids to the surroundings necessitated by their condition; the right of everyone to profit by all the measures of protection which science makes possible.

"The right to live implies also: the right to work, sufficiently limited to give opportunity for leisure and sufficiently remunerated to permit everyone to profit widely by the well-being which scientific and tech-

nological progress is making accessible, and which under an equitable distribution must and can be assured to everyone; the right to a full intellectual, artistic and technical development according to the capacities of the individual; the right of maintenance for all who are unable to work.

"All workers have the right to participate in person or through their representatives in elaborating plans for production and distribution and the right to supervise the application of such plans. The purpose of these rights is to eliminate all exploitation of man by his fellow man and to guarantee a just remuneration of labor, as well as the utilization of the creative forces released by science for the welfare of all.

"Individual property is considered as a right only insofar as it does not impair the common interest. The independence of citizens and of the State is particularly threatened by the ownership of property by dominant groups representing egoistic interests (cartels, trusts, banks)."

This draft⁴ is especially interesting because it formulates in jural terms the inspiration of the Popular Front movement and government in France (1936-1937). Its main points have since been reaffirmed and further developed in the social program of the French Resistance Movement, both during the underground period and after the liberation. The nationalization of banks,

⁴It would be instructive to compare this draft with that of H. G. Wells, formulated in his book, *On the Rights of Man*, (Penguin Series), London, 1940.

of insurance companies, of key industries and of economic monopolies, and the establishment of a planned economy on the basis of the self-government of workers and consumers, are here the main demands which tend to "socialize without reinforcing the State"—"socialiser sans étatiser,"⁵ and to "synthesize economic planning and industrial democracy." At the same time, there can be observed in several of the rights proclaimed a continuous line of development from as far back as the French National Convention of 1793. Indeed, in the Bill of Rights voted by the convention on June 23, 1793, we find the following articles: "Public assistance is a sacred debt. Society owes maintenance to unfortunate citizens, either through procuring work for them, or assuring means of existence to those who are unable to work" (Art. 21). "A man can hire out his services, his time; but he can neither sell himself or be sold. His person is not alienable property" (Art. 18). "Instruction is needed by all. Society must promote with all its power the cultivation of the mind of every-one and put education at the disposal of all citizens" (Art. 22).

These articles, to the preparation of which such diverse historical figures as Condorcet and Robespierre have contributed, played an important role in the French Revolution of 1848. French socialists, especially Louis Blanc, were inspired by them when they insisted on the necessity of proclaiming special rights for the worker. Thus, the Provisional Government, after its

⁵According to the famous and already traditional slogan of the *French Confederation of Labor* (C.G.T.).

establishment in February, 1848, under the pressure of the revolutionary masses of Paris proclaimed the *Right to Labor* (*Droit au Travail*); it guaranteed a job to each worker and eliminated the possibility of unemployment. But after the suppression of the "June Riot" connected with the dissolution of "national factories," the "Right to Work" was not included in the Constitution of November 4, 1848. Nevertheless the problem of social rights was not ignored and some traces of it can be found in the text:

"The French Republic considers as its aims the assurance of a more and more equitable division of the burdens and benefits of Society and the increasing of the comfort of everybody" (Art. 1). "It is the responsibility of the Republic to protect the citizen in his personal life, in his family life, in his religion, in his property, in his labor, and to put at the disposal of all the education indispensable to all men; the Republic must assure through fraternal assistance the necessities of life to needy citizens, either procuring them work, so far as its resources permit, or supporting those who are unable to work" (Art. 8). "Society favors and encourages the advancement of labor through free primary schools and professional education; through equality in the employer-worker relationship; through the institution of social security and credit, of agricultural offices, of voluntary associations and through provision by the State, the provinces and the communes of public works suited to the employment of idle hands" (Art. 13).

In contrast to this rather vague purview, the great

French social thinker, P. J. Proudhon,⁶ who is unfortunately comparatively unknown in English-speaking countries and especially in the United States, insisted before, during and long after 1848, that the "Political Constitution" must be complemented and balanced by an independent "Social Constitution," the first pillar of which would be a bill of economic rights of groups and individuals, to serve as a basis for the establishment of "industrial democracy." He proclaimed the necessity of "a 1789 in the economic sphere" and developed the idea that a "system of checks and balances" among the rights of workers, consumers and citizens was the only means to master a double threat to human liberty. This double threat consists in the rise of "economic feudalism" imposing autocratic power in the social sphere, and in the concentration in the hands of the State of both the political and the economic function. Thus, Proudhon, with rare insight, realized the necessity of linking a new bill of social rights with a *pluralistic technique*; in an epoch in which human liberty is particularly menaced by a trend toward monopolies and monistic unity, the pluralistic techniques would profit by the reciprocal limitations of autonomous groups and large scale organizations, recognized as equivalent and equal in their right to reaffirm this freedom. At the same time, Proudhon, in his debates with the French social thinker Louis Blanc, made it

⁶ On P. J. Proudhon see my books: *l'Idée du Droit Social*, Paris, 1932, pp. 347-406, and *Sociology of Law*, New York, 1942, pp. 89-91.

clear that social rights must emerge from autonomous groups and from individuals functioning as active centers of jural life, able to realize and to defend their rights by their own action and with complete freedom. If the social rights were held to be simply duties of the State and its legislative program, they could easily degenerate into new serfdoms; because, as Proudhon rightly said: "The Servant-State evolves into the Despot-State and often becomes more absolute and dangerous than other tyrants." Indeed, in order to serve, "it commands more and more, instead of obeying." Analyses of some texts on social rights to be found in a number of constitutions worked out in the last three decades of the XXth century will show how deeply Proudhon's fears penetrated to the nerve-center of the problem. Nevertheless, in some respects, these texts can be regarded as the antecedents of the more recent drafts of bills of rights which we have quoted.

Among the constitutions of the decades preceding the second world war which include, explicitly or implicitly, Bills of Social Rights, we shall analyze the following:

The Constitution of the United States of Mexico, dated January 31, 1917; *The Constitution of the German Empire*, August 11, 1919; *The Constitution of the Spanish Republic*, December 5, 1931; *The Constitution of the Union of Soviet Socialist Republics (U.S.S.R.)*, of 1936, preceded by the Constitutions of 1925 and of 1918 which also contain Bills of Rights.

The Constitution of the United States of Mexico (1917, amended 1942) remains truest to the principle of individual and group freedom. It proclaims the

following social rights: the right of the worker to guarantees that the labor contract will not diminish the freedom of man and will not limit his political and civil rights (Art. 5); the right of everyone to be free from the domination of any monopoly (Art. 28); the right of freedom for labor unions and the right to strike (XVIII, Art. 17, 21, 22, 123); the right of arbitration and of conciliation in labor disputes, carried out by worker-employer bodies on parity basis (Art. 22); the right to equitable salaries and to satisfactory working conditions, these last being guaranteed by the responsibility of employers in the case of occupational illness and accident (XXIX, XXX); the right of the Nation to impose on private property, and especially on property of stockholders' corporations and trust companies, all restrictions and all measures deemed necessary for the common interest (Art. 6).

The constitutions of the German Reich of 1919 and of the Spanish Republic of 1931, the latter visibly influenced by the former, when they formulate "fundamental rights applied to economic and social life," are more concerned with the prerogatives and functions of the State as Servant, Protector, and Master, than with the rights of groups and individuals and their autonomy, liberty and dignity. This is the more striking because both constitutions establish worker representation (shop committees) in factories and enterprises, but surrender all efforts in the direction of self-government in the economic field to an increased State power.

The essential points of the bill of social and economic rights contained in the "Weimar Constitution" of 1919

read as follows: "Marriage, as the foundation of family life and of the preservation and growth of the nation, stands under the special protection of the constitution. It shall rest upon equality of rights for both sexes. It shall be the duty of the State and of the municipality to maintain the purity, health and social welfare of the family. Families of many children shall have the right to compensatory public assistance. Maternity shall have the right to the protection and public assistance of the State" (Art. 119). "The education of children for physical, intellectual and social efficiency is the highest duty of parents, whose discharge of this duty shall be supervised by the State" (Art. 120). "Illegitimate children shall be given by law the same opportunities for physical, intellectual and social development as legitimate children" (Art. 121). "Youth shall be protected against exploitation as well as against moral, spiritual and physical neglect. The State and the municipalities shall make the necessary provisions" (Art. 122).

As to the economic life proper, the text reads: "The organization of economic life must conform to the principles of justice to the end that all Germans may be guaranteed a decent standard of living" (Art. 151). "Every German shall be given an opportunity to gain a living by productive work. If a suitable occupation cannot be found for him, provision shall be made for his necessary maintenance. Detailed regulations shall be prescribed by special imperial laws" (Art. 153). "Labor shall be under the special protection of the Reich" (Art. 157). "Freedom of

association for the protection and improvement of working conditions and of economic life, is guaranteed to everyone and to all professions. All agreements and provisions which attempt to limit this freedom or seek to hinder its exercise are illegal" (Art. 159). "The Reich shall, with the cooperation of the insured, establish a system of insurance for the preservation of health and the capacity to work, for the protection of maternity, and for a safeguard against the economic consequences of old age, illness, and accident" (Art. 161). "Legislation and administration must favor the independent middle class in agriculture, industry, and commerce, and protect it against exploitation and oppression" (Art. 164). "Workers and employees shall be called upon to cooperate in common with employers, and on equal footing, in the regulation of salaries and working conditions, as well as in the entire field of the economic development of the forces of production. The organizations on both sides and their agreement shall be recognized. Workers and employees shall, to protect their social and economic interests, be given legal representation in Factory Workers Councils... District Economic Councils and the Economic Council of the Reich shall be constituted so that all economic groups shall be represented therein proportionately to their economic and social importance" (Art. 165). Finally, the same text contains dispositions concerning property: "Property imposes obligations. Its use by the owner shall at the same time serve the public good" (Art. 183). "The Reich may by law, without prejudicing the right of compensation and with due application of the provisions in force with regard to expropriation,

transfer to State ownership private economic enterprises suitable for socialization. The Reich itself may participate or may cause the States or municipalities to share in the management of economic enterprises and associations, or may in any other manner assure to itself a determining influence therein. Moreover, in case of pressing need the Reich may, on the basis of administrative autonomy, in the common interest, combine by law economic enterprises and associations, in order to secure the cooperation of all the factors of production and to give to employers and employees a share in management.... Producing and consuming cooperative societies, or associations thereof, shall upon their request be brought into the collectivist system with due regard for their constitution and their peculiarities" (Art. 156).

The Constitution of the Spanish Republic of December 9, 1931, contains an enumeration of social rights interpreted in a way very similar to that of the Weimar Constitution. These rights are rather reduced to prerogatives of the State, in its capacity of protector and master. Nevertheless in certain cases the representation of the groups concerned is provided for. The corresponding articles read as follows:

"Work, in its various forms, is a social obligation and shall enjoy the protection of the law. The Republic shall assure to every worker the conditions necessary for a fitting existence. Social legislation shall regulate: cases of insurance against illness, occupational accidents, unemployment, old age, invalidity and death; the labor

of women and children and especially the protection of maternity; the working day and the minimum of family salary rate...; cooperatives; economic and legal relationship among factors entering into production; the participation of workers in the direction, administration and benefits of enterprise, and everything connected with the protection of workers" (Art. 46).

"The Republic shall protect peasants and to this end shall introduce legislation concerning, among other matters, the nonsequestrable family patrimony, which is exempt from any kind of taxation, agricultural credits, indemnification for loss of crops, cooperative associations for production and consumption, insurance funds... irrigation works and rural communication routes" (Art. 47). "Education is an essential function of the State. Primary instruction shall be free and compulsory... The Republic shall pass laws to assist Spaniards, who may be financially in need, to secure access to all grades of instruction, in order that such access may depend solely on aptitude and vocation" (Art. 48). "Parents have the same obligations toward children born outside of wedlock as to those born in the married state.... The State shall aid the infirm and aged, and give protection to maternity and infancy, adopting the 'Declaration of Geneva' concerning the rights of children" (Art. 43). "All the resources of the country, whosoever may be their owners, are subordinated to the interests of the national economy.... Property may be socialized.... The State may intervene legally in the exploitation and coordination of industries and enterprises, when the rationalization of production and the

interests of the national economy require such action" (Art. 44).⁷

⁷Numerous other constitutions of Europe and of the Western Hemisphere as well contain poorer and richer enumerations of more or less clearly conceived "social rights." As to Europe, we can quote the constitutions of Estonia (1920), Art. 12-25; of Greece (1927), Art. 19-24; of Ireland (1937), Art. 41-43, 45; of Lithuania (1928), Art. 79-83, 89-102; of the Netherlands (1887, amended 1938), Art. 196-201; of Poland (1921), Art. 102-119; of Rumania (1923), Art. 17-21; of Yugoslavia (1921), Art. 22-44 and (1931), Art. 21-24. As to the United States of America, the more recent constitutions of Louisiana (1921), Art. XVIII, and of New York (1938, amended 1941), Art. I, 11, 16, 17, 18; III, 24; IX, 9; XVII, 1, 3; XVIII, I, contain enumerations of jurat guarantees in the economic and social domain. Several Latin-American constitutions formulate particularly detailed declarations of social rights and guarantees; for instance: Bolivia (1938), Art. 17-26, 121-130, 154-167; Chile (1925), Art. 7-14; Costa Rica (1871, amended 1942), Art. 23, 57-68; Cuba (1940), Art. 43-59, 60-102; Nicaragua (1939), Art. 63-105; Panama (1940), Art. 43-56, 145-167; Uruguay (1934, amended 1937 and 1942), Art. 47-62. In Asia, especially the Constitution of China (1931), Art. 33-46, and the draft of a new constitution (1937), Art. 116-138, include corresponding enumerations. "The Proposed Amendment to the Constitution of the Commonwealth of Australia" (draft of amendment, 1942; constitution of 1900) includes the famous "Four Freedoms" of the late Franklin Delano Roosevelt (Art. 60a, 112). It must be added that the trend toward extension of jurat guarantees in the social and economic fields is unfortunately not always inspired by democratic principles and combined with the defense of human freedom and the rights of man. Thus it can be observed that rather reactionary, authoritarian and later, outright fascist corporatist constitutions try to deceive and to abuse the enslaved workers, consumers and citizens by imitations of declarations of social and economic rights from democratic and liberal constitutions, even surpassing them in detailed promises of material satisfactions, security and assistance. We shall only

The three Bills of Rights proclaimed in the Union of Soviet Socialist Republics in 1918, 1924-1925, and finally in 1936, are the expression of three important steps in the social revolution; the era of revolt, of battles and civil wars; the era of victory against all adversaries; and finally the era of stabilization and the crystallization of the achievements of the Revolution. In these three bills it is not a matter of a defense of the rights of workers and the dispossessed, but the affirmation of social rights under a regime where private profit is abolished. The bill of 1918 is predominantly negative and aggressive in its character; it proclaims that he who does not work has no right to eat; it outlaws groups and individuals representative of the social structures which

quote directly fascist-corporatist constitutions such as the Labor Charter of Italy (1927); the Constitution of the Portuguese Republic (1933), Art. 12-21, 29-44; the Labor Charter of Spain (1938); the Constitution of Brazil (amended text, 1943) Art. 57-63, 135-155, etc. This deceptive toying with social rights on the part of their bitterest foes is possible, this will be brought out in this book, because of the dangerous trend toward trusting the State, Servant and Master, with the exclusive realization of social rights. It is the trend toward statism and paternalism, whereas only an appeal to direct self-government and jurat autonomy on the part of workers and consumers who share in management and in economic planning, and effectively control their functioning can give the capacity to affirm, to realize and to defend social rights. Their affirmation and realization is also impossible without *political freedom* and democratic institutional guarantees.

The best collection of constitutional texts on this topic was recently published by the International Labor Office. See *Constitutional Provisions Concerning Social and Economic Policy, An International Collection of Texts Covering 450 Countries and Other Governmental Units*, Montreal, 1944. We quote from this very valuable collection.

were to be destroyed; it lays emphasis upon the distribution and appropriation of material goods, which are recognized as the only means capable of rendering the worker's rights effective. The bill contained in Chapter X of the Constitution of 1936 represents, on the contrary, a triumphal description of achievements realized by the Soviet policy in the social field. Despite the fact that the rights properly so-called are better set off and enhanced and that some limitations of the State ownership of means of production are introduced, the "social rights" continue to be very often reduced to prerogatives, duties and functions of the Socialist State. Now this State is a close relative of the bourgeois State, servant, protector and master, but is in some respects more omnipotent and absolute. It is indisputable that the inspirations and intentions of this State are incomparably better than those of its predecessor, because its main effort is directed toward the liberation of man's labor from the domination of money and of private profit. But those directly concerned, workers and consumers as groups and individuals, are not recognized as the active centers of protection and of creation of their rights; they are not called upon to supervise and to control all power from below, and they have no guarantee of autonomy and freedom. They remain, until new developments, exclusively the beneficiaries of the liberation from economic domination obtained for them by the Soviet State. In other words, the very successful collectivist planned economy of the U.S.S.R., organized and operated under the exclusive direction of the government and its agencies, is not combined with a sufficiently strong self-government of workers

and consumers acting as free agents. Yet the potentiality of a deeper penetrating liberation, which would assure the triumph of human freedom on all levels and in all aspects, can be felt and forecast as the next step; this need not deter us from considering the present defects, omissions, and silences of the Bill of Rights of the U.S.S.R. that we are analyzing. Its most important passages read as follows:

"Citizens of the U.S.S.R. have the right to work; that is they are guaranteed the right to employment and payment for their work in accordance with its quantity and quality. The right to work is assured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, and the elimination of the possibility of economic crises and the abolition of unemployment" (Art. 118). "Citizens of the U.S.S.R. have the right to education. This right is ensured by universal compulsory elementary education; by instruction, including higher education, free of charge; by the system of State scholarships for the overwhelming majority of students in universities and colleges; by conducting instruction in schools in the native language, and by organization in the factories, State farms, machine and tractor stations and cooperative farms of free vocational, technical and agronomic training for working people" (Art. 121). "Women in the U.S.S.R. are accorded equal rights with men in all spheres of economic, State, cultural, social and political life. The possibility of exercising these rights is ensured to women by granting them an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by State

protection of the interests of mother and child, maternity and maternity care with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens" (Art. 122). "Socialist property in the U.S.S.R. exists either in the form of State property (public ownership) or in the form of cooperative farms (Kolkhoses) and other cooperative property (the property of a cooperative farm or the property of other cooperative associations)" (Art. 5-6). "Social enterprises such as cooperative farms and other cooperative organizations, with their livestock and implements, the products of cooperative farms and other cooperative associations, as well as their common buildings, constitute their social property" (Art. 7). "The rights of citizens to personal ownership of their incomes from work and of their savings, of their dwelling houses and subsidiary household economy, their household furniture and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens, is protected by law" (Art. 10).

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We have seen that antecedents to Bills of Social Rights—drafts and constitutional texts—have been very numerous during these last decades. They are indisputably of significance. Nevertheless, in glancing back with impartiality at the bills quoted here, one cannot deny that they arouse a feeling of uneasiness, apprehension, and disappointment. There are three main reasons for this.

First of all, the texts quoted here, as we have already pointed out, are not so much true bills of *rights*, as

programs and promises of social legislation and policy by the State. As for constitutional provisions, it is obvious that the Bourgeois State and the Socialist State appear here as the only real subjects of the new rights, which they affirm in their capacity as servant, protector, benefactor and master. But even in the new drafts the persons and groups directly concerned appear as passive beneficiaries, rather than active participants, as active centers of engenderment and defense of social rights. The means by which they could strive toward the protection of the rights attributed to them and supervise their fulfillment are essentially neglected. Effective guarantees of an indissoluble link between social rights and democratic institutions and procedures are lacking.

Second, instead of deepening and reinforcing democracy by showing that all authentic social rights require for their exercise and defense a new and deeper degree of liberation, the texts quoted here have rather evaded the problem: the common man, the worker and the consumer, as groups and as individuals, must be transformed from mere puppets in the jural life into creators and active participants, exercising their autonomy and freedom. And the problem was evaded for a very profound reason—because of the fundamental question of whether the affirmation, exercise and defense of social rights are possible without changing the actual economic system, and also without directing this change, not toward statism, but toward a pluralistic regime where a planned economy founded on the self-government of workers and consumers would limit the State. The gravest consequence of this was that the doubt whether authoritarian States could fulfill some

"social rights" was not cleared up. Our conviction is that the "Bills of Social Rights" are real bills of rights and produce an authentic liberation only when they cannot be separated from the defense of human freedom in any of its aspects and levels. The success of the heroic struggle against the new obstacles which menace democracy today depends upon this. A true bill of social rights must be a weapon in the struggle for democracy and can be nothing less than that, even if this requires a deep change in the actual economic structure.

Third, if the more recent drafts manifest a clearer tendency towards a systematization of social rights than the prewar texts, a basic principle, a real criterion of such a systematization is visibly lacking. But is it possible to formulate a new, really effective and really decisive bill of rights, being guided only by the empiricism of the needs of the hour, by protest against the particular injustice of the moment, by the desire to describe one successful achievement? We do not think so. These elements always enter into the formulation of a bill of rights, but they are insufficient. In this, more than in any other social initiative or project, "it is necessary to strive towards an ideal, while taking reality into account,"⁸ or, more precisely, what is indispensable is to agree on an ideal, to describe objectively the obstacles to its realization in a particular set of social circumstances and to seek out a special technique which takes both into account.

⁸ The words of the famous French social thinker and leader before the first world war—Jean Jaures.

This is why, despite the many drafts in circulation and the many constitutional provisions already in existence, we believe it timely to formulate and to submit for discussion our own draft of a Bill of Social Rights.

III.

THE UTILITY OF BILLS OF RIGHTS, OLD AND NEW

Before describing the present social conjuncture and formulating an ideal, as well as seeking out a new technique linking both and serving as the basis for a new bill of rights, we must answer a preliminary objection which has often been raised against bills of rights and which, we are sure, our draft will not be spared.

Does it do any good to have a bill of rights? Do they not always remain invalid and ineffective? Has not experience shown them to possess a purely declaratory value? And then, how can bills of social rights inspire any confidence when, in countries where they were included in the constitution—for instance, in Germany, Spain and in some Latin American countries—they have been powerless to prevent the development of totalitarian regimes, of fascism of different kinds? Can it be affirmed that human freedom is sufficiently promoted in the U.S.S.R., even through the bills of social rights? Would it not be preferable to concentrate all attention upon the interplay and functioning of positive institutions, instead of letting ourselves be deluded by

bills—those false fronts which belong to another age, an age of naive optimism, jural, political and social?

Some of these objections were formulated as long ago as the XVIIIth century against the first bills of rights in America and France. Mirabeau himself, at the French National Assembly in 1789, declared that the principles of a bill of rights "are written in our hearts" and that it would, so to speak, profane them to set them down on paper. In other words, Mirabeau saw here only purely moral principles and denied to them any jural character. Many legal scholars of the XIXth century, especially in Europe, shared this conception. They claimed that bills of rights would make sense only if there really existed natural rights, inalienable and immutable, and possessing validity superior to positive law. As the belief in "natural rights" became more and more generally abandoned, these jurists concluded that there was no further justification for the introduction of bills of rights in constitutional texts.

It must be pointed out that this reasoning takes no account of certain fundamental aspects of the problem.

In the first place, jural life does not develop on one but on several levels; it rises gradually through a series of superimposed strata, which the author of this book proposes to call "depth-levels of law."¹ In America and England the "common law" concept points in this direction. Among the European scholars, Leon Duguit

¹ See Georges Gurvitch, *Sociology of Law* (New York, 1942), pp. 221 and ff. See also the description of depth-levels of social reality in general in *Essais de Sociologie* (Paris, 1938), pp. 20 and ff.

formulated most clearly the connection between the jural situation of a bill of rights and the problem of gradually superimposed law-strata. He wrote: "At the top is the supreme law, superior to all others—the bill of rights. Next comes the constitution, which is subordinate to the bill, but has a superior validity to ordinary laws. Below come these last ones which cannot create any provision contrary to the constitution or to the bill of rights. Such a system represents a mighty protection against arbitrary legislation."²

Second, the rights formulated in the bills need not depend on "natural law" in order to prove themselves independent of and superior to the law of the State. They are crystallizations, yet they are charged with a tremendous dynamic force flowing from the spontaneous jural order of the Nation as distinguished from the political organization of the State. The Nation cannot find an adequate expression in any one of the organized super-structures (for instance, the State, the economic organization, the churches, etc.), but only in a plurality of them to which the Nation as a spontaneous whole remains superior.

Solving the problem of the efficacy of the rights proclaimed by bills depends entirely upon the techniques and procedures available for their protection and enforcement. On the European continent for a long time general guarantees such as the principles of legality, the separation of powers and of the sovereignty of

² Léon Duguit, *Traité de Droit Constitutionnel* (Paris) Vol. III, p. 684.

the people, were considered sufficient. Beyond a doubt these guarantees failed to stand the test of experience and proved entirely inadequate. The Anglo-Saxon countries, Britain and the United States of America, were obviously incomparably more successful in the realization of the rights of man by attributing a paramount importance to the protection of those rights by tribunals. Whether it is the control of the constitutionality of the legislation itself by the Supreme Court of the United States (to which any individual or group can complain in any particular case), or whether it is simply the capacity to invoke the "Magna Carta," the "Habeas Corpus Act" and so on, and more fundamentally the "common law" in any court and against any law, as in Great Britain, in both cases the judicial process is the only efficient method. The task of verifying and of suspending the validity of any law, or the legality of any administrative act, must be vested in tribunals of different kinds, including the courts of arbitration, regular or specially organized for this end; all these courts must receive complaints directly from the groups and individuals concerned, whose rights were denied, infringed or limited. More recently, some modern European constitutions have provided for special constitutional courts with the function of direct annulment of laws recognized as contrary to the constitution and the bills of rights; but these courts were empowered only to accept complaints from official institutions. Perhaps both systems could be combined in order to guarantee the jurat efficacy of the bills of rights.

The old principle of separation of powers having lost its force, it is now less than ever capable of protecting

the rights of human liberty. Even in the United States of America where it was applied latest and most forcefully, the rise of presidential power and of different administrative boards and commissions with large creative and regulatory functions put an end to it. New techniques are needed for this purpose, and we believe that sooner or later *pluralistic techniques* of mutual limitation and equilibrium among groups and their blocs, recognized as jurally equivalent and autonomous, will be applied; we have in mind, and will develop further in this book, the organization of "checks and balances" between the political State and the autonomous Organization of Economy (a planned economy based on self-government of workers and consumers), as well as within these organizations, and between the worker and consumer groups, etc. We consider this the most realistic way to protect liberty and rights. This new pluralistic technique could be reinforced by the active role of groups and blocs of groups, as plaintiffs before ordinary, constitutional and arbitration courts, in all cases where the rights set forth by the bills are infringed or threatened.

As to the indication that bills of social rights promulgated in some countries of weak democratic culture and tradition did not prevent there the rise of fascist regimes, we have already answered this objection. We have to remember now only that these bills: a) were not enforced by any kind of guarantee, either judicial or social (e.g., by establishing an equilibrium among autonomous groups); b) from the start did not avoid slipping toward statism and corporatism; c) did not have as their basic aim the defense

of human freedom and dignity as applied to a new sphere; and d) last but not least, these bills were not accompanied by any structural reform of the capitalist society and left intact the domination of economic feudalism and financial oligarchy. Thus the causes of their ineffectiveness and weakness are obvious. They remained "stillborn," successful neither in expressing the spontaneous jural order of the Nation, nor in inspiring structural reforms and autonomous activities of worker and consumer organizations—the only factors which could really make impossible the establishment of totalitarian regimes.

As to the U.S.S.R., despite its marvelous industrial and military achievements, it has not yet arrived at the completion of its dynamic revolutionary cycle; it has not yet succeeded in realizing and protecting human freedom, group and individual. The mighty effort to liberate the worker and the common man from the absolutism of private profit and the domination of money, which inspired the Russian social revolution, stopped half-way; it has not been able to avoid the establishment in some spheres of new servitudes. This is clear, by the way, from the very text of the Bill of Rights of the U.S.S.R., in which there are no provisions for the right of workers and of consumers to participate on any level in the inspection and management of industrial establishments and planning boards; for the freedom of labor unions and self-organization, generally, of workers and consumers; for the right to strike; for the means of defending these rights directly by those concerned; for freedom of opinion and organization of political parties, etc. Nevertheless, the U.S.S.R.

is full of promises, aspirations and potentialities of a deeply humanistic and radically anti-hierarchical nature in its Bill of Rights, as well as in its social structure, with its continuous dynamic evolution, and especially, and above all, in the spontaneous and living law of the many-sided and united Russian Nation. Their final realization should certainly be a new triumph of human liberty in all its aspects and on all its levels. A bill of Social Rights with a keen sense of the necessity for limitation of all powers, with provisions for the autonomy of self-organized and self-governed groups, with the fulfillment of the principle of "socialization without statism," with the application of a pluralistic technique profiting by the "checks and balances" among self-governing groups and among social autonomies for guaranteeing human freedom everywhere, would perhaps remain not without influence on the internal evolution of the U.S.S.R. in the postwar period.

We have answered, it seems to us, the main objections against the utility of bills of rights, old and new. But we do not believe that the discussion of the topic can be considered exhausted. The bills, despite their appearance as the most crystallized level of the written law, in reality represent its most dynamic element. Not only do these bills express more adequately than any other written law, the spontaneous, mobile and living law of the Nation; they do more: by this spontaneous dynamism they penetrate the entire organized jural system and drive it toward constant and immanent change. Indeed, the rights proclaimed in bills are the nearest to jural values themselves, which are in perpetual creation, representing the inherent but at the same time

the most intangible element of jural life. Under democratic regimes, in the bills of rights those values receive a *symbolic expression* adapted to particular social structures and specific historic situations. Like all symbols, the bills are *intermediaries* between values (or ideas) and facts; as such they depend upon both and have to vary in order to keep their efficacy, as soon as social reality is modified. Is it not obvious that jural symbols which were efficient in the XVIIIth century in attacking the obstacles to the realization of democratic values, i.e., in the struggle against political feudalism and monarchic absolutism, cannot have the same validity now? In the midst of the XXth century the obstacles to human freedom are quite different; they are economic feudalism, financial oligarchy and technocracy, and they must be suppressed through new social symbols, replacing the old and outworn ones.

Bills of rights in democratic regimes are indispensable, as symbols generally are in social life. The problem of a new bill of rights from this point of view is an important aspect of the general problem of the creation of new symbols to replace the "tired" and ineffective ones. This issue is paramount at the present hour.

Finally, it would be a grave omission not to take into account the enormous educative role of the bills of rights. *Education through law* becomes of paramount importance during "reforms of social structures" and revolutions. A new bill of social rights which would answer the immense sufferings and prodigious hopes of our brutal as well as heroic times could serve as a powerful beam, lighting the way ahead and the distance

to be covered toward the principal postwar goal, the organization of the economy and society of today through the strengthening of human freedom and dignity and not through their sacrifice.

IV.

THE NEW OBSTACLES TO BE OVERCOME

All "bills of rights," like all precepts of "ought-to-be" and all imperatives, are first directed against something—against the obstacles and resistance which the realization of jural values, symbolized in these bills, meets in a given social structure.

The obstacles against which the old bills of rights, like those of Virginia (June 12, 1776), the United States (September 17, 1787), and France (August 26, 1789), had to struggle were relatively simple. The obstacles to be broken down were: the remains of ancient feudal servitudes; the remnants of craft guilds, regencies, preceptorships and merchant guilds which had degenerated at the end of the *Middle Ages* into forced and closed corporations; privileges of birth; political autocracy and religious intolerance. To achieve this, an individualistic symbolism and a monistic technique were necessary; these consisted in looking upon the State as the unique defender of human freedom, identified exclusively with individual liberty.

In the XXth century we face obstacles infinitely more complicated and more menacing to democratic

values. The transition from free competitive forms of capitalism to its organized forms created new economic techniques. Stock companies, corporations, cartels, trusts, banks, private insurance companies are vast organizations of authoritarian domination. Their tendency toward monopolies, exercised in egoistic private interest, threaten not only the most legitimate interests of workers and consumers; they interfere with the functioning of institutions of political democracy, destroy the faith which inspires them and sometimes even directly corrupt its personnel.

The "economic feudalism" which in this way spreads further and further does not limit itself to subjugating millions of men to an arbitrary power in the economic sphere and demoralizing the government. It forms its own "private government," which often openly clashes with the political governments, directly stays the application of the legislative power of the State and erects *les murs d'argent* (walls of money) against any indispensable reform.

This dangerous situation can be aggravated to the point of disintegration of the Nation—the all-inclusive unity without which democracy is deprived of its basic foundation. During this war the national treason of the big industrial and financial lords in France and some other European countries can serve as an impressive example. French economic feudalists preferred to hand over their fatherland to the enemy, rather than sacrifice their social positions and vested interests. The "Comité de Forges," some associations of employers, and some banks, at first paralyzed war production, then produced

the disgusting display of collaboration with the enemy; they sold out shares of French heavy industry to their German colleagues. ¹ Could anything of the kind even have been imagined a century ago?

At the same time the authoritarian organization of shops, factories, and enterprises humiliates the workers, wounds their human dignity and deprives them of joy and satisfaction in their labor. Democratic principles are constantly disowned and denied in the every day life of the common man who spends the greatest part of his time in factories, shops, offices and bureaus. Thus, belief in the validity of democratic principles and in the sincerity of their defenders cannot help but become weaker, if not destroyed.

Private industrial property, which in the past was combined, if not with labor, at least with the management and direction of the enterprises, became more and more an abstract right which concealed the true monopolistic powers exercised by the financial oligarchy of banks and trust companies. The divorce between labor and management, as well as between management and ownership, only reinforces the dangers implied in economic feudalism. Human liberty finds a base neither in work nor in property, nor in management. The multiplicity of superimposed owners leads to a new form of quasi-feudal property in the industrial domain. For instance, the relations between finance and industrial

¹ Cf. Pierre Cot, *Triumph of Treason*, (Chicago, 1944), pp. 151 and ff., and Georges Gurvitch, "Social Structure of Pre-War France," *The American Journal of Sociology*, Vol. XLVIII, No. 5, p. 542 and ff., March 1943.

capital, between these and the dispersed stockholders, between large and small industries, etc., can be cited. Such intricate forms of property obviously no longer serve to sustain liberty but to destroy it and to undermine democracy.

The tremendous development of present-day industrial technology is disproportionate to the rather belated development of jural, political and social techniques, guarantees and institutions. The possibilities of abuse of power by those who command the technical means have grown enormously. The mounting danger of technocratic and bureaucratic regimes which some have chosen to praise as achievements of so-called "managerial revolution" cannot be denied. These "managerial technocracies" would be founded on a purely arbitrary and autocratic power, derived from "technical competencies" and free from control from below. Combined with the appearance of a new class of technocratic directors, administrators, industrial bureaucrats, "managers" of all kinds (who are seduced by all the temptations implied in the power over "the mass of incompetent people"), the trend toward technocracies appears as a real menace to democracy; this trend aggravates and renders more acute new obstacles rising against the realization of democratic values and the exercise of human liberty.

New instruments of domination stemming from the possession of powerful new technical means of production (including motorized and mechanized armies, radio transmitters and discretionary administrative power), as well as the capacity to manage and to direct

them, increase the resisting force of the obstacles described. They reinforce the subjugation and servitude of common men to things and machines, and, through this intermediary, to the "elite" who know how to direct them.

When "economic feudalism" achieves domination over the State and is combined with a managerial-technocratic regime, simultaneously supported by chauvinistic-racial passions and by complete blindness to all moral and jural values, the hour of fascism strikes. Fascistic totalitarianism, which now lies in ruins in Europe, was a polarized condensation of all the horrors of serfdom, degeneration and bestiality which menace mankind. This threat could become real again if we should prove unable to find and to establish new forms of economic and social organization capable of making democratic values triumph over the tremendous obstacles which threaten them in our contemporary transitory society.

Economic planning, national and international, is absolutely necessary for the reconstruction of the devastated countries of Europe and for measures of rehabilitation and reconversion to peacetime economy, as well as for reaching the aim of full capacity production and its protection against periodic crises. But economic planning could imply, too, grave dangers for human liberty and democracy. Economic planning has succeeded until now only through authoritarian or at least discretionary measures; the western democracies have adopted "economic plans" with some hesitation, driven by war and crises, and not too successfully. To

prevent economic planning, which is a "must" in the current stage of economic development, from becoming a threat against the liberty of groups and individuals, against their equality and fraternity, there is only one way open: a) to found economic planning upon industrial democracy and social rights for all concerned, groups and individuals; and b) to reform political democracy so that it becomes efficient enough to prevent the interference of industrial feudalism in economic planning.

We have completed the analysis of the obstacles which an objective description of the present day social structure shows to be the "battlefield" of the new bills of rights. It has only to be added that the very expansion of large scale organizations represents a considerable danger to liberty and fraternity, even in cases where these organizations do not show autocratic or feudal trends, because of the tendency toward unification and centralization, which is inevitably accompanied by an increasing administrative bureaucratization. As G. D. H. Cole has so well stated, we live in an epoch of Leviathans and "we must learn to control Leviathans, or Leviathans will make us their slaves."² This is exactly what the new bills of rights are called upon to prevent.

Finally, the exigencies of the fierce struggle, without mercy or respite, against dangerous opponents, against economic feudalism, financial oligarchy, arbitrary power of employers in factories, enterprises and industries,

² See G. D. H. Cole, *Europe, Russia and the Future*, (London—New York, 1940), p. 87.

fascist plotters who must be excluded from the national community, and so on, cannot help but cause a sensible reinforcement of the power, the competencies and the might of the State. It seems indisputable that under the capitalistic regime the energetic intervention of the State, affirming its increased authority and utilizing all possible power of constraint, represents the only efficient means of achieving positive results. However, in order to combat and destroy formidable antagonists, and resolve the increasingly urgent problems, would not the political democracies be forced to commit themselves to authoritarian channels, in direct contradiction of the principles for which they are fighting? Painful experience with the limitation of freedom of labor unions and bargaining procedures indicating trends toward obligatory arbitration, suppression of the right to strike, and forced collaboration between labor and management in war industries—in short, "paternalistic corporatism" trends, are facts which, under the pressure of war needs, are currently to be observed in the most sincere democracies. Once again we meet obstacles which have arisen in present-day social reality and which the new bills of social rights must vanquish. They must formulate *limits* for the reinforcement of the power of the democratic State, reinforcement in itself unavoidable in the intermediary phases of the course toward a new social organization. It is only through these limits that the amplified and reinforced activity of the present-day State may finally be directed against itself, in accordance with a pattern we have suggested calling "the dialectic of State-intervention." It consists in powerful action of the State to destroy obstacles preventing

the liberation and the spread of autonomous activity of legitimate groups, blocs of groups, and individuals; after the forces opposing them are wiped out with the help of the State, they will be called upon to limit the State and to serve as checks and balances against it in a new economic organization.³

The more powerful and numerous the obstacles arising in the present-day social structure to prevent its transformation by democratic values, the more creative, aggressive and efficient the new bills of rights and the new techniques for the defense of human freedom must become.

Democracy with deep insight has recently been characterized as "heroic humanism."⁴ Such heroism in the service of humanity and of positive values, heroism which requires the capacity for risking everything in a fight to the very end, has never been so necessary for democracy as right now. If the present formidable obstacles are to be overcome in this historic battle, if the greatest difficulties are to be turned to profit through forcing them to become vehicles of a deeper realization of the democratic ideal, bills of rights, based upon entirely new symbols, must be formulated.

³ For a more detailed analysis of this problem, see the following section (V) and the third part of this book. Cf. also for a sociological description of the new obstacles to the realization of democratic values, the author's papers: "Democracy as a Sociological Problem," *Journal of Legal and Political Sociology*, (1942), Vol. I, No. 1-2, New York, pp. 40-71, and "Le Principe Démocratique et la Démocratie Future," *Expérience Juridique et Philosophie Pluraliste du Droit*, Paris, 1935, pp. 235-265.

⁴ See Jacques Maritain, *Christianisme et Démocratie*, New York, 1943, pp. 99-108, 75.

V.

PLURALISM AS A FACT, AS AN IDEAL
AND AS A TECHNIQUE

From the description we have given of present-day social reality, it follows that the new resistances to the realization of democratic values require entirely new techniques for promoting human liberty. These techniques are linked with a vigorous application of the pluralistic principle, combined with a jurat symbolism which takes into consideration the freedom, dignity and autonomy of communities, collectivities and groups, as well as of individuals.

But the pluralistic principle implies different meanings and aspects. In order to avoid confusion, they must be clearly distinguished.

From the sociological point of view, pluralism is a fact which can be observed without exception in every society. Every society was, is, and always will be, a microcosm of particular groups, limiting, balancing and conflicting with each other and combining and integrating in larger wholes in variable hierarchies; this microcosm of groups in a society manifests itself in an infinite series of combinations, in accordance with historic events and conjunctures. Thus, the web of social life is fundamentally characterized by a factual pluralism, the tension among particular groups and their mobile equilibria forming the basic social matter. The effective measure of their multiplicity, their role, the

intensity of their autonomy, their value and their force, varies in each type of society; all these aspects of group pluralism can expand or diminish but never disappear. This factual social pluralism can serve for good and for evil, for domination and for liberation, for freedom and for servitude, for autocracy and for democracy. It manifests itself at the present time in economic feudalism and the domination of employers in factories and enterprises, in class struggle and in the trend toward disintegration of national communities, as well as in the impressive development of trade-unionism, of collective bargaining, of labor law, of cooperative movements and of institutions the purpose of which is the promotion of an equilibrium between the interests of workers and consumers.¹

Social pluralism as a fact must be clearly distinguished from *pluralism as an ideal*. The latter represents a particular interpretation of the moral and jural ideal, consisting in the harmony between multiplicity and unity, each being a source of the other; it is understood as an equivalence between personal, group and collective values, a mutual immanency between the whole and its parts. Pluralism as an ideal, insofar as it is not orientated toward a total disintegration into multiplicity and does not degenerate into an anarchistic singularism, cannot remain entirely pluralistic. It tends toward

¹ It is "the sociography of groups and of forms of sociability" which the author has suggested calling "microsociology" and "differential sociology," which describes the factual social pluralism. Cf. for the author's attempt in this field *Essais de Sociologie*, Paris, 1938, pp. 1-42, and *Sociology of Law*, New York, 1942, pp. 6-202.

integration of the variety and the equivalence (which are essential manifestations of human freedom) into a synthetic whole. The harmony of this whole would give a criterion of selection among the multiplicity. If one examines the democratic ideal attentively by penetrating beyond its historic and symbolic expressions into its living inspiration, it would appear obvious that the democracy is founded on the principle of equivalence between the values of the individual and of the collectivity; this principle manifests itself through variety in unity—e.g., the democratic ideal has its roots in the pluralistic ideal. "The synthesis of liberty and equality on the basis of fraternity"—the democratic formula of the French Revolution—accentuates all three elements of the pluralistic ideal; it accentuates "variety" through "liberty," "unity" through "fraternity," and the synthesis of both through "equality" of individuals and groups participating in the fraternal community.

By continuing the analysis, it would be easy to show that each of these principles presupposes and implies both of the others. Liberty, which is collective and group liberty as well as individual liberty, presupposes the equivalence of autonomous groups and free persons in the fraternal union in which they are integrated and which freely affirms creative spontaneity. Equality is not undifferentiated identity but equivalence among dissimilar individuals and dissimilar groups, as well as equivalence between the whole and its parts; thus, equality is a constituent element of each fraternal and immanent whole, e. g., of each community founded on cooperation in a "We." This "We" cannot be alienated (for instance, by transforming it into or submitting it to

a transcendent subordinative whole); it does not permit projection either as an exterior object or as a superior subject beyond the multiplicity of its members, from which it would be separated by an abyss. What does fraternity of groups and individuals mean, if not this whole, immanent in the plurality of its members who affirm themselves free and equal? The democratic principle in all its aspects seems inseparable from the pluralistic ideal.

Pluralism as a *technique*, i. e. as a special method used in the heroic struggle for the realization of human freedom and democratic values under a specific set of circumstances, must be clearly contradicting both from pluralism as a fact and from pluralism as an ideal. It does not necessarily follow that the application of the pluralistic ideal to a factual pluralism must inevitably promote a pluralistic technique. During the epoch of the French Revolution the opposite could be observed. A monistic and statist technique proved indispensable in limiting and weakening a factual pluralism which, after having become ossified and degenerate, served only to perpetuate servitude and autocracy; this factual pluralism of the remnants of feudal corporations was just an obstruction on the road for the penetration of democratic values into political and social organization.

The situation has become totally different at the present time, in the epoch of "Leviathans." Now a highly radical pluralistic technique appears to be the only method to ward off tremendous dangers and to preserve and reinforce human liberty. This pluralistic

technique would serve to limit the State by an independent and autonomous self-governing Economic Organization which in turn would be limited by the State. This new pluralistic technique would establish effective checks and balances between the political constitution and the social constitution, between the political democracy and the economic democracy, between public property and social property (see part III, sect. IV), between political common interest and economic common interest, between workers and consumers, between the last as a bloc and the citizens. This rigorous pluralistic technique will be the basis of the draft of a New Declaration of Rights which we have worked out. (See part II of this book.)

The application of such radical pluralistic means does not at all prevent the dissolution and elimination from the indispensable variety of groups of those which serve egoistic interests, since they are founded on the abolition of private interest and profit, and threaten to disintegrate the national and international community. The pluralistic technique, serving an ideal, cannot avoid selecting within the inexhaustible richness of the groups, by trying to destroy some, to favor others, to limit the activity of still more, to arrange new combinations and equilibria among several, and finally to establish equivalence among the most important blocs of groups—all this in order to promote human liberty, democratic ideals and the common interest in the variety of its aspects.

It would also be erroneous to assume that this very radical pluralistic technique, upon which we will try

to base the new declaration of rights, aims at or will result in the weakening of the State and political democracy. On the contrary, their limitation to functions and competencies for which the political power and the State are really qualified and fitted, will reinvigorate them; at the same time, the elimination of interference from economic feudalism and financial oligarchy in governmental affairs will render the action of the State more efficient in its proper domain. To attribute to an organization functions which it is unfitted to exercise in no way reinforces its authority; it is, on the contrary, the best means of diminishing it.

Finally, it is our belief (see Part III of this book) that the limitation of the political parliament (e.g., the Congress of the United States) by an independent national economic representative body, directing autonomous economic planning and based on "social property" which would equilibrate the property of the State, not only does not exclude but is even favorable to a political regime which would give to the political parliament a concentrated and vigorous power in its own domain. For the unitarian States, (for instance, France, England, Italy, and so on), the regime of a single political chamber and of "Government by the Assembly" seems to us highly desirable; it can combine perfectly with the pluralistic limitation of the State by an autonomous economic organization. This regime would clearly be different from "parliamentarian government" and "presidential government." It would eliminate a second political chamber (the "Senate," the "House of Lords") and would transform the "Council of Ministers" or the "President's Cabinet" into an executive

committee elected directly by the House of Representatives. The establishment of effective checks and balances, from without and not from within the political organizations, would permit the will of the majority of the citizens to break through and to act with the necessary speed; all the artificial barriers, established in the political domains for preventing or slowing down the effect of popular vote, would be removed. This regime would increase the strength of the political democracy, the more limited the domain of its competency became.

Obviously the situation is far more complicated in the case of federations and in particular the United States of America. The "Senates," the two chamber systems, seem to be unavoidable in federative states, and it is highly improbable that the people of the United States would desire to change in a foreseeable future its enduring and successful constitution. All that we wish to point out in this case is that the limitation of the political federal government by an autonomous economic federal government seems to us possible in America without a change in the political structure. The "presidential regime" in the United States, especially during the New Deal and the Second World War period, favored the intensive development of many administrative boards and commissions with large-scale creative and regulatory functions (e.g., U.S. Labor Board, O.P.A., and so on), federal agencies which possess a tendency toward a parity representation of workers, consumers and employers. These boards and commissions, if more democratized and more autonomous, could build in the U.S.A. the nucleus of an autonomous organization of economic planning on the

basis of industrial democracy. It seems, in any case, that the current president of the Congress of Industrial Organization (C.I.O.), Philip Murray, and his aides are inclined toward this interpretation.² Of course, such a development would presuppose a deep change in the relationship of social forces in the United States. Should this transformation take place, the U.S. Supreme Court could play a new and decisive role, that of a Supreme Court of Arbitration between the political and economic organization; it would ultimately render judgments on the basis of the spontaneous common law of the super-functional national community. (See below.)

Thus we see that a vigorous pluralistic technique can, in different countries, combine according to their political traditions with different forms of democratic government.

VI.

WORKER, CONSUMER, CITIZEN, COMMON MAN

The human being is not merely a "political animal"—"zoon politikon"—in the phrase of Aristotle. In the concrete plenitude of his qualities, several particular

² See the "Industry Council Program," presented by Philip Murray to the IVth Congress of Industrial Organizations, November 17, 1941, quoted and commented on by C. S. Golden and H. G. Rutenberg, *The Dynamics of Industrial Democracy*, 1942, pp. 329 and ff., 345 and ff.

aspects among the various manifestations of the human being can be distinguished.

The human being becomes *worker* in the largest sense of the term; he participates through his labor in the production of goods of different kinds; he is always *consumer* and very often *user* (customer, client); he is also *citizen* of a State, and so on. But the categories of worker, consumer, and citizen do not exhaust the human being. Under the citizen, worker, and consumer remains the man as such, independent of all his functions and qualities; we can call him the fellow-man, or, in more recent terminology, the "common man."

Everybody is, or has the tendency spontaneously to become, citizen, worker, and consumer; but this does not preclude the fact that the interests of workers, of consumers, and of citizens are far from being identical. On the contrary, they are opposed and enter into conflict under all regimes; they must be equilibrated by special techniques. These antinomies develop within the individual as well as in social life, where they take the form of tensions and struggles among the corresponding groups. Often these antinomies are concealed by more acute and violent conflicts. For instance, under the capitalist regime they are masked by class struggle, in which workers and consumers normally unite against employers, and especially against economic feudalism. But these adversaries once eliminated, or even subjected to an effective control, the indestructible antinomy of workers and consumers, and of the latter two and citizens will appear in the forefront of social life.

The worker (in French—*le producteur*)¹ is an able-bodied man who belongs to an age-group permitting continuous effort. He wants to get the maximum remuneration for his labor; he asks, also, to work in the best surroundings and conditions in order that his creative energy may not be obstructed and that he may enjoy his effort.

Every human being is, from birth until death, a consumer, because he has needs which can be satisfied through economic production. A more restricted group of consumers is formed by the users (customers, clients), who have special interests in a particular field of industry (where they may be large-scale buyers; for instance, the garment industry is a user of wool and cotton textiles), or in the service of a public agency (e.g., the parents of school children in the functioning of a school).

It is to the interest of the worker that the prices of commodities produced by the industry in which he works be as high as possible. It is to the interest of the consumer that the prices of goods he needs be as low as possible; the user wants these low prices especially for

¹ We use the term "worker" in the largest sense of the word, including: employees, technicians, civil officers, farmers, intellectuals, teachers, professors, artists. In French there is a term first employed by Saint-Simon and then generally accepted: "le producteur" for which there is no English synonym, because "producer" means in English mainly the employer or the owner. Thus we were forced to use the term "worker," but we call the attention of the reader to the fact that by this term is meant any person participating through his own efforts and on the basis of his own qualifications in the process of production and creation.

the kind of wholesale commodities he orders. The worker demands dignity and honor for labor; the consumer wants abundance. In an economic democracy the rights of both, taken as groups and as individuals, ought to be recognized as equivalent.

Marxian socialism, which in some aspects remained utopian, believed that with the elimination of class struggle group conflicts would disappear; thus it did not comprehend the full scope of the problem we are discussing here, as it did not see the importance of the struggle among professions. Syndicalism usually considered only the rights of workers and was inclined to sacrifice the rights of consumers and users.² The cooperative movement, inversely, committed the mistake of forgetting the rights of the worker. In our draft of a new Bill of Rights we insist upon the equivalence of the social rights of workers and of the social rights of consumers; we try to promote an equilibrium between both within the autonomous national organization of Economic Planning, founded on self-government and equality between the afore-mentioned groups. Thus we are suggesting that pluralistic technique be applied to the social constitution itself.

Citizens do not at all have the same interests as workers or consumers. Citizens as individuals and as groups

² However, in the projects of "Industrialized Nationalization" developed by the French General Confederation of Labor in 1920-1925 and re-affirmed by the Resistance Movement in 1943-1945, as well as in the projects of Guild Socialism in England after the First World War, the rights of the consumers and users are finally recognized. American labor concurs in this.

(State, province, municipality, county, and other local groups) have interests linked to locality and territory, to neighborhood relationships, to quiet and orderly life, to the unconditional restraint necessary for these goals, and to a normal functioning of public agencies and services. These interests, despite the fact that they apply to another domain than the interests of the workers and consumers, can nevertheless enter into conflict with the latter. A quiet and orderly neighborhood life, the honor and dignity of labor, the abundance of material things, do not always complete each other and combine themselves; they are seldom in spontaneous harmony. Nothing would be more erroneous than the assumption that the political rights of citizens can resolve the problem of the social rights of workers and of consumers. On the contrary, checks and balances between political and social rights are needed.

Finally, the human being, apart from his qualifications as a worker, consumer, and citizen, has interests and social rights which it would be inadmissible to neglect. It would mean a new servitude for the common man, if his desires and his right to be respected and to be able to act independently of his participation in groups and collectivities (blocs of groups) were denied. The first interest of the common man lies in the possibility and opportunity of moving freely among the multiplicity of groups and collectivities, and of entering and leaving them without compulsion; of choosing freely his profession and allegiances. Then come the desire and the right to be educated according to his capacities and to live comfortably; the right to a

happy and joyful childhood, to maternity surrounded with adequate care, and so forth.

Thus, our draft of a new Bill of Rights will be logically divided into the Social Rights of Workers, of Consumers, and of the Common Man. These rights mutually equilibrate and complete each other, as they equilibrate and complete the political rights of citizens. By employing these general categories we have tried to apply the new pluralistic technique to the solution of the problem of a Bill of Social Rights.

VII.

THE CONCEPT OF SOCIAL RIGHTS

We have pointed out in this introduction the different aspects and implications of several Bills of Rights, without explaining and clarifying the term "Social Right." This term, like "Social Law," is now very widely used, but not in the same sense, and without being sufficiently defined; and we did not want to restrict our field of investigation by a clear-cut definition formulated in advance.

But now, at the end of this introduction, it seems to us proper to formulate our own definition of Social Rights and Social Law, because our draft of a new bill is founded upon a particular interpretation of these concepts. During the last fifteen years, we have analyzed, in several books, the philosophical, juristic, political, and sociological aspects of the problem of Social

Law and Social Rights; we shall try in the following few pages to summarize the general conclusions which bear directly on the topics discussed here.

The term Social Law is very often understood as jural regulation linked with the "social policy of the State," especially with State or Federal legislation dedicated to the solution of the "social question." Then "Social Law" means simply the laws (statutes) enacted by the State to protect the weak and despairing elements of society, and to organize State intervention in the economic sphere. We consider such an interpretation of the concept of Social Law erroneous from the theoretical point of view, as well as very dangerous for democracy from the practical point of view.¹

This conception is, we believe, mistaken because it does not take into account the primordial phenomenon of jural pluralism in the real life of law—jural pluralism, which is a direct consequence of the factual pluralism within any social reality. Every group and every collectivity (bloc of groups) possess the capacity of engendering their own autonomous jural order, ruling the inner life of the groups. Groups and collectivities do not wait for the intervention of the State in order to participate, as autonomous centers of jural regulation (to which they give rise) in the complicated web of legal

¹ See Georges Gurvitch, *L'Idée du Droit Social*, Paris, 1932 (ed. Sirey); *Le Temps Présent et l'Idée du Droit Social*, Paris, 1932 (ed. Vrin); *L'Expérience Juridique et la Philosophie Pluraliste du Droit*, Paris, 1935 (ed. Pedone); *Sociology of Law*, New York, 1942. See also my paper, "The Problem of Social Law" in *Ethics*, October, 1941, Vol. LII, pp. 17-40.

life. In this life different jural frameworks confront one another, collide, compete, conflict, interpenetrate, equilibrate, and settle in most variable hierarchies. For our purpose, it appears sufficient to point out the difference and tension between the autonomous labor law, rising from trade unions and other worker organizations, and the social legislation of the State, or the opposition and struggle between the autonomous jural order engendered by trusts and cartels, and the constitutional law of a democratic State.

Ideological implications of the erroneous interpretation of Social Law which we are here challenging consist in the statist and monistic jural theory. This theory sees in law only the command of a superior power or will, of which the ultimate authority resides in the State, the sovereign political organization. But this interpretation cannot withstand critical analysis, whether it comes from sociological, jural, or philosophical angles. All law (e. g., all jural regulation, including rights) represents primarily an attempt to fulfill in given social groups, structures, situations and multiples, which are always highly diversified and multiple, one of the various aspects of the ideal of Justice; the only prerequisite for the rise of law is that every one of its manifold birth-places (which can be called "normative facts") shows a capacity to give a minimal guarantee of validity and effectiveness to rules and rights engendered in this way. All organized constraint and all power, in order to become legitimate, has to be founded on a pre-existent jural regulation arising from social surroundings and serving as a criterion for the organization of constraint and power. The legal order of the

State is a little island lost in the vast ocean of jural life. Here various frameworks of law (or law orders) of greatly disparate efficacy, kind, and scope, show themselves in their jural validity, at times superior (for instance, the jural orders of the Nation and of the International Society), at times equivalent (for instance, the jural order of the future national organization of economic planning and so forth), at times subject to the law of the State.

The interpretation of Social Law which we are repudiating is not only erroneous theoretically but is practically dangerous for democracy and freedom. In economically underprivileged and socially oppressed peoples it sees exclusively passive beneficiaries and recipients of the State's munificent activities. We have previously pointed out this essential defect of several bills of "social rights," which, in reality, nullified those rights; they represented simple programs of State-action and formulations of rights and duties of the State alone. These bills did not attribute to those interested—the groups and the individuals concerned—any social right of their own, any jural autonomy, any capacity to claim and to supervise, any guarantee of their positive freedom and of their active role, any opportunity to self-government and to effective defense of their rights. If the problem of Social Law and rights could be reduced to the State's regimentation of relief, rehabilitation, and distribution of material satisfactions, the authoritarian and totalitarian regimes could, perhaps, be considered in principle as well fitted for the realization of "social rights" as the democracies. In this case, the authoritarian

regime caring for the material well-being of workers and consumers drawn into slavery, would appear normal.

The Social Rights which are formulated in our draft of a new Bill are conceived in a sense diametrically opposed to the interpretation which we have rejected: they preclude any statist prejudice and any totalitarian deceit.

We understand by Social Law the *Law of Integration*, opposed equally to the law of delimitative separation (inter-individual and inter-groupal law) and to the law of subordination and of domination (the "dominium" and the "imperium" of Roman law). Social law, or integrative law, can be engendered by any partial fusion of consequences and behaviors, e.g., by any interpenetration forming a "We," which is the normal basis of the life of every group. Three prerequisites are indispensable and at the same time sufficient for the rise of social law and social rights. First, the "*We*" has to remain *inalienated and true to itself*, e. g., it has to remain unsubjugated and unyielding both to an organized superstructure, which has become transcendent to the "We" and separated from it by an abyss, and to a charismatic chief, whose power, instead of finding its roots in the "We," supersedes it and attributes to itself magical qualities. Second, the "We" has to be an *active center of realization of positive jural values, accepted in the several surroundings*. Third, the "We" and the group based on it have to be sufficiently solid and effective to offer, as previously stated, a min-

inal guarantee of validity for the rules and rights engendered.

The Social Law implies direct participation of its subjects in a whole which in turn participates directly in the jural relations of its members. This is why social law is based upon confidence, common effort, mutual aid, etc. whereas the law of delimitative separation and co-ordination is based upon distrust and conflict, and the law of subordination is based upon the enslavement of the law of integration and the abuse of the power which normally flows from it by its alienation from and subjugation to the law of separation.

Being based on confidence and participation, social law can be imposed neither from without nor from above. It can regulate only from within and from below, in an immanent way. Thus, social law is always autonomous, inherent in each particular "We," favorable to the jural autonomy of the concerned parties and promoting their self-government.

When social law takes an organized form, it can serve only as the basis for equalitarian, fraternal associations. The organized superstructures of groups do not always give birth to organized social law; this occurs only under special and indispensable conditions. Their structure must give every guarantee that they will remain rooted in the subjacent spontaneous We-Unions and that they will remain entirely open to penetration by the living and unorganized social law flowing from these unions. If these conditions are not fulfilled, the

autonomous law of organizations degenerates into the law of subordination and domination. Let us take the example of a factory or of an enterprise under the capitalist regime. Here the organized superstructure is separated by an abyss from the subjacent community of workers; the spontaneous moral law of this community does not penetrate into the organization, which is based upon prerogatives originated by the individual property rights over means of production. Thus, the organized superstructure of the group engenders a jural order of domination and not an order of social law. But were the same superstructure through the organization of worker representation in shops, enterprises, and entire industries to be opened, even partially, to penetration by the subjacent community of workers, and rooted in it, then organized social law would arise.

Generally speaking, it can be stated that any democratic structure, from the jural point of view, represents a manifestation of organized social law—i.e., a form of organization (be it economic, political, educational, religious, or any other) in which there is given every guarantee that it will be entirely determined and penetrated by the spontaneous social law of the community underlying the organization. This law is the living law flowing from the "We," which is inalienable under any form. From this point of view the democratic state and its jural order are themselves manifestations of a particular kind of Social Law, emanating from the spontaneous political community of citizens, the social groups, accompanied by unconditional constraint. But in our draft of a *Bill of Social Rights we deal exclusively with the kinds of*

*social law not connected directly with the State,*² i.e., those emanating from the communities of workers, consumers, and their organizations, or from common men and their unions.

Social Law, like all other kinds of law, being founded upon correspondence and especially upon interpenetration between claims and duties, presents an "objective" aspect in "jural frameworks" and a "subjective" aspect in "rights." Social Law does not exclusively rule and command, but also attributes—to groups and individuals—competences, claims, capacities for autonomous and creative action, etc. The Bills of Social Rights ought primarily to consider *Social Rights* to be attributed to and exercised by groups, collectivities, and individuals.

The Social Law being a law of integration, the *Social Rights* proclaimed by the new bills must be *rights of participation by groups and individuals* in the autonomous and self-governing wholes in which they are in-

² We have distinguished in our writings the following species of Social Law in their relationship to the State's legal order: 1) Pure and independent social law; 2) Pure social law, but partly subjected to the State's tutelage; 3) Autonomous social law, but annexed to the State; 4) Social law condensed into the legal order of a democratic State. From another point of view we have distinguished: 1) Masses' social law, 2) Community social law, and 3) Communion social law. But in order to simplify we do not utilize this last distinction here because community social law is the most favorable for superposition by a detaché or organization and also the most usual. In other words, we omit the description of different degrees of the "We" intensity and its repercussions on social law. For our purposes, the average degree—the community—is sufficient.

regarded, rights guaranteeing the democratic character of these latter: rights of workers, consumer, and common man to participate in the national community and to co-operate within it on equal footing with the citizen; right of supervision and control over any power which arises, under whatever form, in any group or in any collectivity in which the people concerned are integrated; rights of all participants to make appeals to one group or collectivity against another group or collectivity in order to protect liberty whenever it becomes menaced by a whole; rights of freedom for groups, within groups, and among the plurality of groups.

To supplement the Bill of Political Rights with a Bill of Social Rights means to proclaim the rights of workers, of consumers, and of common men as groups and as individuals to take part effectively in all aspects of life and of advancing civilization, in creative work, in security, in well-being, in education and culture, as well as to participate actively in all possible manifestations of jural autonomy, of democratic supervision and control by those concerned, of self-government and of judicial procedure. The Bill of Social Rights means (within the sphere of integration and participation) jural negation of all exploitation and domination, of all arbitrary power, of all inequality, of all unjustified limitation of liberty of groups, collectivities, and individuals. It means also the proclamation of rights of individuals, groups, and collectivities to enjoy a pluralistic organization which alone under present conditions is able to save and to guarantee human freedom.

We believe that we have now furnished all preliminary explanations necessary for facilitating the understanding and discussion of our draft (Part II of our book).

PART TWO

DRAFT OF A BILL OF SOCIAL RIGHTS

PREAMBLE

The National Convention, convinced that the lack of guarantees of the rights of workers and consumers can undermine the efficacy of the rights of men and citizens have decided to proclaim solemnly a Bill of Social Rights supplementing and reinforcing the Bill of Political and Human Rights, the validity of which is in this way reaffirmed and reinvigorated.

In order to destroy any trace of economic feudalism and financial oligarchy and to eliminate any subjugation of workers and consumers to private capital and profit;

In order to protect the human dignity of the worker and the consumer and to guarantee the complete freedom of their organizations;

In order to make impossible any arbitrary and autocratic power in the economic sphere, as well as in the political sphere, and to protect the liberty of groups, liberty within groups, and liberty among the multiplicity of groups;

In order to give all those concerned full opportunity to supervise and to control from below the functioning of any whole in which they are integrated and to promote their participation on a basis of equality in the direction and administration of those wholes;

The following Social Rights of workers, consumers, and common men are proclaimed, guaranteed by the constitution, protected by the courts, and enforced.

I.

GENERAL DISPOSITIONS

Art. I.—The goal of Society is the fraternity of men and groups, which can be fulfilled only through variety in unity—i.e., through a plurality of equalitarian associations protecting the liberty and human dignity of each member and integrated in the national community.

Art. II.—Every power which does not arise from and reside within either the inclusive National and International communities or the particular communities of workers, consumers, citizens, common men, etc., is considered illegal and contrary to the goal of society. The same is true for every power which is not supervised and controlled from below and which is not limited by the rights of common man, citizen, worker, and consumer.

Art. III.—All human beings, all citizens, all workers, and all consumers—as groups and as individuals—are recognized as free and equal, among themselves as well as in the respective fields of their activity.

Art. IV.—The social rights of workers consist in the "right to labor," i.e., the right to get work (to be employed), guaranteed to all able-bodied men and women according to their capacities and their training; and to be remunerated according to standards assuring decent living conditions; the rights of labor, i.e., the right to industrial self-government consisting in participation on an equalitarian basis in the control (supervision), management and profits of factories, enterprises, professions and industries, and in the direction of inclusive organizations of economic planning in their functional, regional, national, and international expressions; the right to rest, leisure, and retirement; the right to complete freedom of labor unions and the right to strike.

Art. V.—The social rights of consumers consist in the right to maintenance in conditions adequate to human dignity, guaranteeing freedom from want; the right to share in the distribution of the fruits and benefits of national economy, guaranteed by an autonomous organization of social insurance guaranteeing freedom from fear; the right of the user's association to participate on equal footing with workers in the management of services, enterprises, and industries, as well as in the direction of regional, national, and international organizations of economic planning; the right of consumers' cooperatives to participate on equal footing with the associations of users in this directing function; the right to complete freedom of cooperatives, of associations of users, and of their federations.

Art. VI.—All the country's wealth, whoever may be its owner, is subordinated to the Right of the Nation.

Property imposes duties; in all its forms it must be considered a social function. Any kind of property which proves to be opposed to the interests of the Nation, to the interests of its economy (e.g., the property of trusts, cartels, banks, private insurance companies, etc.) and to the rights of workers, consumers, citizens, and common men, is prohibited. All prerogatives derived from property, when they conflict with the rights of labor and the dignity of man, are abolished.

Art. VII.—The social rights of common man consist in the right to enjoy a decent life (the rights of motherhood, happy childhood, the rights of large families to social protection); the right to equality between the sexes; the right to an adequate and complete education; the right to free immigration and emigration; the right to free choice among the different economic, political, and cultural associations in which one may participate and which one may leave according to his desire.

Art. VIII.—Workers, consumers, citizens, common men—as groups and as individuals—ought to possess the capacity and opportunity of defending their social rights by appealing to courts of different kinds and by calling upon groups and collectivities in which they participate for protection by limiting other groups and collectivities in which they are also integrated.

If despite these different means of defense, the social rights of groups and individuals are not maintained, they may ultimately have recourse to the right of direct resistance to oppression.

Art. IX.—Individual and collective liberty, guaranteed by social rights, is limited only by the equal liberty of

all other individuals and groups, as well as by their fraternity and the common interests of the Nation, political, economic, and cultural.

Art. X.—All abuse of individual and collective liberty, causing it to conflict with the principles of equality and fraternity, as well as with different aspects of common interest, which is based on the equilibrium of opposed interests, will be curbed. This repression is the function of every organization serving any one of the aspects of common interest.

If separate action of one of these organizations is insufficient, there will be provision for their common action. In the case of conflicts between organizations, abuses will be suppressed by primary tribunals of different categories and ultimately by a Supreme Court making decisions in the name of the National Community.

II.

SOCIAL RIGHTS OF WORKERS

A.—“*Right to Labor*”

Art. XI.—Every able-bodied man and woman, at the age of twenty, is considered a worker. This work is a social duty and honors the human being.

Art. XII.—Every worker has a right to labor, i.e., the right to obtain work fitted to his capacities and to his training and remunerated according to the quality and the quantity of the work done. The remuneration of

labor is considered as a participation in the benefits of production.

Art. XIII.—Every worker has a right to a double remuneration for his work, to salary and to "labor shares" in his own name and non-transferable. Although salaries can differ in proportion to professional training, quality of work, and the role of the worker in the productive process, "labor shares" are equal for all workers and depend only upon the quantity of work done and upon seniority. "Labor shares" become redeemable at the time of retirement or when the worker leaves the economic organization. In the sector of economy remaining private, these shares can be redeemed whenever the worker leaves the enterprise.

Art. XIV.—Every worker has the right through collective bargaining, freely concluded between labor unions and corresponding organizations of users and consumers, to participate in determining the standards of his salary and the number of his "labor shares." In the sector of economy remaining private, employers' unions or individual employers constitute the other party to collective bargaining; in public services, the other party is the State, the province, the municipality, or county.

If, despite procedures of conciliation and arbitration, collective bargaining is unsuccessful, the National Council for Economic Planning (cf. Art. XIX.) is considered competent for a temporary solution of the conflict until such time as collective bargaining may be attained. For public services, this kind of stalemate requires common action by the Political Parliament and by the National Economic Council.

Art. XV.—Every worker has the right to an indemnity in the event that work guaranteed to him fails. This right is realized through the social security organization (including insurance against unemployment) on the basis of workers' self-government and under the supervision of the National Economic Council. A part of the "labor shares" belonging to such a worker is, in this case, turned over to the social security board. The amount of the indemnity for unemployment must correspond to the training and the capacities of the worker and to the living standards in force at the time.

B.—"Right of Labor"

Art. XVI.—Every worker has the right to conditions of work assuring his personal dignity, his physical and moral security, his capacity to supervise all power directing this work, and to a minimum of satisfaction from it.

Art. XVII.—Every worker has a right to participate in the *controlling supervision* and in the *management* of the factory (shop, office, etc.), enterprise and industry in which he works, as well as in the direction of economic planning in its regional, national, and international aspects.

Art. XVIII.—The worker's right to controlling supervision and management of factories, enterprises, and industries is realized through the right to elect representatives to *Controlling (Supervisory) Committees* and to *Management Councils*.

The Controlling (Supervisory) Committees are ob-

factory in any factory, any enterprise, and any industry, and are formed exclusively by delegates from workers in their places of employment (representing 75 percent of the committee's composition) and by delegates from the labor unions (representing the other 25 percent). The functions of these controlling committees are determined through collective bargaining and have for their main goal the setting up of inner regulations for factories and enterprises (submitted for approval to the management councils), the supervision of the fulfillment of collective bargaining, and the presenting of claims, grievances, and criticisms to the management councils.

Management councils are obligatory in all enterprises and industries and are formed by representatives of workers (elected by a direct vote—50 percent, by the controlling committees—25 percent, and by the labor unions—25 percent) and by an equal number of representatives of users (75 percent) and consumers (25 percent). In the sector of economy remaining private, the users and the consumers may be replaced by the representatives of the employer. In public services and agencies, management councils are formed by a tripartite representation of workers (employees), of users, and of the State (or the municipality or county). The functions of management councils are determined for every branch of industry by the National Economic Council and have for their main purpose the general direction and administration of the economic and technical aspects of the enterprise and the industry, the appointment of the technical personnel, and the hiring of all other workers.

Art. XIX.—The right of the worker to participate in the general direction and planning of economic life, regional, national, and international, consists in his right to elect representatives of Regional Economic Councils, to a National Economic Council, and to an International Economic Council. These representatives will be equal in number to the representatives of users-consumers.

Workers have the right to participate in the election of these councils as individuals and as groups, i.e., simultaneously, by a direct vote (50 percent of the delegates) and by a vote of controlling committees, of management councils, of labor unions, of regional and international economic councils.

C.—*Right to Rest and Retirement*

Art. XX.—Every worker has the right to rest, to leisure, and to recreation indispensable for guaranteeing efficiency and satisfaction from labor, for affirming and developing the creative capacity of every worker, and for giving him an opportunity of sharing in the well-being of the group and the fruits of culture.

Art. XXI.—The right of the worker to rest and leisure consists, first, in his right to limit the hours of work to 40 hours a week as a maximum. In the future, it will be the task of the National and International Economic Councils gradually to reduce this maximum.

Art. XXII.—The right of the worker to rest and leisure consists, second, in his right to annual leaves of absence with full pay, of which the minimum may be four weeks.

The opportunity to utilize fully this rest and leisure for recreation is guaranteed by organizing places of relaxation, clubs, camps, libraries, schools holding evening classes on all levels, general and professional, for the use of workers, and administered by them under the supervision of the National Economic Council.

Art. XXIII.—Every worker, at the age of 65, has the right to retire. The industries where the worker may retire earlier, at 60 or 55, will be determined by the National Economic Council.

Art. XXIV.—Retirement pensions are proportional to the number of years of work. After twelve years of work, every worker has a right to a partial retirement-pension. Those who have worked longer than 25 years have the right to a full retirement-pension, which must equal at least half their last salary, with due increase for the additional years of labor. To the retirement-pension is added the full redemption value of "labor shares."

Art. XXV.—The right of the worker to retire is guaranteed by a system of retirement-insurance, for which appropriations are drawn by quotas from the enterprise, the industry, the National Economic Council and the salary of those concerned, and which are administered on the basis of self-government under supervision of the National Economic Council. In the sector of economy remaining private, the same system is applied; the employer, however, who replaces the enterprise or the industry, is taxed for half the quota; the other half is shared between the National Economic Council and the persons insured, under the supervision of the State.

D.—*Right to Freedom of Labor Unions and Right to Strike*

Art. XXVI.—Workers have the right to entire freedom in organizing labor unions. This freedom implies the possibility of forming parallel unions in the same profession and industry. The principles of the imposed union, excluding competition, and of obligatory unionism are declared contrary to the syndical rights of workers.

Art. XXVII.—Every worker has the right to join and to participate in all labor unions and federations he chooses, or to form and to organize new unions, as well as new federations. The complete liberty of labor unions and their federations is guaranteed, as well as the right of every worker to leave them freely.

Art. XXVIII.—The freedom of a labor union is limited only by the liberty of all other unions and by the liberty of controlling councils in factories, enterprises, and industries. It is also limited by the common economic interest, representing an equilibrium among the opposed interests of workers and consumers-users, as well as by the common interest of the Nation.

Art. XXIX.—Every labor union, freely constituted, and every federation, has an equal right to act in behalf of its members, to conclude collective bargainings (obligatory even for third parties), to participate through its representatives in Controlling Committees, Management Councils, Regional, National, and International Economic Councils. Representation of parallel

and competing labor unions is to be proportional to the number of their members.

Art. XXX.—Where collective bargainings are concluded in behalf of an entire profession or industry, or where labor union representation presupposes a preliminary agreement among competing organizations which cannot be reached, intermediary mixed boards are organized; these boards, based on proportional representation of competing unions, are empowered to act in behalf of the entire profession or industry.

For the conclusion of collective bargainings imposing obligations upon an entire profession or industry, representatives of controlling commissions in enterprises and industries must sit in the intermediary mixed boards on equal footing with the representatives of labor unions.

Art. XXXI.—Workers, through the intermediary of free labor unions and their federations, of controlling committees and mixed boards, possess the right to strike. Freedom to strike is fully guaranteed after all procedures of conciliation and arbitration of labor disputes have been exhausted. The supreme agencies in this field are the Management Councils of industries, the Regional Economic Councils, and the National Economic Council.

Art. XXXII.—A system of conciliation and arbitration organs for labor disputes is established, with a representation of workers and consumers-users on a parity basis. Appeal to these agencies alone is obligatory, before calling a strike; but the decisions of these agencies can under no conditions prohibit a strike.

III.

SOCIAL RIGHTS OF CONSUMERS
AND USERS

Art. XXXIII.—Every human being from birth to death is recognized as a consumer, whose rights are protected. Every consumer, group, or individual, having a special interest (e.g., "customers") in the products of a particular branch of industry, or in the functioning of a public service or agency, is recognized as a user, whose rights are protected.

Art. XXXIV.—Every consumer has a social right to maintenance in conditions worthy of human beings, i.e., guaranteeing him sufficient assistance for minimal comfort and freedom from want.

Art. XXXV.—Consumers, as groups and as individuals, have a social right to share equally in the distribution of national wealth. This right is guaranteed to them by imposing reasonable prices for all indispensable goods, commodities, and homes. Consumers have a right to participate through their directly elected representatives and through the intermediary of their organization in the price control mentioned above.

Art. XXXVI.—Every consumer has a social right to a minimum of economic security, guaranteed by a system of social insurance against poverty, sickness, incapacity to work, and old age, granting him freedom from fear.

Art. XXXVII.—Users have a right to participate, on equal footing with workers, through their freely chosen

representatives, in the management of services, enterprises and industries in which they have a special interest, as well as in the direction of planned economy in its regional, national, and international aspects.

In the directing of economic life, consumers and users have a right to equal representation. Taken together, the number of their representatives must be equal to that of workers.

Art. XXXVIII.—The right of users to participate in the management of services, enterprises, and industries is exercised through the associations of users, integrating groups and individuals directly interested in the functioning of the aforementioned units and electing their representatives to Management Councils. These associations have also the right to conclude collective bargainings with labor unions.

Art. XXXIX.—The right of consumers and users to participate in the direction of regional, national, and international economy is exercised through the intermediary of users' associations and consumers' co-operatives (as well as of their federations) electing their representatives on equal footing with workers to Regional, National, and International Economic Councils.

Art. XL.—Every consumer and every user has the right to join and to participate in consumers' co-operatives and in users' associations, as well as in their federations, or to organize new co-operatives, associations, and federations. Their freedom is fully guaranteed, as well as the liberty of every consumer and user to leave these organizations.

Art. XLI.—All users' associations and consumers' co-operatives, and their federations, have equal rights to act in behalf of their members, to conclude collective bargainings obligatory for third parties, to participate through their representatives either in Management Councils (users) or in Economic Councils (consumers and users). Where parallel and competitive organizations of users and consumers exist in the same branches of industry or in the same locality, the proportion of their representatives is established either according to the number of their members (consumers) or according to the double criteria of the size of their consumers' orders and the number of their members (users).

Art. XLII.—Where the representation of consumers and users presupposes a preliminary agreement among competing organizations which cannot be reached, intermediary mixed boards are organized. These boards, based upon proportional representation of each organization (according to the principles indicated in Art. XLI), have the right to vote and to act (for instance, concluding collective bargainings with workers) in behalf of all users and all consumers of the branch or of the locality in question.

IV.

SOCIAL DUTIES AND SOCIAL RIGHTS CONCERNING PROPERTY

Art. XLIII.—All the country's wealth depending upon the jurat order of the nation and all property being recognized as a social function, property is

legitimate only when it does not infringe upon and does not conflict with the rights of the Nation, the rights of the National Economic Organization, the rights of workers and consumers, the property-rights of other persons and groups. This legitimate property is fully protected by law and the courts, whether it is *individual* or *collective*, under the latter's two forms of *social property* and *public property*.

Art. XLIV.—Collective property is considered social property when it belongs to the National Economic Organization, to the Regional Economic Organizations, to the Industries, which are integrated in them, to the cooperatives of consumption and of production (in the agricultural and industrial domains), to labor unions and to their federations, to insurance and banking agencies integrated in the Economic Organization.

Social property is owned simultaneously by collectivities, groups, and individuals, and has, so to say, a federal character (a kind of co-operative co-ownership). It can be neither divided nor alienated. Groups and individuals as joint-owners have only the right to the redemption of their "labor shares" when leaving the organization.

Social property, having been proclaimed the foundation of the nation's economy, enjoys special protection; as far as means of production and of credit are concerned, this form of property is exempted from taxation. Social property cannot, for any reason, be confiscated by the State; it cannot be bought by the State without the agreement of the organizations concerned, approved by the National Economic Council.

Art. XLV.—Collective property is considered public property when it belongs to the State, to the provinces, municipalities, local communities, public services, and agencies. Public property is limited: a) by social property and individual property, both being independent of it and serving as checks and balances to it; b) by the establishment of all property as a social function, which applies also to the public form of ownership (to public property).

Art. XLVI.—Individual property rights to means of consumption, use, and saving, as well as to farms effectively cultivated by owners and their families, to homes for the personal use of the owner (s), to means and materials for farming and craftsmanship, are fully protected. These forms of individual property may be inherited. The aforementioned landed property cannot be expropriated for public interests without adequate indemnity.

Art. XLVII.—Individual ownership of means of industrial production other than "labor shares" and craftsmen's equipment is protected without qualification in the sector of economy remaining private. In the sector of economy in which the general system of social property is established, private property's rights to means of production are protected only within the following limit: the competition of the private enterprise with the National Economic Organization must not harm the National Economy. Cases of grievances and conflicts are settled by courts for economic disputes, with the possibility of ultimate appeal to the Supreme Court of Arbitration.

Art. XLVIII. Individual ownership of farming-grounds effectively cultivated by the owners being recognized as the basis of agricultural economy, the farmer has the right to exemption from any land taxation, as well as to an equal share with other workers in the distribution of national wealth. This right is guaranteed to him by the opportunity to participate in the social property of farming-tools owned by cooperatives for agricultural production, irrigation, sale, and loan; by indemnities for losses of harvests and cattle refunded by Regional Economic Councils and local communities; and finally, by the price control of farm products, as well as industrial products, by the Economic Council, in which the representatives of farmers participate on equal footing with industrial workers.

V.

SOCIAL RIGHTS OF THE COMMON MAN

Art. XLIX.—Every human being from birth to death has social rights, human rights, independent of his functions as worker, as consumer-user, and as citizen. The right to live (including the right to a happy childhood), to be fully educated, to join freely different groups, according to his own choice, are the most important social rights of the Common Man.

Art. L.—Everybody's right to live is protected from the time of inception and is manifested in the rights of the mother and of the child. The mother has rights to all the consideration, care, and supplies which her social role requires. A special law must define the joint

responsibilities of the State, or local communities, and of the organizations of workers and consumers in this respect.

Art. XII.—The child has rights to the fulfillment of all prerequisites to his full physical, moral and intellectual development. These rights are guaranteed by the Nation.

All remnants of jural or social discrimination between legitimate and illegitimate children are abolished. In regard to children born out of wedlock, the parents have exactly the same duties as to those born in it. A registered agreement between the parents of the natural child is sufficient for integrating the child in the family of one of the parents. If an agreement cannot be reached, the case is settled by a special children's court; this court also has the power to direct the child to a foster-family or to a children's home.

The State, the public agencies, the local communities, the National Economic Organization, and the workers' and consumers' associations have a joint social obligation to eliminate all vestiges of unhappy childhood.

Within the family the rights of the child are guaranteed through joint supervision by the State, the local communities, and labor unions.

Art. LII.—The social rights of families with numerous children are guaranteed by special measures of assistance, of protection, of encouragement, of proportionately higher salaries, which constitute the joint social duty of the State and of the National Economic Organization.

Art. LIII.—Women have social rights to complete economic, civil, cultural and political equality with men. In order to suppress all traces of exploitation by men, all discrimination between the sexes in private and public employment is abolished. Laws prohibiting the work of women in certain industries, in order to protect their health, are maintained and developed.

Art. LIV.—Every human being has the social right to participate in intellectual, moral, artistic, and technical achievements and creations of all kinds, according to his capacities.

Consequently, the right to full education, completely free (college and university included), whether it be general, professional, technical, or in the field of fine arts, is guaranteed to all.

Art. LV.—Primary education is obligatory to all.

Secondary and higher education are accessible to all. All boys and girls attaining a certain level of achievement in the preceding grade of study are encouraged to continue their studies on higher levels by a system of scholarships and stipends, to which they have a right in case of need.

Art. LVI.—The right to migrate to and from a country is recognized as a fundamental social right of the common man. The immigrant has the right to seek work, to work in freedom when he finds it; in this case, he enjoys all the protection of the "rights of labor" proclaimed in the second section of this Bill. International agreements, regulations by the International Economic Organization and special laws define the limits and supervise the rights to immigration.

Art. LVII.—Every human being has a sacred right to choose freely among vocations, occupations, professions, factories, enterprises, industries, labor unions, consumers' and users' associations, regional economic organizations, public agencies, groups of different kinds—religious, cultural, scientific, etc.—which he wants to join and in which he desires to participate or to be integrated. He has the right to move freely among all the manifold groups and collectivities, utilizing their mutual limitations for reinforcement of his freedom. He has the right to join and to leave freely any organization, group, and collectivity; in all cases when his freedom is menaced, he has the right to appeal to one or more of these groups against the others.

Art. LVIII.—The pluralism of autonomous and equivalent groups and collectivities, serving mutually as checks and balances, is recognized as one of the fundamental guarantees of human freedom and of the social rights of the Common Man. The right to organization, maintenance, and development of this pluralism is a joint right belonging equally to the worker, the consumer, the citizen, and the common man. It will be protected by all means at the disposal of the Nation, which affirms itself as a unity, immanent within the plurality of groups.

PART THREE

EXPLANATORY NOTES

I.

PREAMBLE AND GENERAL PROVISIONS

The preamble and general provisions were, it seems to us, sufficiently explained in the "Introduction" (Part I) of this book. We shall, therefore, treat here only certain important points.

The first question which may be raised might, perhaps, be formulated as follows: must the Bill of Social Rights be approved only by a political national convention (or at least by a political parliament)—i.e., the highest representative body of citizens—or also by representatives of workers and consumers-users, united in a national economic council acting as a convention in the economic field? Our answer is that, at least in principle, the second solution would appear to us more logical and more desirable: first, because the national community finds a more or less adequate expression only in several independent organized superstructures, especially in the political and economic organizations; second, the pluralistic technique, which inspires this

draft, should be applied, it seems to us, to the approving vote and the proclamation of the Bill itself. Then the Bill of Social Rights would be a kind of "Charter," approved simultaneously by citizens and by workers and consumers-users. It would become a new form of "Social Contract," concluded between the State and the National Economic Organization. Both would agree upon their obligation to submit to the dispositions of this Bill in their relations, their conflicts, and their cooperation, and to join forces in its defense.

Nevertheless, from the practical angle, several objections may be raised against this solution. First, of course, everything depends upon concrete historical circumstances and social conjunctures. There may be countries—as, for example, the United States of America—where a Bill of Social Rights may be adopted simply by approving supplemental articles to the existing Bill, according to the procedure provided by the present political constitution. However, this possibility being fully admitted, it need not exclude post-factum approval of the same Bill of Social Rights by the independent National Economic Council—the representation of workers and consumers-users. Such solemn confirmation would only increase the prestige and the efficacy of the Bill.

Second, to some legally trained readers, it may seem impossible to call upon a national economic convention without having its organization fixed beforehand by a political convention or parliament. This, they will say, precludes for any country and in any case the possibility of a simultaneous approval of the Bill by political and economic representative organs—as we

have suggested. This objection has, in part, already been answered by pointing out that when the political representation is the first channel to approve the Bill, the Bill can be subject to later ratification by the economic representation; the necessity of such a ratification and even the possibility of modifying the texts by parleys could be directly introduced in the political convention's voting. In answer to the legal-formalistic objection, it must be especially pointed out that the economic convention may meet and constitute itself spontaneously and independently of the political convention. This can happen if the controlling workers' committees and management councils of factories, enterprises and industries, and the associations and representatives of consumers and users, were to rise and to develop directly from the transforming processes of economic structure begun from below by the concerned people themselves. Of course, it would be, in a sense, the revolutionary way—or rather one of the possible revolutionary ways; indeed, the most democratic one and the one most deeply permeated by the idea of freedom. We do not yet know whether in some recently liberated European countries the reconstruction of their totally destroyed economy will follow this pattern: self-government by workers and consumers, evicting—with the help of the State—trusts, cartels, owners, employers, etc., from their role in the economic life in order to make it function again. But what we do know and what appears to us indubitable from the "legal" point of view, is that were such a development to take place and were the political convention at its opening to find an economic convention already in action, it

should recognize this "normative fact" as having created a new *jural* status, and consequently cooperate fully with its "rival" on a parity basis. It is obvious that in this case the approval and the proclamation of a Bill of Social Rights would result from direct agreement between both conventions.

Thus we can conclude that, admitting any one among the three factual hypotheses, the final validity of the Bill of Social Rights should rest on the approval of the representation of citizens, and of the representation of workers and consumers-users, acting as agencies of two independent bodies.

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Article II of Section One ("General Dispositions") which guarantees the supervision and control of any power wherever it arises by those concerned, and the limitation of this power by the rights of citizen, of worker, of consumer-user, and of common man, applies not only on a national, but also on an *international* scale. The world of tomorrow will not be a world of national economic autarchies, but must be founded on international economic planning and on the reinforcement of the compulsory power of the United Nations' World Security Organization (approved by the San Francisco Conference). The draft of the Economic and Social Council (Chapter X of the World Security Charter) must be specially mentioned here, despite defects (from our point of view) in its organization and ascribed functions. Most urgently needed, but not yet provided for, is the internationalization of economic

sovereignty and the sharing in unconditional constraint by the new World Security Organization and the national States. The combination of these two principles will transform the power rising in the international community and in its various organized superstructures into a very important and a very positive factor, but this can be fulfilled only under an indispensable condition: that the different manifestations of this power be supervised, controlled, equilibrated, and limited in the same manner as its manifestations in national life.¹

In order to conclude these comments on the general disposition of the Bill, we must concentrate our attention on Art. VIII-X. Article VIII formulates the right which any person possesses to appeal for protection to a group or bloc of groups against another group or another bloc of groups, whenever his liberty is threatened. An individual can belong, and in most cases effectively does belong, to several different groups. As worker, for instance, he is a member of a labor union and of the community of workers in a factory; as a consumer he is a member of a cooperative; as user he is integrated in an association of users; as citizen he is a member of the local community, of the county, of the municipality, of the State, of a political party; as common man he joins religious, philanthropic, cultural, scientific associations, etc. No one of these groups (for instance, on one hand the State, on the other hand the National Economic Organization) ought to be able to

¹ For more detailed developments of this topic see my paper: "Sovereignty and Its Fate in the Post-War Society," *Journal of Legal and Political Sociology*, Vol. II, 1-2 (October, 1948), pp. 30-51.

absorb its members entirely, since this would in the end result in servitude. Means of effective defense for human liberty must be put at the disposal of any individual who states that a group or a collectivity in which he is integrated has become too exigent, imposing upon him duties and liabilities which prevent him from fulfilling obligations toward other groups. The first procedure, one which seems the most directly available, is to grant to the concerned person the right to have aid and protection from other groups and collectivities in which he also integrated and whose interests are harmed as well as his by exorbitant claims of a group.

For example, a labor community of the factory in which a worker is employed and in which a majority of workers belongs to the same labor union, assumes the right to impose upon the aforementioned worker the obligation of joining the same union, and prohibits him from joining a competing union. This practice is very well known, especially in the United States, where it has caused animated and rather partisan controversy about "closed shop." The trend toward "closed shop" came as a reaction against unfair practices and policies of employers, employers' unions and management, who organized artificial competitive unions (in their pay) in order to sabotage the achievements of the real and independent unions. But the danger of these unfair practices was greatly reduced by the N.R.A., the Wagner Act (the National Labor Relations Act), etc. In a conjuncture in which the danger of competitive unions being used by employers is eliminated, the trend toward the "closed shop" will no longer have any justification. This problem could

then be resolved simply by recognizing every worker's right of appeal to the union he has joined or wants to join for the protection of his liberty of choice among unions. Often, of course, the question would remain purely theoretical, because the appearance of parallel unions is a question of fact; it is of especial importance in countries where Catholic labor unions play a role in the true labor movement (France, the Netherlands, Belgium, Italy, pre-Nazi Germany, etc.).

Another case is that in which the labor union attempts to impose upon its members either the duty of voting for a particular list of candidates in the election of representatives to the controlling committees and management councils of factories, enterprises and industries, to the National Council of Economic Planning, etc., or obliges them to join a particular political party; or prohibits their affiliation with certain other parties. In all these cases the workers' right to have the organizations concerned act against the union transcending its powers must be recognized.

For other examples, let us suppose that the consumer cooperatives or users' associations were to try to prohibit their members from joining unions generally or a particular union or federation of unions. The right must be guaranteed to every person to appeal to a labor union of his own choice in order that it may protect his freedom to join and select the unions he wishes. Finally, let us suppose that the State or the National Economic Organization tries to impose upon individuals or upon groups obligations which would threaten their liberty, either as workers and consumers-users or

as citizens. Suppose the State establishes in its favor justified economic monopolies, or the National Economic Organization prohibits free quitting of its organization, etc. The right must be guaranteed to every individual and group to mobilize for the defense of their liberty either the National Economic Organization against the State, or the State against the Economic Organization.

Obviously, this system of appeal by the interested parties to groups and to collectivities in which they are integrated, to have them act in defense of threatened liberty could not function without friction unless special tribunals on a parity basis were organized for solving conflicts among groups and collectivities. The ultimate decision, in case of conflicts, would belong to a Supreme Court based on the parity principle and consisting of an equal number of judges elected by the political parliament (Congress, etc.) and by the National Economic Organization. This court would decide according to the spontaneous and living law of the whole national community. Obviously, the details of the organization of such a court would vary in different countries, according to their political and jurat traditions as well as according to circumstances. Especially in the United States—where a Supreme Court has long existed, though with different functions—the Court of which we speak would probably be closely linked to the existing court.

Finally, every individual and every group should have the opportunity to defend the rights proclaimed in the Bill by suing before courts in every particular

case for the invalidation of any administrative measure, regulation or law, which would conflict with the dispositions of the Bill.

I.

THE PLURALITY OF ASPECTS
OF COMMON INTEREST

Articles X and XI of our draft indicate as limitations of the liberty of groups and of individuals the principles of fraternity and of common interest; the latter presents several aspects: political, economic, cultural, etc. These aspects of common interest require explanation.

The principle of common interest has been, generally speaking, much abused and exploited. First, for centuries, the State as the highest ranking in the group hierarchy has been regarded as possessing a monopoly on representation and on defense of the common interest. Second, the common interest, especially beginning with Rousseau, was interpreted as everybody's identical interest; this interpretation resulted in a new justification of the State monopoly in the representation of common interest, since the identical interest of all required only one organization for its defense.

But as a matter of fact these dogmatic presuppositions concerning the common interest do not withstand objective scientific analysis.

The monopoly in representing the common interest was assigned to the State, because it was considered the sole supra-functional group, i.e., carrying out the indi-

soluble whole of functions and competencies ("competency over all competencies"); it was assumed that the common interest, implying the indissoluble integrity of its inseparable aspects, cannot but be represented by a group of universal functions and competencies. But several errors are implied in this reasoning:

2) —The State, which is simply a bloc of locality-neighborhood groups, is a functional and not at all a supra-functional unit. It is a functional unit both in its aspect as a spontaneous political community subjacent to the superimposed governmental organization, and in its aspect as this organized superstructure itself. In its first aspect, its limitation to the political function, to territorial-neighborhood regulations—e.g., in behalf of citizens—cannot be overemphasized. In its second aspect, it must be pointed out that any organized superstructure, whatever it may be, cannot but be functional because like every organization it is based on particular and limited goals. The state-organization is no exception. Variations in the functions and competencies of the State throughout different ages may serve as an empirical confirmation of this theoretical analysis. These variations have been reinforced by the fact that in the social reality there is no stable hierarchy of groups, and that in different types of society, this hierarchy was reversed in multiple directions; the State occupied the chief place in the hierarchy of groups only during particular epochs and within particular types of society, losing this position during other epochs and within other types of society.²

² Cf. my *Sociology of Law*, New York, 1942, pp. 231-286.

b) —The nation and the international society alone are supra-functional groups; but for this very reason they cannot find adequate expression except in a plurality of functional communities and in a multiplicity of organizations superimposed upon them. It is the spontaneous and mobile jurat order of the nation on one hand, of international society on the other, which determines the variable hierarchy of groups in a given society.

c) —Were the possibility of representing the common interest really dependent upon the capacity of a group to embody the integrity of the indissoluble aspects of the common interest, the nation and the international society alone, and not the State, would possess the monopoly of representing common interest. As a matter of fact, it is not difficult to demonstrate how the different aspects of common interest can be separated from one another and how their representation can be distributed among several groups and organizations. It is here that we can appreciate the second dogmatic assumption concerning the principle of common interest: the supposition that it embodies the identical interests of all individuals and of all groups. Were this unfounded supposition true, it would not only prevent the possibility of separating the different aspects of common interest from one another, but would also preclude any distinguishing of its various aspects at all. But in reality identical interests do not exist, *even within the same groups or in regard to the same individual*. Groups and individuals, whatever they may be, are split from within by deep and perpetual conflicts of opposite and equivalent interests; let us remember, for instance, the

conflict of interests among worker, consumer, citizen, and common man, within ourselves and within society, and this is only one aspect of the perpetual tension of antinomic interests. *Common interest is simply a mobile equilibrium between opposing interests, and there are as many multiple and equivalent aspects of common interest as there are factual possibilities to equilibrate conflicting interests in a particular domain*. Common interest, speaking in philosophical language, is not an abstract generality, but a concrete whole in which the opposite interests find their peculiar place as integrated parts.

From this interpretation of the common interest as a balance, an equilibrium of antinomic interests, it follows necessarily that there is always a plurality of equivalent aspects of the common interest and that each of these aspects can be represented by another functional group or collectivity, as well as by corresponding organized superstructures. Thus, *the political common interest* in which are equilibrated the opposed interests of different regions, of different counties and municipalities, of different neighborhood groups, of different public services, and finally of different political parties, must be represented by local self-government bodies, by the State, by any federation of States, (and, finally, also by the World Security Organization in the making). *The economic common interest*, in which are equilibrated the opposed interests of workers and of consumers-users, as well as of different professions and industries, must be represented by management councils, regional economic councils, national and international economic councils, etc. . . . These separated

aspects of common interest must, nevertheless, be integrated within the all-inclusive common interest, uniting the whole of its aspects and remaining exclusively within the supra-functional national and international communities.

II.

SOCIAL RIGHTS OF WORKERS

A.—"Right to Labor"

The principle of the "Right to Labor" has been implicitly recognized in all countries which have established obligatory insurance against unemployment. First, there are the United States, with its system of "social security," Canada, New Zealand, South Africa, Queensland, Australia, and also some minor European countries (in the past Bulgaria, Poland, etc.). In the U.S.S.R. insurance against unemployment is considered as a direct consequence of the "right to labor." In England and in Denmark, voluntary insurance against unemployment by trade unions or by provisions of collective bargaining agreements, and in France the subventions granted to the jobless by municipalities and local communities, have been so extensive as to imply at least a tendency toward recognition of the same principle.¹

The much discussed "Beveridge Report" suggests the establishment in England of obligatory insurance against

¹ For a short summary of the situation see *Social Insurance and Allied Services*, A Report by Sir William Beveridge, McMillan, London and New York, 1942, pp. 287-293.

unemployment (with liability quotas contributed predominantly by employers and by the State).²

When the right to obligatory insurance against unemployment is recognized, there is only one step more to be taken toward an open and direct proclamation of the "right to labor," i.e., to obtain work. This right becomes valid in so far as it is guaranteed through an economic planning and an employment organization able to make the payment of unemployment premiums an exception. It would be unfair to argue against the "right to get work" by citing the famous failure of the "national factories" (*ateliers nationaux*) which, during the revolution of 1848, were established in France in connection with the "right to labor," then proclaimed for the first time. These "national factories," as a matter of fact, were organized not by the defenders, but by the opponents of this right and of its promoter, the French socialist Louis Blanc; the aim was to compromise this right by demonstrating its absurdity. These foes of the "right to labor" transformed the "national factories," conceived by Louis Blanc as based upon workers' self-government, into camps for forced labor, where unemployed persons, without regard to their professional qualifications and abilities, and under military discipline, were forced to work at levelling ground. Conversely, the tremendous success of the National Recovery Act, T.V.A., and the large scale public works (P.W.A.) organized in the United States during the first New Deal period by the late President Franklin

² *Ibid.*, pp. 9, 55, 124, 126.

D. Roosevelt, could be cited as an impressive and positive experiment.

It is obvious that the realization of the right to get work should for the most part be the responsibility of regional, national, and international economic councils. Nevertheless, in this field, the duties and competencies of the State, the counties, municipalities and local communities are not to be denied. It must be realized that the State participates in economic life through its public services and other administrative agencies. The actual tremendous effort of reconstruction and rehabilitation of desolated areas throughout the world by organizing giant public works on a hitherto undreamed-of scale, will cause the State, public services, and local self-governments to play an extremely important role as recruiting centers for employment. Thus, one must conclude that the fulfillment of the "right to obtain work" will require in the near future agreement and close co-operation between the national and international economic organizations on one side, and the State, counties, municipalities and local communities, on the other. The reconversion from war to civil production which is now beginning, and the justified claims of returning veterans, will make this right a burning actuality.

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Articles XIII and XIV of the section we are discussing proclaim the right of the worker to a double remuneration through an adequate salary and through

labor shares. The principle of labor shares necessitates some explanation.

"Labor's stock-holding" which has occasionally been established in some places through the initiative of employers, in order to interest workers in the profits of private enterprise has, and with justification, a very bad reputation in labor circles. It therefore seems to us necessary, first of all, to point out that the "labor shares" of which we speak in our draft have nothing to do with the aforementioned ill-conceived and unfair maneuvers of employers. Any measure depending upon the benevolence of employers is entirely excluded here. Labor shares are considered in our draft an obligatory and universally applied form of remuneration; all danger of placing one group of workers in opposition to the whole workers class by means of labor shares is precluded; the more so, since the principle of equality is strictly applied to remuneration by labor shares in contradistinction to remuneration by salary.

Second, labor shares are not transferable, and are in the holder's name; thus, they cannot be sold and resold. This excludes the possibility of speculation, as well as the accumulation of these shares otherwise than by work effectively done.

Third, labor shares are in the main a part of the nationalized and planned sector of economy. Under the supervision of the National Economic Organization, they will also be introduced in the private sector of economy. The main purpose of labor shares is to assure the workers' participation in the profits of collective production.

Finally, labor shares depending only upon the quantity of work done and upon seniority do not initiate, as has already been pointed out, any new form of inequality among workers, but on the contrary, contribute to the reinforcement of the equalitarian form of remuneration. Labor shares serve as checks and balances against the unavoidable inequality of salaries, which cannot but take into account professional training and achievements, the quality of work done, and the effective role of the worker in production.

There are further reasons for introducing "labor shares": a) they make each worker a co-owner of the means of production, the ownership of which takes a federative form (entirely, in the nationalized sector of economy; partly, in the private sector of economy); b) they give to each worker a theoretical and in some cases even a factual power to leave the Economic Organization or private enterprise (for example, because individual inventions are recognized or for entering public services) with his labor shares redeemed; c) they provide for universal individual savings, without deductions from salaries, and add substantially to retirement annuities (cf. Art. XXIV), while representing an essential contribution to the funds for unemployment insurance (cf. Art. XV).

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As Article XIV of our draft specifies, collective bargaining agreements must be considered the only normal procedure for the establishment of salary standards and rules of seniority (as far as labor shares are concerned).

This applies to the nationalized sector of economy and to public services of the State, as well as to the private sector of economy. It would be an enormous mistake to believe that collective bargaining can be applied exclusively under the capitalistic regime and can be concluded only with employers' unions. The contrary is true. Under the regime of economic planning and partial or even total nationalization of means of production, collective bargaining should receive a new impetus and take on an importance greater than ever. This represents one of the indispensable conditions for assuring the democratic character of economic planning and nationalization, and for realizing equality and liberty among economic groups as well as among individuals. In collective bargaining agreements freely concluded, the counterpart to labor unions would certainly be associations of users and consumers and, as far as public services are concerned, local communities, municipalities, counties, and the State.³

B.—"Rights of Labor"

1. SUPERVISING-CONTROLLING COMMITTEES AND MANAGEMENT COUNCILS

The part of our draft devoted to "rights of labor" involves a series of new and entirely transformed institutions which require a detailed elaboration. We have in mind especially the Supervisory Controlling Committees, Management Councils and the National

³For more details on the structure of collective bargaining, cf. comments on Part D.

Economic Council directing the planning. Shop committees, steward committees, the "Whitley Councils" (so called in England, after their originator), workers' councils in factories and enterprises, labor-management councils, workers' delegations (or whatever they may be called) were tried out in the period between the two wars under different forms and in different countries.¹ Their goal was to transform shops and enterprises from autocracies to "constitutional monarchies." But only

¹ Cf. the Whitley Report in England, 1916, suggesting the parity principle (workers-employers) for the organization of industry, a project partly realized in 1918 in the municipal enterprises and in 1921 in the railroads; the decree of the Russian Provisionary Government (Kerensky-Lwow) of April 23, 1917, establishing obligatory shop-councils in all places where more than 20 persons were employed; the regulation of the U.S. National Labor Board in 1918 establishing labor-management committees in the war industry; the Austrian law of May, 1919, and the German law of February 4, 1920, establishing obligatory factory councils in all enterprises where more than 20 workers were employed; the Czechoslovakian law of March 11, 1921 contained analogous provisions. In Luxembourg (1919) and in Norway (1920) measures in the same direction were tried, but were soon abandoned; in Sweden a draft of a law was elaborated by a commission of the Parliament, but was finally rejected (1921). Article 46 of the Constitution of the Spanish Republic (1931) contained the promise of "workers' participation in the administration of enterprises." The French law of June 24, 1936 (the so-called "Matignon Agreements"), made it obligatory to set up within any collective bargaining agreement a provision about workers' delegations in shops and enterprises; it was supplemented by the law of November 12, 1938, on the "status of worker delegates," expanding their organization, but limiting their competences.

If the obligatory worker councils in factories and enterprises proved too weak and inefficient in limiting the powers of employers and managers, this is obviously more so for the same councils

committees and councils imposed as obligatory either by law or as an indispensable provision of collective bargaining agreements can be cited as entering into the compass of our discussion.

It is very well known that the experience of shop committees introduced as obligatory proved far too weak to limit effectively the autocracy of *workers* and managers.

For these councils to become real and basic organs of industrial democracy, and adequate expressions of "the constitutional law of enterprises," there are several indispensable requirements:

established on a purely voluntary basis as freely accepted provisions of collective bargaining agreements, according to a practice largely extended throughout England, and partially tried out also in the United States and in France (before the law of 1936).

Shop committees bestowed from above by the arbitrary will of employers proved extremely dangerous to the unity of the labor movement, and they were unanimously condemned by all independent labor unions. This was especially so in the United States where, between 1920 and 1924, shop committees set up by employers played a certain role; they were finally condemned as unfair employers' practices (a form of "company union") by labor, by the federal administration (U. S. National Labor Board), and finally by the famous "National Labor Relations Act" (Wagner Act) of July 5, 1935. For details concerning the experience of factory and enterprise workers' councils between the two wars cf. G. Gurvitch, *Le Temps Présent et l'Idée du Droit Social*, Paris, 1933, pp. 35-84, and the bibliography, pp. 309-319; W. G. Lauck, *Political and Industrial Democracy*, New York, 1926, and Joseph Rosenfarb, *The National Labor Policy and How It Works*, New York, 1940, *passim*.

As to the workers' committees' experience during World War II (1939-1945), it was rather limited and did not lead to new patterns of workers' representation.

To begin with, the distinction between "supervisory controlling committees" and "management councils" must be firmly established. The supervisory controlling committees, which were the only ones effectively tried, whatever name they were given, can, as a matter of fact, neither supervise efficiently the disciplinary power of owners and management, nor participate with sufficient authority in the elaboration of "inner regulations" of shops, factories and enterprises, without the participation of workers in management councils, too. Indeed, the latter councils, whose function consists in directing the general running of the enterprise and the industry from the economic and technical point of view, are the most powerful. If the workers as well as the supervisory controlling committees, as units, do not share in this power, industrial democracy cannot work. There were some attempts to attribute to shop committees the "right to be informed" by management—e.g., the right to ask for an accounting of the management and direction of the enterprise; but this right could never be realized because management and direction remained entirely in the hands of owners and of the personnel appointed by them. In order that the workers' supervision of disciplinary power in the factories and enterprises may function effectively, it is indispensable that the organs of this supervision, as well as all workers directly, participate in the management and direction of enterprises and industries. These management councils with worker representation must be established as obligatory institutions, simultaneously with the establishing of shop committees.

It is obvious that these management councils cannot

be based on the same principles of representation as those applied in the supervisory committees. The latter should be and were exclusively organs of workers' representation. On the contrary, as far as management councils are concerned, their composition must be founded on the principle of parity, the counterpart to workers being either users and consumers (in the nationalized sector of economy), or employers-owners (in the private sector of economy), or the State, county, municipality, or local community (in public services). It must be added that whereas the supervisory-controlling committees have for their field of action factories, enterprises (which can have several plants) and industries (including all enterprises of the same branch), management committees can only function for the direction of entire enterprises and entire industries.

Second, the shop committees which developed between the two world wars were a failure because they were not included in a chain of institutions, not integrated in a system of representative organs of industrial democracy. Such a system would go step by step from basic cells, such as shop committees, to the councils of industries and to regional economic councils, reaching finally the National Economic Council and, higher up, the International Economic Council. The shop committees were weak because they remained dismembered parts, cut off from any living link with the whole of the organs and agencies ruling economic life. They will get real impetus from their integration in the National Economic Organization, as suggested in our draft.

Third, the problem of relations between shop committees and labor unions has never been resolved. Professional labor unions, constituted a long time ago, very often feared the lack of syndical discipline in shop committees. Multiple frictions between these two forms of labor organization have been observed, and this, certainly, did not serve to reinforce the position of shop committees, a position already weak for the other reasons already indicated. In the United States the conflict and struggle between the A.F.L. unions based upon profession or trade, and the C.I.O. unions based upon place of employment, throw some light on certain aspects of the kind of tension here involved. At the same time, it is obvious that the unions of the C.I.O. must favor shop committees, in contradistinction to the A.F.L., because the C.I.O. unions' principle of organization is closer to that of the shop committees.

In any case, the introduction into the composition of controlling committees and management councils of labor unions' representatives (25 percent of their members) seems to us the only possible solution. Its purpose is to guarantee efficient contact and cooperation between the aforementioned representative organs and labor unions.

This solution is reinforced by attributing to the collective bargaining agreements concluded by the labor unions the power of defining exactly the functions of controlling committees in shops, enterprises, and industries. This precludes any possibility of conflicts between particular agreements which may be concluded by controlling committees, and general collective bar-

gaining concluded exclusively by labor unions; the latter here affirm their undisputed primacy. Thus, our draft is based upon the principle of equilibrium between labor unions and direct workers' representation in places of employment.

The fourth and last reason for the failure of shop committees in their older form seems to us to be the most important. Neither controlling committees nor management councils can function efficiently without economic planning and at least partial nationalization of industry. *The different organs of industrial democracy without economic planning are only shadows deprived of reality, and economic planning without industrial democracy is simply a reinforcement of domination and oppression over workers as well as consumers.*

Thus, it is indispensable that economic planning and industrial democracy join and interpenetrate, becoming one and the same thing. It is then, and only then, that the controlling committees in factories, enterprises, and industries, as well as regional, national and international economic councils, can become a full-fledged reality and function with genuine efficiency. Controlling committees, provided that at least one sector of economy has become nationalized, will receive considerable strength; this is true even for the sector of economy remaining private, because, by participating through their representatives in the National Economic Organization, the controlling workers' committees functioning in private shops and enterprises will enjoy the support of the entire organization.

In explaining the causes of the shop committees' weakness and failure during the period between the two world wars, we have had an opportunity to comment at the same time on the economic representative organs provided for in our draft. But it seems to us necessary to elaborate upon *management councils*, in order to answer a possible objection: would it not be dangerous to call upon workers to participate in the technical and economic administration of enterprises, in view of their incompetence in this domain? Our answer would be that the difficulty here is imaginary rather than real: the functions of management councils will consist in the general direction and the running of enterprises and industries, and will not take over the functions of the technical personnel. The latter will be appointed by management councils and receive from them general directives only. In general questions the workers on one hand, and the users on the other, being directly interested in the efficient functioning of production, are more competent than the present-day members of directing boards of trusts, corporations, and stockholding companies, and the directors appointed by them and by individual owners. This technical personnel, e.g., engineers, will be chosen by management councils among the persons possessing academic degrees qualifying them for this kind of position. In judging the personal qualities and experience of these candidates, workers are more competent than anyone else. After appointment of the technical personnel for a limited period by management councils, it may be desirable to submit them to periodical re-elections by workers. This would be a very effective

means of combatting the technocratic trend without interfering with "technical competency." A qualified engineer, or any technician, would lose none of his qualifications in being submitted to periodical re-elections. Without requisite degrees he could neither be appointed nor elected.

The composition of the management councils proposed in our draft (Art. XVIII) might be criticized as being too complicated. One might ask: why not merely add the representatives of users and consumers to the controlling workers' committees in constituting these councils? Our answer is: a) the qualities required by workers' representatives for exercising supervision over the disciplinary power in a shop or enterprise are not at all the same as those which are required for participation in its management and direction; b) it must also be remembered that the controlling committees and the management councils will function as counterparts of one another; thus it is desirable that the workers' representatives be, for the most part, different in these two boards; c) direct elections are, in principle, always to be preferred to indirect elections through representation on several levels. If, for the sake of efficient functioning (as in the case of management councils), a number of representatives must be elected by intermediary agencies (in our case by labor unions and controlling committees), nevertheless predominance must be given to representatives directly elected from below by those concerned (cf. Art. XIX of our draft for the application of this principle).

2. THE NATIONAL ECONOMIC COUNCIL

We shall now concentrate upon the structure of the inclusive economic councils whose function is planning and directing economy on the regional, national, and international levels. It is mainly on the National Economic Council that we shall comment, because misunderstandings and recollections of the recent past may prevent an exact understanding of this institution as it is suggested in our draft.

It must be emphasized that the National Economic Council, in our sense, figuring in the draft as the apex of the system of industrial democracy and of economic planning independent of the State, *has nothing to do with a second chamber (senate) of the political parliament, nor with a special administrative board or agency of the State.* It is also very different and far removed from the German *Reichswirtschaftsrat* (law of May 4, 1920), the National Economic Council of Czechoslovakia (law of December 5, 1919), and from the former French National Economic Council (decree of January 16, 1925).

Nothing would be more erroneous and dangerous than the identification of the "National Economic Council," in our interpretation, with a political chamber based on "representation of interests," or "professional representation," or "corporatist representation." Nothing would be more anti-democratic and more reactionary, from the political point of view, and more contrary to the economic organization suggested in our draft, than a political representation of this kind:

2) It would obstruct the full expression of the majority-will of the citizens in the field of their specific competency, the normal channels of which are universal suffrage and democratic State.

b) The selection of "interests," of "professions," of "cooperative organizations," etc., admitted to political representation, as well as the fixing of the number of representatives of different economic bodies, cannot help but be arbitrary and authoritarian. Thus, it is no wonder that for the most part the ardent proponents of this kind of representation are "corporativists" and fascists of different kinds, working for the subjugation of labor organizations to employers and State autocracy. Briefly, such reform of political representation was the goal of the worst foes of democracy, industrial as well as political.

c) Corporatist or professional representation, reinforcing instead of suppressing the second chamber of the political parliament (the senate), would only perpetuate and legalize the interference of "great economic interests" in the functioning of the State and could only result in the definite triumph of "economic feudalism."

d) The administration and direction of economic affairs entrusted to a political chamber formed in the aforementioned way would only cause economic statism; this kind of statism would be even worse, because it is less democratic than that caused by the control of economy by a political parliament elected on the basis of universal suffrage.

It would also be misleading to confuse the National

Economic Council with "an economic chamber" based on universal suffrage and constituting a second chamber, with limited competency, in the framework of the State's representative organs. Such a body, proposed by Sidney and Beatrice Webb¹ after World War I, would avoid the danger of corporatist and anti-democratic trends, but such a proposal does not solve the problem for the following reasons: a) An economic chamber elected by universal suffrage would be a form of complete economic statism, instead of an economic organization independent and autonomous, serving as an equilibrium to the State; b) Instead of calling upon workers and consumers-users, the Webbs' proposal appeals to the vote of citizens and gives to the latter a double role; thus, it transcends their specific political competency; c) This project, finally, eliminates the basic cells of industrial democracy from participation in the administration and the direction of national economy. In short, it eliminates the workers' controlling committees and the management councils of enterprises and industries.

Economic councils, conceived simply as administrative boards or agencies of the State, are only executive organs of its legislation. Being habitually constituted on a tripartite basis, by adding to governmental agents workers' and employers' delegates, such boards very often cannot help but reinforce the influence of employers upon the economic administration of the State, without, at the same time, preventing the threat

¹ Cf. S. and B. Webb, *Constitution of the Socialist Commonwealth of Great Britain*, London, 1920, pp. 120 ff.; 309, ff.

of statism.² This threat would not be eliminated even if these boards for governmental economic administration were to exclude completely employers-owners representation and were to include direct delegations of controlling workers' committees in factories and enterprises; in the last analysis, the economy here would be directed not by those who are concerned but by the political parliament representing the citizens of the State.

As for the National Economic Councils tested in Republican Germany, Czechoslovakia, France, and some other countries, in the interval between the two World Wars, their inefficiency and failure are well-known. The reasons for their lack of success have been the following defects in their powers and in their organization:

a) These councils were conceived simultaneously as representative bodies of an independent economic organization and as agencies of the State; they were supposed to possess a double function as a consultative assembly for economic matters (a supplemental agency for State legislation in these matters) and as the "administrative agency for inter-cabinet co-ordination." Thus, they were hybrids.

² Cf. for instance, the different tripartite committees acting under the U.S. National Labor Relations Board, the definitive organization of which was fixed by the "National Labor Relations Act" of July 5, 1935—called the Wagner Act, after its author, Senator R. F. Wagner, and other Federal and State agencies now especially connected with the War Effort. Cf. also, the plan by Philip Murray, president of C.I.O., concerning "The Industrial Council Program," submitted to the Fourth Congress of U.S. Industrial Organizations on Nov. 17, 1941.

b) These councils were organized from above in an arbitrary manner and without any link either with basic cells of the industrial democracy—the workers' controlling committees in shops, enterprises, and industries—or with regional economic councils.³

The nourishing roots of the central economic councils were, in this way, cut off even before they came into existence. Simply, the labor unions, employers' associations, consumers' co-operatives, technicians' associations, and the most important administrative agencies were designated by the State as qualified to elect representatives to these councils. The councils thus formed hung in mid-air and had no real connection either with the productive-process, or with the true democratic representation.

c) The structure of these councils, based on equal representation of employers-owners and workers, necessitated adding to their members numerous governmental representatives serving as arbitrators between the two conflicting groups. As a matter of fact, without the support given by governmental representatives to the workers' delegates, the representatives of the employers-owners would completely dominate and thus impose their will in these assemblies. The reason for this situation is very clear: Employers under the present regime possess an incomparably stronger economic force and influence than those on which the workers can count.

³ The Czechoslovakian and the German Republican constitutions contained promises to establish such a link, but these promises were not fulfilled in the laws organizing the National Economic Council.

There is only one way to avoid the transforming of independent National Economic Councils into governmental and administrative bodies: this is to bar any employers-owners' representation in them⁴ and to apply the principle of parity exclusively to the proportion of workers' and users'-consumers' representatives.⁵

d) Finally, in behalf of the National Economic Councils, it is necessary to repeat what was already said about the workers' committees in shops, enterprises, and industries. These councils can function effectively only under a system of economic planning and at least a partial nationalization of the economy. It is then, and only then, that they possess sufficiently important and clear-cut competencies: those of directing the running of the national economy. To these councils the task of economic planning and the supervision of the plan's fulfillment must be assigned. Those sectors of economy remaining private will have to take this planning into account and follow the general directions of the National Economic Councils.

⁴ Excluding employers'-owners' representation from the national economic council seems to us justified by the fact that this council has nothing in common with a parliament, but is merely the supreme organ for managing "social federative property" (cf. below, comments on Section IV of the draft) in which obviously the owners of private enterprises do not participate. Private employers-owners keep their right to form associations but the latter are not entitled to integration in the system at the top of which is the National Economic Council.

⁵ For more detailed analysis of the organization and functioning of different kinds of "National Economic Councils" in the interval between the two wars, see my book *Le Temps Présent et l'Idée du Droit Social*, Paris, 1932, pp. 34, ff.

The dispositions concerning the competencies and the mode of organization within the National Economic Council (Articles XIV, XIX, XXXI, XXIX, XLIV, and LI of our draft) take into consideration all the criticisms and the analyses which we have developed. This council is proclaimed the directing organ of economic life; its organized superstructure is recognized as an independent body in its relation to the State. The National Economic Council is the supreme representative organ of the whole system of economic planning, rooted in the basic cells of industrial democracy and founded upon the parity principle applied to all representative economic organs from which employers-owners and government representatives are excluded. This council administers the "social property" of means of production (Art. XLIV), which is clearly opposed to public property and to private property. It possesses special competencies in the field of price control, in the organization and direction of credit, in the fixing of salary standards for enterprises and industries where the collective bargaining agreements cannot be concluded or renewed, in the organization of social security and insurance, as well as procedures for conciliation and arbitration of economic conflicts, etc.

The national economic council is, nevertheless, limited in its competencies not only by checks and balances coming from the State (from without) and from controlling worker's committees, from labor unions and users'-consumers' associations (from within), but also by regional and international economic councils. These two types of councils must be organized on a pattern similar to that of the national council.

International economic planning will play an ever-increasing role in the world of tomorrow. Among the different aspects of sovereignty, economic sovereignty has the greatest chance of being internationalized, i.e., of being attributed to the international community. To some degree the nucleus of the International Economic Council exists already, and in two different forms: in the relatively older form of the "International Labor Organization" and in recent form of the "Economic and Social Council" provided for in Chapter X of the Charter of the World Security Organization. The relationships between those two international economic bodies are not yet clarified. In any case the older of these two—I.L.O.—is the only international organization which has survived the ordeal of war and which has given proof of its efficacy. The "Economic and Social Council" created at the San Francisco Conference possesses larger competencies than the I.L.O. and may even become fitted for economic planning on an international scale. But, elected directly by the assembly of the World Security Organization, it represents a retrogression, when compared with the I.L.O., in that it is not at all based on workers' representation as the I.L.O. is, at least in part. We expect that sooner or later both organisms will fuse in an International Economic Council composed of representatives of the National Economic Councils of different countries, and direct representatives of workers and of consumers-users.

The National Economic Council will constitute its own cabinet. It is desirable, in order to guarantee its stability and its competency, that this economic govern-

ment be directly elected by the assembly of the National Council, as its executive committee, empowered to act quickly and unimpeded.

D.—“*Right to Freedom of Labor Unions*”
and “*Right to Strike*”

The problem of maintaining and strengthening labor union freedom under the regime of economic planning and nationalization of essential industries is of paramount importance. To limit or negate this liberty under the pretext that it can be justified only under the capitalist regime, where it is challenged by its counterpart, the liberty of owners'-employers' organizations, seems to us simply a poorly disguised attack upon the freedom of groups and against the freedom of workers. It is one of the favorite lies of corporatism, the worst enemy of democracy. In reality, workers have the right to defend their legitimate and specific interests under any regime; they have this right under the regime of economic planning and of socialism no less than under any form of capitalist regime, because the interests of workers are never identical with those of users-consumers or citizens.

Syndical freedom consists not only in the right of workers to be represented by unions, formed and directed by them with full autonomy, but also and especially in their liberty to constitute parallel and competitive unions in the same profession or in the same industry. Thus, syndical freedom excludes the system of sole and obligatory unions, which is only an

effort to subjugate unions to the State by transforming them into organs of State domination over workers, imposing on them strict discipline from above. Fascist corporatism was the principal promoter of sole and obligatory labor unions, which were deprived in this way of any real autonomy. Obligatory unionism which permits choice among several unions is less perverse. Nevertheless, it is also very dangerous, because: a) it suppresses the individual liberty of a worker to refrain from joining any union; b) it limits the “right to work,” making the fulfillment of this right dependent upon joining a union.

The Bill of Social Rights, having as its main inspiration the fierce struggle against any form of subjugation of individuals and groups in the economic sphere, must also combat with all its energy the subjugation of workers to forced unions, integrated in the State. Wholly free labor unions alone can contribute to the realization of workers' social rights.

Free labor unions, however, are not the only representative organs of the workers. The controlling committees in factories, enterprises, and industries play the same role. To the extent that the principle of workers' organizations attached directly to places of work (i.e., organizations integrated in the network of the production itself) is recognized, there follows the necessity to seek new equilibria between the liberty of unions and the liberty of controlling shop committees.

The possibility of insoluble conflicts between parallel and competing labor unions, as well as between conflicting competencies of unions and controlling shop

committees, is avoided through mixed commissions on a parity basis. These commissions, as has been indicated, are formed when collective bargaining agreements are concluded in the name of an entire profession or an entire industry, as well as in the cases when union representation would rest upon preliminary agreements between competing unions which cannot be reached.

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Collective bargaining agreements which are normally concluded by unions and their federations must be regulated by the National Economic Council in regard to their jural validity and status. State legislation concerning collective bargaining agreements showed, during the interval between the two wars, a marked tendency toward recognition of the paramount fact that these agreements were not *simple contracts*; their structure as "rulings" (*actes-règles*, according to French jurists), as "charters," as industrial constitutional texts, etc., imposing obligations not only upon the signing parties but also upon third parties (workers and employers remaining outside the agreement), was clearly indicated in the legislation of the period. It was thus established by legislative texts as well as by court practice that the salary standards and working conditions provided for in collective bargaining must be applied to all workers employed in a union plant, without excepting non-union workers. Employers who had not participated in a collective bargaining agreement were obliged to follow its dispositions, because unionized workers may not accept work in any plant without exception, at standards

lower than those provided for in the aforementioned agreement.

Finally, it has become recognized more and more that the jural validity of collective bargaining prevails over the validity of individual labor contracts and automatically causes their nullification if the latter contravene the dispositions of the agreement.¹ This "statutory" or "charter" character of collective bargaining, already firmly established, will simply be codified and generalized by the regulations of the National Economic Council.

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The indispensable requisite for defending the social rights of workers is the recognition of their right to strike. Strikes can be declared either by labor unions and their federations, or by the controlling workers' committees in shops, enterprises, and industries, or by mixed workers' commissions. The procedures of conciliation and arbitration are very desirable, and can even be made obligatory *before* the decision to strike becomes effective. But to prohibit strikes, either directly or by establishing under the term "obligatory arbitration" the power of arbitrators or of the State to impose their

¹ For the evolution of collective bargaining in the United States see Joseph Rosenfarb, *The National Labor Policy and How It Works*, New York, 1940, pp. 189-385; for its evolution in European countries and the general jural problems involved, see my book, *Le Temps Présent et l'Aide du Droit Social*, Paris, 1932, pp. 27 and ff.

decisions in order to bar strikes, ² leads to authoritarianism and corporatism.

In the economic field, the strike is the fulfillment of the sacred right of resisting oppression—a right long ago recognized in the political field. To attempt to encroach upon this right under any regime means the subjugation of workers.

Before the decision to strike becomes effective—after procedures of arbitration have failed or the decisions of arbitrators have been rejected—an obligatory vote of all workers concerned may be called for; this has become more and more the custom in the United States. But to go further than this would be to deny the very foundations of industrial democracy and to intringe upon the social rights of workers.

² Unfortunately, during the last decade there could be observed even in the most democratic countries of the world a trend toward prohibiting strikes by means of obligatory arbitration without appeal. We hope that this is only a temporary tendency caused by the tremendous pressure of the international crisis, and the needs of the war industry. We firmly believe that when the second world war is definitely won, this trend will be reversed. In any case, we see no justification for the projects now in circulation precluding strikes in the post-war period; and we know that this position is shared by labor unions throughout the world. Labor unions will defend the right to strike as the most essential right of workers.

III.

SOCIAL RIGHTS OF CONSUMERS AND USERS

Whereas the group of consumers is extremely large, encompassing every human being as the center of all needs and wants, the group of users is more restricted. For instance, an industry or an enterprise plays the role of a user in regard to another industry or enterprise. The parents of school children are users of the school which their children attend, etc. . . .

It is obvious that the social rights of consumers and users, despite some economic affinity between the two groups, cannot be the same; this is equally true of the methods to be applied protecting these rights.

The social rights of consumers are primarily rights which guarantee them decent subsistence, equitable participation in the distribution of national wealth, economic security founded on an effective system of social insurance. The basic methods for protecting these rights consist in the possibility afforded to consumers of participating directly by elected representatives or by their organizations in the following two controls: a) in the price control of the most essential commodities and rents; b) in the control and administration of social security boards and insurance organizations.

Whereas the general authority over price control is attributed in our project to the Regional and the National Economic Councils in which consumers participate

only through the intermediary of their organizations, the price control of most essential commodities and home rentals must be organized differently. Here authority must be exercised by special local boards, in which not less than half of the members will be directly elected by consumers, the other half consisting of representatives of local communities, municipalities, regional economic councils, and management councils of industries and enterprises, in the field of agriculture, food processing, clothing manufacture, construction, etc.

In the control and administration of social insurance boards (for poverty, sickness, invalidism, and old age) the insured consumers must play a paramount role. Obviously, the regional and national economic councils, as well as local communities, municipalities, and the State, must also be represented on these boards. Nevertheless, the insured consumers being here the only persons directly concerned, at least half the members of local boards, as well as half the central administration of social insurance, must be directly elected by consumers; in these organs the latter must also be represented by their associations, beginning with the consumers' cooperatives. One of the obvious defects of the social insurance project by Sir William Beveridge is its disregard for the right of the insured to control and to manage the insurance machinery.¹ This can also be

¹ Sir William Beveridge does mention, only once in his report, "self-governing societies" which could be "entrusted by the State" as responsible agents for the "administration" of insurance; cf. Beveridge, *Report, op. cit.*, p. 31. Obviously, this is insufficient, for participation by the persons insured in the general direction of the social insurance organization is here not at all guaranteed.

considered as a defect in the present United States social security organization. The French law on social insurance of April 5, 1928, supplemented by that of April 30, 1930, provided for the representation of insured persons at the lowest local level, but did not introduce it at any other level of the insurance organization.

In contradistinction to their prominent position in price control and in social security boards, consumers can be granted only a very limited right of participation through their representatives in management councils of enterprises and industries. Here, the active element constituting the effective counterpart to workers is the users directly interested in a branch of industry or in the functioning of a service. Our draft provides for an equal number of users' and workers' representatives in management councils (Arts. XVIII and XXXVII). Conversely, the representatives of consumers' organizations are introduced in management councils in small numbers, identical with those of labor unions' representatives, and these two delegations must balance each other.

In the nationalized sector of economy, the organizations of users supplant to some degree the owners-employers group. These users' organizations may have interests strongly opposed to those of the workers, but nevertheless perfectly legitimate. Finally, the users' organizations constitute the normal counterpart in concluding collective bargaining agreements with labor unions.

In the election of representatives to management coun-

cils of enterprises and industries it would be obviously impractical to have isolated users vote separately and directly. This procedure might also cause injustice, because users may be extremely important or very significant customers of an industrial branch or enterprise. Users must therefore be encouraged to unite in associations; these users' associations, by electing representatives to management councils, could take into account the respective importance of different categories of users as customers of an industry or an enterprise.

The same problem arises and must be resolved in an analogous way when there is competition between parallel users' associations; indeed, the freedom of these associations must be recognized, just as is the freedom of labor unions; there must be no exclusive and compulsory users' organizations. In the case of competition, mixed commissions among several users' associations must be formed; their composition must be based upon a double criterion: the importance of those associations as customers and the number of their members (Art. XLII).

While users, in management councils of enterprises and industries, are given a prominent position which they share on a parity basis with workers, this no longer holds for the general direction of economic life where the larger category of consumers plays an important role. In regional, national, and international economic councils, users' and consumers' organizations must be represented on equal footing—i.e., on a parity basis. It is obvious that in the delegations to these councils, which are supposed to constitute a balance and counter-

part to workers' delegations, consumers ought to have an influence at least equal to that of the users. Indeed, when the problem is to work out a general scheme of economic planning, the selection of means for its realization and the supervision of its execution, the interests and rights of any of these groups are equally entitled to consideration; no one group or interest ought to be sacrificed or preferred over any other one.

IV.

SOCIAL DUTIES AND SOCIAL RIGHTS CONCERNING PROPERTY

The articles of our draft concerned with property rights (cf. Art. XI and Arts. XLIII-XI.VIII) are based upon a general conception of the problem of property which requires an explanation.

It is impossible to bring about a triumph of human liberty in the economic domain, unless the power of man over man, in so far as it is founded on the power of man over things, is suppressed. The struggle against the alteration of power based upon property into domination over groups and individuals represents, indeed, the main goal of any authentic Bill of Social Rights. We have tried to show in the introduction to this book (and in a series of former writings) that the law of subordination and domination which is opposed to the social law represents an alteration of the latter by its subjugation to the individual rights of owners. To proclaim a Bill of Social Rights means to try to make impossible such a subjugation and perversion.

For a very long time it was believed that it would be sufficient, for resolving the problem, to transfer the property of means of production from individual owners to a collective owner, for instance, the State. It was hoped that a simple change in the subjects holding property would be sufficient to avert the danger of exploitation and domination engendered by property. But this fact was overlooked here: property attributed to collective subjects, and especially to the State, can remain property unlimited in its nature and thus permit all kinds of abuse. The fact was not taken into account that concentrating the monopoly of industrial property in the hands of the State—already possessing a monopoly of unconditional constraint—presents an enormous danger because it increases the possibilities of worse abuses.

The great French thinker, P. J. Proudhon, the representatives of "decentralistic socialism" headed by the French leader Jean Jaurès, and more recently the British guild-socialists and the French syndicalists, have understood the situation.¹ They have sought (but without decisive success) to elaborate formulas of socialization which would change the intrinsic nature of property; the goal of this change would be humanization and ethical uplift of the property-structure, guaranteed, among other means, by the direct participation of work-

¹ On Proudhon's theory of property cf. my *L'Idée du Droit Social*, pp. 392 and ff. On the different conceptions of "decentralistic socialism," guild-socialism and syndicalism, see my paper "Socialism and Property" in *Expérience Juridique*, and *Philosophie Pluraliste du Droit*, Paris, 1935, pp. 266-296.

ers and consumers in the possession, management, and use of industrial property.

The growing awareness of the fact that simply changing the owner-subjects of industrial property does not always transform its nature has led to another exaggeration. Some jurists have concluded that it would be sufficient, for resolving the problem, to proclaim that all property is a "social function"; that is, that basic limitations in property rights would be introduced by establishing a series of positive obligations upon owners, the further development of which would hamper property by a tight network of strong restrictions (see, for instance, the property theory of the French scholar Léon Duguit). Some jurists therefore concluded that the change in owner-subjects is of only secondary significance, and may even lose all importance; the more so because property manifests a growing tendency today toward "objectivization," becoming property "without owners" or belonging to proprietors who "cannot be found" (e.g., Rockefeller, Carnegie, Guggenheim, or Smithsonian Foundations; art, historical, philanthropic institutions, and so on).²

However, the only idea which appears to us sound in this conception is the indication that all property, no matter to whom it may belong or be attributed, should be restrained and limited by its particular aims, supervised to avoid possible abuse; in short, transformed into a "social function." But, to us, it is entirely

² Cf. the analysis of Léon Duguit's theories in my books *L'Idée du Droit Social*, pp. 295-628, and *Sociology of Law*, pp. 123-134.

erroneous to conclude that the change of owners-subjects does not matter. In reality, this position is an attempt to escape the problem because to transform the intrinsic nature of property without changing its owners would mean simply to limit it by legislative measures and State intervention. This solution would guarantee neither the elimination of domination by industrial and financial autocrats, who would retain their positions, nor the prevention of direct or indirect concentration of industrial property in the hands of the State. Thus, finally, the concept we are criticizing seems to move within an alternative, both poles of which we must reject: corporativism concealing industrial feudalism or statism pure and simple.

Moreover, what would one say about a follower of democratic ideals who, after having come to the sound conclusion that political democracy does not consist in simply transferring the absolute power of a monarch to the people, but also in the transforming of the internal structure of this power which becomes subject to the new law and limited by it, were to draw from this the following statement: it matters not to whom the political power in a State belongs and it is unimportant whether the monarch remains on his throne!

For an effective solution of the present-day property problem, it is indispensable to find a link between the change in ownership of industrial property and the transformation of its intrinsic nature. What really matters is that the transfer of property rights over means of production and of credit causes a real transformation in the property structure, making it internally re-

strained, humanized, penetrated from within by the social law and by efficient guarantees against any possible abuse. It is also necessary that this transfer, instead of reinforcing the compulsory power of the State, serve to limit it more effectively in favor of group and individual freedom.

We are convinced that the true solution consists in the attributing of means of production and credit to a complex and multiple collective subject, independent of the State; all group and individual participants in the whole economic organization would share in this indivisible property, becoming "co-owners" of means of production and of credit.

The property owned by such a subject, within which are equilibrated multiplicity and unity, balancing each other, may be called federative property. Numerous examples of this form of property can be indicated already under present régime; e.g., property of co-operatives, of societies for mutual credit and aid, the agricultural property of local communities in some countries, and even, in a perverted form, it is true, property of present-day corporations, stockholding companies, etc.

Federative property becomes social property under several conditions: a) when it is universally applied and integrated within a whole serving the common economic interests; b) when it is founded on "shares" which are neither transferable nor subject to accumulation in other ways than by labor effectively completed; c) when, finally, it is administered on equal footing by all co-owners, groups and individuals. In short,

federative property, differentiated from simple co-ownership by prohibiting its partition and admitting only the repayment of shares to co-owners who leave, becomes *social property* when it is attributed to the National Economic Organization, independent of the State and based upon industrial democracy, as well as upon the parity between workers and consumer-users. Co-owners of this federative social property would be, simultaneously, the entire economic organization, its regional sections, industries, enterprises, communities of workers in shops and factories, the labor unions, associations of users and consumers, and, finally, the workers and users taken individually.

Federative property implies in its structure the *potentiality of restraint and limitation*, because the decision concerning the goods involved ultimately depends upon the multiplicity of distinct factors; the relations between persons and the things held by them are regulated by social law engendered by the community of co-owners. Thus, the peculiar provisions of the social law stemming from the community of co-owners and expressed in the superimposed organization, make the aforementioned potentiality of intrinsic restraint of federative property real and effective. It is only then, and then alone, that federative property takes the form of social property. We have already noted that this result cannot be obtained without the integration of different federative properties into a general system attributed to the National Economic Organization, affirming its independence from the State and serving as its balance.

These general considerations lead to the particular dispositions, in our draft, concerning property. These dispositions are founded upon a clear-cut differentiation of social property, public property and personal property. These three forms of property must be maintained and must form an equilibrium in the national economic structure. However, this equilibrium can only be a variable and mobile one, depending upon different circumstances and conjunctures. The measure of importance of the sector of economy remaining private obviously will strongly influence the role of individual ownership of means of production. The individual property of farming lands effectively cultivated by the owners will, it seems to us, remain the paramount basis of agricultural economy in several countries, especially in the United States and France. Nevertheless, this does not seem to us to preclude the possibility of applying the formula of social property to the means of farming production (machines, manures, seeds, etc.), and to the organization of credit and exchange in the domain of agriculture.

On the other hand, the possibility of mixed forms of property which can become particularly important during transitional phases of development cannot be ignored. For the sake of simplicity we have not mentioned these forms in our draft. Obviously we cannot neglect the matter here.

Mixed forms of property may be partially public and partially individual, partially social and partially individual, partially social and partially public, and, finally, partially public, partially social, and partially

individual. These forms arise when either the State (local community, county, municipality) or the National Economic Organization, or an agreement between both, establishes mixed administrations of enterprises (in France they are called "régies"). They consist in a partial integration of private enterprises and companies in collective economy or public services; this integration is partial, because the enterprises are not entirely absorbed, but are to different degrees dependent upon a collective control. For instance, a kind of collective control may be established by the State or municipality granting "concessions" to different private companies and societies. Combinations even between social property and public property may develop (in very special cases, like those of an armament industry, where the sole customer would be the State, or, like those of some credit organizations).

Generally speaking, within any type of society there always co-exists a variety of property-forms, and it would be utopian to believe that economic planning and nationalization ought to or could eliminate them, even where the means of production are concerned.

In any case, it is of utmost importance that the paramount role in industrial life, as well as special jurat protection, be given to a particular form of property—social federative property—which is the most favorable for the defense of group and personal liberty and for the humanization and intrinsic limitation of property.

As a matter of fact this is the only way to limit effectively all other forms of property (individual, public, partially individual-partially public, partially social-

partially individual, partially public-partially social-partially individual) and to transform them into "social functions." The subjection of all the country's wealth to the jurat order of the national community, and the abrogation of all privileges derived from property, to the extent that they infringe upon the rights and legitimate interests of workers, consumers-users, citizens, and common men, can become real only under one condition. This condition is that the federative social property become the dominant form of industrial property and succeed in imposing its inner restrictions as an example and model for all other forms of property.

V.

SOCIAL RIGHTS OF THE COMMON MAN

Among the human social rights enumerated in our draft, it is necessary only to elaborate the right to happy childhood, the right to immigration and emigration, and finally, the right to freedom of choice among groups which a person desires to join.

The right of a child to live, e. g. to the fulfillment of all prerequisites to his full physical, moral, and intellectual development, implies among other rights that of enjoying a home and family life. Thus the measures of protection for homelife and families with numerous children become particularly important (cf. Art. LI of our draft). Assistance, protection, encouragement, for homes and families with numerous children—all provisions already current—must be considerably reinforced.

being recognized as a joint social obligation and responsibility of the State and of the National Economic Organization. Particularly, proportionately and effectively higher salaries for parents with large dependency are absolutely necessary in order that the privileged economic position of bachelors and childless families be eliminated.

As for children born out of wedlock, they must be granted the right to be integrated either in the family of the mother or of the father. This is why a registered agreement between the parents must be considered sufficient for the realization of the child's right to find his place within a family. The decision of a special children's court may take the place of agreement between the parents. The right to a happy childhood is very difficult to realize without a home; guarantees must be given to every child of obtaining a home whenever the slightest opportunity arises. Obviously, children's courts must have complete freedom to decide whether the character of the spouses in whose home the child is to be integrated give sufficient guarantees. In the case of a negative conclusion, the children's court has the right to replace integration with the family of one of the parents with adoption by a willing childless family, or to place him in a children's home. The development and the perfecting of these homes must be the joint responsibility of the State and of the National Economic Organization.

As for the protection of the child's rights within the family, appreciable results have already been obtained in different countries. This kind of protection must be reinforced and rendered more perfect through coopera-

tion in this field by labor unions, local communities, municipalities and the State.

The rigorous restriction of the right to immigrate and to emigrate, which has greatly increased during the interval between the two World Wars and at the present time, is very dangerous; it constitutes a set-back and threat to human freedom. Often these restrictions are contrary to the interests of the country which establishes them. The problem of free migration is obviously connected with the demographic problem, that of the density of population and of the industrial potential of different countries. It is the task of the International Economic Organization, and of the regional agreements, as well as of international treaties between concerned countries, to work out rational immigration and emigration regulations. However, the National Economic Organization, the State, and the labor unions (on the national and international level) are also deeply interested in this complicated problem and must participate in its solution in a liberal and generous spirit. All other considerations set aside, the negation of the right of a man to free choice of the country into which he desires to integrate himself, to live and work, is one of the aspects of his enslavement, a negation of human freedom.

In the text of our draft we have emphasized the paramount social right of every human being to choose freely among the occupations, professions, shops, factories,

enterprises, labor unions, associations of consumers and users, regional economic organizations, public services, religious, cultural, and scientific groups of all kinds. Woe to the political, social, economic, religious, or cultural organization which dares to disregard this primary human right! It would destroy the very basis of human liberty and undermine the true value of all other social rights. Indeed, all these rights are proclaimed in order to liberate the human being, not to subjugate him by absorbing him within a single group which would be forced upon him.

Thus, in concluding the Bill of Social Rights, as in its beginning, the pluralistic principle—as an ideal and a technique—reveals itself in all its rich potentialities.

Extract from President Roosevelt's speech of January 7, 1941.

APPENDIX I.

THE FOUR FREEDOMS

The nation takes great satisfaction and much strength from the things which have been done to make its people conscious of their individual stake in the preservation of democratic life in America. Those things have toughened the fibre of our people, have renewed their faith and strengthened their devotion to the institutions we make ready to protect.

The basic things expected by our people of their political and economic systems are simple. They are:

Equality of opportunity for youth and for others.
Jobs for those who can work.

Security for those who need it.

The ending of special privileges for the few.

The preservation of civil liberties for all.

The enjoyment of the fruits of scientific progress in a wider and constantly rising standard of living.

In the future days which we seek to make secure, we look forward to a world founded upon four essential freedoms.

The first is Freedom of speech and expression—everywhere in the world.

The second is freedom of every person to worship God in his own way—everywhere in the world.

The third is freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.

The fourth is freedom from fear, which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation.

APPENDIX II.

Draft of a New Bill of Rights worked out by the U. S. National Resources Planning Board, January 1943.

A NEW BILL OF RIGHTS

1. The right to work usefully and creatively through the productive years;
2. The right to fair pay, adequate to command the necessities and amenities of life in exchange for work, ideas, thrift and other socially valuable service;
3. The right to adequate food, clothing, shelter, and medical care;
4. The right to security, with freedom from fear of old age, want, dependency, sickness, unemployment and accident;
5. The right to live in a system of free enterprise, free from compulsory labor, irresponsible private power, arbitrary public authority, and unregulated monopolies;

6. The right to come and go, to speak or to be silent, free from the spyings of secret political police;

7. The right to equality before the law, with equal access to justice in fact;

8. The right to education, for work, for citizenship, and for personal growth and happiness; and

9. The right to rest, recreation, and adventure, the opportunity to enjoy life and take part in an advancing civilization.

APPENDIX III.

Extract from President Roosevelt's speech of January 12, 1944.

This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty.

As our nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness.

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights, under which a new basis of security and

prosperity can be established for all, regardless of nation, race or creed.

Among these are:

The right to a useful and remunerative job in the industries or shops or farms or mines of the nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every business man, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

The right of every family to a decent home;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

The right to adequate protection from the economic fears of old age, sickness, accident and unemployment;

The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

America's own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens. For unless there is security here at home there cannot be lasting peace in the world.