GENERAL PROBLEMS OF RIGHTS

Ever since the great century of Renaissance civilized mankind has been seeking the answer in always renewed forms to a more propitious settlement of the relationship between the individual and the community. The differentiation made in the age of Reformation between "private individual" and "public man", the declaration by the French Revolution of the "rights of man and citizen" and recently the stress laid upon the free unfolding of *personality* — all reflect the same effort while posing the question in different ways, as determined by the material conditions of the given epoch and given society.

The ideas on rights and liberties expressed in the Communist Manifesto occupy an honourable position on the ascending spiral of this centuries-old evolution which was laden with contradictions. The Manifesto was the first to point out and prove with the force of scientific truth that under the conditions of developed capitalism it was not the abstract dualism of "man and citizen" concealing the class struggle waged between the exploited and the exploiter, but the antagonism between bourgeois and proletarians — an antagonism calling for a revolutionary solution or by-passing — which marked out the way of progress. This fact served the ideological foundations for the Paris Commune, and its workers' government to summarize, even if in a somewhat Utopian manner and with an optimism not warranted by the prevailing circumstances, the liberties and rights of "*man, citizen and working individual*".

The first spelling out of the rights of working people means a turning point in the history of human rights. Since the middle of the 19th century the catalogue of the citizen's basic rights, the form of expressing these in constitutions and the effective safeguards have been determined by the balance of the class struggle between the proletarian and bourgeois classes. It was the result of this fight that the socialist state emerged, handing over to the collective ownership of the working masses those material and cultural properties which are indispensable to efficiently safeguard these rights. It meant also that the classical human rights known up to that date were endowed with a new meaning. Formerly even the most democratic capitalist state had remained content with the formal protection of rights as laid down in statutes, and with redressing their infringements. However, as soon as the means of production, and the cultural, social and public health institutions have passed into public ownership, it became a duty incumbent upon the *community, society and the state* as their representative to regulate and organize the constant building up of the material wealth and its general distribution which is necessary to make these rights a living reality. Simultaneously, new types of

economic, social and cultural rights were evolving, and only the socialist state which controls the productive process was capable of undertaking a *legally sanctioned* obligation to the organized satisfaction and actual enforcement of these new rights. But the socialist state also proved the opportunity, after eliminating the exploiting classes, through the liquidation of class antagonism, followed by the gradual disappearance of social classes, of evolving a harmonious unity among the interests of society, state, and individual. This is the kind of harmony which helps expand the scope of the development of personality and to freely unfold individual abilities.

Four centuries of social evolution lie between the private individual as mentioned in Calvin's Institutiones and the pretensions of modern personality. The "private man" is perhaps not *the* first attempt but in any case the first discernible effort to express in an abstract form, with a theoretical objective, the demands of citizens to a field of action which is independent of the system of feudal public authorities and state intervention. At the outset they were aimed not so much at economic matters as to affairs of religion, of world-outlook. It goes without saying that also in this context economic interests were hidden under the ideological cover. The fight of the bourgeoisie for an unrestricted economic liberty and later for political power was launched on an ideological plane. The "private man" — as yet — was not fighting for political power, at least not directly. He would have been content for the moment to accommodate himself to those in power. What he wanted was to be left alone in religious — and that meant at the time in ideological — matters, undisturbed by the feudal government machinery, in order to dig in his heel at this firm point and, like a new Archimedes, unhinge the entire system of feudal society. This private man organized various communities, associations first with a religious later with an explicit political tinge, to subsequently discard the feudal "commoner" and conquer political power as a "bourgeois".

The pattern of the new government machinery was built on a fiction best suited to the demands of the bourgeois: the concept of *contract* which precisely reflects the everyday economic activity of the bourgeois. The theory of social contract has survived up to our days. It is professed in many instances through intricate media and is difficult to identify. Still, it is invariably present and discernible not only behind the ideological tenets used to justify the government machinery of the bourgeois state but also behind the theoretical conclusions explaining rights and duties and the relation between the individual and society.

Nobody would insist that the contract theory was the product of the bourgeois revolutions; but it is no mere accident either that this theory was preferred to many others available by the bourgeoisie. This preference was presumably enhanced by the fact that the "private man" represented an individual conceived as an independent being, detached from the government machinery, fully within his rights, a contracting party possessing the entirety of rights under the law of nature. As a consequence of the contract theory its variants rendered, within a relatively short period of history, the private man a subject of claims and obligations of many fictitious contractual formulae. He first enters into contract with God.

Then he will form various bodies with a view to enter into contract with the ruler, the king who was considered on the ground of divine rights to be a contracting party equal to the community of private men, in order to lay down the precise conditions of governance. This is what was called the theory of "dual contract" which, admitting it or not, retained the idea of the divine origin of state power. However, the private man was to get rid, sooner or later, also of this compromise to become a Janus-faced creature in the doctrine of Rousseau who, by entering into contracts with being like himself, brings about *public power* in a single contract constituting thereby himself a lord and subject; a sovereign and at the same time a governed people. Thus the private man recognized hitherto by public power only as a subject vanishes, only to reappear as the sole owner and possessor of political power. From this moment all the rights of the former private man connected with the exercise of power (political rights), and his rights of ownership (private property, unrestricted disposal over property, the sanctity of property) claim to be safeguarded and protected by the entire legal order and state organization. This new duality marks the emergence of the pre-revolution private man in a double capacity. The citizen as the possessor of political power, the self-conscious *citoyen* and the economically active citizen as he is shown in the first basic paper of this volume from various angles. It is necessary to probe deeper into this double aspect before one can understand the revolutionary significance of the rights of "man and citizen" as laid down in the declaration of the French Revolution.

This concept, as reflected in the titles, if not quite consciously but in any case in a clear-cut form approves, on the ground of the capitalist production relations, the sharp distinction between political and economic power and the organic division between the two. Differentiation between the public power of the state and economic power or perhaps even more: its sanctioning by the state was an act of historical significance. At this phase of social evolution it contributed to the unfolding of individual initiative and the development of productive forces. This economic foundation of contrasting man and citizen — revealed first by the young Marx — left of course its impact upon other spheres of social relationships too. It secured the autonomy of personality, the independent scope of action and the perspective of its development also in such respects which were only indirectly related to, or through several transmissions connected with, economic activity. In this sense it had an important function in enhancing the unfolding of *individual personality* and in laying the foundations for a number of individual rights and liberties generally recognized also in our days.

Nevertheless, this dual aspect involved some other consequences as well. The adoption of this duality by the legislation namely provided an ideological basis for the working men — right on the morrow of bourgeois revolutions — to regard as a battle-ground all the rights and liberties, without exception and simultaneously, of the economic man and politically conscious citizen. The fight was simultaneously launched for making the means of production general, common property, for abolishing the class character of ownership, for transforming political

rights into all-embracing, veritable "human" rights, for doing away with the actual restrictions by means of which the bourgeois class, from the moment of its gaining power, had excluded from the exercise of the abstractly conceived political rights and thereby from the exercise and possession of political power the overwhelming majority of society. These demands were summed up at the outset in the endeavour to reach a real social, economic and political equality. This idea of equality did not reflect the particular rights of working men but involved the requirement of a *declaration of the economic, social and cultural rights*, similar to that on political rights and of their effective safeguards. It is obvious that the demands of equality as were raised in the wake of bourgeois revolutions contained many Utopian dreams of the petty bourgeois, but it is also clear that these demands reflected after the French revolution the explicit interests of working men. As early as 1793, when the Robespierre declaration was made, the inclusion of the right to work and education in it must be deemed as a gesture towards the working men. The manifesto issued by the Babeuf conspiracy "The Manifesto of Equals" (1796) expressed the most important demands of the workers' groups for the right to equal educational opportunities and for the general and equal obligation to work (the logical counterpart of which is the safeguarding of the right to work for every individual). These ideas of equality were gradually transforming into demands which eventually discarded the insistence on the classical rights of man and citizen and put in the forefront the class demands of workers. This is not to say that the working class either refused to accept, or rejected the ideas on traditional rights of the French declaration; it meant rather that the working class was gradually becoming class-conscious, was emerging as a distinct revolutionary force and was reaching the level of evolution when it could demand the leadership of the struggle waged by the whole population for the "economic emancipation of labour", for the elimination of exploitation. Accordingly, proletarians substituted their own, distinct rights as the comprehensive rights of working men for the ideas of right and liberty of the bourgeois class. From this moment on the struggle waged for enforcing the rights of working people are no longer restricted to the recognition of economic, social and cultural rights, i.e. a new category of rights, but involved the comprehension that these rights could be translated in reality only within the framework of a new social system. In fact there arises the outline of a new type of state which is to serve the interests of the formerly oppressed and exploited majority in all spheres of all the rights, whether political, economic, cultural or social.

At that stage of evolution the working-class movement measures, of necessity, all social values, and thus the value of fundamental freedoms and liberties against the standard of the momentous antagonism between the *bourgeois and proletarian class*. The more so because by the middle of the last century the bloom of the natural law was in any case fading away from these rights, and it became obvious that the extent of their actual implementation for the working population corresponded to the success of the day-to-day fight waged for enforcing these. Thus, it became necessary to destroy in the masses of workers the unsophisticated belief

in the social values created by the great century of Enlightenment but betrayed by the bourgeoisie after it had come to power. The entire working-class had to be taught that there could be no social values which could force working men to cooperate with the exploiting classes and to give up their struggle against exploitation. It fell to the Communist Manifesto to substantiate that "the bourgeoisie dissolved personal dignity into an exchange value and replaced the numerous liberties laid down in charters and won with difficulties with the *sole* unscrupulous liberty of trading". The working-class in capitalist states should consider all laws, morals, religion as mere bourgeois prejudices; serving to disguise bourgeois interests. The rights expressed by these tenets protected (together with the laws and the entire legal system) the interests of the capitalist class. Illusions purporting that these afforded an overall institutions protection to individual personality and security must be given up. The Manifesto arms the workers, the vanguard of the revolution, to oppose all previous "private security and private safeguards" protected by the capitalist state. The destruction of these illusions constituted the prerequisite of taking over into public ownership the means of production. When these illusions were destroyed, merely the "bourgeois individuality", the "bourgeois self-assertion", and "bourgeois liberty" would be eliminated for "liberty means in the bourgeois order of production free trading, the unhindered sale of goods, "the freedom to exploit, a freedom which will have disappeared when profiteering will be stopped." "The phrases about free profiteering, as well as the other bourgeois slogans about liberty, make sense only in respect of the restricted profiteering, the medieval bourgeois plunged into servitude but are void of any sense in respect of the elimination by the communist of profiteering, of the bourgeois production relations and of the bourgeoisie itself." "The ideas of the freedom of conscience and religion were but the expressions of the domination of free competition relating to conscience." "Whom you consider as an individual is nothing but the bourgeois man of property." This judgement calls for the "veritable abolition of individuality" but it does not object to the freedom of individuals "whose property cannot be anymore the means of exploitation". In any case the Manifesto rejects all such ideas which would measure the elimination of bourgeois ownership against "the bourgeois concepts of liberty, law, culture, etc." — which are the products of the capitalist production relations.

Thus it was *not the fundamental rights and liberties* which were attacked in the Communist Manifesto but their *bourgeois construction and practice*. More than one and a half decade later the same idea is proclaimed in the declaration announcing the formation of the Ist International. It is laid down in that declaration that the struggle for the emancipation of the working-class is directed not at obtaining class privileges but at abolishing all kinds of class rule, at accomplishing the equality of rights and duties. But the emancipation of the working-class could be carried only by the working-class itself and this *principal* objective must dominate all other considerations. The working-class, at the first opportunity when it came to power even if for a brief period, proved that its efforts were aimed not at abolishing rights but to expand these for all. The proclamation of April 20, 1871 which may be

considered as the program of the Paris Commune addressed to the people of France holds out the prospect of the entirety of rights for all French citizens to enable them — as "*men and citizens and as working individuals* — to unfold all their abilities and natural bents in all walks of human activity". In this way the Paris Commune came near not only to the modern requirements of personality but also pledged itself for a wider and richer list of fundamental rights. This should be said even if it is clear that the old terms used to denote these rights were already covering a changed substance; the image of a society is appearing where all persons are "working-men" because working is a general obligation and, in turn, all working persons are also "citiziens", i.e. they share in and exercise political power. Thus in such a social system the economic, social and cultural rights appear as if pertaining to the working men only, but — just as the political rights — in fact they are secured for all citizens.

Less than half a century elapsed between the Paris Commune and the "Declaration on the Rights of the Working and Exploited People" and the first Soviet constitution — the first socialist summary of the citizens' rights. It is perhaps of a symbolical significance that both the French declaration and the socialist declaration on the rights of the working and exploited people were first debated in bourgeois national assemblies whose main objective was to bar the way of royal absolutism. But while the French National Assembly in 1789 represented social progress, and contributed to the formation of a new epoch by adopting the declaration on the rights of man and citizen, the *Constituent Assembly* created by the Russian bourgeois revolution, being an obsolete institution of a belated bourgeois revolution justified its own doom by the very fact that it refused to adopt the declaration on the rights of the working and exploited people. This rejection also shows that much more was involved in this declaration than a mere extension of the rights of individuals or citizens.

When either the declaration on the rights of the working and exploited people or the general part of the first, 1918 Soviet constitution laying down these rights are considered, we are faced with such instruments whose main function was to express the basic principles of a new social system, the achievements attained in the course of the revolutionary struggle fought for a new social system. But obviously it was not their purpose to lay down human rights with a legal precision. Besides, these instruments set out, explicitly and deliberately, to lay down the rights of working individuals and the exclusion of the exploiting class from the enjoyment of these rights and this fact determines also the character of the single rights. The rules connected e.g. with the freedom of the press provide for the emancipation of printing equipment and making these available for the *working people* mark the results attained. The freedom of organization and association is conferred upon industrial workers and poor peasants whom the necessary financial and other means are put at their disposal for this end — after the political and economic power of the exploiting classes have been done away with. A similar concept appears also in the freedom of assembly. It would equally be difficult to identify the right to education as it is conceived today with the promise of the government

of securing funds for the education of workers and poor peasants and of raising the educational level of working men. Likewise, the provisions on the right to work as it is understood today would have been meaningless under the then prevailing conditions when the main problem was how to enforce the general obligation of labour and how to use it to re-educate the former exploiting classes. General political rights, extending to all citizens are not found in these instruments either. It is the primary function of the constitution to exclude the exploiting class from the exercise of power. On the other hand, under the constitution state power was built on the Soviets, the mass organizations of the working people, defining thereby the frames of the structure and functioning of a government system which held out the perspective that literally all citizens of the state would be drawn into government activity. Also the citizens' duties acquired a different meaning. Instead of laying down conscription, e.g. the constitution simply proclaims the fact of arming the working people and disarming the exploiting classes. (There are of course several provisions in the constitution which recall, in their form, the traditional wording of rights and liberties as e.g. the equality between nationalities and races, the right of asylum, etc. But the substance of these rights was equally inseparable from the tasks the revolution was then facing.)

A great number of other tenets could be adduced to show that the first constitutional legislation in the emerging Soviet socialist state was not aimed at declaring, with a general force, the rights of man and citizen but laid down the rights of the *workers*. From this fact, which was always unequivocally pointed out and acknowledged by the Soviet government, was construed an accusation to the effect that the young Soviet state had rejected democracy and the fundamental rights of its citizens. But the first enactments of the Soviet state only reflected the state of affairs as they actually were: while exploiting classes were still existing and while the danger of their armed rebellion was actually threatening, and while these classes retained their influence in society and while individuals belonging to these classes were actually "not working people" — they had to be excluded from the enjoyment of the rights conferred upon the working people. This is however something quite different than a general rejection of the concept of fundamental human rights. This is borne out by the contemporary documents of the international working class movement, too. It is well-known that these constitutional provisions and legal views then adopted in the Soviet state truly reflected, in the given epoch, the views professed by the international revolutionary working class movement. The issue was discussed at the Ist Congress of the International (March 3—7, 1919) — at a time when international armed intervention and internal armed counter-revolution were at their height — and in the main the Congress adopted a positive stand in respect of the democratic rights and liberties when it laid down that "it is an inevitable consequence of the dictatorship of the proletariat that not only the general forms and institutions of democracy will have been changed; the changes to be effected will be aimed at securing a *real use of democracy for the capitalist-oppressed working classes*. And indeed, the form of the dictatorship of the proletariat which has already emerged in fact, e.g.

the power of Soviets in Russia, the Räte- (Council) system in Germany, the Shop Steward Committees and similar council-like institutions in other countries, mean and implement the actual opportunity of exercising democratic rights and liberties for the working classes, i.e. the overwhelming majority of the population which had never existed to a similar extent even in the best and most democratic states of bourgeois democracy".

The proclamation addressed by the IIIrd International to the peoples of the world explicitly rejects the accusation as if a victorious proletariat were to wipe out freedom and democracy. It is pointed out in the proclamation that only bourgeois democracy and its methods will be destroyed simultaneously with the overthrowing of bourgeois governments. On the other hand it is also pointedly stressed that it would amount to a betrayal of the proletariat in its life-and-death struggle waged against the exploiting classes if it were compelled to observe the rules of game as these prevail in political democracies. "To demand from the proletariat to observe piously the principles of political democracy in its last life-and-death struggle against capital were similar to asking a man defending his life against a murderer to observe the artificial and conventional rules of French boxing, let alone those rules which were framed by his enemy but which he himself does not take seriously."

The Vth All-Russian Congress of Soviets (July, 1918) which enacted the first Soviet constitution placed — for the first time — side by side the great French declaration, the Communist Manifesto and the first Soviet constitution stressing their historical significance. Indeed all three documents constituted milestones also in the history of human rights.

After the adoption of the first Soviet constitution the evolution of fundamental rights and duties has been advancing along two different lines. The Soviet state has started on the way which has led to extending the rights of the workers for all citizens, according to the laws of socialist society. With the accumulation of material and cultural wealth, this path leads to the emergence of new categories and new safeguards of rights on the economic, social and cultural plane. However, *in the other part of the world* the struggle between the proletariat and bourgeoisie has been sharpening to an unprecedented extent. On the one hand, as a result of the great international movement of the working class, economic and social rights have gradually found their way into bourgeois constitutions; on the other hand the repeated efforts of the most reactionary circles in imperialist states, bred by the general crisis of capitalism, to dispense with even the classical human rights — getting increasingly inconvenient — have become a permanent feature. When Fascist governments came to power, democratic rights, fundamental human rights and freedoms were wiped out, and all those ethical and cultural values which had been created in the last centuries by the evolution of human society were threatened with outright destruction.

This was the historical moment when the international working class movement was able to raise its voice on a world-wide scale for the protection of democratic rights and to offer an alliance to all social forces — irrespective of nationality, race, outlook and social status — which were willing to resist Fascist barbarism.

This historical moment made all people aware that in our days the catalogue of the fundamental human rights includes, also in capitalist countries, numerous achievements attained by the working class in its struggle. It is thus much more than just a tactical action in quest of allies, when the VIIth Congress of the International (1935) — though stressing the class-limitations of the bourgeois democratic rights — still takes an unequivocal stand for the same: "We believe in the Soviet democracy, in the democracy of the working people which is the most consistent democracy in the world. But we are and will be defending even the tiniest bourgeois democratic liberty in capitalist states which is threatened by Fascism and bourgeois reaction, because this is what the interests of the class struggle of the proletariat call for." This stand meant a certain change in the policial line of the IIIrd International, in which previously the emphasis was laid on exposing the class character of the bourgeois liberties.

In these years (the middle 'thirties), incidentally, *the attack against democratic rights* was not confined to the countries where Fascism had triumphed. It became then a veritable world phenomenon. It would be difficult to list those philosophical, sociological, political trends all of which provided ready-made ideologies depicting the democratic rights as obsolete, barring the way of evolution or as institutions retarding social achievements. It would be even more difficult to sum up those concrete political or legal measures which were aimed at restricting or eliminating these rights. The difficulties were also increased by the fact that the Soviet Union had at that time to cope with major internal economic and political problems. The socialist transformation of agriculture necessarily involved numerous economic troubles. As far as political life was concerned, the personality cult then emerging created an atmosphere favouring — to put it mildly — that the *indispensable rigour of statutes be further enhanced by inhuman actions.* In such a historical situation, when seemingly the whole world was all out against democratic rights and institutions, it was of a historical significance that the Soviet Union, adopting the constitution of 1936, put again the democratic rights and liberties extending to all citizens, in the foreground. (The domestic conditions for extending these rights to all citizens had become ripe by then in the Soviet Union after elimination of the exploiting classes.) Thus, the 1936 constitution of the Soviet Union provided a program of action for the fight waged for democratic rights at a time when the belief in democratic institutions had been shaken all over the world. This much should be stressed even if the limitations of the 1936 constitution are well known.

The idea of fundamental rights and liberties largely contributed to the Soviet Union and the Western democracies becoming talking partners in the middle 'thirties in assessing the repeated aggressive actions committed by the Fascist powers. Such was the international political atmosphere which eventually created the environment for the military alliance of the leading imperialist states and the Soviet Union (countries with so different social systems) which was to destroy with joint effort Fascism itself. Numerous other economic and foreign political interests contributed to the emergence of the world alliance against Fascism. However, it is undoubted that the millions of simple men and women, the peoples

and fighting soldiers standing behind the governments — ranging from the Russian Bolsheviks to the American Quakers — saw their common objective, their common moral basis, in the defence of human rights. This common objective accounts for the fact that the war could not be finished with the partial attainment of the war aims of one or the other power, and why it had to lead of necessity to the complete destruction of Fascism.

The momentous significance of the fundamental rights and liberties in the struggle against Fascism evolved finally into a universal effort towards elaborating a high-level and intricate set of guarantees which would prevent for all times to come the brutal annihilation of the universally recognized fundamental rights and freedoms.

The bitter experiences made it obvious that the means resorted to hitherto in positive law were inadequate for their protection. The elaboration of legal safeguards of a novel type, which would meet the requirements of countries with different levels of development, let alone with differing social systems, would clearly take a longer time. In this state of affairs the opportunity was offering itself to revive the tenets of *natural law* long surpassed formerly by positivist legal theories. Although these tenets have not added a single new institution to the enforcement of the actual safeguards of these rights, they still have the advantage of not being limited by the results of modern social sciences and appear to be capable of giving answers, in a speculative way, to all problems relating to the protection of fundamental rights. The principal danger of the new natural law trends lies in the very fact that these divert attention from the opportunities available in extending the safeguards in the field of positive law. It is clear that natural law schools will necessarily decline at the moment when an increasing number of realistic safeguards will have met the requirements of the increased protection of democratic rights. Nowadays, however, it appears to be appropriate that a paper in this volume should be devoted to assessing these trends.

In the legal concept of historical materialism it is almost a theoretical point of departure that the new means of safeguarding human rights can be defined only in the context of those social forces, and built upon those classes and strata of society which have an interest in the maintenance and constant improvement of these rights and liberties. It has been shown by experience that *the social basis of the protection of rights and liberties* is not only very extensive but it is expanding in keeping with the augmentation of the catalogue of these rights' and of their safeguards. Looking at the matter from another aspect: as to the safeguards themselves, a very significant, almost primary, function may be obtained by resorting to opportunities afforded by positive law. In any case the system of legal safeguards is displaying a distinct perfectioning both in municipal laws and in international law. And the perspective of the development of safeguards points unmistakably to the further differentiation and strengthening of legal safeguards.

As to international law, no one could state that the legal and structural patterns of the desirable solutions have already been found. It is also clear that in the past

two decades the *international legal safeguards* have been developing under very contradictory conditions. But this state of affairs notwithstanding, it would be an exaggeration to say that all efforts in this direction have proved useless. From the Atlantic Charter, in which was declared the requirement to introduce international safeguards to protect human rights, to the UN Charter and the Universal Declaration of Human Rights, and to the partial agreements adopted recently and securing certain rights (e. g. the right of equality), numerous international instruments bear witness that under the conditions of peaceful co-existence there are realistic opportunities to lay down international legal safeguards which are in conformity with the sovereignty of states. The increasing importance of international legal safeguards has made it almost a compelling necessity to devote a paper to the historical evolution and present state of these safeguards.

But however great the expansion and differentiation of the system of international legal safeguards may be, the primary role in enforcing these rights will always be allotted to safeguards laid down in the municipal laws of states. In the future, at least in a long-term perspective of development, it is the *effective municipal law measures* which will, on a mass scale, determine the practical enforcement of these rights. In any case, the effective implementation of these safeguards constitutes also a prerequisite of an international regulation. Thus it is clear that recent research has laid a particular stress on the many-sided, sociological, legal, economic, statistical, etc. examination of the process which leads from the idea of these rights (from the political views prevailing in a given type of society and relating to these rights) through the expression of these in the legal system (in statutory law, eventually in constitutional regulation, in legal institutions) to the practical enforcement of these rights. A paper is devoted in this volume to one of the most important aspects of the issue, namely those social factors which have a bearing on the trend of evolution of this process under the conditions of bourgeois society.

If the problem of legal safeguards is approached from the angle of social realities it may safely be said that the perspectives of development are almost unlimited in this field also in our days, the fact notwithstanding that development is invariably characterized by a sharp struggle. Subsequent pages will revert to analysing why the problem of the legal safeguards of the economic, social and cultural rights are not and, indeed, cannot be solved, in the main, under capitalist conditions. But there are much more loopholes in the system of the safeguards of, what are termed, classical liberties than can be endured in the political and ideological etiquette of bourgeois democracies. An impressive number of instances could be adduced to prove that in countries which are very proud of their democratic traditions and the stage of their development a very wide gap exists between the rights as proclaimed and their actual enforcement, if the position of the working classes is examined. It is perhaps unnecessary by now to go into arguing that the statutory regulation of legal safeguards and principally the process of their practical implementation is not dependent upon the benevolence or malevolence of

governments and not even upon the execution of scientifically prepared codification projects. Under the conditions of a capitalist society the forces which have an interest in curtailing or wiping out democratic rights will always be vigorous. This tenet is well illustrated recently by the long-lasting struggle about the adoption of legislation on civil rights in the US.

The *developing countries* which have become free from colonial oppression are now taking the initial steps in actually safeguarding fundamental rights. Those by no means insignificant changes in the stage of social development will undoubtedly be reflected in the legal safeguards just being laid down or to be laid down in the countries concerned. In a number of instances the introduction of really effective safeguards is hampered by the lack of legal traditions or legal erudition. The colonial rule must be blamed for that. But it is a problem of today that the basic international declarations and conventions on the fundamental rights do not always take into account the special characteristics of the developing countries. Thus there exists a double danger that these states when adopting and declaring requirements suited for the most developed countries, will only formally comply with the provisions as laid down in the UN-Charter. In the long run this fact is, to a certain extent, a hindrance in the way of evolution. Namely, due to this state of affairs, some of these countries are prevented from introducing, enacting and practically implementing institutions which would be in harmony with their actual social and economic development, conforming thereby to a minimum standard, acceptable on an international scale, which could be a realistic foundation for a continued evolution and for the practical implementation of institutions which — at present — can only be established in the most developed countries.

New problems have been involved after the second world war in respect of the evolution of the socialist concept of fundamental rights and liberties, through the appearance of *people's democratic states* as the new varieties of a socialist state. At first it was not clear in these countries, either in jurisprudence or judicial practice, whether the socialist regulation of the citizens' fundamental rights should start from the concept of the *general rights of citizens* or — as had been the case in the first stage of the Soviet development — the *rights of the working people*. However, subsequent upon the defeat of Fascism the main problem was to secure the achievements attained in bourgeois democracies, and the relatively peaceful way of popular democratic development led to the result that the rights were laid down so as to embrace all citizens. This fact is reflected in the relevant constitutional provisions, though it cannot be said that this trend was quite unequivocal. The concept to emphasize the rights of the working people was apparent in some instances on the level of constitutional regulation, and still more in the statutes giving effect to these rules — at least in the first stage of development. By now, when the foundations of socialist society have already been laid down in the people's democratic countries, exploitation has been put an end to, such a unity in society has emerged which provides a ground for the concept of extending, in their entirety, the fundamental human rights to all citizens. An opportunity is thus afforded to place in the foreground the common, general features of rights

and duties prevailing in the Soviet Union and in the people's democratic countries. When the common features are analysed it should not be left out of consideration that there are numerous variances in the legal systems of various socialist countries as regards these rights and their safeguards. These variances are closely coupled with the social conditions, historical traditions, legal heritage of the respective countries. The fact should not be left out of account that in some of the socialist countries the socialist revolution came in the wake of relatively more developed bourgeois democratic institutions or was faced with such demands, which had an impact, to a certain extent, on the formation of the socialist institution. The variances are further stressed by the emergence in the Soviet Union of the all-people state, where the dictatorship of the proletariat has already come to an end, while the people's democratic states have only started on this way of evolution.

In the socialist states the central problem of expanding these rights has become the *introduction of the differentiated system of legal safeguards*, in addition to what are termed material safeguards. It may also be said that it is only in the past years that the appropriate conclusions necessarily following from the extension of the "workers' rights" to the entirety of citizens have been drawn. This is not to say that the category of the workers' rights was alien to the concept of legal safeguards, but it is also undoubted that when the rights pertaining to all citizens are concerned the conditions of laying down detailed safeguards, general rules of conduct and of enacting these in high-degree legal rules are much more favourable. This should be stressed all the more because the 1936 Soviet constitution and the constitutions of the people's democratic states which — in many ways — adopted these patterns of regulation, even when putting in the foreground the all-comprising nature of citizens' rights, have mostly remained at the level of laying down the material safeguards, — a characteristic feature of the first stage of Soviet development. However, the realization has been gaining ground in the past years that the strengthening of material safeguards, the pointing out of such elements of the social system which are indeed the primary requirements of the exercise of all such rights, are not incompatible with the detailed elaboration of the legal safeguards of these rights and with their *laying down in constitutions*. The elaboration of legal safeguards has been to a large extent stepped up by the negative experiences gained in the period of the personality cult. This period served as a proof that, although there is no conflict and, indeed, there cannot be a conflict between individual and community interests in a socialist society, yet the occurrence of such incidental conflicts which originate in the shortcomings of the activity of the government machinery, are not precluded, particularly when the organs exercising state power superimpose their specific interests upon those of the community as a whole. It is concomitant with this realization that in socialist legal writings, in addition to economic and legal safeguards, numerous other types of safeguards are put forward as distinct phenomena. Thus e.g. the function of *political*, *organizational*, *ideological*, *etc.* safeguards is distinctly pointed out, when the implementation of the rights of citizens is discussed always with a stress upon the outstanding importance of the legal safeguards.

It should not be left out of consideration that the major part of the legal safeguards had already been evolved at an earlier stage of development but much of these had not been included within constitutional provisions. Another part of these is now in the state of formation. The new requirements are indicated by the recently enacted socialist constitutions and the preparatory work upon these are in progress in several socialist countries. This had, of course, to be taken into consideration when the papers on the single human rights were prepared, but owing to the fact that the analysis of the existing institutions was envisaged, in this volume the examination of institutions now emerging was necessarily restricted.

Certain elements of the evolution now in progress should all the more be taken into account because the requirement of the differentiation of safeguards and particularly the demand for laying down detailed legal safeguards may affect the way of regulating the fundamental rights also from another aspect. It may be assumed that e.g. the abstract method of regulation hitherto characteristic of socialist constitutions in this sphere will have to be reappraised. This may lead to the result that institutions which have hitherto been the safeguards of comprehensive human rights and thus left out from constitutional regulation, will eventually be considered as topics of constitutional provisions. The demand for a more specified regulation appears to arise in the field of what are termed personality rights.

The set of problems connected with the citizens' fundamental rights and duties was placed in the foreground after the second world war by all the *Congresses of the Communist Party of the Soviet Union* from specific aspects. In 1952 the XIXth Congress evoked in general the significance of democratic liberties. In addition to national independence *it referred to the expanding, strengthening and protecting of democratic liberties* as the principal political idea that would, in the years to come, have an effect on social evolution on a world scale. It is known that when at the XXth Congress (1956) the abuses and unlawful actions indulged in during the period of personality cult were analyzed, and the *consolidation and expansion of the socialist rule of law* was emphasized, the *legal safeguards of individual liberties* were, in the main, laid stress upon. At the XXIst Congress (1959) the many-sided expansion of *political democracy* and the relevant liberties were placed in the centre of discussion. The XXIInd Congress (1962) and the program of the Soviet Communist Party adopted by it focussed attention on the *fundamental rights of citizens* and together with it on the conditions of the *unfolding of personality* within the sphere of all the human rights. Subsequent upon the XXIInd Congress a rich program was provided for law-makers and constitutional regulation mainly by the requirement of "protecting through all means the rights and interests of citizens and securing veritable individual freedom". But the growing significance of the legal safeguards within the sphere of political liberties should invariably be taken into account. The importance of the citizens' independent actions, their free initiative and expression in solving the tasks with which society is faced, will be emphasized to an increasing extent. This requirement, in turn, involves that the well-defined respective spheres not only of individual and state but also of individual, government and social activity be delimited through legal

institutions. When thus the sphere of individual activity is delimited an added importance is lent to the constitutional and other legal regulation of the citizens' fundamental rights and duties.

As a result of the domestic development of the socialist states the *problem of the safeguards of economic, social and cultural rights* is raised in a novel way. The realization (which appears in several papers included in this volume) that the pattern of the regulation of these rights as now adopted comprises, essentially, a dual substance: namely the basic principles which express the social system, as well as the fundamental rights of citizens, will necessarily involve a reappraisal of the mode of regulation hitherto followed. These *rights — being the basic principles of the social structure* — are not rights pertaining to individuals but provisions binding government and eventually social organs. *The other aspect of the substance of these rights constitutes individual rights* for satisfying specific economic, social and cultural demands and for sharing in specific services. This requirement calls for a more diversified regulation of the legal safeguards of the economic, social and cultural rights — as fundamental rights — than has so far been resorted to.

In a socialist state which organizes production and the distribution of the commodities the introduction of these legal safeguards and the laying down of their main features in the constitution is not only feasible but (as will be seen later) it will become a generally voiced demand, in keeping with the advance of evolution. This amounts to saying that in a socialist state there is *no difference — as to their legal nature — between this group of rights and what are described as classical liberties.* Such a distinction may have a real basis under capitalist conditions though, and the legal safeguards may have a role to play in guaranteeing a certain minimum level.

It is another question that the system of regulation in socialist constitutions has not drawn the conclusions which follow from the dual nature of the economic, social and cultural rights as referred to above. The examination of the reasons would lead far; this was partly occasioned by the not quite clear perception of theoretical problems, but it may also be assumed that the uncertainty about the recognition of the universal nature of these rights has perhaps retarded the process of evolution.

A consistent assertion of the universal character of fundamental rights necessarily ties up the problems of citizens' equality of rights with the legal regulation of the safeguards of individual rights. Incidentally, the securing of the equality of rights from all aspects has been the central problem of the post-war evolution of human rights. (For this reason a paper is devoted in this volume to the theoretical foundations of the equality of rights.) While in capitalist states the chances of the evolution of the equality of rights end with the classical rights, in socialist states these apply to the entire catalogue of rights; the real equality of rights being the basic safeguard also of the enforcement of the economic, social and cultural rights.

It is perhaps unnecessary to point out that the consistent implementation of the universal nature of fundamental rights is *different from an egalitarianism*

conceived in the vulgar sense. The enforcement (the extent of which is expanding) of the principle of financial incentives runs counter in its perspectives to ideas which would prefer to introduce some kind of allocation system parcelling out among the citizens in an egalitarian way — the commodities produced and the services to be shared. Citizens may satisfy their needs in proportion to the work done, through the operation of the economic process in the economic, cultural and social sphere. But special demands of the kind, the satisfaction of which requires specific legal means, are increasing in number. Such safeguards have begun to emerge in various fields or in certain socialist countries. Thus, as it is known, an almost chronic manpower shortage in socialist states is one of the most outstanding economic guarantees of the right to work. On the other hand, the freedom of entering into labour contract means an adequate legal guarantee for the citizens to do work suited to their abilities and training. The relating legal safeguards have not yet been worked out in all fields, but the increasing demand for the introduction of legal guarantees is indicated by the adoption of several legal institutions. Thus, e.g. in several socialist countries government departments are legally bound to offer well-defined suitable jobs for men and women graduating from universities or colleges. It is also common knowledge that the increasing number of universities and colleges are capable of satisfying the demand for higher education to an annually increasing extent. Admission into specific universities or faculties appears already as an individual right of the citizen; for this reason a number of statutes provide that application of admission should be decided upon on equal terms, as far as possible, within the limits which observe also the plans of manpower economy. A number of socialist countries adopted detailed legislation which secures that citizens, after their titles have been duly examined, be allotted newly built homes on equal terms, in accordance with a strictly defined system, on the ground of the principle of the equality of rights. On the other hand, numerous illustrations could be adduced showing that the formation of legal safeguards in this sphere is not conscious enough, not comprehensive enough and lacking even in fields where the conditions are ripe for them.

The insistence in this field on the adoption of legal regulation or, what is more, of detailed legislation may appear somewhat unusual. Under the conditions of capitalist society legal regulation in this field might appear absurd or susceptible of consideration only in the conditions of emergency calling for state intervention. The demand for a legal regulation in a socialist state (which is in charge of the distribution of the products) derives, of course, from quite different reasons. In fact a number of such social, communal, health, etc. services are run by state and society — just in order to better implement the economic, social and cultural rights — where the sums to be paid by citizens for their use are much lower than their financial value or overhead costs. The fixing of the amounts of reimbursements is not merely a question of economic policy; it is closely connected with the perspective of the evolution of socialist society gradually adopting the principle of communism, namely in the field of distribution "to all according to his needs". Already at the present stage of the development of socialist states an increasing

portion of individual incomes is made up of benefits, outside of wages and salaries, where the sharing in the commodities produced is not a countervalue of the work done, but is based on the equality of citizens and equality of rights. This is particularly striking in the field of cultural, social, public health and other communal services which are practically almost gratuitous. The fundamental function of the general legal safeguards in this context is to actually ensure equality, and thereby to bar the way of establishing privileges for groups or individuals.

This volume devotes a large space to the economic, social and cultural rights of citizens as warranted by their significance, and indicates the new problems encountered within this scope.

A number of new questions are raised in socialist states by the constitutional and other legislative regulation of what are called *classical liberties*. These new issues are closely related to the process of evolution now going on in the Soviet Union and people's democratic countries in developing all aspects of socialist democracy. Socialist democracy is evolving nowadays particularly in two directions: one trend is the strengthening and developing of the social and representative elements of the state structure, the other is the furthering of the activity of autonomous social organizations, voluntary associations which are independent of government departments and on which quite a number of government functions is being transferred. Both trends are concomitant with an expansion of direct democratic institutions. This process of development places in the foreground the issues of what are called *political liberties* and the continued diversification of their legal safeguards. The strengthening of the rights of personality, their increased importance involves of necessity a more precise definition of the individual liberties. Consequentially a part is devoted in this volume to the new forms of appearance of the most important classical liberties.

When single rights and duties are analyzed, difficulties are caused by the fact that in several socialist countries the whole set of statutes regulating fundamental rights has been undergoing almost continuous changes in recent years. It is namely a fact that in the majority of socialist constitutions the new requirements relating to the regulation of these rights are not adequately reflected. In the Soviet Union e.g. the chapter of the constitution of 1936 still in force on the citizens' rights has hardly changed in the last 30 years, while tremendous changes have ensued in that period in the life of the Soviet state and society. These changes are in most parts reflected in statutes implementing single provisions of the constitution. As a result there is a certain gap between the provisions of the constitution and the statutes materializing them in detail. The preparatory work now going on in respect of the introduction of a new constitution is faced with the task to summarize the most important aspects of this evolution as a fundamental enactment. And at the same time it can also be assumed that the constitutional provisions now in preparation (and suited to the needs of a class-less, all-nation society) will have a major impact upon the further evolution of the entire Soviet legal system, and within that upon the legislation on the citizens' rights and duties. In the majority of people's democratic countries — among these

also in Hungary — the constitutions in force were mostly adopted in the first stage of the socialist development. The preparatory activity of drafting new constitutions has already started. This activity envisages to consolidate the achievement hitherto attained in laying the foundations of a socialist society, and to define the new-type safeguards of the rights and duties has already been started. The socialist constitutions adopted in recent years (those of Viet-Nam, Mongolia, Czechoslovakia, Yugoslavia) already display some new elements in regulating rights and duties. References to these are found in this volume in all instances. It should not be left out of consideration either that the social conditions in these countries are, to a greater or lesser extent, varied. It should also be added that these countries have only made the first steps in the way of practically implementing the institutions as laid down in the general provisions of the constitutions. This notwithstanding, a certain material is furnished by these new constitutional provisions for the relating theoretical abstraction.

This volume contains the selected, comprehensive theoretical chapters of a voluminous work published in 1965 in Hungarian "The Citizens' Fundamental Rights and Duties" ("Az állampolgárok alapvető jogai és kötelességei") — a collection of essays. The Hungarian publication which is much lengthier than the present volume did not set the aim to cover the entire sphere of citizens' rights and duties, let alone to give a final conclusion on the subject indicated and held important under Hungarian conditions. That volume merely intended to place in the foreground the most comprehensive issues and thus to lay the basis, to smooth the way, for a many-sided detailed research activity. The latter, of course, should be based on the direct study of social conditions in all fields which have an important bearing on the enforcement of human rights. Completeness can even less be claimed for the present, abbreviated, English edition. When compiling the material of the present volume, the aim was pursued in the first place to give the reader, as far as possible, a comprehensive survey of the Marxist assessment and concept of the past and future trend of evolution of the citizens' fundamental rights, to give an insight into the general state of these rights in the socialist countries, and to provide a more detailed information on the constitutional regulation and practical implementation of the most important human rights in Hungary. These considerations served as a guide when the chapters concerned were made shorter or when the chapters in the Hungarian edition which concern other aspects, e.g. economic, social and cultural rights or other liberties, were rewritten and summarized.

The Hungarian edition which serves as a basis for the present volume, was launched on the 175th anniversary of the 1789 Declaration of the French Revolution — the first synthesis of basic human rights — documenting thereby that socialist Hungarian jurisprudence appreciates the significance of this anniversary and together with it all the revolutionary traditions of the struggle waged for the vindication of citizens' rights. This is not to say that in the second half of the 20th century, ideas originating in the 18th or 19th century should be still defended. The social progress of nearly two centuries (and within that period

almost half a century of socialist practice) has widened and made up-to-date the concept of these rights for us too. But we are also convinced that the formation of really momentous ideas and the way of their implementation can only be measured in centuries. And even if for a superficial thinker there may appear several identical aspects between the abstract maxims expounded by scholars during the Age of Enlightenment and the ideas, concrete objectives and the plans which mould the future of the socialist society, this should be attributed to the fact that the conditions for settling once and for all the relationship between community and individual, the overwhelming antagonism between proletarians and bourgeois has been surpassed in a vast territory of the globe, in the socialist countries. The political thinkers in the Age of Enlightenment could not have been aware of the internal contradictions which were to tear apart bourgeois societies. On the other hand, the socialist societies — advancing towards communism — have created the conditions of assessing the evolution, expansion and practical implementation of fundamental rights through a prism cleared of the class-antagonisms between individual and community, between personality and society.