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JUDGE HALPERN AS AN ADVOCATE OF HUMAN RIGHTS

JUSTICE PHILIP HALPERN began his service in the UN as a member of the United States Delegation to the Commission on Human Rights at its 1953 session in Geneva. His competence was immediately recognized, and the Human Rights Commission elected him soon thereafter to its Subcommittee on the Prevention of Discrimination and Protection of Minorities. The Subcommittee is composed of fourteen experts from different countries. They serve in their individual capacity, and thus without the protection of governmental instructions when forced to vote on controversial issues. Judge Halpern, as his colleagues usually called him, was known for the depth and generosity of his concern for human justice. His skill and readiness in speech brought him into frequent conflict with those of other opinion, particularly with members from the Soviet bloc. That he retained their admiration as well as their personal friendship was a tribute to his quality of mind as well as his warmth of feeling.

The Subcommittee meets annually in New York in January. At his first session, in January 1954, Judge Halpern faced a preliminary report, prepared by Professor Ammoun of Lebanon as a special rapporteur on discrimination in education, which *inter alia* coupled the United States with the Union of South Africa in requiring racial segregation in public schools. Judge Halpern refuted Soviet and other attacks arising from this statement by pointing to the tremendous effort then under way to improve schools in our southern States and showing by statistics that the number of Negroes in American colleges exceeded the entire college population of many countries. At no point, however, did he defend the doctrine of racial superiority nor deny the need for change; on the contrary, he sought by all possible means to press the claim of children denied full educational opportunity, either because schools were lacking, or because they were denied free access to the great ideas of history and philosophy by communist or other political strictures.

Fortunately for the United States, and to Judge Halpern's own great satisfaction, the Supreme Court decision of the following March, denouncing the doctrine of "separate but equal" in education, came in time to change the final report; in it Dr. Ammoun hailed the United States as a leader in seeking revision of discriminatory education laws.

In the meantime Judge Halpern had been invited by the Subcommittee to prepare an outline for a study of discrimination in religious rights and practices. In his study, presented in 1955, he laid out the basic human rights provisions relating to religious freedom in the United Nations Charter and in the Universal Declaration of Human Rights. He also pointed to threats to religious believers existing in many areas, and though he named no particular countries, the U.S.S.R. member sought at length to turn the Subcommittee's attention to other matters.

As the result the Subcommittee undertook a full study of discrimination in religion and named its Indian member, Sir Arcot Krishnaswami, as special rapporteur. A critical element in this study plan was freedom for the rapporteur to make use of all sources of information in his discretion. Although Soviet-bloc members sought to limit the rapporteur to official reports, Judge Halpern and others succeeded in maintaining his access also to non-governmental and scholarly sources. Recognizing that the non-governmental organizations in consultative status with the Economic and Social Council (NGO's)—a group of some hundred international organizations with technical competence—would be of great importance in providing material for this study, he sought them out to urge their responsibility for research and reporting.

Among these NGO's were a number of interested religious groups—Catholic, Jewish, Protestant; among them also were the International League for the Rights of Man and civic and labor organizations with experience in gathering data from refugees as well as from their own members. Few of them were equipped at that time with staff or expert resources for the task, but they responded to his promise of support for their efforts. While their contribution to the Krishnaswami study proved relatively small, plans developed among the NGO's provided highly significant documentation a few years later, when the Subcommittee undertook an examination of the anti-Semitism touched off across the world by pre-Christmas incidents in Germany.

Roger Baldwin, perhaps the dean of the NGO representatives, sitting session after session in the United Nations, speaks of his participation in the Subcommittee during Judge Halpern's period of service as a "satisfying duty."

The meetings, he writes were marked by lively debates and satisfying conclusions. . . .

Philip Halpern brought to bear a power of mind and expression so keen and quick that he often left a lot of us struggling to catch up. . . . He has left in the accomplishments of the Subcommittee, where so much of the UN human rights activities start, a record and an impress of enduring value.¹

Repeatedly in the debates the Soviet members of the Subcommittee accused free governments of tolerating "hate propaganda" and sought to ban free speech. Judge Halpern was scathing in exposing the hypocrisy of these proposals. "The menace in the world today," he said in an early session, "is not hatred propaganda by individuals to be prevented by government law. The menace in the world today is government-directed and government-inspired propaganda." He continued:

As a co-religionist of six million who were killed by the last authoritarian government that went down to defeat, I need no reminder of the fact that it is not the private agitation which needs prohibition but agitation by governments. That is the phenomenon

1. Letter from Roger Baldwin to Rachel C. Nason, November 3, 1963.

of the Twentieth Century—the use of the advocacy of racial, religious, national or linguistic hostility as an instrument of national policy for one of two purposes, either for the purpose of taking this particular minority group, whether it is the Jews in Germany or a national group in another country, and using them as a scapegoat to divert the attention of the people from their very real grievances against their government, to divert their attention from the social, economic and political evils for which the government was responsible, and to find a scapegoat to whom, in a Freudian trick, the government attempts to transfer public resentment.

Another phenomenon of the Twentieth Century is the use and advocacy of racial, national, religious hostility as an instrument of national policy for the purpose of advancing and imposing a monolithic national culture. A totalitarian country cannot afford to have within its borders any cultural group that maintains an independent cultural point of view which it shares with persons outside of its borders. It must blind its peoples to the existence of an outside world. They can see the outside world only in the mirror which they are permitted to look into after it has been carefully screened through the thought control and mind control of its dominant propaganda agencies.²

Judge Halpern favored suppression of government propaganda as a means of protecting free speech for the individual. He believed deeply in the power of a free people and a free press to distinguish truth from error. In a 1954 statement which was quoted widely by his colleagues in later sessions, he stated his philosophy, and likewise his faith in American democracy, in classic terms:

Here we have the problem of the extent to which it would be wise to give governments the power to suppress free speech and to suppress free press on the part of its own citizens. And I think this Subcommittee, after very thoughtful consideration during two prior sessions, struck the balance at the right place, that the advocacy of hostility becomes a subject of punishment or prevention by the state when it constitutes an incitement to violence.

That is the theory upon which the free democracies of the world stand. We take the position that it is incompatible with our concept of freedom of speech and freedom of the press, freedom of expression generally, to entrust any government agency with the power of censorship. It is only when the advocacy reaches the point of an overt act, of inciting to violence or illegal action, when in accordance with the phrase used by the great American jurist Oliver Wendell Holmes, "there is a clear and present danger that the words will incite to action," then according to the concept of democracy it is the function and duty of the government to step in.

If a government steps in before that time, at an earlier stage, then history has demonstrated that the cure is worse than the disease, and there is a much greater danger of injury to freedom through

2. U.N. Sub. on Prev. of Discrim. and Prot. of Min., 6th Sess. (E/CN.4/Sub.2/SR.130) (1954).

governmental censorship than there is through occasional and sporadic advocacy by individuals of nonsensical hostility.

We take this view, and so does every democracy that has confidence in the strength of its own democracy, confidence in the strength of its own people, confidence in the ability of its people to shake off improper and foolish appeals. It is the view of all such democracies that they need no governmental protection against objectionable ideas. We give full freedom to crackpots. We take the view that the foolish vaporings of a crackpot will disappear in the bright sunlight of free discussion just as the early mist disappears in the sunlight of the dawn. We see a much greater menace of thought control in governmental censorship no matter how laudatory and commendable may be the objective.

. . . If I may quote from a recent opinion of an appellate court in New York State—and I trust no one will ask me who the author of this sentence was—a very recent opinion which expresses my personal philosophy—and I think it also expresses the philosophy of the free democracies, confident as they are in their strength to shake off, to receive and digest and reject improper propaganda pleas—this quotation runs as follows: “Freedom of expression is freedom alike for ‘propaganda’ which we deplore and for ‘education’ of which we approve.”

The difference between propaganda and education, when the drawing of that distinction is entrusted to government, is only in the eye and in the mind of the government, because it is the governmental censor who at the end decides what is education and what is propaganda. The things he does not like he calls “propaganda” and forbids them. The things of which he approves he calls “education.”

Once we set our feet on that path, once we entrust to any governmental authority the power to draw that distinction with finality, to take either the pre-censorship step of injunction or the post-publication step of criminal prosecution, we are on the road to totalitarianism.³

In January 1962, when the Berlin wall was fresh, the Subcommittee was engaged in a study of the right of everyone to leave any country, including his own. During the debate news came of the first escapes from East Berlin by tunneling under the wall. The spectacle of men and women in such misery moved Judge Halpern sharply; he denounced the violation of human dignity in forcing men to “crawl like worms.” Stung by his rebuke, Mme. Miranova, the Soviet member, demanded time for a reply in which she read at length from Senator Javits’ book on “Discrimination, USA.” The Judge cancelled a long-standing appointment to remain in the room while she read; it was only courteous, he said, to “take his punishment.” The echoes of this exchange pervade the Subcommittee’s final report on this study, completed in 1963; despite Soviet efforts to delete reference, the Berlin wall is described as an ultimate example of a government’s efforts to imprison its people.

The Judge’s response to Mme. Miranova’s long tirade was one of grati-

3. *Ibid.*

tude for Senator Javits' right to criticize his country and to work as a citizen for its betterment. "The history of liberty," said the Judge, "is not the history of the extension of governmental power. It is the history of the extension of governmental restraints." He continued:

If I may refer to our own Bill of Rights, which has stood the test of time for over 160 years and which we believe has developed in our country a kind of free democracy which we hope other countries will look to, as we looked to other countries as a result of their experimentation, our own Bill of Rights contains no restraints against the individual, none whatever. The only illustration of a restraint against the individual in our constitution was the ill-fated prohibition experiment, which was repealed. But our Bill of Rights, supplemented by our fourteen amendments, consists of restraints first against the federal government, this new government that was being created by the thirteen states. Then as a result of the fourteenth amendment, these restraints have now been carried over and made applicable to the states to restrain the states from state action.

There is a lesson which we think the world can draw from that successful experiment in the development of a democracy, that what we ought to be concerned about is finding ways, by constitutions, statutes and ultimately by the force of world opinion . . . to find restraints against governmental action, and we ought to steer clear as far as we can of extending the power of the government against the freedom of individuals. I urge you to think deeply about that fundamental approach to this problem.

It is an approach which our country has found to be the best assurance of individual liberty. With all the experimentation we have had in the economic and social field—and those of you who are familiar with recent developments in our country realize that we have adopted a great many experimental economic and social changes . . . our United States Supreme Court, our lower courts, our Congress and our State Legislatures have stood firmly against the extension of any paternalistic ideas into the realm of freedom of expression and freedom of thought. In that realm we have stood rigidly for complete freedom from governmental interference and upon that rock we continue to stand.⁴

His colleagues have written of Judge Halpern's work. Professor Richard Hiscocks, for many years the United Kingdom expert in the Subcommission, says in his tribute:

Philip Halpern's zest for work and his personal friendliness to his colleagues were an example to all who are engaged in activities at the United Nations. I remember particularly well working with him at the time of the anti-Semitic outbreaks during the winter of 1959-1960. His humanity, his hatred of injustice, and his vigour in action were then revealed at their best.⁵

4. U.N. Sub. on Prev. of Discrim. and Prot. of Min., 14th Sess. (E/CN.4/Sub.2/SR.371) (1962).

5. Letter from Professor Richard Hiscocks to Rachel C. Nason, November 25, 1963.

Another who shared with Judge Halpern, Judge Saario of the Supreme Court of Appeals in Finland, writes:

As a member of the United Nations Subcommittee on Prevention of Discrimination and Protection of Minorities I came to know and respect Judge Halpern. For many years he was one of the most active members of the Subcommittee. In this capacity he was guided by the noblest principles of humanity. The dignity and the worth of the human person constituted for him one of the basic values of life, for the attainment of which he was always ready to work with unrelenting energy and consummate fortitude. All of his actions were characterized both by precise legal thinking and by a positive approach to the many problems with which the Subcommittee was confronted.⁶

Those of us in the Department of State who had the privilege of working with Judge Halpern can attest likewise to his unfailing good humor, his generous wisdom and his determination for justice. His thorough scholarship and clear insight made him an invaluable participant in every discussion. Because he was both brilliant and articulate, he was able to stimulate fresh thought on difficult issues and win support for new courses of action. Throughout his service, he furthered the human rights objectives of the United Nations Charter.*

RACHEL CONRAD NASON, *Foreign Affairs Officer*
United States Department of State

6. Letter from Judge Saario to Rachel C. Nason, November 19, 1963.

* The views expressed are those of the author, and do not necessarily represent those of the United States Government.