

# Human Rights at San Francisco

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On January 8, 1918, ten months before the armistice which marked the end of the First World War, President Woodrow Wilson delivered his Fourteen Points address to Congress. Wilson called, as the enduring basis of a world made safe for democracy, for open covenants of peace, freedom of navigation, removal of economic barriers, guarantees of armament reduction, impartial adjustment of colonial claims, and a general association of nations affording mutual guarantees of political independence and territorial integrity to great and small states alike.

Twenty-three years later, after Adolf Hitler's storm troopers had goose-stepped triumphantly through Poland, Norway, the Low Countries, and France, shattering Wilson's dream of a new world order, President Franklin D. Roosevelt and Prime Minister Winston Churchill formulated the postwar aims of their respective countries at Argentia Bay, off Newfoundland. The Atlantic Charter renounced territorial aggrandizement, supported the right of peoples to choose their own form of government and cooperative efforts to improve their economic position and social security, and pledged freedom from want and fear. Once again, long before the last shot had been fired, the United States committed itself to a brave new world, based on peace and justice for all men.

The emphasis which Wilson had placed on national self-determination and a peace without victory among equals had shifted, by 1941, to the international protection of the rights of man. In his annual message to Congress of that year, President Roosevelt urged American support of those people who were fighting in defense of the "four freedoms": freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear.

The idea of international guarantees for human rights had found many adherents, in this country and abroad, even before the war

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began. Pacifist, educational, and religious groups pressed for such guarantees to provide the only reliable framework for world security. A Committee to Study the Organization of Peace (C. S. O. P.) met in New York City on November 5, 1939, two months after Germany had invaded Poland, "to exert what influence it can to ensure that the United States, whether or not forced to enter the present struggle, shall not again fail to play its part in any opportunity which may offer to organize a durable peace." Specifically, the committee, chaired by the eminent Columbia University historian, James T. Shotwell, urged an international bill of rights as "an indispensable basis of . . . peace and security."<sup>1</sup> Among the recommendations of a British National Peace Council, which met two years later, was "a new charter of human rights and obligations to be applied to all people irrespective of race or nationality, class or creed."<sup>2</sup>

The American Jewish Committee was one of many American organizations interested in such proposals. The Committee, organized in 1906 as an aftermath of the Kishinev massacres in Russia, had labored diligently, and with some success, "to prevent the infraction of the civil and religious rights of Jews, in any part of the world . . . [and] to alleviate the consequences of persecution and to afford relief from calamities affecting Jews, wherever they may occur." The atrocities committed by Nazi Germany against the Jews of Europe convinced the leaders of the American Jewish Committee that the internationalization of human rights would be a prerequisite to the security and safety of all people, particularly Jews, in the postwar world.

#### PROSKAUER AND A NEW CAREER

The president of the American Jewish Committee, Judge Joseph M. Proskauer, was a distinguished New York lawyer with a long and notable record of public service. A native of Mobile, Alabama, he had graduated with honors from Columbia College and Law School. Active in the Citizens Union of New York, a reform or-

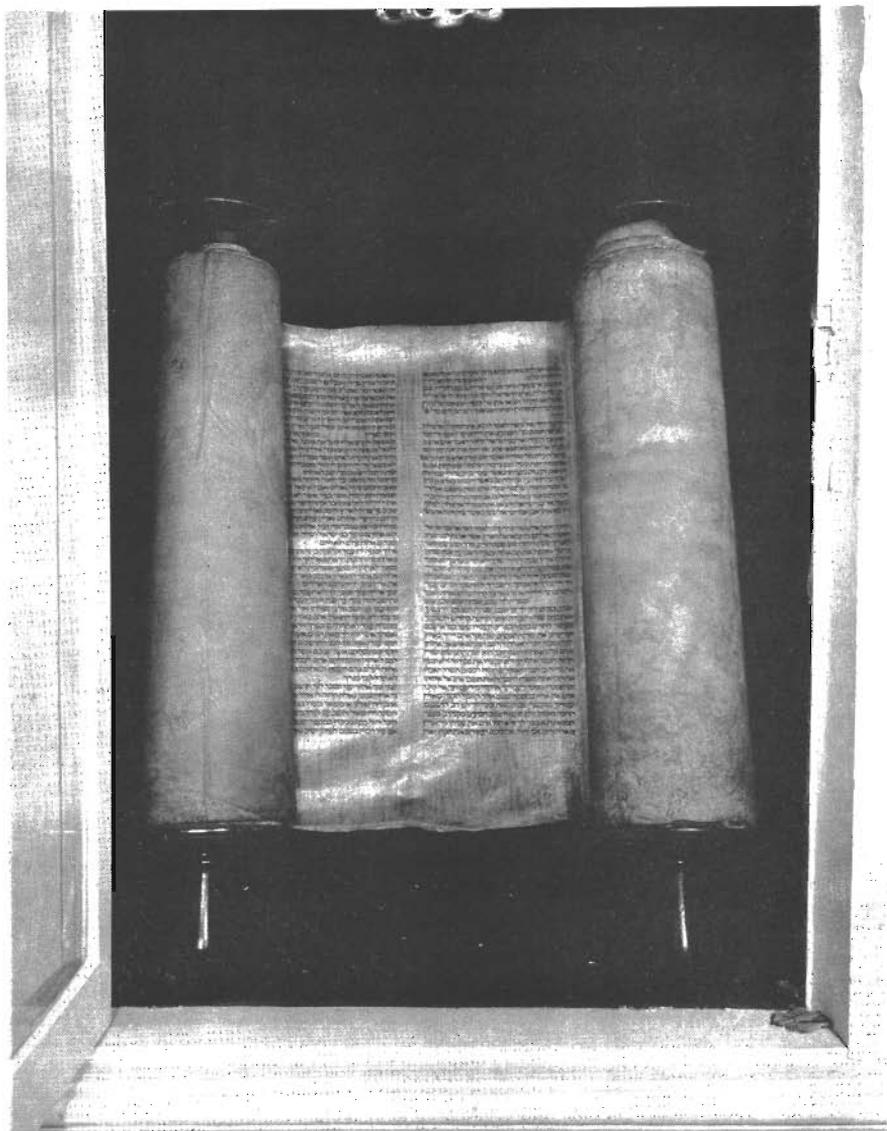
<sup>1</sup> C. S. O. P., *Preliminary Report*, November, 1940. *Bulletin of C. S. O. P.* (April-June, 1941).

<sup>2</sup> *Bulletin of C. S. O. P.* (August, 1941).



*Courtesy, Society of Friends of Touro Synagogue National Historic Shrine, Inc.,  
Newport, Rhode Island*

Holy Ark  
Touro Synagogue, Newport, Rhode Island  
(see pp. 45-46)



*Kerschner Photo Studio, Newport, R. I.*

A Torah Scroll  
from the Newport Synagogue  
(see pp. 45-46)

ganization dedicated to securing high standards of municipal and state political leadership, he had met Alfred E. Smith when the latter ran for sheriff of New York County in 1915. Smith's forthright espousal of progressive government won Proskauer's support; strong bonds of respect and admiration soon united the two men. At Smith's request Proskauer managed his gubernatorial campaigns of 1920 and 1922 and helped to mobilize the independent support for Smith which was so vital an ingredient of his political successes.

In 1923 Smith named Proskauer to the Supreme Court of New York; three years later he elevated him to the Appellate Division. Proskauer's judicial career did not interrupt his political activities on Smith's behalf. In 1924 he drafted the famous "Happy Warrior" speech in which Franklin D. Roosevelt placed Smith's name before the Democratic Convention in Madison Square Garden. In 1927 he prepared Smith's reply to Charles C. Marshall's letter in the *Atlantic Monthly*, a letter which questioned Smith's capability, as a Catholic, of fulfilling the responsibilities incumbent upon a President of the United States. The following year Proskauer joined Smith on the Presidential campaign trail which wound its way into Oklahoma City, past the burning crosses of the Ku Klux Klan. The judge long remembered the intolerance and bigotry which spawned vicious attacks on Smith in his unsuccessful attempt at the Presidency.

With Smith's political career on the wane, Proskauer channeled his civic energies elsewhere while maintaining his stature, after his retirement from the Appellate Division in 1930, as a leader of the New York Bar. As president of the Y.M.-Y.W.H.A. and the Federation of Jewish Philanthropies of New York, and as a member of Mayor Fiorello H. La Guardia's Charter Revision Commission, Proskauer continued to serve his coreligionists and his community. In 1943, with his election to the presidency of the American Jewish Committee, he began a new career which was to reach a climax at the United Nations Conference in San Francisco in May, 1945.

#### WE NEED A SHERIFF

The keystone of the post World War I structure for international protection of human rights had been a series of minority treaties, drafted under the auspices of the League of Nations. At

the insistence of the Big Four powers, such states as Austria, Hungary, Bulgaria, Turkey, and Poland agreed to assure protection of life and liberty to all their inhabitants, regardless of birth, nationality, language, or religion. Focusing on national minorities *in* a state, these treaties failed adequately to safeguard the rights of nationals *of* a state. World War II tragically revealed that the shelter of sovereignty enabled nations to treat their own citizens with total disregard of basic rights.<sup>3</sup> Considerable controversy has surrounded the question of the effectiveness of the minorities treaties. Although many informed people have written them off as unqualified failures, it has been argued that notable results were achieved under their aegis. Still, tied closely to the unsuccessful League of Nations, they inevitably inherited its aura of imperfection.<sup>4</sup> By the 1940's a few efforts were made to resuscitate them in suggestions for postwar protection of individual rights.

In the United States the American Bill of Rights tradition strongly influenced proposals to safeguard human rights. The C. S. O. P. published a study which called for a permanent United Nations Commission on Human Rights. The favorable response to this suggestion prompted the committee to activate American opinion on this issue; in addition, it exerted pressure on the State Department to commit American policy behind its objectives.<sup>5</sup> In January, 1942, a declaration of the United Nations called for a complete victory as essential "to preserve human rights and justice" throughout the world. Winston Churchill, addressing the World Jewish Congress in 1942, spoke of "the enthronement of human rights" as the goal of the Allied war effort.<sup>6</sup>

Judge Proskauer and the American Jewish Committee realized the importance of rallying the Jewish community behind human rights proposals. Proskauer expressed his interest in the work of the C. S. O. P. to Clark Eichelberger, its director, and from Pro-

<sup>3</sup> Karl Lowenstein, "An International Bill of Human Rights," *Current History*, IX (October, 1945), 273-83.

<sup>4</sup> Jacob Robinson, *et. al.*, *Were The Minorities Treaties a Failure?* (New York: Institute of Jewish Affairs, 1943), 261.

<sup>5</sup> Oscar I. Janowsky, "The Human Rights Issue at the San Francisco Conference," *The Menorah Journal*, XXXIV (April-June, 1946), 29-55.

<sup>6</sup> H. Lauterpact, *An International Bill of the Rights of Man* (New York: Columbia University Press, 1945), p. 86.

fessor Shotwell came a note acknowledging the Judge's interest and expressing Shotwell's desire to discuss the work of the committee with him.<sup>7</sup> Proskauer replied that he was momentarily preoccupied with his American Jewish Committee business and could not serve on Shotwell's committee. Within a month, however, he reconsidered. A meeting between the two men provoked a written inquiry from the judge: "Is it chimerical to suppose that we could draw up an international bill of rights making it at least as specific as our own constitutional bill of rights and call for its incorporation in the body of international law . . . ?" Underlining the basic problem inherent in such a proposal, he continued: "What I miss is a square grasping of the nettle of international force to effectuate the decisions of international law. . . . To my mind we will never get anywhere unless the international court has a sheriff."<sup>8</sup>

In his communications with other members of Shotwell's committee, Proskauer reiterated the necessity, not only of a specific bill of rights, but also of international law as a guaranty of its enforcement. He wrote to Professor Manley Hudson, of the Harvard Law School: "What's the matter with my suggestion that you substitute for some high sounding quotable phrases a specific bill of rights for individuals, and declare that it is the concern of international law to enforce these rights, and that they are not matters of internal administration? Then, as for the sheriff, the millennium hasn't come and neither you nor Shotwell is going to bring it. We need a sheriff."<sup>9</sup> Before long, the American Jewish Committee announced the creation of a Special Committee on the Terms of Peace to aid in securing a world "in which Jews, like all others, would be free to abide in peace and honor." In a draft of a letter to Secretary of State Cordell Hull, Proskauer expressed his hope that the United States Government would place its program before those who would frame the terms of peace. "We trust," he concluded, "that in this way we may be of service to our government and to the world at large, and especially to the stricken Jews of Europe."<sup>10</sup>

<sup>7</sup> Shotwell to Proskauer, December 16, 1943, Proskauer Papers.

<sup>8</sup> Proskauer to Shotwell, June 6, 1944, *ibid.*

<sup>9</sup> Proskauer to Hudson, January 18, 1944, *ibid.*

<sup>10</sup> Draft of the Proskauer letter to Hull, June, 1944, *ibid.*

## THE CORNERSTONE OF OUR CULTURE

While the American Jewish Committee and the Committee to Study the Organization of Peace formulated their programs, representatives of the United States, Great Britain, Russia, and China met at Dumbarton Oaks to draft a charter for a permanent postwar international organization. Faced with this enormous task, the Four Powers had neither the time nor the inclination for an extended discussion of guarantees for human rights. Only the United States proposed that the observance of human rights be specifically promoted by the new international organization, but little support came from the others. Even the ineffectual statement, "It [is] the responsibility of each state to . . . respect the human rights and fundamental freedoms of all its people . . .," aroused controversy, and ultimately this proposal was dropped.<sup>11</sup> The final draft of the conference pledged the United Nations Organization to "facilitate solutions of international economic, social, and other humanitarian problems and promote respect for human rights and fundamental freedoms."<sup>12</sup> It left much to be desired.

The vague proposals of the Dumbarton Oaks Conference spurred Proskauer to mobilize public support behind a more inclusive program. He insisted that "a basic principle of conduct must be international recognition of those basic freedoms guaranteed by the American bill of rights. Invasion of these freedoms by any nation is no longer a matter of internal politics."<sup>13</sup> On December 15, 1944, the 153rd anniversary of the American Bill of Rights, the American Jewish Committee circulated a *Declaration of Human Rights*, endorsed by over 1,300 prominent Americans and approved by President Roosevelt. The *Declaration* called for a "new world . . . based on the recognition that the individual human being is the cornerstone of our culture and our civilization." Specifically, it advocated the promulgation of an international bill of rights "to

<sup>11</sup> Ruth B. Russell, *A History of the United Nations Charter* (Washington: The Brookings Institute, 1958), p. 424.

<sup>12</sup> *Human Rights: Unfolding of the American Tradition* (United States Department of State, 1949), p. 65.

<sup>13</sup> Undated draft, Proskauer Papers.

guarantee for every man, woman and child, of every race and creed and of every country, the fundamental rights of life, liberty and the pursuit of happiness." It urged that "no plea of sovereignty shall ever again be allowed to permit any nation to deprive those within its borders of these fundamental rights on the claim that these are matters of internal concern."<sup>14</sup>

Proskauer's insistence "that we have to start somewhere, [and] that start must be made with fundamentals and from there on we must work out the machinery," brought criticism from advocates of a more concrete and detailed statement.<sup>15</sup> The *Jewish Review* complained, "The very unanimity which such a bill of rights aroused indicates its weakness as a document of any significance. Its statements were so broad and so all encompassing that it could in no way provide a workable basis for the future world situation."<sup>16</sup> Another critic, who was approached for an endorsement of the *Declaration*, disapproved of signing petitions "that are sound in themselves but not designed to gain tangible results."<sup>17</sup> An outspoken statement of opposition came from a prominent news columnist: "I think [the *Declaration*] is carelessly drafted, does not conform to the facts of the present day and ought to be revised so that it has specific meaning. . . . Instead of the empty phrase, the fundamental rights of life, liberty and the pursuit of happiness, why do you not specify the rights which you seek for people?"<sup>18</sup>

Inevitably, these criticisms were muted by the surge of optimism and idealism which the approaching end of the war generated in 1945. In the spring of that year, Proskauer received assurances from the State Department that the human rights provisions of the Dumbarton Oaks proposals were being carefully studied, in the hope "that some of the questions raised in this connection may be answered in the near future."<sup>19</sup> On March 20th, Proskauer

<sup>14</sup> Joseph M. Proskauer, *A Segment of My Times* (New York: Farrar, Straus & Co., 1950), p. 217.

<sup>15</sup> Proskauer Papers.

<sup>16</sup> December 21, 1944.

<sup>17</sup> Proskauer Papers.

<sup>18</sup> *Ibid.*

<sup>19</sup> Archibald MacLeish to Proskauer, March 14, 1945, *ibid.*

and the American Jewish Committee chairman Jacob Blaustein conferred with President Roosevelt at the White House and presented him with the Committee's proposal for an international bill of rights. After their meeting Proskauer told the press that the President "considered the report a serious endeavor to implement the Dumbarton Oaks program" and had received it with "profound interest."<sup>20</sup>

With the United Nations Conference on International Organization but a month away, Proskauer restated and summarized his views in an article which he prepared for *World Affairs*, a publication of the American Peace Society. "It is my belief," he wrote, "that the content of international law must be expanded. It must deal no longer merely with the rights of states; it must concern itself with the rights of individuals within those states. . . . There must be an international Bill of Rights, guaranteeing to every human being those fundamental attributes of freedom which are guaranteed to us in America by our own Constitution." Proskauer, reflecting the wartime revulsion with exaggerated concepts of race, labeled the post World War I minorities treaties a failure. "Here in America," he concluded, "we have seen it demonstrated that a great nation can come into being without any homogeneity of race or creed. . . . The concept of minority group and majority group must be obliterated. The rights which must be guaranteed are the rights of every individual, and not of men as mere parts of a segregated minority."<sup>21</sup>

#### NO SENSE OF GREATNESS

Two weeks before the United Nations Conference convened, Secretary of State Edward R. Stettinius, Jr., recently appointed by President Roosevelt after Cordell Hull's resignation, dispatched invitations to forty-two prominent American organizations to designate representatives to serve as consultants to the American delegation. The American Jewish Committee, along with the American Federation of Labor, the Congress of Industrial Organiza-

<sup>20</sup> New York *Herald Tribune*, March 21, 1945.

<sup>21</sup> Proskauer draft, Proskauer Papers.

tions, the National Association for the Advancement of Colored People, and the National Association of Manufacturers, among others, chose Proskauer and Blaustein to represent it. Eager to capitalize on this opportunity, Proskauer suggested to the Secretary of State that "there may be some job which a seasoned old lawyer, claiming some skill in negotiation and drafting, can do for you and the cause generally."<sup>22</sup>

The United Nations Conference convened in San Francisco on April 25, 1945, in a mood of "solemn deliberation." *New York Times* correspondent James Reston wrote that the conference marked "the beginning of the effort of ordinary men and women to create a world in which they can be safe from a repetition of the ghastly experience of the past six years."<sup>23</sup> The recent death of President Roosevelt, only two weeks before, cast a pall over the American delegation; Bruce Bliven noted that "there was no sense of greatness in the air; we were all a little lost and uncertain."<sup>24</sup>

The seven American delegates in attendance were led by Secretary Stettinius. Delegate Arthur H. Vandenberg, the powerful Republican senator from Michigan, had confided to his diary on April 13th: "Up to now [Stettinius] has been only the presidential messenger. He does *not* have the background and experience for such a job at such a critical time. . . ."<sup>25</sup> Significantly, four days later, Vandenberg insisted to Anthony Eden that if he were to be held responsible for Republican votes for the United Nations Charter in the Senate, he would demand the specific inclusion of "justice" as an objective of the charter, and the pledges of the Atlantic Charter as "musts."<sup>26</sup> Stettinius' inexperience, as it turned out, was to be no barrier to the implementation of Vandenberg's wishes; in fact, the Secretary was to play a crucial role in their enactment.

<sup>22</sup> Proskauer to Stettinius, April 16, 1945, *ibid.*

<sup>23</sup> *New York Times*, April 26, 1945.

<sup>24</sup> Bruce Bliven, "San Francisco: Now or Never," *The New Republic*, CXII (May 7, 1945), 633-34.

<sup>25</sup> Arthur H. Vandenberg, Jr., *The Private Papers of Senator Vandenberg* (Boston: Houghton Mifflin Company, 1952), p. 167.

<sup>26</sup> *Ibid.*, p. 170.

The consultants to the American delegation were given entree to the conference sessions and met either with Stettinius or with Commander Harold E. Stassen twice weekly. In addition, informal conferences were held with Assistant Secretary of State Archibald MacLeish and John Dickey, Director of the Office of Public Affairs of the State Department.<sup>27</sup> At the first meeting, on April 26th, Stettinius promised to keep the consultants informed and to seek their views. Although some inevitably grumbled that this pledge was honored only in theory, rather than in practice, James T. Shotwell expressed the views of the majority when he wrote: "This new experiment in the conduct of informal conferences proved to be highly valuable not only to the consultants and the associates but to the delegates themselves in the development of their program. . . ."<sup>28</sup>

#### IT ISN'T ENOUGH

On April 28th, Proskauer and Blaustein issued a statement to the press urging the establishment by the United Nations Conference of a permanent commission to formulate an international bill of rights. "The new world order," they insisted, "must provide security and contentment for citizens of every nation, irrespective of race or creed. . . ."<sup>29</sup> But many obstacles blocked the realization of this goal. The Russian delegation looked with suspicion on any proposal likely to interfere with internal Soviet affairs. The British, holding tenaciously to their colonial possessions, had similar fears. The American delegation was split on the adoption of such a program: Delegates and State Department officials disagreed as to the advisability of moving beyond the erection of a structure of international organization to basic substantive decisions such as the question of a bill of rights would entail.<sup>30</sup>

<sup>27</sup> Proskauer, *A Segment of My Times*, p. 219.

<sup>28</sup> Shotwell to Edward Weeks, June 13, 1945, copy in Proskauer Papers; *New York Times*, April 17, 1945.

<sup>29</sup> *New York Herald Tribune*, April 29, 1945; Proskauer, *A Segment of My Times*, p. 220.

<sup>30</sup> Jewish Telegraphic Agency Dispatch, April 26, 1945.

Regardless of official indifference or indecision, columnist Victor Riesel observed a growing sentiment among the consultants for a human rights commission. Behind this campaign, he said, "is the Federal Council of Churches of Christ in America, the American Jewish Committee, twelve Catholic bishops, and the powerful Baptist Joint Conference Committee on Public Relations. . . ."<sup>31</sup> Nevertheless, as the deadline approached for amendments to the Dumbarton Oaks proposals, delegate Virginia C. Gildersleeve, dean of Barnard College, informed the consultants that the American delegation had decided not to present to the other sponsoring powers any extension of the Dumbarton Oaks human rights provisions. She told them that since they were to meet shortly with Secretary Stettinius, any objections would have to be presented to him at that time.<sup>32</sup>

Immensely disappointed, Proskauer returned to his room at the Whitcomb Hotel and dictated a round robin petition to the Secretary of State. Working furiously against time, he called a meeting in Clark Eichelberger's office, which included Professor Shotwell, Dr. O. Frederick Nolde, of the Federal Council of Churches, Eichelberger, Proskauer, and several others. After making minor editorial changes, they bolted a quick lunch and raced to the lounge of the San Francisco Opera House to obtain signatures from other consultants. By 4:30 P. M., a half-hour before the meeting with Stettinius, representatives of twenty-two of the forty-two organizations had signed; the others could not be reached. At the suggestion of Professor Shotwell, Dr. Nolde agreed to present the document, to be followed by Proskauer's plea for its approval.<sup>33</sup>

At five o'clock the consultants gathered in the Blue Room of the Fairmont Hotel, at the top of Nob Hill. Tense with hope, they listened to Dr. Nolde read the round robin to Secretary Stettinius. After proposing specific amendments to the Dumbarton Oaks proposals, Dr. Nolde continued: "The ultimate inclusion of the equivalent of an international bill of rights in the functioning of

<sup>31</sup> New York *Post*, April 30, 1945.

<sup>32</sup> Proskauer, *A Segment of My Times*, p. 221.

<sup>33</sup> Proskauer speech to the Administrative Committee of the American Jewish Committee, June 5, 1945, copy in Proskauer Papers.

the organization is deemed of the essence of what is necessary to preserve the peace of the world. . . . The assurance to every human being of the fundamental rights of life, liberty and the pursuit of happiness is essential not only to domestic but also to international peace. . . . It is thus a matter of international concern to stamp out infractions of basic human rights. . . . Sponsorship of this project by the American delegation would win the enthusiastic support of the American people, and . . . would command their hearty approval.”<sup>34</sup>

When Dr. Nolde had concluded his presentation, Judge Proskauer arose to speak extemporaneously on its behalf. Almost sixty-eight years old, white-haired and slightly bent, he fixed the Secretary of State in his gaze and began his impassioned plea. “It isn’t enough,” he said, “for the charter to speak for universal respect for and observance of human rights. If there is to be freedom in this world, and peace, human rights must be safeguarded and there must be machinery within the United Nations to promote such freedom, to make fundamental human rights a living reality.” Proskauer told the Secretary: “I am bound to you by ties of personal friendship and official loyalty. But I am here to tell you that the voice of America is speaking in this room as it has never before spoken in any international gathering. And this is what it is saying to you: ‘If you make a fight for these proposals and win, the bands will play and the flags will fly. If you make a fight for it and lose, we are still for you. If you lie down on it, there is not a man or woman within the sound of my voice that will have a word to say for your charter! You will have lost the support of American public opinion and I submit to you that you will never get a charter ratified.’”<sup>35</sup>

As Proskauer concluded, he turned to his colleagues and said, “I’ve assumed to speak for the Board of Consultants but if anyone here disagrees with my statement he can now register his dissent.” One man arose in the rear of the room: Philip Murray, president

<sup>34</sup> Proskauer, *A Segment of My Times*, pp. 222–24.

<sup>35</sup> Walter M. Kotschnig, “Report on the Work and Problems of the Drafting Committee and Future Considerations to be Given the Bill of Rights,” copy in Proskauer Papers; Proskauer speech to the American Jewish Committee Administrative Committee, June 5, 1945, *ibid.*

of the C. I. O. "Mr. Secretary," he began, "I didn't sign that paper." Pausing for an interminable moment, he pointed his finger at Stettinius and rasped in his Scotch burr: "But the only reason I didn't sign that paper was that they didn't get it to me. And I am here to tell you that I am not just speaking for the C. I. O. I believe I am speaking . . . for all labor when I tell you that Judge Proskauer is 150% right. Mr. Secretary, don't lie down on your job."<sup>36</sup>

Stettinius, visibly affected, stood up, promised to present the consultants' plea to the American delegation immediately, and left the room. A State Department official who departed with the Secretary has written: "I accompanied Mr. Stettinius at the end of that meeting to a meeting of the American delegation. We went straight there. And all the way up in the elevator, then way down the long corridor on the fifth floor, down to the corner room, where the American delegation was meeting, he didn't say a word. He was obviously moved. But he did speak strongly and convincingly at the delegation meeting. It was that afternoon that the Commission on Human Rights was born."<sup>37</sup>

#### THE FACTS OF REALPOLITIK

Proskauer's speech left its impact on others, in addition to the Secretary of State. Clark Eichelberger called it "one of the greatest addresses I have heard."<sup>38</sup> To James T. Shotwell, it was "the most eloquent and convincing argument that I have ever listened to in my life. [It] is destined to become one of the chapters of American history."<sup>39</sup> A newspaper correspondent wrote: "I witnessed Judge Proskauer mobilizing the non-Jewish consultants in a fight against those members of the U. S. delegation who were eager to ignore this problem. I saw him personally pressing this point to Secretary

<sup>36</sup> *Ibid.*

<sup>37</sup> Kotschnig, *op. cit.*

<sup>38</sup> Eichelberger's speech at Proskauer's seventieth birthday dinner, December 4, 1947, copy in Proskauer Papers.

<sup>39</sup> Shotwell's speech to the New York Chapter of the American Jewish Committee, June 12, 1945.

of State Stettinius. I observed the determination which he displayed in fighting those opposed to a commission for human rights and I must say that the eventual breakdown of the opposition was, to a large extent, due to the impressive speech which Proskauer delivered. . . ."<sup>40</sup> Assistant Secretary of State Archibald MacLeish succinctly summarized the feelings of most: "None of us will ever forget Judge Proskauer's eloquent statement on behalf of the consultants."<sup>41</sup>

With Stettinius as the driving force, the American delegation finally swung over to support the demands of the human rights advocates. On May 4th, just before the Dumbarton Oaks amendment deadline, Senator Vandenberg happily confided to his diary, "Everything I want in respect to 'justice' and 'human rights' and 'fundamental freedoms' is in."<sup>42</sup> The next day, the Big Four sponsored twenty-two amendments to the Dumbarton Oaks proposals. Chapter One of the United Nations Charter, "Purposes," now read: "To achieve international cooperation in the solution of international economic, social, cultural and other human problems *and promotion and encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, language, religion or sex*" (amendments italicized).<sup>43</sup> In addition, a specific provision called for the establishment of a Human Rights Commission. Secretary Stettinius told the press, "Many suggestions made by individual citizens or civic groups in the United States are reflected in these amendments. The assistance and advice of the consultants to the United States delegation have been invaluable."<sup>44</sup>

Notwithstanding Proskauer's jubilant assertion that the consultants "showed what democracy in action could do, . . . it was democracy in action and nothing else that brought about an extension of the whole area of international law . . .," there were indications

<sup>40</sup> *Jewish Daily Forward*, May 20, 1945.

<sup>41</sup> *The Committee Reporter*, I (July, 1945), 1.

<sup>42</sup> Vandenberg, *Private Papers*, p. 185.

<sup>43</sup> *Documents of the United Nations Conference on International Organization* (New York: United Nations Information Organization, 1945), III, 622-23.

<sup>44</sup> *New York Times*, May 6, 1945.

almost immediately that his victory fell considerably short of the ultimates which he had sought.<sup>45</sup> According to the *New York Times*, the amendments to the Dumbarton Oaks proposals, a gesture to American public opinion which wanted "a less materialistic interpretation of history and a more idealistic statement of principles," would not diminish in the least "the power of the big nations to keep the peace in the world."<sup>46</sup> At a press conference on May 15th, Secretary of State Stettinius insisted that the human rights provisions represented a long step toward the realization of social justice. But, he added significantly, they "will not, of course, assure by themselves the realization of human rights and fundamental freedoms for all people. The provisions are not made enforceable by any international machinery. The responsibility rests with the member governments to carry them out."<sup>47</sup>

Despite Stettinius' warning, the optimists carried the day in the immediate post-Conference period. Senator Vandenberg, urging the Senate to ratify the United Nations Charter, predicted, "The protection for human rights and fundamental freedoms inherent in the San Francisco Charter will inevitably make a better, a wiser and a safer job of it in its ultimate impacts upon humankind."<sup>48</sup> A State Department publication, admiring the efficacy of public opinion in molding the policy of the United States government at San Francisco, spoke of the charter as "an acclamation of faith and a bold experiment."<sup>49</sup> Professor Shotwell hoped that in years to come "the world may say that the work of the United Nations in the field of human rights and fundamental freedoms, while attracting little attention at the time, was the most fundamental of all."<sup>50</sup>

<sup>45</sup> Proskauer, *A Segment of My Times*, p. 226.

<sup>46</sup> *New York Times*, May 4, 1945.

<sup>47</sup> *The State Department Bulletin*, XII (May 20, 1945), 928-29. Cf. also Edward R. Stettinius, Jr., "Human Rights in the United Nations Charter," *The Annals of the American Academy of Political and Social Science*, CCXLIII (January, 1946), 1-3.

<sup>48</sup> Vandenberg, *Private Papers*, pp. 217-18.

<sup>49</sup> Alice M. McDiarmid, "The Charter and the Promotion of Human Rights," *The Department of State Bulletin*, XIV (February 10, 1946), 210-12, 222.

<sup>50</sup> Shotwell to Proskauer, November 12, 1947, Proskauer Papers.

Within a very short time, however, disillusionment set in. At three vital and sensitive points, the human rights provisions of the charter underwent attack. An obvious weakness was the absence of any machinery for their enforcement. Clark Eichelberger, in appraising the Charter, consigned its implementation to "the good faith of the nations, the development of public opinion, and hard work by the Human Rights Commission."<sup>51</sup>

The second prong of the attack centered on the inconsistency of the human rights provisions with other charter stipulations. For example, Article 2 (7) insisted that nothing in the Charter authorized the United Nations "to intervene in matters which are essentially within the domestic jurisdiction of any state."<sup>52</sup> In addition, a question has been raised concerning the compatibility of an international bill of rights, contemplated under the Charter, and the principle, insisted upon at San Francisco, that each nation must retain the fullest freedom to determine its own system of government. On these grounds, one student of this problem has concluded that an international bill of rights "may be plausible and attractive [only] so long as we do not pause to inquire into the substance of its provisions."<sup>53</sup>

Finally, the idealists who framed human rights proposals at the end of World War II were chastised for their indifference to the facts of *Realpolitik*. In an era of belligerent nationalism, this argument ran, the assumption that such a thrust would submit to greater international control is unrealistic. Given this nationalistic surge, the chances of implementing human rights provisions, in the words of one critic, "are rather less than rosy."<sup>54</sup> The furthest extension of this argument came from Professor Oscar I. Janowsky, who made careful studies of the attempts to protect human rights

<sup>51</sup> Clark Eichelberger, *United Nations Charter* (New York: American Association For the United Nations, Inc., 1948), p. 20.

<sup>52</sup> Cf. Karl Lowenstein, "An International Bill of Human Rights," *Current History*, IX (October, 1945), 273-83.

<sup>53</sup> H. Lauterpact, *An International Bill of the Rights of Man* (New York: Columbia University Press, 1945), pp. 11-14.

<sup>54</sup> Edwin Borchard, "Historical Background of International Protection of Human Rights," *Annals of the American Academy* (January, 1946), pp. 116-17.

through international sanctions. Janowsky contended that the Charter provisions "constitute a definite defeat, a retrogression in the struggle for human rights. . . . The right of international supervision and enforcement in limited areas has been annulled; and human rights, which were at least in part reserved for international protection by the minorities treaties, have again been turned over to domestic jurisdiction."<sup>55</sup>

In tracing the development of Judge Proskauer's ideas on international protection of human rights, something of this retreat is apparent. In his letter to Shotwell in June, 1944, Proskauer expressed his maximum demands: "International force to effectuate the decisions of international law." The widely circulated *Declaration of Human Rights*, however, called for an international bill of rights to the virtual exclusion of machinery for its enforcement. In defending it, the judge had argued that fundamentals must precede machinery. Writing in *World Affairs*, Proskauer completely rejected the minority group basis of the post World War I treaties, urging the far more difficult task of protecting individuals throughout the world. Finally, the ultimate result of his speech to Secretary Stettinius was to commit the American delegation to the principle of promoting respect for human rights and fundamental freedoms, not to the principle of penalizing their violators through international law enforcement.

#### A PRICE FOR SUCCESS

Amid the welter of conflicting opinions regarding the efficacy of the Charter provisions, the magnitude of Judge Proskauer's performance in swinging the American delegation to support human rights ought not to be forgotten. He faced apparently insurmountable obstacles and overcame them with an extremely powerful and moving argument. It is equally clear, however, that his enthusiastic evaluation of the significance of his victory was premature. His assertion that Article 68 of the Charter, providing for the estab-

<sup>55</sup> Oscar I. Janowsky, "The Human Rights Issue at the San Francisco Conference," *The Menorah Journal*, XXXIV (April-June, 1946), 51. Cf. Ben Halpern, "The Human Rights Discussion," *Jewish Frontier*, XII (June, 1945), 11-12.

lishment of a Human Rights Commission, meant "that no plea of sovereignty shall ever again be allowed to permit any nation to deprive those within its borders of fundamental rights on the claim that they are matters of internal concern," expressed a hope, not a legal or political fact.<sup>56</sup>

If Proskauer's viewpoint prevailed at San Francisco, the refusal, throughout time, of great nations to submit to international supervision of human rights within their borders has indicated that a declaration of high purpose and noble sentiment is insufficient. In seeking to provide a formula for the amelioration of man's inhumanity to man, Judge Proskauer and the American Jewish Committee succeeded, eloquently and with dignity. But, in ignoring enforcement machinery, they paid a heavy price for their success. National self-interest was the stumbling block which made the fighters for human rights at San Francisco prisoners of their own rhetoric.

<sup>56</sup> *New York Times*, June 13, 1945; Janowsky, *loc. cit.*, 41.

### THE JEWS IN AMERICA

Singer of hymns, by Sinai who adored  
 The Fire, the Trumpet, the Eternal Law;  
 Builder of temples, from Zion's hill who saw  
 Dawn smite the Heathen with Jehovah's sword;  
 Exiled of nations, long for no reward  
 Keeping thy Sabbaths and thy Feasts with awe;  
 Victor of sorrows, on a bed of straw,  
 Come unto us, O Israel of the Lord!

Here, past the Gentile seas, the stars by name  
 Shine with the ages' welcome; here anew  
 The rainbow towers; here the mountains wait:  
 Come! and then fill us with thy holy flame: —  
 We have a word to speak, a work to do,  
 If once, like thine, our soul be consecrate!

— WILLIAM ELLERY LEONARD

[From George Sylvester Viereck, ed., *America: A Litany of Nations* (New York: The New Immigrants' Protective League, 1907)]