

Passing the Philosophic Torch of Basic Rights and Freedoms for Space Migrants to Evolve and Survive ... Or Become Extinct: A Proposed Modified US Declaration of Independence and Future Constitution Applicable to Long Duration and Permanent Spacekind Inhabitants

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Abstract

The United States and the Soviet Union, along with others, developed a framework for a basic Space law in the Outer Space Treaty of 1967. This is still the basis for Space law, but it has specific provisions on universal rights. This article suggests that the US Constitution, Declaration of Independence, and Bill of Rights offer a model of such rights that Spacefaring nations can and should adopt. It offers a Declaration of Negotiable First Principles for the Governance of Earth Originated Outer Space Civilizations and Their Inhabitants as an example of how this might work.

Keywords: Space law, US constitution, Bill of Rights, Outer Space Treaty, Principles for Space governance.

Introduction

The US Declaration of Independence and the US Constitution ... as well as very similar documents of other Free World nations ... can serve as a *prototype example* for a long-duration and/or permanent space society and civilization. Or would totally different mandates be required for totally different life-support venues? Let us start with the one document we should know best in the United States.¹

¹ It should be noted at the outset that the ensuing discussion is a *personal "declaration of conscience"* of the present author, i.e., a declaration of humankind rights and freedoms, and the guardianship roles of space law and space lawyers with respect to the ongoing evolution and adaptation of the human genome and the essences of *Homo sapiens sapiens*, of modern humankind, and its evolving descendants. It is a reflection on the imperfect past of the Constitution, its interpretation and application, and its very questionable interpretation and application in the present. It also reflects the hopeful future history of space law, embracing and representing the principles of social order between and among varying species with sentience, with abstract perception capabilities *in extremis*, and all in a truly unique medium where human biochemistry and evolving technology are integrated for survival in a fashion and for purposes having no equal. This declaration of conscience is offered by a deeply concerned, but ever hopeful, servant of space philosophy, and concern to implement positive laws that have yet to embrace a definitive bill of humankind rights to "extinguish from the bosom of every member of the community," as James Madison asserted almost two hundred years ago, "any apprehension that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled." The time to fight for those liberties and acceptable variations in space is now.

The US Constitution was drafted in 1787 and then ratified two years later in 1789.² But it was the Declaration of Independence³ and a specific Bill of Rights⁴ that convinced leaders of the English colonies in America, such as Thomas Jefferson, James Madison, and George Mason, that the subsequent Constitution would not be ... could not be ... a shallow and impotent document largely reflecting wishful thinking. In a letter to James Madison, Thomas Jefferson wrote that “The Bill of Rights is what the people are entitled to against every government on earth, general or particular and what no just government should refuse or rest on interferences.”⁵ The efficacy, of course, rests solely on the actual manner of its implementation by governing authorities.

But it is not just the Constitution, generally, that may well provide the platform for understanding what were and are considered the inherent rights of all humankind. It is particularly the Bill of Rights that was drafted in 1789 and ratified in 1791 that made it clear that these rights penetrated every facet of governmental authority and everyday decisions and conduct in order to protect and promote the inherent, indeed Natural Law premised, rights of every human individual against potential compromises and impositions, unjustifiable excesses, committed by those elected and appointed to govern. As the international community prepares humans, *transhumans*, and post humans⁶ for ever-longer terms and permanent occupation and settlement off-Earth, we seem to be

² For an excellent concise history of the evolution and establishment of the United States Constitution, see “Constitution of the United States: A History” online at www.archives.gov/exhibits/charters/constitution_history.html.

³ For a brief, but helpful, discussion of the history of the US Declaration of Independence, see “Declaration of Independence: United States History” online at www.britannica.com/topic/Declaration-of-Independence and at www.archives.gov/exhibits/charters/declaration_history.html.

⁴ The Bill of Rights is embraced in the first ten amendments to the US Constitution. For a listing of the Bill of Rights and a brief discussion of its history, see “The Bill of Rights: Its History and Significance” online at law2.umkc.edu/faculty/projects/ftrials/conlaw/billofrightsinintro.html.

⁵ What Jefferson was not in a position in those times to understand was the empirical basis underlying the philosophic construct giving rise to the Declaration of Independence and the Constitution. That construct is premised on Natural Law Theory (see Black’s Law Dictionary, 4th ed. [St. Paul, MN: West, 1951], 1177 for a helpful discussion of Natural Law Theory, or *jus naturale*, in the ages of the Antonine and Stoic doctrines, i.e., the incipient stages of recognizing that all life and biotic behavior is controlled by the dictates of a quantifiable nature). Unknown during the formulation of the Declaration and the Constitution was the issue, regardless of the answer, of whether survival of an individual or society is a product of chance or the result of infinitely complex relationships that are created and directed in a predetermined fashion, as dictated by a “single, basic, underlying law of energy.” Further, is the whole truly greater than the sum of its parts? Natural Law is greater than the sum of all jurisprudential characteristics, which are greater than the sum of the parts of all implementing positive laws. Regardless of the methodology followed to determine the question of neurophysiologically predicated decisions versus subsequent free will selection of questions and answers embraced in the context of abstract perception *in extremis* and individual and collective essences, the answers will be found only in the relative short term by the discipline of quantum physics.

⁶ As we meld human biology with technology, we create an entity that transitions into a totally self-sufficient, independently thinking entity referred to as post human. And as we continue to design and create these entities that will be required to survive in an otherwise hostile environment, also *in extremis*, it is essential to be ever so sensitive to the need for unparalleled principles of law that will allow this type of spacekind progeny of humankind the necessary safeguards to survive in space as truly free “envoys of humankind.” In this context, see G. Robinson, “METALAW: From Speculation to Humankind Legal Posturing with Extraterrestrial Life,” *Journal of Space Philosophy* 2, no. 2 (2013): 49-56; and also G. Robinson, “The Biochemical Foundations of Evolving Metalaw: Moving at a Glance to the Biological Basis of Sentient ‘Essence’,” *Journal of Space Law* 39, no. 1 (2012): 181-216.

overlooking ... perhaps have even forgotten ... this core of humankind motivation and evolution. It is the only heritage that struggles to separate and ensure that our descendants who inhabit outer space, temporarily and permanently, will do so absent the dictates of totalitarians, imperialists, and military ideologues.

Space is not just another object of idle, but extraordinarily expensive, curiosity, as space research has been called by various presidents and other world leaders. Quite unfortunately, migration to and settlement of off-Earth locations in space and on other celestial bodies for the purposes of humankind genome survival is faced with a rapidly dwindling interest globally; certainly in terms of having space settlers and “envoys of humankind” carry with them and abide by such US Constitutional rights as freedom to exercise religious beliefs, free speech, peaceable assembly, and the right to petition the governing body for redress of a grievance; to be secure from unreasonable search and seizure; not to be subject to double jeopardy and self-incrimination; not to be deprived of life, liberty, or property without due process of the law; to be tried speedily by an impartial jury; not to be subjected to cruel and unusual punishment; not to be enslaved; and to retain all those basic human rights and freedoms *not specifically given up*. Clearly, given the somewhat unique circumstances of survival by off-Earth space inhabitants and the type of interim Earthkind support required, these rights must remain very flexible in terms of how they are formulated ... perhaps unique and innovative ... and interpreted and under what circumstances; and then how they accommodate progressively discovered empirical dictates and apply them appropriately in each situation. The same is true, of course, in terms of the application of these rights and freedoms on Earth, but the unique challenges in off-Earth survival will require extraordinarily careful and detailed study, modification where necessary, and application ... without losing the spirit and relative intents of the underlying principles set forth in the Bill of Rights.

Without a rather creative and intense refocusing of these basic humankind freedoms in their applications to long-term and permanent space inhabitants, the underlying principles will never be restored to the ongoing evolutionary odysseys of humankind and its evolving essences in space. Again, space must not be considered just another place for migratory curiosity to express itself ... certainly not as our military servants would have us believe. To the contrary, space must be considered an arena for the continuous exercise of evolving and finely tuned basic humankind rights and those of its *transhuman* and post human descendants ... and a reasonable document from which to pull and assess the relevant principles may well be the US Constitution. Without an intense and very careful refocusing of those rights in a space society ambience, the underlying principles and appropriate variations in interpretation and application will never be restored to the continuing humankind evolutionary odyssey off-Earth.

For the moment, near and deep space are the only loci where the hard-won lessons of ecumenical politics, economics, and theology can be put in place and tested for our permanent extraterrestrial descendants, i.e., our own sons and daughters, grandsons and granddaughters, and evolving human essences embraced in *transhuman* and post human individuals and populations ... *ad infinitum*. But what makes the American movement into space, both nationally and collectively premised on significantly interdependent collaboration with other nations, more than another cycle of economic and

military imperialism? What may be even unique about what the United States has to offer humankind's ongoing survival migration off-Earth? Perhaps, in the final analysis, it is an ideology and governing structure committed to its traditional basic and collective *humankind* rights and sentient capabilities allowing the survival and evolution of our species essence, regardless of what part of the known Universe those individuals occupy ... inhabit.

It is too terribly facile to sacrifice unwittingly these rights, these hard-won principles, in the name of raw survival expediency (on Earth as well as in space) once long-term and permanent habitation of humankind in space is established. These rights must not be treated casually and distorted by current and future parochial domestic politics and geopolitical alliances. These basic rights must not be allowed to be distorted for the sake of domestic political conveniences, twisted by international arms control posturing, or cramped as well as liberated by international pragmatism about technological capabilities, monumental costs, and staggering domestic and global fiscal deficits. It would not be surprising to see basic human rights addressed in the US Constitution sacrificed principally, if not solely, in order to obtain military objectives in the use of near and deep space.⁷

The rather ephemeral start-up principles agreed to by the leading nations in early space activities, principally the United States and the former Soviet Union, long before anyone knew whether outer space really could or even would be explored and exploited successfully, were articulated in the 1967 Outer Space Treaty⁸ in the following manner:

- Space exploration shall be conducted for the benefit of all countries, and shall be the province of all mankind.
- Outer space and celestial bodies cannot be claimed by any country for itself.
- Space research is to be carried out in the interest of furthering international cooperation, understanding, and peace everywhere.
- Outer space may not be used for the placing of nuclear weapons or other weapons of mass destruction, nor shall there be any military bases,

⁷ It is interesting to note the serious concerns being expressed about the diminishing relevance of space treaties and applicable implementation of domestic laws being addressed by leading space law experts, space engineers and scientists, space program and project economists, and the like, at an August 2015 conference held in Greece. The subjects addressed at the International Conference on New Challenges in Space Law – The Space Treaties at a Crossroads, include (1) the rationale and scope of space treaties, (2) challenges to the rescue agreement and the liability convention, (3) challenges to the registration convention, (4) challenges to the space treaties resulting from new space-related activities, (5) space treaties and the rising concern about environmental issues, (6) the commercial exploitation of space-related resources, interaction with other seemingly related legal regimes, and (7) where and how should international space law be created.

⁸ The *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies* entered into force for the signatories in January 1967. For a full statement of the Treaty and its provisions, see history.nasa.gov/1967treaty.html.

- installations, or fortifications, maneuvers, or weapons testing in outer space.
- Astronauts shall be considered as envoys of mankind and shall be given assistance and protection in their endeavors.
 - States, governments, and international organizations shall have certain liabilities for activities and accidents arising from space exploration.
 - Efforts will be made to avoid contaminating celestial bodies or harming the Earth environment as a result of the introduction of extraterrestrial matter.

Nowhere, however, in all of the related domestic laws and international agreements is there a definitive embracing of human and humankind rights and freedoms in space. There is no space law ... currently ... that incorporates or specifically embraces and articulates a definitive bill of rights and freedoms for humankind, transhumans, and post humans while living in the synthetic and alien life-support environments of off-Earth space ... no bill of rights to “extinguish from the bosom of every member of the [space] community,” as James Madison so eloquently observed a couple of hundred years ago, “any apprehension that there are those among his countrymen [i.e., fellow space inhabitants] who wish to deprive them of the liberty for which they valiantly fought and honorably bled.” Inflexible lessons from Free World history!

Those involved in the growing use of space for military purposes, starting initially under the umbrella of the US Strategic Space Initiative,⁹ must not disregard the fact that these activities by the United States independently and collectively with its allies are designed to protect not only the United States and the so-called Free World, but also the concept and principles upon which the United States and most of the prevailing and future Free World were, and will be, founded. It is the regime of space law, a strange and often bewildering mosaic of public and private, domestic and international principles of law, that must be constantly reviewed as the shelter and guardian of human and humankind rights (and duties to one another). At times and under certain circumstances, components of this body of law still make infinite sense to all signatories. More often than not, it is becoming non-responsive and insensitive to developing space capabilities and activities traditionally considered to be peaceful, civilian, and non-military. Interpretations and proposed amendments to various bodies of space law are bound up in precatory assertions of the obvious frequently assumed by lawyers and statesmen to be tightly and carefully drawn legal positivisms. Good or parochial and self-serving, sensible or confounding, forthright or intentionally deceptive, space law and its underlying philosophic construct derived from the essence of Natural Law Theory exists in many respects in the helter-skelter image of the evolved law of the high seas.

⁹ The Strategic Defense Initiative was first proposed by President Ronald Reagan during a nationwide television address on March 23, 1983. Because parts of the defensive system that the President advocated would be based in space, the proposed system was dubbed “Star Wars” after the space weaponry used in the popular movie of the same name.

Conclusion

Space law positivisms deriving from the principles of space jurisprudence are not always concise and clear to those who adopt and implement them. Space law is not effectively codified, except perhaps in domestic law positivisms. But whatever international space law is intended to achieve, peacefully and/or militarily, it does not embrace a clear and definitive statement of humankind rights. Nevertheless, as this body of law evolves through applications and changing space capabilities, it has the potential for doing what is desired, as long as Free World nations are committed to the long-term values with which humankind started its journey and evolution in space. What is important for species migration, adjustment, mutation, accommodation, and survival ... or extinction ... is the philosophic and empirical methods relied on, and not just that evolving technology has made it possible. Also, as we meld human biology and technology into a unique entity of Spacekind, we must be ever so sensitive to the need for unparalleled principles of law that will give them the necessary safeguards to live in near and deep space as truly free envoys of Earthkind ... or as a totally separate and distinct species.

Unfortunately, throughout the comparatively embryonic history of space law, interpretive continuity has reflected primarily the efforts of lawyers, statesmen, and political/military strategists to make highly questionable, if not invidious, rationalizations of the true spirit and intent underlying much of domestic and international space law. Collectively, these rationalizations and accommodations have outraged the intellectual chastity of many of the initial students and practitioners of the discipline. Space law was considered a transcending and unique legal regime that for many reflects humankind's deeply felt hopes and aspirations that moving into near and deep space would constitute exploration, migration, and exploitation, for peaceful purposes only ... "for the benefit of *all* humankind."

Human movement into and occupation of off-Earth space has been one of those rare and unique opportunities in the history of human cultures furthering biological and biotechnological survival ... a unique opportunity in the history of disparate human civilizations to break the seemingly endless cycles of economic imperialism, colonialism, denial of basic human rights, and the subsequent violent confrontations that inevitably follow. This personal declaration of the present author's conscience hopefully will help serve, amidst the extraordinarily brutal contests between and among varying cultures and religions, as a sharp if not shrill clarion call among jurists and laymen alike to focus attention on the US Constitution (and clearly similar documents) and its Bill of Rights, which embrace universal humankind values. These values allow the very essence of the species and its evolving descendants to focus on the absence in human affairs of outer space of any carefully considered and crafted assertions of inalienable and basic humankind rights and freedoms; and the critically imperative need to define them and clearly articulate them.

Toward this end, the present author encourages assessment of the following suggested Declaration of Negotiable First Principles for the Governance of Earth Originated Outer Space Civilizations and Their Inhabitants:

PREAMBLE¹⁰

We, the undersigned Petitioners,

- Bearing witness to the exploration and inevitable permanent settlement of outer space by humankind and its evolving descendants;
- Recognizing the universal longing for life, liberty, equality, peace, and security for all long-term and permanent inhabitants of near and deep space;
- Expressing an unshakeable belief in the dignity of the individual and the societies and civilizations of which they are component members;
- Placing trust in societies that guarantee their members full protection of law, due process, and equal protection under the law;
- Reaffirming a faith in existing and yet to be determined fundamental freedoms inherent in space societies and civilizations;
- Mindful of the self-evident truth that all humankind and its descendants were endowed by the Creator with certain inalienable rights and responsibilities;
- Recognizing the responsibility of Earth-indigent governments and space governments and, indeed, all governing entities present and future, to protect the rights of the governed spacekind to exist, evolve, and practice their established and evolving personal and collective freedoms under a Space Bill of Rights,

Do assert and declare in this petition the intrinsic value of a set of First Principles for the Self-governance of Outer Space Societies and Civilizations, and urge all of Earthkind and Spacekind to acknowledge, accept, and apply such First Principles as hereinafter set forth....

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About the Author: Dr. George S. Robinson, III is a space law pioneer and international space expert. His book, book chapter and professional article publications – over 100 – are found throughout the aerospace and Space literature and continue to date. He served as International Relations Specialist for NASA, legal counsel to the FAA, and legal counsel at the Smithsonian Institution in Washington, DC. He serves on numerous Boards of Directors for science research. Dr. Robinson was a strong supporter of the Aerospace

¹⁰ For an expanded discussion of certain aspects of the suggested preamble appearing in the context of a celebration of the Bicentennial of the US Constitution, see G. Robinson "Essay – Re-Examining our Constitutional Heritage: A Declaration of First Principles for the Governance of Outer Space Societies," *Berkeley Technology Law Journal* 3 (1): 81-89.

Technology Working Group, which was the forum from which Kepler Space Institute and University emerged.

Dr. Robinson has taught and lectured in law and business relating to space commerce at numerous universities in the United States and abroad, including George Mason University, Oxford University, McGill University, George Washington University, and Georgetown University. He serves on the board of directors for various science research facilities, foundations, and hospitals. He has also consulted for the National Research Council, the Smithsonian Institution, the Department of the Interior's Remote Sensing Data Archives, the Maritime-Aerospace Liaison Project of the Maine Maritime Academy, and NASA, where he serves on the Planetary Protection Advisory Committee.



Editors' Notes: Our esteemed colleague, Dr. George S. Robinson, a global Space Law pioneer throughout his long professional career, here emulates our US forefathers and provides leadership of the world in his set of principles and foundations for *humankind* rights and freedoms in Space, This is a milestone article in the fifty-year evolution of thinking, writing, and talking about governance human settlements in Space, This article forms part of a trilogy of new publications focused on the essential need to create guidance and policy for human behavior and leadership if the failures on Earth are to be prevented in humanity's movement to Space. The other two articles in that trilogy are Yehezkel Dror's "Preventing Hell on Earth" and Stephanie Lynn Thorburn's "Progressive Etudes on Consciousness and Noetic Sciences," both in this edition of the *Journal of Space Philosophy*. **Bob Krone and Gordon Arthur.**