

Human Rights in the Twentieth Century

Edited by

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Introduction

Genealogies of Human Rights

Stefan-Ludwig Hoffmann

How can we adjudge to summary and shameful death a fellow creature innocent before God, and whom we feel to be so? – Does that state it aright? You sign sad assent. Well, I too feel that, the full force of that. It is Nature. But do these buttons that we wear attest that our allegiance is to Nature? No, to the King. Though the ocean, which is inviolate Nature primeval, though this be the element where we move and have our being as sailors, yet as the King's officers lies our duty in a sphere correspondingly natural? So little is that true, that in receiving our commissions we in the most important regards ceased to be natural, free agents.

Herman Melville, *Billy Budd*

Who would not agree today with Hannah Arendt's famous dictum that there is and always has been an inalienable "right to have rights" as part of the human condition? Human rights are the *doxa* of our time, belonging among those convictions of our society that are tacitly presumed to be self-evident truths and that define the space of the conceivable and utterable. Anyone who voices doubt about human rights apparently moves beyond the accepted bounds of universal morality in a time of humanitarian and military interventions. The only issue still contested today is how human rights might be implemented on a global scale and how to reconcile, for example, sovereignty and human rights. Whether human rights in themselves represent a meaningful legal or moral category for political action in the first place appears to be beyond question. The contributions to this volume seek to explain how human rights attained this self-evidence during the political crises and conflicts of the twentieth century.

Implicit in this objective is the hypothesis that concepts of human rights changed in fundamental ways between the eighteenth and twentieth centuries. Like all legal norms, human rights are historical. Initially formulated in the revolutions of the late eighteenth century, they almost disappeared from political and legal discourse in the nineteenth century, while other concepts such as "civilization," "nation," "race," and "class" gained dominance. Only

in the second half of the twentieth century did human rights develop into a political and legal vocabulary for confronting abuses of disciplinary state power (of "governmentality" in the Foucauldian sense)¹ – a claim foreign to revolutionaries of the eighteenth century, who believed that the nation-state would guarantee civil and human rights and who simply assumed that those parts of the world not yet organized as nation-states were extra-legal territories. One of the paradoxical results of the catastrophic experiences of the two world wars and the subsequent wars of decolonization was that the notions of global unity and the equality of rights became objects of international politics. Our argument is that human rights achieved the status of *doxa* once they had provided a language for political claim making and counter-claims – liberal-democratic, but also socialist and postcolonial. It was not until the last two decades of the twentieth century that human rights developed into the "lingua franca of global moral thought."² Only at this time were they invoked to legitimate humanitarian and military interventions, thereby serving as a hegemonic technique of international politics that presented particular interests as universal.³

"Contemporary history begins," as British historian Geoffrey Barraclough has famously stated, "when the problems which are actual in the world today first take visible shape; it begins with the changes which enable, or rather compel, us to say we have moved into a new era."⁴ As a legal norm and moral-political *doxa*, human rights – conceived as inalienable rights accorded to every human being – are a fundamentally new phenomenon indicative of the beginning of a new era, indeed, so recent that historians have only just begun to write their history. The authoritative studies on human rights in international law and politics have not been written by historians.⁵ A rapidly expanding literature on human rights has emerged (in the West) since the 1990s, particularly in the disciplines of political science, philosophy, and law. Although scholars from these disciplines do occasionally argue historically,

¹ Michel Foucault, "Face aux gouvernements, les droits de l'homme [1984]," in *Dits et écrits*, vol. 4: 1980–1988 (Paris, 1994), 707–708.

² Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, 2001), 53.

³ Martti Koskenniemi, "International Law and Hegemony. A Reconfiguration," *Cambridge Review of International Affairs*, 17:2 (2004), 197–218; Tony Evans, *The Politics of Human Rights. A Global Perspective* (London, 2003).

⁴ Geoffrey Barraclough, *An Introduction to Contemporary History* (London, 1964), 12.

⁵ A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford, 2001); Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge, 2002); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005); Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, 1999); Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, 2001); William A. Schabas, *Genocide in International Law* (Cambridge, 2000); Daniel Thomas, *The Helsinki Effect: International Norms, Human Rights and the Demise of Communism* (Princeton, 2001); Roger Normand and Sarah Zaidi, *Human*

their primary objective has been to provide a normative and legal grounding for human rights in the present or to discuss the limits of humanitarian law. In contrast, recent master narratives of nineteenth- and twentieth-century history have tended to mention the issue of human rights only in passing (for example, C. A. Bayly's *Birth of the Modern World* or Tony Judt's *Postwar*), although there have been notable exceptions (such as Mark Mazower's *Dark Continent*). The standard *Cambridge History of Political Thought* has no separate entry for human rights, while the article on human rights in the German conceptual-historical lexicon *Geschichtliche Grundbegriffe* does not move beyond the early nineteenth century. In short, there is an abundant literature on how to make human rights work, but less on the actual workings of human rights in the past.

This situation is beginning to change, as is demonstrated by Lynn Hunt's recent study *Inventing Human Rights*. However, Hunt's important account also makes clear how much this historical field is still in the making, particularly in regard to the question of presumed continuities in the history of human rights after 1800.⁶ Recent histories of human rights, in most cases written by Anglophone scholars, have tended to provide a triumphalist and presentist account ("the rise and rise of human rights");⁷ thereby distorting past figures and institutions such as the anti-slavery movement, which did not employ rights-talk and had rather different objectives and accomplishments. In contrast, our contention in the present volume is that human rights in their specific contemporary connotations are a relatively recent invention.

By focusing on the actual workings of human rights in the twentieth century, we hope to provide a more nuanced account of the emergence of human rights in global politics and to establish an alternative framework for analyzing the political and legal quandaries of that history. Most of the contributors are currently preparing or completing major studies on the history of human rights politics in the past century, with a particular emphasis on Europe in a global context. These studies focus on reconstructing cases of human rights "in action," rather than engaging in normative theorizing about human rights. In doing so, we seek to move beyond the false dichotomy in contemporary human rights scholarship between moral advocacy, on the one hand, and charges of political hypocrisy, on the other.

⁶ Lynn Hunt, *Inventing Human Rights: A History* (New York, 2007); similarly teleological are Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia, 1998); Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, 2004). For critical accounts of this narrative see Kenneth Gmel, "The Recent History of Human Rights," *American Historical Review* 109:1 (2004), 117–135; Reza Afshari, "On Historiography of Human Rights Reflections on Paul Gordon Lauren's *The Evolution of International Human Rights: Visions Seen*," *Human Rights Quarterly*, 29 (2007), 1–67; Samuel Moyn, "On the Genealogy of Morals," *The Nation*, March 16, 2007; and, more generally, Moyn, *The Last Utopia: Human Rights in History* (Cambridge, Mass., 2010).

⁷ See, e.g., Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, 2001).

In contrast to the prevailing conception of a natural evolution of human rights, our aim is to understand human rights as a historically contingent object of politics that gained salience internationally since the 1940s – and globally since the 1970s – as a means of staking political claims and counterclaims. Only in the crises and conflicts of the second half of the twentieth century did a conceptual version of human rights emerge that corresponds to the current moral universalism. Thus in order to write a genealogy of human rights, this conceptual transformation – elicited by and formative of social and political events, movements, and structural changes – must be traced diachronically and transnationally. We seek to determine more precisely how historical conflicts about the universality of human rights were incorporated into their different meanings, and thus how the genesis and substance of legal norms were historically intertwined. Can we conceive of a genealogy of human rights that narrates their history not teleologically as the rise and rise of moral sensibilities, but rather as the unpredictable results of political contestations?

The Chimera of Origins

Problems emerge at the start with the question of origins. Where should a history of human rights begin? With Roman law perhaps, where the concept *ius humanum* can indeed be historically documented, albeit not in the sense of subjective, natural rights for all humanity, but rather as rights created by humans and consequently subordinate to divine right?⁸ Or with Calvinism, in particular with Calvin's idea of the freedom of conscience and the covenant, as John Witte suggests?⁹ Can we agree with Wolfgang Schmale that legal conflicts in French Burgundy and German Electoral Saxony in the sixteenth and seventeenth centuries were the precursors of the human rights declarations of the late eighteenth century? Is a basic human need articulated in these conflicts, one that exists independently of whether the concept of "human rights" was employed by contemporaries?¹⁰ Or would the incorporation of all historical struggles for concrete rights and privileges – which were not intended to be universal, but rather were strictly tied to specific groups – amount to rewriting the entire legal history as a history of human rights?

Even the most familiar account of the origins of human rights – that they emerged in eighteenth-century Europe – is historically contested. More than a hundred years ago, Georg Jellinek sought to tear human rights away from the French archenemy, in particular from Jean-Jacques Rousseau, and to antedate them to the German Reformation and the English legal tradition.

⁸ See, for example, Paul Veyne, "Humanitas: Romans and Non-Romans," in Andrea Giardina (ed.), *The Romans* (Chicago, 1993), 342–369; in contrast to Richard A. Baumann, *Human Rights in Ancient Rome* (London, 2000).

⁹ John Witte, Jr., *The Reformation of Rights: Law, Religion and Human Rights in Early Modern Calvinism* (Cambridge, 2007).

¹⁰ Wolfgang Schmale, *Archäologie der Grund- und Menschenrechte in der Frühen Neuzeit. Ein deutsch-französisches Paradigma* (Münich, 1997), 44f.

This "Germanic" tradition, according to Jellinek, gave rise to the Virginia Declaration of Rights (1776), which in turn provided a superior template for the *Déclaration des Droits de l'Homme et du Citoyen* of 1789. The emphatic rejection of this position from beyond the Rhine was hardly surprising. This controversy has continued in its basic form but with more nuanced arguments. In fact, contemporary historiography has affirmed many of Jellinek's positions as well as those of his French critic Émile Boutmy, even if no scholarly consensus has emerged as a result.¹¹

A different version of this genealogy can be found in the aforementioned synthesis *Inventing Human Rights: A History* by Lynn Hunt, an eminent scholar of French cultural history, in particular of the early modern period. In order to elucidate the problems of a triumphalist history of human rights, it is worthwhile to review her argument in brief. Hunt, too, believes that human rights were an invention of the Enlightenment, but offers an unconventional explanation for this. Human rights gained currency in the eighteenth century, she argues, because they were based on new experiences and social practices, on a new emotional regime, with imagined empathy at its heart.¹²

It is no coincidence, according to Hunt, that the three novels of this century that impressively invoked a new sentimental subjectivity – Richardson's *Pamela* (1740) and *Clarissa* (1747–1748) as well as Rousseau's *Julie* (1761) – directly preceded in temporal terms a conceptual version of human rights. Male and, in particular, female readers of these epistolary novels adopted a feeling of equality beyond traditional social boundaries. Epistolary novels tied readers' emotional life to the suffering of others and in this way promoted a moralization of politics. A similar thesis about the politics of eighteenth-century moral and social practices can be found decades earlier in Reinhart Koselleck's *Critique and Crisis*, although the latter was more skeptical toward the Enlightenment.¹³

¹¹ See, for example, Keith Michael Baker, "The Idea of a Declaration of Rights," in Gary Kates (ed.), *The French Revolution: Recent Debates and New Controversies* (London, 1998), 91–140; Marcel Gauchet, *La Révolution des droits de l'homme* (Paris, 1989); Knud Haakonssen and Michael J. Lacey (eds.), *A Culture of Rights* (New York, 1991); Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton, 1994); Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge, 1996); Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York, 1997). On Jellinek see Duncan Kelly, "Revisiting the Rights of Man. Georg Jellinek on Rights and the State," *Law and History Review*, 22:3 (2004), 493–530.

¹² Hunt, *Inventing Human Rights*, 32. The two classic accounts of the emergence of "humanitarian sensibility" are Thomas L. Haskell, "Capitalism and the Origins of Humanitarian Sensibility," *American Historical Review*, 90 (1985), 339–361, 547–566; Thomas Laqueur, "Bodies, Details, and the Humanitarian Narrative," in Lynn Hunt (ed.), *The New Cultural History* (Berkeley, 1989), 176–204. See also Samuel Moyn, "Empathy in History, Empathizing with Humanity," *History and Theory*, 45 (2006), 397–415.

¹³ Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, Mass., 1988). On the post-Enlightenment politics of these moral and social practices see, for example, Stefan-Ludwig Hoffmann, *Politics of Sociability: Freemasonry and German Civil Society, 1800–1900*, trans. Tom Lampert (Ann Arbor, Mich., 2007).

This emotional regime becomes even more apparent in the moral campaigns for the abolition of torture beginning in the 1760s. In particular the famous Calas affair connected the new emphasis on physical autonomy to this moral sensibility and empathy.¹⁴ Torture could become a scandal in this case only because it was perceived as outdated. It was no longer regarded as a necessary means for publicly reconstructing the body politic. The audience now viewed only the pain and the suffering of individuals. Just six weeks after the Declaration of the Rights of Man and of the Citizen in 1789, the National Assembly abolished torture. The declarations of 1776 and 1789 thus transformed into rights the antecedent evolution of new emotional regimes. Reading accounts of torture or epistolary novels had physical effects that translated into "brain changes" and "came back out" as new concepts of human rights – this is how Hunt summarizes her argument.¹⁵

Hunt omits the issue at the heart of the Jellinek controversy, whether the revolution of 1776 was perhaps more successful (in the sense of political legitimacy) than that of 1789 because it tied a specific existing tradition (the Bill of Rights of 1688–1689, which defined the rights of Englishmen) to the universal-revolutionary conception of rights.¹⁶ The radical, cascade-like logic of human rights is, for Hunt, much more important. In the French Revolution, one social group after another demanded its rights and received them as well: first the Protestants, then in 1791 the Jews, and following the suppression of the Saint-Domingue rebellion the free blacks. Slavery was abolished in the French colonies in 1794 (but reintroduced by Napoleon several years later). Women remained the only group that was denied legal equality in the French Revolution. But the demand for human rights, once raised, could not be denied forever, even to women. Hunt insists that however restrictive the declarations of 1776 and 1789 may have been in practice, in the long term they opened up a political space in which new rights could be asserted: "The promise of those rights can be denied, suppressed, or just remain unfulfilled, but it does not die."¹⁷ In the end, Hunt argues, human rights will be implemented because they accord with an emotional regime that, once in the world, will ensure through the force of its own logic the establishment of rights and justice, somehow, somewhere.

Rights, Nations, and Empires since 1800

The concept of the "rights of man" (*droits de l'homme, Menschenrechte*), however, essentially vanished from European politics in the epoch between the

¹⁴ Voltaire intervened for Jean Calas, who had allegedly driven his son to suicide because the latter wanted to convert to Catholicism. The son was buried as a Catholic martyr, while the father was killed by having his bones broken with an iron rod and his limbs pulled apart on a wheel, before finally being burned at the stake.

¹⁵ Hunt, *Inventing Human Rights*, 33.

¹⁶ See Michael Zuckert, "Natural Rights in the American Revolution: The American Amalgam," in Jeffrey N. Wasserstrom et al. (eds.), *Human Rights and Revolutions* (Lanham, Md., 2000), 59–76.

eighteenth-century revolutions and the world wars of the twentieth century, or was replaced (again) by (civil) liberties. Rights that were supposed to hold for all humankind were as rare in international law as they were in the constitutions of the era. Nor did the notion of human rights have great currency in nineteenth- and early-twentieth-century political thought. Tocqueville, Marx, and Weber all mentioned human rights only in passing and with palpable contempt.¹⁸ In contrast to prevailing conceptions of a seamless evolution of human rights, it is therefore necessary to explicate more clearly their historical reconfigurations and ruptures between 1800 and 1945.

Let us briefly examine this issue in terms of the following four points: (1) Colonialism, international law, and humanitarianism were not mutually exclusive in the nineteenth century. Rather, those countries with liberal or republican legal traditions such as Great Britain and France engaged in particularly expansive colonialism. The movement to abolish slavery perhaps had less to do with a new enlightened sensibility for the "rights of man" than with the colonial "civilizing mission." (2) The struggle for *civil* and *social* rights, rather than human rights, was central for constitutions and politics in nineteenth-century Europe; and those who claimed such rights had no difficulty in withholding them from others. (3) Beginning in the 1860s international law did seek to delimit and "humanize" wars between states, but excluded the non-European world from this effort. (4) The homogeneous nation-state also served as the regulative idea guiding efforts to protect minorities both before and after the First World War. Genocide and expulsion were not impeded by such efforts, but instead became instruments of state population politics that aimed at an "ethnic cleansing" of the body politic.

1. *Slavery, Humanitarianism, and Empire.* The movement to abolish slavery began in England in 1787 with the Society for the Abolition of Slave Trade founded by the Quakers. Twenty years later parliament passed a related law. In 1833 all slaves in the colonies of the empire were freed – the abolitionists had collected more than one million signatures for a petition to parliament. France followed this example only in the course of the Revolution of 1848. American plantation owners in the southern states were forced to free their slaves after the end of the American Civil War in 1865. Serfdom had already been abolished in Russia in 1861. By the end of the century slavery was also completely abolished in Central and South America. Can one conceive of a more apt example of the rise and rise of human rights?

As Tocqueville had already noted in 1843, it was not the French radical tradition of human rights that had engendered the moral campaigns to abolish slavery.¹⁹ British abolitionists wanted to elevate the "humanity" of slaves to make them Christians. The success of the movement had less to do

¹⁸ See also Jeremy Waldron (ed.), *'Nonsense Upon Stilts': Bentham, Burke, and Marx on the Rights of Man* (London, 1987), who shows that this disdain for human rights was popular among nineteenth-century liberals, conservatives, and socialists alike.

¹⁹ Alexis de Tocqueville, "The Emancipation of Slaves (1843)," in Tocqueville, *Writings on*

with a new humanitarian sensibility for the "rights of man" than with this new evangelicalism and the political crisis of the British Empire following military defeats overseas and the loss of the American colonies (1783).²⁰ In search of a moral legitimacy for the Empire, slavery and the slave trade were declared symbols of a colonial past. The reinvention of a specifically British, Protestant-colored idea of freedom provided the justification for an imperial "civilizing mission" that not only aimed to free slaves and subjects in British colonies, but was also supposed to establish Britain's moral primacy vis-à-vis other European powers. Later, in the era of colonial acquisition, the condemnation of slavery was also a motif and pretext for "humanitarian" interventions by European colonial powers.²¹ French republicanism, for example, saw in the idea of its own *mission civilisatrice* the justification for "freeing" Africans from "feudal" conditions under indigenous rulers.²² The abolition of slavery was thus followed by a new European expansionism, justified on humanitarian grounds, parallel and in contrast with the democratization of nineteenth-century European civil societies. As Max Weber noted in 1906, imperial expansion constituted the historical condition for the emergence of civil liberties in Europe.²³

2. *Constitutionalism and Citizenship*. In the long nineteenth century, European constitutions avoided references to natural rights or human rights, irrespective of whether they were republics, empires, and/or constitutional monarchies. Human rights were no longer mentioned in the French Constitution

example of Tocqueville can also be used to show how political liberalism of the nineteenth century could connect the moral condemnation of slavery to the justification of imperial expansion, in this case the French colonization of Algeria. See Jennifer Pitts, *A Turn to Empire. The Rise of Imperial Liberalism in Britain and France* (Princeton, 2006), 204–239.

²⁰ Christopher Leslie Brown, *Moral Capital. Foundations of British Abolitionism* (Chapel Hill, N.C., 2006). Adam Hochschild, who in his introduction declares the abolitionists to be "towering figures in the history of human rights," later contradicts himself when he writes about the sentiments of the abolitionists toward the slaves: "The African may have been 'a man and a brother,' but he was definitely a younger and grateful brother, a kneeling one, not a rebellious one. At a time when members of the British upper class did not kneel even for prayer in church, the image of the pleading slave victim reflected a crusade, whose leaders saw themselves as uplifting the downtrodden, not fighting for equal rights for all. ... The upper-class Britons comprising that body might be moved by pity, but certainly not by a passion for equality." Hochschild, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves* (New York, 2005), 4, 133–134.

²¹ See Kevin Grant, *A Civilized Savagery: Britain and the New Slavery in Africa, 1884–1926* (New York, 2005); Grant, "Human Rights and Sovereign Abolitions of Slavery, c. 1885–1956," in Grant et al. (eds.), *Beyond Sovereignty: Britain, Empire, and Transnationalism, c. 1880–1950* (Basingstoke, 2007), 80–102.

²² Alice L. Conklin, "Colonialism and Human Rights: A Contradiction in Terms? The Case of France and West Africa, 1895–1914," *American Historical Review*, 103:2 (1998), 419–442; Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895–1930* (Stanford, Calif., 1997).

²³ Max Weber, "Zur Lage der bürgerlichen Demokratie in Rußland," in *Zur Russischen Revolution von 1905: Schriften und Reden 1905–1912*, ed. Wolfgang J. Mommsen and

of 1799 (and resurfaced only in 1946.) This was true as well for the United States, where the Bill of Rights sank into insignificance after 1800 (and was not ratified by the states of Massachusetts, Georgia, and Connecticut until 1939).²⁴ Only the constitutions of the individual states were important for legal practice at the time. This situation did not change with the Fourteenth Amendment of 1868, which granted civil rights to everyone born in the United States, including black slaves. (Lincoln himself long favored the plan to deport the freed slaves to Africa.)²⁵ The legal situation in the respective states, rather than the Bill of Rights, continued to be decisive for the rights of individuals. Only after the Second World War did the Supreme Court breathe new life into the Bill of Rights.

The draft constitution of St. Paul's Church in Frankfurt am Main in 1848 did include a catalog of "basic rights" (*Grundrechte*), as human rights were now called in German in order to provide distance from the radicalism of the French revolution. As with other constitutions of the era, however, these were civil rights tied to citizenship (*Grundrechte des deutschen Volkes*) and not universal rights. After the failed revolution, the state emerged as the guarantor of rights, which were regulated by laws. Legal positivism rather than natural law became the prevailing doctrine for granting rights, and not only in Germany. The issue of human rights played no role at all in the constitutional conflicts of the 1860s. It was absent from the Constitution of the German Empire of 1871 not because the empire was particularly authoritarian, but because no party attributed any significance to a declaration of basic rights. Not until the Weimar Constitution of 1919 was a detailed catalog of basic rights and duties included.

In the nineteenth century, lines of political conflict within European civil societies were instead defined by the demand for social or political rights. While early socialists did invoke the declarations of 1789 or 1793, the revolutions and civil wars in France of 1830, 1848, and 1871 emphasized collective rights (for example, of workers) or the *droits des citoyens*. Reference to the *droits de l'homme* reappeared only in the constitution of the Fourth Republic of 1946.²⁶ A just society, according to the socialist utopia, would arise only by transcending capitalism and "bourgeois" rule of law. The European Left emphasized not freedom *from* the state, but rather freedom *in* and *through* the state, over which they thus sought to gain control. Human rights were

²⁴ Orlando Patterson, "Freedom, Slavery, and the Modern Construction of Rights," in Olwen Hufton (ed.), *Historical Change and Human Rights: The Oxford Amnesty Lectures 1994* (New York, 1995), 132–178, here 164.

²⁵ See, for example, his "Speech in Springfield, Illinois, June 2, 1857," in Henry Louis Gates Jr. and Donald Yakovone (eds.), *Lincoln on Race and Slavery* (Princeton, 2009), 92–102.

²⁶ Tony R. Judt, "Rights in France: Reflections on the Etymology of a Political Language," *Tocqueville Review*, 14 (1993), 67–108. William H. Sewell has shown that French workers rarely employed the language of rights in the 1840s, instead formulating their claims in the corporate language of the ancien régime. Sewell, *Work and Revolution in France* (Cambridge, 1980).

therefore closely tied to the concept of the sovereignty of the people.²⁷ This presumed that only citizens incurred rights, not humanity in general, or, for instance, subjects in the colonies.²⁸ The same was true of the women's movement, which was organized internationally but aimed above all at political and social rights within nation-states, for instance, women's suffrage (paradoxically this aim was often justified by reference to the special place of women in society).²⁹ Only during the Dreyfus affair and the founding of the *Ligue pour la Défense des Droits de l'Homme* at the end of the century did socialists and republicans discover the value of individual rights vis-à-vis the state, a development that was curtailed with the explosion of nationalism during the First World War.³⁰

3. *The Meanings of International Law.* For Europeans, the nineteenth-century world was divided: On the one hand were the "civilized" (Christian) states, in which fierce conflicts for political participation took place, but whose legal principles (the right to property, security, religious freedom) were increasingly regulated through constitutions and laws, and in which an ever greater legal equality emerged, and on the other hand the remaining territories and "uncivilized" (non-Christian) peoples outside Europe, whose legal status remained weakly defined. The most important function of the liberal international law that emerged in the 1860s lay in regulating conflicts among European powers in the absence of a world sovereign. Only when a people had become "civilized" to the degree that it possessed its own state was it accorded rights. "[B]arbarians," as John Stuart Mill wrote in 1859, "have no rights as a nation, except a right to such treatment as may, at the earliest possible period, fit them for becoming one."³¹ The international standard of civilization did follow its own logic of imperial integration, which Martti Koskenniemi describes as "exclusion in terms of a cultural argument about the otherness of the non-European that made it impossible to extend European rights to the native, inclusion in terms of the native's similarity with the European, the native's otherness having been erased by a universal humanitarianism under which international lawyers sought to replace native institutions by European

²⁷ Alexander J. Schwitsanski, *Die Freiheit des Volksstaats. Die Entwicklung der Grund- und Menschenrechte und die deutsche Sozialdemokratie bis zum Ende der Weimarer Republik* (Essen, 2008), 454–455.

²⁸ Alice Bullard, "Paris 1871/New Caledonia 1878: Human Rights and the Managerial State," in Jeffrey N. Wasserstrom et al. (eds.), *Human Rights and Revolutions* (Lanham, Md., 2000), 79–97.

²⁹ See Leila J. Rupp, *Worlds of Women: The Making of an International Women's Movement* (Princeton, 1997).

³⁰ Emmanuel Naquet, "Entre justice et patrie. La ligue des droits de l'homme et la grande guerre," *Mouvement social*, 183 (1998), 93–109; William Irvine, *Between Justice and Politics: The Ligue des droits de l'homme, 1898–1945* (Stanford, Calif., 2007).

³¹ John Stuart Mill, "A Few Words on Non-Intervention," [1859] in *The Collected Works of John Stuart Mill*, ed. John M. Robson, vol. 21: *Essays on Equality, Law, and Education* (Toronto, 1984). <http://oll.libertyfund.org/title/255/21666>.

sovereignty."³² Thus in contrast to the constitutions of the era, natural rights arguments did still play a role in international law in a "civilizing" sense; however, they ultimately served European imperialism in that sovereignty was tied to a (European) standard of civilization. In the nineteenth century, international law continued to regard all territories of the world not controlled by sovereign states as *terra nullius* and thus as free to be occupied.³³

The attempts to "humanize" warfare also focused exclusively on conflicts among or within "civilized" states, and not, for example, on the suppression of revolts in the colonies, which assumed genocidal traits at the end of the century.³⁴ The wars of the 1860s in Europe and the American Civil War had become increasingly brutal through the mechanization and democratization of killing. Compulsory military service allowed for larger armies and thus deployments with significantly higher casualties among soldiers. At the same time, media reports in the age of an expanding public sphere made the killing more immediate. During the American Civil War, Prussian émigré and political philosopher Franz (Francis) Lieber was commissioned to draw up guidelines for dealing with the rebels. The Lieber Code, issued by Abraham Lincoln to the northern states in 1863, regulated the treatment of deserters and prisoners, regular troops, and partisans for the first time in the history of modern warfare. The report by Swiss entrepreneur Henri Dunant about the bloody Battle of Solferino in June 1859 between the Austrian army and troops of Piedmont-Sardinia and France led to the founding of the Red Cross in 1863 and a year later to the Geneva Convention, which the majority of European states and the United States adopted by the end of the century.³⁵ Its provisions were expanded and elaborated at the Hague Peace Conferences of 1899 and 1907 encompassing, for instance, the protection of the civilian population during foreign occupation. This new humanitarian international law was only selectively observed in the two world wars of the twentieth century. The

³² Koskenniemi, *Civilizer of Nations*, 130. For a different account see Anthony Pagden, "Human Rights, Natural Rights, and Europe's Imperial Legacy," *Political Theory*, 31:2 (2003), 171–199.

³³ Jörg Fisch, *Die europäische Expansion und das Völkerrecht* (Stuttgart, 1984), 490; Fisch, "Internationalizing Civilization by Dissolving International Society: The Status of Non-European Territories in Nineteenth Century European Law," in Martin H. Geyer and Johannes Paulmann (eds.), *The Mechanics of Internationalism: Culture, Society, and Politics from the 1840s to the First World War* (Oxford, 2001), 235–257; Fisch, "Africa as terra nullius: The Berlin Conference and International Law," in Stig Förster et al. (eds.), *Bismarck, Europe, and Africa: The Berlin Conference and the Onset of Partition* (London, 1988), 437–476; Fisch, *Das Selbstbestimmungsrecht der Völker oder die Domestizierung einer Illusion. Eine Geschichte* (Munich, forthcoming); Anghele, *Imperialism*.

³⁴ Isabel V. Hull, *Absolute Destruction: Military Culture and the Practices of War in Imperial Germany* (Ithaca, N.Y., 2005).

³⁵ Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience* (London, 1998); Caroline Moorehead, *Dunant's Dream: War, Switzerland, and the History of the Red Cross* (New York, 1998); John F. Hutchinson, *Champions of Charity: War and the Rise of the Red Cross* (Boulder, 1996).

juridification of war around 1900 thus stands in awkward tension with the lawlessness of warfare in the twentieth century, in particular the systematic killings of enemy civilians.

4. *Nation States, Minorities, and Genocide.* The crisis of the multiethnic Ottoman, Habsburg, and Romanov Empires beginning in the late nineteenth century made nationalism appear to be the most likely path to political rights and state sovereignty. This was true for Turkey and the new nation-states of the Balkans before the First World War, as well as for those nation-states in Central and Eastern Europe that were established after 1918 and in the Middle East, Asia, and Africa after 1945. In all of these cases, the creation of sovereign nation-states led to problems with the treatment of ethnic minorities and consequently to a new politics of genocide and population transfer. The collapse of the empires and the global expansion of the nation-state thus fundamentally altered international politics, from the traditional diplomacy of the great powers all the way to population policies or "bio-politics."³⁶

The right to national self-determination propagated first by Lenin and later by Woodrow Wilson at the end of the First World War solved old conflicts while engendering new ones. "Versailles had given sixty million people a state of their own, but it turned another twenty-five million into minorities."³⁷ Furthermore, after the First World War a completely new group of refugees emerged, stateless people, who as "foreign elements" or "the class enemy" had been stripped of their citizenship by one nation and forced to emigrate, but were unable to officially immigrate to the receiving nation (and apply for political asylum). This was particularly acute for Armenians and the millions of political refugees from the Russian Civil War (1917–1920) and beginning in 1933 a matter of life and death for German Jews. It was only with the dissolution of older multiethnic empires and the reordering of the world into egoistic nation-states that ethnic homogenization and genocide emerged as political imperatives for bio-politics.

National Socialism inverted nineteenth-century imperialism, as Afro-Martinican Francophone author Aimé Césaire wrote after the war, in that it treated Europeans like Africans – without rights and without states that could guarantee these rights.³⁸ Slavery also returned to Europe in the guise of forced labor. The nation-states of Central and Eastern Europe created in 1918–1919 were either completely annexed by Nazi Germany or turned into colonial protectorates. The *Generalplan Ost* (General Plan East) included no sovereign state or civil rights for the occupied territories and the peoples of the Soviet Union. In contrast to nineteenth-century imperialism, the Nazi empire did not attempt to legitimate itself through an ostensible "civilizing" of the colonized.

³⁶ Eric D. Weitz, "From the Vienna to the Paris System: International Politics and the Entangled Histories of Human Rights, Forced Deportations, and Civilizing Missions," *American Historical Review*, 113:5 (2008), 1313–1343.

³⁷ Mark Mazower, *Dark Continent: Europe's Twentieth Century* (London, 1998), 42.

³⁸ Aimé Césaire, *Discourse on Colonialism* [1950]. Translated by Robin D. G. Kelley (New

Exploitation and extermination were no longer the implicit consequences, but rather the declared objective of the subjugation.

The League of Nations created in Versailles in 1919 failed to resolve the issue of minority rights despite its other accomplishments.³⁹ The League was supposed to monitor the observation of minority rights in the new states of Central and Eastern Europe; the democracies of the West (including defeated Germany) were excluded from this because they were regarded as sufficiently "civilized" to ensure these rights themselves – irrespective of protests, for instance, by Poland. The exclusive standard of civilization thus did not disappear from international law during the First World War, but instead became the sole measuring stick for sovereignty, applied now also to the "immature" states of Central and Eastern Europe. A proposal by Japan to include the equality of all races in the articles of the League of Nations was rejected by the Western victorious powers, as were all attempts to extend the right to national self-determination to the colonies. Thus even the former German colonies in Africa and the Ottoman territories in the Middle East did not become independent states but mandate territories (similar to colonial protectorates) that were now directly administered by the victorious powers. After 1918–1919, the elites of the colonial world abandoned the idea of liberal reform within the British and French empires and embraced other ideologies, for instance, communism (China). The anti-colonial nationalism of the "Third World" emerged at the end of the First World War from the disappointed expectations about a new and just international order.⁴⁰

Competing Universalisms since 1945

One of the results of the two world wars was not only the end of the Nazi racial empire in Europe, but the beginning of the disintegration of the colonial empires, in particular those of the victorious powers Great Britain and France. Only with the Universal Declaration of Human Rights of 1948 and the decolonization of the world did human rights become universal in the sense that they were not supposed to apply exclusively to Europeans. As Mark Mazower demonstrates in his contribution to this volume, in this process "human rights" (and later "development") replaced the concept of civilization

³⁹ See, for example, Susan Pedersen, "Back to the League of Nations," *American Historical Review*, 112:4 (2007), 1091–1117; Carole Fink, "Minority Rights as an International Question," *Contemporary European History*, 9 (2003), 385–400; Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878–1938* (Cambridge, 2004); Donald Bloxham, *The Great Game of Genocide: Imperialism, Nationalism, and the Destruction of the Ottoman Armenians* (Oxford, 2005); Michael Marrus, *The Unwanted: European Refugees in the Twentieth Century* (Oxford, 1985). See also the classic critique of the interwar minority system by Hannah Arendt, *The Origins of Totalitarianism* [1951] (London, 1976), 267–303; on human rights and "bio-politics": Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, Calif., 1998), 126–135.

⁴⁰ See Eric Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford, 2007).

(and of "civilizing missions") in international law and politics. In many ways, human rights acquired universality only after the demise of European international law and its exclusive standard of civilization.

This emergence of human rights during the midcentury crisis as a normative concept that claimed authority even beyond state boundaries stood (and continues to stand today) in tension with the principle of sovereignty. Like human rights, the global expansion of the nation-state as a model of political order is also a result of the cataclysmic history of the first half of the twentieth century and the implosion of the colonial empires. The new international order was thus constructed around two often mutually exclusive principles: individual human rights, which could also be asserted vis-à-vis one's own state; and the principle of state sovereignty, which – as new states from Israel to India and Pakistan were convinced – rendered the state solely capable of guaranteeing rights.

The new intergovernmental organizations, declarations, and conventions, like international politics since 1945 in general, have thus been based on the principle of state sovereignty and have at the same time employed moral imperatives such as human rights that point beyond the nation-state. The second half of the twentieth century was defined by the global expansion of the nation-state and the increasing erosion of state sovereignty through (among other things) transnational legal norms such as human rights. Ideas about the equal sovereignty of states and of individuals emerged in tandem and in political tension with one another. This paradoxical constellation helps to explain the trajectories of human rights in the second half of the century, in particular the difficulties involved in their political implementation. Once again we can identify four sets of problems: (1) Cold War contestations and (2) decolonization, both primarily from the late 1940s to the early 1960s; (3) the global campaign against pariah states such as Chile and South Africa and the new humanitarianism; and (4) the demise of communism and the emergence of dissidence in Eastern Europe, both in the 1970s and 1980s.

I. *Cold War Contestations.* Human rights returned to the international arena during the Second World War as a unifying moral imperative for the states allied against Nazi Germany. Indeed, the war experience played a pivotal role for the international constitutionalism of the late 1940s. However, the "strange triumph of human rights" in the 1940s was based as well on the geopolitical interests of the Allies. The (nonbinding) Universal Declaration of Human Rights of 1948 contained a strategic dimension in the sense that it pushed the rights of individuals to the fore for the first time in international law while simultaneously ignoring the rights of minorities, lending the Allies a free hand for postwar population transfers, not least the expulsion of millions of Germans from East-Central Europe.⁴¹ In their contributions to this volume,

⁴¹ Mark Mazower, "The Strange Triumph of Human Rights, 1933–1950," *Historical Journal*, 44 (2001), 1–23; Eric Foner, "The Strange Triumph of Human Rights, 1933–1950," *Historical Journal*, 44 (2001), 1–23.

Dan Cohen examines the refugee crisis as an example for the postwar human rights revolution while Lora Wildenthal discusses the German case: The fact that postwar Germans were not included in the emerging international human rights regime confounded precisely those Germans who had not been Nazis, whereas Carl Schmitt, for instance, merely regarded his own views as confirmed by this.⁴²

The consensus among the Allies quickly disintegrated as their interests diverged. During the Cold War the communist bloc and the decolonization movements insisted that a condemnation of racism and a guarantee of collective and social rights were essential dimensions of human rights, while the liberal democracies in the West emphasized individual and political rights, such as the right to free expression, that were already guaranteed in their constitutions. The substance of human rights, in other words, was historically contingent and politically contested. Again, this is a history marked more by ruptures than continuities. In the early 1950s, the United States and the Soviet Union partially withdrew from attempts to establish an international human rights regime – the United States was still a racially segregated society at this time, and the post-Stalinist Soviet Union had only then begun to eliminate forced labor.⁴³ Within the scope of the European Convention on Human Rights (1950), the post-Fascist democracies of Italy, France, Austria, and Germany were prepared to cede sovereignty rights, in part out of fear of a return of political extremism within their own societies.⁴⁴ This ceding of sovereignty rights by Western European nations would have been inconceivable without the constellation of the Cold War (and the demise of the colonial empires, an issue that will be addressed below). As Mikael Rask Madsen shows in his contribution, the new institutions of the European Court of Human Rights and the European Commission on Human Rights were not particularly significant for jurisprudence in the first two decades of their existence (the court issued few judgments until the 1970s), but they did serve as instruments for the political unification of the western half of the continent

and the Crisis of the Mid-20th Century," *International Affairs*, 82 (2006), 553–566. For a more sanguine view see Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, Mass., 2003).

⁴² See also Paul Betts, "Germany, International Justice and the 20th Century," *History and Memory*, 17 (2005), 45–86. Schmitt wrote the following in a diary entry of December 6, 1949, expressing the prevailing sentiment among postwar Germans: "There are crimes against and for humanity. The crimes against humanity are committed by Germans. The crimes for humanity are committed on Germans." Schmitt, *Glossarium: Aufzeichnungen der Jahre 1947–1951* (Berlin, 1991), 282.

⁴³ Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–55* (Cambridge, Mass., 2003); Mark Bradley, "The Ambiguities of Sovereignty: The United States and the Global Rights Cases of the 1940s and 1950s," in Douglas Howland and Luise White (eds.), *Art of the State: Sovereignty Past and Present* (Bloomington, Ind., 2009), 124–147.

⁴⁴ Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization*, 54 (2000), 217–252.

under conservative auspices in response to the challenge of communism. In the postwar era, anticommunism was more important for the emergence of a European human rights regime than the Holocaust.⁴⁵ As *Samuel Moyné's* essay contends, within the liberal democracies of Western Europe after 1945 it was especially the Christian-Democratic parties that adopted the cause of human rights. Political Catholicism, which in the interwar period had still demonized the French Revolution, now discovered in human rights and the sacred concept of the person an effective strategy to conceal its own entanglement with the radical right and to infuse a religious dimension into the anti-totalitarian consensus of the West.

2. *Decolonization and the Internationalization of Rights.* After 1945 the new United Nations institutions resembled the League of Nations of the interwar era in many ways, and it appeared initially as if the liberal internationalism that still worked in an imperial framework and had been animated by the legal traditions of the British Empire would continue after the war.⁴⁶ South African President Jan Smuts, the representative of a Commonwealth state based on racial segregation, composed the preamble to the United Nations Charter in 1945. It is hardly surprising that a condemnation of racism was absent from this document. In contrast to the interwar period, however, representatives of the colonies were no longer willing to be put off. Smuts became the object of attacks within the new international arena in 1946, in particular from Nehru and other Indian politicians, who now demanded recognition of the rights of the Indian minority in South Africa. This became something of a precedent for the aforementioned dilemma: to demand universal rights and nonetheless to respect sovereignty rights. Until the end of apartheid, South Africa remained a kind of pariah state within the international community, but was never subject to any direct military intervention.

With the Cold War division into East and West and the wars of decolonization, human rights became a disputed domain in international politics in the 1950s. One of the many ironies of this process was the "boomerang effect" of the internationalization of human rights: The demise of French and British imperial power coincided with the internationalization of the greatest accomplishments of their political and democratic cultures, that is, human rights. As *Glenda Sluga's* contribution shows, questions of racial and sexual equality constituted the central focus for the human rights rhetoric of the postcolonial and communist states.⁴⁷ At the time, liberal-democratic, socialist, and

postcolonial human rights norms competed in the international arena, and yet each claimed for itself moral universalism. Consequently the prevailing models for the history of human rights are hardly convincing. In 1949, at the height of the Labour government's reform policies, British sociologist T. H. Marshall proposed as a model for the historical development of citizenship a succession of civil, then political, and then social rights, which Italian philosopher Norberto Bobbio, for instance, subsequently adopted and applied to human rights. Karel Vasak, a legal expert from Czechoslovakia who had fled to France in 1968, developed a similar model containing three generations of rights: first civil and political rights, followed by social and cultural rights, and finally in the twentieth century solidarity rights, such as the right to peace, development, and a healthy environment.⁴⁸ These different rights claims did not in fact follow one another as subsequent generations, but rather competed historically. Women's suffrage was adopted in the European democracies only after the Great War, in France not until 1944 and in Switzerland not until 1971. The right to work had already appeared in Article 21 of the Declaration of Human Rights in the French Constitution of 1793 and was thus not an invention of the nineteenth or twentieth century. The United States did sign the International Covenant on Economic, Social, and Cultural Rights (1966) in 1977 at the beginning of the Carter administration, but is one of the few countries in the world that has not ratified it even today, although during the Second World War social rights were a firm part of the Roosevelt administration's postwar agenda.⁴⁹

As British international legal expert A. W. Brian Simpson has argued, the decline of the colonial empires after 1945 can hardly be explained without the moral and political pressure of human rights. This is particularly clear in the revolts and wars in the 1950s against Great Britain and France, both of which had been weakened by the Second World War; these two colonial powers participated in the establishment of a European human rights regime and yet were compelled at the same time to declare states of emergency in their own colonies, for instance, Kenya and Algeria, in order to suppress independence movements, as *Fabian Klose* makes clear in his contribution to this volume.⁵⁰

⁴⁵ T. H. Marshall, "Citizenship and Social Class," in *Citizenship and Social Class and Other Essays* (Cambridge, 1950), 1–85; Norberto Bobbio, "Human Rights Now and in the Future [1968]," in *The Age of Rights* (London, 1996); Karel Vasak, "Pour une Troisième Génération des Droits de l'homme," in C. Swinarski (ed.), *Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet* (The Hague, 1984), 837–845.

⁴⁶ Martin H. Geyer, "Social Rights and Citizenship during World War II," in Manfred Berg and Martin H. Geyer (eds.), *Two Cultures of Rights: Germany and the United States* (Cambridge, 2002), 143–166.

⁴⁷ See also Simpson, *Human Rights*; Kenneth Cmiel, "Human Rights, Freedom of Information, and the Origins of Third World Solidarity," in Mark Bradley and Patrice Petro (eds.), *Truth Claims: Representation and Human Rights* (New Brunswick, N.J., 2002), 107–130; Mikael Rask Madsen, "France, the United Kingdom and the 'Boomerang' of the Internationalisation of Human Rights (1945–2000)," in Simon Halliday and Patrick Smith (eds.), *Human Rights*

⁴⁵ Marco Duranti, "Conservatism, Christian Democracy and the European Human Rights Project, 1945–50," PhD diss., Yale University, 2009.

⁴⁶ See Saul Dubow, "Smuts, the United Nations and the Rhetoric of Race and Rights," *Journal of Contemporary History*, 43 (2008), 45–74; Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, 2009).

⁴⁷ See also Sunil Amrith/Glenda Sluga, "New Histories of the United Nations," *Journal of World History*, 19 (2008), 251–274. In the 1950s and 1960s it was primarily representatives of the postcolonial world who put women's rights on the UN agenda. See Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia, 2010).

The fact that Great Britain initially insisted on excluding the subjects of its colonies from the European Convention on Human Rights and that France did not ratify the convention (until 1974) could hardly still be justified in terms of "a civilizing mission."

As a result of decolonization, the institutions that liberal internationalism had created in the mid-1940s were now "globalized." The new independent states of Africa and Asia increasingly gained in influence; since the early 1960s the countries of the "Third World" constituted a majority in purely numerical terms within the institutions of the United Nations. Cold War rivalries and the emergence of "Third World" sovereign states fostered a fundamental change in the constitution of international society, previously dominated by European colonial empires. Now postcolonial states could assert their own perspective on human rights within international organizations. In 1960 the post-colonial states (on the initiative of the Soviet Union and without votes from the West) were able to attain recognition of the right to national self-determination as Article 1 of the Declaration on the Granting of Independence to Colonial Countries and Peoples – and thereby as one of the UN Human Rights Norms.⁵¹ At the first International Human Rights Conference of the United Nations in Teheran in 1968, twenty years after the Universal Declaration, the states of the "Third World" – many of them now autocratic dictatorships such as the regime of Reza Shah Pahlavi in Iran – formulated a rejection of individual rights and a (renewed) turn within the international community to social and collective rights. The socialist states and the new states of the postcolonial world frequently formed an anti-colonial bloc against the West within international organizations (UNO, UNESCO, ILO), although this invocation of human rights had no consequences for jurisprudence within their own societies.⁵²

As *Andreas Eckert* argues in this volume, African political leaders invoked human rights in the 1950s primarily to expose the hypocrisy of the West. For anti-colonialist intellectuals such as Julius Nyerere, Frantz Fanon, or Léopold Senghor, the language of nationalism and revolutionary violence was more significant than that of human rights. Whenever it appeared that the invocation of human rights might threaten the sovereign rights of recently independent nation-states, the former were summarily rejected, as *Daniel Roger*

2004), 57–86; Charles O. H. Parkinson, *Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories* (Oxford, 2007); Bonny Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (New York, 2007); Burke, *Decolonization*.

⁵¹ See Burke, *Decolonization*, ch. 4.

⁵² See, for example, the ILO debates on forced labor between 1947 and 1960: Sandrine Kott, "Arbeit – ein transnationales Objekt? Die Frage der Zwangsarbeit im 'Jahrzehnt der Menschenrechte,'" in Christina Benninghaus et al. (eds.), *Unterwegs in Europa. Beiträge zu einer vergleichenden Sozial- und Kulturgeschichte* (Frankfurt, 2008), 301–321; Daniel Roger Maul, *Menschenrechte, Sozialpolitik und Dekolonisation. Die Internationale*

Maul's article here suggests. This, of course, was no different in the case of the superpowers, the United States and the Soviet Union. Thus from the perspective of the postcolonial world, human rights have constituted both: a moral and political means of applying pressure upon the former colonial powers in the international arena, while at the same time representing a dangerous, modernized version of the nineteenth-century "standard of civilization" that further fostered the social and economic gap between the imperial metropolis and the periphery (or North and South, as it was termed by this time).

Human rights thus became a language of international politics, although still without significant consequences for national governance. International legal experts such as Paul Kahn have even argued that one reason for the rapid juridification of the world (in different regional and international human rights regimes) was the fact that this emerging global law proved unenforceable. Torture, for instance, became a common practice in the dictatorships of Latin America at precisely the same time it was officially prohibited by the International Covenant on Civil and Political Rights (1966, in force since 1976).⁵³

3. *Global Hegemony and the New Humanitarianism.* The situation changed in the early 1970s, at the moment when human rights left the restricted space of international diplomacy and became a global concept for non-state actors such as Amnesty International and Médecins Sans Frontières, which began to demand the enforcement of human rights beyond national borders.⁵⁴ Nongovernmental organizations (NGOs) dedicated to humanitarian issues have existed since the late eighteenth century. For example, the British Defence and Aid Fund, which assisted people persecuted by apartheid laws in South Africa, developed from the Treason Trial Defence Fund out of Christian Action, which had been established in the period after the Second World War and which in turn had its origins in the British Anti-Slavery Society.⁵⁵ Now, however, a variety of new organizations emerged that regarded the "global

⁵³ Paul W. Kahn, *Sacred Violence: Torture, Terror, and Sovereignty* (Ann Arbor, Mich., 2008), 57–58.

⁵⁴ See Akira Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (Berkeley, 2002); Ann Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton, 2001); Kenneth Cmiel, "The Emergence of Human Rights Politics in the United States," *Journal of American History*, 86 (1999), 1231–1250; Tom Buchanan, "The truth will set you free": The Making of Amnesty International," *Journal of Contemporary History*, 37 (2002), 575–597; Buchanan, "Amnesty International in Crisis, 1966–7," *Twentieth Century British History*, 15 (2004), 267–289; David Kennedy, *The Dark Sides of Virtue. Reassessing International Humanitarianism* (Princeton, 2005); Dominique Clement, *Canada's Rights Revolution. Social Movement and Social Change 1937–1982* (Vancouver, 2008); Jean Quataert, *Advocating Dignity: Human Rights Mobilizations and Global Politics* (Philadelphia, 2009); Matthew Hilton, *Prosperity for All: Consumer Activism in the Era of Globalization* (Ithaca, N.Y., 2009).

⁵⁵ Hakan Thörn, *Anti-Apartheid and the Emergence of a Global Civil Society* (Basingstoke, 2006), 6–7.

community" rather than national governments as the source of authority and the audience for their campaigns. This began with the Biafra crisis in the late 1960s, which triggered a wave of new humanitarian aid organizations in the West.

Certainly one factor in this development was the political disillusionment of the radical Left in Western Europe after 1968, as well as what it regarded as the toothless internationalism of the UN human rights regime. Historians speak of a second globalization beginning in the early 1970s, which, for example, also gave rise to a new global media public and a sense, at least in affluent Western societies, to share global concerns. The images of suffering children in Biafra evoked among Western viewers the feeling they had to act immediately in order to end humanitarian emergencies in postcolonial crisis states – a politically double-edged form of empathy that bore similarities to the imperial humanitarianism of the early nineteenth century. Entirely new forms of media resonance have also been part of this constellation, for instance, the worldwide broadcasts of pop concerts, beginning with the *Concert for Bangladesh* in New York organized by Ravi Shankar and George Harrison (for refugees of the civil war), including Bob Geldorf's *Live Aid* concerts for Africa in 1984 and 1985, and the *Tribute to Nelson Mandela* in London's Wembley Stadium in 1988, which was watched by more than 60 million people on television. Human rights became popular in the 1970s. They left the conference room of international organizations and became an issue for humanitarian engagement by individual groups, which used transnational organizational networks and media to mobilize a global audience. Only now did it appear that "the narrower or wider community of the peoples of the earth has developed so far that a violation of rights in one place is felt throughout the world," as Kant had claimed in his foundations of a cosmopolitan law two hundred years earlier.⁵⁶

In the campaigns against individual states (for example, Chile and South Africa, but also the Soviet Union in the course of the Helsinki process), it became clear that both national and transnational actors could invoke human rights as moral and political leverage against individual states and their governments. Still, as *Jan Eckel* suggests in this volume for Chile, the global moral campaigns exerted pressure only on those states that wanted to be regarded internationally as democracies. The contributions by *Devlin O. Pendas* and *A. Dirk Moses* point to the failure of the "legalist paradigm of war," according to which individual and state violations of human rights were to be prosecuted internationally after 1945. This paradigm failed because of the principle of nonintervention into the domestic affairs of sovereign states, even when governed by brutal dictatorships. Indeed, the capacity of international law and politics to enforce the observation of rights was

⁵⁶ Immanuel Kant, *Perpetual Peace* [1795], ed. H. S. Reiss, trans. H. B. Nisbet (Cambridge, 1991), 23.

actually weakened. The fact that the prosecution of genocide became a *ius cogens* of international law since 1945 has reduced neither state violence against ethnic minorities nor genocidal wars. Thus, for example, the frequent invocation of the genocide convention of 1948 in the civil wars of the 1960s and 1970s (Biafra, Bangladesh, or Cambodia) never prompted UN military intervention. NGOs in the West did not undertake moral campaigns against the crimes committed in these states, which by far surpassed those in Chile or South Africa, because moral and political pressure could be exercised solely upon those regimes that sought membership in the "global community."

Western NGOs engaged in their work without state commission or democratic legitimization. The appeal of the humanitarian engagement of many NGOs lay precisely in their renunciation of traditional politics. These organizations testify less to the existence of a "global civil society" than to a growing concern within the West in the late 1960s and early 1970s for the social and economic consequences of decolonization in the global south.⁵⁷ The debate about human rights politics now also resonated among governments and parliaments of Western states. Post-imperial states such as Canada and the Netherlands were especially active in human rights politics. Particularly significant was the Carter administration's abandonment in 1975–1976 of the Realpolitik of the Nixon-Kissinger era, internationally disavowed after the Vietnam War, as well as its rediscovery of human rights. Human rights not only continued to serve as an argument in the Cold War against the Soviet Union, but now figured as a moral imperative for the new political and economic hegemony of the United States in an era of the global integration of markets and spaces. Like the British Empire at the beginning of the nineteenth century, the United States searched for new legitimacy in the world after its moral defeat in a war against insurgents. In addition to institutions such as the World Bank and the International Monetary Fund, which secured the leading economic position and interests of the United States, human rights became a central argument for the United States' claims to political hegemony in the world.⁵⁸ This led to a reconfiguration of global politics that moved beyond the framework of the Cold War and ultimately paved the way for the preoccupation with human rights and humanitarian interventions since the 1990s, when the United States became the global hegemon. Western

⁵⁷ See Giuliano Garavini, "The Colonies Strike Back: The Impact of the Third World on Western Europe, 1968–1975," *Contemporary European History*, 16.3 (2007), 299–319.

⁵⁸ See, for example, Charles Bright and Michael Geyer, "Where in the World Is America? The History of the United States in the Global Age," in Thomas Bender (ed.), *Rethinking American History in a Global Age* (Berkeley, 2002), 63–99; Bright and Geyer, *The Global Condition in the Long Twentieth Century* (Berkeley, forthcoming), and more specifically Daniel Jonathan Sargent, "From Internationalism to Globalism: The United States and the Transformation of International Politics in the 1970s," PhD diss., Harvard University, 2008; Sarah Snyder, *Human Rights Activism and the End of the Cold War: A Transnational History of the Helsinki Network* (New York, forthcoming).

claims to political hegemony and the new humanitarianism have thus gone hand in hand, although human rights activists in NGOs have rarely recognized this connection.⁵⁹

4. *The Demise of Communism.* Beginning in the late 1940s the Soviet Union sought to promote their version of human rights within international politics, as Jennifer Amos demonstrates in her contribution. The Soviet Union took part in the Universal Declaration of Human Rights, the Genocide Convention, as well as the war crime tribunals in Nuremberg and Tokyo – a fact that was played down in the liberal democracies of the West during the Cold War and that has been forgotten since the end of Soviet-style socialism.⁶⁰ Precisely because human rights long served as a diplomatic code (or propaganda ploy) within the international arena, socialist countries had no difficulties with participating in the UN human rights conventions and the Helsinki process in the 1960s and 1970s. This participation was motivated by hopes of international recognition of the socialist world and by trust – as it turned out, an unmoderated trust – in the fact that the language of human rights would remain in the international arena (“covenants without the sword are but words,” as Hobbes wrote in *Leviathan*).⁶¹

Moreover, human rights could develop such a dynamic within the Eastern bloc only because of the Socialist rights talk that the domestic opposition was able to invoke.⁶² There was no rule of law under Communist regimes, but there were laws and the promise of rights that the opposition could exploit. It is no coincidence that the only effective mass opposition movement in the Eastern bloc was Poland's Solidarity, founded in 1980, a free trade union that demanded civil and social rights for workers.⁶³ “Socialist

⁵⁹ Yves Dezalay and Bryant Garth, “Droits de l'homme et Philanthropie Hégémonique,” *Actes de la recherche en sciences sociales*, 121 (1998), 23–41.

⁶⁰ Francine Hirsch, “The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order,” *American Historical Review*, 113:3 (2008), 701–730, here 710. See also, for example, Catriona Kelly, “Defending Children's Rights,” in *Defense of Peace? Children and Soviet Cultural Diplomacy*, *Kritika* 9 (2008), 711–746, esp. 735–743.

⁶¹ Thomas Hobbes, *Leviathan: The Matter, Form and Power of a Commonwealth Ecclesiastical and Civil* [1651] (Oxford, 1929), p. 2, ch. 17, 128.

⁶² The *Great Soviet Encyclopedia*, for example, first included an article on the Universal Declaration of Human Rights in its third edition (in the second edition of 1952 there was only an entry on the declaration of 1789, which emphasized its bourgeois “class basis”). The article in the third edition was quite positive, albeit with one restriction: “The declared rights and freedoms may be claimed by every human being, without distinction of race, skin color, sex, language, religion, political or other convictions, national or social origin, or property, birth, or other circumstances. The Soviet Union recognizes the Declaration of Human Rights as a progressive document, but refrained from voting for its passage because it contained no references to concrete measures to implement the declared rights and freedoms.” “Deklaracija prav čeloveka OON Vseobščaja,” in *Bol'shaja Sovetskaja Enciklopedija*, 3rd ed., vol. 8 (Moscow, 1972), 47. See also “Pakty o pravah čeloveka,” *ibid.*, vol. 19 (Moscow, 1975), 93.

⁶³ Stephen Kotkin, with a contribution by Jan T. Gross, *Uncivil Society. 1989 and the Implosion of the Communist Establishment* (New York, 2009), 9.

legality” gained salience as a legal practice beginning in the early 1970s, when socialist states could no longer rely on terror and utopian promise alone. Human rights were thus not simply an invention of a small group of dissident intellectuals, as is usually assumed today. Rather, dissidents often merely took at face value (and much to the distress of authorities) the constitutions of state socialism or the international declarations and conventions signed by socialist countries, as the essays by *Celia Donert* and *Benjamin Nathans* argue.⁶⁴

Eastern European critics of state socialism such as Aleksandr Solzhenitsyn were long regarded in the West as antiquated representatives of Cold War anti-totalitarianism. This changed with the general disillusionment of the political Left after 1968, in particular in France. Put simply, in the 1970s the dissident replaced the revolutionary as the political paragon.⁶⁵ The figure of the “dissident” became an object of projection for the Western European Left, but also for conservatives and liberals: Each claimed the dissident and thus the language of human rights for their own political objectives. This distorted image of dissident intellectuals omitted (and continues to omit) many significant dimensions. György Konrád's *Antipolitics* of the 1980s, for example, was still skeptical about the selectivity of the moral rhetoric in both East and West and was thus aware of the competing universalisms of a liberal and a socialist human rights discourse.⁶⁶ In general, for Eastern Central European dissidents, human rights always remained tied to a return to national history.⁶⁷ For this reason, they never embraced the idea of a postnational “global civil society” propagated by left-liberal intellectuals of the West who in the 1990s retrospectively invoked dissidents and human rights.⁶⁸

Only in the last twenty years, in our current era of terror, humanitarian emergencies, and “global governance,” have human rights become a *doxa* (or secular religion, as Michael Ignatieff noted early on).⁶⁹ Nineteenth-century

⁶⁴ See also Robert Horvath, *The Legacy of Soviet Dissent: Dissidents, Democratization and Radical Nationalism in Russia* (London, 2005), ch. 3: “The Rights-Defenders”; Benjamin Nathans, “The Dictatorship of Reason: Aleksandr Volpin and the Idea of Rights under ‘Developed Socialism,’” *Slavic Review*, 66:4 (2007), 650–663; Peter Bugge, “Normalization and the Limits of Law: The Case of the Czech Jazz Section,” *East European Politics and Society*, 22 (2008), 282–318.

⁶⁵ Robert Horvath, “‘The Solzhenitsyn Effect’: East European Dissidents and the Demise of Revolutionary Privilege,” *Human Rights Quarterly*, 29:4 (2007), 879–907; Kristin Ross, “Ethics and the Rearmament of Imperialism: The French Case,” in Jeffrey Wasserstrom et al. (eds.), *Human Rights and Revolutions*, 2nd ed. (Lanham, Md., 2007), 155–167.

⁶⁶ György Konrád, *Antipolitics: An Essay* (New York, 1984).

⁶⁷ Michal Kopeček, “Citizenship and Identity in the Post-Totalitarian Era: Czech Dissidence in Search of the Nation and its Future,” *Transit Online*. <http://www.twm.at/>.

⁶⁸ Jürgen Habermas, *The Postnational Constellation: Political Essays* [1998], trans. Max Pensky (Cambridge, 2001); John Keane, *Global Civil Society* (Cambridge, 2003).

⁶⁹ Ignatieff, *Human Rights*, 53.

political models of empires and clashes of civilizations returned as did humanitarian interventions.⁷⁰ Human rights were now frequently grounded or rejected in cultural rather than political terms, for instance, in the debate over *Asian values* in the early 1990s.⁷¹ Cultural relativism, which colonial empires had invoked after 1945 in order to oppose the implementation of human rights in their colonies, was now taken up by postcolonial states against the hegemonic human rights claims of the West. Postcolonial legal scholars too regarded human rights now merely as an imperialist strategy of the West masked as universalism.⁷² Conversely, attempts to locate human rights in the cultures of the world (for instance, in an African or Confucian human rights tradition) tended to obscure the fact that there had been political contestations between and among Western, socialist, and postcolonial human rights claims, through which human rights had become universalized in the first place. Those solidarity rights that were recognized by the UN over the past thirty years (in almost every case opposed by the United States), for instance, the "right to development" outlined in the early 1970s by Senegalese international legal expert Kéba M'Baye and adopted in a UN declaration in 1986, have scarcely counted in the West as valid human rights norms.⁷³ Attempts by the UN to tie human rights regimes to development policies in order to respond to the social and economic consequences of globalization (for instance, at the Vienna Conference of 1993) have had little impact. Instead the global discrepancy between rich and poor has increased dramatically over the past decades, while visual representations of the "Third World" have shifted from developing nations to suffering individuals, victims of natural or manmade disasters without political agency in the international arena.

Contestations between different human rights norms continues to exist (the Chinese government, for example, has invoked solidarity rights since the 1990s, opposing them to the individual rights demanded by the West).⁷⁴ Nevertheless, the Western perspective on human rights and humanitarianism has gained hegemony on a global scale. Only now have enlightened experts

⁷⁰ Samuel P. Huntington, "The Clash of Civilizations?" *Foreign Affairs*, 72:3 (1993), 22–49; Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York, 1996).

⁷¹ On the rise of cultural relativism as an argument against human rights in the 1980s see Burke, *Decolonization*, ch. 5. On the Asian values debate see Joanne R. Bauer and Daniel A. Bell (eds.), *The East Asian Challenge for Human Rights* (Cambridge, 1999).

⁷² See, for example, Makau Murua, *Human Rights: A Political and Cultural Critique* (Philadelphia, 2002); Anghie, *Imperialism*, chs. 5, 6.

⁷³ For an eloquent defense of solidarity rights see Upendra Baxi, "The Development of the Right to Development," in Janus Symonides (ed.), *Human Rights: New Dimensions and Challenges* (Dartmouth, 1998), 99–116; Baxi, "Voices of Suffering, Fragmented Universality, and the Future of Human Rights," in Burns H. Weston and Stephen P. Marks (eds.), *The Future of International Human Rights* (Ardley, N.Y., 1999), 101–156.

⁷⁴ Jeremy T. Paltiel, "Confucianism Contested: Human Rights and the Chinese Tradition in Contemporary Political Discourse," in Wm. Theodore de Bary and T. Weiming (eds.), *Confucianism and Human Rights* (New York, 1998), 27–56; Stephen C. Anghie, *Human Rights and the East Asian Challenge* (New York, 1998), 27–56; Stephen C. Anghie, *Human Rights and the East Asian Challenge* (New York, 1998), 27–56.

and managers of the global – Western specialists in international law, social scientists, and NGOs – discovered human rights as their cause. And only now has this cosmopolitan elite begun to invent a history of human rights that extends back into antiquity and is supposed to demonstrate the evolution of universal morality.

Human Rights as History

The *doxa* of a society, those convictions that are tacitly accepted as naturally given, can be recognized as such only in the moment that they lose their self-evidence, that is, when they become historical. Does approaching human rights as history implicitly call into question the universality of those rights? For how can human rights be universal if they are – as the contributors of this volume argue – the product of a global history of violence and conflict? If we understand this history as one of "hegemonic contestations" (Martti Koskenniemi) that possesses no telos and could also have occurred entirely differently, as it becomes clear that there was not one but several competing universalisms, each able to invoke human rights? Moreover, this contends that the emergence of global law in the twentieth century went hand in hand with the fragmentation of the means for its enforcement. Should we thus agree with critics from Edmund Burke to Hannah Arendt who preferred the rights of citizens to human rights because only the state, and not "humanity," represented a historically viable political entity that could guarantee concrete rights? Does the invocation of absolute morality (or moral emergencies) in politics ultimately lead to violence, as Arendt holds in her reading of the predicament of Captain Vere (of the ship *Rights of Man*), in Melville's *Billy Budd*, since politics is about conflict and compromise and not about good and evil?⁷⁵ And yet it was Arendt who insisted, as quoted at the beginning of this introduction, that human beings have the right to have rights. According to Arendt, however, this right should be derived not from the teleologically loaded laws of "history" or "nature," but rather from concrete, contradictory human experiences and the unpredictable histories resulting from them.⁷⁶ Or as Edmund Burke wrote in a letter to a correspondent in Paris in November 1789: "You have theories enough concerning the rights of man; it may not be amiss to add a small degree of attention to their nature and disposition. It is with men in the concrete; it is with the common human life, and human actions, that you are to be concerned."⁷⁷

Rights and Chinese Thought: A Cross-Cultural Analysis (Cambridge, 2002), 239–249; Mireille Delmas-Marty and Pierre-Étienne Will (eds.), *La Chine et la démocratie* (Paris, 2007).

⁷⁵ Hannah Arendt, *On Revolution* (New York, 1963), 74–83.

⁷⁶ See Stefan-Ludwig Hoffmann, "Koselleck, Arendt, and the Anthropology of Historical Experience," *History and Theory*, 49 (May 2010), 212–236.

⁷⁷ Letter to Charles-Jean-François Depont, in Edmund Burke, *Further Reflections on the Revolution in France*, ed. Daniel F. Burtch (Indianapolis, 1962), 10.

In this respect, writing the history of human rights has only just begun. Human rights as a history of political contestations, as proposed in this volume, does not have to diminish our moral convictions about such rights.⁷⁸ On the contrary, by gaining an insight into the historical contingency of our normative concepts, their emergence from concrete experiences of violence and conflict, we may comprehend better why the politics of human rights continues to fail in our time.

⁷⁸ Similarly Thomas L. Haskell, "The Curious Persistence of Rights Talk in the 'Age of Interpretation,'" *Journal of American History*, 74:3 (1987), 984–1012, here 985–86, as well as Hans Joas, "The Emergence of Universalism: An Affirmative Genealogy," in Peter Hedström and Björn Wittrock (eds.), *Frontiers of Sociology* (Leiden, 2009), 15–24.

PART I

THE EMERGENCE OF HUMAN RIGHTS REGIMES