

VIEWPOINT

HUMAN RIGHTS AND HISTORY*

Historians are the embalmers of our political and moral convictions. As soon as historiography begins to take an interest in an issue, we can be certain that it no longer possesses a self-evident presence in our society. Some questions and problems only become objects of history after society has become historically conscious of them. The history of workers boomed in the 1970s, for example, when industrial labour was in the process of disappearing, just as memory and its sites became a mode of inquiry for historians in the 1980s precisely at the moment when lived memory of 'the age of extremes' (Eric Hobsbawm) was disappearing together with its last generation.

The issue of human rights has by no means come so far, even if a certain historicizing sobriety has now set in among activists.¹ On the contrary, as I have argued elsewhere, human rights are still something like the doxa of our times: those ideas and sentiments that are tacitly presumed to be self-evident truths and not in need of any justification.² Who is opposed to human rights today? And who of those born before the late twentieth century would like to be reminded that earlier he or she had had little use for the concept of human rights? At least in the Euro-Atlantic world today the resonance of human rights is so universal and unassailable that in principle the only thing still debated is how they can best be realized on a global scale. We feel distressed and

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¹ Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, 2013).

² Stefan-Ludwig Hoffmann, 'Introduction: Genealogies of Human Rights', in Stefan-Ludwig Hoffmann (ed.), *Human Rights in the Twentieth Century* (New York, 2010), 2.

melancholic about the continued violation of human rights in our time but do not wish to abandon the concept altogether.

And yet it is remarkable that historians have begun to concern themselves with human rights only recently — essentially only since the late 1990s. Still, in the major historical syntheses of the past two decades, for instance in the interpretations of the twentieth century by Eric Hobsbawm and Tony Judt or of the nineteenth century by Jürgen Osterhammel and Chris Bayly, or of the rise and fall of empires by Jane Burbank and Fred Cooper, human rights have appeared only at the margins, if at all. Most historians of genocide, refugees, nationalism, slavery or humanitarianism (including Pamela Ballinger, since 2011 the first professor of the history of human rights in the United States)³ do not consider themselves to be part of the new field of human rights history. This is about to change, so much can be said already. In recent years we have apparently arrived at a new present, an era of ‘global governance’, ‘cosmopolitan ethics’, ‘transnational law’ and ‘humanitarian interventions’, for which we seek anchoring points in history, but which begins at the same time to historicize itself. As times change, so does the past.

The new historiography of human rights can be divided into these two tendencies: one that searches for stabilizing points for the present and finds them in the *longue durée* evolution of human rights (deep history) and one that seeks to demonstrate in revisionist fashion the instability of such universalist narratives and thereby the historicity, that is, the transience, of our political and moral convictions (recent history). Conveniently, these two tendencies are grouped around two path-breaking books: Lynn Hunt’s *Inventing Human Rights* and, as a counterpoint, Samuel Moyn’s *Last Utopia*.⁴

Put briefly, Lynn Hunt argues that in the eighteenth century human rights gained in currency because they were based on new experiences and cultural practices, a new emotional regime, the core of which was ‘imagined empathy’. From this new emotional regime, which is evident, for example, in sentimental, epistolary novels as well as in the moral campaign for the abolition of torture beginning in the 1760s, a new legal regime emerged during the

³ Pamela Ballinger, ‘The History of Human Rights: The Big Bang of an Emerging Field or Flash in the Pan?’, *New Global Studies*, vi (2012), 3.

⁴ Lynn Hunt, *Inventing Human Rights: A History* (New York, 2007); Samuel Moyn, *Last Utopia: Human Rights in History* (Cambridge, Mass., 2010).

French Revolution that in turn followed its own cascading logic: once human rights had acquired self-evidence, they could no longer be removed from the world, and unfolded their revolutionary potential during the nineteenth and twentieth centuries. Reading epistolary novels or accounts of torture had physical effects that translated into 'brain changes' and 'came back out' as new concepts of individual human rights. Hunt acknowledges the paradoxes of human rights as politics, that rights claims emerged in tandem with revolutionary violence, but insists that their self-evidence ultimately transcends these historical mutations: 'You know the meaning of human rights because you feel distressed when they are violated'.⁵

Samuel Moyn, in contrast, objects in *Last Utopia* that we can speak of human rights in their current form, as individual rights granted to every person even beyond the nation state, only since the late 1970s — since Jimmy Carter and disco, as one unhappy reviewer summarized.⁶ Prior to this, human rights were tied to the nation state and were thus essentially citizenship rights. As the title suggests, human rights became, according to Moyn, the last utopia, especially for activists in the recently established human rights non-governmental organizations such as Amnesty International, following the failure of other global emancipation ideologies such as socialism and anti-colonialism. With this brilliant polemic, Moyn provides an interpretative framework for a series of more recent studies and ongoing research projects of a new generation of historians investigating the 'breakthrough' of human rights to a global morality in the 1970s.⁷

⁵ Hunt, *Inventing Human Rights*, 33, 214. See also Lynn Hunt, 'The Paradoxical Origins of Human Rights', in Jeffrey N. Wasserstrom *et al.* (eds.), *Human Rights and Revolutions*, 2nd edn (Lanham, 2007). More explicit is Dan Edelstein, *The Terror of Natural Right: Republicanism, the Cult of Nature, and the French Revolution* (Chicago, 2009); Dan Edelstein, 'Enlightenment Rights Talk', *Journal of Modern History*, lxxxvi (2014), 562: 'Since natural rights were the prerogative only of a feeling person, those who were, in Rousseau's words, "deaf to the gentle voice of nature" could accordingly never know any "true feeling of justice and humanity." Since these monsters could not be improved, they had to be destroyed (*étouffés*). The revolutionaries of 1793 did not abandon the universalizing spirit of the 1789 declaration: that spirit was never there. Just as no one sympathized with the (often aristocratic) villains of sentimental novels, the French revolutionaries would show little restraint toward the (often aristocratic) opponents of the new regime'.

⁶ Gary J. Bass, 'The Old New Thing', *New Republic*, 20 Oct. 2010.

⁷ See, for example, Jan Eckel and Samuel Moyn (eds.), *The Breakthrough: Human Rights in the 1970s* (Philadelphia, 2014); Jan Eckel, *Die Ambivalenz des Guten: Menschenrechte in der internationalen Politik seit den 1940ern* (Göttingen, 2014).

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This essay is intended as a historiographical intervention in this debate and develops three interconnected arguments that seek to determine the place of human rights in the crises and conflicts of the recent past. First of all, I shall push the historiographical revisionism of Moyn and others even further and argue that we can first speak of individual human rights as a basic concept (*Grundbegriff*), that is, a contested, irreplaceable and consequential concept of global politics, only in the 1990s, after the end of the Cold War. In the 1970s and 1980s 'human rights' coexisted and overlapped with other moral and political idioms like 'solidarity' and included competing notions of rights, which were in many ways still indebted to the legacies of socialism and anti-colonialism, as in, for example, the transnational movement against apartheid. It was only after the end of the Cold War that 'human rights' emerged as an explanatory framework for understanding what had just happened. Human rights idealism, I shall argue, is not the cause but the consequence of the epochal ruptures of the late twentieth century.

However, this does not mean, secondly, that 'human rights' have no deeper history; here I agree with Hunt and others. On the contrary, in many respects the human rights idealism of the 1990s appears as a strange return of the enlightened liberalism of the late eighteenth and the nineteenth century and its critics (of Immanuel Kant and Carl Schmitt, the two sources of inspiration and antipodes of the political and moral discourse of the 1990s), as does the enthusiasm for cosmopolitanism, civil society, free trade, humanitarian interventions and moral justifications of war within the new world (dis)order. I shall suggest, therefore, that we should bring the long nineteenth century back into human rights history, especially the histories of social and economic rights, women's rights, humanitarianism and international law, to assess more precisely what is new about the human rights idealism of the late twentieth century. Conversely, I shall discuss which previous notions of

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This argument appeared first in Kenneth Cmiel, 'The Emergence of Human Rights Politics in the United States', *Journal of American History*, lxxxvi (1999), 1233; Kenneth Cmiel, 'The Recent History of Human Rights', *American Historical Review*, civ (2004). For a useful critique, see Robert Brier, 'Beyond the Quest for a "Breakthrough": Reflections on the Recent Historiography of Human Rights', *European History Yearbook*, xvi (2015).

international human rights were replaced or bypassed in the 1990s, especially collective rights claims that were of particular importance for the so-called Third World UN from the 1950s to the early 1990s. The unrecognized irony is that human rights have become not less but more Eurocentric in recent years.

Human rights are not a new (and certainly not the last) utopia. Rather, the question is whether the human rights idealism of the Euro-Atlantic world at the end of the twentieth century can be seen as utopian at all. It is other motifs that appear to be new: the self-evidence of individual human rights, which stand above the rights of states; the evocation of present and past suffering as a mobilizing source; and, finally, the global claims connected to human rights as well as the media presentism of their failed realization, that is, the ubiquity of crises and the state of emergency as a matter of course. The 'endtimes of human rights' (Steven Hopgood) are the global here and now, not a utopian 'elsewhere'. From this follows, thirdly, my concluding suggestion that the rise of human rights as the crisis semantics of a new *fin de siècle* can be understood in part as a result of the fracturing of the modern time regime, that is, the ways in which past, present and future are reflected in our experience of time. Not the future (or an idealized past) serves as the vanishing point, but rather the present, which appropriates past and future to validate the immediate. The new historiography of human rights also belongs, I think, in this context. It invents for our times a history of human rights conceived as individual and pre-state rights which are read into the past and future as if without alternatives.

I

In the introduction to his lectures on the history of the revolutionary age (1867) Jacob Burckhardt used a paradoxical metaphor to describe historians' cognitive interest in the immediate past: 'Wir möchten gern die Welle kennen, auf welcher wir im Ozean treiben, allein wir sind diese Welle selbst' ('We love to know the wave that is carrying us over the ocean, but we are ourselves this wave').⁸ Authentic crises, Burckhardt

⁸ Jacob Burckhardt, *Geschichte des Revolutionszeitalters*, *Werke: kritische Gesamtausgabe*, xxviii, ed. Wolfgang Hardtwig et al. (Munich, 2009), 8.

argued elsewhere, are rare in history. And even if they are difficult for contemporaries to decipher, several characteristics can nevertheless be identified. The most important characteristic of crisis experiences is the element of surprise, the onset of the events. The unexpected transpires with a suddenness that acquires a meaningful interpretation only in retrospect.⁹ What for Burckhardt was the French Revolution and its impact on the history of the nineteenth century is for our time the cascade of events beginning in the mid 1980s with the fall of dictatorships in Latin America, the end of apartheid in South Africa (1994), and the implosion of the Soviet Union (1991) and thereby the end of the Cold War, which had determined international politics since the end of Nazism and empire.

It might be tempting to trace the crisis of authoritarian regimes during the final third of the twentieth century back to their moral subversion through human rights ideas and movements, just as Reinhart Koselleck interpreted the crisis of the *Ancien Régime* during the final third of the eighteenth century as the moralization of politics by enlightened philosophy and civil society.¹⁰ The critique preceded the crisis. Most of the recent histories of human rights argue in a similar fashion. The political upheavals around 1989, including those outside Europe, are regarded as the result of global human rights revolutions that began in the 1970s. As will be shown below, however, this is a retrospective ascription that is accurate only in part.

The distinction introduced by Moyn between citizenship rights (or the rights of man), on the one hand, and transnational human

⁹ Jacob Burckhardt, 'Die geschichtlichen Krisen', in Jacob Burckhardt, *Ästhetik der bildenden Kunst [and] Über das Studium der Geschichte. Mit dem Text der Weltgeschichtliche Betrachtungen in der Fassung von 1905, Werke*, x, ed. Peter Ganz (Munich, 2000), 146–7, 252. See also James R. Martin, 'The Theory of Storms: Jacob Burckhardt and the Concept of "Historical Crisis"', *Journal of European Studies*, xl (2010).

¹⁰ Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, Mass., 1988). For more complex accounts of rights talk during state socialism, see especially Benjamin Nathans, 'Soviet Rights-Talk in the Post-Stalin Era', in Hoffmann (ed.), *Human Rights in the Twentieth Century*; Benjamin Nathans, 'The Dictatorship of Reason: Aleksandr Vol'pin and the Idea of Rights under "Developed Socialism"', *Slavic Review*, lxvi (2007); Celia Donert, 'Charter 77 and the Roma: Human Rights and Dissent in Socialist Czechoslovakia', in Hoffmann (ed.), *Human Rights in the Twentieth Century*; Celia Donert, *The Rights of the Roma: State Socialism and the 'Gypsy Question'* (New York, forthcoming); Paul Betts, 'Socialism, Social Rights, and Human Rights: The Case of East Germany', *Humanity*, iii (2012).

rights, on the other, identifies what is decisively new about the human rights idealism of the late twentieth century. In the revolutions of the late eighteenth and the nineteenth century, human rights were closely tied to the idea of sovereignty or, to put this more generally, to political participation in a democratically constituted polity. Citizenship rights and human rights belonged together, and their location was the nation state. This was also undoubtedly the case with the emergence of human rights after the Second World War and the dissolution of the colonial empires, which provoked an unprecedented global expansion of the nation state. Human rights were frequently invoked by African nationalists in their struggle against colonialism and for self-determination from the late 1940s but also, initially, in protests against racism and African American subordination within the United States.¹¹ During the Cold War human rights did develop into a language of the international community of states and its organizations, but it was a legal and diplomatic language primarily used behind closed conference doors and hence with limited political consequences. Between the end of the Second World War and the early 1990s there was not a single humanitarian, political or military intervention that was justified through human rights. The few military interventions that ended genocidal policies in the decades after 1945 — in Uganda, Cambodia and Pakistan–Bangladesh — were conducted by neighbouring nation states (Tanzania, Vietnam and India) for realpolitik considerations. In many respects the inviolability of state sovereignty was the presupposition for human rights being expansively codified in international accords and treaties, a process frequently driven forward by the new post-colonial states, for whom the right of self-determination was (only apparently paradoxically) the most important basis of human rights.

¹¹ See, for example, Andreas Eckert, 'African Nationalists and Human Rights, 1940s–1970s', and Fabian Klose, '"Source of Embarrassment": Human Rights, State of Emergency, and the Wars of the Decolonization', both in Hoffmann (ed.), *Human Rights in the Twentieth Century*; Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955* (Cambridge, 2003). Within the United Nations, Liberia and Jamaica pushed hardest to make issues of race and religion the main human rights concerns of the 1960s: see Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (New York, 2016).

Parallel to the increasing international codification of human rights and their expansion in the 1960s, 1970s and 1980s to continuously new collective rights (for example, the 'right to development', adopted by the United Nations in 1986 and largely forgotten today), a few Western governments and non-governmental organizations began in the 1970s to discover individual human rights as the moral compass for a new global engagement beyond the nation state. Especially in the United States, human rights became the driving force for non-governmental organizations such as Amnesty International and Human Rights Watch, but also for the new, ethically based foreign policy proclamations of the Carter administration and then, as an intensification of Cold War rhetoric, of the conservative Reagan government.¹² Apart from a sharpening of tone towards state socialist societies and a devaluing of the social and economic human rights (that were supported mainly by the 'Third World UN'), this invocation of human rights still had no significant political consequences. The United States continued to support financially and militarily authoritarian dictatorships in Latin America (including the covert war against the Sandinistas in Nicaragua), as well as insurgencies against Soviet influence, for example, by Islamist jihadists in Afghanistan.

The popularity of Amnesty International, too, was still limited at this time; the global claims should not obscure the fact that Amnesty had organizational branches essentially only in Great Britain, the United States, the Netherlands and West Germany, and its members were for the most part content with paying membership fees. Human Rights Watch has always been an elite organization of a small group of professional experts (mainly lawyers, academics and journalists but not 'activists')

¹² Barbara J. Keys, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* (Cambridge, Mass., 2014); Daniel J. Sargent, *A Superpower Transformed: The Remaking of American Foreign Relations in the 1970s* (Oxford, 2015); William Michael Schmidli, *The Fate of Freedom Elsewhere: Human Rights and the US Cold War Policy toward Argentina* (Ithaca, 2013); Sarah B. Snyder, *Human Rights Activism and the End of the Cold War: A Transnational History of the Helsinki Network* (New York, 2011); Akira Iriye, Petra Goedde and William I. Hitchcock (eds.), *The Human Rights Revolution: An International History* (Oxford, 2012); Michael Cotey Morgan, 'The Seventies and the Rebirth of Human Rights', in Niall Ferguson et al. (eds.), *The Shock of the Global: The 1970s in Perspective* (Cambridge, Mass., 2010). Compare also the more critical account by Greg Grandin, 'The Liberal Tradition in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism', *American Historical Review*, cxvii (2012).

financed by donations from wealthy individuals.¹³ For the struggle against authoritarianism in Latin America, Amnesty and ‘human rights’ rhetoric were undoubtedly important, but the transnational solidarity movement after the coup against Allende in Chile in 1973, for instance, was much more diverse and included competing notions (Marxist, Catholic) of what this solidarity entailed.¹⁴ Of course, ‘solidarity’ was also the key term employed by socialist internationalism in the 1960s and 1970s to connect the so-called Second and Third World in the struggle against racism and US ‘imperialism’ in Latin America, southern Africa and South-East Asia — a past global moral imagination whose history remains to be written.¹⁵ Human rights language itself was still fairly capacious and in flux during the 1970s and could be invoked by liberals, socialists or personalists alike, for or (more often) against US engagement in the region. It is also worth noting that the mass transnational social movements of the 1970s and 1980s were not non-governmental organizations like Amnesty or Human Rights Watch but the ecological movement (from which independent political parties also emerged), the women’s movement and especially the peace and anti-nuclear movements. In October 1981, to recall just one example, millions of people demonstrated in Bonn, Brussels, Paris, London and several Italian cities against NATO’s revival of the nuclear arms race with the Soviet Union.¹⁶ To these peace activists, the anticlimactic end of the Cold War just a few years later came as

¹³ Cmiel, ‘Emergence of Human Rights Politics in the United States’, 1243.

¹⁴ Patrick Kelly, *Latin America and the Making of Global Human Rights* (Cambridge, forthcoming); Vania Markarian, *Left in Transformation: Uruguayan Exiles and the Latin American Human Rights Networks, 1967–1984* (New York, 2005); Jessica Stites Mor (ed.), *Human Rights and Transnational Solidarity in Cold War Latin America* (Madison, 2013). Similarly for the transnational anti-apartheid movement: Simon Stevens, ‘Why South Africa? The Politics of Anti-Apartheid Activism in Britain in the Long 1970s’, in Eckel and Moyn (eds.), *Breakthrough*.

¹⁵ For starting points, see Quinn Slobodian (ed.), *Comrades of Color: East Germany in the Cold War World* (New York, 2015); Anne E. Gorsuch, ‘“Cuba, My Love”: The Romance of Revolutionary Cuba in the Soviet Sixties’, *American Historical Review*, cxx (2015); James Mark and Péter Apor, ‘Socialism Goes Global: Decolonization and the Making of a New Culture of Internationalism in Socialist Hungary, 1956–1989’, *Journal of Modern History*, lxxxvii (2015); the research project Socialism Goes Global, <<http://socialismgoesglobal.exeter.ac.uk>> (accessed 6 Mar. 2016).

¹⁶ See, for example, Benjamin Ziemann (ed.), *Peace Movements in Western Europe, Japan and the USA during the Cold War* (Oxford, 2007).

as much of a surprise as the surge of human rights interventionism in its aftermath.

It would be equally misguided to regard the events around 1990 as a result of the 'discovery' of human rights in the 1970s. The events in east central Europe (but also the end of apartheid in South Africa and the protest movement in China) were first and foremost democratic revolutions focused on classic civil and political but also social and economic rights and the reassertion of national sovereignty. Solidarność was not a human rights non-governmental organization that collected donations for distant suffering, but rather a labour union that demanded citizenship rights at home as well as specific workers' rights, which hit communist legitimacy claims as hard as the unifying ties of Polish Catholicism and nationalism. Solidarity could therefore be invoked in the West by neo-conservative hawks for its anti-communism, by leftist romantics for its emphasis on workers' self-organization, and by liberal intellectuals for its alleged embrace of 'civil society'.¹⁷

A similar case could be made for South Africa: despite Nelson Mandela's becoming a global human rights icon in the late 1980s, the African National Congress was a militant anti-colonial liberation movement with strong communist ties. The transnational movement against apartheid had already begun in the late 1950s; its anti-racist agenda was popular among unionists and Protestants on both sides of the Iron Curtain throughout the 1960s and 1970s and directed primarily against the politics of the United Kingdom, the United States and West Germany, which supported the apartheid regime. As significant as the concerts for Nelson Mandela in 1988 and 1990 were for connecting a global youth culture with the anti-apartheid cause, much more important were social, political and economic developments within South Africa and the end of the Cold War proxy conflicts in neighbouring Angola, Mozambique and Zimbabwe. Namibia gained independence in 1990; the last Cuban mercenaries left Angola in 1991.¹⁸

¹⁷ This point has been made by Robert Brier, *A Contested Icon: Poland's Solidarity Movement and International Human Rights Culture* (forthcoming).

¹⁸ Compare Håkan Thörn, *Anti-Apartheid and the Emergence of Global Civil Society* (Basingstoke, 2006), with the much more sober accounts in Saul Dubow, *Apartheid, 1948–1994* (Oxford, 2014); Sue Onslow (ed.), *Cold War in Southern Africa: White Power, Black Liberation* (London, 2009).

The Tiananmen Square protests of 1989, finally, were driven by radical students who demanded *minzhu* ('democracy', literally 'rule of the people'), respect for the rights of citizens, granted by the Chinese constitution, the right to form unions and, more generally, a national renewal in the spirit of the revolutionary student movement of 1919. The protests were also polemically directed against the strange embrace of economic neo-liberalism (and government corruption) by late communist elites that began to transform Chinese society in the 1980s and that foreshadowed similar developments in the former Soviet Union during the 1990s.¹⁹

However one might evaluate the significance of democratic protest movements in east central Europe and, for instance, regard the economic rather than the moral bankruptcy of elites as the decisive factor in the collapse of state socialism (as Stephen Kotkin does), the outstanding feature of these events was the return of the nation as the guarantor of rights and not a 'postnational constellation' or 'global civil society' of some kind.²⁰ On the contrary, this return to national sovereignty appeared to the political actors (similarly to the post-war moments in 1918 and 1945) to be the sole guarantee of rights claims and political participation, as illustrated by the shift in the rhetoric of the democratic mass movement in East Germany from *Wir sind das Volk* ('We are the people') to *Wir sind ein Volk* ('We are a people'); the shift happened simultaneously in other former socialist states in eastern Europe.²¹ This coupling of rights claims and sovereignty claims led not only to the implosion of communism, but also to the collapse of the multi-ethnic

¹⁹ See, for example, the documentary on the Tiananmen Square protests of 1989 entitled *The Gate of Heavenly Peace* (1995) produced by Richard Gordon and Carma Hinton: <<https://www.youtube.com/watch?v=1Gtt2JxmQtg>> (accessed 6 Mar. 2015).

²⁰ Jürgen Habermas, *The Postnational Constellation: Political Essays* (Cambridge, 2001); John Keane, *Global Civil Society?* (Cambridge, 2003). For an early critique, see Liisa Malkki, 'Things to Come: Internationalism and Global Solidarities in the Late 1990s', *Public Culture*, x (1998).

²¹ Charles S. Maier, *Dissolution: The Crisis of Communism and the End of East Germany* (Princeton, 1997); James Krapfl, *Revolution with a Human Face: Politics, Culture, and Community in Czechoslovakia, 1989–1992* (Ithaca, 2013); Michal Kopeček, 'Human Rights Facing a National Past: Dissident "Civic Patriotism" and the Return of History in East Central Europe, 1968–1989', *Geschichte und Gesellschaft*, xxxviii (2012); Stephen Kotkin, with a contribution by Jan T. Gross, *Uncivil Society: 1989 and the Implosion of the Communist Establishment* (New York, 2009); Stephen Kotkin, *Armageddon Averted: The Soviet Collapse, 1970–2000* (Oxford, 2001).

socialist federations (in the Soviet Union, but also in Czechoslovakia and Yugoslavia), with dramatic consequences, especially in the Balkans.

Human rights were not the decisive catalyst of these revolutions, crises and wars, and thus of the collapse of the old and emergence of a new international order, but instead gained currency as a response to these events. In many regards the reorganization of the world following the events of 1989–91 resembled the previous international settlements of 1918 and 1945. As after the First and Second World Wars, the chain of events after the end of the Cold War was also marked by the simultaneity of the implosion of empires, the eruption of ethnic civil wars, the division of states and the accompanying refugee crises and ethnic cleansings, on the one hand, and the promise of democratic participation as well as lofty visions of a new, more peaceful and just international order, on the other.²² As it turned out, however, the human rights idealism of the 1990s was distinguished from the two previous post-war eras by the fact that the invocation of national sovereignty at least in western Europe (unlike eastern Europe) was perceived as an issue of the past. In this regard the normative liberalism of the 1990s, especially of neo-Kantians such as Jürgen Habermas, also went beyond the enlightened liberalism of the late eighteenth and the nineteenth century, which suddenly experienced a surprising revival in every other respect.²³

Whereas for Kant as well as for liberal international legal scholars of the nineteenth century the cosmopolitan ethos was grounded in the society of states and their legitimate power interests, for Habermas and other Western intellectuals the nation state was the greatest impediment to a global cosmopolitan democracy that was supposed to be based on human rights; and the political upheavals in central and eastern Europe around 1990 were merely a 'rectifying revolution' (*nachholende Revolution*) that implemented what the West had long since attained: democracy, national

²² 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*, cxiii (2008); Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (New York, 2007); Mark Mazower, 'The Strange Triumph of Human Rights, 1933–1950', *Historical Journal*, xlvii (2004).

²³ Emma Rothschild, 'What Is Security?', *Daedalus*, cxxiv, 3 (1995), 54.

sovereignty, market economy, civil rights, guaranteed by a constitutional state. (In his writings, however, Habermas himself did not develop a concept of 'human rights' until 1992, in *Faktizität und Geltung*.)²⁴ Following Martti Koskenniemi, we can speak of an 'ethical turn' in the course of the 1990s in political philosophy and sociology, but also in international law and (as will be shown in a moment) in international politics, with individual human rights as the regulatory idea.²⁵ Human rights thus became the promise that the events around 1990 should acquire historical meaning. Suddenly human rights seemed as self-evident as unregulated markets during the 'roaring nineties': according to the mildly ironic title of Joseph Stiglitz's bestseller, 'the world's most prosperous decade'.²⁶ And it was a particular version of human rights, pre-state and individual, that was established incrementally in the 1990s and whose history was, so to speak, invented.

To assess how quickly this 'ethical' transformation of the post-Cold War world occurred, let us recall two military conflicts, one of which took place at the beginning of the decade, the other at the end: the Iraq War of 1990–1 and the war in Kosovo of 1998–9. The First Iraq War, which began in September 1990 with Saddam Hussein's invasion of Kuwait, was the first war after the end of the Cold War. In contrast to conflicts during the Cold War from Korea to Afghanistan, this was not a proxy war between two superpowers. The United States led a multilateral coalition against Iraq, sanctioned by the United Nations after the

²⁴ Jürgen Habermas, *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats* (Frankfurt, 1992), trans. William Rehg as *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, Mass., 1996).

²⁵ Martti Koskenniemi, "'The Lady Doth Protest Too Much': Kosovo and the Turn to Ethics in International Law", *Modern Law Review*, lxxv (2002). See also Paul W. Kahn, "'Speaking Law to Power': Popular Sovereignty, Human Rights, and the New International Order", *Chicago Journal of International Law*, i (2000); David Chandler, *From Kosovo to Kabul and Beyond: Human Rights and International Intervention* (London, 2006).

²⁶ Joseph E. Stiglitz, *The Roaring Nineties: A New History of the World's Most Prosperous Decade* (New York, 2004). See also Alasdair Roberts, *The Logic of Discipline: Global Capitalism and the Architecture of Government* (Oxford, 2010). For one of the first historical interpretations of the 1990s in Europe, see Philipp Ther, *Die neue Ordnung auf dem alten Kontinent: eine Geschichte des neoliberalen Europa* (Berlin, 2014). On the place of Africa in the post-Cold War world, see especially James Ferguson, *Global Shadows: Africa in the Neoliberal World Order* (Durham, NC, 2006).

sovereignty of one of its member states had been violated. This was the immediate justification given for the intervention, as well as clearly identified economic interests (in particular, control over the stability of oil procurement), but not Saddam Hussein's genocidal policies against the Kurds, such as the use of chemical weapons on the Kurdish civilian population in Halabja in 1988 (just as Jimmy Carter, during his brief rhetorical embrace of human rights at the end of the 1970s, did nothing about the genocide carried out by the Khmer Rouge). In this sense the First Iraq War was a conventional war of states and not a moral, or 'just', war. What was new about this war was something else: the dramatic superiority of the West's modern armaments technology, which allowed a conduct of war that minimized its own casualties. It was also the first war to be broadcast live on television (the so-called 'CNN effect'), which led to the huge peace demonstrations with hundreds of thousands of participants in western Europe and elsewhere, the last hurrah of the international peace movement.

The Kosovo War against Slobodan Milošević's Yugoslavia continued these two latter developments. It was a war conducted from the air without human losses for the West but with many casualties among the civilian population (so-called 'collateral damage', a neologism of the 1990s along with the term 'rogue states'), and it was one in which images played a central role. In every other respect, however, it was fundamentally different from the First Iraq War. The deployment in Kosovo was the first war ever conducted by NATO. It was a war entered into without United Nations approval against one of its member states and was thus outside international law. And, finally, it was the first war waged in the name of human rights in order to prevent genocide. Designated as a 'humanitarian intervention', the war in Kosovo became the laboratory for the wars led by the United States (and Tony Blair's Britain) following the events of 11 September 2001. The rebranding of the United States as a reluctant moral superpower, cleansed of its Cold War sins in Indo-China and Latin America but too hesitant to fight genocidal evil in the world, is essentially an invention of the second half of the 1990s.²⁷

²⁷ A good case in point is Samantha Power, who started out as a young US journalist during the civil war in the former Yugoslavia and, first as a human rights scholar at

(cont. on p. 293)

The overreaction of the West (especially of western Europeans) in the Kosovo War can be explained only by the protracted hesitation of the European Union and the United States to intervene in the bloody break-up of Yugoslavia (as well as by past failed interventions and the reluctance to intervene in other humanitarian catastrophes of the 1990s in Somalia, Rwanda and East Timor). The economic collapse of the 1980s, accelerated by reforms to accommodate World Bank and International Monetary Fund loan stipulations, as well as the end of the Cold War, and thereby the possibility of establishing new nation states in Europe (evident in the example of reunified Germany), contributed to the disintegration of the multi-ethnic Yugoslav federation following the death of Tito. (In the 1960s and 1970s, socialist Yugoslavia had been one of the most developed industrial societies in the world and a model for many non-aligned states.) The most potent economic regions, Slovenia and Croatia, declared themselves sovereign nations (with the support of the West) and thereby transformed the Serbian populations in these new nation states into a minority with limited citizenship rights. Thus continued a spiral of violence, driven forward especially by the attempts of former communist cadres to maintain power, first and foremost Milošević, who invoked the ethnic-nationalistic card and at the same time the socialist ideology of the 'brotherhood and unity' of Yugoslavia's nations and minorities. The West saw in the unfolding civil war an atavistic return of the ethnic hatred that had ostensibly been pent up in state socialist Yugoslavia, and initially did not want to get involved. The turning point came only during the subsequent civil war in Bosnia-Herzegovina from 1992 to 1995 and was especially connected, symbolically and in the global media, to two events: the siege of Sarajevo from 1992 to the beginning of 1996 and the massacre in Srebrenica in July 1995, in which

(n. 27 cont.)

Harvard and later as a foreign policy adviser, became one of the most outspoken proponents of US interventionism: Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York, 2002). In a similar vein, see Gary J. Bass, *Freedom's Battle: The Origins of Humanitarian Intervention* (New York, 2008). Compare, in contrast, Stephen Wertheim, 'A Solution from Hell: The United States and the Rise of Humanitarian Interventionism, 1991–2003', *Journal of Genocide Research*, xii (2010).

approximately eight thousand Muslim men and boys were killed by Serbian paramilitaries.

As in the previous year in Rwanda, this massacre took place directly in front of the UN peacekeepers — an expression of the United Nations' political failure and thereby the end of hopes placed in the organization to become more of a world government. (In 1992 Boutros Boutros-Ghali, the first UN secretary-general from Africa, had claimed that, following the end of the Cold War, the hour of the United Nations and its charter had finally come.)²⁸ Something similar applied to the European Union, for which there had been lofty hopes after 1990. However, it too was not in a position to contain the conflict in Yugoslavia, above all because Europeans wanted to continue to believe that civil wars over sovereignty claims were a thing of the past. And even the United States under the new Clinton administration, following the disastrous experience in Somalia in 1992, did not initially want to be caught up in a conflict for which no geopolitical interests could be identified.

One response to the political failure of international institutions in these violent, catastrophic civil wars was the belated embrace of the idea of human rights interventionism by the generation of baby boomers and student protesters such as Bill Clinton and, somewhat later, Tony Blair, Bernard Kouchner and Joschka Fischer, who had come to power in the 1990s.²⁹ Crucial for this breakthrough in human rights idealism was its connection to Holocaust remembrance, which also peaked in the 1990s, and to the accusation of genocide that made Srebrenica a second Auschwitz. Precisely this connection between human rights and genocide — self-evident to us today — was historically new.

²⁸ Secretary-General to the Security Council, 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping', 17 June 1992, <http://www.un.org/en/sc/repertoire/89-92/Chapter%208/GENERAL%20ISSUES/Item%2029_Agenda%20for%20peace_.pdf> (accessed 6 Mar. 2016).

²⁹ On the intellectual trajectory of this generation, see especially Paul Berman, *A Tale of Two Utopias: The Political Journey of the Generation of 1968* (New York, 1996); Julian Bourg, *From Revolution to Ethics: May 1968 and Contemporary French Thought* (Montreal, 2007); Richard Wolin, 'From the "Death of Man" to Human Rights: The Paradigm Change in French Intellectual Life, 1968–1986', in Mark Bevir, Jill Hargis and Sara Rushing (eds.), *Histories of Postmodernism* (New York, 2007); Robert Horvath, '"The Solzhenitsyn Effect": East European Dissidents and the Demise of the Revolutionary Privilege', *Human Rights Quarterly*, xxix (2007); Kristin Ross, 'Ethics and the Rearmament of Imperialism: The French Case', in Wasserstrom *et al.* (eds.), *Human Rights and Revolutions*.

Contrary to what is commonly assumed, the Universal Declaration of Human Rights of 1948 was not a direct reaction to the Holocaust; the term 'genocide' does not appear in the declaration. Conversely, human rights were not mentioned at all in the Genocide Convention adopted the same year. Because Raphael Lemkin's definition of genocide was aimed so narrowly at the Nazis' singular intention of exterminating entire peoples, the convention proved largely inadequate for international mobilization against the mass violence that was part of ethnic and religious civil wars prior to the 1990s.³⁰

It was the imagery of the civil war in Bosnia recalling concentration camps—in the heart of Europe, as many contemporary commentators emphasized, and not in Rwanda or subsequently in the bloody, protracted civil war in the Congo (with more than five million victims)—that sparked the turnaround for a policy of Western intervention in the name of human rights. Western media-savvy intellectuals such as André Glucksmann, Alain Finkielkraut, Bernard-Henri Lévy and Susan Sontag made pilgrimages to Sarajevo and announced that they were on site to prevent another Auschwitz, while Western governments once again seemed to be standing by and watching (as they had been during the late 1930s and early 1940s).³¹

The conflict in Kosovo five years later thus became the first test-case for the new belief in military intervention in the name of human rights. In Kosovo the connection with accusations of genocide, which today are part of the standard repertoire of military conflicts from Syria to Ukraine, drove political action for the first time. In the words of Susan Sontag, 'There is

³⁰ A. Dirk Moses, *Genocide and the Terror of History: The Quest for Permanent Security* (Cambridge, forthcoming); A. Dirk Moses, 'Raphael Lemkin, Culture, and the Concept of Genocide', in Donald Bloxham and A. Dirk Moses (eds.), *The Oxford Handbook of Genocide Studies* (Oxford, 2010). See also Anson Rabinbach, 'Genozid: Genese eines Konzepts', in Anson Rabinbach, *Begriffe aus dem Kalten Krieg: Totalitarismus, Antifaschismus, Genozid* (Göttingen, 2009); Lasse Heerten, '"A" as in Auschwitz, "B" as in Biafra: The Nigerian Civil War, Visual Narratives of Genocide, and the Fragmented Universalization of the Holocaust', in Heide Fehrenbach and Davide Rodogno (eds.), *Humanitarian Photography: A History* (Cambridge, 2015).

³¹ Richard J. Golsan, *Vichy's Afterlife: History and Counter-History in Postwar France* (Lincoln, Nebr., 2000), especially ch. 8. For an early critique of French intellectuals' distorted perceptions of the problems in eastern and south-eastern Europe, see Tony Judt, 'Paris and the Tribes of Europe', *French Politics and Society*, x (1992).

radical evil in the world, which is why there are just wars. And this is a just war. Even if it has been bungled. Stop the genocide'.³² In many respects, however, the accusation of genocide missed the nature of the conflict in Kosovo, as well-informed journalists were already pointing out.³³ The Kosovo Liberation Army, armed with the arsenal of collapsed communist Albania, led a guerrilla war against the Yugoslav People's Army in the province of Kosovo and exploited the civil war logic of escalating terror and retaliation to convince the West that Milošević was planning to commit genocide against Kosovan Albanians. In contrast to its approach in the war in Bosnia, NATO did not limit itself here to symbolic demonstrations of power, but instead declared war on Yugoslavia. NATO intervened in the civil war with air strikes, thereby initiating (as became clear in retrospect) a humanitarian catastrophe in Kosovo. However justified the military intervention in 1999 may have been, here I am interested solely in the wording of its rationale. The Kosovo War marked the beginning of a new era of humanitarian and military intervention on the basis of ostensible genocides and human rights violations.³⁴

II

The most important motifs for the new human rights idealism can be found in the justifications for the Kosovo War: the pre-eminence of individual human rights over the rights of states; reference to the genocidal policies of the Second World War (but not, for instance, to European colonial atrocities or Cold War proxy conflicts, that is, to the history of nineteenth- and twentieth-century interventionism); global claims of human rights and the humanitarian state of emergency that, broadcast in the media, demand a reaction here and now (and not in the distant future).

But were these motifs really new and utopian? How did the 'ethical turn' in international law and politics make the conflict in Kosovo appear to be different from, for example, the war in Biafra

³² Susan Sontag, 'Why Are We In Kosovo?', *New York Times*, 2 May 1999.

³³ For example, Tim Judah, *Kosovo: War and Revenge* (New Haven, 2000).

³⁴ Mariella Pandolfi, 'Laboratory of Intervention: The Humanitarian Governance of the Postcommunist Balkan Territories', in Mary-Jo DelVecchio Good *et al.* (eds.), *Postcolonial Disorders* (Berkeley and Los Angeles, 2008).

thirty years earlier? Two examples may suffice. On 29 April 1999, a month after NATO's military action in Kosovo began, Jürgen Habermas published an article in the German weekly newspaper *Die Zeit* entitled 'Humanität und Bestialität' ('Humanity and Bestiality'). In the article, Habermas designated the agenda of the Kosovo War as a 'transformation of international law into a law of global citizens'. The German philosopher wrote of a "police operation" that NATO generously performs for the international community' against states 'that have neurotically insisted upon their sovereignty'. In the article (and in a subsequent book) he identified the dilemma of human rights politics as having to act as if a fully institutionalized global civil society already existed, even though their very promotion was the objective of the military action. The war therefore seemed to him 'on the border between legality and morality'. Still, in the Kosovo War, Habermas saw confirmation of the normative Kantianism which in the 1990s he had used to argue for a cosmopolitan law that stood over and above the rights of states and that would eventually replace the brute force of power politics.³⁵

On the very same day as Habermas's article came out, Vaclav Havel argued quite similarly before the Canadian Senate and House of Commons, in a highly regarded speech entitled 'Kosovo and the End of the Nation-State'. The president of the Czech Republic and former dissident claimed that NATO was conducting a war against a genocidal regime:

This is probably the first war that has not been waged in the name of 'national interest' but rather in the name of principles and values. If one can say of any war that it is ethical, or that it has been waged for ethical reasons, then it is true of this war.

Later in the speech he continued:

This war places human rights above the rights of the state. The Federal Republic of Yugoslavia was attacked by the alliance without a direct mandate from the UN. This did not happen irresponsibly, as an act of aggression or out of disrespect for international law. It happened, on the contrary, out of respect for the law, for a law that ranks higher than the law which protects the sovereignty of states. The alliance has acted out of

³⁵ Jürgen Habermas, 'Bestialität und Humanität: ein Krieg an der Grenze zwischen Recht und Moral', *Die Zeit*, 29 Apr. 1999, trans. as 'Bestiality and Humanity: A War on the Border between Legality and Morality', *Constellations*, vi (1999); Jürgen Habermas, *Der gesplittene Westen: kleine politische Schriften X* (Frankfurt, 2004).

respect for human rights, as both conscience and international legal documents dictate.³⁶

In other words, at the end of the 1990s we have the 'breakthrough' of the new global morality of human rights politics that places itself above the rights of states which Moyn identifies as occurring in the late 1970s.

NATO's intervention in Kosovo would have been inconceivable without the preceding images of the massacres in Bosnia and Rwanda. In fact, Kofi Annan, in his Millennium Report to the United Nations in 2000, would explicitly refer to Srebrenica and Rwanda to justify humanitarian interventions against sovereign member states of the United Nations.³⁷ In Kosovo it was not first and foremost the United States, but rather European elites, in particular the Labour government in London as well as the coalition of Social Democrats and Greens in Berlin, that felt obligated to act. For German Greens and their foreign minister, Joschka Fischer, this was a particular challenge. After all, the Green Party had emerged out of the peace movements of the 1970s and 1980s. They now had to commit themselves to the interventionist imperatives of the new global human rights regime. At a spectacular special convention of the Green Party, Fischer was able to overcome bitter (and physical) opposition and win over (using the argument 'Never again Auschwitz') a majority of the pacifist party delegates for NATO's military action. Only his opposition to the Second Iraq War in 2003 and his memorable exchange with the US secretary of defence, Donald Rumsfeld, at a joint press conference ('Excuse me, I am not convinced!') redeemed Fischer in the eyes of the many pacifists in his party.

The 1990s also marked the beginning of a new era in the legal prosecution of mass violence and genocide. The civil wars in the former Yugoslavia as well as in Rwanda were again the crucial catalysts in the emergence of a new international criminal law and its institutions, possibly the most significant legal accomplishment in human rights of the two decades since Bosnia. In contrast to what is generally presumed, almost all important human rights conventions and treaties had already

³⁶ Václav Havel, 'Kosovo and the End of the Nation-State', *New York Review of Books*, 10 June 1999.

³⁷ Kofi A. Annan, *We the Peoples: The Role of the United Nations in the 21st Century* (New York, 2000), 48.

been established during the Cold War, driven forward especially by the post-colonial non-aligned states (for example, the human rights covenants of 1966). As Antony Anghie has noted, the (non-binding) Helsinki Accords of 1975, which loom large in the recent historiography of human rights, did not add much to the framework created by the 1966 treaties.³⁸ The Vienna Declaration adopted by the World Conference on Human Rights in 1993, with its emphasis on women's rights as well as the indivisibility of civil rights and social, cultural and economic rights, and finally the establishment of a UN high commissioner for human rights, belongs in many ways to this earlier framework.

At the same time, the Vienna Conference also constituted the resurgence of the debate about the universality of human rights, which a number of Asian states opposed with the argument that human rights always had to be connected to the local context and collective. Thus, the debate about human rights as a specifically Western form of universalism is also a result of the post-Cold War era: before, human rights were not seen as incompatible with collective rights. On the contrary, in the 1950s and 1960s anti-colonial politicians had evoked human rights within the international arena against Western colonialism.³⁹ The human rights conventions and treaties of the 1960s, 1970s and 1980s were still oriented around promoting the juridification of the world in order to make the results of decolonization (especially economic and political self-determination) irreversible and to enable a more just global distribution of economic wealth in the future. In contrast, the innovations in international human rights law of the 1990s were located primarily in the realm of the legal prosecution of — but also the historiographical, moral and psychological coming to terms with — past wrongs.

The International Criminal Court was established during this period, which also marked the emergence of comparative genocide studies and, more generally, of a shift in

³⁸ Antony Anghie, 'Whose Utopia? Human Rights, Development, and the Third World', *Qui parle*, xxii (2013), 70.

³⁹ Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia, 2010). See also Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth, and the Politics of Universality* (Cambridge, 2011); Daniel Roger Maul, *Human Rights, Development and Decolonization: The International Labour Organization, 1940–70* (Basingstoke, 2012); Talbot C. Imlay, 'International Socialism and Decolonization during the 1950s: Competing Rights and the Postcolonial Order', *American Historical Review*, cxviii (2013).

historiographical sensibilities from (progressive, linear) history to (catastrophic, cataclysmic) memory in the Euro-Atlantic world.⁴⁰ 'Trauma', 'victimhood' and 'witnessing' became the key words used to create a new way of coming to terms with the past, oriented especially around the Holocaust as the event from which human rights had supposedly emerged.⁴¹ This historical narrative — human rights as a response to the Holocaust — seems irresistible, even if the new revisionist historiography insists that it was not shock about Nazi genocidal policies that generated human rights norms in the late 1940s or 1950s.⁴² It is the working through of a dystopian past of individual human suffering that is supposed to have led to political and moral action in the global present. This is also the main moral narrative for the new historiography of human rights, which set in during the late 1990s: past human suffering paradoxically accelerates the evolution of human rights.⁴³

Again, these narratives do not point to a utopian 'elsewhere'. Instead, they aim at a temporal and global expansion of the normative framework, to which especially European and anglophone elites declare themselves to be already morally

⁴⁰ For subtle critiques, see especially Henri Rouso, *The Haunting Past: History, Memory, and Justice in Contemporary France* (Philadelphia, 2002); John Torpey, 'The Pursuit of the Past: A Polemical Perspective', in Peter Seixas (ed.), *Theorizing Historical Consciousness* (Toronto, 2004); John Torpey, *Making Whole What Has Been Smashed: On Reparation Politics* (Cambridge, Mass., 2006); Robert Meister, *After Evil: A Politics of Human Rights* (New York, 2012).

⁴¹ See, for example, Daniel Levy and Natan Sznaider, *Human Rights and Memory* (University Park, 2010). More sceptical is Andreas Huyssen, 'International Human Rights and the Politics of Memory: Limits and Challenges', *Criticism*, liii (2011).

⁴² Compare, for example, G. Daniel Cohen, 'The Holocaust and the "Human Rights Revolution": A Reassessment', in Iriye, Goedde and Hitchcock (eds.), *Human Rights Revolution*, with Marco Duranti, 'The Holocaust, the Legacy of 1789 and the Birth of International Human Rights Law: Revisiting the Foundation Myth', *Journal of Genocide Research*, xiv (2012); Marco Duranti, *Human Rights and Conservative Politics in Postwar Europe* (Oxford, forthcoming). Similarly, Moyn, *Last Utopia*, 82–3; Samuel Moyn, 'The Intersection with Holocaust Memory', in Samuel Moyn, *Human Rights and the Uses of History* (London, 2014); Samuel Moyn, *Christian Human Rights* (Philadelphia, 2015).

⁴³ See, for example, Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia, 1998); Michael Ignatieff, *Human Rights as Politics and Idolatry*, ed. Amy Gutmann (Princeton, 2001); Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, 2004); Hunt, *Inventing Human Rights*; Jean H. Quataert, *Advocating Dignity: Human Rights Mobilizations and Global Politics* (Philadelphia, 2009). For an 'affirmative genealogy' of the ways in which suffering was transformed into rights, see Hans Joas, *Die Sakralität der Person: eine neue Genealogie der Menschenrechte* (Frankfurt, 2012), trans. Alex Skinner as *The Sacredness of the Person: A New Genealogy of Human Rights* (Washington, DC, 2013).

committed. Legally United States governments have taken great care not to fall under the jurisdiction of this international human rights doctrine and have not, for example, signed the Rome Statute of the International Criminal Court of 2002, illustrating, as critics object, the built-in inequality or imperial hypocrisy of this legal framework.⁴⁴ When, in 2004, a German human rights lawyer filed the first major criminal complaint against the US secretary of defence, Donald Rumsfeld, and additional politicians and military officers on charges of torture in Abu Ghraib prison in Iraq, Amnesty at first criticized the move, arguing that it jeopardized the burgeoning international legal practice of prosecuting lower- and mid-level perpetrators (primarily, it should be added, in African countries).⁴⁵ The complaint against Rumsfeld was filed in Paris under the principle of universal jurisdiction since France, in contrast to the United States, was a member of the International Criminal Court. The Paris prosecutor ultimately dismissed the case in 2008, arguing that Rumsfeld had been immune while in office. Thus, the sensational arrest of General Augusto Pinochet in London in 1998 on the basis of an indictment by the Spanish magistrate Baltasar Garzón Real for torture during the Chilean dictatorship remains the inconsequential exception that proves the rule.

The emergence of international criminal law, like the rise of individual human rights in general, was accompanied in the 1990s by an explosion in the numbers of humanitarian and human rights non-governmental organizations. To be sure, the 'new humanitarianism' had already emerged in the late 1960s and early 1970s with the crises in Biafra and Bangladesh as well as the founding of Médecins sans Frontières (Doctors without Borders).⁴⁶ However, in the new era of interventions after the end of the Cold War, military and humanitarian forms of

⁴⁴ Mark Mazower, *Governing the World: The History of an Idea* (London, 2012), 400.

⁴⁵ Wolfgang Kaleck, *Mit zweierlei Maß: der Westen und das Völkerstrafrecht* (Berlin, 2012), 77. Human Rights Watch, this time with the support of Amnesty, addressed these questions in its report 'Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees', *Human Rights Watch*, xvii, 1 (2005), <<https://www.hrw.org/reports/2005/us0405/us0405.pdf>> (accessed 5 Mar. 2016).

⁴⁶ Peter Redfield, *Life in Crisis: The Ethical Journey of Doctors without Borders* (Berkeley, 2013); Eleanor Davey, *Idealism beyond Borders: The French Revolutionary Left and the Rise of Humanitarianism, 1954–1988* (Cambridge, 2015); Lasse Heerten, *The Biafran War and Postcolonial Humanitarianism: Spectacles of Suffering* (New York, forthcoming).

governance outside international law go hand in hand: 'Humanitarianism has become the justification for extralegal action'.⁴⁷ The actual global interdependence of the world and the flow of images in news and social media lead to the assumption of an 'emergency imaginary' that dehistoricizes the social and political roots of conflicts and requires immediate action.⁴⁸ The process of claiming rights, such as the right of asylum, has also undergone a transformation since the 1990s: applicants are no longer expected to bring up stories of political persecution (for example, by dictatorial regimes); instead they must report their traumatization and literally show their wounds, that is, document their bodily suffering.⁴⁹ The focus is not the social and political reconstruction of the claims for asylum, but individual suffering and emotional trauma. Humanitarian empathy replaces rights claims; political subjects become traumatized victims.

A similar redefinition has taken place since the 1990s in the case of the rights of women. To be sure, sexual violence was finally identified as a crime against humanity in the international criminal tribunals for Rwanda and the former Yugoslavia. At the same time, 'women have been written, essentially, into international law predominantly through their experience of harm', that is, through individual suffering.⁵⁰ When seeking

⁴⁷ Didier Fassin and Mariella Pandolfi (eds.), *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (New York, 2010), 13 (editors' intro.).

⁴⁸ Craig Calhoun, 'The Idea of Emergency: Humanitarian Action and Global (Dis)Order', in Fassin and Pandolfi (eds.), *Contemporary States of Emergency*, 30.

⁴⁹ Didier Fassin, *Humanitarian Reason: A Moral History of the Present*, trans. Rachel Gomme (Berkeley, 2011), 145; Didier Fassin and Richard Rechtman, *The Empire of Trauma: An Inquiry into the Condition of Victimhood*, trans. Rachel Gomme (Princeton, 2009); Didier Fassin, 'From Rights to Favour: The Moral Economy of Asylum in Contemporary Society', lecture given at the Twenty-First Berlin Colloquium on Contemporary History, Einstein Forum, Potsdam, 3 Dec. 2015; Miriam Ticktin, *Casualties of Care: Immigration and the Politics of Humanitarianism in France* (Berkeley, 2011). See also Yves Dezalay and Bryant Garth, 'Droits de l'homme et philanthropie hégémonique', *Actes de la recherche en sciences sociales*, cxxi (1998); Gérard Noiriel, *Réfugiés et sans-papiers: la République face au droit d'asile, XIX^e-XX^e siècle* (Paris, 1998), rev. edn of *La Tyrannie du national: le droit d'asile en Europe, 1793-1993* (Paris, 1991).

⁵⁰ Zain Lakhani, 'Between Sex and Sovereignty: Refugee Women and the Politics of Border Control', *Humanity* (forthcoming); Mary Nolan, 'Gender and Utopian Visions in a Post-Utopian Era: Americanism, Human Rights, Market Fundamentalism', *Central European History*, xliv (2011), 31. For feminist legal critiques, see especially Alice M. Miller, 'Sexuality, Violence against Women, and Human Rights: Women Make

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asylum, women have to claim rights from benevolent nations by making their traumatic experiences legible, not as political subjects but as suffering bodies.

The new humanitarianism and the motifs of human rights idealism are part and parcel of what Didier Fassin calls 'humanitarian government', the 'politics of precarious lives'.⁵¹ Again, the consequences of such moral actions and the inequalities emerging from them are by no means new; we need only recall, for instance, the humanitarian interventions of the nineteenth century on behalf of the suffering Ottoman Christians. What is new is the temporality of such actions on the basis of an emergency imaginary in the here and now, which suspends historical time (hence the critique of dehistoricization by contemporary anthropologists)⁵² and dissolves anti-colonialism's and socialism's visions of a future aimed at forced modernization. In the words of Daniel Rodgers, 'One might reach nostalgically for a fragment of the past, but the time that dominated late twentieth-century thought was now'.⁵³

III

In conclusion, we should ask whether the fracturing of the modern time regime is also one of those experiences of crisis at the end of the Cold War that led to the ascent of 'human rights' in the 1990s. Following Koselleck, the French historian François Hartog has argued that the relation between past, present and future is itself historical and that experiences of time underwent dramatic changes in the late twentieth century. Until the French Revolution, it was primarily the past that informed the present. In the modern era, between about 1789 and 1989, the present and the past were conceived in terms of the future, and time itself became an agent: to brutalize the present to accelerate time

(n. 50 cont.)

Demands, and Ladies Get Protection', *Health and Human Rights*, vii (2004); Karen Engle, 'Feminism and its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina', *American Journal of International Law*, xcix (2005); Janet Halley, 'Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law', *Michigan Journal of International Law*, xxx (2008).

⁵¹ Fassin, *Humanitarian Reason*, 4.

⁵² See the review essay by Nicolas Guilhot, 'The Anthropologist as Witness: Humanitarianism between Ethnography and Critique', *Humanity*, iii (2012).

⁵³ Daniel T. Rodgers, *Age of Fracture* (Cambridge, Mass., 2011), 255.

formed the core of revolutionary ideologies. In contrast, after 1989 the present advanced to the predominant horizon of expectations in the Euro-Atlantic world. Without future and without past, Hartog argues, the present regenerates the past and the future only to valorize the immediate. The future is seen no longer as a promise but as a threat, 'not a radiant horizon guiding our advancing steps, but rather a line of shadow drawing closer, which we ourselves have set in motion'.⁵⁴

What seems fundamentally new about the human rights idealism of the 1990s is precisely that it is everything but future-oriented or utopian. It is not a social or political imaginary of a different, more perfect society. On the contrary, individual human rights in many respects regained currency first as a critique of revolutionary utopias, as Moyn correctly points out. After 1989 human rights assumed the place of these past futures that lingered on into the 1970s and 1980s, such as the post-empire insistence on the right to self-determination and on a new, more just international economic order or the realization of social and collective rights within the nation state. Human rights do so at a time marked by a crisis of institutions of solidarity and the advent of a new type of financial capitalism, which has widened the gap of inequality within and between nations: what Pierre Rosanvallon has called the 'great reversal'.⁵⁵ At the end of the 1990s, Michael Ignatieff regarded human rights as no longer a language of global social justice but 'a bare human minimum', 'not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for

⁵⁴ François Hartog, *Régimes d'historicité: présentisme et expériences du temps* (Paris, 2003), trans. Saskia Brown as *Regimes of Historicity: Presentism and Experiences of Time* (New York, 2015), 113, 191. See also Andreas Huyssen, 'Present Past: Media, Politics, Amnesia', in Andreas Huyssen, *Present Past: Urban Palimpsests and the Politics of Memory* (Stanford, 2003); Chris Lorenz and Berber Bevernage (eds.), *Breaking Up Time: Negotiating the Borders between Present, Past and Future* (Göttingen, 2013).

⁵⁵ Pierre Rosanvallon, *La Société des égaux* (Paris, 2011), trans. Arthur Goldhammer as *The Society of Equals* (Cambridge, Mass., 2013). On the 'neo-liberal' replacement of social and economic rights, see especially Susan Marks, *Four Human Rights Myths*, LSE Law, Society and Economy Working Papers, 10 (London, 2012); Mary Nolan, *Human Rights and Market Fundamentalism*, Max Weber Lecture Series, European University Institute, 2014/2 (Florence, 2014). More circumspect is Samuel Moyn, 'A Powerless Companion: Human Rights in the Age of Neoliberalism', *Law and Contemporary Problems*, lxxvii (2015). See also, more generally, Nicolas Guilhot, *The Democracy Makers: Human Rights and the Politics of Global Order* (New York, 2005).

me'.⁵⁶ It is this late twentieth-century understanding of human rights as empathy for which Lynn Hunt provides a historical genealogy.

At the same time, the past also changes into a history of the violation of present norms (slavery, genocide) from which, in turn, the legitimacy of these norms is deduced. Since the 1990s, the violent failure of twentieth-century visions of alternative futures has become the foil for our present human rights idealism. Prosecuting past crimes against humanity itself operates increasingly in a 'legal atemporality', as Hartog notes. As statutory time limitations for these crimes fall away, they constitute a present past, a past put on trial, with the historians transformed into witnesses.⁵⁷ The fierce historiographical debate of the German *Historikerstreit* in the mid 1980s had revolved around the question of whether the crimes of Nazism and Stalinism could be placed into the same analytical and, even more provocatively, sequential framework. More than two decades later, Timothy Snyder did just that in his much acclaimed *Bloodlands* by replacing Ernst Nolte's historical-philosophical musings with graphic descriptions of the individual human pain and suffering caused by both regimes.⁵⁸ The crimes of Hitler and Stalin, genocide and ethnic cleansing, have become the 'moral narratives'⁵⁹ in which we tell the past and validate the present. In this broader sense, we have probably all become historians of human rights.⁶⁰

At the end of the Cold War, Francis Fukuyama attracted a lot of attention, as well as scorn and derision, with his thesis about the end of history. His article 'The End of History?' was published to worldwide acclaim in the neo-conservative journal the *National Interest* in summer 1989, after the massacre in Tiananmen Square, before becoming a book in 1992.⁶¹ Fukuyama, who was working at the State Department at the time, claimed by

⁵⁶ Ignatieff, *Human Rights as Politics and Idolatry*, 349. For a critique of this reinterpretation of human rights, see Wendy Brown, "'The Most We Can Hope For . . .': Human Rights and the Politics of Fatalism", *South Atlantic Quarterly*, ciii (2004).

⁵⁷ Hartog, *Regimes of Historicity*, 200.

⁵⁸ Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin* (New York, 2010).

⁵⁹ Charles S. Maier, 'Consigning the Twentieth Century to History: Alternative Narratives for the Modern Era', *American Historical Review*, cv (2000).

⁶⁰ Linda K. Kerber, 'From the President: We Are All Historians of Human Rights', *Perspectives on History: The Newsmagazine of the American Historical Association* (Oct. 2006).

⁶¹ Francis Fukuyama, 'The End of History?', *National Interest*, 16 (1989); Francis Fukuyama, *The End of History and the Last Man* (New York, 1992).

invoking Hegel and Kojève (as well as Paul de Man, with whom he had studied at Yale) that the upheavals around 1989 signified not only the end of the Cold War and the post-war order, but the end-point of the ideological evolution of humanity and the universalization of Western values as the ultimate form of human government in a globalized world.

The advent of 'posthistoire' has been a staple of political thought on the left as well as the right since the 1940s.⁶² Thus, even if Fukuyama's thesis was not new, he nevertheless articulated the shift in the experience of time that Hartog also posited for the years surrounding 1989. To put it pointedly, the human rights idealism of Euro-Atlantic elites in the 1990s served as a bandage covering the fact that in this new world — even after 'the end of history', that is, the end of alternative futures — civil wars, genocide, and ideological and religious fundamentalisms of every kind were still not things of the past. Human rights morality became, as Hans Magnus Enzensberger noted in 1993, 'the last refuge of Eurocentrism'.⁶³

Does this mean, then, that human rights have no history, at least no history that does not begin in our own present? For this would be the consequence of the revisionist historiography of human rights that I have pushed here even further into the 1990s. But wouldn't that make the new human rights historiography into yet another iteration of the presentism syndrome, 'the sense that only the present exists, a present characterized at once by the tyranny of the instant and by the treadmill of an unending now'?⁶⁴ In order to avoid the converse historiographical pitfall of doing history backwards by projecting our current understandings of individual human rights onto the past, it is necessary to integrate the history of alternative political

⁶² Lutz Niethammer in collaboration with Dirk van Laak, *Posthistoire: ist die Geschichte zu Ende?* (Reinbek bei Hamburg, 1989), trans. Patrick Camiller as *Posthistoire: Has History Come to an End?* (London, 1994).

⁶³ Hans Magnus Enzensberger, *Aussichten auf den Bürgerkrieg* (Frankfurt, 1993), 77.

⁶⁴ Hartog, *Regimes of Historicity*, p. xv. See also the critique by Philip Alston, 'Does the Past Matter? On the Origins of Human Rights. An Analysis of Competing Histories of the Origins of International Human Rights Law', *Harvard Law Review*, cxxvi (2013); and, from a different perspective, by Robin Blackburn, 'Reclaiming Human Rights', *New Left Review*, lxi (2011); Robin Blackburn, *The American Crucible: Slavery, Emancipation and Human Rights* (London, 2011), ch. 14.

or social rights claims, such as the past future of post-colonial modernity, into the history of human rights.

More recent histories of human rights have been interested almost exclusively in the version of human rights focused on suffering individuals. Citing the example of anti-colonialism, Moyn, for example, explicitly disputes whether previous notions of human rights, which also encompassed collective rights, belong to the history of human rights at all.⁶⁵ And in Hunt's history of the emergence of imagined empathy as the source of human rights claims during the French Revolution, social rights ('the transformation of the Rights of Man into the rights of Sans-Culottes', in Arendt's dismissive formulation),⁶⁶ such as the right to work, are not mentioned at all, although they constituted the centrepiece of the Jacobin Declaration of the Rights of Man and Citizen of 1793 (and are, of course, included in the Universal Declaration of Human Rights of 1948). The right of peoples to self-determination,⁶⁷ but also the history of social and economic rights from the French Revolution up to the 1960s and 1970s, when it was especially the post-colonial states that pushed for more global equality — all of these are, from the perspective of international law, part of the international human rights recognized by the United Nations. They do not, however, appear in Moyn, Hunt or much of the recent historiography precisely because they have been defined out of the hegemonic version of human rights over the past two decades.⁶⁸ To reintroduce social and economic rights into human

⁶⁵ Moyn, *Last Utopia*, 86; Samuel Moyn, 'Imperialism, Self-Determination, and the Rise of Human Rights', in Iriye, Goedde and Hitchcock (eds.), *Human Rights Revolution*. Similarly, Jan Eckel, 'Human Rights and Decolonization: New Perspectives and Open Questions', *Humanity*, i (2010).

⁶⁶ Hannah Arendt, 'The Social Question', in Hannah Arendt, *On Revolution* (London, 1994), 61.

⁶⁷ See especially Jörg Fisch, *Das Selbstbestimmungsrecht der Völker: die Domestizierung einer Illusion* (Munich, 2010), trans. Anita Mage as *The Right of Self-Determination of Peoples: The Domestication of an Illusion* (Cambridge, 2015); Brad Simpson, 'The United States and the Curious History of Self-Determination', *Diplomatic History*, xxxvi (2012).

⁶⁸ See, however, the contributions to *Humanity*, iii, 3, *Dossier on Social Rights and Human Rights in the Twentieth Century*, ed. Malgorzata Mazurek and Paul Betts (2012), especially Frederick Cooper, 'Afterword: Social Rights and Human Rights in the Time of Decolonization'; *Humanity*, vi, 1, special issue, *Toward a History of the New International Economic Order*, ed. Nils Gilman (2015). More generally, Alain Supiot, *L'Esprit de Philadelphie: la justice sociale face au marché total* (Paris, 2010), trans. Saskia Brown as *The Spirit of Philadelphia: Social Justice vs. the Total Market* (London, 2012);

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rights history allows for a more qualified assessment of the surge of individual human rights in the late 1970s and their 'breakthrough' after the end of the Cold War.

If the argument developed here is correct — that the recent emphasis on human rights as individual, pre-state and concerned primarily with distant suffering re-emerged as a result of the ethical turn of the 'global nineties', and that it replaced or bypassed previous notions of human rights as internationalism, which were centred on group rights, sovereignty and social justice — then human rights do have an alternative history, one that tells the story of competing rights claims and counter-claims, all based on our common 'humanity'.⁶⁹ If contemporary conceptions of human rights have more to do with the world of the eighteenth and nineteenth centuries than with the internationalism of the Cold War era, for example, then the history of human rights should be expanded to include a moral history of the century after the Enlightenment, a century that Moyn and Hunt have, as it were, skipped over. Even if the concept of human rights was not as central to the Victorian moral campaigns of the nineteenth century, the reform movement's focus on detail, narrative and empathy with distant bodily suffering, for example, does resemble in many ways the depoliticized new humanitarianism of human rights that emerged in the late 1960s and early 1970s in Biafra and Bangladesh and became hegemonic in the 1990s.⁷⁰

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Gregory Claeys, 'Socialism and the Language of Rights: The Origins and Implications of Economic Rights', in Pamela Slotte and Miia Halme-Tuomisaari (eds.), *Revisiting the Origins of Human Rights* (Cambridge, 2015); Mira L. Siegelberg, 'Neither Right nor Left: Interwar Internationalism between Justice and Order', *Humanity*, vi (2015).

⁶⁹ Hoffmann, 'Genealogies of Human Rights', 4.

⁷⁰ Thomas W. Laqueur, 'Bodies, Details, and the Humanitarian Narrative', in Lynn Hunt (ed.), *The New Cultural History* (Berkeley, 1989); Thomas W. Laqueur, 'Mourning, Pity, and the Work of Narrative in the Making of "Humanity"', in Richard Ashby Wilson and Richard D. Brown (eds.), *Humanitarianism and Suffering: The Mobilization of Empathy* (Cambridge, 2009); Thomas L. Haskell, 'Capitalism and the Origins of the Humanitarian Sensibility', *American Historical Review*, xc, 2–3 (pts 1 and 2) (1985); Kevin Grant, *A Civilised Savagery: Britain and the New Slavery in Africa, 1884–1926* (New York, 2005); Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815–1914. The Emergence of a European Concept and International Practice* (Princeton, 2012); Kevin Grant, 'The Limits of Exposure: Atrocity Photographs in the Congo Reform Campaign', in Fehrenbach and Rodogno (eds.), *Humanitarian Photography*; Abigail Green, 'Humanitarianism in Nineteenth-Century Context: Religious, Gendered,

(cont. on p. 309)

Some of the paradoxes discussed by feminist scholars today in light of the recent emphasis on bodily harm and sexual violence for making human rights claims on behalf of women are very familiar to historians of the nineteenth-century female moral reform movement or of the struggle for women's citizenship rights. Of course, it is important and easy enough to point out the gulf that separates, for example, the pre-1914 suffragettes from the women's movement of the late twentieth century, or the Victorian preoccupation with female prostitution from contemporary campaigns against global sex trafficking. However, if we exclude the history of women's rights since the French Revolution from human rights history, we won't be able to understand the latency of concepts, the trapdoors that rights claims based on equality as well as difference might entail.⁷¹

And, finally, we should also ask which other basic concepts of international law and international politics of previous centuries served a function similar to that of individual, pre-state human rights today. Mark Mazower has pointed out that, at the mid twentieth-century disjuncture of the 1940s, 'human rights' assumed the place of the concept of 'civilization', which had structured international law during the nineteenth century.⁷² The erosion of state sovereignty since the 1990s was accompanied by a return of this older rhetoric of universal ethics that was tied to the concept of civilization or civility. Whereas the international political order after the Second World War and the end of empire was based on the formal equality of states, the invocation of individual, pre-state human

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National', *Historical Journal*, lvii (2014); Bronwen Everill and Josiah Kaplan (eds.), *The History and Practice of Humanitarian Intervention and Aid in Africa* (Basingstoke, 2013); Fabian Klose (ed.), *The Emergence of Humanitarian Intervention: Ideas and Practice from the Nineteenth Century to the Present* (Cambridge, 2016).

⁷¹ Joan Wallach Scott, *Only Paradoxes to Offer: French Feminists and the Rights of Man* (Cambridge, 1996). See also, for example, Gretchen Soderlund, 'Running from the Rescuers: New US Crusades against Sex Trafficking and the Rhetoric of Abolition', *NWSA Journal*, xvii (2005); Gretchen Soderlund, *Sex Trafficking, Scandal, and the Transformation of Journalism, 1885-1917* (Chicago, 2013).

⁷² Mark Mazower, 'The End of Civilization and the Rise of Human Rights: The Mid-Twentieth Century Disjuncture', in Hoffmann (ed.), *Human Rights in the Twentieth Century*; Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, 2009); Mazower, *Governing the World*. See also Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge, 2001); Glenda Sluga, *Internationalism in the Age of Nationalism* (Philadelphia, 2013).

rights (especially the doctrine of the 'responsibility to protect') has reintroduced into international law and politics the hierarchy of civilized and uncivilized states which in the nineteenth century led to the justification of humanitarian interventions, for instance, in the Ottoman empire.⁷³ Thus, it may well be that contemporary historians of human rights have more to learn from the history of the long nineteenth century than they realize. For if we continue to tell this history myopically as the breakthrough to our notions of individual human rights, we will 'perpetuate precisely the kinds of hierarchy that rights-language on its best days was expected to dismantle'.⁷⁴

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⁷³ Compare, for example, Rodogno, *Against Massacre*, with Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge, 2011).

⁷⁴ Martti Koskeniemi, 'Foreword: History of Human Rights as Political Intervention in the Present', in Slotte and Halme-Tuomisaari (eds.), *Revisiting the Origins of Human Rights*, p. xviii.