DOES INHUMANITY BREED HUMANITY?
INVESTIGATION OF A PARADOX

THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY. By Samuel Moyn. Cambridge, MA, and London: Harvard University Press, 2010. Pp. 337.

THE IDEA OF HUMANITY IN A GLOBAL ERA. By Bruce Mazlish. New York: Palgrave Macmillan, 2009. Pp. x, 191.

INVENTING HUMAN RIGHTS: A HISTORY. By Lynn Hunt. New York and London: Norton, 2007. Pp. 272.

ABSTRACT

This essay investigates the thesis that inhumanity breeds humanity. Many questions arise when we try to corroborate it: Can we say anything at all about the inhumanity of human beings? Why did large-scale inhumanity occurring before 1700 not elicit a human rights regime? Was the human rights take-off from 1760 to 1800 triggered by instances of inhumanity, and why did the take-off not last? Why did the human rights idea eclipse after 1800 only to reemerge after 1945? Were war and genocide the sole causes of the human rights revival after 1945 or were there also other factors? Was the breakthrough in 1977 of human rights as a mass movement related to any inhumanity? And, finally, is the contemporary enthusiasm for human rights, with 1998 as its stepping stone, sufficient to make atrocities unthinkable for good? I conclude that, at several moments in history, inhumanity did propel humanity, but also that there are many other instances in which inhumanity only gave birth to more inhumanity. If the inhumanity thesis were necessarily true, we would need more human rights catastrophes to inspire more human rights progress. And that would be a self-defeating paradox.

Keywords: crimes against humanity, genocide, human dignity, humanity, human nature, human rights, inhumanity, war

I. THE INHUMANITY THESIS OF HUMAN RIGHTS

Inhumanity breeds humanity.[1] This is, in short, the major thesis of Bruce Mazlish's plan for a history of the idea of humanity, contained in his latest book. Mazlish, a professor emeritus of history at the Massachusetts Institute of Technology, argues that two instances of inhumanity, World War II and the Holocaust, shocked the world to such a degree that, in reaction, a human rights revolution was unleashed. This is best expressed in the final words of his pro-

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1. I thank the participants in the seminar "Anti-Humanismus und Humanismus-Kritik" held by the Humanistische Akademie Berlin at the Institut für Philosophie of the Freie Universität Berlin on March 31, 2011, where I delivered a lecture about the inhumanity thesis.

Citations to the books under review will be made in parentheses.

logue: "My major thesis is that out of an epochal crime—global war and modern genocide—has emerged the idea of crimes against humanity. And out of crimes against humanity has emerged the concept of Humanity . . . " (Mazlish, 15; other mentions of the thesis are on 2-3, 11, 31, 35-36, 89).

Mazlish sees the birth of this novel idea of humanity as the result of three successive waves: the years 1945–1948, which were propitious for the start of standard-setting; the mid-1970s, which saw the proliferation of the human rights idea against the adverse background of the Cold War; and, most recently, the approval of the Rome Statute of the International Criminal Court in 1998, which paved the way for a new period of global justice. Thus, Mazlish says, we are confronted with the paradox that the "birth of humanity" is a major unintended consequence of unsurpassed inhumanity (Mazlish, 89). Basically, Mazlish's book contributes examples and arguments to make this thesis plausible. Other writers seem to endorse the thesis as well. Lynn Hunt, for one, asserts that we are certain that a human right is at issue when we feel horrified by its violation (Hunt, 26, 214). And it is a fact that moral outrage about the human rights violations of World War II was vividly on the mind of the drafters of the Universal Declaration of Human Rights (UDHR) and formed its prime catalyst.

I shall call Mazlish's thesis the *inhumanity thesis of human rights*. It is a strong thesis but not an unproblematic one. Many questions arise when we try to cor-roborate it: can we say anything at all about the inhumanity of human beings? Why did large-scale inhumanity occurring before 1700 not elicit a human rights regime? Was the human rights take-off from 1760 to 1800 triggered by instances of inhumanity and if so, why did it not last? Why did the human rights idea eclipse after 1800 only to reemerge from 1940 to 1945? Were war and genocide the sole causes of the human rights revival of 1940–1945 or were there also other factors? Was the breakthrough in 1977 of human rights as a mass movement related to any inhumanity? And, finally, is the contemporary enthusiasm for human rights, with 1998 as its stepping stone, sufficient to make atrocities unthinkable for good? I shall limit corroboration of the inhumanity thesis to the field of classical political and civil rights. Though much of it is applicable to the field of economic, social, and cultural rights, the issues are substantially different there.

II. THE THESIS AND HUMAN NATURE

In order to explore the relationship between inhumanity and humanity, it would be best to see first whether anything can be known at all about the levels of inhu-manity in world history. This triggers a set of questions about morality. These questions are not anachronistic, as I think that many human rights concepts can be applied even to the further past. It is not because present concepts (such as genocide, crimes against humanity, and war crimes) did not previously exist, or that the realities covered by them did not exist. Malicious intentions, criminal premeditation, widespread or systematic attacks on civilian populations, massive killings, inhuman policies, and other essential ingredients of gross crimes are

phenomena of all times. Therefore, no intrinsic reason exists why present labels could not serve for past violations.[2]

We should start by briefly considering the most basic question of all: what is the moral nature of human beings? Are human beings good, are they evil, or is the question of the good or evil nature of humans a false question? Many people, often inspired by religion, strongly believe in the intrinsic goodness of humans. In contrast to this view, a philosopher like Immanuel Kant (and, with him, scores of individuals in the West) held that human beings were antagonistic and bellicose. According to Kant, this bellicose nature can be restricted but not eradicated. If perceived with enlightened self-interest, precisely this bellicose nature can mobilize the will to create platforms of understanding and eventually trigger lasting peace.[3] Next to these opinions about the goodness or badness of human beings is a third possibility: that goodness and badness are intertwined features that become meaningless without each other. The anthropologist Marshall Sahlins, therefore, argued that human beings are born neither good nor bad. He even contends that the mistaken Western belief in a wicked human nature endangers our existence.[4]

If human beings are neither particularly good nor bad, can we then know whether inhumanity has increased or decreased in the course of history?[5] In absolute terms, the case for an overall increase of inhumanity is quite defensible. Population growth on earth and the increasing sophistication of repressive technologies make this statistically probable. John Gray has argued that mass murder is a side-effect of progress in technology. He counted nearly twenty genocides between 1950 and 2000. But he also maintained that most hunter-gatherers were as destructive and predatory as later humans were.[6] This view implies that our perception may be deficient in contradictory directions: we may overestimate the present absolute level of inhumanity because of our lack of knowledge of inhumanity in the past; alternatively, we may underestimate the present level because we are too impressed by the countervailing forces, especially since recent and expanding human rights awareness has led to a higher state of general alert and perhaps to more prevention. In relative terms, the question is very different: given that an equal amount of inhumanity probably leads to greater absolute destruction in modern times, were past societies more repressive or more humane toward

2. I argued this at length in "Historical Imprescriptibility," *Storia della Storiografia/History of Historiography* 59–60 (September 2011), 128-149, and in "Conceptualising Historical Crimes," *Historein: A Review of the Past and Other Stories* (Athens), no. 11 (2012), 60-70.

3. Immanuel Kant, "Idea for a Universal History from a Cosmopolitan Perspective" (originally German 1784), in *idem, Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, ed. Pauline Kleingeld (New Haven and London: Yale University Press, 2006), 6-8 [8: 20-22] (fourth proposition about antagonism and unsociable sociability); *idem*, "Toward Perpetual Peace: A Philosophical Sketch" (originally German 1795), in *idem, Perpetual Peace,* 89 [8: 365].

4. Marshall Sahlins, *Hierarchy, Equality, and the Sublimation of Anarchy: The Western Illusion of Human Nature* (http://www.tannerlectures.utah.edu/lectures/documents/Sahlins_2007.pdf; Tanner Lectures on Human Values, November 4, 2005), 117-120 (accessed March 21, 2012).

5. Antoon De Baets, "Human Rights, History of," in *International Encyclopedia of the Social and Behavioral Sciences,* ed. Neil Smelser and Paul Baltes (Oxford: Elsevier-Pergamon, 2001), X, 7016-17.

6. John Gray, *Straw Dogs: Thoughts on Humans and Other Animals* (London: Granta, 2002), 4, 14, 91-96.

their citizens than those of today? In tackling this question, a criterion for measuring the intensity of inhumanity is needed. The first criterion that comes to mind is the number of victims of human rights catastrophes as a percentage of the total population. Measured with this criterion, it is not certain at all that present-day rates are higher than those of the past. In his book *One World,* the moral philosopher Peter Singer summed up all the genocidal atrocities described in the Bible and concluded: "It is a sobering thought that in many tribal societies, despite the absence of machine guns and high explosives, the percentage of the population killed annually in warfare far exceeds that of any modern society, including Germany and Russia in the twentieth century."[7] A probable absolute increase of inhumanity in history, then, does not imply that humankind is more barbarous now than it was in the past, nor that it is less. If anything, it seems likely that, in relative terms, levels of humanity are either fluctuating or on the rise.

If humanity is possibly on the rise, why did large-scale inhumanity not trigger a human rights regime before the eighteenth century? It is a fact that inhumanity appeared together with the first human beings. The preamble of the Genocide Convention spoke of genocide as "an odious scourge" that "at all periods of history . . . has inflicted great losses on humanity." And Singer writes that "[T]he capacity to commit massacres probably goes back even further than our distinct identity as human beings."[8] We can only speculate that, in the further past, massive violence was perceived to belong to the *condition humaine*. At the same time, attention to the fate of victims of crime has itself an impressive pedigree: everywhere, religious and ethical systems have preached principles of humanity throughout history, even if these principles were not as formalized as they are today. From early on, most cultures knew variations of the "Golden Rule"—treat others as you would like them to treat you.[9] Almost certainly, the opinion that massive crimes were a normal fact of life was nowhere shared unanimously. Some political leaders were highly estimated as just rulers: a famous example is the Emperor Ashoka of the Indian Mauryan dynasty (third century BCE), who was known for his tolerance of pluralism and who thought it the duty of his government to protect minorities. The Mughal emperor Akbar and several tolerant sultans of the Ottoman Empire are other examples.[10] However, power and wisdom are two different realms. In 1795, Kant uttered his doubts about the ideal of the philosopher-king: "One cannot expect that kings philosophize or that philosophers become kings. Nor is this desirable, for holding power unavoidably corrupts the free judgment of reason."[11] In retrospect, we are forced to conclude

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7. Peter Singer, *One World: The Ethics of Globalization* (New Haven: Yale University Press, 2002), 109.

8. *Ibid.,* 110.

9. For examples, see *For All Life: Toward a Universal Declaration of a Global Ethic—An Interreligious Dialogue*, ed. Leonard Swidler (Ashland, OR: White Cloud Press, 1999), 19-21. Of course, the use of the term "others" was often dependent on ethnocentric interpretation. I thank Jörn Rüsen for this observation.

10. Amartya Sen, "Democracy as a Universal Value," *Journal of Democracy* 10, no. 3 (1999), 13-16; *idem,* "History and the Enterprise of Knowledge," *New Humanist* 116, no. 2 (Summer 2001), 4-8.

11. Kant, "Perpetual Peace," 93-94 [8: 369: "Daß Könige philosophieren, oder Philosophen Könige würden, ist nicht zu erwarten, aber auch nicht zu wünschen; weil der Besitz der Gewalt das freie Urteil der Vernunft unvermeidlich verdirbt."].

that the accumulative force of humanitarian attempts in the further past was not enough to pass a critical threshold.

III. THE THESIS AND THE TAKE-OFF

The second question concerns the watershed in human rights thought as it first appeared in the United States and France in the late eighteenth century. Lynn Hunt, the Eugen Weber Professor of Modern European History at the University of California, Los Angeles, has devoted a remarkable study to it. She has singled out two main explanations for the take-off of the human rights idea after 1760 and its translation into declarations in 1776 and 1789 respectively (Hunt, 35-112). The first factor was the appearance around 1760 of a new genre of novels—epistolary novels—which made their readers sensitive to new experiences and enhanced the empathy and sympathy necessary to boldly imagine new political conceptions such as equality and human rights. The second factor was the development of new conceptions of individual autonomy, which brought more respect for the body and emphasized its private character, making the practice of torture suddenly look unacceptable. These two explanatory factors invite some comment. The first factor, the influence of epistolary novels, seems implausible to me. I do not doubt that reading these hugely successful novels enhanced sympathy. But that is not enough to foster human rights. The sympathy aroused when reading epistolary novels is particularizing—directed at the protagonist of the novel—not universalizing: it is often accompanied by a rejection of all those who are her or his adversaries. Thus, the transfer of sympathy is limited and it stops shortly after the novel is read. No inclusive sympathy is reached in this way. There is additional support for my objection: nearly all of the tremendously popular protagonists of these novels were women, but women's rights were about the last category of rights to be realized. In addition, one of the foremost human rights campaigners, Mary Wollstonecraft, was skeptical about this novel reading (Hunt, 68).

In contrast, the second factor, the general outburst of revulsion against torture, is not only plausible, it is itself an illustration of the inhumanity thesis: the intolerable character of bodily cruelty stirred up a will to formulate rights to protect physical integrity, especially of prisoners. Here, the sympathy that was needed to reach such insights did its universalizing work. It begs the further question, however, of why torture was generally not seen as repulsive *before* 1760. Hunt develops some interesting thoughts to explain the changing attitudes toward pain and the link between vulnerability and dignity. She writes that "[i]n the back-and-forth on torture and cruel punishment, this dignity first emerged in negative reactions to the judicial assaults on it" (Hunt, 108). It is clear that, in addition to the torture factor, other conditions were also necessary to spread the new insights. Hunt stresses that philosophers and legal scholars writing about natural rights—as human rights were called at the time—were widely read on both sides of the ocean. She shrewdly emphasizes the practical advantages of thinking in universal terms: the American colonies did not aim at reform but at independence from England, which made reference to a universal set of values attractive

and necessary (Hunt, 120); in addition, in France the universality in which the principles were cast opened vast horizons of applicability hitherto unthought-of (Hunt, 150-151, 158, 164, 175). In their turn, all these new thoughts could build on a long tradition, as they were preceded by less elaborated and less attuned seventeenth-century conceptions of natural law, which, however, already assumed that basic principles of humanity had to take priority over positive law and that rights had to take priority over duties. This is not to say that the newly formulated rights were enforced immediately. Trials of major perpetrators of human rights violations, for example, had not yet taken place. In short, the inhumanity thesis holds only partially for the human rights revolution of 1760–1800. The inhumanity that from 1940 to 1945 triggered human rights initiatives was composed of a war of aggression and of genocide—illegal acts of which whole groups became victims—whereas the inhumanity that mainly triggered the changes around 1760–1800 was torture—a legal practice directed at individuals. This is the inhumanity thesis in a clearly different shape, but Mazlish does not discuss it. True, he unambiguously locates his thesis in the post-1945 global epoch, but the question why some broadly accepted concept of humanity arose in France and the United States in the eighteenth century, and why not elsewhere, merits more attention in any plan for a history of the idea of humanity.

IV. THE THESIS AND THE ECLIPSE

The next question is an intriguing one. After so promising a start around 1760–1800, why did the human rights idea fall into eclipse between 1800 and 1940? It implies another question: did the idea *really* become eclipsed after 1800? Some developments testify to its survival and continuity in these 140 years. One could point to the strength of the slavery abolition movement, the Geneva Conventions starting with that of 1864, the gradual development of customary rules of international humanitarian law, the attention to the fate of minorities in large empires, the Hague Conventions of 1899 and 1907, and the fight for women's rights. These developments of the nineteenth century were followed by a myriad of important if relatively modest human rights initiatives in the interwar period. Jan Herman Burgers has mapped this period, including the initiatives of the League of Nations for refugees and minorities.[12] Further research may complement the picture and reveal that the eclipse was not as total as it might look at first. It seems unlikely, however, that any such research, although much needed, will prove an uninterrupted triumph of human rights beginning in 1800. Hunt describes how the human rights idea was attacked from all sides in the nineteenth century: from conservatives, liberals, and socialists (Hunt, 176-200). Moreover, ever more powerful currents of defensive nationalism, imperialism, and racism—omnipresent in the second colonization wave of 1870–1914—and scores of dictatorships appearing after World War I (at least sixteen in Europe alone) squarely discouraged a universalistic discourse until after World War II. In addition, the history of calls for trials of major criminals between 1815, when some wanted to try

12. Jan Herman Burgers, "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century," *Human Rights Quarterly* 14 (1992), 447-477.

Napoleon, and 1946–1948, when the Nuremberg and Tokyo tribunals were held, is one of failed attempts (and even the Nuremberg and Tokyo tribunals were again followed by a vacuum of almost half a century).

For our purposes, it is noteworthy that an initiative such as the establishment of the Red Cross was propelled by a war: the 1859 Battle of Solferino. The Red Cross would become the official custodian of the Geneva Conventions. As this still is the most important instrument for humanitarian action in times of war, the connection between Solferino and the Geneva Conventions adds considerable credibility to the inhumanity thesis. It also indicates that a war need not be a "global war," as in Mazlish's version of the thesis, in order to trigger humanitarian initiatives. In contrast, the inhumanity thesis is only partly valid for World War I, although some conditions were comparable to those arising during World War II. Like World War II, World War I saw its own genocide: the Armenian genocide. In addition, this genocide was followed by an attempt to try its perpetrators as well, but it failed. The Armenian genocide was not called genocide at the time because that word was coined later. However, it gave rise to the term "crimes against humanity," which was forged in 1915 to describe the Armenian massacres. It was forgotten afterward, something that led Mazlish to write that "Humanity as a concept was, in fact, a still birth" (Mazlish, 31).[13] Ironically, this episode had its own unintended consequence. The Polish-Jewish lawyer Raphael Lemkin developed the idea of genocide when in the 1920s he learned about the Armenian massacres; he coined the word itself in 1944. On the other hand, out of World War I came the League of Nations, an initiative meant to stimulate international cooperation. In sum, World War I yields an ambiguous picture, sometimes invalidating, sometimes confirming the inhumanity thesis. In the period between 1800 and 1940, some acts of inhumanity provoked new steps; many others did not. Some of the steps taken were unintended or were the product of coincidence. None of them was decisive.

The "eclipse" hides another riddle that cries out for explanation: the strange fate of the concept of dignity. This concept had existed since antiquity, but, in general, it was different from human dignity. Mostly related to hierarchy, privilege, and merit, it usually meant the dignity of office and rank, of institutions and countries. *Human* dignity, on the other hand, was connected with freedom and equality—exactly the opposite. It became a core idea during the Enlightenment, and of Kant's moral philosophy in particular. The idea, the existence of which between 1800 and 1939 became obscure, was fundamental to the UDHR and all subsequent human rights declarations and conventions, which, in fact, are nothing but attempts to render the concept of human dignity operational.[14] Nowadays, three-quarters of the constitutions of the world use the concept of "human dignity" (or "personal dignity") explicitly. The concept confirms the

13. Crimes against humanity play a central role for Mazlish in his attempt to prove the nexus between inhumanity and humanity. However, he seems to think that the concepts of genocide and crimes against humanity are rivals (Mazlish, 19, 53-54), whereas legal scholars see genocide as a subset of crimes against humanity.

14. Antoon De Baets, "A Successful Utopia: The Doctrine of Human Dignity," *Historein: A Review of the Past and Other Stories* (Athens), no. 7 (2007), 71-72.

inhumanity thesis because its tremendous postwar success is closely related to the fear of indignity as embodied by the international outcry triggered by the horrors of World War II.[15] Clearly, indignities can tell us much about dignity. Some even prefer to formulate the relation between dignity and indignity in terms of each other by saying that protesting against indignities is itself a feature of dignity, and failure to protest against them is a feature of the absence of dignity.[16] Today, indignity and inhumanity are almost synonyms. And yet, the concept of human dignity was glaringly absent from the political and philosophical discourse between 1800 and 1939. For example, such texts as the 1907 Hague Conventions or the 1929 Geneva Conventions do not mention the term "dignity" at all, although they occasionally refer to "honor."[17] The term "dignity" co-fluctuates with the term "human rights."

V. THE THESIS AND THE REVIVAL

The next question—did the inhumanity of war and genocide really trigger the human rights revival of 1940–1945?—lies at the heart of Mazlish's argument. We should, however, differentiate the factors "war" and "genocide," for they played different roles. A war of aggression was being visibly prepared by Nazi Germany from at least 1938. As Burgers explained, science-fiction writer and historian H. G. Wells and many others mounted a sustained campaign in favor of human rights immediately after the start of the war in September 1939. This was far anterior to any widespread awareness of the Holocaust.[18] Some of Wells's ideas were picked up by President Franklin Roosevelt when he formulated his Four Freedoms in January 1941.[19] However, it is still not clear whether the main document of the new epoch, the United Nations (UN) Charter of June 1945, played a catalyst role in the campaign. The Charter mentions the notion of human rights seven times (and the notion of human dignity once), but authors differ in their evaluation: Mary Ann Glendon thinks that the human rights project was still peripheral in 1945 and only "launched as a concession . . . that the Allies live up to their war rhetoric. . . ."[20] Hunt confirms that the great powers reluctantly put human rights on the agenda and in the UN Charter (Hunt, 202), and Johannes Morsink thinks that mention of human rights in the UN Charter was sufficient to serve as a major incentive for the foundation of a Human Rights Commission, whose first assignment was to draft the UDHR.[21]

15. A second, recent, factor was associated with cloning and biomedicine, which are often perceived as threats to human dignity.

16. See, for example, Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Knopf, 1993), 234-235.

17. De Baets, "Successful Utopia," 74.

18. Burgers, "Road to San Francisco," 464-468.

19. *Ibid.*, 470.

20. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002), xv-xvi.

21. Johannes Morsink, *The Universal Declaration of Human Rights: Origin, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), 1-4. A close look at the UDHR drafting process yields another surprise. It is often said that the UDHR was a product of Western thought only. But this is a persistent myth. Morsink and Glendon, who both studied the complicated and lengthy

Be that as it may, the preambles of the UN Charter (1945), the UDHR (1948), and the Genocide Convention (1948) all prominently refer to the barbarous acts of the past as a major motive to craft a new human rights regime. It is remarkable, however, that in the Charter, drafted while the guns were still smoking, condemned the abuses of the past with explicit reference to the two world wars, whereas three years later such explicit references, although on everybody's mind, were deliberately removed from the drafts of the 1948 preambles in order to make mention of past atrocities as timeless as possible.[22] Interestingly, the UDHR preamble contains a strong version of the inhumanity thesis. It reads: "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind." This recital does not postulate inhumanity out of the blue; it speaks of inhumanity that dispelled previously existing humanity.

The causal roles of war and genocide in unchaining the human rights revival from 1945 to 1948 were different, with the former far surpassing the latter in importance. Indeed, the genocide factor is more ambiguous. From the summer of 1942, it gradually dawned upon the Allies that the Nazis were performing a large-scale persecution and extermination campaign, but the truth in its full brutality became generally visible only as pictures were released of the dead and the survivors of the extermination camps, taken when they were liberated in 1945.[23] Largely due to Lemkin's energy, this was sufficient to unchain the process to draft the Genocide Convention, which would be approved by the UN General Assembly one day before the UDHR in 1948. It represented a serious breach of the sacred principle of nonintervention in domestic affairs of states.

Strangely enough, there was little connection between the debates about the Genocide Convention and those about the UDHR. Therefore, the question arises whether, as most think, the Holocaust really played a central role in the creation of the UDHR. For Morsink, the Holocaust was incessantly on the minds of the drafters of the UDHR, whereas for Samuel Moyn, the Holocaust played no role at all (Moyn, 7, 47, 82-83, 209, 214, 219-220).[24] It is certain that awareness of the Holocaust came too late for it to play a central role in the UN Charter (drafted in 1944 and the first half of 1945) or the Nuremburg and Tokyo tribunals, the statutes of which were written in August 1945. Nor did such awareness prevent the pervasive silence about the Holocaust that installed itself after 1945 and

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UDHR drafting process, clearly demonstrated that its multicultural character was unusually broad and widely underestimated, thus rendering baseless the allegation that it was a purely Western instrument. In particular, the influence of small and medium-sized states, especially from Latin America, and of nongovernmental organizations, was considerable (*ibid.,* 21, 28-35; see also Glendon, *World Made New,* 221-233; Burgers, "Road to San Francisco," 475-477). It remains true that Western, in particular Christian, social thought dominated the views more than any other perspective (see Moyn, 62-71). Moreover, the main absentees from the drafting process were the African countries (with the exception of South Africa).

22. Antoon De Baets, "The Impact of the *Universal Declaration of Human Rights* on the Study of History," *History and Theory* 48, no. 1 (February 2009), 21-23.

23. Gabriel Milland, "Holocaust: The Holocaust as It Occurred—Censorship in Britain, the US, the USSR, Sweden, Germany, and Nazi-occupied Europe," in *Censorship: A World Encyclopedia*, ed. Derek Jones (London and Chicago: Fitzroy Dearborn, 2001), II, 1077-1079.

24. Morsink, *Universal Declaration,* 36-91. .

lasted until at least the late 1950s.[25] Widespread awareness of the Holocaust was a product of the late 1970s only. But this does not mean that Moyn is right or Morsink wrong. Their opposition can be resolved when we focus on the uncertain semantic situation of the term "genocide" from 1945 to 1948: this new concept was to conquer the mind of the masses only slowly. The Nazi genocide, when it was on the mind of the drafters of the UDHR, was still immersed in a more general aversion to Nazi barbarity. Even if such awareness of Nazi barbarity was omnipresent, the clear expression that the worst part of that barbarity was a unique crime called "genocide" took time.

VI. THE THESIS AND THE BREAKTHROUGH

Samuel Moyn, a history professor at Columbia University, New York, challenges the view of the deep roots of human rights. For him, human rights have been really successful only since 1977 when they finally left their UN quarantine and became embedded in a lasting mass movement as the result of the convergence of several factors: the emergence of Helsinki groups and other human rights organizations (such as Charter 77) in Eastern Europe and the USSR, established in the wake of the Helsinki Final Act in 1975; the incorporation of human rights into the politics of President Carter in 1977; and the conferment of the Nobel Peace Prize on the grassroots movement Amnesty International later that year. These factors coincided with structural developments such as the collapse of the credibility of the geopolitical rhetoric of the Cold War and the postcolonial disillusionment with revolutionary political utopias. According to Moyn, human rights emerged as a minimalist and practical utopia, with a moral rather than a political appeal.[26] He thinks that the biggest future challenge for human rights consists in effectuating the transformation from a narrow platform of core principles to a global blueprint for a politically viable global society. For him, in developing concepts such as transitional justice and governance, this transformation is well underway, but it remains to be seen whether global wrongs such as world poverty can be better challenged when they are reformulated as human rights violations. Moyn also argues that the belated success of human rights was accompanied by the invention of a longstanding tradition reaching back to the eighteenth century. In reality, says Moyn, the survival of the idea of human rights is a story of contingencies, discontinuities, and delays. Before 1977, human rights were a marginal idea, often invoked as verbal embellishment only. For two centuries, their viability was stubbornly interpreted within the framework of the nation-state; their connection to currents of universalism and internationalism was frail. According to Moyn, even the UDHR did not really capture the imagination until

25. Dirk van Laak, "Widerstand gegen die Geschichtsgewalt: Zur Kritik an der 'Vergangenheitsbewältigung'," in *Geschichte vor Gericht: Historiker, Richter und die Suche nach Gerechtigkeit*, ed. Norbert Frei, Dirk van Laak, and Michael Stolleis (Munich: Beck, 2000), 15-18.

26. See, for a comparable view, my "Successful Utopia." Karl Popper once expressed this in subtle and deceptively simple words: "[T]here is, from the ethical point of view, no symmetry between suffering and happiness, or between pain and pleasure. . . . Instead of the greatest happiness for the greatest number, one should demand, more modestly, the least amount of avoidable suffering for all" (Karl Popper, *The Open Society and Its Enemies* (1945) [London: Routledge, 1966], I, 284-285, n. 2).

decades after its adoption. And the fact that the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights—drafted from 1949 to 1954, adopted in 1966, and entered into force in 1976—featured the idea of self-determination so prominently made the idea of human rights look suspicious to many for over a quarter of a century, that is, until the era of decolonization was largely over.

Moyn's analysis, based on a thorough knowledge of the literature, is convincing with two important caveats. First, his debunking of human rights antecedents is dependent on a particular appreciation of historical rhythms. For example, one of the most notable developments, the incorporation of human rights notions in most of the world's constitutions well before the mid-1970s, is called "a fashion" by Moyn (Moyn, 111-112, but see 205). It is impossible to deny contingency in the history of human rights, but instead of continuously overemphasizing it, as Moyn does, one could appreciate more that, quite predictably, universal acceptance of grand principles valid for all individuals would trickle down irkingly slowly and meet serious resistance. There was not only coincidence after coincidence, in a myriad of ways there was also accumulated pressure not to let the human rights idea die. From 1945 to 1948, attention to human rights was huge in comparison to anything that had happened on that front before 1945, but it was modest in comparison to anything that was to happen after 1977. In 1945, the idea of human rights was vulnerable to contradictory influences and, very much like in the decades after 1760, it was to a large degree due to the effort of a group of alert legal scholars and philosophers who used a brief window of opportunity to translate smoldering ideas into clear principles.

Second, like Mazlish, Moyn underestimates the strength of humanitarianism, largely because he equates it with philanthropy (*social* humanitarianism) (Mazlish, 41, 66-71, 74; Moyn, 72, 220-221, 249 n. 62, 259 n. 52, 308 n. 17). Despite some overlap, *legal* humanitarianism is very different from philanthropy. Human rights law is applicable in times of peace, but in times of armed conflict, the bulk of human rights can be suspended, and then the human rights regime has to be supplemented with humanitarian law.[27] The Red Cross not only crafted the subtle edifice of the Geneva Conventions but also played a substantial role in the development of several human rights (and court statutes). An example is the new right to the truth, that is, the right of victims of human rights violations and their families to know the truth about the circumstances in which the violations took place and, in the event of death or disappearance, to know the victims' fate. This right has already culminated in several court judgments with far-reaching impact. Its story began in 1974 when, inspired by a resolution of a Red Cross conference the previous year, the United Nations General Assembly itself adopted for the first time a resolution that called the desire to know the fate of the missing and the dead a basic human need.[28]

27. "International Humanitarian Law and International Human Rights Law: Similarities and Differences" (Geneva: International Committee of the Red Cross, 2003).

28. For the story, see Antoon De Baets, *Responsible History* (New York and Oxford: Berghahn, 2009), 157-161.

It is clear from the factors enumerated above that inhumanity did not play a major role in the breakthrough of 1977. The wars and genocides of the 1960s and 1970s surely provoked indignation, but they had no lasting resonance among human rights activists. Still, one inhumanity-related factor played a role. Outraged by the repression and torture of Latin American dictatorships in the 1970s, Amnesty International launched its antitorture campaign in 1973.[29] This campaign met with overwhelming approval (more so than did the campaigns for prisoners of conscience) and would perhaps become the major key to Amnesty's success. Here, as in the 1760s, the general repugnance against torture was a powerful stimulus.

VII. THE THESIS AND GLOBAL JUSTICE

Moyn pays little attention to developments after the 1970s. International courts, in particular the International Court of Justice and the International Criminal Court, play almost no role in his argument. However, juridical globalization since 1998 was an important next step. In contrast to the boost of 1977, the recent wave of global justice *does* have a direct connection with war and genocide: the wars in the former Yugoslavia and the ethnic cleansing and genocide there and in Rwanda led to the establishment of international tribunals, which formed the laboratory for the International Criminal Court and accelerated the process of approval of the latter's statute in July 1998. The indictments of Augusto Pinochet, Slobodan Milošević, Charles Taylor, Omar al-Bashir; the rapidly increasing numbers of judgments on genocide, crimes against humanity, and war crimes; the recent, much studied opinions of the International Court of Justice; the establishment of international and hybrid tribunals and truth commissions, all indicate at least modest progress.[30]

VIII. THE THESIS AND RECENT FAILURE

Some critics, however, insist that this triumphant talk of human rights advocates is bleak. They ask whether the contemporary enthusiasm for human rights is suf-

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29. The first case in this antitorture campaign was Brazilian history professor Luiz Basílio Rossi.

30. At this juncture, it is necessary to point to two countercurrents: criticism of humanism and antihumanism. The first countercurrent denies the utility and philosophically firm foundation of the human rights idea, calling it a construct, often a (useful) fiction, and—sometimes—a weapon to mask specific interests and power inequalities. For this group, there is nothing natural to rights, and the debate is largely a nondebate. Apart from some well-known nineteenth-century critics of the human rights idea, Mazlish mentions Michel Foucault and John Gray among more recent philosophers. He could have added the skepticism of Carl Schmitt, Maria MacDonald, John Coetzee, Abraham Edel, Joel Feinberg, and Alasdair MacIntyre. An eloquent recent representative is Gray, who in *Straw Dogs* wrote that humanity does not exist, only human beings do. For him, humanism commits the cardinal error of believing that humans are different from all other animals. This type of criticism of humanism should be distinguished from antihumanist currents, of which Ulrich Horstmann is probably the most extreme representative. Horstmann has advanced a plea to alleviate the inescapable suffering of the human being (which he calls "the beast") by self-destruction of the human race and by erasure of all memory of it with the help of atomic weapons. See Ulrich Horstmann, *Das Untier: Konturen einer Philosophie der Menschenflucht* (Vienna: Medusa, 1983).

ficient to make atrocities unthinkable for good. Like others, Mazlish observes that at the very moment that humanity became acutely aware of its common destiny and developed a regime of universal human rights, it is endangered by global catastrophes such as massive human rights violations, destructive climate change, environmental damage, and nuclear annihilation (Mazlish, 21, 44, 108, 112). Will the post-1945 drive therefore be sufficient to survive, or is it much weaker than its advocates tell us?[31]

Many have measured the present level of human rights violations against the advances in human rights protection and have drawn widely differing conclusions from it. Some see undiluted progress, others regression, still others stagnation—the latter often with the caveat that, given the strong claims of human rights advocates, stagnation is tantamount to regression. Kenneth Cmiel, for example, after reviewing a lot of human rights literature, speaks about the "decidedly meager results" of human rights activism.[32] Cmiel is not the first skeptic. Edmund Burke had already remarked that the human rights declaration of revolutionary France did not prevent the suppression of dissent or the Terror (Hunt, 18, 178). Likewise, the upsurge in human rights awareness after 1945 did not stop the atrocities once and for all. Cmiel criticizes those studies that purely outline the triumphs in the struggle against human rights violations while neglecting the dragon on the patio: the ongoing and omnipresent violence. His skepticism is not unreasonable. Indeed, those exalting human rights progress may be misled by ahistorical myopia: *any* progress in the human rights area is impressive when the level of departure—the abyss of past barbarity—is low. As I explained before, other considerations lead us to believe in at least modest progress.

The judgment of recent failure, in its turn, has to meet several empirical objections also. To begin with, the imperfect application of the concept of human rights in daily reality does not necessarily discredit the concept itself. Moreover, in his book, Mazlish charts many factors that stimulate a global awareness and identity (Mazlish, 115-125). He even discusses examples of what I would call a planetary memory: Hiroshima, space travel, the millennium bug, large-scale sports events (Mazlish, 112). One could add the fall of the wall or 9/11, events that were watched by large crowds everywhere. Among these global *lieux de mémoire,* some of the strongest belong to the class of inhumanities. They will be remembered by succeeding future generations. Apart from this new global awareness, some achievements in the field of human rights cannot be dismissed. Even diehard skeptics cannot but agree that a world without a UDHR is worse off than one with such a declaration. Its ideas are available in 384 languages (as of March 2012), which makes it the world's most translated document. The Geneva Conventions, prescribing the humane treatment of civilians and prisoners in times of war, have been ratified by all countries in the world (194 states are parties to it) and are therefore the paramount source of international humanitarian law. And take the idea of genocide. It was given shape in a convention in 1948, but the first sentence ever for genocide was handed down in 1998 against a Rwandan

31. For similar ideas, see Swidler, ed., *For All Life*, 3, 13.

32. Kenneth Cmiel, "The Recent History of Human Rights," *American Historical Review* 109, no.1 (February 2004), 118, 134, also 126, 131-135.

bourgmestre: it took half a century and many setbacks for the efforts of the genocide convention drafters to yield a first concrete result. Since then, convictions for genocide have rapidly multiplied. Another important development is that the political regime best suited to safeguard human rights—democracy—has made considerable progress over recent decades. The United Nations Development Programme (UNDP) recently showed that the share of democracies increased from less than a third of countries in the early 1970s to more than half in 1996 to three-fifths in 2008.[33] The UNDP added, however, that the reported levels of human rights violations remained virtually unchanged globally between roughly 1970 and 2010. It thus seems that the rise of democracy, casting doubt on the recent failure judgment, was matched by stagnation rather than a rise in human rights protection, casting doubt on the recent success judgment. Both judgments—of recent success and of recent failure—can be the product of ahistorical myopia.

IX. CONCLUSION

It is now possible to evaluate the inhumanity thesis. Humanity can be the result of inhumanity, but it need not be. As we saw, progress in human rights thought was often unrelated to any act of inhumanity. Proof for the causal role of the inhumanity factor was weakest during the breakthrough of 1977. Conversely, at several moments in history, inhumanity did propel humanism: first torture, later battles such as the one at Solferino, still later World War II and the genocidal barbarities, and recently the wars in the former Yugoslavia and the genocide in Rwanda. It is noteworthy that it was not always the worst inhumanities that provoked a response in terms of human rights. Depending on the context, lesser forms of inhumanity could trigger more response. Sometimes there were windows of opportunity, and individuals took advantage of them to further human rights. The unbearability of repetition was perhaps a factor as well: it may explain why the human rights response was stronger after World War II than it was after World War I. In contrast, there were many other instances in which inhumanity only gave birth to more inhumanity and to new cycles of violence. The history of human rights is full of discontinuities, and the relationship between inhumanity and humanity is not a necessary one.

Kant's view of bellicose humans, although ultimately not provable, offers us a glimpse of a way out of the paradox. For Kant, it is not only actual inhumanity that breeds humanity, but awareness of its *risk*. This means that inhumanity itself is not a necessary condition for human beings to mobilize their energies for human rights. This is hopeful. For if the inhumanity thesis were necessarily true, we would need more human rights catastrophes in order to spark more human rights progress. And that would be a self-defeating paradox.

Derek Parfit recently wondered whether, when the goodness of the past is balanced against its badness, human history has been worth it. Discussing various arguments in favor and against, he concludes that, as far as his historical knowl-

33. United Nations Development Programme, *Human Development Report 2010* (Oxford: Oxford University Press, 2010), 68, 71.

edge reaches, the sum of happiness has been greater than the sum of suffering and that, therefore, the past has been in itself worth it. However, he also emphasizes that this is a weak opinion—and perhaps wishful thinking—because the badness of uncompensated suffering cannot be easily outweighed. Parfit further asks whether, comparing the past and the future, human history will have been, on the whole, worth it. His answer is a tentative yes again, basically for two reasons. First, the past is very short compared with the possible future, since the Earth may remain inhabitable for far longer than it already has. In addition, he surprisingly argues that, for practical purposes, the horrors of the past can be ignored in the comparison. He admits that "[t]hat may seem like building a dance hall or comedy theatre on the site of Auschwitz, or of some other massacre." However, he gives a strong reason: "[O]f the people who have suffered in lives that were worse than nothing, many suffered in attempts to help to give humanity a good future. These people would have wanted us to try to achieve their aims; and, if we succeed, some of their suffering may not have been in vain." And that same, noble motivation may count for people who would suffer in the future. Hence, Parfit concludes, even if the near future were very bleak, the further future might be worth it and, therefore, it would be best not to end human history.[34] Kant knew already how elusive human beings were when he said: "[N]othing entirely straight can be fashioned from the crooked wood of which humankind is made."[35]

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34. Derek Parfit, *On What Matters* (Oxford: Oxford University Press, 2011), II, 614.
35. Kant, "Idea for a Universal History," 9 [8: 23: "[A]us so krummem Holze, als woraus der Mensch gemacht ist, kann nichts ganz Gerades gezimmert werden."].