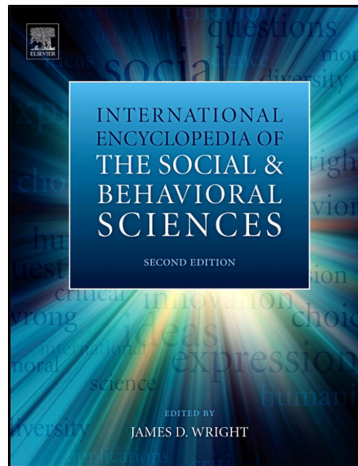


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Human Rights, History of

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Abstract

In this article, six basic debates about human rights are clarified from a historical perspective: the origin of human rights as moral rights connected to the natural law doctrine and opposed to positive rights; the wave of criticism of their abstract and absolute character by nineteenth-century liberal, conservative, and socialist thinkers; their extension from the rights of man to the rights of all human beings and from individual rights to individual and group rights; the tension between national and international control over the protection of human rights and between domestic and international jurisdiction; the controversy over the indivisibility of the three generations of rights; and, finally, the problem of the universal or relative character of human rights as viewed from historical and anthropological angles. The article also tries to answer the questions of whether there has been more progress than failure in the field of human rights and of whether the pressure of inhumanity around us is necessary to trigger human rights progress.

The expression 'history of human rights' has two different meanings. It can be understood (as it usually is) as the history of the concept of human rights, or (less frequently) as the history of the enjoyment of human rights (and their abuse) in practice. Therefore, the basic debates about the concept of human rights are first clarified here from a historical perspective. Then, an attempt is made to answer the questions of whether the history of human rights has been characterized by success or failure and of whether failure triggered progress.

Moral versus Positive Rights

Developing the human rights concept took two millennia in Western history and was so full of unforeseen links, ruptures, reversals, and coincidences, that, until only a few decades ago, it convincingly could be called a unique product of that history. One symbolic pivotal point in this development was 1689–1690, just after the Glorious Revolution of 1688. In these years, the English philosopher John Locke (1632–1704) published his *Two Treatises on Government*, which contained the first classical formulation of human rights (then still called 'natural rights'). In retrospect, this work stood at the juncture of a set of amazingly diverse ideas, some of which went back to antiquity and some of which will survive through the twenty-first century. Locke's point of departure was the doctrine of natural law as it had developed since antiquity and had been transformed, in certain respects almost beyond recognition, by medieval Christianity and early-modern philosophers. According to Locke, the doctrine maintained that human nature endowed all humans with certain basic moral entitlements (such as the rights to life, liberty, and property), to which the manmade laws of society, both positive and customary, had to conform. These entitlements were called natural rights and assumed to possess five characteristics: they were discoverable by reason, itself a faculty of human nature; they existed before humans entered society; they applied to all humans by virtue of their being human; they were inalienable (i.e., could not be taken away); and they were restricted by the recognition of the rights of others only. As such, these rights limited the power of the society and its political and legal manifestation,

the state. Respect for them was the foremost test for the legitimacy of political power.

The natural law doctrine had antecedents. Ancient ideas on rationalism, equality, and the restrained exercise of power formed its substratum. Despite its strong claim of immutability, however, many of its components, such as the exact catalog of moral principles or the source of authority for these principles, turned out to be rather flexible. Although temporarily fallen into eclipse because of the ascendancy of the sixteenth-century absolutist state, the natural law doctrine would be fostered by three developments initiated in that very period: with the Renaissance came an emphasis on individualism and secularism; the outcome of the religious struggles following the Reformation taught the necessity of tolerance; and the seventeenth-century scientific revolution marked the triumph of rationalism. These three developments reversed the philosophical priorities of the hierarchical medieval societies. Natural law gradually became associated with rights rather than duties and with individuals rather than groups.

The perception of the source from which these natural rights emanated also changed. Whereas Christianity had maintained that God was the ultimate source and political absolutism had invested the monarch with divine rights, the consent of the governed came to be seen as the final authority now. Individuals gave this consent in a social contract, which recognized that they possessed natural rights before entering society. Governments owed their origin to that contract, by which free and equal citizens agreed to entrust to a neutral sovereign body some of their nonnatural rights, to accept its authority and rules as long as it protected them, and to rebel against it if it did not. This became the basis for the rule of law and the separation of, and balance between, the legislative, executive, and judicial functions of government.

Although previous political theories paved the way and later ones expressed similar ideas, it was Locke's version that became iconic, especially outside England. In the age of Enlightenment, it exerted profound influence on the politicians behind the great democratic revolutions at the end of the eighteenth century. In the United States and France, natural rights, mainly of a political and civic character, were incorporated into the declarations of the revolutionaries. In 1789, natural rights were

transformed into the 'rights of man' (*droits de l'homme*). This marked the beginning of a slow process of codification of rights within the constitutions of most states and in international law that still has not ended.

This brief overview shows that, although many aspects of the human rights conception have an ancient pedigree, other crucial aspects have not. The gradual appearance of the concept was the result of a unique historic combination of particular series of events and philosophical thought reflecting upon them. The natural law doctrine itself eventually knew a curious fate: with unprovable tenets and with the possibility of abusive claims 'in the name of human nature,' it became overshadowed by the powerful state-centered thinking of the nineteenth century (as it had been in the sixteenth), but it survived. It was rehabilitated in a modest form during World War II. But the present approach sees human rights as an operationalization of the basic concept of human dignity rather than of human nature.

Absolute versus Relative Rights

The debate on moral versus positive rights was continued by liberal, conservative, and socialist critics of human rights, typically in such works as those of Jeremy Bentham (1748–1832), Edmund Burke (1729–1797), and Karl Marx (1818–1883). These critics argued against the abstract and absolute character of human rights and maintained that rights had to be connected to the society in which they historically were to be exercised. The liberal utilitarian Bentham believed only in the force of positive legislation. For him, natural rights were imaginary, 'nonsense upon stilts.' He feared that they were powerful rhetoric in the hands of rulers and a substitute for effective legislation. Unlike Bentham, the conservative Burke did not deny the existence of natural rights. He feared these rights, however, for reasons contrary to Bentham's: in the hands of the common people, natural rights would stimulate revolutionary sentiments and cause social upheaval leading to terror and to the destruction of the social fabric. Rights (and the duties linked to them) ought to be derived from the principles and values emanating from the particular traditions of a society. For the socialist Marx, the human rights doctrine was not radical enough. It left the inequalities generated by capitalism untouched (particularly private property) and therefore served the interests of the ruling bourgeois class. Because of these inequalities, the workers were unable to enjoy their rights fully, which therefore remained largely formal. As a class, the workers had a duty to create the conditions for social change by claiming collective social and economic rights with which to overturn the exploitative economic system. The new, egalitarian society to be established after the struggle had been successful, would be one without a state, laws, or rights.

These three critics did not stand alone, but their arguments gained a classic character and inspired powerful currents. Bentham's ideas gave impetus to the tradition of legal positivism. Ideas similar to Burke's would feed the romanticism and historicism of the nineteenth century to the extent that they also emphasized cultural identity and diversity. Marx's concerns activated the thinking about social and economic

rights, heightened awareness of the need for social legislation, and influenced the 1917 Russian Revolution.

Men versus All Humans and Individuals versus Groups as Rights-Holders

Clearly, until long after its introduction, the concept of 'rights of man' covered only restricted categories of humans, usually male tax-paying citizens. The large majority of women, slaves, and foreigners were excluded. The struggle to include these categories into the ranks of rights-holders would lead to the final transformation of the concept into 'human rights.' As early as 1791, Olympe de Gouges campaigned for women's rights. With the movement against slavery, another group followed. Categories of individuals deemed particularly vulnerable (next to women and slaves, also children, aliens, refugees, prisoners, the disabled) eventually were protected by special regulations. Likewise, the difficult problem of how to realize group rights was introduced at an early stage in the human rights debate. Groups deemed vulnerable (minorities, colonized peoples, indigenous peoples) increasingly received special attention. Specific treaties drafted for national, ethnic, or religious minorities came into effect long before general treaties. The League of Nations, founded in 1919, did not formally recognize human rights but added pioneering treaties for minorities, refugees, and mandate territories.

From the movement to enlarge the concept of rights from selected human beings to all human beings, two further questions can be derived. The first of these is what the consequences are of the anthropocentric character of human rights, as it excludes other sentient beings. The other problem is whether past and future generations have human rights. As to past generations, it is difficult to ascribe rights to the dead, who are not human beings, but *past* human beings. Nevertheless, in this context, one could think of the duties of the living toward the dead concerning the dead body, the funeral, and the grave; concerning the will, the identity, and the heritage of the deceased; and concerning the images and texts about them. As to future generations, the preservation of the cultural heritage of humanity and of the natural environment is a chief concern as is the relationship between human rights and the human genome. As to future generations in relation to past generations, the accountability of successor governments for human rights violations committed by their precursors and their duty to investigate and prosecute these violations – with its corollary, the right to the truth – so as to combat impunity, became the focus of a new field of study: transitional justice (the full range of processes and mechanisms associated with a society's attempts to come to terms with the legacy of large-scale past abuses to ensure accountability, serve justice, and achieve reconciliation).

Domestic versus International Jurisdiction over Human Rights

Since 1800, two tendencies, one international, the other national, partly opposite, partly complementary, have dominated the debate over who was to supervise the protection of

human rights. A process of nationalization started when human rights were incorporated into the constitutions of growing numbers of countries. At the same time, human rights became part of the agenda of intergovernmental meetings, leading to the humanitarian interventions of the nineteenth century (continuing a tradition dating from the seventeenth) and the gradual incorporation of human rights into international law. The decisive historical moment for internationalization, however, came during World War II, when the link between human rights violations and war (hence, *a contrario*, the link between human rights protection and international peace and security) became clearly visible and, shortly after, when the Nazi and Japanese atrocities led to worldwide condemnation embodied in the international war crimes tribunals of Nuremberg and Tokyo. Although the United Nations only paid secondary attention to human rights in their 1945 Charter, this did not prevent work on an International Bill of Human Rights, consisting of a morally compelling but not legally binding Universal Declaration of Human Rights, adopted in 1948, and two International Covenants, one on civil and political rights and the other on economic, social, and cultural rights, both approved in 1966 and entered into force in 1976.

The idea of self-determination appealed to peoples under colonial rule or comparable alien subjugation and proved to be a crucial concept. It was a dangerous concept also because narrowing self-determination to only one of its possible interpretations – political independence, hence secession – was potentially explosive and because consensus was lacking as to who the rights-bearer ('a people') exactly was. Self-determination was promoted to a group right only in the 1966 covenants.

In the efforts to transform human rights into positive rights by making them enforceable in positive law, usually three stages are distinguished: standard-setting (codification of standards), ratification (making standards binding), and implementation (enforcing standards via sanctions). Seminal steps for enforcing standards were the elaboration of complaint mechanisms for state and nonstate actors (mainly since the 1970s), the appointment of a High Commissioner for Human Rights (1993), and the adoption of the Statute of an International Criminal Court with universal jurisdiction to prosecute alleged perpetrators (including heads of state and government) of genocide, crimes against humanity, war crimes committed in international and internal conflicts, and crimes of aggression (1998). Important preparatory work for these new devices was done by a coalition of nongovernmental organizations, the representatives of civil society. The elaboration of human rights institutions and mechanisms on a world scale was paralleled, and often preceded, by similar developments on a regional scale in Europe, America, Africa, and the Arab world.

In the midst of this evolution, the state was the key player. The cherished principles of the Westphalian world order, established in 1648, were national sovereignty and interstate equality. Their corollary, domestic jurisdiction, excluded interference from abroad in the internal affairs of the state. The vigorous doctrine of nationalism and successive waves of decolonization since the late-eighteenth century strengthened these principles. Paradoxically, recognition of national sovereignty made possible progress in international law with its core

principle of interference in the internal affairs of states, for two reasons. First, states slowly realized that when they adopted human rights as the constitutional basis of the rule of law, they implicitly created a duty to protect them everywhere, including beyond their borders. Second, it became painfully obvious that the states charged with the protection of human rights very often were the main perpetrators of human rights violations. As a consequence, states eventually began to accept, although reluctantly, an international monitoring element that restricted their sovereign domestic power. The number of human rights campaigns and humanitarian interventions increased drastically in the 1990s, but their enabling conditions, forms (diplomatic, political, economic, or military), potential abuse, and effect were hotly disputed.

First- versus Second- versus Third-Generation Human Rights

As the list of human rights gradually expanded, analysts grouped them into 'generations.' First-generation rights, tied to the idea of liberty, were traditional or individual rights of a political and civic nature. They were characterized as negative rights ('freedoms from') because they favored government abstention. Second-generation rights, tied to the idea of equality, were modern or collective rights of an economic, social, or cultural nature. They were characterized as positive rights ('rights to') because they favored government intervention. Third-generation rights, tied to the idea of fraternity, were modern or collective rights of a global nature. They were characterized as solidarity rights and usually included the established right of self-determination and the newer rights to development, human security, peace, and democracy. The rights of indigenous peoples and the right to a life-sustaining environment frequently are added, but these also are listed as fourth-generation rights by some.

Each generation of rights emerged in a particular historical context. The first generation was the result of the so-called democratic revolutions of the late-eighteenth century. Increasing political emancipation and democratic participation in the next two centuries gave them further impetus. The second generation developed in the nineteenth century as the socialist tradition with its reformist and revolutionary strategies introduced ideas of welfare and social legislation to counter the exploitation of working classes. The third generation usually is associated with demands from colonial peoples, and after their independence, from the South for a worldwide redistribution of power and wealth, and with the delicate balance between global and local trends.

At the 1993 World Conference on Human Rights in Vienna, the second such conference ever and the first after the Cold War, the indivisibility of human rights was reaffirmed strongly. Even so, seven rights acquired a special status as they were the only ones stipulated by the 1966 covenants to be non-derogable, even in times of public emergency. They are the rights to life; to freedom of thought, conscience, and religion; to be recognized as a person before the law; and the prohibitions against torture and slavery, against imprisonment for nonfulfillment of contractual obligations, and against retroactive application of criminal laws.

The bewildering diversity of human rights nevertheless triggered much controversy on their compatibility and rank. Because all human rights were conceived as inalienable, they sometimes came into mutual conflict. A classic example of a conflict within the same generations of rights is the tension between free expression and privacy: both have to be balanced according to fair rules. But most conflicts occurred between, rather than within, generations of rights. Whereas first-generation rights assumed the character of universally enforceable standards, second- and third-generation rights were rather aspirations of the fulfillment which was utterly dependent on the creation and application of expensive state programs. Faced with all these demands, some states, mainly in the West, gave priority to first-generation rights, whereas others, mainly in the East and the South, campaigned, if not for the primacy, then at least for the equivalence of second- and third-generation rights to those of the first generation.

The strongest debates were held on whether political freedom should take priority over economic development or the reverse. During the Cold War (and even beyond), those defending the priority of political freedom (free minds) were accused of perpetuating inequality, those defending the priority of economic development (full bellies), of perpetuating dictatorial government. The hypothesis that political freedom or democracy has to be suspended until satisfactory levels of economic development are attained is contradicted by experience: in such cases, freedom usually is trampled underfoot, with no economic development attained after all. Unaccountable governments generally exacerbate economic and environmental crises. Moreover, how can a present suspension of freedom ever be conceived as a suitable preparation for its future protection? The reverse hypothesis, that economic development and political participation are interdependent, seems to have firmer ground: the exercise of civil and political rights is dependent to a certain degree on the fulfillment of economic and social rights (such as the rights to food and to education) and, in its turn, it is a requirement for citizens to participate actively in the economic development of the society. In short, there is no evidence for a conflict between political rights and economic performance. Research by the United Nations Development Program (UNDP) demonstrated that democracies are better than dictatorships in at least three crucial areas: managing conflicts; avoiding catastrophes and managing sudden downturns that threaten human survival; and helping spread the word about critical health issues.

This brings us to the major question of the relationship between human rights and political systems. Beginning with the Universal Declaration of Human Rights, all international human rights instruments advocate a democratic society as the best political system to protect human rights. In addition, the preamble of the Universal Declaration strongly condemns the dictatorships of the past. From this, the United Nations infer a simple definition of a democratic society: it is a society that recognizes and respects the human rights set forth in the Universal Declaration of Human Rights. This definition, simple as it seems, is strong because it combines the minimalist conception of democracy as the rule of the majority with a maximalist human rights-oriented application of the rule of law. Although, strictly speaking, no state in the world lives up to such an ideal definition, it points to the fact that a democracy

is the best framework to facilitate proper conditions for the protection of human rights. In any case, human rights and democracies both emerged historically as the results of the 'democratic revolutions' of the late-eighteenth century.

Universality versus Relativity of Human Rights

The history of human rights expounded earlier, pointed to the Western roots of the human rights concept. Elements of the concept, such as some natural law principles, were available outside the West, but the combination of factors that led to its formulation was unique. As the West conquered the rest of the world, it introduced imperial dominance and violence. At the same time, however, its notions of nationalism, freedom, and human rights – developed initially for home consumption – fell on fertile ground around the globe: they proved able to transcend their particular roots and context. In the hands of colonized peoples, these notions echoed similar indigenous values and increasingly served to justly criticize Western exploitation in the language of the West itself. Thus, the claim of the universality of human rights has an anthropological basis, not a historical one: it is based on the worldwide appeal of a specific system of thought. In an unambiguous sense, this is logical because human dignity, as the foundational idea behind human rights, is a universal value with venerable traditions everywhere.

The critics of the universality of human rights remained skeptical. During the preparatory work on the 1948 Universal Declaration of Human Rights, leading U.S. anthropologists emphasized the cultural relativity of values and denounced the universalist pretensions of the intended declaration as cultural imperialism. Moreover, the historic critics of the universality of human rights, presented earlier, were succeeded by neo-Marxists, communitarians, and postmodernists. But the most influential group of critics was the vociferous ruling elites of some Asian and African countries. They challenged specific formulations of human rights, such as religion or marriage, and advocated, instead of universality, the principle of, for example, 'Asian values' or of domestic jurisdiction or of the primacy of second- and third-generation rights over first-generation rights. Remarkably, the victims of imprisonment, torture, and other violations in non-Western countries (among them many future elites of these countries), if they survived the prisons of dictators, found such criticism of the ruling elites unconvincing. They argued that denying universal human rights to citizens outside the West was itself a sign of cultural arrogance. One cannot deny progress in this regard: whereas the 1948 Universal Declaration of Human Rights was approved by a vote of 48 to 0 with 8 abstentions, at the 1993 Vienna Conference, 171 states unanimously reaffirmed the universality claim laid down in this declaration. This made the universality claim more representative and hence more solid.

Progress and Failure in the History of Human Rights

Recently, historian Bruce Mazlish defended the thesis that inhumanity breeds humanity. He argued that World War II and the Holocaust shocked the world to such a degree that, in

reaction, a human rights revolution was unleashed. This opinion can be called the *inhumanity thesis of human rights*. It is a strong thesis but not an unproblematic one.

If we want to test it, the first question is whether we can know anything at all about the moral nature of human beings. Are human beings good or evil? Many people, often inspired by religion, strongly believe in the intrinsic goodness of humans. In contrast, others, like Immanuel Kant, hold that human beings are antagonistic and bellicose. Still others, like the anthropologist Marshall Sahlins, think that goodness and badness are intertwined features and that the question of the good or evil nature of humans is a false question. If human beings cannot be called unambiguously either good or bad, how can we know whether inhumanity has increased or decreased in the course of history? In absolute terms, the case for an overall increase of inhumanity is quite defensible. Population growth on earth and the increasing efficiency of repressive technologies make this probable. Our perception, however, may be misled: 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 recently expanding human rights awareness. In relative terms, the question is 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 their citizens than those of the twenty-first century? When we look at the number of victims of human rights catastrophes as a percentage of the total population, it is not certain at all, as many think, that present-day rates are higher than those of the past. Peter Singer has argued that in many tribal societies, despite the absence of machine guns and high explosives, the percentage of the population killed annually in warfare far exceeded that of any modern society. 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 inhumanity are fluctuating or even possibly in decline.

If the level of inhumanity is not necessarily on the rise, why did large-scale inhumanity not trigger a human rights regime before the eighteenth century? 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 an impressive pedigree: everywhere, religious and ethical systems have preached principles of humanity throughout history (although these systems often defined humanity in a limiting sense). We are forced to conclude, however, that the accumulative force of humanitarian attempts in the further past apparently did not pass a critical threshold.

Another question concerns the watershed in human rights thought as it first appeared in the United States and France in the late-eighteenth century. According to Lynn Hunt, one of the factors explaining this human rights takeoff was the appearance around 1760 of a new genre of novels – epistolary novels – which made their readers sensitive to new experiences and enhanced in them the empathy and sympathy necessary to imagine new political conceptions, such as equality and human rights. Another equally strong factor was the

development of new views of individual autonomy, which brought more respect for the body, making the practice of torture suddenly look unacceptable. The first factor, the influence of epistolary novels, seems implausible. It cannot be doubted 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 protagonists of the novel – and not universalizing: it often is accompanied by a rejection of all those who are their 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 this 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.

In contrast, the second factor, the general outburst of revulsion against torture, is plausible. The intolerable character of ill-treatment led to the formulation of rights to protect physical integrity. It begs the question, however, of why torture generally was not seen as repulsive *before* 1760. It therefore is clear that, in addition to the torture factor, other conditions were necessary to spread the new insights. Hunt stressed that philosophers and legal scholars writing about human rights were read widely on both sides of the ocean. She also emphasized the practical advantages of thinking in universal terms: in America, the English colonies did not aim at reform but at independence, which made reference to a universal set of values attractive and necessary; in France, the new principles were cast in the language of universality and so opened vast horizons of applicability hitherto unthought-of. 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 takeoff of 1760–1800. The question of why some relatively successful concept of humanity arose in France and the United States in the eighteenth century, but not elsewhere, merits more attention.

The next question is intriguing. 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 the continuation of the *élan* during these 140 years. One could point to the strength of the movement for the abolition of slavery, the Geneva Conventions, the gradual development of customary rules of international humanitarian law, and the Hague Conventions. These developments of the nineteenth century were followed by myriad important if relatively modest human rights initiatives in the interwar period, including those of the League of Nations. Although research may further reveal that the eclipse was not as total as it might look at first, it seems unlikely that this period will prove an uninterrupted triumph of human rights. The human rights idea was attacked by conservatives, liberals, and socialists. Powerful currents of defensive nationalism, imperialism, and racism in the nineteenth century, and scores of dictatorships appearing in the

twentieth century, discouraged thoughts about universal human rights before 1940.

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 Solferino connection adds considerable credibility to the inhumanity thesis. In contrast, World War I yields an ambiguous picture. On the one hand, although it saw a genocide (the Armenian genocide), an attempt to try its perpetrators failed. On the other hand, one of its results was the League of Nations, an initiative meant to stimulate international cooperation. It seems that none of the steps taken in the period between 1800 and 1940 was decisive.

The next question is whether the inhumanity of war and genocide really triggered the human rights revival of 1940–1948, as was postulated by Mazlish. The factors ‘war’ and ‘genocide’ played different roles. A total war of aggression was being visibly prepared by Nazi Germany from at least 1938. H.G. Wells and others mounted a human rights campaign immediately after the start of the war in September 1939. Some of Wells’s ideas were picked up by Franklin Roosevelt in his Four Freedoms speech in 1941. It is still not clear, however, whether the main document of the new epoch, the United Nations Charter (1945), played a catalyst role in the campaign. Some emphasize that the mere mention of human rights in the Charter was sufficient to establish a Human Rights Commission, whose first assignment was to draft the Universal Declaration of Human Rights.

The other factor, genocide, was more ambiguous. From the summer of 1942, it gradually dawned upon the Allies that the Nazis were performing a large-scale extermination campaign, but the truth in its full brutality became generally visible only in the last months of the war. This was sufficient to unchain the process to draft the 1948 Genocide Convention, which represented a serious breach of the sacred principle of nonintervention in domestic affairs of states. Strangely enough, however, there was little connection between the debates about the Genocide Convention and those about the Universal Declaration, although they were held simultaneously, and it therefore is not clear whether the Holocaust was incessantly on the minds of the drafters of the Universal Declaration. We must realize how uncertain the semantic impact of the term ‘genocide’ still was between 1945 and 1948: this new concept was to conquer the minds of the masses only slowly. The Nazi genocide, when it was on the minds of the drafters of the Universal Declaration, was immersed in a more general aversion to Nazi barbarity. Even if such awareness of Nazi barbarity was omnipresent, the idea that the worst part of that barbarity constituted a unique crime called ‘genocide’ only slowly emerged in wider circles.

Recently, the historian Samuel Moyn has challenged 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 United Nations quarantine and became embedded in a lasting mass movement. That mass movement was the result of the emergence of Helsinki groups and other human rights organizations in Eastern Europe and the Union of Soviet Socialist Republics, the incorporation of human rights into the politics of President Carter in 1977, and the conferment of the Nobel Peace Prize on the grassroots organization 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 post-colonial disillusionment with revolutionary political utopias. According to Moyn, human rights emerged as a minimalist and practical utopia, with moral rather than political overtones. Moyn also argued that the belated success of human rights was accompanied by the invention of a longstanding tradition starting in 1760, whereas, in reality, the survival of the idea of human rights was but a story of contingencies.

Moyn’s analysis is convincing with two important caveats. First, his debunking of human rights antecedents before 1977 depends on a particular appreciation of historical rhythms. For example, one of the most notable developments, the incorporation of human rights notions into most of the world’s constitutions well before the 1970s, is called ‘a fashion’ by Moyn. There was not only coincidence after coincidence, in myriad ways there was also an 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 short, the breakthrough of 1977 was unthinkable without this preparatory work. Second, like Mazlish, Moyn underestimated the strength of humanitarianism, largely because he equated it with philanthropy (*social* humanitarianism). Despite some overlap, *legal* humanitarianism is very different from philanthropy. 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 (such as the right to the truth) and of court statutes (such as the 1998 statute of the International Criminal Court).

It is clear from these factors 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 did play a role. Outraged by the repression of Latin American dictatorships in the 1970s, Amnesty International launched its antitorture campaign in 1973. This campaign met with overwhelming approval and perhaps became the major key to Amnesty’s success. Here, as in the 1760s, the general repugnance against torture was a powerful stimulus.

Juridical globalization from 1998 was an important next step. In contrast to the boost of 1977, this 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 1998. This indicates at least modest progress.

Some, however, insist that all these results are meager. Where some see progress, these critics see regression or stagnation. This skepticism is not unreasonable. Indeed, those defending the judgment of recent progress in human rights may be misled: *any* progress in this area is impressive when the start is recent and the level of departure low. The judgment of recent failure of human rights, in its turn, has to meet several empirical objections also. First, the imperfect application of the concept of human rights in everyday reality does not

necessarily discredit the concept itself. Second, among the growing number of planetary *lieux de mémoire*, which stimulate global awareness, some of the strongest belong to the class of inhumanities: the Holocaust, Hiroshima, and 11 September are examples. Third, even skeptics have to admit that a world without a Universal Declaration is worse off than one with such a declaration. The Geneva Conventions are ratified by all countries in the world. There is also 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: half a century later. Since then, convictions for genocide have multiplied rapidly. Last but not least, the political regime best suited to protect human rights – democracy – has made considerable progress over the past decades. The UNDP recently showed that the share of democracies increased from less than a third of countries in the early 1970s to three-fifths in 2008. At the same time, however, the reported levels of human rights violations have remained virtually unchanged globally between roughly the same decades. It thus seems that the rise of democracy, casting doubt on the judgment of recent failure, was matched by stagnation rather than a rise in human rights protection, casting doubt on the judgment of recent success. Both judgments can be the product of ahistorical myopia. It further shows that even if democracy is the regime most favorable to human rights, progress is not to be taken for granted.

It is now possible to evaluate the inhumanity thesis. The relationship between inhumanity and humanity is not a necessary one. There were many instances in which inhumanity only gave birth to more inhumanity and to new cycles of violence. Conversely, progress in human rights thought often was unrelated to any act of inhumanity. Proof for the causal role of the inhumanity factor was weakest during the most important breakthrough, the one of 1977. At several moments in history, however, inhumanity *did* propel humanism. And it was not always the worst inhumanities that provoked a response in terms of human rights. Even the awareness of the risks of inhumanity often was sufficient. The unbearable repetition probably played a role as well: it may explain why the human rights response was stronger after 1945 than after 1918. This is hopeful. For if the inhumanity thesis were necessarily true, we would need more human rights catastrophes to book more human rights progress. And that would be a self-defeating paradox. But progress in human rights is not given, it is fought for. As Kant wrote, “Nothing entirely straight can be fashioned from the crooked wood of which humankind is made.”

See also: Courts and Adjudication; Dehumanization; Democracy, History of; Genocide, Historical Aspects of; Human Rights, Anthropology of; Natural Law; War Crimes Tribunals, Crimes against Humanity and Transitional Justice.

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