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A Brief History of Human Rights

Universal human rights have a very particular history. Prior to the second half of the seventeenth century, the idea that all human beings, simply because they are human, have rights that they may exercise against the state and society received no substantial political endorsement anywhere in the world. Although limited applications of the idea were associated with political revolutions in Britain, the United States, and France in the late-seventeenth and eighteenth centuries, an extensive practice of *universal* human rights is largely a twentieth-century creation—and a late-twentieth century creation at that. (For example, the Universal Declaration of Human Rights ignored colonialism, which involved the brutal and systematic denial of most human rights to most Africans, many Asians, and a large number of Latin Americans.)

This chapter very briefly sketches this history, preliminary to a broader discussion of universality and relativity in the following chapters. The first two sections show that the idea and practice of human rights were alien to premodern societies in both the Western and non-Western worlds. The remaining sections explore the "modernity" of human rights and the nature of their relation with "Western" theory and practice.

I. Politics and Justice in the Premodern Non-Western World

It is often argued that human rights have a long history (e.g., Ishay 2004; Lewis 2003). It is also often argued, as we will see in some detail in this section, that human rights have been widely endorsed by many, if not all, of the world's great civilizations. Such claims, however, are demonstrably false— if by "human rights" we mean equal and inalienable rights that all human beings have simply because they are human and that they may exercise against

their own state and society, and if by "human beings" we mean, if not nearly all members of *Homo sapiens*, then at least some substantial segment of the species, including prominently many outside of one's own social or cultural group. In this section I briefly canvass arguments that premodern China, Africa, and the Islamic world had practices of human rights. In the next section I develop a parallel argument for the premodern West.

A. Traditional China

It is often argued that "the idea of human rights developed very early in China" (Lo 1949: 186), "as early as 2,000 years ago" (Han 1996: 93). In fact, however, nothing in the mainstream of Chinese political theory or practice prior to the twentieth century supports such contentions.

From the earliest written records, in the Shang dynasty in the second millennium BCE, through to the end of the Qing dynasty in the early twentieth century, hierarchical rule by a king or emperor was the theoretical ideal. For about half of this period, practice more or less conformed with this ideal—and when it did not, the alternative usually was political disintegration characterized by a mix of internal disorder and external invasion that made even law, order, and defense problematic.

"In a broad sense, the concept of human rights concerns the relationship between the individual and the state; it involves the status, claims, and duties of the former in the jurisdiction of the latter. As such, it is a subject as old as politics, and every nation has to grapple with it," writes Tai Hung-Chao (1985: 79). Not all institutionalized relationships between individuals and the state, however, are governed by, related to, or even consistent with human rights. What the state owes to those it rules is indeed a perennial question of politics. Human rights provide but one answer. Divine right monarchy is another. The dictatorship of the proletariat, the principle of utility, aristocracy, theocracy, democracy, and plutocracy are still different answers.

It certainly is true that from at least the Zhou dynasty, in the early first millennium BCE, rule was seen to rest on a Mandate of Heaven, a grant of rule to the emperor contingent on his discharging the duties of his office to assure order, harmony, justice, and prosperity. In the imperial period, if the emperor failed in his obligations, Confucian civil servants, as the authorized representatives of society, were obliged to remonstrate the ruler. If the emperor proved recalcitrant and unusually vicious, popular resistance was authorized, and widespread resistance was evidence that the ruler had lost his mandate. In other words, Chinese rulers were not unaccountable autocrats. Limited government should not, however, be confused with government limited by the human rights of its citizens and irregular political participation in cases of extreme tyranny should not be confused with a human right to political participation.

"The Confucian code of ethics recognized each individual's right to personal dignity and worth, but this right was 'not considered innate within each human soul as in the West, but had to be acquired' by his living up to the code," writes Tai (1985: 88), quoting John Fairbank (1972: 119). Such rights were not *human* rights. They had to be earned. They could be lost. Their ground was not the fact that one was a human being. The dignity and worth in question were not inalienable and inherent.

Many commentators seem uncomfortable with the fact that, as Lo Chung-Sho notes, "there was no open declaration of human rights in China, either by individual thinkers or by political constitutions, until this concept was introduced from the West" (1949: 186). Lo thus continues by arguing that "this of course does not mean that the Chinese never claimed human rights or enjoyed the basic rights of man" (1949: 186). How, though, the Chinese managed to claim human rights without the language to make such claims is certainly a mystery and Lo presents no evidence that they actually asserted or otherwise exercised such rights. Quite the contrary, his examples show only a divinely imposed duty of the ruler to govern for the common good, not rights of the people.

This is not a "different approach to human rights" (Lo 1949: 188). It is an approach to social justice or human well-being that does not rely on human rights. Lo fails to draw the crucial conceptual distinction between having a right and enjoying a benefit (see section 1.1) As a result, he confuses making claims of injustice with claiming human rights. Simply because acts that we would today say involved violations of human rights were considered impermissible does not mean that people were seen as having, let alone that they could claim or enjoy, human rights.

"Different civilizations or societies have different conceptions of human well-being. Hence, they have a different attitude toward human rights issues," writes Lee Manwoo (1985: 131). Even this is significantly misleading. Other societies may have similar or different attitudes toward issues that we consider to be matters of human rights. In the absence of the concept of human rights, however, they are unlikely to have *any* attitude toward human rights. To fail to respect this important conceptual distinction is not to show cultural sensitivity, respect, or tolerance but rather to anachronistically impose an alien analytical framework that misrepresents the social and ethical foundations and functioning of a society.

B. Traditional Africa

S. K. B. Asante writes that "the African conception of human rights was an essential aspect of African humanism" (1969: 74). Dunstan Wai concurs: "It is not often remembered that traditional African societies supported and

"practiced human rights" (1980: 116). As in the Chinese case, such assertions prove to be not only unsupported but actually undercut by the evidence presented on their behalf.

Wai continues: "Traditional African attitudes, beliefs, institutions, and experiences sustained the 'view that certain rights should be upheld against alleged necessities of state'" (1980: 116). This confuses human rights with limited government.[1] There are many other bases on which a government might be limited, including divine commandment, legal rights, and extralegal checks such as a balance of power or the threat of popular revolt. Even a right to limited government may be, for example, legal, traditional, or contractual, rather than a *human* right.

"There is no point in belaboring the concern for rights, democratic institutions, and rule of law in traditional African politics" (Wai 1980: 117). To this we can add only that it is particularly pointless in a discussion of human rights, given the form such concerns traditionally took. Even where Africans had personal rights against their government, those rights were based not on one's humanity but on such criteria as age, sex, lineage, achievement, or community membership.[2]

Asmarom Legesse notes that "many studies . . . suggest that distributive justice, in the economic and political spheres, is the cardinal ethical principle that is shared by most Africans" (1980: 127). Distributive justice and human rights, however, are different concepts. Plato, Burke, and Bentham all had theories of distributive justice. No one, however, would ever think to suggest that they advocated human rights. Although giving each his own—distributive justice—typically involves respecting the rights of others, unless "one's own" is defined in terms of that to which one is entitled simply as a human being, the rights in question will not be human rights. In African societies, rights typically were assigned on the basis of social roles and status within the community.

In a similar vein, Timothy Fernyhough argues that "many precolonial societies were distinguished by their respect for judicial and political procedure" (1993: 61). This is even more obviously irrelevant. The question, of course, is the nature of the procedures, in particular whether they were based on universal rights. They were not.

Rather than a case in which "different societies formulate their conception of human rights in diverse cultural idioms" (Legesse 1980: 124), we

1. "This chapter will argue that authoritarianism in modern Africa is not at all in accord with the spirit and practice of traditional political systems" (Wai 1980: 115). Compare Legesse (1980: 125–27) and Busia (1994: 231). For non-African examples of a similar confusion, see Said (1979: 65), Mangalpus (1978), and Pollis and Schwab (1980: xiv).
2. Fernyhough (1993: 55ff) offers several examples of personal rights enjoyed in precolonial African societies. See also Mutua (1995: 348–51).

see here fundamental differences of concept and practice. Traditional African societies had concepts and practices of social justice that simply did not involve human rights. It is certainly true that "many African traditional societies did respect many of the basic values that underlie human rights" (Penna and Campbell 1998: 21). The ways in which they were valued, however, and the practices established to implement them were quite different. Recognition of human rights simply was not the way of traditional Africa, with obvious and important consequences for political practice (compare Howard 1986: chap. 2).

C. Islam and Human Rights

"In almost all contemporary Arab literature on this subject [human rights], we find a listing of the basic rights established by modern conventions and declarations, and then a serious attempt to trace them back to Koranic texts," writes Fouad Zakaria (1986: 228). The standard argument in the now quite extensive literature on Islam and human rights is that "Islam has laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances . . . fundamental rights for every man by virtue of his status as a human being" (Mawdudi 1976: 10). Such claims, however, are almost entirely baseless.

For example, Khalid Ishaque argues that "Muslims are enjoined constantly to seek ways and means to assure to each other what in modern parlance we call 'human rights'" (1974: 32). While he admits that "human rights" cannot be translated into the language of the Islamic holy works, he nevertheless claims that they lie at the core of Islamic doctrine. But unless our concepts are independent of language—a highly implausible notion, especially for a social practice such as rights in which language is so central to its functioning—it is hard to see how this claim could even, in principle be true. These texts, at most, enjoin functional analogues or different practices to produce similar ends. And in fact the fourteen "human rights" that Ishaque claims are recognized and established by Islam (1974: 32–38) prove to be only duties of rulers and individuals, not rights held by anyone (compare Said 1979: 65–68).

The scriptural passages cited as establishing a "right to protection of life" are in fact divine injunctions not to kill and to consider life inviolable. The "right to justice" proves to be instead a duty of rulers to establish justice. The "right to freedom" is a duty not to enslave unjustly (not even a general duty not to enslave). "Economic rights" turn out to be duties to help to provide for the needy. The purported "right to freedom of expression" is actually an obligation to speak the truth.[3]

3. Compare Khadduri (1946: 77–78), Mawdudi (1976: 17–24), and Moussalli (2001: 126).

Muslims are indeed regularly and forcefully called upon—by scripture, tradition, religious leaders, and ordinary believers—to treat others with respect and dignity. They are enjoined, in the strongest possible terms, to pursue both personal well-being and social justice. These injunctions clearly call to mind the *values* of the Universal Declaration of Human Rights. But they appeal to divine commands that establish duties, not human rights. The *practices* traditionally established to realize these values simply did not include equal and inalienable rights held by all human beings.

Consider Majid Khadduri's claim that "human rights in Islam are the privilege of Allah (God), because authority ultimately belongs to Him" (1946: 78). This is quite literally incoherent: "human rights" that are not rights of human beings but privileges of God. This is not, however, an idiosyncratic conception. Mahmood Monshipouri also argues that "in Islamic traditions human rights are entirely owned by God" (1998: 72). Similarly, Abdul Aziz Said argues that "individuals possess certain obligations towards God, fellow humans and nature, all of which are defined by Shariah. When individuals meet these obligations they acquire certain rights and freedoms which are again prescribed by the Shariah" (1979: 73–74). Such rights are contingent, unequal, earned, and alienable—rather than equal, inalienable, and universal. Being "duty based and interdependent on duties one owes to God and the community" (Ali 2000: 25), these are not human rights.

"Human rights in Islam, as prescribed by the divine law, are the privilege only of persons of full legal status. A person with full legal capacity is a living human being of mature age, free, and of Moslem faith" (Khadduri 1946: 79). These are rights of free Muslim men, not human rights—unless we restrict the category of human beings to free Muslim men, as Sultanhussein Tabendeh does when he claims that the preferential treatment of Muslims in certain criminal cases is "quite free of difficulty" from a human rights perspective, because "people who have not put their reliance in conviction and faith, nor had that basic abiding-place nor believed in the one Invisible God, are reckoned as outside the pale of humanity" (1970: 17). "Human rights" thus are supposed to be based on a conception that sees the majority of the population of the world as "outside of the pale of humanity"[4]—a view to which we will return in chapter 8.

Although most contemporary Muslims reject such views; they represent the historically dominant practice of most Muslim societies—much as most Christian societies throughout most of their histories treated non-Christians as inferior, despite what seems to us today the obviously universalistic egalitarianism of the New Testament. It is certainly true that "the notions of democracy, pluralism, and human rights are . . . in harmony with Islamic

4. Compare Ahmad Moussalli's claim that "human rights in Islam are creedal rights" (2001: 126).

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thought" (Moussalli 2001: 2)—if by that we mean that Islam (like Christianity) can or ought to be read in this way. Here, however, we are addressing the historical question of how in fact they typically were read and acted upon by "traditional" Muslim societies. Like most other "traditional" societies, rights and duties were largely dependent on community membership. The "community of obligation," to use Helen Fein's apt term (1979: 33), was largely that of all believers[5]—Dar al Islam—not humanity. Even within the community, rights played a relatively minor role, compared to duties, and rights were earned and differed according to social status rather than being inherent and equal.

2. The Premodern West

The idea of human rights was equally foreign to the Western world prior to the mid-seventeenth century—and the practice remained largely foreign long after that. In this section I look briefly at social and political life in classical Greece, medieval Christendom, and early modern Europe.

A. Classical Greece

The Greeks of the classical era (ca. 476–336 BCE) drew a fundamental categorical distinction between Hellenes (the Greek term for "Greeks," the Latin-derived name) and barbarians (non-Greeks), who were considered incapable of self-rule and generally fit to be enslaved. This degradation of the barbarian remained a central feature of ancient political thought and practice right through to the collapse of the Roman Empire. "In the Greco-Roman political tradition the barbarian the barbarian was the outsider. Rational human order was embodied in Greek or Roman society" (Markus 1988: 87).

Among Hellenes, life revolved around the polis, the independent city-state. During the classical era, citizen self-rule was so central to polis life that some classicists gloss polis not as city-state but citizen-state (Hansen 1993: 75; Runciman 1990: 348; Raaflaub 2001: 75). Although this created a certain formal equality among citizens, sharp categorical distinctions were drawn between citizens and noncitizens. Slavery was universal in the Greek world and central to the Athenian economy.[6] Women were, "of course," politically excluded and socially subordinated. Noncitizen residents enjoyed few rights

5. This is both too broad—within the *umma*, the community of believers, there were slaves—and too narrow—Christians and Jews often enjoyed both freedom of religion and limited rights of self-government, despite being treated as legally, politically, socially, and morally inferior to Muslims.

6. Sparta seems to have had few outright slaves, but the Spartiate elite brutally dominated an effectively enserfed helot population that provided their material sustenance and equipment.

beyond some limited property rights and, in some cases, a basic legal personality. Thus even in democratic poleis the vast majority of even adult male residents was excluded from politics and consigned to a reduced and typically degraded social status. In some cities, such as Sparta, only a miniscule minority enjoyed civil and political rights.

Consider in a bit more detail Athens, the iconic "first democracy," the polis "most like us." The Athenians rightly prided themselves on the practice of *isonomia*, equal application of the law to rich and poor alike, and even *isogoria*, the formal right of all to speak in the assembly. Offices were kept to a minimum, filled by lot wherever possible, carefully monitored, and severely constrained in their powers. All important decisions were taken by the assembled people, in frequent, periodic mass meetings requiring a large quorum (of six thousand for important issues in the later fifth and fourth centuries). Furthermore, for the last half of the classical era, attendance at the assemblies and in the law courts was compensated at roughly the wages of a day laborer, making it possible for even poor citizens to play an active political role.

Nonetheless, the requirement that citizen-soldiers arm themselves was an effective bar to full participation by the poor, particularly in the fifth century, when principal reliance was placed on heavy-armored infantry (hoplites). And among citizens, distinctions of birth and wealth remained socially and politically central.

Political leaders were amateurs, in the sense of individuals without professional qualifications or (usually) a formal title. Political success, however, required close to full-time commitment throughout much of one's adult life and brought honor but no financial remuneration, putting it far out of the reach of ordinary citizens. Furthermore, the system of "liturgies" required wealthy private individuals to undertake public functions such as outfitting a ship or sponsoring a chorus in a play in a religious festival. Leaders were also expected to undertake, at their own cost, public functions such as serving on diplomatic missions and hosting visiting dignitaries. Private generosity toward less fortunate citizens was also expected. These various contributions brought one not only status but, if we are to believe the evidence of forensic oratory, special treatment.

Laws against hubris (public disrespect) restrained some of the more degrading demonstrations of elite disdain for the masses. Sumptuary laws considerably restricted some of the more blatant forms of elite display. Such practices, however, only tempered a fundamentally hierarchical system of distinctions between citizens—which rested on top of more fundamental distinctions between citizens and noncitizens and Hellenes and barbarians.

Relatively widespread popular political participation and the practices of *isonomia* and *isogoria* were later looked back upon as important precursors of contemporary ideas of universal human rights. We should not, however,

confuse the limited legal and political equality of a privileged elite with contemporary ideas of human rights.

B. Medieval Christendom

In medieval Europe—or, to use the local label, (Western, Roman, or Latin) Christendom—neither being a human being nor being a Christian had significant implications for one's social, economic, or political rights or status. Quite the contrary, society and politics emphasized division and particularity, both in separating Christians from heathens (and heretics) and in the multitude of orders, grades, and statuses of Christians.

Medieval Christians saw themselves as surrounded by dangerous heathens. In the ninth, tenth, and twelfth centuries, Christendom moved significantly north and east. Much Muslim-held territory in Spain and Italy was "reconquered" in the eleventh and twelfth centuries. A largely unsuccessfully series of papally sanctioned Crusades, beginning in 1095, attempted to recover the Holy Land. The crusading form also was applied, with much greater success, to the struggle in the pagan north and east in the thirteenth century. In all of these "missionary" movements, Christians combined contemptuous arrogance with savage violence. Those who resisted the one true faith were treated not as dignified beings who had made a most tragic error but as contemptible, degraded beings undeserving of the least respect or consideration.

Within Christendom, both religious and secular life were hierarchically organized. Emphasis was placed on distinctions between grades of men (and within a particular social stratum, of men over women).

Bishops, who often chafed at assertions of papal authority, aggressively asserted their rank and its privileges over both subordinate clergy and the flocks to which they ministered. Furthermore, religious men were widely perceived to be closer to God than laymen of similar birth, status, and rank.

In the secular domain, the imperial idea retained great ideological appeal. In the German lands, the emperor's claim to superiority typically had considerable practical reality. Further west, kings struggled for power and position with other secular princes. Furthermore, within all polities hierarchy was the reigning principle.

"Feudal" hierarchies were also of central importance for extended periods. Understood narrowly, feudalism is a system based on contractual obligations of vassalage and land holding by fief or fee. More loosely, "feudalism" refers to various types of lordship characteristic of the early second millennium. George Duby (1974 [1973]: 174–77) describes these as "domestic lordship," based on control over the persons of subordinate laborers of varying legal status; "landlordship," based on possession of land and the rents and services it generated from those living on the land; and "banal" lordship,

based on the *bannum*, the right of command and the administration of justice. Whatever the details, largely autarkic local communities lived under the (often effectively absolute) rule of local lords, and beneath the lords (*domini* or *seigneurs*) and their vassals (*vassi* or *homines*)—a class usually demarcated by noble birth and possession of horses and heavy arms—lay the vast bulk of the population, often further divided into slave (and later serf) and free.

Another standard medieval division was between those who fought, those who prayed, and those who worked the land. Those who fought and prayed were seen as morally superior and the ruling element of society. The absolute subordination of the ordinary man was usually emphasized with reference to Paul's Epistle to the Romans: "Let every soul be subject to higher powers: for there is no power but from God: and those that are, are ordained of God" (Rom. 13:1).[7]

Popular protests, often reflecting a millenarian, eschatological vision, were recurrent but almost always relatively easily (and more or less ruthlessly) suppressed. The rise of cities, which often attained considerable freedom from royal or imperial control, resulted in considerable freedom and political power for citizens of Italian communes and the burghers of northern Europe. But they insisted on their rank and status relative to the peasantry and proletariat beneath them no less strenuously than the nobility did with respect to them.

Hierarchy and division, rather than any shared sense of a common humanity or equal rights, dominated political thought and practice. Any moral idea of equal dignity at best referred to the potential of every Christian to be saved in the afterlife. No notion of equal political rights of "men," or even Christians, had any theoretical or practical traction.

C. Early Modern Europe

Early modern Western political practice was as alien to any plausible conception of human rights or human dignity as its ancient and medieval predecessors. Most sixteenth- and seventeenth-century polities were "composite states" (Elliott 1992; Nexon 2009; Trencsényi and Zászkaliczky 2010) created through processes of dynastic agglomeration in which smaller polities were incompletely; in varying degrees, and on varying terms, incorporated into a larger "imperial" polity. Far from revealing the beginnings of democratic

7. Tyranny was typically treated as an offense against God, for which the tyrant would be punished in the afterlife. Not only did the people have no right to just rule—let alone a right that they could act on through violent resistance to tyranny—it was typical to cite the passage from Job that described tyranny as divine retribution for the viciousness of a tyrant's subjects. For an extended discussion of these issues in the emblematic theory of Thomas Aquinas, see Donnelly (1980).

politics or popular sovereignty, rule was not merely primarily but increasingly monarchical. For example, it was not until the seventeenth century that the divine right of kings became the ruling orthodoxy of monarchs in France and England.

Appeals to natural rights did begin to be advanced in England with some real political effect, both during the civil wars of the 1640s and in justification of the Glorious Revolution of 1688. At most, though, these arguments brought property a political footing comparable to birth. The vast bulk of even the adult male population remained politically excluded and subordinated. Across Europe, uprisings by the poor were regularly repressed, typically brutally.

Furthermore, most of the early modern period was marked by savage cruelty in the context of national and international religious warfare. Consider just a few highlights.

- The Peasant War of 1524–25, closely associated with what we would today call the "viral" spread of Lutheranism in southwestern Germany, led to the deaths of about one hundred thousand.

- On succeeding to the English throne in 1553, Queen Mary attempted to return the country to Catholicism, by force if necessary, including burning at the stake two to three hundred prominent Protestant leaders. In fairness, though, it must be admitted that "Bloody Mary" did little more than continue the policies of her father, Henry VIII, simply switching the victims from Catholics such as Thomas More to Protestants such as Thomas Cranmer.

- In 1562, an attack on Calvinist worshipers led to a general massacre of Protestants in Vassy in Champagne that plunged France into three and a half decades of sporadically erupting religious warfare.

- The Thirty Years' War combined dynastic and religious rivalry in a particularly brutal form. The population of Germany declined by about a fifth—greater than Soviet losses during World War II—and in some areas, such as Württemberg, more than half of the population was killed.

- In the English Civil War of the 1640s perhaps two hundred thousand people (roughly 4–5 percent of the population) were killed in England and Scotland. In Ireland, a third of the population was killed—more than twice the level of deaths during the potato famine ("the Great Hunger") two hundred years later.

- In 1681, Louis XIV began the forced conversions of French Huguenots, leading to a huge forced emigration. In 1685, he revoked the Edict of Nantes, destroyed Huguenot churches, and closed Protestant schools. The following year, the king boasted of having

removed or converted more than 98 population of the Huguenot population—and promised to deal with the remainder quickly and decisively.

At the end of the seventeenth century, a single state religion, combined with the active persecution of public worship in unapproved forms, remained the European norm. Wealth did begin to compete with birth as the basis for political privilege, but even England at the end of the seventeenth century had managed to achieve little more than some sort of balance between king, lords, and commons—which, it must be remembered, represented only a tiny propertied elite. On the continent, outside of the few republican enclaves, even that level of "popular" political participation was rare. Any idea of the equal dignity of all men—much less women—or even of all resident men adhering to the state religion, was a fringe idea with little or no political impact.

To this dismal picture we need to add the development of overseas imperialism, often in the most brutal forms, and the revival of slavery (which had largely died out in medieval Europe, primarily for economic and political reasons). If Europeans did not see their civilized Christian neighbors as rights-bearing fellow humans, it is hardly surprising that such an idea seems not even to have crossed the minds of most Westerners when they encountered overseas "barbarians" and "savages."

Dating Western history to the Persian Wars, for its first two millennia the West had neither the idea nor the practice of human rights (understood as equal and inalienable rights that all human beings have and may exercise against society and the state). Athenian democracy, Roman republicanism, and Christian theological egalitarianism could be, and from the late-eighteenth century regularly were, drawn upon to both demand and justify egalitarian rights-based polities. But prior to the late-seventeenth century any such attempts—for example, by early Christian Gnostic sects, radical sixteenth-century Anabaptists, and the millenarian Diggers in the 1640s in England—were ruthlessly (and usually rapidly) repressed. We must not confuse later and earlier appropriations of "the same" cultural resources. Unless we appreciate these differences in social practices—that is, the sharp break with traditional ways implicit in the idea and practice of equal and inalienable rights held by all human beings—we delude ourselves about the past and obscure central elements of the meaning and importance of human rights today.

3. The Modern Invention of Human Rights

What in "modernity" led to the development of human rights? In a gross (but I hope insightful) oversimplification, I want to suggest that modern states and modern markets triggered social processes and struggles that eventually

transformed hierarchical polities of rulers and subjects into more egalitarian polities of office holders and citizens.[8]

To reduce three centuries to a few paragraphs, ever more powerful capitalist markets and sovereign, bureaucratic states gradually penetrated first Europe and then the globe. In the process, "traditional" communities, and their systems of mutual support and obligation, were disrupted, destroyed, or radically transformed, typically with traumatic consequences. These changes created the problems that human rights were "designed" to solve: vast numbers of relatively separate families and individuals left to face a growing range of increasingly unbuffered economic and political threats to their interests and dignity.

The absolutist state—increasingly freed from the constraints of crosscutting feudal obligations, independent religious authorities, and tradition—offered one solution: a society organized around a monarchist hierarchy justified by a state religion. But the newly emergent bourgeoisie, the other principal beneficiary of early modern markets and states, envisioned a society in which the claims of property balanced those of birth. By the late seventeenth century, such claims increasingly were formulated in terms of natural rights.

More or less contemporaneously, the Reformation disrupted the unity of Christendom, with consequences that were often even more violent. By the middle of the seventeenth century, however, states gradually began to stop fighting over religion. Although full religious equality was far off—just as bourgeois calls for "equal" treatment initially fell far short of full political equality even for themselves, let alone for all—religious toleration (at least for some Christians sects) gradually became the European norm.

Add to this the growing possibilities for physical and social mobility—facilitated by the consolidation of states and the expansion of markets—and we have the crucible out of which contemporary human rights ideas and practices were formed. As "modernization" progressed, an ever-widening range of dispossessed groups advanced claims first for relief from legal and political disabilities, then for full and equal inclusion. Such demands took many forms, including appeals to scripture, church, morality, tradition, justice, natural law, order, social utility, and national strength. Claims of equal and inalienable natural or human rights, however, increasingly came to be preferred—and over the past couple decades have become globally hegemonic.

8. If I were to add one more element to this story it would be the development of modern scientific rationality, which both helped to tear down traditional hierarchies and to establish new forms of social, economic, and political organization. The association of modern with scientific rationality has been especially emphasized by the "Stanford School" of "world society theory." See, for example, Meyer et al. (1997), Meyer and Jepperson (2000), and Thomas (2010).

4. The American and French Revolutions

The transformation from "traditional" hierarchical polities to "modern," egalitarian, rights-based polities was neither rapid nor easy. Three centuries separate the Peace of Westphalia from the Universal Declaration of Human Rights, during which prolonged, intense, and often violent political struggles were required to expand both the substance and the subjects of "natural rights." Consider the American and French Revolutions.

These eighteenth-century revolutions were in many ways quite distant from their seventeenth-century English predecessor. This is particularly clear in a comparison between the 1689 English Bill of Rights and the 1776 and 1789 American and French Declarations.

The English Bill begins with "the Lords Spiritual and Temporal and Commons assembled at Westminster" presenting "unto their Majesties . . . a certain declaration in writing." The trappings are much more "medieval" than "modern"—as is the substance of their complaints. The heart of their case is that "the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom." In other words, Parliament acted to replace a bad king with a good one, understanding the badness of the old king in terms of his offenses against the Protestant religion and the traditional laws and liberties of the land.

When they moved on to asserting their rights, they did so "as their ancestors in like case have usually done" and for the purpose of "vindicating and asserting their ancient rights and liberties." In other words, when they appeal to rights it is as Englishmen, not human beings. And they conclude with an oath to "be faithful and bear true allegiance to their Majesties" and to "from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position, that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm."

The English Bill of Rights, in other words, fits comfortably within the early modern framework of dynastic monarchy and religious warfare. William, who held a title from a small principality in southern France, and had succeeded his father as *stadthouder* of the Dutch Republic, become King of England as a result of his marriage to the daughter of James II, because of dissatisfaction with his wife's father's religion.

Compare the 1776 American Declaration of Independence. The claim of American independence was rooted not in traditional rights and privileges but in "the separate and equal station to which the Laws of Nature and Nature's God entitle them." The Declaration of Independence is addressed not only to king and country, but no less importantly to "the opinions of mankind" and to "Nature's God." And it states a completely new conception of government.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights Governments are instituted among Man, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

God is still present—but not religion. Rights and liberties remain central—but they are now natural or human rights, not traditional rights. Sovereignty resides not in the king or Parliament but in the people—who are free not just to replace a bad king with a good one but to replace kingship with a republic. Thus, in conclusion, "We . . . by Authority of the good People of these Colonies, solemnly publish and declare [American independence]."

Even more radically, the 1789 French Declaration of the Rights of Man and the Citizen begins by asserting that "ignorance, neglect or contempt of the rights of man are the sole causes of public misfortunes and governmental corruption." Its first three articles assert that "men are born and remain free and equal in rights," that "the purpose of all political association is the preservation of the natural and imprescriptible rights of man," and that "the principle of sovereignty rests essentially in the nation."

By the end of the eighteenth century, the mainstream of Western theory and practice included a new conception of political legitimacy based on a notion of (politically foundational) equal and inalienable rights of man. We should not, however, underestimate either the exceptional nature of these revolutions or their very severe limits.

The rights in question in the American and French Revolutions were indeed the rights of men, not of women, and the men in question were almost exclusively white. The US Constitution of 1787 not only entrenched the institution of slavery within the fundamental law of the new republic but infamously defined slaves as three-fifths of a person for the purposes of electoral apportionment. The French Revolution in its most radical phase did for one year officially abolish slavery. The practice, however, remained essentially unchanged.

Furthermore, property restrictions on the franchise continued to exclude many freeborn white male residents from full or active citizenship, particularly in the Old World. Economic and social rights were restricted largely to the right to property (although in America, where land still could readily be seized from the indigenous populations, this was a less severe limitation than in the Old World). Many basic civil and political rights continued to be deeply contested. For example, the Alien and Sedition Acts of 1798 were intended and used to repress political speech critical of the US government. And it would take most of the rest of Europe until well into the nineteenth century or later to achieve even this level of progress.

5. Approaching the Universal Declaration

In the nineteenth century, the United States continued to expand the depth and range of its rights-based republic—at least for white Christian men—moving in a general direction that can plausibly be described as liberal-democratic. Progress in the Old World was more limited, and more sporadic, especially in the first half of the century. After 1848, though, the tide shifted decisively against the monarchical vision of Europe's future and in the ensuing decades universal suffrage for men became the norm.

Women still remained excluded. In the United States, even after the abolition of slavery, racial discrimination remained systematic, legalized, and extremely harsh. And overseas colonialism was in the midst of a new phase of expansion.

Not until after World War II—key symbolic markers are Indian independence in 1947, Ghanaian independence in 1956, and the adoption in 1960 of UN General Assembly Resolution 1514, the Declaration on the Granting of Independence to Colonial Countries and Peoples—did the Western world really came to accept the notion of equal political rights *for all*. More precisely, the West finally came to accept that equal political rights could not be legitimately denied on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, [or] birth," as the Universal Declaration put it—or colonial status either.

Even this only takes us halfway to the Universal Declaration vision of human rights. The equal importance of economic and social rights in the Western world is largely a phenomenon of the first half of the twentieth century. In the 1920s and 1930s, there was considerable divergence, with Sweden, Denmark, Norway, and the United Kingdom leading and Finland, Switzerland, France, Belgium and Italy lagging (Flora and Alber 1981: 57). By the late 1940s, however, almost all Western states were not merely politically committed to becoming welfare states but well on the way to realizing that commitment. Consider, for example, the flurry of legislation in Britain: the Family

Allowance Act (1945), National Insurance Act (1946), National Insurance (Industrial Injuries) Act (1946), National Health Service Act (1946), Children Act (1948), and National Assistance Act (1948).

The Universal Declaration did not reflect long-held Western ideas and practices. Western states did endorse the Universal Declaration, with considerable enthusiasm—but largely on the basis of what those states had become over the preceding several decades. Roots (as opposed to suggestive intimations) of this conception of human dignity and human rights do not go back much beyond two hundred years before the Universal Declaration and the bulk of the gap between the mainstream of Western practice and the vision of the Universal Declaration was closed in the three or four decades prior to the Declaration.

6. Expanding the Subjects and Substance of Human Rights

The historical development of human rights has involved the interconnected expansions of both the list of human rights and the groups of *Homo sapiens* considered to hold them. Not only does John Locke's list of natural rights to life, liberty, and estates fall significantly short of the Universal Declaration, Locke clearly envisioned them to be held only by propertied white Christian men. Women, "savages," servants, and wage laborers were never imagined to be holders of natural rights at the end of the seventeenth century.

Over the succeeding three centuries, however, racist, bourgeois, Christian patriarchs found the same arguments they used against aristocratic privilege turned against them by members of new social groups seeking full and equal participation in public and private life. In each case, the essential claim was that however different ("other") we—religious dissenters, poor people, women, nonwhites, ethnic minorities—may be, we are, no less than you, human beings, and as such are entitled to the same basic rights. Furthermore, members of disadvantaged or despised groups have used the rights they did enjoy to press for legal recognition of those rights still being denied them. For example, workers used their votes, along with what freedoms of the press and association they were allowed, to press to eliminate legal discrimination based on property.

The substance of human rights thus expanded in tandem with their subjects. For example, the political left argued that unlimited private property rights were incompatible with true liberty, equality, and security for working-men (and, later, women). Through intense and often violent political struggles this led to regulations on working conditions, the rise of social insurance schemes, and an extended range of recognized economic, social, and cultural rights, culminating in the welfare state societies of late-twentieth-century

Europe. The Universal Declaration codified an evolved shared understanding of the principal systematic public threats to human dignity in the contemporary world (and the rights-based practices necessary to counter them). And, finally, the International Human Rights Covenants, by adding of the right of peoples to self-determination, expanded the subjects of human rights to all human beings everywhere on the globe.

6
The Relative Universality of Human Rights

Universality and relativity are usually presented as opposites defined either dichotomously or as end points of a continuum. The primary sense of "universal," however, as we will see in a moment, is not merely compatible with but necessarily includes an essential element of relativity. The question, then, is not *whether* human rights are universal or relative but *how* human rights are (and are not) universal and how they are (and are not) relative. Exploring these various senses leads to the conclusion that internationally recognized human rights are "relatively universal" in the contemporary world.

1. "Universal" and "Relative"

The first definition of "universal" in the *Oxford English Dictionary* (OED) is "extending over, comprehending, or including the whole of something." Universal, in this sense, is "relative" to a particular class or group, the "something" that is encompassed. Universal means "applies across all of a particular domain" (rather than everywhere in the universe). Universality is relative to a *particular* "universe" of application. For example, universal health care, universal primary education, and universal suffrage, involve making health care, primary education, and voting rights available to all citizens, nationals, or residents of a country—not everyone on the globe (let alone anywhere in the universe). A "universal remote control" neither controls all possible entertainment devices nor works everywhere in the universe. It operates only those devices that are "standard" for "us" here and now. Most American "universal remotes" won't even work in Europe.

Universal also is defined as "of or pertaining to the universe in general or all things in it; existing or occurring everywhere or in all things." Little, though, is universal in this sense, other than formal logical systems of propositions, like mathematics, and perhaps some of the laws of physics (or God).