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## Introduction

### Genealogies of Human Rights

Stefan-Ludwig Hoffmann

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

Herman Melville, *Billy Budd*

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

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

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

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

<sup>1</sup> Michel Foucault, “Face aux gouvernements, les droits de l’homme [1984],” In *Dits et écrits*, vol. 4: 1980–1988 (Paris, 1994), 707–708.

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

<sup>3</sup> Martti Koskenniemi, “International Law and Hegemony. A Reconfiguration,” *Cambridge Review of International Affairs*, 17:2 (2004), 197–218; Tony Evans, *The Politics of Human Rights. A Global Perspective* (London, 2005).

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

<sup>5</sup> A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford, 2001); Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge, 2002); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005); Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, 1999); Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, 2001); William A. Schabas, *Genocide in International Law* (Cambridge, 2000); Daniel Thomas, *The Helsinki Effect: International Norms, Human Rights and the Demise of Communism* (Princeton, 2001); Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Bloomington, Ind., 2008).

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

This situation is beginning to change, as is demonstrated by Lynn Hunt's recent study *Inventing Human Rights*. However, Hunt's important account also makes clear how much this historical field is still in the making, particularly in regard to the question of presumed continuities in the history of human rights after 1800.<sup>6</sup> Recent histories of human rights, in most cases written by Anglophone scholars, have tended to provide a triumphalist and presentist account ("the rise and rise of human rights"),<sup>7</sup> thereby distorting past figures and institutions such as the anti-slavery movement, which did not employ rights-talk and had rather different objectives and accomplishments. In contrast, our contention in the present volume is that human rights in their specific contemporary connotations are a relatively recent invention.

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

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

<sup>7</sup> See the critique by Kirstin Sellars, *The Rise and Rise of Human Rights* (Stroud, 2002).

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

### The Chimera of Origins

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

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

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

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

<sup>10</sup> Wolfgang Schmale, *Archäologie der Grund- und Menschenrechte in der Frühen Neuzeit. Ein deutsch-französisches Paradigma* (Munich, 1997), 445.

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

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

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

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

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

<sup>13</sup> Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, Mass., 1988). On the post-Enlightenment politics of these moral and social practices see, for example, Stefan-Ludwig Hoffmann, *Politics of Sociability: Freemasonry and German Civil Society 1840–1918*, trans. Tom Lampert (Ann Arbor, Mich., 2007).

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

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

### Rights, Nations, and Empires since 1800

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

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

<sup>15</sup> Hunt, *Inventing Human Rights*, 33.

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

<sup>17</sup> Hunt, *Inventing Human Rights*, 175.



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

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

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

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

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

<sup>19</sup> Alexis de Tocqueville, “The Emancipation of Slaves (1843),” in Tocqueville, *Writings on Empire and Slavery*, ed. and trans. Jennifer Pitts (Baltimore, 2001), 199–226, here 209. The

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

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

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

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

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

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

<sup>23</sup> Max Weber, “Zur Lage der bürgerlichen Demokratie in Rußland,” in *Zur Russischen Revolution von 1905: Schriften und Reden 1905–1912*, ed. Wolfgang J. Mommsen and Dittmar Dahlmann (Tübingen, 1996), 100.



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

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

In the nineteenth century, lines of political conflict within European civil societies were instead defined by the demand for social or political rights. While early socialists did invoke the declarations of 1789 or 1793, the revolutions and civil wars in France of 1830, 1848, and 1871 emphasized collective rights (for example, of workers) or the *droits des citoyens*. Reference to the *droits de l'homme* reappeared only in the constitution of the Fourth Republic of 1946.<sup>26</sup> A just society, according to the socialist utopia, would arise only by transcending capitalism and "bourgeois" rule of law. The European Left emphasized not freedom *from* the state, but rather freedom *in* and *through* the state, over which they thus sought to gain control. Human rights were

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

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

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

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

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

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

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

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

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

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