

## Visions and Disputes

In his famous autobiography, written in 1789 and depicting the horrors of transatlantic slavery, Olaudah Equiano invoked human rights. Describing his torturous journey of captivity from the West African hinterland to the coast, he referred to his captors as “sable destroyers of human rights.”<sup>1</sup> He went on to compare this passage to the coast with the terrifying and traumatic life of chattel slavery in the New World. Equiano was not alone in invoking “human rights” within nineteenth-century antislavery. In the 1830s, the American Anti-Slavery Society published two regular campaign pamphlets – *The Anti-Slavery Examiner* and *Human Rights Extra* – which framed the abolitionist movement partly in terms of human rights. In the pages of *Human Rights Extra*, slavery was challenged not only in terms of Christian ethics but also on the normative grounds of a universal humanity expressed in terms of human rights of the “negro.” Soliciting contributions for the Anti-Slavery Society’s campaign for emancipation resettlement in Africa, one abolitionist stated that in no part of the globe was the “colored man found in the full enjoyment of human rights except in Liberia.”<sup>2</sup> The writer bemoaned the “sad fact” that in the United States, with its abundance of “wealth and intelligence,” the negro’s human rights condition was much worse than in newly settled Liberia where the resettled citizens could enjoy

<sup>1</sup> Olaudah Equiano, *The Interesting Narrative of the Life of Olaudah Equiano* (Radford, VA: Wilder Publications, 2008), 18.

<sup>2</sup> B. T. Kavanaugh, “Facts,” *The African Repository and Colonial Journal* (1847), 23, 349.

unrestrained liberties. Slavery, another contributor proclaimed, was “an outrage on human rights.”<sup>3</sup> These abolitionist writings have been described as some of the strongest contemporary intellectual statements that we possess on the human rights character of antislavery.<sup>4</sup>

\*\*\*

In 1919, a group of continental and diaspora African leaders gathered in Paris for a Pan-African congress that they hoped would address varied issues of racism and exclusion, colonialism and exploitation affecting peoples of African descent globally. The congress attracted fifty-seven delegates representing fifteen countries and colonies including Liberia, several West African colonies, Haiti, the British West Indies and the United States. Two key figures behind the organization of the congress were the African American intellectual W. E. B. Du Bois and the influential Senegalese politician Blaise Diagne, who, as Senegalese deputy to the French Parliament, was the highest-ranking African in French politics. Coinciding with the end of World War I and the gathering of European and American politicians for the Versailles Peace Conference, the Congress’s objective was to influence the political agenda of the Peace Conference and the fate of black people in the post-war era. A key outcome of the Congress was the adoption of a charter of rights for peoples of African descent. Delegates passed a resolution calling for a “code of law for the international protection of the natives of Africa” from abuse, exploitation and violence. The resolution called for the direct supervision of colonies by the League of Nations to prevent economic exploitation by foreign nations, and the abolition of slavery and capital punishment of colonial subjects in Africa. It also asserted the rights of black people to education within the colonies and the rights of African people everywhere to participate in government. The Congress delegates specifically demanded that “civilized” persons of African descent be “accorded the same *rights* as their fellow citizens [and] not be denied, on account of race or color, a voice in their own government, justice before the courts and economic and social equality.”<sup>5</sup> These resolutions affirming rights and equality

<sup>3</sup> Samuel J. May, “Slavery and the Constitution,” *The Quarterly Anti-Slavery Magazine* (American Anti-Slavery Society), 2 (1837): 77.

<sup>4</sup> Lamin Sanneh, *Abolitionists Abroad: American Blacks and the Making of Modern West Africa* (Cambridge: Harvard University Press, 1999), 278.

<sup>5</sup> “Pan African Congress Resolution, Paris, 1919,” in *African Intellectual Heritage: A Book of Sources*, Molefi K. Asante and Abu Shardow, eds. (Philadelphia: Temple University Press, 1996), 519.

for Africans and peoples of African descent garnered a tepid response from the great powers gathered at the Versailles Peace Conference. No delegate at the Pan-African Congress was invited to address the Peace Conference, and ultimately, the resolutions were not instituted at the Conference. Undeterred, the Pan-African Congress delegates resolved to continue lobbying for their goals, and went on to hold more congresses in London in 1921, in Lisbon in 1923 and in New York in 1927.

\*\*\*

Accused of planning acts of sabotage against the state, Nelson Mandela was tried and sentenced to life imprisonment by the South African apartheid government in 1964. In the course of the trial, Mandela appealed to universal human rights. Presenting his defense from the dock, he offered three justifications for the African National Congress's defiance of the ban imposed on it by the government, and the organization's resort to violent sabotage tactics in its campaign against white minority rule. Mandela stated that the ANC believed that the government's repressive policies made violent response by Africans inevitable. Unless responsible leadership was given to control the frustrations of the oppressed African masses, there would be outbreaks of terrorism that would produce intense bitterness and hostility between the various races in the country. Second, Mandela felt that without restrained violence, there would be no way open to the African people to succeed in their struggle against white supremacy that implied black inferiority. All lawful modes of expressing opposition to this principle, he asserted, had been closed by apartheid legislation. Then, Mandela turned to the human rights argument. "We believed," he said, "in the words of the Universal Declaration of Human Rights that the 'will of the people shall be the basis of authority of the government.'" To accept the ban on the ANC would be equivalent to accepting to "silence the African for all time." Mandela closed his speech by restating his enduring belief in the ideal of a free and democratic society in which all persons live together in harmony and with equal opportunities. "It is an ideal which I hope to live for and to achieve," he said, "but if need be, it is an ideal for which I am prepared to die."<sup>6</sup>

\*\*\*

In 2008, the president of Sudan, Omar al-Bashir, became the first sitting head of state to be indicted by the International Criminal Court

<sup>6</sup> Nelson Mandela, *No Easy Walk to Freedom: Articles, Speeches and Trial Addresses of Nelson Mandela* (London: Heinemann Educational, 1973), 189.

(ICC) established in 1998 to prosecute individuals for gross human rights violations including genocide, crimes against humanity and war crimes. Al Bashir was accused of being personally responsible for war crimes and genocide committed against the civilian population of Darfur. The warrant issued for Al Bashir's arrest by the ICC claimed that the government of Sudan, under his leadership, was responsible for attacks against the civilian population of Darfur and subjecting them to torture, forcible transfer, murder and extermination.<sup>7</sup> Al Bashir and the government of Sudan promptly rejected the ICC charges and refused to cooperate with the Court, depicting the allegations as baseless and challenging the ICC's jurisdiction over the Darfur situation. The charges against Al Bashir were also criticized by African multilateral governance institutions. The African Union and the Arab League condemned the warrant of arrest as unnecessary and unacceptable. Their principal concern was that by targeting a sitting head of state, the ICC was setting a precedent that could potentially undermine the legitimacy of ruling regimes and engender political instability in already fragile African states. In contrast to this position, human rights activists and Darfur leaders welcomed Al-Bashir's incitement as a move against state impunity for human rights violations. Human rights groups described the warrant as a lifeline for victims of Sudanese government atrocities that would change the mood of frustration and helplessness.<sup>8</sup> In a letter to the UN Human Rights Council supporting Al Bashir's indictment, a coalition of African and international human rights non-governmental organizations urged the Council to recognize and respond to the gravity of the human rights situation in Sudan and to address the widespread violations of human rights and international humanitarian law in the country.<sup>9</sup>

\*\*\*

These four episodes, spanning three centuries, exemplify the range and complexity of human rights narratives in African history and politics. They reflect the vast scope of human rights as both an idea

<sup>7</sup> International Criminal Court, Warrant of Arrest for Omar Hassan Ahmad Al Bashir, ICC 02/0501/09, March 4, 2009.

<sup>8</sup> Marlise Simons and Neil Macfarquhar, "Court Issues Arrest Warrant for Sudan's Leader." Available at [www.nytimes.com/2009/03/05/world/africa/05court.html](http://www.nytimes.com/2009/03/05/world/africa/05court.html). Accessed January 16, 2015.

<sup>9</sup> NGO Letter Regarding Human Rights Situation in Sudan at the 27th session of the Human Rights Council, July 29, 2014. Available at [www.hrw.org/news/2014/07/29/ngo-letter-regarding-human-rights-situation-sudan-27th-session-human-rights-council](http://www.hrw.org/news/2014/07/29/ngo-letter-regarding-human-rights-situation-sudan-27th-session-human-rights-council).

and a movement in the African experience. From Olaudah Equiano to Blaise Diagne, from Nelson Mandela to Omar al-Bashir, they also exemplify the varied historical moments and contexts in which the idea of human rights has been deployed by Africans and by others in relation to Africa. The theme of human rights resonates in several aspects of African history including indigenous egalitarian morality as it intersects with notions of personhood and human dignity, European Christian humanism and missionary activities, slavery and the antislavery movement, colonial conquest and domination, anti-colonialism and decolonization, and the tumult of post-colonial nation-building. Although these themes have received varying degrees of attention from historians, few studies have examined them from distinctly human rights perspectives.

Given the deep echoes of rights in African history, a *longue durée* history of human rights in Africa must begin with some conceptual and methodological clarification of the scope of the present inquiry. A key conceptual question relates to the meanings of human rights in varied historical contexts. For example, is there an underlying notion that links Equiano's invocation of human rights within eighteenth-century antislavery, through anti-colonial petitions for self-determination, to contemporary discourses of international human rights and transnational justice? Does the idea of human rights possess some foundational meaning outside these specific sociohistorical contexts? These are some of the conceptual and methodological questions that any inquiry into human rights history must address. For a study that aspires to tell the story of human rights in Africa over a long expanse of time and across national and cultural boundaries, these conceptual questions are amplified.

This book engages questions that are integral to human rights history from an Africanist perspective. It is as much about the history of human rights in Africa as it is about the place of Africa in human rights history. It offers an interpretative history of human rights as vision, discourse and sociopolitical struggle in Africa and within global contexts. This book does not present a comprehensive account of human rights throughout African history; that would be a task requiring several volumes. Rather, the aim here is to trace the broad contours of the history of human rights in Africa by providing chronological and thematic excursions into the key ideas, events and movements that have shaped the human rights experience in the continent. More specifically, this book investigates the complementarities and

tensions between traditional African sociopolitical systems pertaining to human dignity and the more formal liberal rights regimes introduced with colonial rule and instituted in the independent state. It explores how human rights were promoted and subverted in these varied contexts. This study also examines the connections between human rights in Africa and the broader global human rights movement. Because human rights movements are essentially struggles for social and political inclusion, the human rights story becomes ultimately a narrative of ideas, events and personalities. It becomes not just the political history of oppressors and victims but also the intellectual history of visionaries and social history of movements and activists.

The story of human rights in Africa cannot fully be told outside the broader history of the global human rights movement. The contemporary meanings of human rights have come to be closely associated with global inclusion. Universalism and internationalism are the defining markers of human rights as we understand them today. The post-World War II human rights movement is premised on inalienability and a persistent universalism that posits that every human being in the world is entitled to certain basic rights simply by virtue of being human. This conception of human rights which follows from the notion that human nature is universal and that human rights are rights that one has irrespective of their membership or place in society, therefore ascribes an irreducible moral value to each individual human being.<sup>10</sup> This concept of human rights conveys an intrinsic entitlement to autonomy and equality that all individuals can demand from the state, and which are protected by the state as well as regional and global multilateral institutions. The universal character of modern human rights makes it essential to interpret the history of human rights in Africa from global comparative perspectives. African experiences, from antislavery through anti-colonialism to modern-day state violations, are integral to the history of the global human rights movement. Diasporic experiences, particularly those relating to slavery and antislavery, also make the African human rights story a global human rights story.

The varied sociopolitical currents that have shaped human rights as doctrine, law, policy and social movement make constructing a

<sup>10</sup> Jack Donnelly, "Human Rights and Western Liberalism," in *Human Rights in Africa: Cross-Cultural Perspectives*, Abdulahi Ahmed An-Na'im and Francis M. Deng, eds. (Washington, DC: The Brookings Institution, 1990), 35.

continent-wide account of human rights an intricately subjective exercise in historical cherry-picking. Discussions about rights occur in almost every facet of human life. Individuals are constantly asserting what they consider to be their rights in the constructions of personhood and dignity, in struggles for freedom and equality, in competition over resources, and in everyday social interactions. Many of these encounters involve questions of “liberties,” broadly understood as the freedom to think or act without being constrained by force. Other encounters pertain to more formal legal and moral entitlements founded on normative rules about what is allowed of people or owed to people in specific contexts. At the most basic level, therefore, a history of human rights requires certain conceptual and contextual parameters to guide the discussion.

## Ruptures and Continuities

Although the twentieth century has been described as the age of the human rights revolution, human rights remain an elusive concept. Because multiple and competing claims can and have been historically advanced in the name of human rights, several human rights stories are possible. The term “human rights” has been used to convey a broad range of ideas and practices, from notions of freedom and human dignity within antislavery to particularistic claims about political liberties, self-determination within anti-colonialism and democratic rights in independent states. Some of these human rights stories have clearly received more attention than others in the burgeoning human rights historiography. In spite of its deep etymology and normative antecedents, human rights have come to be seen as a uniquely twentieth-century invention, with the age of the “human rights revolution” ushered in by the World War II and specific events in its aftermath.<sup>11</sup>

The conventional wisdom is that modern human rights, understood as universal inalienable rights that all human beings hold simply by virtue of their humanity, came into prominence only with the end of World War II, the establishment of the UN organization and the

<sup>11</sup> See generally Michael Ignatieff, *The Rights Revolution* (Toronto: Anansi, 2000); Akira Iriye, Petra Goedde and William I. Hitchcock, eds., *The Human Rights Revolution: An International History* (New York: Oxford University Press, 2012).

new international order that this era ushered. The adoption of the Universal Declaration of Human Rights (UDHR) by the UN General Assembly in 1948 was a defining moment in this process. Both the UN Charter and the UDHR challenged the principle of state sovereignty that emerged from the Peace of Westphalia three centuries earlier, which had governed the relationship between nations and empires. Human rights featured prominently in the visions of the post-war international order and in the establishment of the UN. The UN Charter expresses “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”<sup>12</sup> The Charter also outlines principles aimed at realizing human rights and fundamental freedoms without distinction as to race, sex, language or religion.<sup>13</sup>

These human rights principles are now well established in international law, primarily through the UDHR and related UN Human Rights Covenants. However, the notion of universal human rights continues to be challenged on multiple fronts. It has been challenged by proponents of varying degrees of national and cultural relativism who question universal rights claims, by *positivists* who refuse to recognize any human rights other than legally enforceable entitlements, by *essentialists* who subscribe only to a post-World War II UN-inspired definition of universal human rights, and by *evolutionists* who emphasize the historical continuities of the human rights idea rather than the paradigmatic shifts of the twentieth century.<sup>14</sup> To legal positivists and essentialist scholars, rights without legal remedies are no rights at all. The long-standing argument for African and other non-Western values in conceptualizing or interpreting human rights typifies the relativist position. Scholars have made the case for an African concept of human rights founded on communitarian values and distinct from “Western” human rights traditions that are premised on atomized individualism. I examine in detail the philosophical arguments for African human rights values in the following chapter.

Recent histories of human rights have sought to go beyond the twentieth-century meanings of human rights to excavate the

<sup>12</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

<sup>13</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI. Articles 13, 55.

<sup>14</sup> For an insightful discussion on how different scholars have approached the concept of human rights, see Marie-Bénédicte Dembour, “What Are Human Rights? Four Schools of Thought,” *Human Rights Quarterly*, 32, 1 (2010).



antecedents of the human rights idea. Throughout history, people have indeed grappled with ideas about human dignity, fairness, respect and responsibility. It is fitting to describe human rights as an idea that is “thousands of years in the making.”<sup>15</sup> But where precisely does the story of the idea begin? Accounts of human rights origins and genealogy are dominated by questions of meaning, as scholars seek to make connections between modern interpretations of human rights and their historical antecedents. Most accounts acknowledge that the norms enshrined in the UDHR that have come to define the international human rights movements have sources in prior rights traditions. There is a growing inclination toward reexamining, from human rights perspectives, key historical events including the anti-slavery movement,<sup>16</sup> indigenous social systems and rights traditions,<sup>17</sup> Enlightenment liberalism, and eighteenth-century Euro-American political revolutions,<sup>18</sup> colonialism<sup>19</sup> and anti-colonialism.<sup>20</sup> Key contributions on these topics have sought to chart new genealogies of human rights showing the complex links between past human struggles and a rights movement that has been cast as a uniquely twentieth-century phenomenon.

\*\*\*

The genealogy of human rights is marked by certain defining epochs and episodes. These represent milestones in the development of the

<sup>15</sup> This quotation welcomes visitors to the Canadian Museum of Human Rights in Winnipeg, Canada.

<sup>16</sup> Jenny Martinez, *The Slave Trade and the Origins of International Human Rights Law* (New York: Oxford University Press, 2012); Robin Blackburn, *The American Crucible: Slavery, Emancipation and Human Rights* (New York: Verso, 2011).

<sup>17</sup> Francis M. Deng, “A Cultural Approach to Human Rights among the Dinka,” in *Human Rights in Africa: Cross-Cultural Perspectives*, Abdullahi Ahmed An-Na’im and Francis M. Deng, eds. (Washington, DC: The Brookings Institution, 1990); Brendan Tobin, *Indigenous Peoples, Customary Law and Human Rights: Why Living Law Matters* (New York: Routledge, 2014). Timothy Fernyhough, “Human Rights and Pre-Colonial Africa,” in *Human Rights and Governance in Africa*, Goran Hyden and Winston P. Nagan, eds. (Gainesville: University Press of Florida, 1993).

<sup>18</sup> Lynn Hunt, *Inventing Human Rights* (New York: W. W. Norton, 2007); Kate E. Tunstall, ed., *Self-Evident Truths? Human Rights and the Enlightenment* (London: Bloomsbury, 2012).

<sup>19</sup> Alice Conklin, “Colonialism and Human Rights, a Contradiction in Terms? The Case of France and West Africa, 1895–1914,” *The American Historical Review*, 103, 2 (1998); Bonny Ibhawoh, *Imperialism and Human Rights: Discourses of Rights and Liberties in African History* (Albany: SUNY Press, 2007).

<sup>20</sup> Ronald Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010).

human rights idea that various scholars have identified and emphasized. There is no agreement, however, on which of these episodes marked the most significant epoch or turning point in the development of modern human rights. At least eight of these defining historical episodes stand out: ancient religious and secular humanism, classical philosophical traditions and Enlightenment liberalism, eighteenth-century Euro-American political revolutions, the antislavery movement, World War II and the Holocaust, the emergence of the UN and the adoption of the UDHR, anti-colonial movements, and the universalizing human rights agenda of the 1970s characterized by the rise of international human rights NGOs.<sup>21</sup> Although scholarly skepticism of such neat watersheds is justified, it is useful to engage them. Of particular interest for present purposes is the question of where African history fits in the broader debates on the origins and genealogy of human rights.

Most human rights histories proceed from the premise that rights ideas are as old as civilization.<sup>22</sup> Several accounts of the global history of human rights go as far back as the Hammurabi Code and the religious traditions of Buddhist, Hindu and Confucian texts; the Torah; the Bible and the Quran. Although few accounts draw direct connections between these traditions and the modern concept of human rights, ancient ideas and practices of justice are seen as the normative beginnings of the human rights idea. Many accounts seek the direct origins of human rights in Western legal and philosophical traditions epitomized in natural law theory. Most histories of human rights begin the story here, tracing modern conceptions of rights and liberties from natural law and ancient Greek stoicism through the medieval period to Enlightenment liberalism. Natural law philosophy characterized by a belief that laws and rules of conduct are embedded and derivable from the nature of man has become a secure place in antiquity to ground universal human rights. Since human nature is the same around the world, the laws derived from that nature are seen as

<sup>21</sup> Bonny Ibhawoh, “Where Do We Begin? Human Rights and Public History,” in *Taking Liberties: Human Rights History in Canada*, David Goutor and Stephen Heathorn, eds. (Don Mills: Oxford University Press, 2013), 67.

<sup>22</sup> For example, Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2008); Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania, 2003).