
The Making of Modern Human Rights

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In the Western world, the first milestones toward the development of human rights are often considered the American and French Revolutions because of each revolution's propagation of individual rights. Others argue that the concept of human rights were not fully realized until the United Nations announced their existence with the Universal Declaration of Human Rights (or the Universal Declaration) in 1948, the first document listing all rights falling under the category of human rights.¹ There is a third category of scholars that argue that the concept of human rights did not gain traction until two decades after the Universal Declaration, when human rights non-governmental organizations (NGOs), such as Amnesty International, began to advocate on behalf of human rights and successfully pressured governments to protect these same rights. This is a highly contentious debate not only within the human rights community but within the larger international community as well. To say, for example, human rights were conceived during the American or French Revolutions implies that human rights were a Western creation. This brings into question the universality of human rights; can human rights created by the United States or France represent the same rights promised to individuals in China, India, or Saudi Arabia? Arguing that the concept of human rights did not develop until the Universal Declaration or later, however, bolsters the belief that human rights represent the rights of humans everywhere, regardless of geographical location, culture, or heritage.

This essay argues that while the American and French Revolutions were important to the development of universal human rights, human rights were not an inevitable outcome in the 1700s. It further argues that the Universal Declaration cannot be considered the final milestone towards the development of human rights. Because the declaration was not legally binding, human rights were largely treated as a formality until 1966, when two treaties were created to make these same rights legally binding.² It was with these two treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, that human rights first began to come into their own. This essay supports the argument that human rights didn't develop into modern human rights until the advent of human rights NGOs in the 1960s and 70s. It was not until this last milestone in the evolution of human rights that human rights developed an authority superseding even that of state sovereignty.

DEFINING HUMAN RIGHTS

While the origin of human rights and their importance is disputable, there is a near universally accepted definition on the concept. The United Nations states that:

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.³

¹ United Nations, *The Universal Declaration of Human Rights* (Paris, 1948), accessed May 14, 2016, <http://www.un.org/en/universal-declaration-human-rights/>.

² Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 18-26. Mark Mazower, "The Rise of Human Rights and the NGO," in *Governing the World: The History of an Idea* (New York: Penguin Press, 2012), pg. 317.

³ "What Are Human Rights?," United Nations Human Rights: Office of the High Commissioner, accessed May 14, 2016, <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

Three themes are consistently included in the definition of human rights. Human rights are natural, or inalienable (human rights are inherent to human beings); equal (“the same for everyone”); and universal (“applicable everywhere”).⁴ Underlying these three pillars of human rights is a principle of universal authority: human rights are intended to usurp state sovereignty. While recent events, including the genocide in Rwanda and the crimes against humanity in Darfur, demonstrate that human rights lack a certain degree of enforcement, the legitimacy of modern states is measured by the extent to which those states uphold human rights.⁵

THE AMERICAN AND FRENCH REVOLUTIONS AND INDIVIDUAL RIGHTS

The first milestone in the making of human rights occurred at the end of the eighteenth century with the U.S. Declaration of Independence in 1776 and the French Revolution in 1789, but the individual rights promised by these documents differed from modern human rights in meaningful ways.

The U.S. Declaration of Independence pronounced natural, universal, and equal rights.⁶ The Declaration of Independence stated that the source of rights was “the Creator” (though the Creator could be appropriately be translated as “nature” and allowed for more than one religious tradition).⁷ The U.S. Declaration assumed that with nature acting as both the creator of man and the source of rights, all men were endowed with these rights.⁸ In this way, rights were, for the first time, both universal and natural. The U.S. Declaration of Independence announced that rights were endowed to all men, everywhere (universal rights) by nature (natural rights). Jefferson stated in letter written in 1802,

It is impossible not to be sensible that we are acting for all mankind; that circumstances denied to others but indulged to us have imposed on us the duty of proving what is the degree of freedom and self-government in which a society may venture to leave its individual members.⁹

The U.S. Declaration also declared that rights were equally distributed among men (“all men are created equal”), including slaves.¹⁰ The original draft of the Declaration of Independence went so far as to accuse King George III of violating human nature and sacred rights “by carrying [a distant people] into slavery,” though this clause was later removed.¹¹ It wasn’t until 1787, however, that the United States enumerated the natural rights spoken of in the Declaration of Independence in the Bill of Rights to gain popular support for the new U.S. Constitution.¹² By this time, however, the “naturalistic framing [of rights] had faded” in the United States.¹³

In creating the French Declaration of the Rights and Man and Citizen in 1789, French diplomats moved universal, natural, individual rights in a new direction by demanding a declaration with “positive” rights.¹⁴ French revolutionaries felt that the rights promoted by the U.S. Bill of

⁴ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd ed. (Ithaca: Cornell University Press, 2013), pg. 27.

Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Company, 2007), Kindle location 167-168.

“What Are Human Rights?,” United Nations Human Rights: Office of the High Commissioner, accessed May 14, 2016, <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

⁵ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd ed. (Ithaca: Cornell University Press, 2013), pg. 88.

⁶ Michael Zuckert, “Natural Rights in the American Revolution: The American Amalgam,” in *Human Rights and Revolutions*, ed. Jeffrey N. Wasserstrom, Lynn Hunt, Marilyn Blatt. Young, and Greg Grandin (Lanham, MD: Rowman & Littlefield Publishers, 2000), pg. 66-67.

⁷ Ibid.

⁸ Ibid, pg. 68.

⁹ Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Company, 2007), Kindle location 783-785.

¹⁰ United States, *The Declaration of Independence* (Philadelphia, 1776).

¹¹ Michael Zuckert, “Natural Rights in the American Revolution: The American Amalgam,” in *Human Rights and Revolutions*, ed. Jeffrey N. Wasserstrom, Lynn Hunt, Marilyn Blatt. Young, and Greg Grandin (Lanham, MD: Rowman & Littlefield Publishers, 2000), pg. 69 and 82.

¹² Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 286-288.

¹³ Ibid, Kindle location 289-290.

¹⁴ Ibid, Kindle location 281-283.

Rights were too aristocratic in nature.¹⁵ The Bill of Rights stated prerogatives “negatively” rather than requiring the state to fulfill positive obligations (the U.S. Constitution states “Congress shall make no law . . . abridging the freedom of speech” whereas the Rights of Man and Citizen promises that “Every citizen may, accordingly, speak, write, and print with freedom,” for example).¹⁶ The rights contained within the Declarations of the Rights and Man and Citizen, like those alluded to in the U.S. Declaration of Independence, were natural, universal, and equal. The French Declaration spoke on behalf of all men, stating that the “National Assembly [believes] that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments.” French revolutionaries believed that rights were endowed to all men (universal) and further stated that the rights of man were “natural, unalienable, and sacred.” In the same way that the United States declared “all men are created equal,” the French Declaration declared “[m]en are born and remain free and equal in rights.”¹⁷

Both the U.S. Constitution and the French Declaration of the Rights and Man and Citizen insisted that the rights of man were equally distributed among the population. In practice, however, women, children, the propertyless, and slaves were excluded from exercising rights. While both states claimed that rights were equally promised to all citizens, there was an underlying assumption that to be able to exercise rights, an individual had to have “the ability to reason and the independence to decide for oneself.”¹⁸ Theoretically, rights were promised to all individuals alike. In practice, however, children were deemed unable to reason and women, children, the propertyless, and slaves lacked independence.¹⁹ This meant, however, that children and the propertyless were able to exercise their rights once they gained reason and independence.²⁰ Lynn Hunt, author of *Inventing Human Rights: A History*, states that the writers of the U.S. Bill of Rights and the French Declaration did not believe that women, children, the propertyless, and slaves did not have rights; they instead believed that these groups could not practice these rights because they were not capable of “moral autonomy.”²¹

Despite the fact that the American and French Revolutions declared rights to be inalienable, equal, and universal, these rights were not yet modern human rights, as defined above. First and foremost, the rights published in the U.S. Bill of Rights and the French Declaration of Man and Citizen, while declaring themselves to be universal, were, in all actuality, dependent upon an individual’s relationship to the state. The revolutionary fever in the United States did subside. The rights later enumerated in the Bill of Rights were much less naturalistic, and instead, were constitutional.²² The Bill of Rights became a contract between a state and its constituents, rather than a universal declaration of the rights of all men.²³ In France, the rights of man would be redefined with each change in government.²⁴ Though the Declaration of the Rights of Man and Citizen declared natural rights, the “rights of man” were about a whole people incorporating itself in a state.²⁵ Furthermore, neither state provided an authority above that of the state to ensure that the

¹⁵ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 286-288.

¹⁶ France, *Declaration of the Rights of Man and Citizen* (1789), Article 11.

Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 281-283.

United States, *U.S. Constitution* (Philadelphia, 1787), Amendment I.

¹⁷ France, *Declaration of the Rights of Man and Citizen* (1789), Article 1.

United States, *The Declaration of Independence* (Philadelphia, 1776).

¹⁸ Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Company, 2007), Kindle location 267-268.

¹⁹ *Ibid.*, Kindle location 261-267.

²⁰ *Ibid.*, Kindle location 270-271.

²¹ *Ibid.*, Kindle location 272-274.

²² Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 289-290.

²³ *Ibid.*, Kindle location 285-286.

²⁴ *Ibid.*, Kindle location 294-296.

²⁵ *Ibid.*, Kindle location 296-297.

government respected the rights of man.²⁶ In 1789, U.S. “judicial review of legislation in the name of fundamental mental rights was not a foregone conclusion.”²⁷ In France, a similar judicial review process would not be established until after World War II.²⁸ Finally, while it is important to note that both French and U.S. revolutionaries believed rights were promised to all persons, both governments discriminated against large sections of their populations, including women, children, the propertyless, and slaves, whereas human rights prohibit such discriminations. Human rights would eventually be inspired by the individual rights promised in the U.S. Declaration of Independence, the U.S. Bill of Rights, and the French Declaration of the Rights of Man and Citizen, but human rights were not an inevitable outcome of these revolutions.²⁹

THE HOLOCAUST AND THE UNITED NATIONS DECLARATION OF HUMAN RIGHTS

For a century and a half, individual rights flourished in the West but it wasn't until the United Nations Declaration of Human Rights that human rights (universal, equal, and natural individual rights) were declared to be universally protected; again, however, while the Universal Declaration was critical to the development of human rights, it failed to make these same rights legally binding.³⁰

Before the 1940s, the term “human rights” was rarely used.³¹ At least in part, the declaration was a response to the atrocities of the Holocaust.³² Despite this global consensus for human rights, states (including the United States, the United Kingdom, and USSR) strongly opposed making the rights legally binding.³³ Mazower, the author of *Governing the World: the History of an Idea, 1815 to Present*, states that “[t]he British feared embarrassment over the colonies, the Americans over segregation and civil rights.”³⁴ The Soviet Union refused to allow a world government (or a human rights regime) to supersede the authority inherent in state sovereignty.³⁵ In large part because of the great powers' push against the potentially transcendent power of a human rights mechanism, the momentary fervor for human rights quickly dissipated. Jeri Laber, the founder of Amnesty International, stated that even by the early 1970s,

I did not use the words “human rights” to describe our cause; it was not a part of my everyday vocabulary and would have meant little to most people at that time... the concept of human rights was mainly in the province of legal and academic specialists.³⁶

At best, it was hoped that the Universal Declaration would act as a normative statement.³⁷

Despite the Universal's lack of visibility and enforcement, the document was a decisive victory for advocates of human rights. The rights in the Universal Declaration were explicitly inalienable, equal, and universal. Outside of the declaration, human rights were largely a forgotten concept but the declaration “is unquestionably the foundational document of international human

²⁶ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location, 302-303.

²⁷ Ibid, Kindle location 305-306.

²⁸ Ibid, Kindle location 308-309.

²⁹ Ibid, Kindle location 62-65, 292-322.

³⁰ United Nations, *The Universal Declaration of Human Rights* (Paris, 1948), accessed May 14, 2016, <http://www.un.org/en/universal-declaration-human-rights/>.

³¹ Kenneth Cmiel, "The Recent History of Human Rights," in *The Human Rights Revolution: An International History*, ed. Akira Iriye, Petra Goedde, and William I. Hitchcock (Oxford: Oxford University Press, 2012), pg. 27.

³² G. Daniel Cohen, "The Holocaust and the 'Human Rights Revolution'" in *The Human Rights Revolution: An International History*, ed. Akira Iriye, Petra Goedde, and William I. Hitchcock (Oxford: Oxford University Press, 2012), pg. 56-59, 68.

³³ Mark Mazower, "The Rise of Human Rights and the NGO," in *Governing the World: The History of an Idea* (New York: Penguin Press, 2012), pg. 317.

³⁴ Ibid, pg. 318.

³⁵ Ibid.

³⁶ Jeri Laber, *The Courage of Strangers: Coming of Age with the Human Rights Movement* (New York: Public Affairs, 2002), pg. 74.

³⁷ Mark Philip Bradley, "Approaching the Universal Declaration of Human Rights," in *The Human Rights Revolution: An International History*, ed. Akira Iriye, Petra Goedde, and William I. Hitchcock (Oxford: Oxford University Press, 2012), pg. 330.

rights law.”³⁸ Despite the existence of nine core international human rights treaties, the Universal Declaration forms the definition and boundaries of human rights.³⁹ For the first time, rights were not bound by an individual’s participation in a state. Unlike the documents produced out of the American and French revolutions, the Universal Declaration prohibited discrimination “of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴⁰ Not only were rights equally promised to all individuals, every individual was equally promised the ability to practice the rights enumerated in the Universal Declaration.

Even though the Universal Declaration of Human Rights ushered in the existence of universally promoted human rights, these human rights still paled in comparison to their modern descendants. The declaration was largely a symbolic measure.⁴¹ Just as the U.S. Bill of Rights and the French Declaration of the Rights of Man and Citizen failed to provide an authority or forum above that of the state capable of protecting rights, so too did the Universal Declaration of Human Rights fail to provide a mechanism to enforce human rights (such as a committee, commission, or an agency). The UN Commission on Human Rights had been created to draft the Universal Declaration and was allowed to promote human rights and elaborate human rights treaties, but until the creation of the two human rights covenants, the commission was powerless to investigate violations of human rights.⁴²

MODERN HUMAN RIGHTS AND ITS TRANSCENDENCE OVER STATE SOVEREIGNTY

It wasn’t until the 1960s and 1970s that modern human rights developed, with their power to transcend state sovereignty. The first such step in the progression of human rights during this period was the creation of two human rights covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together, these two legally binding treaties divided up and reiterated the human rights enumerated in the Universal Declaration of Human Rights.⁴³ In the 1970s, human rights advocacy abounded and state sovereignty was placed under the authority of human rights.

In 1966, the two covenants were adopted by the General Assembly, though they did not enter into force until 1976.⁴⁴ With the exception of the right to self-determination, the two covenants largely reiterated the rights listed in the Universal Declaration of Human Rights. In addition to these rights, however, the Human Rights Council was created under the International Covenant on Civil and Political Rights to monitor the implementation of the covenant.⁴⁵ The Economic and Social Council was given the authority to implement the contents of the International

³⁸ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd ed. (Ithaca: Cornell University Press, 2013), pg. 88.

³⁹ "Core International Instruments," Core International Instruments, accessed May 14, 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>.

⁴⁰ United Nations, *The Universal Declaration of Human Rights* (Paris, 1948), Article 2, accessed May 14, 2016, <http://www.un.org/en/universal-declaration-human-rights/>.

⁴¹ Mark Mazower, "The Rise of Human Rights and the NGO," in *Governing the World: The History of an Idea* (New York: Penguin Press, 2012), pg. 317-318.

⁴² Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 788-789, 1147-1149.

⁴³ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd ed. (Ithaca: Cornell University Press, 2013), pg. 27.

⁴⁴ "International Covenant on Civil and Political Rights," United Nations Treaty Collection, May 15, 2016, accessed May 15, 2016, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

"International Covenant on Economic, Social and Cultural Rights," United Nations Treaty Collection, May 15, 2016, accessed May 15, 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁴⁵ "Human Rights Committee," United Nations Human Rights: Office of the High Commissioner, accessed May 15, 2016, <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

Covenant on Economic, Social and Cultural Rights.⁴⁶ For the first time, human rights were made legally binding in the international arena and forums existed to enforce these same rights.⁴⁷

In the 1970s, non-governmental organizations (NGOs) abounded and began to pressure state governments to enforce human rights through their mass mobilization movements, such as phone call campaigns and political advocacy.⁴⁸ In 1961, Appeal for Amnesty was created (later renamed Amnesty International).⁴⁹ In 1972, the organization began an international campaign to abolish torture, based on the prohibition against torture contained in the Universal Declaration.⁵⁰ Unlike human rights groups before it, Amnesty International did not use the United Nations as its primary means of human rights advocacy.⁵¹ Instead, the organization pursued mass mobilization movements and direct lobbying of state governments.⁵² In 1977, this mobilization pushed the UN General Assembly to request the Human Rights Commission to draft a convention on torture.⁵³ Fellow NGOs adopted the advocacy techniques that were proven effective by Amnesty International. NGOs began to collect data on state violations of human rights and published infractions for the world to see.⁵⁴ These same organizations provided average citizens a voice and the information needed to lobby governments to respect human rights and to intervene on their behalf. During this decade, human rights advocacy and international law converged to promote natural, equal, and universal human rights.

It was during this era of mass human rights advocacy that human rights finally gained an authority able to transcend state sovereignty. The 1948 Universal Declaration of Human Rights affirmed that human rights had an authority above that of state governments. Without a legally binding treaty, however, states could neglect human rights without repercussion. The two human rights covenants legally bound states to the commitments declared under the Universal Declaration. It wasn't until the escalation of human rights activism in the 1970s, however, that states began to feel an obligation to respect human rights.

[T]he rise of human rights in international law occurred not for reasons internal to international law as a profession, but due to the ideological changes that set the stage for a moral triumph of human rights—one that in turn gave a whole new relevance to the field's mission.⁵⁵

Social activism, inspired in large part by NGOs like Amnesty International, provided the final piece of the puzzle. Human rights had been natural, equal, and universal since 1948 but only in the late 1960s and 1970s did human rights gain the legal legitimacy and the international public support to be able to trump even the most powerful states.

⁴⁶ "International Covenant on Economic, Social and Cultural Rights," United Nations Treaty Collection, May 15, 2016, Part IV, accessed May 15, 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁴⁷ The one exception to this rule are rights enumerated under the International Convention on the Elimination of All Forms of Racial Discrimination which were established in 1963.

⁴⁸ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 1490-1493.

⁴⁹ Mark Mazower, "The Rise of Human Rights and the NGO," in *Governing the World: The History of an Idea* (New York: Penguin Press, 2012), pg. 324.

⁵⁰ Ibid.

United Nations, *The Universal Declaration of Human Rights* (Paris, 1948), Article 5, accessed May 14, 2016, <http://www.un.org/en/universal-declaration-human-rights/>.

⁵¹ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 1490-1493.

⁵² Ibid.

⁵³ Mark Mazower, "The Rise of Human Rights and the NGO," in *Governing the World: The History of an Idea* (New York: Penguin Press, 2012), pg. 324.

⁵⁴ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), Kindle location 1698-1699.

⁵⁵ Ibid, Kindle location 2420-2421.

CONCLUSION

The enforcement of human rights is in dire need of attention. While two legally binding human rights covenants now exist, approximately 14% of UN member states have yet to ratify one or both human rights covenants.⁵⁶ Genocides in the 1990s and 2000s demonstrate the need for a more powerful human rights mechanism. However, human rights have progressed since their declaration in 1948 with the Universal Declaration of Human Rights and are nearly unrecognizable from the individual rights enumerated in the U.S. Declaration of Independence, the U.S. Bill of Rights, and the French Declaration of the Rights of Man and Citizen. While the American and French revolutions inspired human rights a century and a half later, human rights were not an inescapable conclusion in 1776 or 1789. These rights, in practice, were not afforded to certain populations, including women and slaves. These rights were also dependent upon the authority of the state, which (in both France and the United States) originally lacked a judicial system capable of holding states accountable to these promises of individual rights. The tragedies of the two world wars and the Holocaust encouraged the international community to pursue the Universal Declaration of Human Rights. This document was important for human rights because it was the first of its kind to list out all rights contained within the phrase “human rights.” Even after this declaration, however, human rights were not legally binding on states. It was only after two human rights covenants made human rights legally binding on state parties and the mass mobilization campaigns of human rights NGOs that human rights superseded state sovereignty. With this final milestone, human rights became modern human rights, rights that are natural, equal, and universal and transcendent over state sovereignty.

⁵⁶ The United States has not ratified the Covenant on Economic, Social and Cultural Rights, for example.

"International Covenant on Civil and Political Rights," United Nations Treaty Collection, May 15, 2016, accessed May 15, 2016, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

"International Covenant on Economic, Social and Cultural Rights," United Nations Treaty Collection, May 15, 2016, accessed May 15, 2016, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.