An introduction to the evolution of human rights
Celebrating the inclusion of environmental rights

Asterios Tsioumanis



HUMAN RIGHTS AND THE ENVIRONMENT IN THE EU / TOWARDS AN INCLUSIVE DEBATE

TIESS TRANSDISCIPLINARY INSTITUTE FOR ENVIRONMENTAL AND SOCIAL STUDIES

A few words on this appendix

The Transdisciplinary Institute on Environmental and Social Studies (TIESS), in collaboration with a group of academic researchers, was successful to its application for a Jean Monnet grant to analyze and study environmental rights. The three-year project addresses various aspects of the concept of environmental rights and this publication signals the start of this work.

Human rights and environmental sustainability are inextricably linked. A healthy, safe, and productive environment is a necessary precondition for the enjoyment of most human rights.

At the same time, the concept of human rights may prove a valuable ally in promoting and eventuallly achieving environmental sustainability.

Human rights have been at the forefront of multilateral policymaking for the last half century, with the Universal Declaration of Human Rights paving the way since the end of the Second World War. The notion of rights inherently belonging to humans and the building blocks of such a theory have been around long before then, arguably for millennia; however, their systematization and, even more importantly, their central positioning in international affairs has been a much more recent development.

Still, during the last decades, a vast body of literature on human rights has been produced: presenting and analyzing them; discussing various aspects of their content and their evolution; categorizing them; questioning some of them or their universality; and eventually contributing, via various disciplines, to their firm rooting in the modern world. Simultaneously, an increasing number of non-governmental organizations have taken up campaigns on human rights, raising public awareness on relevant issues.

Despite the significant amount of work, outside the human rights community and the relevant academic one, public awareness and knowledge on human rights still varies depending on country, culture, and other socioeconomic parameters. Many lay people have heard about the Universal Declaration; few know its exact content; even fewer know what it means and its evolution.

The main aim of this report is to portray the dynamic character of human rights via their evolution and development. This process includes not only the various theories on the predecessors of the concept of human rights, but also the dynamics that led into their concrete formulation in the modern era. A better understanding of these parameters, together with the essential discussion on environmental rights that will follow in the duration of the project, will provide a solid basis for analyzing various aspects of environmental rights, contributing to a mechanism of mutual support between the human rights and environmental sustainability agendas.

The first part of this report includes basic concepts on human rights. The second addresses the various suggested predecessors of human rights; our aim is not to vindicate some theories, but rather to show the variety of historic sources that can be considered as inspirational to modern discourse on human rights.

The third part discusses the development of the Universal Declaration on Human Rights, focusing on the intellectual and cultural background of significant contributors. It further discusses its content and indivisibility, and briefly addresses the issue of universalism.

The fourth part provides an overview of the development of the network of international treaties and the parallel development of multilateral environmental agreements. It is envisaged that, following the project's completion, further research will be conducted on the ideas of universality, cultural relativism, and the indivisibility of rights.

It is not this publication's aim to provide an inclusive narrative of all potential precursors of modern human rights. Rather, it intends to introduce the story of a joint vision of a just world, shared by many across the centuries. Hopefully, the story's various threads will incentivize those interested to further explore this fascinating path of human development.



The Declaration of the Rights of the Man and the Citizen during the French Revolution, 1791, public domain

Introducing the notion of human rights

1.1 Defining

Human (noun)**:** a bipedal primate mammal (*Homo sapiens*) that is anatomically related to the great apes, but distinguished especially by notable development of the brain with a resultant capacity for articulate speech and abstract reasoning; a person.

Right(s) (noun): the fact that a person or animal can expect to be treated in a fair, morally acceptable, or legal way, or to have the things that are necessary for life; things to which one is entitled or allowed; freedoms that are guaranteed.

Human rights (noun): rights to which people are entitled by being human.

1.2 Discussing content

Human rights are rights inherent to all human beings, applying equally to all, *without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status* (Article 2, Universal Declaration).

Human rights can be seen as moral predispositions, including all features necessary for a dignified human existence.

"Like other ethical claims that demand acceptance, there is an implicit presumption in making pronouncements on human rights that the underlying ethical claims will survive open and informed scrutiny" (Sen, 2004). The moral basis of rights as ethical concerns draws "on concepts such as natural law, social contract, justice as fairness, consequentialism, and other theories of justice" (Marks, 2016).

In addition to ethical norms, human rights are crafted as rules governing human societies via lawmaking, through which human rights become enforceable and legally binding. "While 'natural rights' derive from natural order or divine origin, and are inalienable, immutable, and absolute, rights based on 'positive law' are recognized through a political and legal process that results in a

A concept relatively new for humanity

The concept of human rights, the belief that everyone, by virtue of being human, is entitled to certain rights is new in human history. The ethical and legal acceptance of slavery, racial discrimination, or the suppression of rights of women for the vast majority of human civilization is an adequate testimony to that fact. The development of the human rights framework over the last decades led to a broad spectrum of rights, ranging from fundamental freedoms such as the right to life, to cultural ones like the right to cultural identity.

declaration, law, treaty, or other normative instrument" (Marks, 2016).

In this sense and simplifying the overall development, the moral aspiration of the modern conception of human rights is recorded in the Universal Declaration of Human Rights (UDHR), while the norm-creating process includes, among others, the ratification and entry into force of numerous treaties, including the UDHR-related Covenants.

The concrete formulation of specific rights in the legal system is usually the end result of a broader process of social change that mirrors moral developments. The creation of norms may, in some cases, precede relevant broad, social, and ethical concerns.

The initial desire of this project was to analyze why environmental rights should be incorporated in the human rights' body and explore what the mutual benefits of such a recognition would be. Thankfully, after Friday 8 October 2021, we can go one step further. On that date, the UN Human Rights Council adopted Resolution 48/13, recognizing for the first time that having a clean, healthy, and sustainable environment is a human right.

While this may prove significant from a policy perspective in the near future, it does not essentially change the fact that all dimensions of environmental rights need to be thoroughly analyzed, and additional light needs to be shed on the interrelationships between the human rights and environmental sustainability agendas.

1.3 Addressing controversies

For better or worse the present document does not fall under the discipline of history so it does not have to conform with its strict rules. In many ways, any narrative describing and analyzing the evolution of anything (in our case human rights) may easily fall under Butterfield's broad definition of whiggishness, that is analyzing the past with reference to the present. Even worse, in our case, the end result of the evolutionary process under study, the systematized version of human rights we have today, is even celebrated.

I would thus easily concede to similar critique; this narrative does not aim to be inclusive in presenting and thoroughly discussing all historical developments related to human rights. It indeed cherry-picks and tells a distilled, non-inclusive story. Without doubt, a detailed description and analysis of all the historical developments that could, directly or indirectly, be linked with the notion of human rights, would be a considerably different research effort. Detailed literature exists for every era and every event; an interested reader could study this literature and proceed in developing a clear picture of each distinct period, although, given the wealth of concentrated knowledge, this would be a herculean task.

This document aims to introduce to the non-expert reader how complex human rights' notions emerged from the past, telling part of the story with the hope to promote further study. It is such the nature of this effort that important

milestones may be briefly referenced or omitted altogether. This may raise some eyebrows; how can, for instance, an important moment in the history of rights, such as Edward Coke's involvement in the Petition of Right, produced in 1628 by the English Parliament and sent to Charles I as a statement of civil liberties, be omitted? As already noted, it is not the ambition of this narrative to be inclusive.

The discussion on human rights, both in academic circles and the policy world, has been very rich and at times intense, with differing views tabled on a variety of considerations around the concept. While this exchange is probably going to continue in the future, the policy environment regarding human rights is nowadays much more stable than it has been half a century ago.

This by no means implies that the human rights' framework has been implemented successfully. While it can be argued that both developing the content of human rights and cementing them in global treaties has been successful, implementation of even the most basic human rights' norms has not followed suit. Simply observing the state of the world in the early 21st century, including its stark inequalities, make this reality difficult to deny.

In this sense, there can exist a pessimistic tendency to dismiss the framework around human rights altogether; either as a broad set of aspirations that have little to do with every day's reality, or, more cynically, as a set of moral principles that certainly don't apply to all, lacking thus universality.

One of the initial considerations before embarking on studying environmental rights was whether focusing on their inclusion would lead to a proliferation of the human rights' agenda. This could be harmful to the urgency to address the continuous violation of fundamental rights of millions of people. This important discussion will continue throughout the project.

It is undeniable that human rights' violations take place every day in every corner of the world. However, if one considers that the framework is just, lack of implementation may only constitute a stern signal for strengthened efforts to achieve the state objectives. In the words of Milad Ebrahimi, a refugee from Afghanistan currently in a camp at Lesvos island in Greece, whose human rights have been multiply violated throughout his life: *this is the world; people don't respect differences between each other. But I still have hope that the world is not just darkness, there is a narrow bright light inside this dark world* (BBC, 2020).

Human rights are part of this *narrow bright light*, currently leaving the path of the less privileged relatively dark. Succeeding on their full and unconditional implementation will create a spotlight, casting the darkness away, and allowing the free humans of the future to walk together the sunny avenues of solidarity and mutual respect, and construct better societies than the ones we have today.

Historical development

2.1 Introduction

Addressing human rights from an historical perspective is challenging. Despite the fact that there have been numerous political and legal developments over the last 50 years to protect and respect human rights in the international policy arena, there has been little agreement about the origin of these rights (Forsythe, 2000). There are multiple suggested trails and the genealogy often draws from different sources, although many milestones are shared among researchers. As already mentioned in the introduction, the notion of universal human rights is a recent one and these rights were systematized only following the Second World War. Since they acquired central stage in international relations during the 1970s as one of the most appealing ideas of the 20th century, different variants have been suggested for their origins. It falls out of the scope of this report to actively engage in the intellectual discussion on the exact origins of human rights and whether one source of inspiration from the past is more significant than the other; it rather wants to underscore the progressive development of the ideas that constituted the building blocks and basic notions as well as the existence of multiple, often competing, theories about human rights precursors.

2.2 The world's religions and ancient sources

The world's religions and their teachings on compassion, justice, and respect for life, leading to an idea of inherent dignity of the human being have been a source of inspiration as human rights precusors. There is ample literature on the compatibility of Buddhism, Christianity, Hinduism, Judaism, or Islam with human rights and even more references pinpointing to specific parts of the holy texts of each religion that affirm this compatibility.

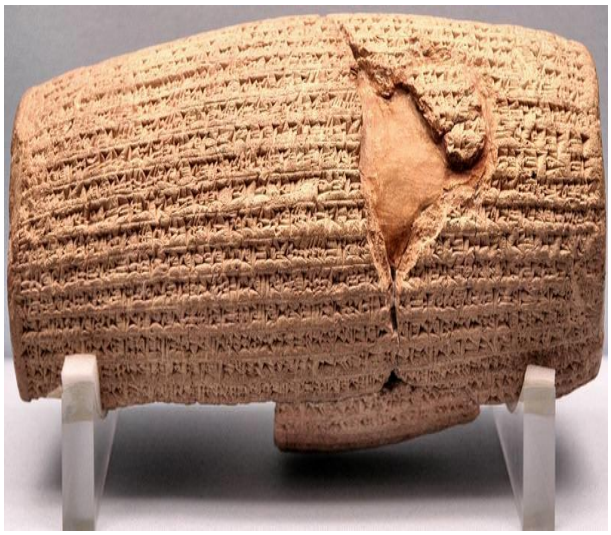
The leading religious traditions, despite their obvious differences, contradictions, and conflicts, share the same vision of respecting the dignity of all people and the resultant task of fraternity, solidarity, and protection of the defenseless (Gordon 2003). They all share an interest in the integrity and dignity of all people, thus promoting the initial discussions about rights and offering the building blocks for the modern human rights framework (Lauren, 1998).

Even in belief systems that offer seemingly incompatible visions with individual approaches to human rights, like Confucianism and its requirement that the individuals must subordinate their interests to those of the group or the collective, compatibility based on the concept of moral autonomy has been suggested.

Ancient written sources that address duties and rights are often flagged as important milestones in the development of the human rights notion, introducing ideas on natural rights, moral responsibility, and the role of governments. The Babylonian Code of Hammurabi, the Persian Charter of Cyrus, and the edicts of Ashoka in India are often referenced as rule-establishing documents, developing principles of human rights (Ishay, 2008).

The Code of Hammurabi (ca. 1750 BCE) includes an introduction noting that the rules had been provided by the gods "to prevent the strong from oppressing the weak" and contains a broad range of laws, covering many aspects of everyday life, including proclamation of religious freedoms.

The Cyrus cylinder, issued by Cyrus the Great during the 6th century BCE, has been a source of inspiration for future thinkers on human rights principles.



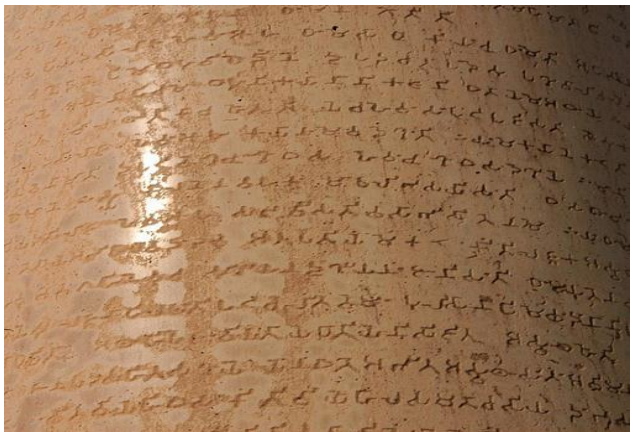
The Cyrus Cylinder, Uploaded by Antoine Simonin under Creative Commons Attribution-ShareAlike

Cyrus, in order to govern his multicultural, multireligious, and multilingual empire that extended from today's Libya to Afghanistan, adopted a model based on diversity and tolerance, realizing that the effort to impose a single system would be futile. While the Cyrus Cylinder is considered by some researchers as the first human rights document, others view this interpretation as anachronistic (Daniel, 2012, p.39) or an exaggeration (Kuhrt, 2007, p.124).

Cyrus himself was, according to ancient Greeks, a charismatic figure. The Greek historian and philosopher Xenophon, writing a couple of centuries later, describes him as the ideal ruler, bearing all moral virtues. He also does not conceal his admiration for the legal system Cyrus established, even noting that "Persian laws take care in advance that the citizens will not become such that they will want to commit evil and depictable acts". The Cylinder itself became controversial and was indirectly connected with the first International Conference on Human Rights, 26 centuries later, but that is a different story for a different chapter.

Ashoka the Great was an Indian emperor reigning during the 3rd century B.C., who, following a successful albeit gory battle, adopted Buddhism and quit warfare to embrace progressive social reforms. The edicts of Ashoka are a collection of inscriptions scattered across the region of today's Afghanistan, Bangladesh, India, Nepal, and Pakistan. They are a set of laws against religious

discrimination, promoting tolerance, and the first tangible evidence of Buddhism.



A Major Pillar Edict of Ashoka in India, by Sachin kumar tiwary https://commons.wikimedia.org/w/index.php?curid=70710778

2.3 Ancient philosophy

A well repeated genealogy of human rights follows their development through breakthroughs in human thought that are considered as major advances. This Ariadne's thread on the notion of human rights typically includes the Greek and Roman Stoics; the contributions of Christian theologists and philosophers during the Middle Ages; the advances by philosophers of the Enlightenment; the French and American revolutions; and the social movements against slavery or for women's rights (Hunt, 2007).

Stoic teaching is widely regarded as a precursor of the theory of natural law and of human rights. It was among the Stoic thinkers of the Hellenistic age that the natural law movement "first attained a large and general expression; and that expression became a tradition of human civility, which runs continuously from the Stoic teachers to the American and French revolutions" (Barker, 1981).

While it is difficult to argue that the Stoics developed a concrete theory on human rights, their cosmopolitanism led many researchers to point towards their central ideas on human dignity, moral equity, freedom, justice, and brotherhood. The notion of a 'citizen of the world', which is central to the universal character of human rights, is born with the Stoics.

In 2002, the United Nations Educational, Scientific and Cultural Organization (UNESCO) introduced World Philosophy Day, to be celebrated the third Thursday of November. In his inaugural speech, Jerome Binde, director of UNESCO's Division of Foresight, Philosophy, and Human Sciences, after referring to philosophers unfriendly towards the notion of human rights, stressed: "I personally believe that there exists a first key moment that sealed the common fate between philosophy and human rights; the Stoic moment. It is in ancient stoicism that the idea of the citizen of the world emerged, central for the notion of universality of human rights".

The term cosmopolitan denotes in its modern use someone who has experience from many different parts of the world. Etymologically it derives from Ancient Greek meaning citizen of the world. The term was first coined, according to Diogenes Laertius, by the Cynic philosopher Diogenes, who, when asked where he is from, responded he is a cosmopolitan.



Diogenes the Cynic, in his pithos, the large ceramic jar, is attributed with coining the term cosmopolitan. Photographic representation of J.W.Waterhouse's painting, Art Gallery of New South Wales, public domain

The academic discussion on the Stoics' significance for providing the basic building blocks for a theory on rights is extensive. Zeno's *Republic* offers quite a different vision than Plato's, although the latter is much more popular. Zeno's ideal society is reigned by rationality and natural laws. Men and women are equal and the notion of unjustness is absent as incompatible with reason. There is no crime, no greed, no hatred; people have what they want and want no more. Love reigns, being literally the only god. It is hard to see the necessity for a compact theory of human rights in such a place.

As centuries went by, Stoicism became one of the most influential schools of thought in the Roman world, particularly in the first centuries C.E. Cicero, himself an Academic skeptic, in his book *De officiis* (On Duties, 44 B.C.E.) discussed in the first two parts what is honorable and what is advantageous. Influenced by the Greek Stoic philosopher Panaetius' work, he extended the doctrine of natural law, articulating the principle that people have a duty to secure justice for all members of the human race, regardless of their nationality of ethnicity (Cicero, 44 B.C.E).

In his book *De Re Publica* (On the Republic), Cicero used a Socratic dialogue to address the types of government, the development of the constitution, and citizens' role. Significant parts of the six books that form *De Re Publica* are missing; still, one of the passages saved by the early Christian author Lactantius is an emblematic presentation of the notion of the natural law of justice.

"There is indeed a law, right reason, which is in accordance with nature; existing in all, unchangeable, eternal…No other law can be substituted for it, no part of it can be taken away, nor can it be abrogated altogether. Neither the people or the senate can absolve from it. It is not one thing at Rome, and another thing at Athens: one thing today, and another thing tomorrow; but it is eternal and immutable for all nations and for all time" (Cicero, translation by Featherstonhaugh, p.13).

The third and last phase of ancient Stoicism, the late Stoa, includes the works of Seneca, Epictetus, and the Roman emperor Marcus Aurelius. The philosopher king, as the latter is known in history books but also to his contemporaries, offers another vision of cosmopolitism. In his book, later called *Meditations*, he notes: "All things are woven together and the common bond is sacred, and scarcely one thing is foreign

to another, for they have been arranged together in their places and together make the same ordered Universe…Frequently consider the connection of all things in the universe. We should not say 'I am an Athenian' or 'I am a Roman' but 'I am a citizen of the Universe'" (Marcus Aurelius VI:38, translation by Hammond, 2014).

Despite the political collapse of the Greek world, its philosophical schools of thought continued to be significant. Following the prevalence of Christianity in the Roman Empire, Plato's Academy survived for another century and a half. Its closing in C.E. 529 by Justinian signified for many researchers, the death of ancient classical philosophy. In Bertrand Russell's words: "At last, in C.E. 529, (the Academy) was closed by Justinian because of his religious bigotry, and the Dark Ages descended upon Europe" (Russell, 1945, p.67). Stoic thought would have to wait 1,000 years to resurface.

2.4 Codifying rights in the Middle Ages

Stemming from power abuse on behalf of monarchs, the first charters codifying rights and freedoms in the Middle Ages addressed specific rights that particular groups of people could claim under specific circumstances. The most well-known document is probably the *Magna Carta Libertatum*; other relevant early codifications include the Golden Bull of Hungary, the Danish Erik Klippings Håndfæstning, the Joyous Entry in Brabant, or the Union of Utrecht.

The 1215 Magna Carta, essentially a peace treaty between King John of England and rebel barons, is widely regarded and celebrated as one of the most significant early advances in the development of constitutional law, at least in the English-speaking world. Magna Carta lived through the subsequent centuries and is reflected in modern cornerstone documents on human rights. Probably its most important legacy is that everyone, including rulers, is subject to the law.



Magna Carta, Cotton MS. Augustus II. 106,

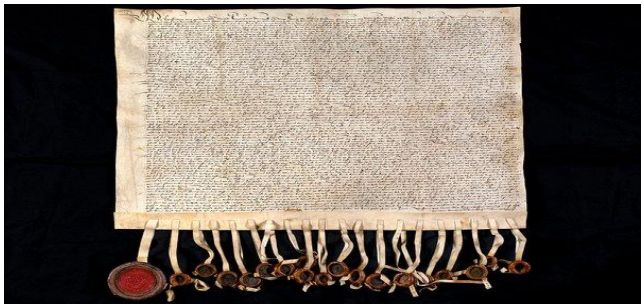
The original Magna Carta is less exciting than one might expect. Most of its 63 clauses deal with specific rights and customs, applicable to the medieval world; regulations on land ownership, medieval taxes, management of royal servants, standardization of weights and measures, even clauses on the removal of fish weirs from the Thames. The most famous clause, and one of the few still valid in the modern era, is the 39th. "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send

others to do so, except by the lawful judgement of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice" (Magna Carta 39, Holt, 1965).

Few men and no women qualified as "free men" in 1215; thus, the clause was only applicable to a small fraction of the population. Still, the mere existence of such language allowed for further developments, including future interpretations as a guarantee to a trial by a jury (by the 14th century English Parliament) or as a declaration of individual liberty (by Sir Edward Coke during the first half of the 16th century).

Similar chapters that sought to limit royal power can be found in European Medieval history starting from the 13th century. Hungary's Golden Bull of 1222 introduced limitations to King Andrew II of Hungary. It established the rights of the nobles and the church, including disobeying the king when acting unlawfully.

A håndfæstning in Denmark was a promise in the form of an oath given by the king to the noblemen. In 1282, Erik Klipping became the first Danish King to (be forced to) issue a written one, introducing restrictions to his power.



1360 håndfæstning by Valdemar Atterdags *photo: Rigsarkivet*

The Joyous Entry of 1356 was a charter of liberties granted to the burghers of the Duchy of Brabant by Duchess Joanna and Wenceslaus I, Duke of Luxembourg.

All these charters have been compared to Magna Carta, often seen as its equivalent in different geographical and historical contexts. Historical interpretation of these documents, including Magna Carta, differed throughout the centuries. For instance, until the 19th century, Magna Carta's reputation as a guarantee of civil liberties and human rights was very strong. Gradual interpretations of the document's clauses combined with a tendency by historians of the time to "praise revolutions provided they have been successful, to emphasize certain principles of progress in the past, and to produce a story which is the ratification if not the glorification of the present" (Butterfield, 1931).

When William Stubbs was writing his *Constitutional History of England in its Origin and Development* in 1880, the dominant view described Magna Carta as "an act of the united nation, the church, the barons, and the commons, for the first time thoroughly at one" or "the first great public act of the nation after it had realized its own identity" (Stubbs, 1880). In this narrative, the rebellious barons were not representing themselves or their social class, but rather the people as a whole, standing up for their rights to an unjust monarch. The Magna Carta, following this line of thinking, represented a major step in the process by which the various communities of the

English kingdom reached political maturity and began to take their place in governance (Turner, 2003).

In the beginning of the 20th century, Edward Jenks embarked on a journey to uncover "the false glamour which invests Magna Carta" (Jenks, 1904). In his book with the rather revealing title *The Myth of Magna Carta*, he noted that in 1215 hardly one sixth of the male population would qualify for certain of the charter's clauses. He added that many clauses were backward looking and even harmful, suggesting that the adoption of trial by jury was "delayed indefinitely" by the Charter (Jenks, 1904).

A few years later, in 1914, William McKechnie followed the same lines in his book *Magna Carta: A Commentary on the Great Charter of King John*. He stressed that certain constitutional principles, including equality before the law "had been discovered in various clauses of the Great Charter" without actually being there, and cautioned against making such links as they "diffuse false notions of the development of English law" (McKechnie, 1914).

The debate was further inflated in 1931 when Herbert Butterfield published his book *The Whig Interpretation of History*, coining the term "whig history" and its derivatives. The term took its name from the British Whigs, advocates of the parliamentary power, opposed by the Tories, advocates of the King's rule. Butterfield cautioned against oversimplified narratives, which he called "abridgements" that study the past with reference to the present. Although his initial target was the habit of some English historians of seeing their subject as a progressive broadening of human rights, ending with the triumph of personal liberty and parliamentary authority, the term is broadly used for any teleological view of the historical process.

While following the particular discussion over Magna Carta's significance regarding the evolution of the notion of human rights falls outside the scope of the present analysis, the broader theme Butterfield introduced is particularly important for any historical narrative. The ensuing discussion enabled us, and particularly historians, to better acknowledge anachronistic interpretations and address with skepticism teleological narratives.

However, as the President of the American Historical Association notes "although Butterfield's generation of historians learned to be suspicious of stirring narratives that played fast and loose with historical complexities, and although subsequent generations have learned to be equally suspicious of the oppressions that dominant triumphalist narratives can impose on the less hegemonic histories they too often silence, we still cannot evade the storytelling task of distilling history's meanings. Historians exist to explain the past to the present" (Cronon, 2012).

Under this perspective, Magna Carta's significance concerns its symbolic meaning, the fact that some of its core principles echo all the way to the American Bill of Rights and the Universal

Declaration of Human Rights. A document on resolving medieval grievances between a king and some barons has become a powerful symbol of liberty, inspiring thinkers throughout the centuries. In the opening of the congressional hearing on President Nixon's impeachment in 1974, commenting on equality before the law, the chair of the House Judiciary Committee noted that "seven centuries have now passed since the English barons proclaimed this principle, by compelling King John at the point of a sword, to accept the great doctrine of Magna Carta" (Rodino, 1948, p.107).

Considering the importance of every medieval charter in the development of human rights, the general conclusion that can be drawn is that rights are conferred to specific groups by virtue of their rank or status. Humanity would have to wait a few centuries for an all-encompassing philosophical concept of individual liberty and even longer to embrace a universal understanding of human rights.

2.5 Natural law and natural rights in the late Middle Ages

The notion of natural law stemmed from the Stoic interpretation that all humans are subject to a basic, universal law of nature. Through its development, including the Roman elaboration to include a duty to secure justice for all humans, natural law philosophies argue for certain values and rights inherent by virtue of human nature, conferred not through a legislative act, but by God, nature, or reason, which can be universally understood through human reason.

While natural law had been equated to divine law by religious thinkers before the 13th century, Thomas Aquinas (1225-1274), who is often a point of reference regarding medieval natural law theories, disassociated the two concepts. In the *Treatise on Law* of his *Summa Theologica* he noted: "…the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the divine light. It is therefore evident that the natural is nothing else than the rational creature's participation of the eternal law" (Aquinas, 1485).

The concept of natural law, and later that of natural rights, attracted a lot of attention and theoretical disagreements over the centuries. The vast majority of researchers agree, though, on a radical transition from an older doctrine of natural law that imposed obligations towards a modern concept that focuses on the self-assertion of the individual. Different theories have been proposed on how this transition came about. It was definitely not there in the times of Aquinas, who very sporadically used the word *ius* (right) with a subjective connotation.

Historical narratives on the evolution of natural rights, conceived as rights not dependent on the laws, customs, or beliefs of any particular culture, usually start at the beginning of the 17th century

with Thomas Hobbes (1588-1679) or maybe Hugo Grotius (1583-1645). Many researchers follow an approach initiated by Leo Strauss, pointing to a fundamental tension and historical discontinuity between the ideas of natural law and natural rights. Modernity temporarily took over the concept of natural law inherited from Antiquity and the Middle Ages, but transformed it according to the axioms of modern philosophy, made it secondary and derivative compared to the concept of rights, and eventually abandoned it.

A diametrically opposing opinion identifies a close relationship between the ideas of natural law and natural rights, using 17th century theories of natural law as a point of departure. According to this perspective, the most remarkable and imperishable merit of natural law theories is the elaboration of the idea of natural rights (e.g. Gérard 2007).

The classical theories of the 17th century will be briefly discussed in the next sub-section, but for the purposes of this narrative, Hobbes did distinguish between the notions of "law" and "right". In a famous passage from *Leviathan* he notes: "For though they that speak of this subject, use to confound Jus, and Lex, Right and Law; yet they ought to be distinguished; because Right consisteth in liberty to do, or to forbeare; Whereas Law determineth, and bindeth to one of them: so that Law, and Right, differ as much, as Obligation and Liberty; which in one and the same matter are inconsistent" (Hobbes, 1651 , p.91).

Addressing natural law as a sum of moral precepts that strictly prescribe or prohibit certain acts, impeding the individual's freedom of action, it was only possible to formulate natural rights against such natural law (Tattay, 2009). The distinction is stark in the work of the French legal philosopher Michel Villey. He sees an absolute logical incompatibility between the ideas of natural law and natural rights, and claims that while the classical concept of 'ius' meant the constraint of all power, the modern notion of 'iura' means the theoretically unrestricted power of the individual (Villey, 1975). For Villey though, the innovator, who first created a doctrine of subjective rights, was the 14th century Franciscan philosopher, William of Ockham, initiating a "semantic revolution" when he associated for the first time the two concepts, "ius" and "potestas", right and power (Viley, 1975). British political theorist and historian of political thought Richard Tuck in his *Natural Rights Theories* argued that the first theory of natural rights was developed in the 15th century by the French scholar Jean Gerson (Tuck 1979).

Both Villey and Tuck point to an evolution of the idea of natural rights prior to the 17th century and the classical theories. A significant amount of research over recent decades focused on this medieval evolution of the idea of natural rights (e.g. Tierney (1988), Tierney (1989), Oakley (2005), Mäkinen and Korkman (2006)). The idea that modernity inherited from scholasticism,

in addition to the ancient concept of natural law, a notion of natural rights contests the view that natural rights were conceived as a product of the rise of philosophical individualism, modern science, and the market economy. Tierney and Brett discuss at length the evolution of the idea of natural rights from the 12th to the 17th century with the former noting that "to write a full history of natural rights theories, even for the modern period, would be a formidable task" (Tierney, 1997, p.43, Brett, 1997).

Tierney's work and most related research begin their considerations from the 12th century, noting it was an age of new vitality in many spheres of life and thought, including first great gothic cathedrals and the first universities (Tierney, 1997). There was also a widespread concern for rights; either rights establishing the relative power of kings against religious authorities and vice versa, or liberties built around the feudal society's complex hierarchical system, including aspirations of communal associations and groups of merchants or craftsmen.

Particular focus is given to the revival of legal studies with the recovery of the whole corpus of Roman law around 1100 and the subsequent codification of church law in Gratian's *Decretum*. This 12th century collection of canon law used as sources Roman law, the Bible, the writings of the Church Fathers, papal decretals, and the acts of church councils and synods. It attracted considerable attention and commentaries at the time. Tierney points to different usages of the term *ius naturale* (natural right) in the first chapters of *Decretum*, identified by early commentators. Influenced by their own era, canonists sometimes "defined natural right in a subjective sense as a power, force, ability or faculty inhering in humans" (Tierney, 1997). Although no canonist developed a theory on the basis of a distinction between subjective and objective rights, the ensuing discussion led to an effort to specify such rights; the first one under analysis was the right of the destitute poor to the necessities of life, even if this meant appropriating for themselves the surplus property of the rich. When John Locke, five centuries later, developed his natural rights theory, he included the principle of extreme necessity. It is the single element of his theory that "has been lost with the passage of time; most people today have never heard of it and react with disbelief when it is explained. That principle was nevertheless a commonplace of medieval theology" (Swanson, 2007).

Following the same line of thinking, researchers focused on the idea of permissive natural law as a ground of natural rights. Drawing from the Roman legal distinction of law as permissive or perceptive, "they sometimes argue that natural law too did not consist only of restraints on power, commands, and prohibitions; it could also define an area of permissiveness where agents were free to act as they chose" (Tierney, 2004). This theory does not imply the construction of a natural rights' theory; it suggests that these canonists

established the foundations for the creation of a language that could express a doctrine of rights, many centuries later.

Distinct events throughout the centuries have helped to shape and develop the relevant concepts. As briefly noted above, Michel Villey considers William of Ockham the great innovator, underscoring the early 14th century dispute between Pope John XXII, head of the Catholic Church from 1316 to his death in 1334, and the Franciscan Order. The Franciscans abandoned both private and common property and all right to use property; they kept a bare, factual use of commodities without any ownership rights. In 1323, the pope ruled that it was heretical to maintain that Christ and the apostles had nothing or that they had no rights in the things they used. In another decree, directed against the Franciscans, he emphasized that there could be no just use of anything without a right of using it. Analyzing the monastic order, Agamben notes that the Franciscans, "instead of insisting on these aspects, which would have called into question the very ground of property law…[they] prefer to take refuge in the doctrine of the juridical validity of the separation of de facto use and right" (Agamben, 2011, p138). This dispute led to the theoretical work of William of Ockham, who is mainly known nowadays from the razor that bears his name and the relevant methodological principle.

Whether the Franciscan philosopher initiated a semantic revolution, as Villey claims, or not, he repeatedly stressed, not only that governments existed for the common good, but also the existence of individual rights of the subjects. Ockham's nominalist philosophy coupled with the ensuing individualistic political theory led Villey and others to describe his philosophy as the cradle of subjective rights.

While this and other developments were important, they mainly led to theoretical debates with limited application in everyday life and real problems. Tierney describes the phenomenon brilliantly, using the discussion on the right to property, and whether it came from natural or civil law. This discussion was known since the times of the *Decretum*, in which Gratian, gave a definition of *ius naturale,* encompassing both common possession and acquisition of things. He attributed common property to natural law and private ownership to positive law. He added that any human law contrary to natural law was void, leaving the existence of private property in the real world unjustified. The contradiction was addressed by subsequent interpretations of *ius naturale*, first by Rufinus in the mid-12th century, and later by Huguccio, towards the end of the same century.

The latter wrote in his *Summa decretorum*: "By natural law something is mine and something is yours, but this is by permission, not by precept, since divine law never commanded that all things be common or that some things be private, but it permitted that all things be common and some private, and so by natural law something is common and

something private" (Huguccio, translation by Tierney, 2014)

> ***If a doctrine of rights had not grown up in an earlier, more religiously oriented culture, there would, so to speak, have been nothing there to secularize*** **(Tierney 2006).**

Similar language may seem to vindicate Tierney (2004), when he notes that, by 1500, debates about natural rights seemed like "arguments for the sake of argument, clever intellectuals playing clever intellectual games." And he continues with the discussion on whether the right to property -dominion- came from natural or civil law. "When John Mair, a leading master of Paris, addressed this question around 1500 he took a deep breath, so to speak, and told his students that, to begin with, there were eight kinds of dominion to consider. They were: Dominion of the blessed, dominion of the damned, original dominion, natural dominion, gratuitous dominion, evangelical dominion, civil dominion, and canonical dominion. The students must have been very impressed if not completely baffled. And John Mair was relatively simple for his time. His contemporary, Conrad Summenhart, found no less than twenty-three different kinds of dominion, each with associated rights" (Tierney, 2004).

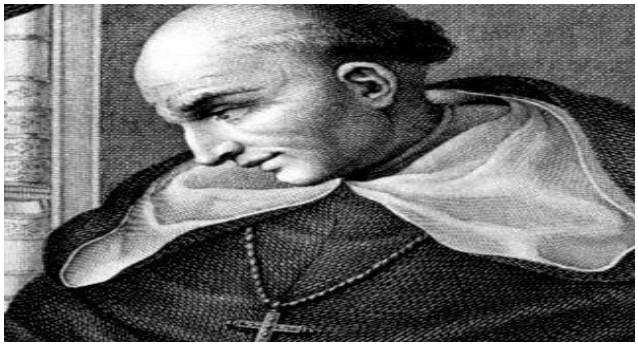
The theoretical discussion became relevant to practical problems after the discovery of America. A new debate, arose over the rights of indigenous peoples with the concept of natural rights being central. Were these "savages" entitled to such rights or should they be restricted to "civilized" people?

Central in this debate is the figure of Bartolomé de las Casas (1484-1566), the "protector of the Indians", who wrote extensively in defense of the Indians, including the *Short Account of the Destruction of the Indies* and the *History of the Indies*. Despite his religious background, Las Casas defended indigenous rights in terms of reason and law, including claims for their rights to liberty, property, self-defense, and self-governance. He used the old Justinian maxim of 'what touches all must be approved by all' to show that indigenous' consent was the only way to legitimize Spanish rule, extending the principle at the individual level.

Las Casas' arguments were met with opposition; one of his famous opponents was Juan Ginés de Sepúlveda (1494-1573), who in his book *Democrates Alter*

> **The basic idea carried forward in theories of natural rights in the 17th century is that *men, considered purely as isolated individuals, had a control over their lives, which could correctly be described as dominium or property. It was not a phenomenon of social intercourse still less of civil law: it was a basic fact about human beings, on which their social and political relationships had to be posited* (Tuck, 1979).**

or on the Just Causes of War against the Indians argued that some native peoples were incapable of ruling themselves. During the exchange, including the Valladolid debate between the two in 1550, Las Casas provided an elaborated rebuttal of the doctrine of natural slavery, originating from the times of Aristotle. Defending the rights of indigenous peoples, he set the foundations for the recognition of freedom and dignity of all humans.



Bartolomé de Las Casas (1484-1566)

While arguably many developments from the early canonists to Las Casas' passionate books point to a gradual transition to a more subjective understanding of rights, a systematized individualistic doctrine on human rights was yet to appear. Still, by the mid-16th century when the Valladolid debate was taking place, the world was changing rapidly.

The rise of science was undermining ancient axioms; Copernicus' *De revolutionibus orbium coelestium libri vi* had been published, challenging not only the geocentric understanding of the universe, but numerous prior assumptions in a domino of skepticism. Slowly, philosophy, unconstrained from theology, would challenge old theories and create new ones. The power of rulers was also challenged, leading to growing skepticism towards the legitimacy of an absolute monarch. This was accompanied by an increasing call for individual freedoms, which culminated in the late 18th century in radical calls for political reform, inspired by passionate ideals of the Enlightenment, and ultimately leading to the American Revolution (1775-1783) and the French Revolution (1789-1799). It would be difficult to understand these developments without discussing, in brief, the contributions of the early thinkers of the 17th century. Thomas Hobbes (1588-1679), who inverted the emphasis upon duty is where most historical narratives on natural rights begin.

2.6 Early classical natural rights theories

During the first half of the 16th century, efforts focused both on exploring the subjective understanding of rights and on distinguishing between natural law as a sum of duties and a theory of individual rights. Simultaneously, intellectuals tried to provide a secular framework, based on legal principles rather than God and tradition. Dutch jurist Hugo Grotius (1583-1645), in his *The Rights of War and Peace*, claimed that natural law is valid even if one accepted "that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are no concern to Him" (Grotius and Neff, 2012, p.4). Grotius, who is widely considered as one of the

main contributors in the development of international law and is still often referenced in ocean management for his *Mare Liberum* (The Freedom of the Seas) book and notion, was straightforward in his argument: "The law of nature, again, is unchangeable – even in the sense that it cannot be changed by God. Measureless as is the power of God, nevertheless it can be said that there are certain things over which that power does not extend; for things of which this is said are spoken only, having no sense corresponding with reality and being mutually contradictory. Just as even God, then, cannot cause that two times two should not make four, so He cannot cause that which is intrinsically evil be not evil" (Grotius and Neff, 2012, p.29).

Grotius placed self-interest and self-preservation at the center of his system; he argued that humans enjoy *dominium* over anything necessary for their self-preservation. Attacking the Aristotelian doctrine of political naturalism, which posits a natural law, guaranteeing justice, applicable to all, he emphasized that social order must be voluntary. The English jurist John Selden (1584-1654), criticized Grotius, publishing under political turmoil his *Mare Clausum* in response to *Mare Liberum.* Regarding rights, Selden did not deviate too much, stressing that they are directly correlated to natural liberty, such that the only basis for individual obligation is free assent to contracts. He opined that natural liberty could be renounced by an individual act.

Most researchers point to the English philosopher Thomas Hobbes (1588-1679) as one of the pioneers of individualistic theories of human rights, systematizing previously suggested concepts. As already noted, and despite the subsequent interpretations arguing that natural rights theories are some sort of development of the idea of natural law, Hobbes was rather clear: "Law is a fetter; Right is a freedom, and they differ like contraries" (Hobbes, 1839).

In his most well-known book *Leviathan*, Hobbes suggested that individuals are endowed with natural rights that are independent of society, including the fundamental right to self-preservation. With all humans endowed with natural liberty, they can do whatever to ensure their self-preservation, which in Hobbes' theory leads to conflict, fear, war, and chaos. To avoid this, humans submit their natural freedom to the will of a ruler, who will ensure safety and order.



Frontispiece of Leviathan (1651), engraving by Abraham Bosse

A social contract is thus agreed upon, whereby individual natural rights are submitted to a sovereign power, in many ways justifying absolute and unlimited government. Hobbes' practical goals in his political theory, namely the justification of absolutism and prevention of rebellion, was uninspiring, especially for those interested in the limits of authority and individual rights. Indeed, the 17th century was the theatre of many rebellions, which in their theoretical armory often used the notion of inalienable rights, including the right to self-defense towards an unjust ruler. Hobbes' Leviathan, in the form of absolute state power that everyone must obey not to descend into chaos, was definitely unpopular among those groups.

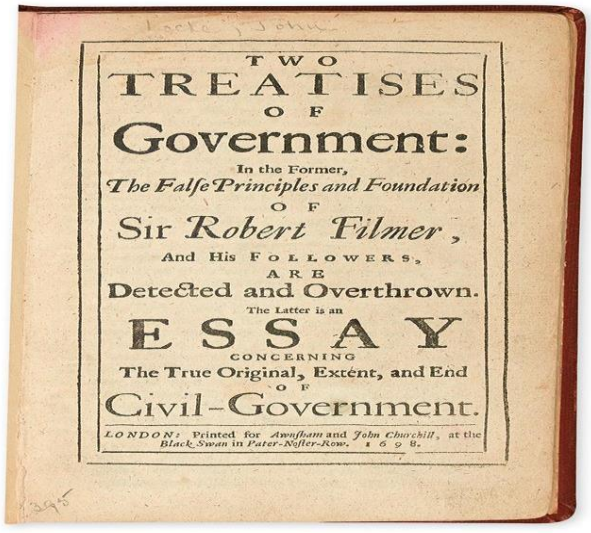
However, groups that subscribed to the monarchical rule were equally unimpressed by Hobbes' notion of inalienable rights, which, under specific circumstances, could be used against a sitting ruler. As Sreedhar notes, in 1658, Bishop Bramhall famously accused Leviathan of being nothing more than a *"Rebel's catechism"*. "It is no surprise, then, that Hobbes is typically seen as advancing a view that was not appealing to anyone in the debate" (Sreedhar, 2010, p.3).

The further analysis of the significance of various resistance rights that comprise the Hobbesian right to self-preservation (including the rights to resist arrest, corporal punishment, and imprisonment), while interesting, falls outside the scope of this analysis. It also quickly became less relevant as thinkers of the enlightenment, starting with John Locke, "linked the ideas of natural rights, the state of nature and the social contract to far-reaching notions of limited government, popular sovereignty and accountability" (Vizard, 2000).

The English philosopher John Locke (1632-1704), in his early work *Essays on the Law of Nature*, emphasized: "…for right is grounded in the fact that we have the free use of a thing, whereas law is what enjoins or forbids the doing of a thing. Law and right are thus irreconcilable" (Locke, 1988 p.111). He developed a theory of rights, embarking from a different point of departure than the Hobbesian *homo homini lupus*. In Locke's natural state, individuals are born free and equal, endowed with natural rights to life, liberty, and property; in his own description: "Men living together according to reason, without a common Superior on Earth, with Authority to judge between them" (Locke, 1946, ch.3, sec.19). These natural rights are guaranteed by a law of nature which obliges everyone. This understanding of the natural state, although significantly different than "war of every man against every man" where "notions of Right and Wrong, Justice, and Injustice have no place" (Hobbes, 1958" Ch. 13, 107-108), still led individuals to realize that they could promote their rights more effectively in an organized society. Following such a process, in Locke's social contract, which is an outcome of free and individual action, individuals give up their rights to interpret and execute natural law,

consenting to obey government and laws. Fundamental rights themselves may not be surrendered in the social contract. The notions of natural rights and the formation of a consensual social contract are central in Locke's theory.

In one of his major works, the *Two Treatises of Government*, Locke both attacked the idea that power can be justified by a monarchical divine right and laid down the fundamentals of his theory on natural rights and the social contract. The first part of the book is attacks the views of Sir Robert Filmer (1588-1653), a critic of democracy and supporter of the divine right of kings. Locke focused on views contained in Filmer's *Patriarcha*, where, drawing from biblical evidence, especially from the Old Testament and starting with God, Adam, and Noe, Filmer derived absolute authority of kings, founded on divine right. The *Second Treatise* describes the Lockean theory, explaining in various parts that only individual consent can legitimize governments.


TWO
TREATISES
OF
Government:
In the Former,
The False Principles and Foundation
OF
Sir Robert Filmer,
And His FOLLOWERS,
ARE
Detected and Overthrown.
The Latter is an
ESSAY
CONCERNING
The True Original, Extent, and End
OF
Civil-Government.
LONDON: Printed for Awnsham and John Churchill, at the Black Swan in Pater-Noster-Row. 1698.

Cover of a 1698 edition of Locke's Two Treatises of Government with its full title

It logically flows that if a government's actions are against the objectives for which consent was given, it is in theory possible to delegitimize and overthrow the government. In Locke's understanding, governments that deny the exercise of natural rights (defined as rights to life, liberty, and estate) is illegitimate. Locke closes the *Second Treatise* with a discussion of the dissolution of government, prioritizing natural rights over social obligations, and thus arguing for limited, as opposed to absolute, governmental authority. Individuals may withdraw their consent and render the social contract void, if its terms are broken as a result of arbitrary power.

> *Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby anyone divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it.*
> John Locke, Second Treatise, Chapter 2

Hobbes' and Locke's work attracted considerable attention both by contemporary and subsequent thinkers, and instigated discussions, including the publication of numerous commentaries. While diligently presenting all the contributors goes too far for this analysis, it might be worth noting the works of two

people: John Lilburne (1614-1657), who coined the term 'freeborn rights' (Braddick, 2018), rights that every human is born with; and Samuel von Pufendorf (1632-1694). The German philosopher in his *De iure naturae et gentium*, published almost 20 years earlier than Locke's *Two Treatises*, challenged the state of nature as presented by Hobbes.

Locke's theories, as all theories, attracted considerable criticism in later times, including regarding an unlimited right to appropriation, a negative depiction of freedom, or an understanding of the human nature strictly in individualistic terms around self-sufficiency. It is difficult to deny, however, that they had an important impact on the discussion on freedoms and rights.

It is important to bear in mind that theories were not developed in a vacuum, but were stimulated by sociopolitical developments in everyday life, and vice versa. When the *Two Treatises* were published, anonymously, in 1690, the world was rapidly changing. In England, the Glorious Revolution had taken place two years before, confirming the primacy of Parliament over the Crown. The subsequent Bill of Rights of 1689 codified the status quo but was only the end result of a very politically intense, and often blood-filled, 17th century in England.

While the details of medieval monarchy in England often escape the attention of the international audience, for the purposes of this narrative, it would be worth stressing that the Glorious Revolution was not much of a revolution in the sense of mass mobilization. That had happened a few decades earlier in the English Civil Wars.

The first English Parliament was convened in 1215, with the signing of Magna Carta. During the following centuries Parliament's power grew at the expense of the monarchy, in a process that exploded during the 17th century. In 1625, Charles I became the King of England, Scotland, and Ireland at the age of 25. Turbulence soon rose with the House of Commons submitting a Petition of Right in 1628, which included limitations on: tax imposition without parliamentary consent; martial law imposition; and imprisonment without due process. Although Charles I accepted the petition in a diplomatic move, he soon dissolved the Parliament and ruled on his own for the following 11 years.

After years of tension, in 1642, the English Civil War erupted between the Parliamentarians and the Royalists. The war lasted for nine years and was won by the Parliamentarians. Charles I was arrested, tried, and executed. His son Charles II continued the war, ended in exile and the monarchy was briefly replaced by the Commonwealth of England under the rule of Oliver Cromwell. Following Cromwell's death, Charles II was reinvited to the throne in 1660, continued disagreeing and fighting with the Parliament, even dissolved it in 1681 for the last four years of his reign without causing another war, and eventually died in 1685, succeeded by

his brother James II. James II was openly Catholic; protestants didn't like that and invited William of Orange from the Netherlands, a protestant who was married to Mary, daughter of James II, to claim the throne. William invaded, James fled, and in the subsequent arrangement, the Bill of Rights was enacted in 1689. The Bill of Rights limits the king's power, and guarantees the rights of Parliament, free elections and freedom of speech.

It would simply be impossible to analyze the writings of major thinkers and the developments of theories on rights without taking into account the turbulent realities of everyday life. It is also important to balance the stimuli from theoretical analysis with those stemming from social tension. In this vein, it is argued that "assertions of inherent rights of individuals in opposition to despotism flowed, not from theoretical principles enunciated by philosophers of Enlightenment, but from popular politics among a minority within a minority, a small part of the activist core that supported the Long Parliament in its struggle with Charles I" (Zaret, 2000).

The end result was that the 17th century constituted a turning point. The Age of Enlightenment had already started. All the building blocks were there; Descartes had laid the foundations of his rationalist philosophy, having already declared *cogito ergo sum* (I think, therefore I am) in his 1637 *Discourse on the Method*. Equally as important, his dualism had been challenged by Spinoza, who published *Tractatus Theologico-Politicus* in 1670 and *Ethics* seven years later. By asserting the unity of matter, Spinoza's monism had radical implications; employing philosophical reason it led to the denial of the existence of an all-powerful, transcendent, law-providing God. Spinoza argued for subordination of religion to the state, against superstition and miracles, and in favor of a democratic republic where natural rights are not surrendered via a social contract.

According to recent researchers, including Jonathan Israel's *Radical Enlightenment* and *Enlightenment Contested*, this contrast leads to two distinct lines of Enlightenment thought: the moderate variety, following Descartes and Locke, seeking to find middle ground between the reform claims and the traditional power structure; and the radical one, inspired by Spinoza, and " "advocating democracy, individual liberty, freedom of expression, and eradication of religious authority" (Israel, 2006). In any case, the 18th century, the century of rights, was *ante portas*.

2.7 Revolutionary times

Towards the end of the 18th century, a wave of revolutions swept the old order of things; among them the French Revolution is arguably the most universally significant. Regarding the development of human rights, the resulting declarations of both the American and the French Revolutions constitute important milestones.

While diverse factors and case-specific circumstances shaped the path of each revolutionary effort, the encapsulation of the revolutionaries' ideals in the declarations reveal a direct link with the ideas of the philosophers and other intellectuals briefly discussed in the previous section. Ideas on equality of all men, natural or human rights, just governance, new principles of government based on reason, the notion of a social contract, or that of separation of powers, among others, were increasingly read on both sides of the Atlantic.

One of the most quoted passages of the American *Declaration of Independence* is: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness" (US National Archives and Records Administration, 2021). And the French *Declaration of Rights of Man and the Citizen* denotes: "Men are born and exist free and with equal rights. The purpose of all political unions is to preserve men's inalienable natural rights. These rights are freedom, ownership, security, and opposition to repression. All principles of sovereignty reside in the citizens. Liberty means the ability essentially to take any actions without hurting others" (Robespierre, 1850).

There were many contributing factors creating fertile conditions for revolutions and the change of the status quo. These included the increasing demand for power from an emerging bourgeois class over traditional rights-holders like the nobles or the clergy, as well as the collapse of a feudal system with peasants becoming aware of their own position and increasingly unwilling to support it. Or even, in the case of France, the reconsideration of the divine right to rule as the French monarchy proved unwilling to adapt to changing circumstances. However, both the American and the French revolutions shared tax increases as a final revolutionary motive, which led in revolts, from the elite classes initially.

The start of the American Revolution in 1765 is the year that the British Parliament passed the Stamp Act, which taxed British colonies. The British treasury had found itself in deep deficit during those times, following the Seven-Year War, which although fought between European countries, was the first world conflict with a global theatre of military operations. Great Britain, despite being victorious, had to face an increasing cost of war and its colonies had to share the burden. The Stamp Act, as expected, was very unpopular on the other side of the Atlantic, leading to the slogan 'no taxation without representation'. A decade later and after an interesting sequence of events that fall outside the scope of this narrative, open war erupted, eventually leading to the establishment of the United States of America.

From the perspective of the evolution of the notion of human rights, the American Revolution provided important documents, including the *Declaration of*

Independence and the *Bill of Rights*. The first step, not only chronologically, was the *Virginia Declaration of Rights*, which was adopted at Williamsburg, Virginia, on 12 June 1776, less than a month earlier than the United States *Declaration of Independence*. The document was developed following a vote by Virginia's fifth Revolutionary Convention to prepare a declaration of rights and a new plan of government, away from English control. The task was given to a committee of 30 individuals and while one would assume that it would be difficult to reach a consensus draft, it was soon obvious, during initial discussions, that the text prepared by George Mason was so good that "had swallowed up all the rest" (Broadwater, 2006).



Statue of George Mason at his Memorial, located at West Potomac Park in Washington D.C. He is holding Cicero's *De Officiis;* the two books next to him are John Locke's *Of the Conduct of the Understanding* and Jean-Jacques Rousseau's *On the Social Contract.* George Mason, despite being the main author of the influential Virginia Declaration of Rights does not hold the iconic status of the Founding Fathers, which include his Virginia colleagues George Washington, Thomas Jefferson, and James Madison. *(photo by Zachary R. Ziccardi, https://commons.wikimedia.org/w/index.php?curid=37605600)*

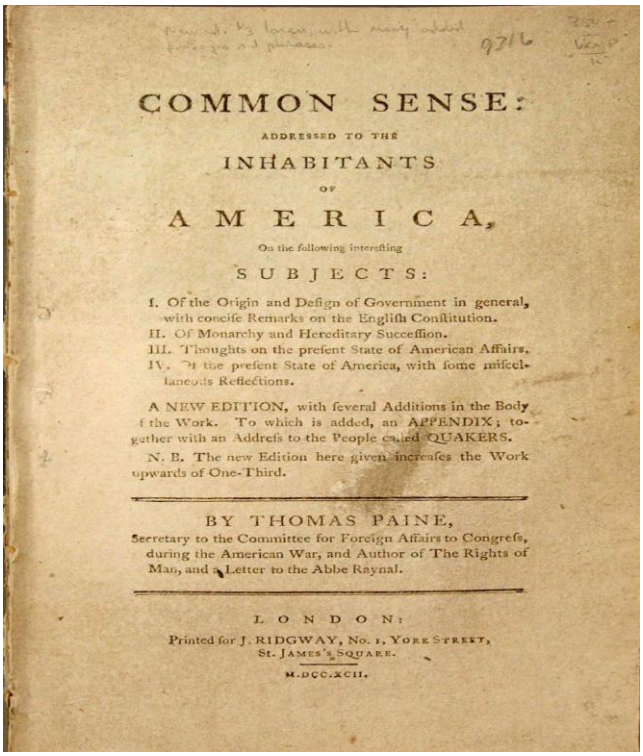
The Virginia Declaration of Rights drew from various sources, including the English Bill of Rights; many of its sections are influenced by the writings of the philosophers previously discussed. Section 1 denotes that all men are equally free and have inherent rights, including life, liberty, property, safety, and pursue of happiness. Sections 2-3 state that all power is vested in, and derived from, the people, underscoring that government is instituted othe common benefit of the people, including the right to reform, alter, or abolish it if it is inadequate. Sections 4-6 exclude special privileges for social classes, separate legislative, executive, and judiciary powers, and state that all elections for representatives ought to be free. Sections 7-10 caution against suspending laws, set standards for criminal prosecutions, and regulate excessive punishments and procedures around suspects. Sections 11-16 prescribe trial by jury for property disagreements, protects the freedom of the press, regulates the role of militia and standing armies, set the right to uniform government in the State, states firm adherence to justice, moderation, temperance, frugality, and virtue, and protects religious freedoms. Many of these enlisted rights were incorporated in the United States and other countries' constitutions and, much later, in the United Nations Universal Declaration of Human Rights. George Mason, despite being the main author of the influential Virginia Declaration of Rights and the 1776 Constitution of Virginia, does not hold the iconic status of the Founding Fathers, which include his Virginia colleagues George Washington, Thomas Jefferson, and James Madison.

The adoption of the *Virginia declaration* was not smooth, and the first section attracted considerable discussions and disagreements. The original draft by Mason stated that **"**all men are born equally free and independent, and have certain inherent natural rights, of which they cannot by any Compact, deprive or divest their Posterity" (Slauter, 2009, p.263). This posed a controversy, "the problem that bedeviled the founders again and again" (Aron, 2008): how could all men be equally free when some were slaves? How could there be a discussion on guarantying private property when that property included other human beings?

The final adopted section circumvented the problem by adding the phrase "when they enter a state of society" (the text reads that "all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity"). Black slaves were not considered to have entered the state of civilization, thus comforting the concerns of slave owners and allowing the

The Virginia Declaration of Rights has influenced subsequent documents to the extent that it has been called the most influential constitutional document in American history (Pacheco, 1992). The final version consists of 16 sections, with Mason's initial draft containing 10 of them. The first section states that all men are by nature equally free and independent and have certain inherent rights, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety (Virginia Declaration of Rights, 1776).

During the first days of 1776, Thomas Paine (1737-1809) published *Common Sense*, a short book which was widely read and made a powerful case for independence. Just after a year since his emigration to America, Paine's passionate writings provided a boost to the popular appeal for breaking political ties with Great Britain.



COMMON SENSE:

ADDRESSED TO THE

INHABITANTS

OF

AMERICA,

On the following interesting

SUBJECTS:

I. Of the Origin and Design of Government in general, with concise Remarks on the English Constitution.
II. Of Monarchy and Hereditary Succession.
III. Thoughts on the present State of American Affairs.
IV. Of the present State of America, with some miscellaneous Reflections.

A NEW EDITION, with several Additions in the Body of the Work. To which is added, an APPENDIX; together with an Address to the People called QUAKERS.

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BY THOMAS PAINE,

Secretary to the Committee for Foreign Affairs to Congress, during the American War, and Author of The Rights of Man, and a Letter to the Abbe Raynal.

LONDON:

Printed for J. RIDGWAY, No. 1, YORK STREET, St. JAMES's SQUARE.

M.DCC.XCII.

A 1791 edition of Paine's Common Sense, Jamestown-Yorktown Foundation

In early June 1776, Richard Henry Lee introduced a resolution to the Continental Congress, the governing body of the union during the revolution, “noting that these united colonies are and of right ought to be free and independent states” (Lee, 1776). One by one, the 13 rebelling states started instructing their delegates elected to Congress to support a formal declaration of independence. The Congress appointed a 5-man committee to draft the declaration. The first draft was written by Thomas Jefferson (1743–1826) and was subsequently edited both by the committee and Congress before its final adoption on 4 July 1776.



Thomas Jefferson and the Committee of Five present the first draft of the Declaration of Independence to the Second Continental Congress, oil on canvas by John Trumbull, 1818, U.S. Capitol Rotunda, Washington, D.C.

Regarding the evolution of human rights, the preambular part of the declaration is the most significant and simultaneously the most popular. “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” (US National Archives and Records Administration, 2021). The preambular paragraph also includes that all government power derives from the consent of the governed and that the people have a right to alter or abolish an unfit government.

The rest of the declaration is a rather long list of 27 complaints against King George III, which justified and legitimized the rebellion, noting that “these repeated injuries and usurpations…are the causes which impel them to separation” (US National Archives and Records Administration, 2021). The concluding part of the declaration establishes the United States of America: "we, therefore, the Representatives of the United States of America in General Congress… solemnly publish and declare that these united colonies are, and of right ought to be free and independents States” (US National Archives and Records Administration, 2021).

After a few years of fighting, the American Revolutionary War officially ended, victoriously for the newly established U.S.A., and with the Treaty of Paris in September 1783, the boundaries were set between the newly independent country and what remained of the British Empire in North America. Separate peace treaties were signed between Britain and France, Spain, and the Dutch Republic, all of which had supported the American fight for independence. With the colonial system

still in full force, territories all over the world were part of these peace treaties, including Menorca, the Bahamas, Grenada, Montserrat, Tobago, or Senegal.

Four years later, in the United States, during the summer of 1787, delegates at the Philadelphia Convention drafted the US Constitution. The document defines the framework of the federal government, envisioning a system of checks and balances with an executive branch, a representative legislature and a federal judiciary. While the document went into detail regarding what the government could do, it did not say much about what it could not do. Five days before the end of the convention, George Mason had suggested the addition of a *Bill of Rights*; the suggestion was quickly rejected, which led to three delegates, including the author of the *Virginia Bill of Rights* refusing to sign the constitution.

Mason wrote down his objections, which were soon published, starting with "There is no Declaration of Rights"…and ending with the prediction that "this government will commence in a moderate aristocracy; it is at present impossible to foresee whether it will, in its operation, produce a monarchy or a corrupt oppressive aristocracy: it will most probably vibrate some years between the two, and then terminate in the one or the other" (Mason, 1787, see Kenyon, 1985). Two distinct parties surfaced as a consequence; the Federalists who supported the constitution and the Anti-Federalists, who opposed it, leading to a formidable body of literature, systematized as the Federalist and Anti-Federalist Papers respectively.

The debate influenced the constitutional ratification process, which required nine states ratifying the new constitution before it entered into effect. Following uneventful processes in five states, the convention in Massachusetts proved polemic and in the resulting *Massachusetts compromise*, Anti-Federalists agreed to support ratification under the condition that recommendations for amendments would be put forth. Federalists agreed to support the proposed amendments, including a Bill of Rights. Several states, including Virginia, followed the example ratifying the constitution subject to conditions for amendments. The constitution reached the required number of ratifications during the summer of 1788 and the following year, George Washington became the first president of the United States of America.

The inclusion of a Bill of Rights was central in the debate and one of the Anti-Federalists main spearheads. Soon after the signing of the constitution, James Madison sent a copy to Thomas Jefferson, who was Ambassador to the Court of Louis XVI in Paris. Jefferson's response summarized the things he liked about the new constitution and highlighted those that he did not, especially "the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the

habeas corpus law, and trials by jury…stressing that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference" (Jefferson, 1787).

Madison, one of Virginia's representatives to the first US Congress, had initially opposed the necessity of a bill of rights, but was soon convinced that it would have positive effects. He put forth a series of 17 amendments, out of which, following lengthy deliberations at the House of Representatives and the Senate, 10 were ratified. These 10 first amendments constitute the Bill of Rights. The document was influenced by the *Virginia Declaration of Rights* and other documents, including the *Magna Carta* and the *English Bill of Rights*.

One month after Madison tabled his amendments to the US Constitution that would form the Bill of Rights, all focus turned to France. A state prison on the east side of Paris, known as the Bastille, was stormed by a mob.; the Storming of the Bastille was one of the most symbolic moments of the French Revolution.

The Bill of Rights guaranteed the most fundamental rights that citizens perceived as naturally theirs, including: freedom to exercise one's religion (or no religion); of speech, press, petition, and assembly; right to be free from unwarranted government intrusion; due process of law; and equality before the law.

The French Revolution

The French Revolution was a period of radical change in France during the end of the 18th century. It is the most influential revolution in history, with its motto of "liberty, equality, fraternity" inspiring uprisings, revolts, and social movements worldwide. It was also central in the development of the notion of human rights.

The iconic year for the French Revolution and for human rights development was 1789. Some researchers point to that year as the start of the revolution, while others suggest it started two years earlier, when Charles-Alexandre de Calonne, the controller general of finances for Louis XVI at the time, called the Assembly of Notables, essentially a group of noblemen and other influential individuals selected by the royal court, to announce increasing taxation of the privileged classes to balance the state's budget.

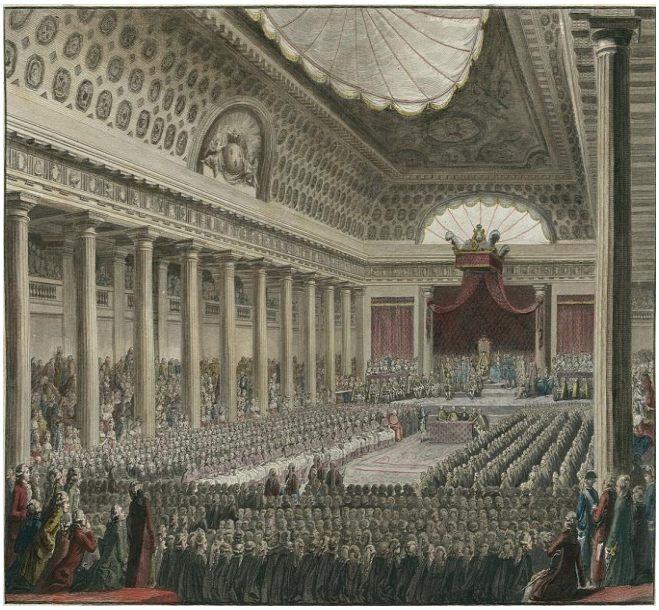
Budgetary concerns were grave for a variety of reasons, including increased expenses for the Anglo-French War, also known in Britain as the Bourbon War, which lasted for six years (1778-1783) and witnessed war theaters from the Mediterranean to the Indian Ocean and the Caribbean.

The Assembly of Notables eventually denoted that they were unable to accept any tax reforms and the Estates General, which had not met for 175 years, should be convened for that purpose. After a historically short but very dense period of political crisis, Louis XVI decided to

summon the Estates-General in May 1789.

The *ancient regime* is the term used to describe the social and political system in France from the Late Middle Ages until 1789. Under the regime, everyone was a subject of the king of France as well as a member of an estate and province.
Society was institutionally organized under three orders: clergy, nobility, and commoners known as the Third Estate. All rights and status were linked to this social order. The three orders collectively constituted the Estates General (or States-General), the legislative and consultative assembly of the different classes.

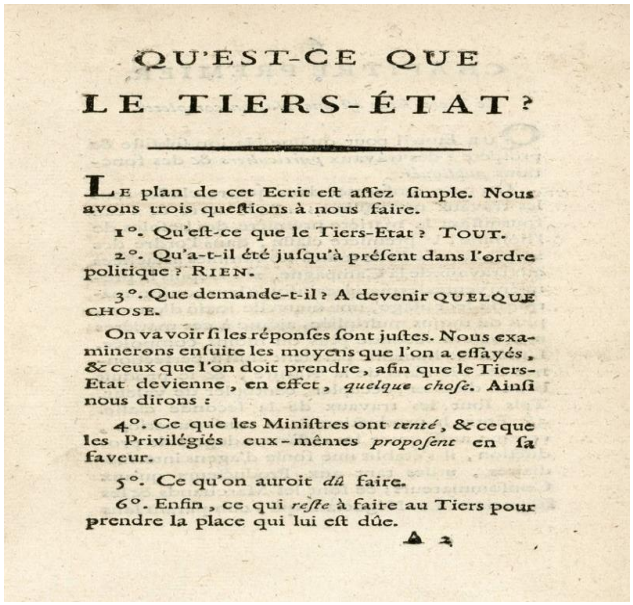
The Estates General included representation of three social orders: the First Estate for the clergy, the Second for the nobility, and the Third Estate for common people. They traditionally met separately, which meant that the first two could pass decisions without the consent of the third despite obvious population disproportionalities. In 1789, the First Estate represented 100,000 Catholic clergy, the Second around 400,000 noblemen, including women and children, and the Third more than 25 million people. The first two had about 300 delegates each (303 and 291 respectively) and the Third 610, however meeting as separate entities meant that the first two could outvote the third.



Opening of the Estates-General in Versailles 5 May 1789, Engraving by Isidore-Stanislaus Helman (1743–1806)

This obvious injustice had led to calls for political reforms, with one of the most eloquent and radical ones contained in the pamphlet *What is the Third Estate?*, published by Emmanuel-Joseph Sieyès commonly known as Abbé Sieyès (1748 – 1836). He started his pamphlet with the phrase: "What is the Third Estate? Everything. What has it been hitherto in the political order? Nothing. What does it desire to be? Something" (Sieyès, 1963).

Sieyès, a priest elected from the Third Estate, argued that there was no place in a properly constitute nation for privileged groups of any sort. The Third Estate, "which had hitherto counted for nothing in the political order, was in fact everything; for a nation was a body of associates living under a common law, and privileges by definition were exceptions to common law" (Doyle, 1984).



QU'EST-CE QUE
LE TIERS-ÉTAT?

LE plan de cet Ecrit eſt aſſez ſimple. Nous avons trois queſtions à nous faire.

1°. Qu'eſt-ce que le Tiers-Etat? TOUT.

2°. Qu'a-t-il été juſqu'à préſent dans l'ordre politique? RIEN.

3°. Que demande-t-il? A devenir QUELQUE CHOSE.

On va voir ſi les réponſes ſont juſtes. Nous examinerons enſuite les moyens que l'on a eſſayés, & ceux que l'on doit prendre, afin que le Tiers-Etat devienne, en effet, *quelque choſe*. Ainſi nous dirons:

4°. Ce que les Miniſtres ont *tenté*, & ce que les Privilégiés eux-mêmes *propoſent* en ſa faveur.

5°. Ce qu'on auroit *dû* faire.

6°. Enfin, ce qui *reſte* à faire au Tiers pour prendre la place qui lui eſt dûe.

A 2

First page of Sieyès' influential pamphlet What is the Third Estate?

Inner inequalities made the delegates' status more volatile. Two-thirds of the First Estate, the clergy, were often poorer than those elected for the Third Estate, the commoners. Voting restrictions to male French taxpayers at least 25 years old led to half the Third Estate being lawyers or local officials, one third businessmen, and a further sixth wealthy land-owners, not quite representing the urban and rural poor.

In any case, when the Estates-General met in May 1789, deliberations came to a halt, after a procedural requirement was tabled that all deputies be approved by the Estates-General as a whole, which would lead to a single sitting of the three estates. Following an extended stalemate, the Third Estate proceeded verifying its own delegates and by mid-June, having been joined by 100 members of the clergy, they declared themselves the National Assembly.

Louis XVI reacted by closing down the venue, however by the end of June most of the First Estate and almost 50 members of the Second had also joined, making the situation more or less a *fait accompli* for the king. Despite this development, people in the streets, very much supporting the new National Assembly, were suspicious of an intervention by the royal court impeding change and the presence of armed Swiss Guards in Paris did not calm those concerns.

After several turbulent days with rumors that the king would use force to disperse the National Assembly, on 14 July 1789, a large group of people attacked the Bastille, a royal fortress used as a prison, but of limited practical use at the time as it was stationing just seven people. Rumors had it that a large amount of ammunition had been stored there; people demanded they be removed together with a big canon. Following negotiations and a brief battle, the governor of the Bastille, Bernard René de Launay surrendered the fortress. Around 100 people died in the fighting, almost all of them from the attackers' side. Following the storming of the Bastille, a few of the garrison's soldiers were killed by the mob, including de Launay.

When Louis XVI heard about the Storming of the Bastille the next day, he famously asked Duke de la Rochefoucauld: "Is it a revolt?" … "No sire," the duke replied "it is a revolution." When he went to Paris a few days later, having accepted the new reality and set new administrative structures, it was clear that things had started to change.

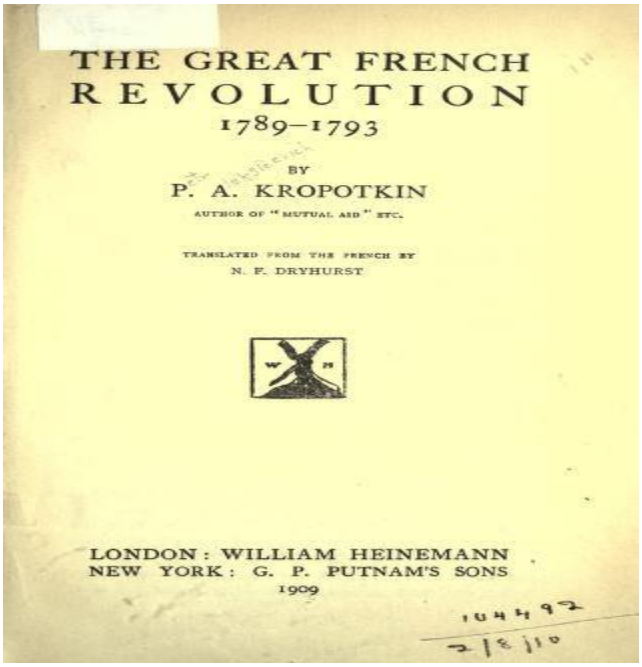


Storming of the Bastille, painting by Jean Pierre Houel (1735-1813), oil on canvas, National Library of France

The king would follow the new developments reluctantly. A few weeks before Bastille, he had ardently defended the *Old Regime*: "All property rights, without exception, shall be constantly respected, and His Majesty expressly understands under the name of property rights, tithes, rents, annuities, feudal and seigniorial rights and duties, and, in general, all the rights and prerogatives useful or honorary, attached to lands and fiefs or pertaining to persons" (Anderson, 1908).

Irrespective of what the main political figures, including the king, wanted or anticipated, the turmoil was much more than a mere political crisis. Mob attacks in Paris were in the spotlight, the lynching of the greatly unpopular Finance Minister Foullon and his son-in-law, while in the countryside the Great Fear erupted, a two-week period of insurrection and riot by peasants and attacks on aristocratic property, which was less respected than the king had proclaimed. The result of this lack of control of social order was additional pressure on the National Assembly, who then produced the August Decrees, which essentially ended the Old Regime, abolishing feudalism, and privileges of the nobility and seigneurial rights.

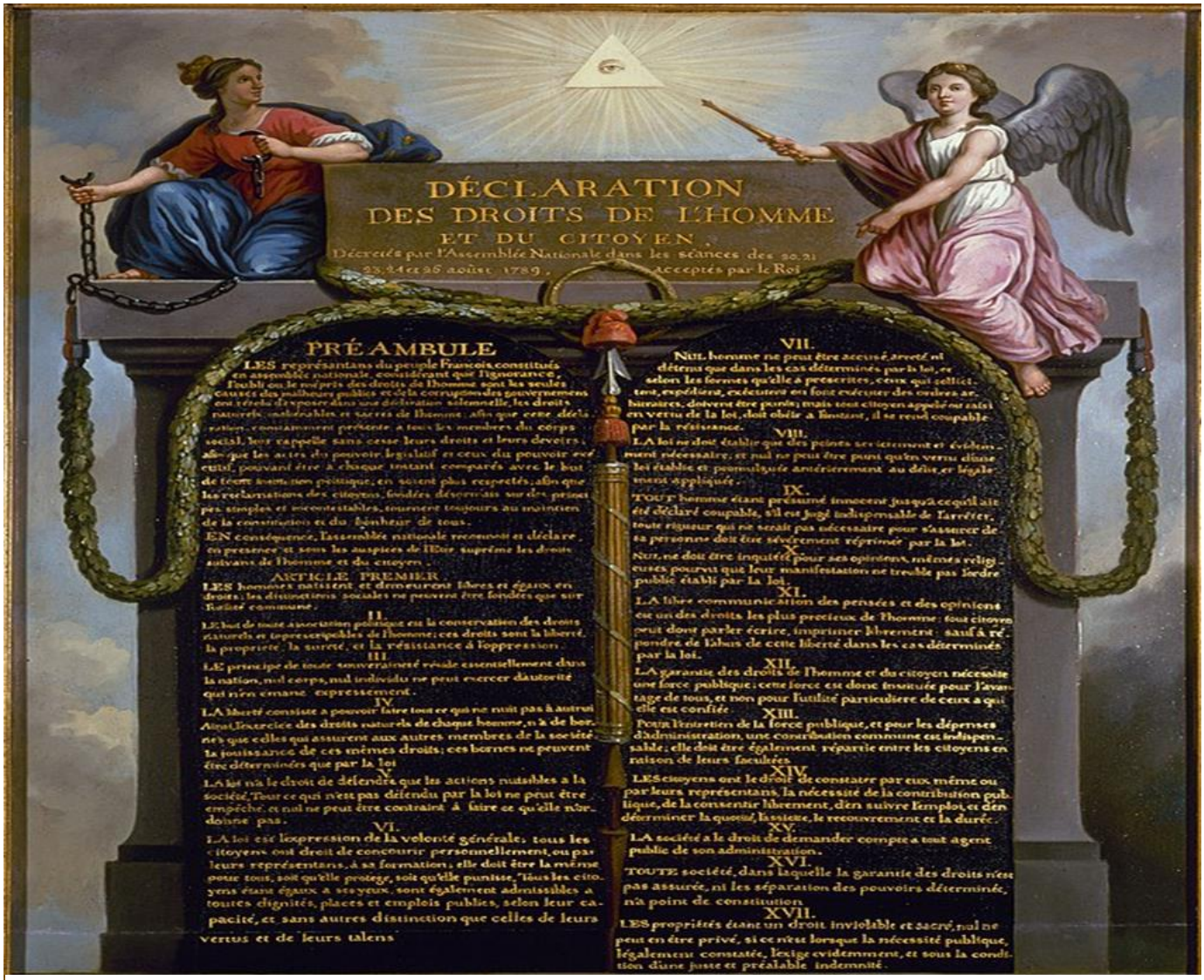
This radical transition would prove to be a slow process and the privileges would not be abolished overnight. The Russian revolutionary Kropotkin noted respectively that "the Assembly was carried away by its enthusiasm, and in this enthusiasm, nobody remarked the clause for redeeming the feudal rights and tithes, which the two nobles and the two bishops had introduced into their speeches – a clause terrible even in its vagueness, since it might mean all or nothing, and did postpone the abolition of feudal rights for five years" (Kropotkin, 1909).



Front cover of Kropotkin's The Great French Revolution, 1909 edition

Despite the obstacles, the *August Decrees* paved the way for the adoption of the *Declaration of the Rights of Man and Citizen* at the end of August 1789, which proved iconic in the development of human rights. Notwithstanding subsequent sociopolitical developments, the declaration marked the beginning of a new political era, constituting a reference text in subsequent centuries around the world, "the credo of the new age" in the words of French 19th century historian Jules Michelet.

The *Declaration of the Rights of Man and of the Citizen* contains 17 articles adopted by the National Assembly from 20 to 26 August 1789, less than six weeks after the Storming of the Bastille. The first draft is attributed to Marquis de Lafayette with the help of Thomas Jefferson, although different drafts were discussed and ideas synthesized by the National Assembly and the relevant committee.



The Declaration of Rights of Man and Citizen, 1789

The document draws from the ideas of the French Enlightenment and other 18th century thinkers. It is also influenced by the human rights documents related to the American revolution, including the Virginia Declaration. It served as a preamble to the first Constitution of the French Revolution in 1791 and subsequent constitutions.

The Declaration and its claim to be based on universally applicable fundamental principles proved extremely influential and remained relevant in the evolution of human rights all the way to the modern era.

Its revolutionary consciousness gave birth to a new mentality, which was shaped by a new time consciousness, a new concept of political practice, and a new notion of legitimization. "The historical consciousness that broke with the traditionalism of nature-like continuities; the understanding of political practice in terms of self-determination and self-realization; and the trust in rational discourse, through which all political authority was supposed to legitimate itself – each of these is specifically modern" (Habermas, 1999).

The basic principle of the Declaration of the Rights of Man and of the Citizen is that men are born and remain free and equal in rights; and social distinctions may be based only on common utility (Article 1). These rights are liberty, property, security, and resistance to oppression (Article 2). Article 3 establishes the principle of national sovereignty, noting that all sovereignty rests essentially in the nation. Article 4 notes that the natural rights of each man have no other limits than those which assure to others the enjoyment of the same rights.

The law is the expression of the general will and all citizens are equal in its eyes. It should: only prohibit actions injurious to society; establish only necessary punishments; and set the cases for which a person can be indicted, arrested, or detained. Every man is presumed innocent until judged guilty (Articles 5-9).

The Declaration establishes freedom of opinion, speech, and religion within the bounds of public order (Articles 10-11). It states that public authorities are instituted for the advantage of all, and for the administration's expenses, common taxation is indispensable, which should be apportioned equally among all the citizens according to their capacity to pay. The citizens have the right, through their representatives, to determine the means of apportionment, assessment, and collection, and the duration of these taxes. Every public agent for the administration can be held accountable (Articles 12-15). Article 16 proclaims that any society in which the guarantee of rights is not assured, or the separation of powers not settled, has no constitution. The last, Article 17, refers to private property and is indicative of the power struggle behind the development of all relevant documents. It notes that property being an inviolable and sacred right, no one may be deprived of it except when public necessity, certified by law, obviously requires it, and on the condition of a just compensation in advance. (Declaration of the Rights of Man and of the Citizen, 1789).

The French Revolution followed its own path with the Revolutionary Wars against a coalition of European monarchies, the radicalization of the revolution and the guillotines that attract public imagination, including the public execution of Louis XVI in early 1793, all of which are not thoroughly discussed here. It is important to underscore, however, that "nowhere were discussions of them more explicit, more divisive, or more influential than in revolutionary France in the 1790s" (Hunt, 1996).

This led to an increased interest across the globe on the revolutionary ideals. New articles in the French Constitution mandated public relief of the poor and free public education, innovative notions that would eventually inspire the discussion over social and economic rights. Some were inspired and demanded their own rights, including the black slaves in Saint-Domingue, today's Haiti, who initiated the Haitian Revolution, a successful slave uprising in ironically a French colony. Others tried, both by the sword and the pen, to shield traditional values and defend traditional ways to organize societies.

Above all, the human rights documents coming out of the American and French revolutions reflected a vision for a better, more just world. They can hardly be seen as the rational outcome of a historical process, neither were deeply rooted in human practices and historical precedence. As Lauren (2013) points out "the pharaohs of ancient Egypt, the caesars of Rome, the emperors of Byzantium, the caliphs of the Islamic world, the kings of Cambodia, the jarlar of Scandinavia, the khans of the Mongols, the emperors of China and Japan, the sultans and princes of the Indian subcontinent, the tsars of Russia, the kings of African tribes, the rajas of Java and Sumatra, and the emperors of the Aztecs and Incas, among any others and despite their considerable differences, all ruled traditional and highly stratified hierarchical societies. They drew sharp distinctions between the rulers and the ruled, and subjects were expected to respect and fear authority. The few governed the many, the rich and powerful dominated the poor and weak, and those with influence clearly sought to shape the prevailing culture by explaining this as part of *the natural order* of things to reflect and reinforce their interests."

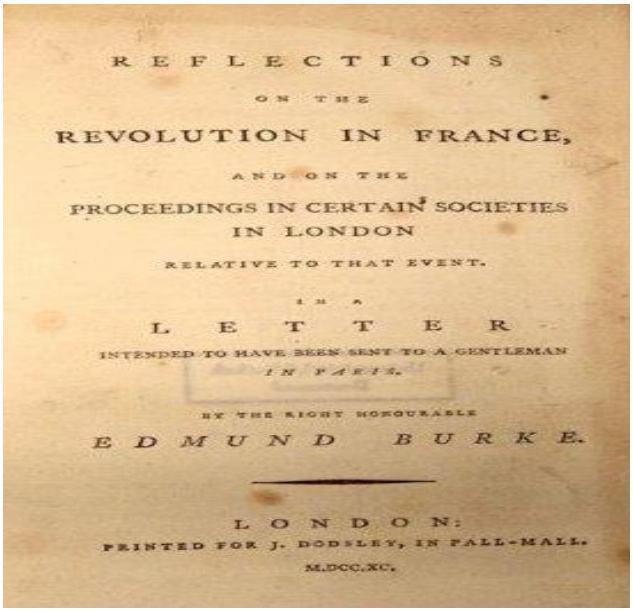
The revolutionary human rights texts came about as the result of social unrest, violence, war, and revolution. They can be seen to a certain degree as future aspirations, since reality was contradicting revolutionary ideals. For example, most of the population, including women and slaves were excluded by the celebratory announcements; stern opposition was to be expected in efforts to include them.

2.8 Visions and realities

As in every shift of power, not everyone was happy with the change in the status quo. Those that had an incentive for the preservation of a system based on hierarchy and distinguishing in terms of color, gender, class, nationality, or

beliefs were not impressed with the upcoming changes. Other than individuals longing to retain established privileges, in-group morality systems prioritized relationships between exclusive groups rather than embracing humanity. Some were longing for traditional values that had in the past led to an apparent stability and were appalled by the brute forces of social change that threatened to leave nothing untouched.

Before the ink from the *Declaration of the Rights of Man and of the Citizen* had dried out, Edmund Burke was unleashing his attack on this great departure from the ancient course. In his *Reflections on the Revolution in France*, published in 1790, he offered a conservative rejection of the new ideas and one of the most well-known attacks on the French Revolution, presenting a source of inspiration for counterrevolutionary theorists in the 19th century. Burke, who was born in Dublin and was a member of Parliament in the House of Commons, attacked the destruction of inherited privilege and emerging hierarchies, and established tradition. He saw the declaration itself as "a mine that will blow up, at one grand explosion, all examples of antiquity, all precedents, charters, and acts of parliament" (Burke, 1860). Burke decried human rights' declarations as metaphysical and the notion of human equality as monstrous fiction. He argued that social stability arises through the hereditary wisdom that is created via the lawful inheritance of power among governing elites.

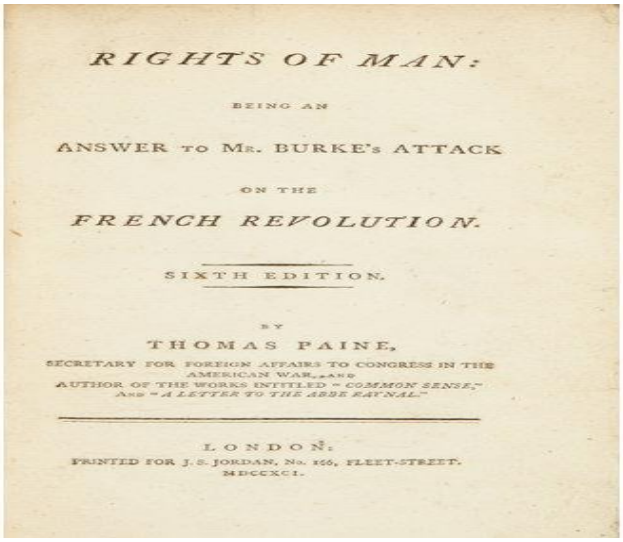

REFLECTIONS
ON THE
REVOLUTION IN FRANCE,
AND ON THE
PROCEEDINGS IN CERTAIN SOCIETIES
IN LONDON
RELATIVE TO THAT EVENT.
IN A
LETTER
INTENDED TO HAVE BEEN SENT TO A GENTLEMAN
IN PARIS.
BY THE RIGHT HONOURABLE
EDMUND BURKE.
LONDON:
PRINTED FOR J. DODSLEY, IN PALL-MALL.
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Front Page of Burke's Reflections on the Revolution in France

The notion of human rights also attracted criticism from other, even opposing sides of the philosophical and political spectrum. The utilitarian Jeremy Bentham published his influential critique A*narchical Fallacies of the Declaration, natural rights, and by extension human rights* in 1795. Bentham, whose ethical theory stressed that actions are morally right if they tend to promote happiness or pleasure and morally wrong otherwise, "built his fundamental argument around natural rights lacking any ontological basis, except to the extent that they reflected the personal desires of those propagating them" (Schofield, 2003). He worried that abstract declarations could replace positive law. "Rights is the child of law; from real law come real rights; but from imaginary laws, the 'law of nature', come imaginary rights…natural rights are simple nonsense; natural and

imprescriptible rights, rhetorical nonsense, nonsense upon stilts… and of these rights, whatever they are, there is not, it seems, any one of which any government can, upon any occasion whatever, abrogate the smallest particle" (Bentham, 1795).

Intellectual support of the new ideals was also strong. Thomas Paine, who had written the influential *Common Sense* prior to the American independence, produced a popular rebuttal of Burke's positions. His *Rights of Man* published in 1791 introduced the term human rights. "Man did not enter into society to become worse than he was before, nor to have fewer rights than he had before, but to have those rights better secured… The fact, therefore, must be that the individuals, themselves, each, in his own personal and sovereign right, entered into a contract with each other to produce a government: and this is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist" (Payne, 1791).


RIGHTS OF MAN:

BEING AN

ANSWER TO MR. BURKE'S ATTACK

ON THE

FRENCH REVOLUTION.

SIXTH EDITION.

BY

THOMAS PAINE,

SECRETARY FOR FOREIGN AFFAIRS TO CONGRESS IN THE AMERICAN WAR, AND AUTHOR OF THE WORKS INTITLED "COMMON SENSE," AND "A LETTER TO THE ABBE RAYNAL."

LONDON:

PRINTED FOR J. S. JORDAN, No. 166, FLEET-STREET.

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Front cover of Paine's Rights of Man, 1789 edition, image by Heritage Auctions

Paine's passionate book became a best-seller and many ascribed to the vision of an egalitarian, republican society. However, as it directly challenged vested interests, opposition was stern, both in the short-term for Payne himself who had to face a trial on his ideas on the right of the people to overthrow an unjust government and was found guilty in absentia, and in the long run over the decades.

The important thing on the evolution of human rights was that that an aspirational vision had been set, a new mentality proposed. The revolutions in the U.S.A. and France at the end of the 18th century constituted a break from the past. They gave expression to natural rights theory, restricted the prerogatives of monarchs and extended the principles of democratic government; and defined this first generation of human rights that emphasized civil and political rights. Nevertheless, even revolutionary wars, and violence could not change everything at once and the resistance to any broad-based extension of human rights for all remained determined and strong (Lauren, 2013).

There was significant distance between the ideals proclaimed in the American and French Revolutions and the realities on the ground. Universal right for all was not even on the table as practices and legislation denied rights to a significant part of the population. Half of the population, women, were excluded, same as slaves, individuals considered the property of other individuals. The 17th article of the French Declaration

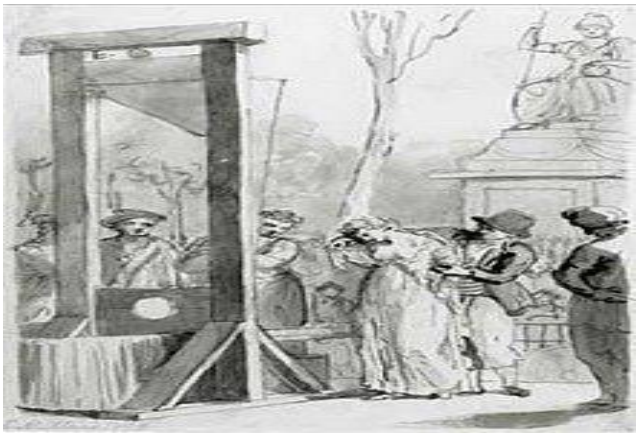
declaring property an inviolable and sacred right that no one may be deprived of, acquires a tragic character when one considers that property back then would extend over humans. A closer look shows that the declaration says little not only about women, but also about slaves and propertyless men. Despite forcefully arguing these issues during those fertile times, it would take more than a century for the notion of human rights to apply to all.

2.7 The thorny path towards human rights for all

Among all the elements of traditional difference that profoundly challenged larger visions of human rights and equality for all, gender stands out in striking clarity (Lauren, 2013). Women, during the course of history, have been the victims of discrimination in male-dominated, patriarchal societies, where traditions, laws, and norms were systematically used to create different spheres of social interaction for men and women, and vertical power structures. This prejudice and its resulting discrimination, exploitation, repression, and abuse applied to no less than one half of the human race (Lauren, 2013).

It would be unfair to consider that in the revolutionary times during the end of the 18th century in France, the argument that women should have equal rights as men was not tabled. Both women and men forcefully made the argument at the time; however, they constituted a minority since most viewed women as fundamentally different to men and certainly did not consider that the discussion on rights applied to them. Even during the radical changes brought forth during the French Revolution, some of women's civil rights were promoted, including legislation on divorces and inheritance, but overall women were systematically denied political rights.

A year after the adoption by the National Assembly of the *Declaration of the Rights of Man and of the Citizen*, Etta Lubina d'Aelders gave her speech *Discourse on the Injustice of the Laws in Favour of Men, at the Expense of Women* at the National Convention. A year later, the playwright and political activist Olympe de Gouges published the *Declaration of the Rights of Woman and of the [Female] Citizen*. In her manifesto she attests that women also have natural, inalienable, and sacred rights; outlines in 17 articles all the rights that women should enjoy as men; and urges women to recognize they have been treated unequal and to take action to remedy the injustices: "Women, wake up, the tocsin of reason sounds throughout the universe; recognize your rights" (Hunt, 1996). De Gouges ended up at the guillotine.



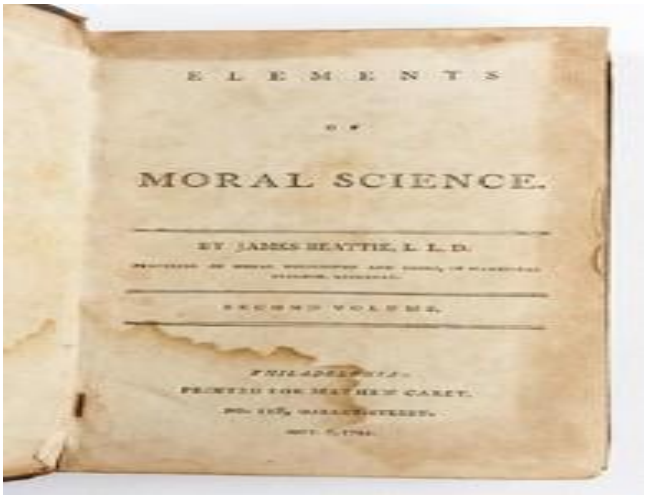
The execution of Olympe de Gouges, by artist Mettais, 1793

In 1792, after Charles Maurice de Talleyrand-Périgord read a not particularly flattering report for women to the French National Assembly, the English philosopher Mary Wollstonecraft published her book *A Vindication of the Rights of Women*, arguing for equal access to education and women's rights.

On the other side of the Atlantic, Judith Sargent Murray published her *On the Equality of the Sexes* in 1790, calling for gender equality and challenging the then prevailing view that men's intellect was superior to that of women. Opposition to these equity calls was stern. Indicatively, Abigail Adams, the wife of John Adams, second president and first vice-president, and one of the Founding Fathers of the U.S.A., in their famous correspondence warned that "if particular care and attention is not paid to the Ladies we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation" (Adams, 2016). Her husband's response was indicative of the era's spirit: "I cannot but laugh;…we know better than to repeal our masculine systems" (Adams, 2011).

Ironically, "some of the Enlightenment's great minds who espoused the democratic principles of liberation, equality, toleration, natural rights, and respect for the dignity of individuals and who challenges notions that a privileged few should rule over the vast majority of the population, at the same time revealed that they believed that these principles should be applied to their own gender and their own race alone" (Lauren, 2013). Rousseau thought that it was the order of nature for women to obey men. Montesquieu and Voltaire said that blacks are savage and barbarian and possess only a few ideas more than animals, while Hume argued that he is up to suspect that they are inferior to whites.

While the majority insisted on its traditional worldview on limiting rights' attribution to a certain number of males, a long list of individuals argued for universal rights since those early days. In the French National Assembly, Marquis de Condorcet noted that "either no individual of the human race has genuine rights, or else all have the same, and he who votes against the right of another, whatever the religion, color, or sex of that other, has henceforth abjured his own" (Lauren, 2013). James Beattie wrote in his *Elements of Moral Science* that "if human bondage in slavery is excusable or pardonable it is vain to talk any longer of the external distinctions of right and wrong, truth and falsehood, good and evil" (Beattie, 1793).


ELEMENTS

OF

MORAL SCIENCE.

BY JAMES BEATTIE, L.L.D.

Front page of James Beattie's Elements of Moral Science, 1794 edition

Differences on racial characteristics have confronted basic principles of human rights directly. "For centuries men and women ranging from Japan to the Islamic world and from the Indian subcontinent to Europe and then the Americas discriminated against those of 'backward races' whom they regarded as racially inferior. Skin color served to greater or lesser degrees as the badge of master and subject of the free and enslaved and of the dominators and dominated. Among many cases of racial prejudice, the most prolific is the white Western world" (Lauren, 2013).

Stemming from ideas found in Aristotle, Europeans were gradually convinced of their natural superiority, or the inferiority of non-white people, which legitimized discrimination. The Greek philosopher offered in his *Politics*, four centuries BCE, some of the most quoted references in defense of slavery, arguing even that it is beneficial to the slave: "For that some should rule and others be ruled is a thing not only necessary, but expedient; from the hour of their birth, some are marked out for subjection, others for rule…slavery is both expedient and right" (Aristotle, Politics, I 2-5).



Cartoon on racial discrimination, Kim Duchateau (Belgium)

Following a string of repetitive arguments from authority and pseudoscientific misconceptions, by the 18th century, theories on racial inferiority were used to legitimize "racial segregations, imperial conquests, colonial exploitation, and especially the capture and sale of living human beings info life-long bondage via the international slave trade" (Lauren, 2013).

In the U.S.A., the first constitution did not do many favors to slaves as it prohibited Congress from taking measures to eliminate the slave trade for 20 years. Important figures of the American Revolution arguing for liberty were slave-holders themselves, leading to ironic comments from the British, their main adversaries during the revolution, like Samuel Johnson's question: "How is it that we hear the loudest yelps for liberty from the drivers of Negroes?" (Johnson, 1913). The obvious disparity between "all men are created equal" and the institution of slavery led to fervent discussions on both sides of the Atlantic. The initial proclamations, however, were not much help for slaves, women, American Indians, or any other marginalized population group.

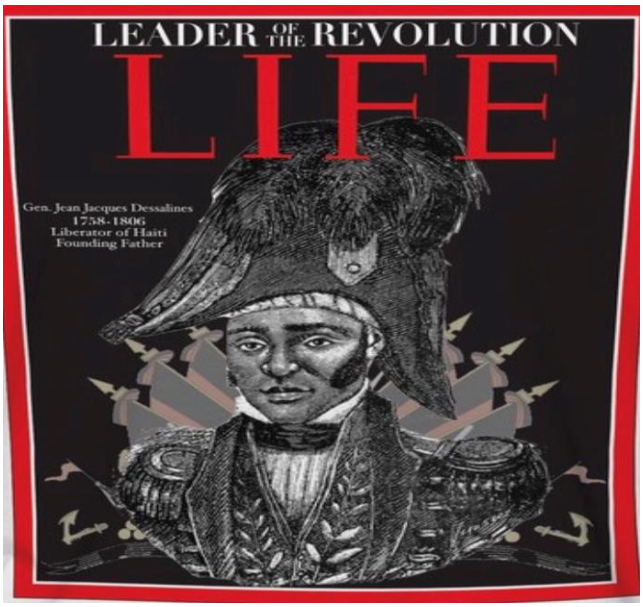
In France, discussions went back and forth with the obvious contradiction between the proclamation that "men are born and remain free and equal in rights, including liberty," while at the same time having colonies and participating in the slave system. The National Assembly initially tried balancing competing interests, granting rights to certain categories of blacks and mulattos, then

took those rights back, before eventually in 1794, abolishing slavery in all its colonies. Following the end of the French Revolution, Napoleon reinstalled slavery eight years later.

While the swing of power in revolutionary France shifted regularly, affecting national position on issues as important as slavery, real life in the French colonies was not static. Haiti was one such example and proved highly significant historically.

When Christopher Columbus first set foot on the island at the end of 1492, he claimed it for the Spanish Crown and named it *The Spanish Island - La Isla Española*, which became *Hispaniola*. The island's original inhabitants, the Taíno and Arawakan people were largely exterminated. Two centuries later and following many battles, war, and competition between European colonial forces, Spain ceded the western part of the island to the French, who called it Saint-Domingue.

By the time the French Revolution started, a slave revolt was under way in Saint-Domingue. When the French National Convention decided to abolish slavery in 1794 in all colonies, the news was greeted with enthusiasm. When Napoleon reinstated it in 1802, the former slaves would not so easily abandon their hard-fought liberty. Napoleon's brother-in-law Charles Leclerc and his army were defeated and on the 1st of January 1804, Jean-Jacques Dessalines proclaimed the country's independence, reclaiming the indigenous Taíno name of Haiti, the Land of Mountains. Becoming the first country in the Western hemisphere to unconditionally ban slavery, Haiti's declaration of independence ends with a vow to live free and independent, and to prefer death to anything that will try to place them back in chains (Dubois and Garrigus, 2006).



The Haitian revolutionary Jean Jacques Dessalines at the cover of Life magazine.

Setting a bad example of slaves successfully revolting and gaining independence, Haiti would face diplomatic obstacles and even more direct challenges during the nation's infancy. In 1825, a French fleet returned, demanding an indemnity in exchange of recognition. Facing brute force, Haiti agreed to the initial sum of 150 million francs; following many hurdles and additional loans to be able to finance the debt and repay, the agreed indemnity was eventually repaid in the 20th century, after the end of the Second World War.

Traditional opposition around the world would persist. In the words of

Edmund Burke, "the body of the people must not find the principles of natural subordination…rooted out of their minds by some misguided and inflammatory visions of human rights" (Lauren, 2013). Those revolutionary ideas could only destabilize societal structures and endanger law, order, and private property. Still, the seed had fallen and eventually, through many struggles, the world would slowly move towards the abolition of slavery and the promotion of women's rights.

The northern states of U.S.A. abolished slavery in 1804. U.S.A. and Britain passed motions abolishing the Atlantic slave trade three years later. Britain eventually ended slavery in its colonies in 1833, except for India. The French, who had reestablished it under Napoleon, abolished it once more in 1848, as did formally the U.S.A. for all its territory with the 13th Amendment in 1865, following the American Civil War. In the 20th century, slavery was declared illegal at the international level and Mauritania became the last country to abolish it, via a presidential decree, in 1981.

Establishing equal access to human rights for women took a considerable amount of time and effort by relevant social groups fighting for change, even regarding political rights. Things finally changed at the turn of the 20th century with New Zealand, a self-governing British colony then, granting the right to vote to women in 1893. In 1901, Mark Twain wrote that "he should like to see the time come when women shall help to make the laws. I should like to see that whiplash, the ballot, in the hands of women. As for this city's government, I don't want to say much, except that it is a shame - a shame; but if I should live twenty-five years longer - and there is no reason why I shouldn't - I think I'll see women handle the ballot" (Twain, 2006).

Twain died in 1910 at the age of 75, but indeed he was right. In 1915, Norway became the first sovereign country to award women the right to vote. From 1917 to 1920, many countries, including Canada, Britain, Germany, Austria, the Netherlands, and the U.S.A. did the same. France, perhaps ironically if one considers the French Revolution, was a late adopter as women got the right to vote in 1944, while other late adopters in Europe included Greece (1952) and Switzerland (1971).

As is apparent in modern societies, the path towards gender equality is thorny. Gender-based violence, sexual violence and harassment, workplace and other forms of discrimination continue to plague human societies. From a human rights policy perspective, gender-based discrimination is addressed nowadays by the Convention on the *Elimination of All Forms of Discrimination against Women*, which established an international bill of rights for women and girls, including states' obligations. It was adopted by the United Nations General Assembly in 1979 and has been ratified by more than 189 countries worldwide.

The Universal Declaration of Human Rights

3.1 The path towards the creation of the United Nations

The horror of the world wars has been repeatedly underscored as one of the main reasons for the call to set up an organization that would promote international cooperation, peace, prosperity, and social progress. Indeed, especially the Second World War with its unprecedented hatred, destruction, and killings, undoubtedly posed an existential question for humanity; either some form of cooperation could offer other, more peaceful, ways to address human disagreements and conflicts or self-destruction would only be a matter of time, especially in light of the new technological weapon capabilities.

Before the two world wars, international cooperation was fast becoming a prerequisite for economic development in a rapidly interrelated globe. In 1865, the International Telecommunications Union, the oldest international organization, was founded in Paris in an effort to standardize international communications. In 1874, the Treaty of Bern established the General Postal Union, which later became the Universal Postal Union as membership grew rapidly. The barriers impeding international exchange of letters were removed and 9 October, the day the treaty was signed, is now celebrated as World Post Day.

By the time the international community establihsed that mail could be exchanged freely across borders, other international initiatives focused on less pleasant topics. Following an initiative of Czar Alexander II of Russia, in the summer of 1874, representatives from 14 European countries gathered in Brussels to discuss an intenrational agreement on the laws and customs of war. While the resulting *Brussels Declaration* was not ratified as a binding convention, it opened the way to the Hague Conventions of 1899 and 1907.

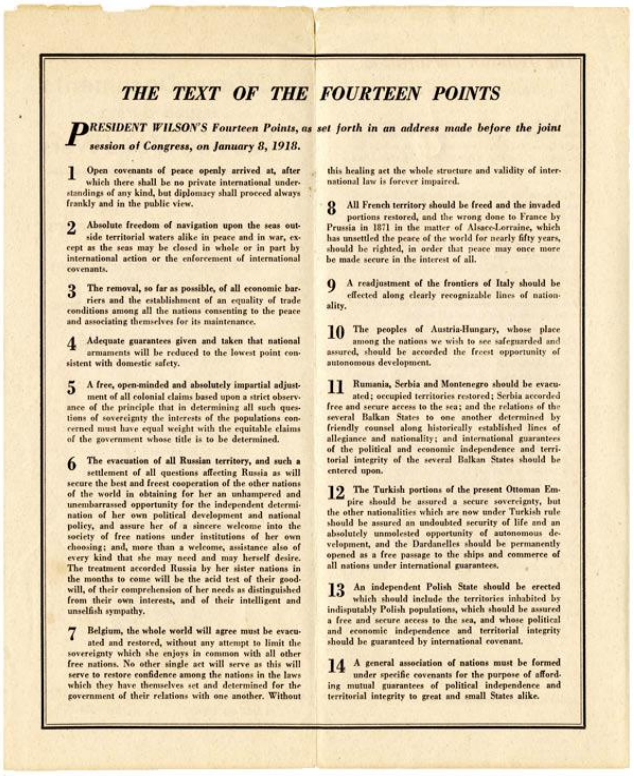
The Hague Conventions were essentially two international peace conferences held in The Hague, the Netherlands, which led to a series of treaties and declarations. The meetings tried to regulate the laws and customs of war, mainly according to the Lieber Code, an instruction signed by the U.S. President Abraham Lincoln during the American Civil War, regarding how soldiers should conduct themselves in

wartime. The resulting conventions further attempted to regulate maritime warfare, discharge of projectiles and explosives from balloons, use of poisonous gas, and types of ammunition. They foremost signed and ratified the *Convention for the Pacific Settlement of International Disputes*. One of the institutions established under the convention still exists today: the Permanent Court of Arbitration, a non-UN intergovernmental organization located in The Hague.

The rest of the provisions other than being a source of inspiration for future efforts, had little effect. A third conference in The Hague was scheduled for 1914, rescheduled for 1915, and eventually cancelled. Unfortunately for the proponents of international cooperation, the First World War had erupted.

While all the details, the sides, the battles, the winners, the losers, the whys, and the why nots of the First World War do not fall into the scope of this narration, the horrendous character of the conflict shaped future responses. By the time the bloodshed ended, in 1918, many parts of the world were in total collapse. An estimated 9 million people were killed in combat; an additional 5 million civilians died on the side. The Spanish Flu swept away what had remained.

In the aftermath of the shocks of the Great War (as known at the time before an even greater war came along), many drew the obvious conclusion that some kind of mutual understanding is necessary to prevent humanity's self-destruction. Among them was Widrow Wilson, who had been U.S. President since 1912. In the beginning of 1918, he introduced, in a speech to Congress, his '14 Points' for building a peaceful post-war world. The last of his famous points was a proposal for a "general assosiation of nations, under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike" (Wilson, 1918).



THE TEXT OF THE FOURTEEN POINTS

PRESIDENT WILSON'S Fourteen Points, as set forth in an address made before the joint session of Congress, on January 8, 1918.

1 Open covenants of peace openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view.

2 Absolute freedom of navigation upon the seas outside territorial waters alike in peace and in war, except as the seas may be closed in whole or in part by international action or the enforcement of international covenants.

3 The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

4 Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

5 A free, open-minded and absolutely impartial adjustment of all colonial claims based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

6 The evacuation of all Russian territory, and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy, and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their goodwill, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

7 Belgium, the whole world will agree must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

8 All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

9 A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

10 The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity of autonomous development.

11 Rumania, Serbia and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan States to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan States should be entered upon.

12 The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

13 An independent Polish State should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

14 A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike.

A pamphlet with Wilson's 14 points

Wilson's 14 Points did not materialize, especially regarding self-determination. The Paris Peace Conference in 1919-1920 effectively decided the post-war world order with the victorious Allies dictating the terms and the defeated Central Powers having no option but accepting them. Five treaties redrew the

maps of Europe, Asia, Africa, and the Pacific Islands. Financial reparations were imposed to the defeated, especially Germany, the verocity of which led to economic hardships and mass resentment.

Wilson's concluding point, however, did materialize. The *Treaty of Versailles*, drafted during the Paris Peace Conference, included the Covenant of the League of Nations, "the first universal organization entrusted with the lofty task to maintain peace and security throughout the world" (He, 1995). The Covenant consists of 26 articles and has three main objectives: ensure collective security, assure functional cooperation, and execute the mandates of the peace treaties. By 1920, more than 40 countries had joined the League of Nations, which was based in Geneva. Along with its main constitutional organs, the new body established the Permanent Court of International Justice and the International Labour Organization. The former was replaced by the International Court of Justice under the United Nations, while the latter exists to date.



Cartoon on the birth of the League of Nations, Brooklyn Citizen newspaper, January 1919, Hulton Archive

The League of Nations' short existence was marked by few successes and many failures in an increasingly polarized world. It managed to solve differences between Sweden and Finland over the Aaland Islands, between Germany and Poland over Upper Silesia, and between Bulgaria and Greece over a border conflict. The League also promoted a variety of social policies, including assistance towards poorer countries and international health campaigns (Ginneken, 2006). Under its auspices, the *Geneva Declaration of the Rights of the Child* was adopted, the first international human rights' document to specifically address children's rights.



The League of Nations Assembly, Geneva, Switzerland, 1930, Bundesarchiv, Bild 102-09042 / CC-BY-SA 3.0

If the League of Nations was envisioned as a global body, it was handicapped since its inception. Major countries had not been invited, including those defeated during World War I, and Russia, considered a pariah state setting a bad example following the October Revolution of 1917. Somehow ironically, the U.S.A, whose President Wilson had been instrumental to the creation of the

League never ratified the agreement and never became a member. Isolationist policies had long influenced US foreign policy and many believed that the country would be better off away from stagnated, old-fashioned Europe, which was also bearing new ideas, such as communism, that could derail the American vision.



THE GAP IN THE BRIDGE.

Cartoon criticizing the US lack of participation to the League of Nations, Punch Magazine, 10 December 2019, public domain

In the US, the 1918 midterm congressional elections had transferred control of the Senate from the Democrats to the Republicans, meaning that Woodrow Wilson needed bi-partisan support to approve the Treaty of Versailles and US participation to the League of Nations. Many Americans still favored the 1823 Monroe Doctrine that America should stay out of Europe's affairs and vice versa. In fact, when Wilson attended the Versailles Conference, he was the first US President to ever visit Europe. The Senate never ratified the Treaty of Versailles and the U.S.A. never joined the League of Nations. Wilson denounced isolationists as "contemptible, narrow, selfish, poor little minds that never get anywhere but run around in a circle and think they are going somewhere," suffered a severe stroke in 1919, and died five years later. He was awarded the 1919 Nobel Peace Prize for "his role as founder of the League of Nations".

Germany was identified as the main agressor that led to war, and in addition to having to compensate all damage done to the civilian population of the Allies and their property, was considered an outcast from the international community. Some years later, following the *Locarno Agreement*, a reconciliation process between France and Germany, Germany became a member of the League in 1926, which did not prevent the rise of Hitler to power and the path that led to the Second World War.

Russia was another notable absentee. While the country had initially joined forces with the Allies, following the Russian Revolutions of 1917, it had withdrew from the war signing a separate treaty with Germany in Brest-Litovsk. That treaty, through which "Germany had taken away a third of Russia's population, one half of Russia's industrial undertakinks and nine-tenths of Russia's coal mines, coupled with an indemnity of six biollion marks" (Woods, 2019), was the formal reason for Russia not being invited. The real reason was

the paradigm change following the 1917 revolutions.

The February Revolution had led to the abdication of Tsar Nicholas II. The October Revolution led to the Bolsheviks assuming power and the introduction of a series of measures that horrified Western European and other countries. These included the nationalization of all private property and banks, including bank accounts as well as the property of the Russian Orthodox Church. All foreign debts were repudiated and control of the factories was given to the Soviets.

The resulting paradigm change in Russia via Lenin's socialism was by no means welcome by other countries. Russia was not only not invited in the League of Nations, but allied forces from 13 countries, including the United Kingdom, France, and the U.S.A., fought to overthrow the new regime during the Russian Civil War, following the 1917 revolutions. Eventually, the Red Army fighting for the Bolsheviks defeated the White Army that encompassed diverse, interests, leading in 1922 to the formation of the Soviet Union.



Political cartoon depicting the communist fear soon after the 1917 revolutions, The Atlanta Constitution, January 19, 1919

In the mid-1930s things changed. The rise of Adolph Hitler and the Nazi party in power in Germany made clear that international cooperation was not one of their top priorities. Hitler became Chancellor in early 1933 and at the end of the same year, alongside Reichstag elections, a referendum was held on whether Germany should leave the League. An astounding 95% voted it should leave and signs of a forthcoming war were evident in Europe.

Under such a political climate, the League of Nations organized a series of meetings on disarmament and, on September 1934, invited the Soviet Union to join the League and "bring its valuable cooperation" (Plettenberg, 1983). The Soviet Union became a member of the League and a permanent member of the Council, only to be expelled five years later as punishment for agression against Finland at the beginning of the first Soviet-Finnish War, also known as the Winter War.

By then, though, the blows to the League of Nations' efforts to promote peace and international cooperation were constant and a full-fledged world war did not look like a distant option. In 1935, Italy invaded Ethiopia as the League of Nations watched helplessly with Benito Mussolini famously noting that "the League is all very well when sparrows shout , but no good at all when eagles fall out" (Woods, 2019). In 1936 the Spanish Civil War broke out. In 1937 the second Sino-Japanese War erupted. Three months prior to the expulsion of the Soviet Union from the League of Nations,

Germany had already provided the final blow to the League; its invasion of Poland marked the start of another tragic period in human history, the Second World War.

The arrangements on the post-World War I world order in the Paris Conference and the *Treaty of Versailles* have been criticized as extremely harsh on the defeated, effectively paving the way with accumulated discontent to the Second World War. In addition, Wilson's vision on self-determination had hardly materialized. However, as some researchers note, the whole process "launched the transformation of the norms and standards of international relations that established the self-determining nation-state as the only legitimate political form throughout the globe, as colonized and marginalized people demanded and eventually attained recognition as sovereign, independent actors in international society" (Manela, 2007).

3.2 Humanity in shambles

World War II was much worse than the first one; in fact, it was by far the deadliest conflict in human history with an estimated 70-85 million people dying, either directly in battle or indirectly from famine and disease. Its ending found Europe utterly destroyed and humanity realizing the horrors it was capable to materialize, including horrendous war crimes, massacres, and genocides, including the Holocaust.

Dwelling on all the important details of World War II does not serve the scope of this narration, and most information on the rise of fascism is hopefully already known, thus extensive detail will not be provided. The war officially started on 1 September 1939 when Germany invaded Poland and ended six years later following the drop of the atomic bombs in Japan. The vast majority of the world's countries participated in the war, with very few exceptions that retained neutrality till the end. They were grouped around two camps: the Axis powers led by Nazi Germany, the Empire of Japan, and the Kingdom of Italy; and the Allies grouped around the United Kingdom, the Soviet Union, and the U.S.A.

Following the German invasion of Poland, the United Kingdom and France declared war on Germany. The latter invaded France, Denmark, and Norway in April 1940 and the Tripartite Pact formally creating the Axis powers was signed in September. By the summer of 1941, all of continental Europe was under Axis control.

The Allies main forces entered the war gradually with the United Kingdom present from the beginning. The Soviet Union, having singed the Molotov-Ribbentrop Pact in 1939 entered the war following its invasion by Germany through the *Operation Barbarossa* in the summer of 1941. The U.S.A., despite President Roosevelt's address at the end of 1940 to become "the great arsenal of democracy" (Roosevelt, 1941) by supporting the Allies, entered the war after the Pearl Harbor attack at the end of 1941.

After plenty of bloodshed, the war eventually ended in 1945 with the Allies defeating the Axis powers. In late April, capturing the Reichstag in Berlin symbolized the defeat of Germany; in late August, following the use of two nuclear weapons in Hiroshima and Nagasaki, the only time such weapons have been used in human history, Japan also surrendered, effectively ending the Second World War. But discussions on the new world order had started long before that.



A soldier raising the flag of the Soviet Union over the Reichstag, symbolizing the defeat of Nazi Germany

The first Inter-Allied Meeting took place during the summer of 1941, while Europe was under German occupation, with the exception of the United Kingdom. Representatives from the Allies, including governments in exile, met in London and issued the *Declaration of St James's Palace*. In addition to assurances on their common fight against the Axis Powers, the third clause refers to the basic principles of a post-world order, stating that "the only true basis of enduring peace is the willing co-operation of free peoples in a world in which, relieved of the menace of aggression, all may enjoy economic and social security; and that it is their intention to work together, and with other free peoples, both in war and peace to this end" (St. James Agreement, 1941).

A couple of months later, U.S. President Franklin D. Roosevelt and British Prime Minister Winston Churchill met and issued a joint declaration, which became known as the *Atlantic Charter*, a term coined by the Daily Herald newspaper. The Charter provided a general vision of the post-war world, including on provisions on people's right to self-determination and the need for global economic cooperation and advancement of social welfare.

On the first day of 1942, representatives from 26 countries, including the U.S.A., the Soviet Union, the United Kingdom, and China signed a brief declaration, subscribing to the *Atlantic Charter* and pledging mutual allegiance. The document is known as the *Declaration by United Nations*, with the term *United Nations* coined by Roosevelt to describe the Allies as an alternative to 'Associated Powers', which was used by the U.S.A. during its interference in World War I. The second preambular paragraph of the Declaration stresses that "complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands…" (Declaration by the United Nations, 1942). While the

reference on religious freedom was an addition to the *Atlantic Charter* advocated by the US, the reference to human rights was a sign of post-war developments.



Representatives from 26 countries sign the Declaration by United Nations, UN photo, public domain

The major Allies met multiple times prior to the end of the war, including at the highest level which was personified by US President Frankin Roosevelt, UK Prime Minister Winston Churchill, and the Soviet Union Premier Joseph Stalin. Meeting took place in Moscow in October 1943, Tehran a couple of months later, Dumbarton Oaks in the fall of 1944, and culminated in Yalta, a resort city at the Crimean Peninsula in February 1945, which effectively decided the new world order. These meetings paved the way for the formation of the organization of the United Nations in its modern form.

In the *Moscow Declaration* the idea of establishing a global organization was articulated, recognizing "the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security" (Joint Four-Nation Declaration, 1943). The *Tehran Declaration* refers to a "world family of Democratic Nations" (Tehran Declaration, 1943), seeking cooperation. One of the main outcomes of the Dumbarton Oaks Conference was the working document *Proposals for the Establishment of a General International Organization*. And eventually in Yalta, the three main powers agreed that "a Conference of United Nations should be called to meet at San Francisco in the United States on the 25th April, 1945, to prepare the charter of such an organization, along the lines proposed in the formal conversations of Dumbarton Oaks" (Dumbarton Oaks Proposals, 1945).

3.3 Creating the United Nations

The San Francisco Conference took place as planned, starting on 25 April 1945. Close to one thousand delegates from 50 nations gathered for the United Nations Conference on International Organization. Thousands of people attended the meeting as advisers, secretariat, staff, civil society representatives, press, and observers. There was, however, a notable absentee. On 12 April, two weeks before the beginning of the San Francisco Conference Franklin Roosevelt died; the meeting went ahead as scheduled and Harry Truman succeeded Roosevelt in the US Presidency.



Plenary view at the San Francisco Conference, AP photo

The San Francisco Conference set the tone for most subsequent meetings under the United Nations. Plenary sessions took place chaired in rotation by the four sponsoring countries, the U.S.A., the United Kingdom, the Soviet Union, and China, while most of the work took place in parallel contact groups and informal consultations with interested countries. Every decision was subject to a two-third majority vote.



Political cartoon on the San Francisco Conference by John Knott

Discussions, as one can imagine, were not easy. Delegates head in front of them more than 5000 documents (UN, 1945). They organized the work around four Committees, four general commissions, 12 technical committees, and numerous sub-committees and informal groups.



Meeting of Commission I, General Provisions, Committee 1, Preamble, Purposes and Principles; San Francisco, 4 May 1945, UN photo

Delegates managed to successfully complete this enormous task in exactly two months. On 25 June 1945, they unanimously adopted the Charter of the United Nations and the Statute of the International Court of Justice. Signatures followed the next day.

The Charter came into force, as agreed, when China, France, Great Britain, the Soviet Union, the United States, the five permanent members of the Security Council, and a majority of the other signatory countries had ratified it. This condition was fulfilled on 24 October 1945 and the United Nations came into existence. That day is celebrated as United Nations Day.

The first U.N. General Assembly, with 51 nations represented, opened in

London on 10 January 1946. On 24 October 1949, exactly four years after the United Nations Charter went into effect, the cornerstone was laid for the present United Nations headquarters, located in New York City.



UN Headquarters in New York, under construction in 1949 and in the modern day, UN photos

Human rights references in the charter lack precision and are rather vague. There is no concrete discussion on either civil and political rights, or social and economic ones. Those familiar with word choices in policy documents note the selection of relatively softer language, such as "encouraging" and "promoting" human rights in the document. In fact, stronger language had been suggested by Latin American countries, including Panama, Chile, and Cuba, but was rejected following concerns that more compelling language may be legally binding (Russell, 1958). The position of the Latin American countries portrayed the outcome of the Inter-American Conference held in Mexico City a couple of months prior to the San Francisco Conference.

The UN Charter consists of a preamble and 111 articles grouped in 19 chapters. It is the constitutive instrument of the United Nations, establishing its purpose, structure, and overall framework, including its main organs and procedures, and outlining the rights and obligations of Member States.

The preambular section starts with "We the Peoples of the United Nations," obviously echoing the American Constitution calls, among others, for reaffirming "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."

The purposes of the UN included in Article 1 are to: maintain international peace and security; develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples; achieve international cooperation, including in promoting respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and be a center for harmonizing the actions of nations towards these ends.

Chapter II defines the membership criteria; Chapters III-XV describe the UN organs and institutions; Chapters XVI and XVII describe arrangements for integrating the UN with established international law; and Chapters XVIII and XIX outline the processes for amendment and ratification. The Charter was amended in 1963, 1965, and 1973.

In San Francisco, many insisted that human rights should have a more prominent role and that the suggested Economic and Social Council (ECOSOC) should be elevated to one of the primary UN organs and the Conference's outcome further included a call for the development of a Declaration of the International Rights and Duties of Man by the Inter-American Juridical Committee. Non-governmental organizations raised similar concerns before and during the San Francisco Conference.

Maybe even more important than the vague character of references to human rights, the Charter's Article 2(7) set the tone for the subsequent discussion on matters of human rights and national sovereignty. Article 2(7) states that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII (action in respect to threats to peace)." This article on national sovereignty initiated further discussions during the drafting of the *Universal Declaration of Human Rights*.

Overall, the Charter contains seven references to human rights. In addition to the references in the preamble and in the section on the purposes of the United Nations, similar language can be found in the provisions on the General Assembly's function and powers (Article 13), the ECOSOC, one of the six principal organs of the UN (Article 62), and the Trusteeship System (Article 76). Articles 55 and 56 on international economic and social cooperation state that members pledge to achieve "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." The final reference, being the one that paved the way to the *Universal Declaration of Human Rights*, was under ECOSOC in Article 68, mandating the newly formed council to set up commissions in economic and social fields and for the promotion of human rights.

3.4 Drafting the Universal Declaration of Human Rights

ECOSOC, in its first session in May 1946, established a preparatory committee, the Nuclear Commission on Human Rights, to propose terms of reference for the new Commission on Human Rights. In the second ECOSOC session, two months later in June, the Commission on Human Rights was created (ECOSOC Resolution 9/II), electing its 18 members following technical consultations to ensure balance and expertise. The commission members were instructed representatives of their governments and were tasked with developing an international bill of rights. In that respect the Secretariat was requested to provide a compilation of existing human rights treaties and other relevant information.

During the negotiations on the *UN Charter*, suggestions were made that members of ECOSOC commissions should reflect expertise on the respected fields rather than professional diplomats; this idea was not pursued following the argument that only official governmental representatives would ensure that recommendations could be implemented (Johnson and Symonides, 1998).

At its first meeting in early February 1947, the Commission on Human Rights discussed whether the suggested human rights document to be developed should focus on setting standards, in the form of a declaration, or envision a legally binding instrument. This debate ensued until the final adoption of the Declaration. The Commission decided to form a drafting committee to work on an International Bill of Human Rights.



First meeting of the Drafting Committee on an International Bill of Rights (Commission on Human Rights), United Nations, Lake Success, New York

The task at hand was by no means a simple one. Delegates had to come up with a conception of human rights, universally accepted across a wide range of cultures and traditions, political systems, and levels of socioeconomic development. As a first step, the Commission's members had to provide an affirmative answer to the question of whether a universal standard on human rights is possible at all. Not everybody agreed such was the case and the debate continued in the following decades. In a famous example, the American Anthropological Association (AAA), in its statement submitted to the Commission on Human Rights in 1947, offered a strong defense of cultural relativism, noting that "standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any declaration of human rights to mankind as a whole" (AAA, 1947). Cultural relativism, which stressed that cultures cannot be ranked, but that all humans see the world through the lens of their own culture, and judge it according to their own culturally acquired norms, had been axiomatic to anthropology since the early 20th century and the work of Franz Boas. In 1999, the AAA adopted the *Declaration on Anthropology and Human Rights*, which is its modern position.

The AAA's concerns, while expressing an anti-colonial and anti-racist stance, would lead to abandoning the plan of producing a universal declaration and the political will to express a vision of cooperation in a wounded world. The AAA however, in the same submission timely underscored a fundamental

challenge in the effort of the Drafting Committee. "The problem of drawing up a Declaration of Human Rights was relatively simple in the 18th century, because it was not a matter of human rights, but of the rights of men within the framework of the sanctions laid by a single society. Today the problem is complicated by the fact that the Declaration must be of world-wide applicability. It must embrace and recognize the validity of many different ways of life…The rights of Man in the 20th century cannot be circumscribed by the standards of any single culture, or be dictated by the aspirations of any single people."

Indeed, when the Drafting Committee started its work in June 1947 on the draft declaration, few efforts had been made to address the building blocks of such a universal approach on human rights. A few months later, in March 1948, UNESCO initiated a process on the underlying principles of human rights to permit the formulation of a declaration. The process included a mail survey and a meeting in Paris, which is often referred to as the Philosophers Committee. While the outcome document of this process was not taken up by the Commission on Human Rights and its Drafting Committee, its content has been used on subsequent discussions in defense of universalism. "The group found after consulting with Confucian, Hindu, Muslim, and European thinkers, that a core of fundamental principles was widely shared in countries that had not yet adopted rights instruments and in cultures that had not embraced the language of rights. Their survey persuaded them that basic human rights rest on "common convictions," even though those convictions are stated in terms of different philosophic principles and on the background of divergent political and economic systems." (Glendon 2001, 222, quoting from UNESCO 1949, 258–59). However, this description seems to provide an additional dimension to an ambitious effort that attracted limited participation (Goodale, 2018).

Prior efforts included an initiative at the end of 1943 of the Universities Committee on Post-War International Problems and the World Peace Foundation to discuss post-war international human rights, which reported a consensus on the substantive character of human rights, mirroring largely Western concepts of civil and political rights (Johnson and Symonides, 1998). Perhaps the most influential effort was conducted by the American Law Institute. In 1942, the institute appointed a committee representing different cultural and philosophical systems, to develop a common understanding on the content of a universal approach to human rights.

After two years of work, the Committee produced the *Statement of Essential Human Rights*. Panama, whose former president was a member of the committee, tried to incorporate the outcome into the UN Charter and to have it adopted during the first UN General Assembly. While both attempts were

unsuccessful, later on and during the initial stages of the work of the Drafting Committee, John Humphrey, the Secretariat member that was instrumental in the development of the Universal Declaration, was tasked with providing a first draft. He drew from a variety of sources and submissions, noting that "the best of the texts from which I worked was the one prepared by the American Law Institute, and I borrowed freely from it" (Humphrey, 1984).

The Drafting Committee met twice, in June 1947 and May 1948. The report of its second session, which was forwarded to the third session of the Commission on Human Rights, contained in its Annex I the draft International Declaration of Human Rights. The Commission examined the report, addressed several articles of the draft declaration and submitted it to the seventh session of the ECOSOC. ECOSOC adopted the declaration and passed it on to the third session of the UN General Assembly, held in Paris from 21 September to 2 December 1948.

Finalizing the declaration in less than two years was a remarkable feat, inconceivable in modern international diplomacy, which moves at a much slower pace. The main burden for the document's preparation fell on the shoulders of the members of the Drafting Committee. The Drafting Committee consisted of the chair of the Commission on Human Rights Eleanor Roosevelt from the U.S.A., Vice-Chair Peng-chun Chang from China, and Rapporteur Charles Malik from Lebanon. It was soon enlarged to include Commission members René Cassin (France), Alexander Bogomolov (Soviet Union), Hernán Santa Cruz (Chile), William Hodgson (Australia), and Charles Dukes (UK). From the Secretariat, the Canadian John Peters Humphrey carried the main responsibility for gathering and analyzing the background documents and his role was instrumental. Other members of the Commission on Human Rights also played an important role, including Hansa Mehta from India and Fernand Dehousse from Belgium.

The Drafting Committee's task was complicated as they had to breach fundamentally differing worldviews in producing a document on rights that could be accepted by everyone. Diverging opinions extended in the social, political, cultural, and philosophical realms.



Eleanor Roosevelt, the widow of Franklin Roosevelt, was invited by Harry Truman to join the first US delegation to the United Nations, apparently for political reasons. The fact left senior diplomats unimpressed, and succeeded in placing her at the Social, Humanitarian, and Cultural Committee, perceived as less important, eventually becoming the President of the Commission on Human Rights. Her contribution was important, mainly mediating to find common ground when differences arose, but also magnifying the declaration's global impact.

The emergence of the Soviet Union under a Marxist ideology as a world power after the Second World War and the formation of the Eastern Bloc, a group of socialist states of Central and Eastern Europe, and Asia under the influence of the Soviet Union following the Yalta agreement, generated various conflicts. These conflicts were mainly of political and philosophical nature during the drafting of the declaration, but eventually became propaganda and competition tools, leading to the Cold War that lasted several decades. Marxism's group-based understanding of rights was in many cases distant to individual affirmations of rights. The belief that human rights could only be achieved within the framework of societal needs and rights challenged some of the fundamentals of strong proponents of individual freedom. The strong focus on civil and political rights, prioritized by Western countries, was seen by Marxists as a dangerous emphasis on rights that are "nothing more than bourgeois rights, that is, rights which could be exercised, at best, by the capitalist class and which, at worst, could be used as an instrument of oppression against the working class" (Johnson and Symonides, 1998). Instead, they prioritized economic and social rights, targeting economic inequality and unequal access to resources. On the other hand, the Soviet Union and its allies were often criticized about the status of civil and political freedoms in their countries.

Maybe unexpectedly, these disagreements, although present, did not become prominent during the declaration's negotiations. The Soviet representatives, including Bogomolov, played a limited role and were often rotated during negotiations. The Eastern Bloc's proposals were usually defeated upon voting during deliberations. Still, some expressions of economic and social rights have been included in the final declaration. Its proponents did not only include Eastern Bloc countries but also Western delegates, who were sympathetic to socialism or non-governmental organizations, including workers' groups.



Peng-chun Chang, the Vice-Chair of the Commission, was a Chinese academic, philosopher, and diplomat. Although he received his higher education in U.S. universities (Clark and Columbia), his thought was significantly influenced by Confucianism. He was "consistently characterized by his peers as the towering intellect of the Commission on Human Rights, who more than anyone else was responsible for imparting a universal rather than purely Western character to the Universal Declaration of Human Rights (Twiss, 2007).

Another source of potential problems derived from the philosophical realm. As already discussed in previous chapters, the Western notion of rights was developed via the natural law notion; humans are endowed with rights by nature or God. This conception, whether utilizing the religious element or not, still used an extra-human phenomenon as the foundation of a rights' theory.

Legal positivism, on the other hand, stressed that law and rights are determined by human actions, and societies, unconstrained by extra-human law, voluntarily and rationally impose behavioral limits. The understanding of law as essentially a matter of social fact, although not always called legal positivism and significantly developed since the times of Hobbes and Bentham, had a multi-disciplinary influence during the 20th century.

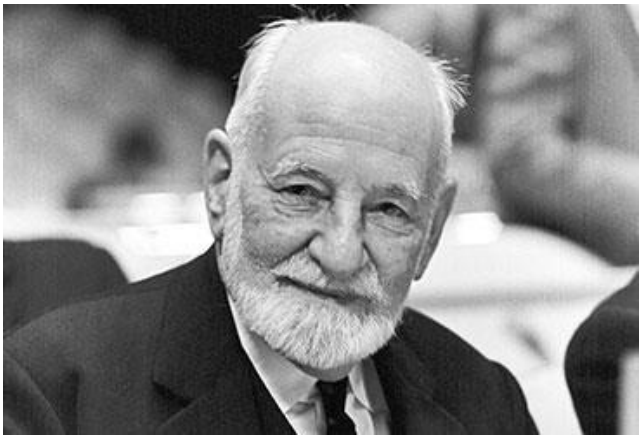


Charles Malik, the Rapporteur, was a Lebanese academic, philosopher, and diplomat. Malik was a Greek Orthodox Christian, educated at the American University of Beirut, Freiburg, and Harvard, and strong believer in the natural law basis of human rights. He succeeded Roosevelt as President of the Commission on Human Rights and later became President of the UN General Assembly.

This divergence mainly arose during discussions on whether the declaration of human rights would refer to God or not. The final decision not to include such reference disappointed some delegations, including from the Netherlands who regretted that "man's divine origin and immortal destiny had not been mentioned in the declaration, for the fount of all those rights was the Supreme Being, who laid a great responsibility on those who claimed them. To ignore that relation was almost the same as severing a plant from its roots, or building a house and forgetting the foundation" (Van Roijen, 1948). Opposition to such reference came from a number of participants, "both those which took a positivist stance and those non-Western countries which viewed natural law theories as emblematic of Western cultural values" (Johnson and Symonides, 1998)



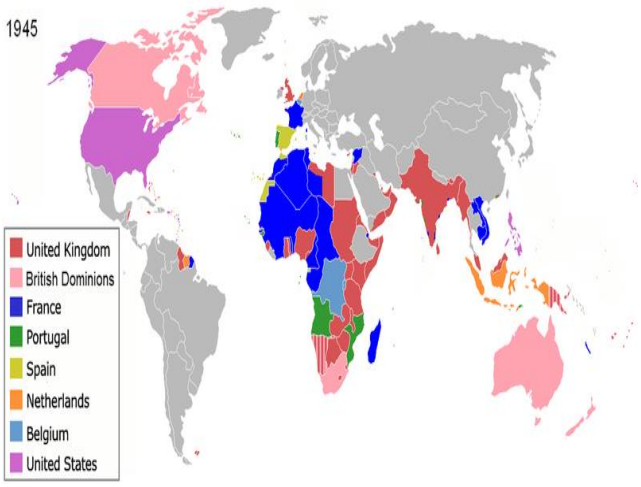
John Peters Humphreys, the Director of the Division of Human Rights in the Department of Social Affairs, was the Secretariat member that was most instrumental in the drafting of the declaration. Humphreys, an international lawyer and former Dean of the Faculty of Law at McGill University, among others, collected, analyzed, and incorporated all submissions and background documents into the first working document for the Drafting Committee.



René Cassin, a French jurist, judge, and philosopher was an instrumental member of the Drafting Committee as he produced an early draft and contributed in various other ways in the declaration's development. He later became President of the European Court of Human Rights and received the Nobel Peace Prize in 1968.

Western cultural values' salience in the drafting process was also a concern. The significantly divergent opinions discussed above, both philosophically and politically were indeed the product of Western thought in the sense that both the natural law and positivist theories, as well as Marxist thought, were products of centuries of evolution of European intellectual production. Developing a declaration of universal character would, by definition, have to include all human rights' formulations from different parts of the globe.

One of the main problems was that during the declaration's deliberations, much of the world was still under colonial occupation where some countries, especially in Asia, were just gaining their independence. Both the African and Asian continents, and thus relevant cultures, were underrepresented in 1948. The case was blatant for Africa; out of 54 sovereign African countries that are UN members today, a mere four were represented.



World map highlighting colonized countries after the Second World War, creative commons

In a rather short period of time, from 1870 to the start of World War I in 1914, the percentage of Africa under direct control of some European country rose from 10% to 90%. This invasion and colonization of the continent is called the Scramble for Africa. Two countries remained independent during the period, Liberia and Ethiopia, although the latter was occupied by Italy in the events prior to World War II. These two countries were two of the African representatives in the deliberations for the declaration of human rights in 1948. The third was Egypt, which gained its independence in 1922 and the fourth was South Africa, which on the verge of apartheid, was by no means expressing the African culture.

The highly complex South African history offers good insights of an evolving world, still full of contradictions, as colonization suggests. Similar contradictions had haunted earlier declarations of rights, which had to reconcile the fact that all men were proclaimed equal with the fact that some were slaves.

Jan Christian Smuts (1870-1950), the South African statesman and military leader, who played an important role in the creation of the Union of South Africa in 1910 and served as Prime Minister from 1919-1924 and 1939-1948, personifies the era's contradictions. Smuts strongly supported both the League of Nations and the United Nations. At the San Francisco Conference that established the United Nations in 1945, he proposed adding the phrase "fundamental human rights" into the preamble of the Charter.

Still, in South Africa white leaders, including his government, were working on securing white supremacy over its African, Indian, and "colored" populations.
"Smuts relied on anthropological theory to justify segregation on the basis of fundamental cultural difference, and cited new fossil finds, pointing to South Africa's singular importance in hominid evolution, to suggest that prehistoric differences between different races were profound and perhaps unbridgeable in the present" (Dubow, 2019).
While all these posed significant problems for any declaration that would envision fundamentally equal rights for all humans, the tragedy was that Smuts was a moderate among South African whites at the time. In 1948, him and his party lost the election to the National Party; among the accusations directed to Smuts were that he prioritized his personal international reputation over national interests. The National Party initiated the notorious apartheid, a system of extreme racial segregation, discriminating against the non-white majority in the country. Apartheid lasted from 1948 to 1994 and its blatantly discriminatory policies created a global anti-apartheid movement.

Bridging all these different opinions was not an easy task; still, the draft was prepared in a remarkably short period of time, compared to the pace of modern international negotiations. Less than a year had passed since the first meeting of the Drafting Committee where Chang suggested to Humphrey that he put aside his other duties for six months and study Chinese philosophy, after which he might be able to prepare a text for the Committee (Humphrey, 1984), to the submission of the draft declaration to the Commission on Human Rights for its consideration. A bit more than 30 months after ECOSOC's first meeting, which initiated discussions regarding fulfilling its human rights mandate, the UN General Assembly had before it, at its third session (30 September – 7 December 1948), a declaration of human rights for its consideration.

Both the structure and the content of every single article of the declaration had been negotiated at length. Following the two-year long ordeal for the Commission on Human Rights and its Drafting Committee to come up with an agreeable text, the General Assembly assigned the matter to its Third Committee, the Social, Humanitarian, and Cultural Committee. Delegates devoted an additional 85 sessions, in addition to sub-committee and informal meetings to shape the final text, suggesting more than 150 amendments and voting article by article. A brief discussion of the first article reveals the difficulties in finding common ground among delegations.

The Declaration's first article states that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood." An initial problem that arose was answering the natural law-related question regarding "by whom" human beings are endowed with reason and conscience. Suggestions during the drafting process included referring to God or to nature were rejected, with the final language denoting that human beings are endowed with reason and conscience by virtue of being human.

An initial draft of the article read "all men" are born free. The Indian representative Hansa Mehta is widely credited with changing the phrase to "all human beings," with the support of other delegations, including Denmark and Dominican Republic. Some, including the Danish delegate, felt that reference to "all human beings" was still weak, stressing that by not explicitly referring to the equal rights of women, discriminatory policies could be still envisaged in male-dominated societies.



Hansa Mehta, the representative from India to the UN Commission on Human Rights (to the right the representative from Guatemala Carlos Bauer), UN photo/Marvin Bolotsky

The inclusion of the term "conscience" was the result of the compromise derived from an initial suggestion in the Drafting Committee by Chang to include, in addition to reason, the notion of "two-men mindedness," his translation of the Confucian concept of *jen*, which denotes human heartedness, benevolence, what makes man distinctively human. "It was fully understood by the Drafting Committee of the Human Rights Commission that "conscience" referred to the emotional and sympathetic basis of morality. Taken together, reason and conscience were the epistemic sources for recognizing human dignity and rights, serving also to justify the prescription to act in the spirit of brotherhood" (Twiss, 2007). While similar debates dominated the majority of the declaration's articles, the different commissions and committees were still able to table a draft declaration for the General Assembly's consideration and final vote on 9 December 1948.

The two other related issues, a treaty and measures on implementation would have to wait a little longer. Some delegations and mainly the British, believed that a vague declaration of goals related to human rights would need to be accompanied by a relevant treaty in order to be enforceable, which would be legally binding upon its signatories and would include duties, obligations, and compliance mechanisms. A draft treaty was in fact submitted by the British delegation and relevant discussions took place during the drafting process before abandoning the plan to focus on the

declaration. Discussions on measures of implementation were less dense and mainly included compilations of submissions during the drafting process. At a rather late point in time, during the third meeting of the Commission on Human Rights, delegates finally decided to focus on the declaration and postpone discussions on establishing a legally binding treaty and implementation measures. Both became central to deliberations focusing on the adoption of the *Universal Declaration of Human Rights*.

On 10 December 1948, the UN General Assembly took the final vote on the *Universal Declaration of Human Rights*, following another intense debate. The Third Committee's rapporteur, Haitian delegate Emile Saint Lot, emphasized that "the UN representatives had sought out among old-established, or recent political, economic, social, and cultural rights, formulas which might be acceptable to men from the four corners of the world. The text of the draft declaration represented a kind of common denominator for those various ideas. It was perhaps not perfect, but it was the greatest effort yet made by mankind to give society new legal and moral foundations" (Ramcharan, 2020). Charles Malik highlighted that "thousands of minds and hands have helped in its formation. Every member of the United Nations has solemnly pledged itself to achieve respect for and observance of human rights. But, precisely what these rights are we were never told before, either in the Charter or in any other national instrument. This is the first time the principles of human rights and fundamental freedoms are spelled out authoritatively and in precise detail. I now know what my government pledged itself to promote, achieve and observe" (Lauren, 2003).



Cartoon on human rights by Ramses Morales (Cuba), Cartooning for Peace

The General Assembly approved the *Universal Declaration of Human Rights* with 48 votes in favor, 0 against, and 8 abstentions, which came from South Africa, Saudi Arabia, and six countries of the communist bloc (Soviet Union, Belarus, Ukraine, Poland, Yugoslavia, and Czechoslovakia – Belarus and Ukraine). 10 December, the day of the UDHR adoption is now celebrated as International Human Rights Day.



A view of plenary from Palais de Chaillot in Paris, on 10 December 1948, during the third General Assembly and the Declaration's adoption, STF/AFP/Getty Images

3.5 Concerns and disagreements

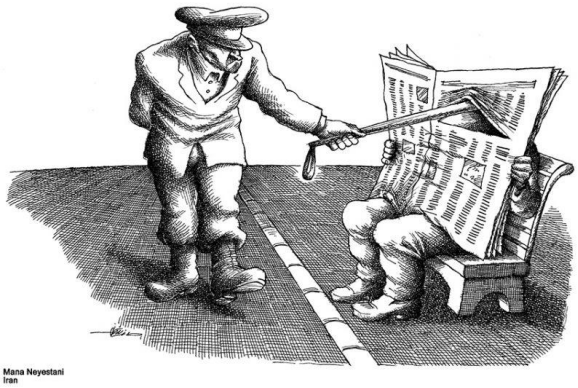
Perhaps over-simplifying matters, South Africa under its apartheid government, abstained for what the Declaration contained; the Soviet Union and its allies for what the Declaration did not contain; and Saudi Arabia due to concerns over specific articles that touched upon religious matters.

South Africa, initiating its apartheid policy following the 1948 general elections, which took place six months prior to the third UN General Assembly and the negotiations on the *Universal Declaration of Human Rights*, was clearly violating a number of the provisions included in the declaration. While in closing remarks, the South African delegate Harry Andrews stressed that the declaration was going way too far, contemplating and including social, cultural, and economic rights not initially envisaged, this was only part of the story. The first apartheid laws that were enacted in the following years were the Prohibition of Mixed Marriages Act, the Immorality Amendment Act, and the Population Registration Act, which, in 1950, classified all South Africans into four racial groups. Such blatantly discriminatory policies could by no means be reconciled with the UDHR basic principles.

The basic right of participation to one's government was, according to the South African position in the negotiations, not universal, but conditioned by qualifications of franchise. Obviously, contrary to the Declaration's vision, these qualifications in the South African case included issues of race. In the 1948 elections for example, not only did all candidates for the House of Assembly and the Senate have to be of European descent, but few people were even allowed to vote, with a limited number of Africans meeting electoral qualifications and voting for seven white candidates separately. South Africa's abstention in 1948 was more than understandable; an intellectually honest stance, taking into account its blatantly racist position at the time, would be to vote against the Declaration altogether. While the struggles of South Africans and the condemnation by the international community against South African apartheid policies in the following decades fall outside the scope of this narrative, the South African historical path is one of the most inspiring for visionaries of human rights and freedom. The Population Registration Act was finally abolished in 1991, the first free elections took place in 1994, and the constitution was rewritten in 1996 as one of the most progressive in the world, enjoying high acclaim internationally.

Some of the philosophical and political reasons behind the abstention of the Communist Bloc have already been briefly mentioned. While the ideological divide between the Western and the Eastern Bloc was apparent during negotiations, some degree of consensus was reached and the Soviet representatives took part in the proceedings, influencing the document's development. Indeed during negotiations "they could claim on paper what remains

the most full-blown declaration of rights yet propounded in world history, in the "Stalin" Constitution of 1936, conceived at a moment when the relevance of communism for the individual personality mattered, both for citizen self-consciousness and Western propagandizing" (Moyn, 2012). Certain economic and social rights that the Soviet Union and others were so keen to promote were included in the Declaration. At the same time, however, suspicions from the Soviet side that expressions of civil and political rights would be used from Western countries as a means for interference to domestic events were ever present.

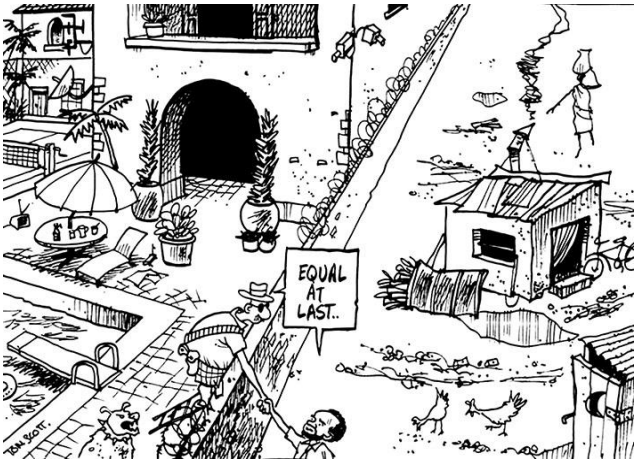


Cartoon on censorship and freedom of expression by Mana Neyestani (Iran), Cartooning for Peace

After all, the Soviet Union was still under the stronghold of Joseph Stalin and accusations for lack of political freedoms were not easy to deny during the Stalinist purges of dissidents.

Last minute efforts to postpone the Declaration's adoption for a year in order to address outstanding issues failed, as did final suggestions amending a number of articles. The camps were well formed. The Soviet proposal that attracted the largest number of votes – one suggesting that nations should amend their laws to enforce the Declaration's principles – only received 10 votes, a mere four in addition to the six of the Soviet Bloc.

Numerous other suggestions were defeated, including one stating that "it is the inalienable right of every person freely to express and disseminate democratic views and ideas, to defend democratic systems and democratic State and social institutions, and to combat fascism in the spheres of ideology, politics, and State and public life" (Wilson, 1963). In that specific case, the Eastern Bloc voted against the article in question rather than abstaining as usual to express its dissatisfaction. In his concluding remarks, the Yugoslav representative emphasized that the declaration "simply codified long since secured political and civil rights, while not effectively incorporating the collective interdependence of humanity that modern economics made so glaringly necessary" (Moyn, 2012).



Cartoon on inequality by Tom Scott, New Zealand, Cartooning for Peace

The six abstentions from the Eastern Bloc mirrored the increasing competition for world dominance and the looming Cold War. The adoption of the *Universal Declaration of Human Rights,* even if the communist countries had not abstained, would be far too peripheral to seriously pose a challenge to the struggle for world dominance. In any case, as we shall see, in the years immediately after the adoption of the Declaration, human rights were associated with anti-communism.

Still, the Soviet Union and its allies while being strong defenders of both socioeconomic rights and self-determination of territories under colonial control, they were at the same time blatantly violating the civil and political rights of a significant part of their own population in a highly authoritarian, repressive regime. Despite not signing the Declaration, the Soviet Union used it to promote anti-colonization efforts and in the propaganda war that raged during the following decades to attack the U.S.A. on its record regarding racial equality. As Weitz notes "a country that on its home turf was deeply repressive, that denied large segments of its populace basic rights and at times murdered and terrorized its own citizens on scale, this same country promoted human rights at the international level (Weitz, 2018).

Saudi Arabia's abstention was mainly centered around disagreements on language in the article that described the right to marriage and changing one's religion or belief. While other Muslim countries signed the Declaration, Saudi Arabia chose to abstain.

Regarding marriage, the representative of Saudi Arabia noted that "apparently the declaration's authors had…ignored more ancient civilizations which were past the experimental stage, and the institutions of which, for example, marriage, had proved their wisdom down through the centuries" (Johnson and Symonides, 1998).

The disagreement on the right to change one's religion was more serious as Saudi Arabia viewed it as apostasy, violating the cultural principles of Islamic States. More than 40 years later, in 1990, the Organization of the Islamic Conference produced the *Cairo Declaration of Human Rights in Islam*; it contains no reference to a right to change religion.

The Declaration had a wide-spread effect that perhaps even its conceptual parents did not expect. Although relatively less prominent at the time of its conception, it gradually managed to capture humanity's collective imagination. The Declaration frames the necessary conditions for human existence that ought to be guaranteed. Despite its shortcomings and the criticism it drew, it contains no invocations of a specific moral theory, no theological or other foundations, or any theory about society's origins. It does not even refer to a specific political system other than a vague reference to democracy. It does not prioritize one class of human rights over another and address them as indivisible.

The Universal Declaration of Human Rights

The Declaration contains the preamble and 30 Articles.

The preambular part recognizes that the inherent dignity, and the equal and inalienable rights of all humans is the foundation of freedom, justice, and peace. It references the Four Freedoms as articulated in the 1941 Roosevelt's State of the Union address (freedom of speech and worship as well as freedom from want and fear). It further denotes that human rights should be protected by the rule of law and, mirroring language found in previous declarations, notes that otherwise people may be "compelled to have recourse, as a last resort, to rebellion against tyranny and oppression."

30 Articles are then listed "as a common standard of achievement of all peoples and all nations."

Article 1, as already noted, posits that humans are born free and equal in dignity and rights, endowed with reason and conscience. Article 2 emphasizes that human rights belong to all without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Articles 3-5 guarantee rights to life, liberty, and security, and freedoms from slavery and torture. Articles 6-12 stress that all are equal before the law, have the right to legal support and to a fair and public trial, being considered innocent until proven guilty. They further offer protection from arbitrary arrest and imprisonment as well as violation of privacy and damaging of reputation.

Articles 13 and 14 guarantee freedom of movement and to seek asylum from persecution. Article 15 emphasizes the right to a nationality.

Article 16 underscores the right to marry for men and women of full age, without limitations of race, nationality, or religion, and with their free and full consent.

Article 17 addresses the right to own property.

Article 18 underscores freedom of religion or belief, noting the "right of thought, conscience, and religion," including changing one's religion or belief.



Illustrations by Yacine Ait Kaci from the illustrated UN publication of the UDHR, available at https://www.un.org/en/udhrbook/index.shtml

Development of international treaties on human rights and the environment

4.1. Development of relevant international treaties on human rights

Since 1965, the General Assembly of the UN adopted a number of International treaties on general and particular issues, The Universal Declaration of Human Rights, together with the two Covenants constitute the International Bill of Rights. Conventions are legally-binding treaties between contracting parties. Nine of these are the core human right treaties having a control mechanism, a Committee which is responsible of - examining the periodic reports by member states on how the implement the provisions of the treaty, and issuing concluding observations-adopting General Comments or Recommendations to membsr states on how to implement the provisions of the treaties- examine indivisual or state comlplaints concerning violation of the conventions.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Adopted in 1965, in force in 1969. Signing members must commit to promoting racial harmony and eliminating racial discrimination. This includes outlawing hate speech and making membership in racist organizations a crime. It has 182 member states.

International Covenant on Civil and Political Rights (ICCPR)

Adopted in 1966, the Covenant is based on the Universal Declaration of Human Rights. It came in force in 1976. It's part of the International Bill of Human Rights and requires parties to respect rights such as the right to life, freedom of religion, and freedom of speech. It has 173 member states. The two Optional Protocols were adopted in 1966 also. The first one is on submitting complaints by indivisuals and states before the Human Rights Committee, which acts as a semi-judiciairy organ. The second Optional Protocol abolishes the death penalty.

International Covenant on Economic, Social, and Cultural Rights (ICESCR)

It was adopted in 1966 and came in force in 1976. It's part of the International Bill of Rights and commits parties to progress with rights such as labor rights, right to health, and right to education. As of 2023, 171 parties ratified the treaty. It has one Optional Protocol, adopted in 2008, on submitting complaints by indivisuals and states before its Committee on Economic, Social and cultural rights.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

It was adopted in 1979 and came in force in 1981. It defines discrimination against women. It requires that all ratifying states protect gender equality in their legislation, repeal discriminating laws and introduce new laws protecting women from discrimination. Until 2023 it was ratified by 189 states. The Optional Protocol, adopted by the General Assembly in 1999, sets up a process where individuals or groups can call out national violations of the treaty to the CEDAW's expert committee.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Adopted in 1984, and came in force in 1987. This treaty requires states to take concrete action against torture. Until 2023 166 states ratified the treaty. The Optional Protocol has been in force since 2006. It sets up a system where independent international and national bodies visit countries where people are experiencing torture and other treatment that falls under the treaty.

Convention on the Rights of the Child (CRC)

Adopted in 1989 and came in force in 1990. It establishes the civil, political, social, economic, and cultural rights of children. There are also three Optional Protocols, two of them adopted in 2000. It has 196 member states. The first Protocol is on the involvement of children in armed conflict, while the second covers child prostitution, child pornography, and the sale of children. The third on submitting comlplaints was adopted in 2011, in force 2014. **The CRC has adopted 26 general comments the last one is on Human Rights and environments!**

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

Adopted in 1990, in force in 2003. It protects migrant workers' rights, drawing a firm connection between human rights and migration. Its purpose is not to establish new rights but to ensure that migrants receive equal treatment and the same working conditions as nationals. It was ratified by 57 member states only, none of them is European.

Convention on the Rights of Persons with Disabilities (CRPD)

Adopted in 2006, entered in force in 2008. It has 185 member states. Its goal is to protect the rights of people with disabilities. It identifies where people with disabilities need adaptations and where rights must be reaffirmed and reinforced. The Optional Protocol sets up a system where individuals claiming to be victims of a violation can bring a case before the UN Committee on the Rights of Persons with Disabilities.

International Convention for the Protection of All Persons from Enforced Disappearance (CED)

Adopted in 2006, the treaty entered in force in 2010.It has 68 member states. It intends to prevent forced disappearance. This occurs when a government or entity acting on behalf of the government secretly kidnaps or imprisons a person. The Committee on Enforced Disappearance examines relevant cases.

4.1. Regional developments

A. EUROPE

1. THE COUNCIL OF EUROPE

1. The Convention for the Protection of Human Rights and Fundamental Freedoms, known as the **European Convention on Human Rights**, was adopted on 4 November 1950 and came in force on 3 September 1953. It was the first instrument to give effect to certain of the rights stated in the Universal Declaration of Human Rights and make them binding. It has 46 member states. The mechanism of implementation is **the European Court of Human Rights**, an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. In 1998 it has sat as a full-time court and individuals can apply to it directly.

Since its adoption, it has been amended a number of times and supplemented with many rights in addition to those set forth in the original text adopting a number of Additional Protocoles Nos 1,4,6,7,12,13,14,15,16.

Convention Protocols

- Protocol No 1– incorporated three new rights, right to property, education, elections (1954)
- Protocol No 4 – civil imprisonment, free movement, expulsion (1968)
- Protocol No 6 – abolishing the death penalty in peacetime (1985)
- Protocol No 7 – crime and family (1988)
- Protocol No. 12 – prohibition of discrimination (2005)
- Protocol No. 13 – abolition of the death penalty in all circumstances (2003).

Protocol 14 – reforms in different areas concerning the Court (2010).

- Protocol No. 15 – amending the Convention, introduces a reference to the principle of subsidiarity and the doctrine of the margin of appreciation (2021).
- Protocol No. 16 – enables the highest national courts and tribunals, to request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the Protocols (2018)

2. The European Social Charter

The European Social Charter was adopted in 1961 and entered in force on 26 February 1965. The European Social Charter aims at securing a number of social and economic rights, and it is therefore the natural counterpart to the European Convention on Human Rights which guarantees civil and political rights.Ratifyed by 46 member states of the Council of Europe.

Protocols of 1988, 1991 and 1995

- Protocol of 1988, incorporated new rights (1992)

- Protocol of 1991, improvement of the mechanism of implemantation of the Charter (1992)

- Protocol 1995, introduced the collective complaints (1998)

The European Social Charter (revised), 1996

The European Social Charter in its revised version was adopted in 1996 and entered in force on 1 July 1999. The revised Social Charter will thus only progressively replace the original Charter, the terms of which it updates and extends. By taking into account new social and economic developments, the revised Charter amends certain existing provisions and adds new ones.

The European Committee of Social Rights is the mechanism of implementation.

-examines periodic reports submitted by member states

-examines collective complaints acording to Protocol 1995

II.EUROPEAN UNION

1. Lisbon Treaty (2009)
2. The Charter of Fundamental rights of the European Union (2009)

Mechanism of implementation the European Court of EU

B. AMERICA

ORGANIZATION OF AMERICAN STATES

1. The **American Convention on Human Rights**, adopted on 22 November 1969 and came in force on 18 July 1978.Ratified by 25 out of 35 member states.

The bodies responsible for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both of which are organs of the Organization of American States (OAS).

- **Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights** (the "Protocol of San Salvador"), was signed on 17 November 1988. It includes the right to work, the right to health, the right to food, and the right to education. It came in force on 16 November 1999 and has been ratified by 16 countries.

- **Protocol to the American Convention on Human Rights to Abolish the Death Penalty**, was adopted at Asunción, Paraguay, on 8 June 1990. While Article 4 of the American Convention had already placed severe restrictions on the states' ability to impose the death penalty , signing this protocol formalizes a state's solemn commitment to refrain from using capital punishment in any peacetime circumstance. To date it has been ratified by 13 countries.

C. AFRICA

ORGANIZATION OF AFRICA UNION

1.The African Charter of Human and Peoples' Rights

The African Charter of Human and Peoples' Rights ('the Banjul

Charter), adopted in 1981, entered in force 21 October 1986, with 53 member states. Mechanism of implementation of the Charter is the **African Commission on Human and Peoples' Rights** (1987).

2. Protocol to the Charter

A Protocol to the Charter was adopted in 1998 and came in effect in 2005 establishing the **African Court of Human and Peoples' Rights.**

3. The African Charter on the Rights and Welfare of the Child

Adopted in 1990, came in force in 1999

D. ARAB WORLD

THE LEAGUE OF ARAB STATES

The Arab Charter on Human Rights adopten in 2002, in force 15 March 2008.

Mechanism, the Arab Committee on Human Rights

The Arab Court of Human Rights was adopted in a separate Convention in 2014.

E.ASIA

ASEAN

ASEAN Intergovermental Commission on Human Rights

ASEAN Human Rights Declaration (9 November 2012)

4.2. Selected developments in international environmental policy

The development of multilateral environmental policy after the Second World War was influenced by certain key events, as well as by the increasing understanding that global problems require global agreements and commitments towards solving them.

Two key events stand out:

- The 1972 United Nations Conference on the Human Environment in Stockholm, Sweden, which is considered by many as the first world conference to make the environment a major issue, which resulted in the creation of the United Nations Environment Programme (UNEP).
- The 1992 United Nations Conference on Environment and Development, also known as the "Earth Summit", was held in Rio de Janeiro, Brazil, which resulted in the Rio Declaration and the genesis of the Rio Conventions.

Efforts towards resource conservation started before 1972, evidenced by the International Convention for the Regulation of Whaling, which was agreed in 1946 and subsequently led to the International Whaling Commission, the International Convention for the Conservation of Atlantic Tunas (ICCAT), which was established in 1966, or the Antarctic Treaty, which entered into force in 1961.

The Convention on Wetlands of International Importance, also known as the Ramsar Convention, was signed in 1971 and entered into force in 1975. The Convention provides a framework for

national action and international cooperation for the conservation and wise use of wetlands and their resources. The Convention currently has 172 parties. A total of 2,471 wetland sites, covering more than 250 million hectares, are included in the Ramsar List of Wetlands of International Importance.

The UN Educational, Scientific and Cultural Organization (UNESCO) Convention Concerning the Protection of the World Cultural and Natural Heritage, also known as the World Heritage Convention, was adopted in 1972 and entered into force in 1975. Linking the concepts of nature conservation and the preservation of cultural properties, it aims to promote cooperation among nations to protect heritage around the world that is of such universal value that its conservation is important for current and future generations. 193 parties have adhered to the convention.

Following the Stockholm Conference, two major conventions on resource management were created. The Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES) was established as a response to growing concerns that over-exploitation of wildlife through international trade was contributing to the rapid decline of many species of plants and animals around the world. The Convention was signed by representatives from 80 countries in 1973 and entered into force in 1975. There are currently 184 parties to the Convention. There are approximately 5,800 fauna species and 30,000 flora species protected under the three CITES Appendices.

The Convention on the Conservation of Migratory Species of Wild Animals (CMS), was adopted in 1979 and entered into force in 1983. Also known as the Bonn Convention, it recognizes that states must be the protectors of migratory species that live within or pass through their national jurisdictions and aims to conserve terrestrial, marine, and avian migratory species throughout their ranges. CMS currently has 130 parties and also provides for the development of specialized regional agreements. To date, seven such agreements and 19 memoranda of understanding (MoUs) have been concluded. The seven agreements aim to conserve: populations of European bats; cetaceans of the Mediterranean Sea, Black Sea, and contiguous Atlantic area; small cetaceans of the Baltic and North Seas; seals in the Wadden Sea; African-Eurasian migratory waterbirds; albatrosses and petrels; and gorillas and their habitats.

UNEP launched its Regional Seas Programme in 1974 with the aim of protecting the marine environment using a "shared seas" approach to address the accelerating degradation of the world's oceans and coastal areas. More than 143 countries have joined 18 Regional Seas Conventions and Action Plans for the sustainable management and use of the marine and coastal environment. Although individual Conventions and Action Plans reflect a similar approach, each is tailored by its governments and institutions to suit the unique environmental challenges faced in each region.

A series of conventions aiming to protect the marine environment at the regional level were developed, including: the 1996 Convention for the Protection and Development of the Marine Environment and Coastal Region of the Mediterranean

Sea (Barcelona Convention); the 1981 Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region; the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region; the 1985 Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention); the 1981 Convention for the Protection of the Marine Environment and Coastal Area of the South-east Pacific; the 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific Region; the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention); the 1982 Regional Convention for the Conservation of the Red Sea and the Gulf of Aden Environment; the 1992 Convention on the Protection of the Black Sea against Pollution; and the 1992 Convention for the Protection of the Marine Environment of the North-east Atlantic (OSPAR Convention).

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), which entered into force in 1994, sets forth the rights and obligations of states regarding the use of the ocean, its resources, and the protection of the marine and coastal environment. UNCLOS established that the Area (the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction) and its resources are the common heritage of humankind, governed by the International Seabed Authority.

Under the Food and Agriculture Organization of the UN (FAO), the Commission on Genetic Resources for Food and Agriculture (CGRFA) was established in 1983 as the Commission on Plant Genetic Resources for Food and Agriculture. The Commission was renamed in 1995 to reflect its broadened mandate to encompass all components of biodiversity for food and agriculture, including plant, animal, forest, aquatic, and microorganism and invertebrate genetic resources. CGRFA produces regular global scientific assessments of genetic resources for food and agriculture in agricultural subsectors, as well as cross-sectoral assessments. It includes five Intergovernmental Technical Working Groups on plant, animal, forest, aquatic, and microorganism and invertebrate genetic resources, to address specific issues in these sectors. The CGRFA currently comprises 178 members.

Also under FAO, the International Undertaking on Plant Genetic Resources was agreed in 1983 and was updated and strengthened as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA, or the Treaty). The Treaty establishes a multilateral system for facilitated access to a specified list of plant genetic resources for food and agriculture, including 35 crop genera and 29 forage species, and institutionalizes monetary and non-monetary benefit-sharing from the utilization of these resources in the areas of commercialization, information exchange, technology transfer, and capacity building. It was adopted in 2001, entered into force three years later, and currently has 149 parties.

The Rio Conventions that stemmed from the 1992 United Nations Conference on Environment and Development, include the United Nations Framework

Convention on Climate Change (UNFCCC); the Convention on Biological Diversity (CBD); and the United Nations Convention to Combat Desertification (UNCCD).

The UNFCCC sets out the basic legal framework and principles for international climate change cooperation with the aim of stabilizing atmospheric concentrations of greenhouse gases (GHGs) to avoid "dangerous anthropogenic interference with the climate system." The Convention, which entered into force on 21 March 1994, has 198 parties. To boost the effectiveness of the UNFCCC, the Kyoto Protocol was adopted in December 1997. It commits industrialized countries and countries in transition to a market economy to achieve quantified emissions reduction targets for a basket of six GHGs. In December 2015, parties adopted the Paris Agreement. Under the terms of the Agreement, which entered into force on 4 November 2016, and has 194 parties, all countries will submit nationally determined contributions.

The CBD was adopted on 22 May 1992 and entered into force on 29 December 1993. There are currently 196 parties to the Convention, which aims to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources. The CBD has adopted the Cartagena Protocol on Biosafety and the Nagoya Protocol for Access and Benefit-sharing. In December 2022, the meeting of the 15th Conference of the Parties adopted the Kunming-Montreal Global Biodiversity Framework. Four bodies meeting intersessionally: the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA); the Working Group on Article 8(j) (traditional knowledge) and related provisions; the Subsidiary Body on Implementation (SBI); and the Working Group on digital sequence information from genetic resources.

The UNCCD, and four regional implementation annexes for Africa, Asia, Latin America and the Caribbean, and the Northern Mediterranean were adopted on 17 June 1994, with the objective to combat desertification and mitigate the effects of drought in countries experiencing serious drought particularly in Africa. The Convention entered into force on 26 December 1996, and currently has 197 parties. A fifth regional implementation annex, for Central and Eastern Europe, entered into force in 2001.

On science-policy panels, the Intergovernmental Panel on Climate Change (IPCC) was established in 1988 by the World Meteorological Organization (WMO) and UNEP to assess the scientific, technical, and socio-economic information relevant to understanding human-induced climate change, its potential impacts, and adaptation and mitigation options. It is an intergovernmental and scientific body with 195 member countries, conducting assessments of the state of climate change knowledge based on published, peer reviewed scientific and technical literature.

The Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES) was established in 2012 to provide evidence-based and policy-relevant information on the planet's biodiversity, ecosystems, and the benefits

they provide to people. IPBES produces thematic and methodological assessments; provides policy support; builds capacity and knowledge; and ensures effective communication and an outreach strategy. IPBES currently has 143 members.

Conventions on management of hazardous substances include:

- the Basel Convention, which was adopted in 1989 and entered into force in 1992, and was created to address concerns over the management, disposal and transboundary movement of the estimated 400 million tonnes of hazardous wastes produced worldwide each year. The guiding principles of the Convention are that transboundary movements of hazardous wastes should be: reduced to a minimum; minimized at the source; managed in an environmentally sound manner; and treated and disposed of as close as possible to their source of generation. There are currently 190 parties to the Convention.
- The Rotterdam Convention, adopted in 1998 and entered into force in 2004, with the aim to promote shared responsibility and cooperative efforts among parties in the international trade of certain hazardous chemicals to protect human health and the environment from potential harm. There are currently 165 parties to the Convention and 54 chemicals subject to the prior informed consent procedure, including 35 pesticides, 18 industrial chemicals, and one chemical in both the pesticide and the industrial chemical categories.
- The Stockholm Convention, which was adopted in 2001 and entered into force in 2004, calling for international action on three categories of persistent organic pollutants (POPs): pesticides, industrial chemicals, and unintentionally produced POPs. The Convention, which initially addressed 12 substances (informally known as "the dirty dozen"), was designed to facilitate the review and addition of new chemicals through a three-stage scientific review process prior to consideration for listing by the COP. Since 2009, the COP has added 19 new POPs, including both pesticides and industrial chemicals, to the annexes of the Stockholm Convention. There are currently 186 parties to the Convention.
- The Vienna Convention for the Protection of the Ozone Layer, which was adopted in 1985 and entered into force in 1988, and the resulting Montreal Protocol on Substances that Deplete the Ozone Layer (signed in 1987 and entered into force two years later) are global agreements aiming to protect the Earth's ozone layer by phasing out the chemicals that deplete it. There are currently 198 parties to the Convention.
- The Minamata Convention on Mercury, which was adopted in 2013 and entered into force in 2017, includes a ban on new mercury mines, the phase-out of existing ones, the phase-out and phase-down of mercury use in a number of products and processes, control measures on emissions to air and on releases to land and water, and the regulation of the informal sector of artisanal and small-scale gold mining. The Convention also addresses interim storage of mercury and its disposal once it becomes waste, sites

contaminated by mercury as well as health issues. The Convention currently has 147 parties.

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (ECE Water Convention) is a unique convention focusing on the sustainable management of shared water resources, the implementation of the Sustainable Development Goals, the prevention of conflicts, and the promotion of peace and regional integration. Initially negotiated as a regional instrument within the EU, it was adopted in 1992 and entered into force in 1996. In 2016, the Convention has been opened up for accession to all UN Member States.

The International Tropical Timber Organization (ITTO) was established in 1986 over concerns about the world's tropical forests. Going beyond tropical timber as a commodity, it addresses issues of conservation and sustainable management, and other challenges affecting tropical timber trade and sustainable management, including climate change, biodiversity loss, and land degradation. ITTO's membership represents about 90% of world trade in tropical timber and 80% of the world's tropical forests. It was originally established by the International Tropical Timber Agreement (ITTA), which was negotiated under the auspices of the UN Conference on Trade and Development. The ITTA was adopted in 1983 and entered into force in 1995.

The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) was adopted in 1998 and entered into force in 2001. The Aarhus Convention aims to empower the role of citizens and civil society organizations in environmental matters and is founded on the principles of participative democracy. It provides for: access to environmental information; public participation in environmental decision making; and access to justice. It currently has 47 parties.

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