

Edited by **Micheline R. Ishay**

The Human Rights Reader

Major Political Essays, Speeches, and Documents From Ancient Times to the Present

Third Edition



THE HUMAN RIGHTS READER

The third edition of *The Human Rights Reader* presents a variety of new primary documents and readings and elaborates the exploration of rights in the areas of race, gender, refugees, climate, Artificial Intelligence, drones and cyber security, and nationalism and Internationalism. In the wake of the Covid-19 crisis, it addresses human rights challenges reflected in and posed by global health inequities. Each part of the reader corresponds to five historical phases in the history of human rights and explores the arguments, debates, and issues of inclusiveness central to those eras. This edition is the most comprehensive and up-to-date collection of essays, speeches, and documents from historical and contemporary sources, all of which are placed in context with Micheline Ishay's substantial introduction to the *Reader* as a whole and context-setting introductions to each part and chapter.

New to the Third Edition

- 60 new readings and documents cover subjects ranging from human rights in the age of globalization and populism, debates of the rights of citizens versus those of refugees and immigrants, transgender rights, the new Jim Crow, and the future of human rights as they relate to digital surveillance, the pandemic, and bioengineering.
- Part I has been reorganized into three chapters: the Secular Tradition, Asian and African Religions and Traditions, and the Monotheistic Religions.
- Part V has been significantly updated and expanded with the addition of an entirely new chapter — “Debating the Future of Human Rights.”
- Each of the six parts in the book is preceded by an editorial introduction and, in four of the parts, a separate selection providing the reader with a general background on the history and themes represented in the readings that follow.
- Each part and several chapters conclude with new Questions for Discussion authored by the volume editor.
- An extensive new online resource includes 62 key human rights documents ranging from the Magna Carta to the United Nations Glasgow Climate Pact.

Micheline R. Ishay is Distinguished Professor of International Studies and Human Rights at the Josef Korbel School of International Studies at the University of Denver.

Praise for *The Human Rights Reader*, Third Edition

“Ishay’s *Human Rights Reader* is a monumental work, chronicling the force of human rights ideas and documents in the time they emerged and beyond. For activists like myself, joined in the campaign to forge enduring peace founded on universal rights, this book offers a wealth of knowledge with unparalleled breadth. It is a truly important resource.”

—**Leymah Gbowee**, *Nobel Peace Laureate*

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—**Nadine Strossen**, *New York Law School (Emerita);
Past President, American Civil Liberties Union*

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“In tracing the complex intellectual history of human rights, Micheline R. Ishay’s insightful and provocative selection of texts illuminates many of today’s most fundamental rights debates. Are human rights Western impositions or universal values? Does globalization advance or undermine them? Do they originate in or constrain religion? Are they the product of socialism or among its victims? Did the anti-colonial movement respond to repression or simply shift its source? None of these questions admits simple answers, but no one should address them without considering the deep and varied perspectives provided in Ishay’s new *Human Rights Reader*.”

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—**David Kretzmer**, *Hebrew University of Jerusalem, Emeritus*

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ANCIENT TIMES TO THE PRESENT

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Edited by
MICHELINE R. ISHAY

Designed cover image: The Freedom Sculpture by Zenos Frudakis. The bronze sculpture is located at GSK World Headquarters, on 16th and Vine Streets in Philadelphia, Pennsylvania.

Third edition published 2023
by Routledge
605 Third Avenue, New York, NY 10158

and by Routledge
4 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

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First edition published by Routledge 2007
Second edition published by Routledge 2012

Library of Congress Cataloging-in-Publication Data

Names: Ishay, Micheline, editor:

Title: The human rights reader : major political essays, speeches, and documents from ancient times to the present / edited by Micheline R. Ishay.

Description: Third edition. | New York, NY : Routledge, 2023. |

Includes bibliographical references. |

Identifiers: LCCN 2022013344 (print) | LCCN 2022013345 (ebook) |

ISBN 9780367639426 (hardback) | ISBN 9780367634612 (paperback) |

ISBN 9781003121404 (ebook)

Subjects: LCSH: Human rights--History--Sources.

Classification: LCC JC571 .H7699 2023 (print) |

LCC JC571 (ebook) | DDC 323.09--dc23/eng/20220630

LC record available at <https://lcn.loc.gov/2022013344>

LC ebook record available at <https://lcn.loc.gov/2022013345>

ISBN: 978-0-367-63942-6 (hbk)

ISBN: 978-0-367-63461-2 (pbk)

ISBN: 978-1-003-12140-4 (ebk)

DOI: 10.4324/9781003121404

Typeset in AmasisMT Light
by Newgen Publishing UK

Access the Support Material: www.routledge.com/9780367634612

Pour mon père, Edmond Ishay



Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

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PREFACE TO THE THIRD EDITION

“Human Rights law has failed to accomplish its utopian aspirations, and it ought to be abandoned,” wrote Eric Posner in an article of *Harper’s Magazine*.¹ In this spirit, Stephen Hopgood maintained in *The Endtimes of Human Rights*:

We are living through the end times of the civilizing mission. The ineffectual International Criminal Court . . . along with the failure in Syria of the Responsibility to Protect are the latest pieces of evidence . . . of fatal structural defects in international humanism.²

Some go even further, arguing that the human rights movement not only failed to do enough, but that its inaction after the Cold War made it complicit with a neoliberal order that created growing inequality.³ Times are grim for the advance of human rights, and the challenges of unregulated globalization, populism, conflict, and a pandemic have led to bleak predictions of further setbacks. These dark times call instead for a renewed and forceful reclamation of human rights. Rather than blaming or weakening the champions of human rights movements, prioritizing one cluster of rights against another, elevating one region over another, or one group against another, a collective and reflective understanding of the long historical tradition of human rights and its manifold expressions is now urgent. In the face of real challenges and formidable enemies, this third edition of *The Human Rights Reader*, like the previous editions, is animated by the need to provide defenders of human rights with an up-to-date understanding of this struggle’s evolving tradition.

Until the publication of *The Human Rights Reader: Major Speeches, Essays, and Documents from the Bible to the Present* (1997), there was no comprehensive canon on the history of human rights. That book represented my first effort to convey that history by focusing on primary sources. I spent much of the next seven years researching and writing *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2004; 2nd edition 2008). As I worked on that book, it became clear that the original *Reader* needed to be revised and expanded. A much more developed and reorganized second edition of *The Human Rights Reader* appeared in 2007 (New York: Routledge).

The second edition drew its conceptual organization from my *History of Human Rights*. The first five parts corresponded to five historical phases in the history of human rights, addressing critical questions: What

1 Eric Posner, “Against Human Rights,” *Harper’s Magazine* (October 31, 2014), 13–16.

2 Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, NY: Cornell University Press, 2013), 1.

3 See Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: Harvard University Press, 2019).

are the ethical origins of modern human rights discourse (Part I)? Why did Europeans so strongly influence the modern notion of human rights (Part II)? How has socialism made a lasting contribution to the legacy of human rights (Part III)? Is self-determination promoting or undermining the notion of universal human rights (Part IV)? And how can human rights be promoted in the era of globalization (Part V)? Each part was subdivided into three subsections. The first presented the arguments on behalf of human rights associated with the historical phase under consideration; the second conveyed the corresponding debate over acceptable ways to promote those human rights; and the third showed the views of contributors from that period regarding the inclusiveness of human rights. Finally, the second edition gathered major historical legal documents, organized to represent major themes in the modern legal history of human rights.

This third edition of *The Human Rights Reader* largely follows that same structure, but it has been significantly revised and updated.

- Part I has been reorganized into three chapters: the Secular Tradition, Asian and African Religions and Traditions, and the Monotheistic Religions. Each of these chapters is subdivided into sections focusing on liberty, tolerance and codes of justice, social and economic justice, justice in war and peace, and a recurring question: “justice for whom?” Modernized translations have replaced some archaic texts, and new selections have been added.
- Part II, addressing human rights in the Enlightenment, has been expanded with additional context, guiding questions, modern versions of some archaic texts, and new selections from Kant, Voltaire, Paine, and Burke. Counterpoints were added where relevant to engage varying notions of rights.
- Part III, on socialist human rights perspectives, has also been expanded with the addition of guiding questions, revised selections, and counterpoints such as Charles Darwin versus John Stuart Mill. New texts include selections from Sojourner Truth and August Bebel.
- Part IV provides broader context on the right to self-determination, with the addition of guiding questions and new texts from Giuseppe Mazzini and Ernest Renan.
- Part V of this edition has been significantly updated with the addition of contemporary readings and guiding questions to address current and future human rights challenges.
 - Chapter 11 highlights the redefinition of rights in the age of globalization and populism with added readings on labor, development, and environmental rights.
 - Chapter 12 focuses on ways to protect human rights including security rights, humanitarian interventions, and global governance.
 - Chapter 13 adds new selections with debates of the rights of citizens versus those of refugees and immigrants, while providing documents on human trafficking.
 - Chapter 14 addresses recent debates about the future of human rights as they relate to digital surveillance, the pandemic, and bioengineering.
- Part VI contains an expanded selection of human rights declarations and conventions, tracing their historical development and illustrating their continuing relevance.
- To provide historical and theoretical context to the selections in this edition, each of the six parts is preceded by an editorial introduction and, in four of the parts, a separate selection provides the reader with a general background on the history and themes represented in the readings that follow.
- Discussion questions were added at the beginning of each part and for chapters 11–14.
- In addition, notes have been added to direct readers to original sources. Titles without quotation marks and usually preceded by the word “on” are mine. Throughout, British spelling and punctuation has been changed to American style for the sake of consistency. Finally, I have removed archaic or cumbersome references, occasionally adding my own editorial notes where needed for clarification.

One can of course always challenge the choice of one selection over another, and some readers will inevitably conclude that particular sets of ideas, or regions of the world, should be favored over others. The principal criteria guiding the selections of this new *Human Rights Reader*, beyond the manifest historical importance of some of the readings, was their value in illustrating the main clusters of rights that comprise the U.N. Universal Declaration of Human Rights (1948), and the contribution the selections would provide to critical human rights debates. My *History of Human Rights* remains the scholarly companion to this book, and readers who wish to deepen their knowledge through thorough analyses of debates and historical phases would do well to consult that volume.



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ACKNOWLEDGMENTS

My own historical journey through the creation of a new edition of *The Human Rights Reader* benefited from many helpers. I want to thank Robert Pyne, in particular, for his careful and detailed help in editing monotheistic and ancient texts and for chasing down more legible texts; and overall for his invaluable research and editing assistance throughout this project. This book greatly benefits from his insightful scholarship. I would also like to thank Andrew O'Connor for his suggestions regarding Qur'anic texts and my research assistants: Brianna Klipp, Shane Frazier, Aimee Vandervelde, and Kathryn Waidler for their conscientious research and assistance with this project. I am grateful to Steve Bronner, Claus Offe, Manisha Desai, Ilene Grable, and George De Martino for their conversations and suggestions, and for remaining great supporters over the years. For their help with previous editions, I remain indebted to Steve Roach, Matt Dickhoff, Sasha Breger, Rebecca Otis, and Joel Pruce for their industrious research help. David Michael Gillespie showed exemplary diligence as a research assistant.

At Taylor & Francis, I would like first to express my gratitude to my editor Jennifer Knerl. Without her encouragement at the beginning of this project, I would not have produced this new edition. I would also like to thank Jacqueline Dorsey and Kelly Winter for guiding the project through its final stages, and copyeditor Emily Boyd for her careful work. I don't want to forget my previous editor Gerry Jaffe, copyeditor Sheyanne Armstrong, and my very capable acquisition editors Robert Tempio and Michael Kerns.

Finally, my deepest thanks go to my shining stars, Adam and Elise, who never cease to amaze me, and who carry the torch to the next generation; and to David Goldfischer, who lent great assistance to this and early editions. I remain grateful to my loving mother, Rachele Bazini, and for the human rights courage of my father, Edmond Ishay. Through the determination and decency they carried with them as refugees and immigrants across three continents, they showed me the path that made all the difference. This book is dedicated to my late father and to the generations of fighters for human rights that preceded and followed him.



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INTRODUCTION

*Human Rights: Historical and Contemporary Controversies*¹

Micheline R. Ishay

We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind, that is, the approval by the General Assembly of the Universal Declaration of Human Rights. This declaration may well become the international Magna Carta of all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation of the Declaration of the Rights of Man by the French people in 1789, the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries.

—Eleanor Roosevelt, 1948

The spirit of human rights has been transmitted consciously and unconsciously from one generation to another, carrying the scars of its tumultuous past. Today, invoking the United Nations (U.N.) Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, one may think of human rights as universal, inalienable, and indivisible, as rights shared equally by everyone regardless of sex, race, nationality, or economic background. Yet conflicting political traditions across centuries have elaborated different visions of human rights rooted in past social struggles.

Eleanor Roosevelt, however, was resolute in her efforts to overcome ideological and philosophical tensions among the eighteen delegates who composed the first U.N. Human Rights Commission, over which she presided. Indefatigable, she mediated many disputes that ultimately led to the drafters' agreement on the central tenets of human rights. Comparing those rights to the portico of a temple, René Cassin, one of the most influential drafters, divided the twenty-seven articles of the Declaration among four pillars. The four pillars supported the roof of the portico (articles 28 to 30), which stipulated the conditions under which the rights of individuals could be realized within society and the state. The first two articles of the declaration are represented by the courtyard steps of the portico and stand for human dignity, shared by all individuals regardless of their religion, creed, ethnicity, or sex. The first pillar represents articles 3 to 11 and covers the rights of individuals, notably the right to life, liberty, and security. The second pillar, encompassing articles 12 to 17 of the Declaration, invokes civil and

1 This introduction is a broader and altered version of my previous article, "What Are Human Rights? Six Historical Controversies," *Journal of Human Rights*, Vol. 3, No. 3 (September 2004), 359–371 and from the version in the second edition of this *Human Rights Reader*.

property rights; the third, delineated in articles 18 to 21, stands for political and social rights; and the fourth (articles 22 to 27) focuses on economic, social, and cultural rights.²

Drawing from the rallying cry of the French Revolution, Cassin identified these four pillars as “dignity, liberty, equality, and fraternity,” corresponding to the successive generations of rights. It is worth noting that while these four clusters of rights do not correspond precisely to the historical chronology of emergent visions (or generations) of human rights, they serve as a useful historical reference for this reader. For instance, with some thematic adjustment consistent with history, one can associate the concept of dignity with monotheistic and nonmonotheistic religions; the preponderance of (civil) liberty arguments with the Enlightenment legacy; the fight for greater economic and political equality with the socialist and labor movements of the industrial revolution; and fraternity with the notions of group and cultural rights identified with anti-imperialist movements in nineteenth-century Europe and within the twentieth-century colonized world.

Inspired by Cassin, what follows is a brief consideration of these five periods, each of which can be associated with critical controversies regarding human rights. These controversies are of more than merely historical interest; they underlie and animate contemporary political battles over human rights and help structure this reader. The first controversy concerns the debate over the origins of human rights (Part I). Did they emerge out of humanity’s great religions and ancient secular traditions? Or did human rights arise from a fundamental challenge to the narrow worldviews embraced by those traditions? The second controversy is over the validity of the claim that our modern conception of rights, wherever in the world it may be voiced, is predominantly European in origin (Part II). The third controversy concerns the often overlooked socialist contribution to human rights – a contribution obscured by Stalinism and Maoism (Part III). The fourth controversy, over the right to self-determination, originally invoked against imperialism, continues to provoke conflicts between opposed groups fighting for sovereignty over the same territories (Part IV). Finally, the fifth controversy considers whether globalization in its multifaceted economic and cultural forms is a boon or a threat from a human rights perspective (Part V). This part also considers whether the new security regime consolidated after September 11 is serving to promote or undermine human rights in our age of globalization.

Part I: The Controversy Over the Origins of Human Rights

When embarking on a historical investigation of the origins of human rights, the first question one confronts is: Where does that history begin? It is a politically charged question, as difficult to answer as the one addressing the end of history. The question of the end of history has always implied the triumph of one particular worldview over another. Thus, Friedrich Hegel’s vision of history ending with the birth of the Prussian state celebrated the superiority of German liberal and cultural views of his time over other beliefs; Karl Marx’s prediction that history would end with the withering away of the state and the birth of a classless society emerged from a deepening struggle against the abuses of early industrialization; and Francis Fukuyama’s declaration of the end of history exemplified liberal euphoria in the immediate aftermath of the Soviet collapse.

Similarly, where one locates the beginning of a history tends to privilege a particular worldview; a history of human rights can be perceived as a way either to defend a specific status quo or value system against possible challengers, or to legitimize the claims of neglected agents of history. It is in this context that one can understand the fight between religious creationists and evolutionary Darwinists in

2 For further elaboration, see Mary Ann Glendon, *A World Made New* (New York: Random House, 2001), 173–192.

American schools, and the clash between some defenders of the Western canon, on the one hand, and some advocates of African and Third World studies, on the other. Identifying the origins of human rights will inescapably invite a similar debate. For example, skeptics over the achievements of Western civilization are correct to point out that current notions of morality cannot be associated solely with European history.

Modern ethics is in fact indebted to a worldwide spectrum of both secular and religious traditions. Thus, the concept of proportionate punishment and justice was first professed by the Hammurabi Code of ancient Babylon. The Hebrew Bible celebrates the sanctity of life and reciprocal entitlements. The Hindu and Buddhist religions offered the earliest defense of the ecosystem. Confucianism promoted widespread education. The ancient Greeks and Romans endorsed natural laws and the capacity of every individual to reason. Christianity and Islam encouraged human solidarity, just as both considered the problem of moral conduct in wartime.

Yet the idea that religion is a source of our current human rights tradition remains contested by some scholars, who regard religious edicts and commandments as the very antithesis of rights. Often presented as injunctions against prescribed behaviors, many religious invocations of moral duties would correspond closely to later secular conceptions of rights. For example, the Biblical injunction “thou shall not kill” implies the right to secure one’s life, just as “thou shall not steal” implies a right to property.

At the same time, while all religions and secular traditions prior to the Enlightenment may have shared basic views of a common good, no ancient religious or secular belief system regarded all individuals as equal. From Hammurabi’s Code to the New Testament to the Koran, one can identify a common disdain toward indentured servants (or slaves), women, and homosexuals – as all were excluded from equal social benefits. While emphasizing a universal moral embrace, all great civilizations have thus tended to rationalize unequal entitlements for the weak or the “inferior.” Yet, while such commonalities are noteworthy, they should not overshadow one of history’s most consequential realities: it has been the influence of the West that has prevailed, including Western conceptions of universal rights.

Part II: The Controversy over the Liberal Legacy and the Enlightenment

If the civilizations and ethical contributions of China, India, and the Muslim world towered over those of medieval Europe, is it equally true that the legacy of the European Enlightenment supersedes other influences on our current understanding of human rights? The necessary conditions for the Enlightenment, which combined to bring an end to the Middle Age in Europe, included the scientific revolution, the rise of mercantilism, the launching of maritime explorations of the globe, the consolidation of the nation-state, and the emergence of a middle class. These developments stimulated the expansion of Western power, even as they created propitious circumstances for the development of modern conceptions of human rights. They ultimately shattered feudalism and delegitimized appeals by kings to divine rights.

As Europe was plagued by religious wars pitting Catholics and Protestants in a struggle to redefine religious and political structures, human rights visionaries like Hugo Grotius, Samuel Pufendorf, Emmerich de Vattel, and René Descartes constructed a new secular language, affirming a common humanity that transcended religious sectarianism. Over the next two centuries, revolutionaries in England, America, and France would use a similar discourse to fight aristocratic privileges or colonial authority, and to reorganize their societies based on human rights principles. Armed with the scientific confidence of their era, they struggled for the right to life, for freedom of religion and opinion, and for property rights, and ultimately broke the grip of monarchical regimes.

Notwithstanding the incontestable debt of modern conceptions of human rights to the European Enlightenment, the positive legacy of that era remains widely contested. Many rightly argue that

the Enlightenment did not fulfill its universal human rights promises. In the early nineteenth century, slavery and the repression of indigenous peoples continued in the European colonies and in America. Throughout the European-dominated world (with the brief exception of revolutionary France), women failed to achieve equal rights with men, propertyless men were denied the right to vote and other political rights, children's rights continued to be usurped, and the right to sexual preference was not even considered. Given those shortcomings, critics have argued that the Enlightenment legacy of human rights represented little more than an imperialist masquerade, designed to bend the rest of the world to its will under the pretense of universality.

While the development of capitalism in Europe contributed to the circumstances necessary for the development of a secular and universal language of human rights, the early European liberal agenda inadvertently taught that very language to its challengers. Thus, the international languages of power and resistance were simultaneously born in the cradle of the European Enlightenment. Not only did the Enlightenment thinkers invent the language of human rights discourse, but they launched arguments over the nature of human rights that continue to preoccupy us today.

Now as then, we find ourselves pondering the role of the state – as both the guardian of basic rights and the behemoth against which one's rights need to be defended. During the Enlightenment and still today, this dual allegiance to one's state and to universal human rights has contributed to the perpetuation of a double standard of moral behavior, in which various appeals to human rights obligations remain subordinated to the "the national interest." Just as the celebrated Declaration of the Rights of Man and the Citizen (1789) was followed by Napoleon's *realpolitik* during his reign over the European continental system, Fukuyama's end-of-history vision predicated on liberal rights has confronted post-September 11 claims that civil liberties must yield to the need for national security and nationalist solidarity.

In addition, we are still embroiled in Enlightenment debates over whether a *laissez-faire* approach to economic activity is the best way to promote democratic institutions and global peace, as such early advocates as Immanuel Kant and Thomas Paine were echoed more than two centuries later by thinkers such as the political theorist Michael Doyle and the economist Milton Friedman. Further, we remain engaged in the Enlightenment argument over when and how one may justly wage war (see Hugo Grotius, Part II, Chapter 6). The current forms of these debates, one should add, are not merely a contemporary variant of the early liberal tradition, but have been modified and enriched by the socialist contribution.

PART III: The Controversy Over the Socialist Contribution and the Industrial Age

The nineteenth-century industrial revolution and the growth of the labor movement opened the gates of freedom to previously marginalized individuals, who challenged the classical liberal economic conception of social justice. Yet, despite the important socialist contribution to the human rights discourse, the human rights legacy of the socialist – and especially the Marxist – tradition is today widely dismissed. Bearing in mind the atrocities that have been committed by communist regimes in the name of human rights, the historical record still needs to show that the struggle for universal suffrage, social justice, and worker's rights – principles endorsed in the Universal Declaration of Human Rights (articles 18 to 21) and by the two main 1966 international covenants on human rights (see Part VI, Chapter 15) – was strongly influenced by socialist thought.

Indeed, the Chartists in England – early socialist precursors – and later the European labor parties, played a large role in the campaign for voting and social rights. Disenfranchised from the political process, propertyless workers realized that without a political voice they would not be able to address the widening economic gap between themselves and the rising industrial capitalists. In other words, the historical struggle for universal suffrage was launched and largely waged by the socialist movement. As Marx put it in the *New York Daily Tribune* of 1850: "The carrying of universal suffrage in England ... [is]

a far more socialistic measure than anything which has been honored with that name on the Continent” (Karl Marx, on universal suffrage, Part III, Chapter 8).

While liberals retained their preoccupation with liberty, Chartists and socialists focused on the troubling possibility that economic inequity could make liberty a hollow concept – a belief that resonated powerfully with the burgeoning class of urban workingmen and women. Highlighting this inconsistency, the French socialist Louis Blanc declared (on the material basis for health and other rights, Part III, Chapter 7):

But the poor man, you say, has the *right* to better his position? So! And what difference does it make, if he has not the power to do so? What does the right to be cured matter to a sick man whom no one is curing? Right considered abstractly is the mirage that has kept the people in abused condition since 1789.... Let us say it then for once and for all: freedom consists, not only in the RIGHTS that have been accorded, but also in the power given men to develop and exercise their faculties, under the reign of justice and the safeguard of law.

In this sense, socialists became legitimate heirs of the Enlightenment, applying the universal promises of “liberté, égalité, fraternité” to the political realities of the nineteenth century.

From the nineteenth century onward, radical and reformist socialists alike called for redefining the liberal agenda to include increased economic equity, the right to trade unions, child welfare, universal suffrage, the restriction of the workday, the right to education, and other social welfare rights. Most of these principles were encapsulated in the U.N. Covenant on Social, Cultural, and Economic Rights. By then, these key elements of the original socialist platform had long since been embraced as mainstream tenets of liberalism. So long as arguments are framed in terms of universal rights, liberals and socialists have thus shared a key premise, i.e., universalism, that could provide a basis for reasoned debate. In that sense, both visions of rights have often been allied in opposition to the recurrent challenge posed by adherents of cultural and national relativism.

Part IV: The Controversy over the Right to Self-Determination and the Imperial Age

The liberal nationalist writings of Jonathan Gottlieb Fichte, Giuseppe Mazzini, John Stuart Mill, and Theodore Herzl, among other social thinkers of the nineteenth century, foreshadowed the twentieth century’s quest to codify the right to self-determination. If generally invoked throughout nineteenth-century Europe against imperial domination or ethnic oppression, the right to a homeland would become a central issue of twentieth-century international affairs. Yet the intensifying assertion of self-determination as an inalienable human right, throughout the twentieth century, was imbued with contradictions from the outset.

At the time of the ratification of the Covenant of the League of Nations (1919), advocates, such as President Woodrow Wilson, failed to foresee that imperialist and fascist leaders would invoke the notion of national rights to justify their expansionist policies, contributing to the horrors of World War II. Few recognized, despite the warnings of Rosa Luxemburg, that such rights would be left far too vague in international legal documents. Indeed, Article 1 of the two main human rights covenants, adopted by the U.N. in 1966, stipulated that “all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic and cultural development.”

Written in such sweeping terms, that legal codification of self-determination never specified which type of political regime a newly independent state would establish. It never addressed the possibility that legitimizing one group’s national aspirations would be invoked at the expense of others and possibly create conflicts; it never resolved to what extent a prospective independent state was economically viable, and thereby at least potentially a truly sovereign state; and it never

considered how an economically nonviable new state might be doomed to permanent economic dependency and neocolonial political subordination.

The search for appropriate standards for implementing self-determination rights started before World War I, as a nationalist tide swept Central and Eastern Europe, fragmenting the Ottoman and Austro-Hungarian Empires. With the ever more defiant ascendance of nationalism and the threat of war on the eve of World War I, puncturing the universalist hopes of the second Socialist International, socialists such as Rosa Luxemburg and Vladimir Lenin reflected on how to resolve the question of self-determination, addressing the need to establish standards for legitimizing this otherwise vacuous claim. With the anticolonial struggle spreading through Asia and Africa to overthrow European imperial domination in the mid-twentieth century, a new set of leaders and thinkers including Mahatma Gandhi, Sati' al-Husri, and Frantz Fanon emerged from the colonized world, building their claims on previous rationales and quests for self-determination. Because the right to self-determination can result in contending claims to the same territory, the meaning of this right remains far from obvious and needs to be elaborated in light of historical and political precedents.

Part V: The Controversy Over Globalization's and Populism's Impact on Human Rights

There is clear evidence that globalization coincides with a widening gap between the rich and poor within and between states, an association that has propelled anti-Western sentiments, nationalist backlashes, and war. At the same time, one can make the case that the plight of the poorest countries can be attributed not to globalization but to their exclusion from the global marketplace. More inclusive globalization – from this point of view – would not only reduce ethnic sectarianism, but also generate new opportunities for human rights movements.

However one judges its overall benefits and adverse effects, globalization has affected people in different ways, creating a plethora of ever more specific and conflicting human rights demands. For instance, if the fight for labor rights has been reenergized in recent years, organized labor continues to be divided internationally between workers from rich and poor countries, and domestically between the interests of those who are unionized and those who are not. Similarly, while the unprecedented ravaging of the global environment has prompted the emergence of a global ecological movement, that movement is animated by different social and economic priorities in the developed and the developing world. The abuses of a growing illegal immigrant labor force and the hardships suffered by refugees fleeing from poverty, repression, or war have led to calls for fairer immigration and refugee laws. At the same time, low-skilled immigrants to richer countries conflict with the interests of unemployed and low-wage workers in the developed world, pitting two needy communities against each other.

Undoubtedly, these conflicts over rights have intensified cultural and regional differences. Indeed, if globalization erodes national distinctions, creating a more integrated world, as internationalists from liberal or socialist persuasions have hoped (in different ways), efforts to protect national patrimonies against waves of immigrants, foreign imports, or the overall homogenization of the world into universal consumerism have revived the appeal of cultural rights. Whereas staunch internationalists fear a world of competing cultures, which would favor the triumph of the most belligerent fundamentalists at the expense of women and other disenfranchised groups, cultural rights proponents worry that tendentious “universal” moral perspectives of the most powerful players will prevail over the cultural values of subordinated nations or groups.

That fight between internationalists and cultural relativists has intensified and has taken a tragic turn since September 11, 2001. In many economically or culturally aggrieved areas of the world, the Western maestros of globalization are seen as responsible for overlooking oppression and creeping

poverty and must now face the inevitable “blowback.” These sentiments in turn have intensified Western fear of the Muslim world, strengthened demagogic assertions of Western superiority, and made it politically viable to insist on adopting whatever means are necessary for security. Torn between their internationalist aspirations and the immediate dangers of the post-September 11 world, human rights advocates have been debating the extent to which security rights can override civil and other human rights, the legitimacy of humanitarian intervention to overthrow tyrants by force, and whether globalization represents desirable interdependence or a mask for empire.

This fight further intensified with the spread of populism and the decline of democracy and the international liberal order. This climate was fortuitous for further polarization between the rights of migrant and refugee workers and those of citizens, as identity politics took an even more belligerent turn with the advance of the pandemic. How can the international liberal order be reformed and a new global compact be restored that strengthens the capacity of states to protect human rights? What do new and unfolding developments – from the ongoing Covid-19 pandemic to the acceleration of disruptive technologies – hold for the future of human rights? Those technological advances, including the spread of digital platforms, artificial intelligence, and bioengineering, have moved to the center stage of human rights debates and now demand our urgent attention. Some have argued that these technologies have empowered human rights activism, while others see in these developments new means to censor and curtail human rights violations.

The various schisms within the human rights community remind us why the main drafters of the Universal Declaration of Human Rights argued with such fervor for the indivisibility of human rights. By doing so, they were challenging assertions that security rights prevail over civil rights, as has been claimed in the “age of terror,” or that development rights justify civil and political repression, as argued by some Asian political elites. In short, the drafters were trying to reduce the prospect that specific rights could be opportunistically elaborated to advance the political agenda of this or that leader or this or that movement, thereby undermining an all-encompassing and universal perspective on human rights.

Part VI: Human Rights and Legal Documents: A Brief Historical Narrative

Finally, Part VI of the *Reader* gathers major historical legal documents, organized to represent the major themes of the modern legal history of human rights. This new edition of *The Human Rights Reader: Major Political Essays, Speeches, and Documents from Ancient Times to the Present* is also designed as a companion to my book, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008). There, one can encounter the historical context in which the contending visions of human rights – portrayed in this *Reader* – have emerged.

In sum, to help regain clarity of purpose amidst these theoretical, historical, and legal divisions, this book invites its readers to acquaint themselves with the original sources of human rights discourse and the historical debates that have shaped our current understandings of human rights. The central themes developed in the Universal Declaration of Human Rights provide a useful path for navigating the major historical speeches, polemical writings, and legal documents. Each of the first five parts of this *Reader* corresponds to critical historical junctures in the development of human rights: The Origins: Secular, Asian, and Monotheistic Traditions; The Legacy of Early Liberalism and the Enlightenment; The Socialist Contribution and the Industrial Age; The Right to Self-Determination and the Imperial Age; and Human Rights in the Era of Globalization and Populism. Each of these parts is in turn divided into three sections. The first presents the new human rights claims of the period under consideration, the second reviews debates over acceptable ways to promote human rights, and the third addresses views on the inclusiveness of human rights.



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PART I

THE ORIGINS

Secular, Asian, and Monotheistic Traditions

Introduction

Part I introduces readers to the preliminary work on human rights undertaken by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in 1947. To assist the Human Rights Commission drafting committee, UNESCO commissioned a questionnaire, designed by the French Christian philosopher Jacques Maritain (1882–1973), to study the Chinese, Islamic, Hindu, American, and European peoples on human rights traditions and legal perspectives. Seventy responses came back from notable leaders and social thinkers, including the pacifist leader of the Indian independence movement, Mahatma Gandhi, Italian philosopher and historian Benedetto Croce, Indian Muslim poet and philosopher Hamayun Kabir, Indian social scientist S. V. Puntambekar, Chinese philosopher Chung-Shul Lo, and British historian and journalist E. H. Carr.

Maritain was a well-noted political thinker and well suited to manage this ambitious project. He had written extensively on religion and culture, the philosophy of science, epistemology, and political theory. His moral philosophy, inspired by Aristotelian and Thomist principles of justice, maintained that everyone could recognize that certain basic universal rights were, like natural rights, fundamental and inalienable. The challenge he posed to various political leaders and social thinkers around the world was “to imagine an agreement of minds between men who come from the four corners of the globe and belong to different cultures and civilizations.” The responses to the UNESCO questionnaires revealed a conception of universal ethics beyond the “narrow limits of the Western tradition and [that] its beginning in the West as well as in the East coincides with the beginning of Philosophy” (see Section I.1). Ancient traditions and religions and current international texts affirmed the importance of human dignity (see I.3., Preamble to the Universal Declaration of Human Rights). However, it would take modern human rights discourse to clarify the somewhat vague meanings of that concept. It would be erroneous to suggest that the modern discourse of human rights can be reduced to the ethical legacy of the ancients, but it is equally nonsensical to suggest that the modern concept of human rights was born ex-nihilo and only in the Western world, disregarding the long historical evolution of human rights both in the West and in non-Western countries. Further, canceling out this early tradition provides ammunition to viewpoints rooted in selective snippets of history. This section illuminates the ancient influence on what would later become the modern understanding of human rights. Part I begins with some of

the findings of the UNESCO survey, then builds on those important observations by documenting the nature and scope of traditional sources of ethical thought that would lend their influence to our modern understanding of human rights. Drawn from critical themes developed in the Universal Declaration of Human Rights, these traditional contributions are divided into three chapters: The Secular Tradition (Chapter 1), Asian and African Religions and Traditions (Chapter 2), and the Monotheistic Traditions (Chapter 3). Each chapter will include four sections: “Liberty, Tolerance, and Codes of Justice,” “Social and Economic Justice,” “Justice, War, and Peace,” and “Justice for Whom?” To assist the reader, titles have been provided for most of the selections.

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 1.

Questions For Part I

1. To what extent is UNESCO’s 1947 “Grounds for an International Declaration of Human Rights” inclusive of all cultures?
2. What values reflected in ancient laws ultimately contributed to later understandings of human rights? What ethical arguments from ancient philosophers are most compelling? Why?
3. What differences do you observe between the Asian, African, and Western sources cited here? How do they contribute to modern understandings of human rights?
4. What ethical similarities between monotheistic religions contribute to later notions of human rights? Why would some interpreters regard religion as antithetical to universal human rights?
5. To what extent were the moral injunctions of these ancient standards understood to be universal? To what extent were they cultural or particular?
6. Which of the arguments expressed here for just war might still be used in our day?
7. What support do you find in these texts for civil and economic rights?
8. Why are some groups consistently marginalized in religious and secular tradition?

I.1 UNESCO: The Grounds for an International Declaration of Human Rights (1947)¹

An international declaration of human rights must be the expression of a faith to be maintained no less than a program of actions to be carried out. It is a foundation for convictions universally shared by men however great the differences of their circumstances and their manner of formulating human rights: it is an essential element in the constitutional structure of the United Nations. In order

that all peoples and all governments shall be made aware that the authority and goodwill of the United Nations will be exercised with ever increasing power to apply these means for the advancement of human happiness in the great society, it is fitting that its members solemnly proclaim a declaration of rights to the civilized world. Such a declaration depends, however, not only on the authority by which rights are safeguarded and advanced, but also on the common understanding which makes the proclamation feasible and the faith practicable.

1 Final result of the UNESCO inquiry on the theoretical bases of human rights, drafted by committee (Edward H. Carr, Richard P. McKeon, Pierre Auger, Georges Friedmann, Harold J. Laski, Chung-Shu Lo, and Luc Somerhausen) and signed in Paris, July 1947, in “Human Rights: Comments and Interpretations: A Symposium edited by UNESCO,” with an Introduction by Jacques Maritain (Paris, 1948), Appendix 2. <https://e-docs.eplo.int/phocodownloadpap/userupload/aportinou-eplo.int/Human%20rights%20comments%20and%20interpretations.compressed.pdf>

The preparation of a Declaration of Human Rights faces fundamental problems concerning principles and interpretations as well as political and diplomatic problems concerning agreement and drafting. For this reason the UNESCO Committee on the Philosophic Principles of the Rights of Man has undertaken, on the basis of a survey of the opinion of scholars in the various parts of the world, an examination of the intellectual bases of a modern bill of rights, in the hope that such a study may prove useful to the Commission on Human Rights of the Economic and Social Council both in suggesting common grounds for agreement and in explaining possible sources of differences. The UNESCO Committee is convinced that the members of the United Nations share common convictions on which human rights depend, but it is further convinced that those common convictions are stated in terms of different philosophic principles and on the background of divergent political and economic systems. An examination of the grounds of a bill of rights should therefore serve to reveal, on the one hand, the common principles on which the declaration rests and to anticipate, on the other hand, some of the difficulties and differences of interpretation which might otherwise delay or impede agreement concerning the fundamental rights which enter into the declaration.

The United Nations stands as the symbol to all of victory over those who sought to achieve tyranny through aggressive war. Since it was created to maintain the peace of mankind and, as it maintains peace, to make ever more full the lives of men and women everywhere, it is fitting that it should record its faith in freedom and democracy and its determination to safeguard their power to expand. That faith in freedom and democracy is founded on the faith in the inherent dignity of men and women. The United Nations cannot succeed in the great purposes to which it is committed unless it so acts that this dignity is given increasing recognition, and unless steps are taken to create the conditions under which this dignity may be achieved more fully and at constantly higher levels. Varied in cultures and built upon different institutions, the members of the United Nations have, nevertheless, certain

great principles in common. They believe that men and women, all over the world, have the right to live a life that is free from the haunting fear of poverty and insecurity. They believe that they should have a more complete access to the heritage, in all its aspects and dimensions, of the civilization so painfully built by human effort. They believe that science and the arts should combine to serve alike peace and the well-being, spiritual as well as material, of all men and women without discrimination of any kind. They believe that, given goodwill between nations, the power is in their hands to advance the achievement of this well-being more swiftly than in any previous age.

It is this faith, in the opinion of the UNESCO Committee, which underlies the solemn obligation of the United Nations to declare, not only to all governments, but also to their peoples, the rights which have now become the vital ends of human effort everywhere. These rights must no longer be confined to a few. They are claims which all men and women may legitimately make, in their search, not only to fulfill themselves at their best, but to be so placed in life that they are capable, at their best, of becoming in the highest sense citizens of the various communities to which they belong and of the world community, and in those communities of seeking to respect the rights of others, just as they are resolute to protect their own.

Despite the antiquity and the broad acceptance of the conception of the rights of man, and despite the long evolution of devices to protect some human rights by legal systems, the systematic proclamation of declarations of human rights is recent. The history of the philosophic discussion of human rights, of the dignity and brotherhood of man, and of his common citizenship in the great society is long: it extends beyond the narrow limits of the Western tradition and its beginnings in the West as well as in the East coincide with the beginnings of philosophy. The history of declarations of human rights, on the other hand, is short and its beginnings are to be found in the West in the British Bill of Rights and the American and French Declarations of Rights formulated in the seventeenth and eighteenth centuries, although the right of the people to

revolt against political oppression was very early recognized and established in China. The relation of philosophic considerations to the declarations of human rights is suggested by the differences of these two histories. The philosophic temper of the times was an indispensable background and preparation for each statement of human rights, but despite the broad agreements among the resulting statements there was no more agreement among philosophers in the eighteenth than in the twentieth century. Moreover, despite the faith in human dignity and the formula for human happiness prepared by philosophers, an implementation was needed in social and political institutions to secure human rights for men. An international declaration of human rights is involved in precisely the same problems. The philosophies of our times, notwithstanding their divergencies, have deepened the faith in the dignity of man and have vastly expanded the formula for his happiness; but the differences of philosophies have led to varied and even opposed interpretations of fundamental rights and the practical import of philosophies has become more marked.

The civil and political rights which were formulated in the eighteenth century² have since that time been incorporated into the constitution or the laws of almost every nation in the world. During the same period, the developments of technology and industrial advances have led to the formation of a conception of economic and social rights. The older civil and political rights have sometimes been extended to embrace these new rights. In such applications and other contexts of the newer rights, the meanings have frequently undergone modification, and indeed the two have sometimes been thought to be in conflict. Finally, as science and technology have given men greater control over nature, rights which were in the past reserved for the few have gradually been extended to the many and are now potentially open to all. This addition of new rights and the changes in the significance of old rights in the context of developing knowledge

and technology presents problems as well as opportunities. Perhaps the greatest problem involved in the basic ideas which underlie a declaration of human rights is found in the conflict of ideas which have been used to relate the social responsibilities entailed in the material and social developments of the nineteenth century to the civil and political rights earlier enunciated. This conflict has even shaken the simple form of the faith in the dignity of man which was based on the confidence in progress and the advance of knowledge, for it is the source of complexities in the interpretation of liberty and equality and of their interrelations, as well as of apparent contradictions among the fundamental human rights. In like fashion, the problem of the implementation of human rights, new and old, depends on the tacit or explicit resolution of basic philosophic problems, for the rights involve assumptions concerning the relations not only of men to governments, but also of the relations of groups of men to the state and of states to one another, and in the complex of these interrelations the interdependence of rights and duties has been redefined.

Notwithstanding these difficulties, the UNESCO Committee on the Philosophic Principles of the Rights of Man is convinced that the perspectives open to men, both on the planes of history and of philosophy, are wider and richer than before. The deeper the re-examination of the bases of human rights that is made, the greater are the hopes that emerge as possible. The Committee has therefore circulated to a select list of the scholars of the world a series of questions concerning the changes of intellectual and historical circumstances between the classical declarations of human rights which stem from the eighteenth century and the bill of rights made possible by the state of ideas and the economic potentials of the present. On the basis of that inquiry, it has set down briefly, first, what seem to it some of the significant consequences of the evolution of human rights and, second, a schematic

2 Editor: It is often forgotten that universal suffrage without property franchise was advocated in the nineteenth century.

formulation of basic rights which in its opinion can and should be vindicated for all men. The history and the schematism grew out of the discussions of the Committee during its meetings in Paris from June 26th to July 2nd, but although they are based on a study of the replies received to the questionnaire, they do not represent the options of all the scholars who contributed to the symposium....

The fundamental human rights which were specified first and proclaimed widely at the beginnings of the modern period were rights which regulated man's relations to political and social groups and which are therefore usually referred to as *Civil and Political Rights*. They had as purpose to protect man in actions which do not derogate from the freedom or well-being of others and to assign to him the exercise of functions by which he might exert a proper influence on the institutions and laws of the state. As a result of religious movements and the development of national states, a series of freedoms were formulated more and more precisely and insistently from the Renaissance to the eighteenth century: to free man from unwarranted interference in his thought and expression, the freedom of conscience, worship, speech, assembly, association and the press. During the seventeenth century, each of these freedoms received eloquent defense on the grounds, not only that they may be granted without danger to the peace of the state, but also that they may not be withheld without danger. Legal implementation for their protection was step by step provided by the institution of courts or the extension of the jurisdiction of existing courts, and these rights may, therefore, be associated with respect to the means of securing them, with other personal rights and with the right to justice, by which it was recognized that all men have an equal right to seek justice by appeal to law and in that appeal to be protected from summary arrest, cruel treatment and unjust punishment. As civil rights, moreover, they are closely related to the right to political action by which the function of citizens in states is defined, and the growth of democratic institutions during this period is largely an expression of the conviction men can achieve justice and

the defense of their rights only by participation direct or indirect in the governments by which they are ruled. Political rights were therefore written into instruments and institutions of government, whereas civil rights, protected from interference by governments by recourse to courts, were written into bills of rights. The right to political action within a state discussed during this period, moreover, in close conjunction with the right to rebellion or revolution by which men might set up a government in conformity with justice if the fundamental principles of justice and the basic human rights are violated in such fashion as to permit no redress by recourse to peaceful means, and also in conjunction with the right to citizenship by which men may abandon their existing citizenships and assume the citizenship of any country which is prepared to accept them as citizens. Finally, during the nineteenth century, the discussion of the right to political action made increasingly clear that it is a right which can be exercised wisely only in conjunction with the right to information by which the citizen may equip himself for the proper exercise of his political functions.

During the nineteenth century there were added to these rights another set of fundamental human rights which grew out of the recognition that to live well and freely man must have at least the means requisite for living and which was made increasingly practicable by the advances in technology and industrialization in making the means of livelihood potentially accessible to all men. These have come to be called *Economic and Social Rights*. They were first treated as subdivisions or extensions of civil and political rights, but in the course of the last hundred years it has become apparent that they are different in kind from the older rights and that they therefore require difference [in] implementation. In their earliest form they are associated with the right to property, which in the eighteenth century was conceived by many philosophers to be the basic human right from which the others are derived, in such a fashion that even liberty and the pursuit of happiness are often treated as property rights of man. The evolution of social and economic rights

depended on the discussion of the relation of the ownership and the use of property, of private and common ownership, and of private rights and public responsibility. Similarly, the right to education was early conceived to belong to all men, and the institution of public systems of education was designed to effect the realization of that right. Likewise, the right to work was treated first as a freedom consequent on the right to property and was only later implemented with legal provisions for bargaining and arbitration concerning the conditions and the rewards of work. The right to protection of health usually started in the various states from modest beginnings in pure food and drugs legislation under the provisions of police power, and slowly extended to the provision of minimum medical and dietetic services, while the end of the nineteenth century and the beginning of the twentieth century saw the growth of various forms of social security designed to embody the right to maintenance during infancy, old age, sickness and other forms of incapacity, and involuntary unemployment. Finally, there are few to deny, in the retrospect of technological advances, today, the right of all to share in the advancing gains of civilization and to have full access to the enjoyment of cultural opportunities and material improvements.

Since the increased accessibility of economic and social rights was achieved as a consequence of the advances of science and since the ideals and accomplishments of an age find their expression in art and literature, a new emphasis has been placed on Rights of the Mind: on the right to inquiry, expression and communication. Whether the purpose of communication be the expression of an idea or an emotion, the furthering of an individual or social purpose, or the formulation of an objective and scientific truth, the right is grounded both in the purpose of developing to the full the potentialities of men and in the social consequences of such communications.

I.2 Jacques Maritain: On Opposing Ideologies and a Common List of Rights (UNESCO Symposium, 1948)³

Of the tasks assigned to the United Nations Organization, one of those which could and should most nearly affect the conscience of the peoples, is the drawing up of an International Declaration of Human Rights. The task was committed to the Economic and Social Council of the United Nations. UNESCO's part was to consult philosophers and assemble their replies. This volume is a collection of the most significant texts thus gathered in the course of UNESCO's inquiry into the philosophic bases of human rights...

It is related that at one of the meetings of a UNESCO National Commission where Human Rights were being discussed, someone expressed astonishment that certain champions of violently opposed ideologies had agreed on a list of those rights. "Yes," they said, "we agree about the rights but on condition that no one asks us why." That "why" is where the argument begins...

Because ... the goal of UNESCO is a practical goal, agreement between minds can be reached spontaneously, not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action. No doubt, this is little enough, but it is the last resort to intellectual agreement. It is, nevertheless, enough to enable a great task to be undertaken, and it would do much to crystallize this body of common practical convictions...

We do know that, though the crisis of civilization which rose with this century has offered to our gaze the gravest violations of Human Rights, yet simultaneously it has led the public mind to a keener awareness of those rights, and Government propaganda to pay to them – in words – the most ringing tributes. Pending something better, a Declaration of Human Rights agreed by the nations would be

3 "Human Rights: Comments and Interpretations: A Symposium edited by UNESCO," with an Introduction by Jacques Maritain (Paris, 1948), I–IX, <https://e-docs.eplo.int/phocadownloadpap/userupload/aportinou-eplo.int/Human%20rights%20comments%20and%20interpretations.compressed.pdf>

a great thing in itself, a word of promise for the downcast and oppressed throughout all lands, the beginning of changes which the world requires, the first condition precedent for the later drafting of a universal Charter of civilized life.

I.3 United Nations: Universal Declaration of Human Rights (1948), Preamble, Articles 1, 3, 5–12, 18–19, 27⁴

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, whereas it is essential to promote the development of friendly relations between nations, whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom....

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.

Article 3

Everyone has the right to life, liberty and the security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled to full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
2. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one

4 The Universal Declaration of Human Rights (resolution 217 A (III), A/RES/3/217 A), proclaimed by the United Nations General Assembly in Paris on December 10, 1948.

that was applicable at the time the penal offense was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or

private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 27

2. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

1. THE SECULAR TRADITION

From Babylon to the Greeks to the Roman Empire, one cannot overlook the influential contributions of Hammurabi, Plato, Aristotle, and Cicero when considering the early origins of human rights. The 282 laws drafted by Hammurabi, king of Babylonia (1728–1686 B.C.E.), marked the inception of the conviction that some laws are so basic as to be beyond the reach of even the king to alter them. This concept of the law as a check against the abuse of power is a feature of most modern legal systems. The Code of Hammurabi (1700 B.C.E.) focused on various liberties and the overall integrity and transparency of the judiciary system, assuming that guilt must be proven before an accused person could be punished. Yet the most important contribution was illustrated by the Talion principle: an “eye for an eye, tooth for a tooth,” or the idea that the nature of the punishment would be determined by the severity of the offense (see Section 1.1).

The Persian king Cyrus’ generous treatment of nations previously conquered by the Babylonians was noted both in the Hebrew Bible (2 Chr. 36; Ezra 1) and in Xenophon’s *Cyropaedia*, a fictionalized account of the king’s benevolent education that was highly regarded by later thinkers from Machiavelli to Jefferson. A more direct source regarding Cyrus was unearthed in 1879. Created after the capture of Babylon in 539 B.C.E., the Cyrus Cylinder is the king’s own account of his achievements, including his apparent tolerance for different religions (see Section 1.2).

In ancient Greece, the search for justice would be associated with the philosopher Plato (427/428–348/347 B.C.E.). Plato’s *Republic* (c. 360 B.C.E.) rests on the foundation of eternal ideas of Truth or Forms that represent universals or absolutes. For Socrates, as reported by Plato, absolute justice can be achieved only when individuals fulfill the tasks to which each is suited, in harmony with the common good. Going about one’s own business cannot create harmonious cooperation and mutual care, which are fundamental to the sound functioning of a just polity. Rousseau’s notion of the “General Will,” and contemporary defenders of group rights, would later echo Socrates’ teaching (see Section 1.3).

Like Plato, Aristotle (384–322 B.C.E.) had a profound impact on the development of the notion of justice and human rights. Aristotle’s *Politics* (c. 350 B.C.E.) shows how the concepts of justice, virtue, and rights change in accordance with different kinds of constitutions and circumstances. Evaluating the strengths and weaknesses of various democracies, oligarchies, and tyrannies, Aristotle concluded that mixed constitutions – backed by a strong middle class – represent the fairest and most stable form of governance. In other words, he maintained that virtue and justice best blossomed between extremes. Aristotle sought to discuss the condition of a perfect state within the bounds of possibility, so long as “virtue has external goods enough for the performance of good actions” (see Section 1.4).

In a similar tradition, Roman statesman, lawyer, and scholar Marcus Tullius Cicero (106–43 B.C.E.) was also a believer in the common good and republican principles. Indeed, his *De Legibus* (*The Laws*, 52 B.C.E.) laid out the foundations of natural law, a concept closely related to modern conceptions of human rights. The gods, he argued, entrusted individuals with the capacity to reason, to derive subsistence from nature, and to unite peacefully with other fellow citizens. Despite distinctions of race, religion, and opinion, individuals are bound together in unity through an understanding that “the principle of right living is what makes men better.” The notion that everything is just by virtue of customs or the laws of a nation is a foolish idea. “Would that be true,” asked Cicero, “even if these laws had been enacted by tyrants?” Cicero appealed to universal laws that transcended unfair customs, and to the idea that one should be “a citizen of the whole universe, as it were of a single city” (see Section 1.5).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 1.

Liberty, Tolerance, and Codes of Justice

1.1 The Code of Hammurabi: On Freedom of Speech and Civil Rights (c. 1700 B.C.E.)¹

§ 1

If a man has accused a man and has charged him with man-slaughter and has not substantiated his charge, his accuser shall be put to death.

§ 2

If a man has charged a man with sorcery and then has not proved [it against] him, he who is charged with the sorcery shall go to the holy river; he shall leap into the holy river and, if the holy river overwhelms him, his accuser shall take and keep his house; if the holy river and he come back safe, he who has charged him with sorcery shall be put to death; he who leapt into the holy river shall take and keep the house of his accuser.²

§ 5

If a judge has tried a suit, caused a sealed tablet to be executed, [and having made a judgment] thereafter varies his judgment, they shall convict that judge of varying [his] judgment and he shall pay twelve-fold the claim in that suit; then they

shall remove him from his place on the bench of judges in the assembly, and he shall not [again] sit in judgment with the judges.

§ 127

If a man has caused a finger to be pointed at a high-priestess or a married lady and does not substantiate his slanderous comments, they shall flog that man before the judges and shave half his head.

If a man has come forward in a case to bear witness to a felony and then has not proved the statement that he has made; if that case is a capital one, that man shall be put to death.

If he has come forward to bear witness to [a claim for] corn or money, he shall remain liable for the penalty for that suit.

Talion Law: “An Eye for an Eye” (Limitations on Punishment)

§ 195

If a son strikes his father, they shall cut off his fore-hand.

§§ 196–205

If a man has put out the eye of a free man, they shall put out his eye.

1 *The Babylonian Laws*, edited by G. R. Driver and John C. Miles (Oxford: Clarendon Press, 1955).

2 Here the question of guilt is determined through trial by ordeal, which was used for centuries, especially for accusations of crimes allegedly committed in private, lacking witnesses. See Numbers 5:11–31 for a biblical example.

If he breaks the bone of a [free] man, they shall break his bone.

If he puts out the eye of a servant or breaks the bone of a servant he shall pay 1 maneh of silver.

If he puts out the eye of a [free] man's slave or breaks the bone of a [free] man's slave, he shall pay half his price.

If a man knocks out the tooth of a [free] man equal [in rank] to him [self], they shall knock out his tooth.

If he knocks out the tooth of a servant he shall pay 1/3 maneh of silver.

If a man strikes the cheek of a [free] man who is superior [in rank], he shall be beaten with 60 stripes with a whip of ox-hide in the assembly.

If the man strikes the cheek of a free man equal to him [self in rank], he shall pay 1 maneh of silver.

If a servant strikes the cheek of a servant, he shall pay 10 shekels of silver.

If the slave of a [free] man strikes the cheek of a free man, they shall cut off his ear.

1.2 Cyrus: On Religious Tolerance (*The Cyrus Cylinder*, c. 539 B.C.E.)³

§§ 24-36

My vast troops were marching peaceably in Babylon, and the whole of [Sumer] and Akkad had nothing to fear. I sought the safety of the city of Babylon and all its sanctuaries. As for the population of Babylon [... , w]ho as if without div[ine intention] had endured a yoke not decreed for them, I soothed their weariness; I freed them from their bonds(?).

Marduk, the great lord, rejoiced at [my good] deeds, and he pronounced a sweet blessing over me, Cyrus, the king who fears him, and over Cambyses, the son [my] issue, [and over] my all my troops, that we might live happily in his presence, in well-being.

At his exalted command, all kings who sit on thrones, from every quarter, from the Upper Sea to the Lower Sea, those who inhabit [remote district] (and) the kings of the land of Amurru who live in tents, all of them, brought their weighty tribute into Shuanna, and kissed my feet. From [Shuanna] I sent back to their places to the city of Ashur and Susa, Akkad, the land of Eshnunna, the city of Zamban, the city of Meturnu, Der, as far as the border of the land of Gutu – the sanctuaries across the river Tigris – whose shrines had earlier become dilapidated, the gods who lived therein, and made permanent sanctuaries for them. I collected together all of their people and returned them to their settlements, and the gods of the land of Sumer and Akkad which Nabonidus – to the fury of the lord of the gods – had brought into Shuanna, at the command of Marduk, the great lord, I returned them unharmed to their cells, in the sanctuaries that make them happy.

May all the gods that I returned to their sanctuaries, every day before Bel and Nabu, ask for a long life for me, and mention my good deeds, and say to Marduk, my lord, this: Cyrus, the king who fears you, and Cambyses his son, may they be the provisioners of our shrines until distant days, and the population of Babylon call blessings on my kingship. I have enabled all the lands to live in peace.

1.3 Plato: Justice In State and Individual (*The Republic*, c. 360 B.C.E.)⁴

Book 4

... "At any rate, wisdom, discipline, courage, and the ability to mind one's own business are all rivals in this respect. And we can regard justice as making a contribution to the excellence of our city that rivals that of the rest." ...

"Suppose a builder and a shoemaker tried to exchange jobs, or to take on the tools and the

3 The British Museum, "Translation of the text on the Cyrus Cylinder," translated by Irving Finkel (https://web.archive.org/web/20121221112524/http://www.britishmuseum.org/explore/highlights/articles/c/cyrus_cylinder_-_translation.aspx); also in Finkel, *The Cyrus Cylinder: The Great Persian Edict from Babylon* (London: I.B. Tauris, 2013).

4 Plato, *The Republic*, translated by Desmond Lee, second edition (London: Penguin Books, 2003).

prestige of each other's trade, or suppose alternatively the same man tried to do both jobs, would this and other exchanges of the kind do great harm to the state?"

"Not much."

"But if someone who belongs by nature to the class of artisans and businessmen is puffed up by wealth or popular support or physical strength or any similar quality, and tries to enter our military class; or if one of our military Auxiliaries tries to get into the class of administering Guardians for which he is unfit, and they exchange tools and prestige; or if a single individual tries to do all these jobs at the same time — well, I think you'll agree that this sort of mutual interchange and interference spells destruction to our state."

"Certainly."

"Interference by the three classes with each other's jobs, and interchange of jobs between them, therefore, does the greatest harm to our state, and we are entirely justified in calling it the worst of evils."

"Absolutely justified."

"But will you not agree that the worst of evils for one's own community is injustice?"

"Of course."

"So that is what injustice is. And conversely, when each of our three classes (businessmen, Auxiliaries, and Guardians) does its own job and minds its own business, that, by contrast, is justice and makes our state just."

"I entirely agree with what you say," he said.

"Don't let's be too emphatic about it yet," I replied. "If we find that the same pattern applies to the individual and is agreed to yield justice in him, we can finally accept it — there will be nothing to prevent us; if not, we shall have to think again. For the moment let us finish our investigation." . . .

"In fact, . . . the provision that the man naturally fitted to be a shoemaker, or carpenter, or anything else, should stick to his own trade has turned out to be a kind of adumbration of justice — hence its usefulness."

"So it seems."

"Justice, therefore, we may say, is a principle of this kind; its real concern is not with external

actions, but with a man's inward self, his true concern and interest. The just man will not allow the three elements which make up his inward self to trespass on each other's functions or interfere with each other, but, by keeping all there in tune, like the notes of a scale (high, middle, and low, and any others there be), will in the truest sense set his house to rights, attain self-mastery and order, and live on good terms with himself. When he has bound these elements into a disciplined and harmonious whole, and so become fully one instead of many, he will be ready for action of any kind, whether it concerns his personal or financial welfare, whether it is political or private; and he will reckon and call any of these actions just and honourable if it contributes to and helps to maintain this disposition of mind, and will call the knowledge which controls such action wisdom. Similarly, he will call unjust any action destructive of this disposition, and the opinions which control such action ignorance."

"That is all absolutely true, Socrates."

"Good," I said, "so we shan't be very far wrong if we claim to have discerned what the just man and the just state are, and in what their justice consists."

"No, we shan't."

"Shall we make the claim, then?"

"Yes."

"So much for that," I said. "And next, I suppose, we ought to consider injustice."

"Obviously."

"It must be some kind of civil war between these same three elements, when they interfere with each other and trespass on each other's functions, or when one of them rebels against the whole to get control when it has no business to do so, because its natural role is to be a slave to the rightfully controlling element. This sort of situation, when the elements of the mind are confused and displaced, is what constitutes injustice, indiscipline, cowardice, ignorance and, in short, wickedness of all kinds."

"Yes, that's so."

"And if we know what injustice and justice are, it's clear enough, isn't it, what acting unjustly and doing wrong are or, again, what acting justly is?"

"How do you mean?"

“Well,” I said, “there is an exact analogy between these states of mind and bodily health and sickness.”

“How?”

“Healthy activities produce health, and unhealthy activities produce sickness.”

“True.”

“Well, then, don’t just actions produce justice, and unjust actions injustice?”

“They must.”

“And health is produced by establishing a natural relation of control and subordination among the constituents of the body, disease by establishing an unnatural relation.”

“True.”

“So justice is produced by establishing in the mind a similar natural relation of control and subordination among its constituents, and injustice by establishing an unnatural one.”

“Certainly.”

“It seems, then, that excellence is a kind of mental health or beauty or fitness, and defect a kind of illness or deformity or weakness.”

“That is so.”

“And each is in turn the result of one’s practice, good or bad.”

“They must be.” ...

“We are sticking obstinately to the verbal debating point that different natures should not be given the same occupations; but we haven’t considered what kind of sameness or difference of nature we mean, and what our intention was when we laid down the principle that different natures should have different jobs, similar natures similar jobs.”

“No, we’ve not taken that into consideration.”

“Yet we might just as well, on this principle, ask ourselves whether bald men and long-haired men are of the same or opposite natures, and having agreed that they are opposite, allow bald men to be cobblers and forbid long-haired men to be, or vice versa.”

“That would be absurd.”

“But the reason why it is absurd,” I pointed out, “is simply that we never meant that natures are the same or different in an unqualified sense, but only with reference to the kind of sameness or difference which is relevant to various employments.”

1.4 Aristotle: On Justice and Political Constitutions (*Politics*, c. 350 B.C.E.)⁵

Book IV, Chapter II

For if what was said in the *Ethics*⁶ is true, that the happy life is the life according to virtue lived without impediment, and that virtue is a mean, then the life which is in a mean, and in a mean attainable by every one, must be the best. And the same principles of virtue and vice are characteristic of cities and of constitutions; for the constitution is in a figure the life of the city.

Now in all states there are three elements: one class is very rich, another very poor, and a third in a mean. It is admitted that moderation and the mean are best, and therefore it will clearly be best to possess the gifts of fortune in moderation; for in that condition of life men are most ready to follow rational principle. But he who greatly excels in beauty, strength, birth, or wealth, or on the other hand who is very poor, or very weak, or very much disgraced, finds it difficult to follow rational principle. Of these two the one sort grows into violent and great criminals, the others into rogues and petty rascals. And two sorts of offenses correspond to them, the one committed from violence, the other from roguery. Again, the middle class is least likely to shrink from rule, or to be over-ambitious for it; both of which are injuries to the state. Again, those who have too much of the goods of fortune, strength, wealth, friends, and the like, are neither willing nor able to submit to authority. The evil begins at home; for when they are boys, by reason of the luxury in which they are brought up, they never learn, even at school, the habit of obedience. On the other hand, the very poor, who are in the opposite extreme, are

5 Aristotle, *Politics*, in *Aristotle*, translated by E. Barker (Oxford: Oxford University Press, 1998).

6 *Nic. Eth. i* 1098^a 16, *vii* 1153^b 10, *x* 1177^a 12.

too degraded. So that the one class cannot obey, and can only rule despotically; the other knows not how to command and must be ruled like slaves. Thus arises a city, not of freemen, but of masters and slaves, the one despising, the other envying; and nothing can be more fatal to friendship and good fellowship in states than this: for good fellowship springs from friendship; when men are at enmity with one another, they would rather not even share the same path. But a city ought to be composed, as far as possible, of equals and similars; and these are generally the middle classes. Wherefore the city which is composed of middle-class citizens is necessarily best constituted in respect of the elements of which we say the fabric of the state naturally consists. And this is the class of citizens which is most secure in a state, for they do not, like the poor, covet their neighbors' goods; nor do others covet theirs, as the poor covet the goods of the rich; and as they neither plot against others, nor are themselves plotted against, they pass through life safely. Wisely then did Phocylides pray, "Many things are best in the mean; I desire to be of a middle condition in my city."

Then it is manifest that the best political community is formed by citizens of the middle class, and that those states are likely to be well-administered, in which the middle class is large, and stronger if possible than both the other classes, or at any rate than either singly; for the addition of the middle class turns the scale, and prevents either of the extremes from being dominant. Great then is the good fortune of a state in which the citizens have a moderate and sufficient property; for where some possess much, and the others nothing, there may arise an extreme democracy, of a pure oligarchy; or a tyranny may grow out of either extreme — either out of the most rampant democracy, or out of an oligarchy; but it is not so likely to arise out of the middle constitutions and those akin to them. I will explain the reason of this hereafter, when I speak of the revolutions of states. The mean condition of state is clearly best, for no other is free from faction; and where the middle class is large, there are least likely to be factions and dissensions. For a similar reason large states are less liable to faction

than small ones, because in them the middle class is large; whereas in small states it is easy to divide all the citizens into two classes who are either rich or poor, and to leave nothing in the middle. And democracies are safer and more permanent than oligarchies, because they have a middle class which is more numerous and has a greater share in the government for when there is no middle class, and the poor greatly exceed in number, troubles arise, and the state soon comes to an end. A proof of the superiority of the middle class is that the best legislators have been of a middle condition; for example, Solon, as his own verses testify; and Lycurgus, for he was not a king; and Charondas, and almost all legislators.

These considerations will help us to understand why most governments are either democratical or oligarchical. The reason is that the middle class is seldom numerous in them, and whichever party, whether the rich or the common people, transgresses the mean and predominates, draws the constitution its own way, and thus arises either oligarchy or democracy. There is another reason — the poor and the rich quarrel with one another, and whichever side gets the better, instead of establishing a just or popular government, regards political supremacy as the prize of victory, and the one party sets up a democracy and the other an oligarchy. Further, both the parties which had the supremacy in Hellas looked only to the interest of their own form of government, and established in states, the one, democracies, and the other, oligarchies; they thought of their own advantage, of the public not at all. For these reasons the middle form of government has rarely, if ever, existed, and among a very few only. One man alone of all who ever ruled in Hellas was induced to give this middle constitution to states. But it has now become a habit among the citizens of states, not even to care about equality; all men are seeking for dominion, or, if conquered, are willing to submit.

What then is the best form of government, and what makes it the best, is evident; and of other constitutions, since we say that there are many kinds of democracy and many of oligarchy, it is not difficult to see which has the first and which the second

or any other place in the order of excellence, now that we have determined which is the best. For that which is nearest to the best must of necessity be better, and that which is furthest from it worse, if we are judging absolutely and not relatively to given conditions: I say “relatively to given conditions,” since a particular government may be preferable, but another form may be better for some people.

Book VII, Chapter I

He who would duly inquire about the best form of a state ought first to determine which is the most eligible life; while this remains uncertain the best form of the state must also be uncertain; for, in the natural order of things, those may be expected to lead the best life who are governed in the best manner of which their circumstances admit. We ought therefore to ascertain, first of all, which is the most generally eligible life, and then whether the same life is or is not best for the state and for individuals.

Assuming that enough has been already said in discussions outside the school concerning the best life, we will now only repeat what is contained in them. Certainly no one will dispute the propriety of that partition of goods which separates them into three classes, viz. external goods, goods of the body, and goods of the soul, or deny that the happy man must have all three. For no one would maintain that he is happy who has not in him a particle of courage or temperance or justice or prudence, who is afraid of every insect which flutters past him, and will commit any crime, however great, in order to gratify his lust of meat or drink, who will sacrifice his dearest friend for the sake of half-a-farthing, and is as feeble and false in mind as a child or a madman. These propositions are almost universally acknowledged as soon as they are uttered, but men differ about the degree or relative superiority of this or that good. Some think that a very moderate amount of virtue is enough, but set no limit to their desires of wealth, property, power, reputation, and the like. To whom we reply by an appeal to facts, which easily prove that mankind do not acquire or preserve virtue by the help of external goods, but external goods by the help of virtue,

and that happiness, whether consisting in pleasure or virtue, or both, is more often found with those who are most highly cultivated in their mind and in their character, and have only a moderate share of external goods, than among those who possess external goods to a useless extent but are deficient in higher qualities; and this is not only matter of experience, but, if reflected upon, will easily appear to be in accordance with reason. For, whereas external goods have a limit, like any other instrument, and all things useful are of such a nature that where there is too much of them they must either do harm, or at any rate be of no use, to their possessors, every good of the soul, the greater it is, is also of greater use, if the epithet useful as well as noble is appropriate to such subjects. No proof is required to show that the best state of one thing in relation to another corresponds in degree of excellence to the interval between the natures of which we say that these very states are states: so that, if the soul is more noble than our possessions or our bodies, both absolutely and in relation to us, it must be admitted that the best state of either has a similar ratio to the other. Again, it is for the sake of the soul that goods external and goods of the body are eligible at all, and all wise men ought to choose them for the sake of the soul, and not the soul for the sake of them.

Let us acknowledge then that each one has just so much of happiness as he has of virtue and wisdom, and of virtuous and wise action. God is a witness to us of this truth, for he is happy and blessed, not by reason of any external good, but in himself and by reason of his own nature. And herein of necessity lies the difference between good fortune and happiness; for external goods come of themselves, and chance is the author of them, but no one is just or temperate by or through chance. In like manner, and by a similar train of argument, the happy state may be shown to be that which is best and which acts rightly; and rightly it cannot act without doing right actions, and neither individual nor state can do right actions without virtue and wisdom. Thus the courage, justice, and wisdom of a state have the same form and nature as the qualities which give the individual who possesses them the name of just, wise, or temperate.

1.5 Cicero: On Universal Justice (*The Treatise on the Laws*, 52 B.C.E.)⁷

Book I

... In our present investigation we intend to cover the whole range of universal Justice and Law in such a way that our own civil law, as it is called, will be confined to a small and narrow corner...

Law is the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite. This reason, when firmly fixed and fully developed in the human mind, is Law. And so they believe that Law is intelligence, whose natural function it is to command right conduct and forbid wrongdoing...

The animal which we call man, endowed with foresight and quick intelligence, complex, keen, possessing memory, full of reason and prudence, has been given a certain distinguished status by the supreme God who created him; for he is the only one among so many different kinds and varieties of living beings who has a share in reason and thought, while all the rest are deprived of it. But what is more divine, I will not say in man only, but in all heaven and earth, than reason? And reason, when it is full grown and perfected, is rightly called wisdom. Therefore, since there is nothing better than reason, and since it exists both in man and God, the first common possession of man and God is reason. But those who have reason in common must also have right reason in common. And since right reason is Law, we must believe that men have Law also in common with the gods. Further, those who share Law must also share Justice; and those who share these are to be regarded as members of the same commonwealth. If indeed they obey the same authorities and powers, this is true in a far greater degree; but as a matter of fact they do obey this celestial system, the divine mind, and the God of transcendent power. Hence we must now conceive of this whole universe as one commonwealth of which both gods and men are members.

And just as in States distinctions in legal status are made on account of the blood relationships of families, according to a system which I shall take up

in its proper place, so in the universe the same thing holds true, but on a scale much vaster and more splendid, so that men are grouped with Gods on the basis of blood relationship and descent...

Therefore among all the varieties of living beings, there is no creature except man which has any knowledge of God, and among men themselves there is no race either so highly civilized or so savage as not to know that it must believe in a god, even if it does not know in what sort of god it ought to believe. Thus it is clear that man recognizes God because, in a way, he remembers and recognizes the source from which he sprang.

Moreover, virtue exists in man and God alike, but in no other creature besides; virtue, however, is nothing else than Nature perfected and developed to its highest point; therefore there is a likeness between man and God. As this is true, what relationship could be closer or clearer than this one? For this reason, Nature has lavishly yielded such a wealth of things adapted to man's convenience and use that what she produces seems intended as a gift to us, and not brought forth by chance; and this is true, not only of what the fertile earth bountifully bestows in the form of grain and fruit, but also of the animals; for it is clear that some of them have been created to be man's slaves, some to supply him with their products, and others to serve as his food. Moreover innumerable arts have been discovered through the teachings of Nature; for it is by a skillful imitation of her that reason has acquired the necessities of life...

But out of all the material of the philosophers' discussions, surely there comes nothing more valuable than the full realization that we are born for Justice, and that right is based, not upon men's opinions, but upon Nature. This fact will immediately be plain if you once get a clear conception of man's fellowship and union with his fellow-men. For no single thing is so like another, so exactly its counterpart, as all of us are to one another. Nay, if bad habits and false beliefs did not twist the weaker minds and turn them in whatever direction they are inclined, no one would be so like his own self as all men would be like all others. And so, however we may define man, a single definition will apply to all.

7 Cicero, *De Republica and De Legibus*, Volume XVI, Loeb Classical Library Volume 213, translated by Clinton W. Keyes (Cambridge, MA: Harvard University Press, 1928).

This is a sufficient proof that there is no difference in kind between man and man; for if there were, one definition could not be applicable to all men; and indeed reason, which alone raises us above the level of the beasts and enables us to draw inferences, to prove and disprove, to discuss and solve problems, and to come to conclusions, is certainly common to us all, and, though varying in what it learns, at least in the capacity to learn it is invariable. For the same things are invariably perceived by the senses, and those things which stimulate the senses, stimulate them in the same way in all men; and those rudimentary troubles, joys, desires, and fears haunt the minds of all men without distinction, and even if different men have different beliefs, that does not prove, for example, that it is not the same quality of superstition that besets those races which worship dogs and cats as gods, as that which torments other races. But what nation does not love courtesy, kindness, gratitude, and remembrance of favors bestowed? What people does not hate and despise the haughty, the wicked, the cruel, and the ungrateful? Inasmuch as these considerations prove to us that the whole human race is bound together in unity, it follows, finally, that knowledge of the principles of right living is what makes men better...

Socrates was right when he cursed, as he often did, the man who first separated utility from justice; for this separation, he complained, is the source of all mischief...

Those of us who are not influenced by virtue itself to be good men, but by some consideration of utility and profit, are merely shrewd, not good. For to what lengths will that man go in the dark who fears nothing but a witness and a judge? What will he do if, in some desolate spot, he meets a helpless man, unattended, whom he can rob of a fortune? Our virtuous man, who is just and good by nature, will talk with such a person, help him, and guide him on his way; but the other, who does nothing for another's sake, and measures every act by the standard of his own advantage — it is clear enough, I think, what he will do!...

But the most foolish notion of all is the belief that everything is just which is found in the customs or laws of nations. Would that be true, even if these

laws had been enacted by tyrants? If the well-known Thirty had desired to enact a set of laws at Athens, or if the Athenians without exception were delighted by the tyrants' laws, that would not entitle such laws to be regarded as just, would it? No more, in my opinion, should that law be considered just which a Roman interrex⁸ proposed, to the effect that a dictator might put to death with impunity any citizen he wished, even without a trial. For Justice is one; it binds all human society, and is based on one Law, which is right reason applied to command and prohibition. Whoever knows not this Law, whether it has been recorded in writing anywhere or not, is without Justice.

But if Justice is conformity to written laws and national customs, and if, as the same persons claim, everything is to be tested by the standard of utility, then anyone who thinks it will be profitable to him will, if he is able, disregard and violate the laws. It follows that Justice does not exist at all, if it does not exist in Nature, and if that form of it which is considered the foundation of Justice, that will mean the destruction of which human society depends. For these virtues originate in our natural inclination to love our fellow-men, and this is the foundation of Justice. Otherwise not merely consideration for men but also rites and pious observances in honor of the gods are done away with; for I think that these ought to be maintained, not through fear, but on account of the close relationship which exists between man and God. But if the principles of Justice were founded on the decrees of peoples, the edicts of princes, or decisions of judges, then Justice would sanction robbery and adultery and forgery of wills, in case these acts were approved by the votes or decrees of the populace. But if so great a power belongs to the decisions and decrees of fools that the laws of Nature can be changed by their votes, then why do they not ordain that what is bad and baneful shall be changed by their votes, then why do they not ordain that what is bad and baneful shall be considered good and salutary? Or, if a law can make Justice out of Injustice, can it not also make good out of bad? But in fact we can perceive the difference between good laws and bad by referring them to no other standard than Nature; indeed, it is not

8 This evidently refers to a law proposed by L. Valerius Flaccus in 82 B.C. with reference to Sulla's dictatorship. Cf. Cicero, *De Lege Agraria* III, 4; Act II in *Verrem* III, 82.

merely Justice and Injustice which are distinguished by Nature, but also and without exception things which are honorable and dishonorable. For since an intelligence common to us all makes things known to us and formulates them in our minds, honorable actions are ascribed by us to virtue, and dishonorable actions to vice; and only a madman would conclude that these judgments are matters of opinion, and not fixed by Nature. For even what we, by a misuse of the term, call the virtue of a tree or of a horse, is not a matter of opinion, but is based on Nature. And if that is true, honorable and dishonorable actions must also be distinguished by Nature. For if virtue in general is to be tested by opinion, then its several parts must also be so tested; who, therefore, would judge a man of prudence and, if I may say so, hard common sense, not by his own character but by some external circumstance? For virtue is reason completely developed; and this certainly is natural; therefore everything honorable is likewise natural. For just as truth and falsehood, the logical and illogical, are judged by themselves, and not by anything else, so the steadfast and continuous use of reason in the conduct of life, which is virtue, and also inconstancy, which is vice [are judged] by their own nature. . . .

Social and Economic Justice

As early as during the period of King Hammurabi (1728–1686 B.C.E.), one can find laws securing creditors' and employees' rights, regulating work relationships, and implying a right to property (see Section 1.6). In the premodern era, the question of property rights had already divided Socrates and Aristotle, setting the stage for the tempestuous conflicts over property rights characterizing the past three centuries. Favoring communal ownership of property, Socrates, as reported by Plato, warned in *The Republic* (c. 360 B.C.E.) that property rights could fragment the polity and tear "the city in pieces by differing about 'mine' and 'not mine,'" thereby undermining the common end (see Section 1.7). Opposing Socrates, Aristotle would defend the importance of property rights, pointing out: "When everyone has his own separate sphere of interest, there will not be the same ground for quarrels" (see Section 1.8).

1.6 The Code of Hammurabi: On Property (c. 1700 B.C.E.)⁹

§ 6

If a man has stolen property belonging to a god or a palace, that man shall be put to death, and he who

In addition, if it be true that virtue is sought for the sake of other benefits and not for its own sake, there will be only one virtue, which will most properly be called a vice. For in proportion as anyone makes his own advantage absolutely the sole standard of all his actions, to that extent he is absolutely not a good man; therefore those who measure virtue by the reward it brings believe in the existence of no virtue except vice. For where shall we find a kindly man, if no one does a kindness for the sake of anyone else than himself? Who can be considered grateful, if even those who repay favors have no real consideration for those to whom they repay them? What becomes of that sacred thing, friendship, if even the friend himself is not loved for his own sake, "with the whole heart," as people say? Why, according to this theory, a friend should even be deserted and cast aside as soon as there is no longer hope of benefit and profit from his friendship! But what could be more inhuman than that? If, on the other hand, friendship is to be sought for its own sake, then the society of our fellow-men, fairness, and Justice, are also to be sought for their own sake. If this is not the case then there is no such thing as Justice at all for the very height of injustice is to seek pay for Justice.

has received the stolen property from his hand shall be put to death.

§ 7

If a man buys silver or gold or slave or slave-girl or ox or sheep or ass or anything else whatsoever

9 *The Babylonian Laws*, edited by G. R. Driver and John C. Miles (Oxford: Clarendon Press, 1955).

from a [free] man's son or a [free] man's slave or has received [them] for safe custody without witnesses or contract that man is a thief; he shall be put to death.

§ 8

If a man has stolen an ox or a sheep or an ass or swine or a boat, if [it is the property] of a god [or] if [it is the property] of a palace, he shall pay 30-fold; if [it is the property] of a servant, he shall replace [it] 10-fold. If the thief has not the means of payment he shall be put to death.

§ 21

If a man has broken into a house, they shall put him to death and hang him before the breach which he has made.

§§ 22–24

If a man has committed robbery and is caught, that man shall be put to death.

If the robber is not caught, the man who has been robbed shall formally declare whatever he has lost before a god, and the city and the mayor in whose territory or district the robbery has been committed shall replace whatever he has lost for him.

If [it is] the life [of the owner that is lost], the city or the mayor shall pay one maneh of silver to his kinsfolk.

§ 25

If a fire has broken out in a man's house and a man who has gone to extinguish [it] has coveted an article of the owner of the house and takes the article of the owner of the house, that man shall be cast into that fire.

1.7 Plato: On the Community of Property (*The Republic*, c. 360 B.C.E.)¹⁰

"In our city the language of harmony and concord will be more often heard than in any other. As I was describing before, when any one is well

or ill, the universal word will be 'with me it is well' or 'it is ill.'"

"Most true."

"And agreeably to this mode of thinking and speaking, were we not saying that they will have their pleasures and pains in common?"

"Yes, and so they will."

"And they will have a common interest in the same thing which they will alike call 'my own,' and having this common interest they will have a common feeling of pleasure and pain? Yes, far more so than in other States. And the reason of this, over and above the general constitution of the State, will be that the guardians will have a community of women and children?"

"That will be the chief reason."

"And this unity of feeling we admitted to be the greatest good, as was implied in our own comparison of a well-ordered State to the relation of the body and the members, when affected by pleasure or pain?"

"That we acknowledge, and very rightly."

"Then the community of wives and children among our citizens is clearly the source of the greatest good to the State?"

"Certainly."

"And this agrees with the other principle which we were affirming — that the guardians were not to have houses or lands or any other property; their pay was to be their food, which they were to receive from the other citizens, and they were to have no private expenses; for we intended them to preserve their true character of guardians."

"Right, he replied."

"Both the community of property and the community of families, as I am saying, tend to make them, more truly guardians; they will not tear the city in pieces by differing about 'mine' and 'not mine'; each man dragging any acquisition which he has made into a separate house of his own, where he has a separate wife and children and private pleasures and pains; but all will be affected as far as may be by the same pleasures and pains because

10 Plato, *The Republic*, translated by Benjamin Jowett (New York: Modern Library, 1941).

they are all of one opinion about what is near and dear to them, and therefore they all tend towards a common end."

"Certainly, he replied."

"And as they have nothing but their persons which they can call their own, suits and complaints will have no existence among them; they will be delivered from all those quarrels of which money or children or relations are the occasion."

"Of course they will."

"Neither will trials for assault or insult ever be likely to occur among them. For that equals should defend themselves against equals we shall maintain to be honorable and right; we shall make the protection of the person a matter of necessity."

"That is good, he said."

"Yes; and there is a further good in the law, viz. that if a man has a quarrel with another he will satisfy his resentment then and there, and not proceed to more dangerous lengths."

"Certainly."

"To the elder shall be assigned the duty of ruling and chastising the younger."

"Clearly."

"Nor can there be a doubt that the younger will not strike or do any other violence to an elder, unless the magistrates command him; nor will he slight him in any way. For there are two guardians, shame and fear, mighty to prevent him: shame, which makes men refrain from laying hands on those who are to them in the relation of parents; fear, that the injured one will be succored by the others who are his brothers, sons, fathers."

"That is true, he replied."

"Then in every way the laws will help the citizens to keep the peace with one another?"

"Yes, there will be no want of peace."

"And as the guardians will never quarrel among themselves there will be no danger of the rest of the city being divided either against them or against one another."

"None whatever."

"I hardly like even to mention the little meannesses of which they will be rid, for they are beneath notice: such, for example, as the flattery of

the rich by the poor, and all the pains and pangs which men experience in bringing up a family, and in finding money to buy necessaries for their household, borrowing and then repudiating, getting how they can, and giving the money into the hands of women and slaves to keep — the many evils of so many kinds which people suffer in this way are mean enough and obvious enough, and not worth speaking of."

"Yes, he said, a man has no need of eyes in order to perceive that."

"And from all these evils they will be delivered, and their life will be blessed as the life of Olympic victors and yet more blessed."

"How so?"

"The Olympic victor, I said, is deemed happy in receiving a part only of the blessedness which is secured to our citizens, who have won a more glorious victory and have a more complete maintenance at the public cost. For the victory which they have won is the salvation of the whole State; and the crown with which they and their children are crowned is the fullness of all that life needs; they receive rewards from the hands of their country while living, and after death have an honorable burial."

"Yes, he said, and glorious rewards they are."

"Do you remember, I said, how in the course of the previous discussion some one who shall be nameless accused us of making our guardians unhappy — they had nothing and might have possessed all things — to whom we replied that, if an occasion offered, we might perhaps hereafter consider this question, but that, as at present advised, we would make our guardians truly guardians, and that we were fashioning the State with a view to the greatest happiness, not of any particular class, but of the whole?"

"Yes, I remember."

"And what do you say, now that the life of our protectors is made out to be far better and nobler than that of Olympic victors — is the life of shoemakers, or any other artisans, or of husbandmen, to be compared with it?"

"Certainly not."

"At the same time I ought here to repeat what I have said elsewhere, that if any of our guardians

shall try to be happy in such a manner that he will cease to be a guardian, and is not content with this safe and harmonious life, which, in our judgment, is of all lives the best, but infatuated by some youthful conceit of happiness which gets up into his head shall seek to appropriate the whole state to himself, then he will have to learn how wisely Hesiod spoke, when he said, 'half is more than the whole'."

1.8 Aristotle: On Property (*Politics*, c. 350 B.C.E.)¹¹

Book II, Chapter 5

1262^b39 The next subject for consideration is property. What is the proper system of property for citizens who are to live under the best form of constitution? Should property be held in common or not? This is an issue which may be considered in itself, and apart from any proposals for community of women and children. Even if women and children are held separately, as is now universally the case, questions relating to property still remain for discussion. Should use and ownership both be common? For example, there may be a system under which plots of land are owned separately, but the crops (as actually happens among some tribal peoples) are brought into a common stock for the purpose of consumption. Secondly, and conversely, the land may be held in common ownership, and may also be cultivated in common, but the crops may be divided among individuals for their private use; some of the barbarian peoples are also said to practice this second method of sharing. Thirdly, the plots and the crops may both be common.

1263^a8 When the cultivators of the soil are a different body from the citizens who own it, the position will be different and easier to handle; but when the citizens who own the soil do the work themselves, the problems of property will cause a good deal of trouble. If they do not share equally in the work and in the enjoyment of the produce, those who do more work and get less of the produce will be bound to raise complaints against those who get

a large reward and do little work. In general it is a difficult business to live together and to share in any form of human activity, but it is specially difficult in such matters. Fellow-travelers who merely share in a journey furnish an illustration: they generally quarrel about ordinary matters and take offense on petty occasions. So, again, the servants with whom we are most prone to take offense are those who are particularly employed in ordinary everyday services.

1263^a21 Difficulties such as these, and many others are involved in a system of community of property. The present system would be far preferable, if it were embellished with social customs and the enactment of proper laws. It would possess the advantages of both systems, and would combine the merits of a system of community of property with those of the system of private property. For, although there is a sense in which property *ought* to be common, it should in general be private. When everyone has his own separate sphere of interest, there will not be the same ground for quarrels; and they will make more effort, because each man will feel that he is applying himself to what is his own.

1263^a30 On such a scheme, too, moral goodness will ensure that the property of each is made to serve the use of all, in the spirit of the proverb, which says Friends' goods are goods in Common. Even now there are some cities in which the outlines of such a scheme are so far apparent, as to suggest that it is not impossible; in well-ordered cities, more particularly, there are some elements of it already existing, and others which might be added: [In these cities] each citizen has his own property; part of which he makes available to his friends, and part of which he uses as though it was common property. In Sparta, for example, men use one another's slaves, and one another's horses and dogs, as if they were their own; and they take provisions on a journey, if they happen to be in need, from the farms in the countryside. It is clear from what has been said that the better system is that under which property is privately owned but is put to common use and the function proper to the

11 Aristotle, *Politics*, in *Aristotle*, translated by E. Barker (Oxford: Oxford University Press, 1998).

legislator is to make men so disposed that they will treat property in this way.

1263^a40 In addition, to think of a thing as your own makes an inexpressible difference, so far as pleasure is concerned. It may well be that regard for oneself is a feeling implanted by nature, and not a mere random impulse. Self-love is rightly censured, but that is not so much loving oneself as loving oneself in excess. It is the same with one who loves money; after all, virtually everyone loves things of this kind. We may add that a very great pleasure is to be found in doing a kindness and giving some help to friends, or guests, or comrades; and such kindness and help become possible only when property is privately owned. But not only are these pleasures impossible under a system in which the city is excessively unified; the activities of two forms of goodness are also obviously destroyed. The first of these is temperance in the matter of sexual relations (it is an act of moral value to keep away from the wife of another through temperance); the second is generosity in the use of property. In a city which is excessively unified no man can show himself generous, or indeed do a generous act; for the function of generosity consists in the proper use which is made of property.

1263^b15 This kind of legislation may appear to wear an attractive face and to demonstrate benevolence. The hearer receives it gladly, thinking that everybody will feel towards everybody else some marvellous sense of friendship — all the more as the evils now existing under ordinary forms of government (lawsuits about contracts, convictions for perjury, and obsequious flatteries of the rich) are denounced as due to the absence of a system of common property. None of these, however, is due to property not being held in common. They all arise from wickedness. Indeed it is a fact of observation that those who own common property, and share in its management, are far more often at variance with one another than those who have property separately — though those who are at variance in consequence of sharing in property look to us few in number when we compare them with the mass of those who own their property privately.

1263^b27 What is more, justice demands that we should take into account not only the evils which people will be spared when they have begun to hold their property in common, but also the benefits of which they will be deprived. Their life can be seen to be utterly impossible.

1263^b29 The cause of the fallacy into which Socrates falls must be held to be his incorrect premises. It is true that unity in some respects is necessary both for the household and for the city, but unity in all respects is not. There is a point at which a city, by advancing in unity, will cease to be a city: there is another point at which it will still be a city but a worse one because it has come close to ceasing altogether to be a city. It is as if you were to turn harmony into mere unison, or to reduce a theme to a single beat. The truth is that the city, as has already been said, is a plurality; and education is therefore the means of making it a community and giving it unity. It is therefore surprising that one who intends to introduce a system of education, and who believes that the city can achieve goodness by means of this system, should none the less think that he is setting it on the right track by such methods as he actually proposes, rather than by the method of social customs, of mental culture, and of legislation. An example of such legislation may be found in Sparta and Crete, where the legislator has made the institution of property serve a common use by the system of common meals.

1264^a1 There is another matter which must not be ignored: we are bound to pay some regard to the long past and the passage of the years, in which these things would not have gone unnoticed if they had been really good. Almost everything has been discovered already; though some things have not been combined with one another, and others are not put into practice. It would shed a great deal of light on these matters, if we could watch the actual construction of such a constitution. The foundation of any city will always involve the division and distribution of its members into classes, partly in the form of associations for common meals, and partly in that of clans and tribes. It follows that the only peculiar feature of the legislation is the rule that the guardians are not to farm the land; and even that

is a rule which the Spartans are already attempting to follow.

1264^a1 Socrates does not explain the character of the whole constitution so far as concerns those who share in it, nor indeed is it easy to explain. The mass of the citizens who are not guardians will be, in effect, nearly the whole of the citizen body. But their position is left undefined. We are not told whether the farmers are also to have property in common, or to own it individually; nor do we learn whether their women and children are to be common to them all, or to belong to each separately.

1264^a17 The first alternative is that all things should belong to them all in common. In that case, what will be the difference between them and the guardians? What advantage will they gain by accepting the government of the guardians? What convinces them actually to accept it? — unless it be some device such as is used in Crete, where the serfs are allowed to enjoy the same general privileges as their masters, and are excluded only from athletic exercises and the possession of arms.

1264^a22 The second alternative is that these institutions should be the same for the farmers as they are in most cities today. In that case, we may inquire, what the character of their association will be? There will inevitably be two cities in one, and those cities will be opposed to one another — the guardians being made into something of the nature of an army of occupation, and the farmers, artisans, and others being given the position of ordinary civilians. Again, legal complaints, and actions at law, and all the other evils which he describes as existing in cities as they are, will equally exist among them. Certainly Socrates says that, in virtue of their education, they will not need a number of regulations (such as city ordinances, market by-laws, and the like); but it is also true that he provides education only for the guardians. A further difficulty is that he has the farmers control their holdings on condition that they pay a quota of their produce to the guardians. This is likely to make them far more difficult to handle, and much more filled with high ideas of their own importance, than other people's helots, penestae, or serfs.

Justice, War, and Peace

The secular tradition owes greatly to the moral lessons drawn from *The History of the Peloponnesian War*. Its author, the Greek historian Thucydides (c. 460/455–400 B.C.E.), recounts the war waged between Sparta and Athens during the fifth century. His Melian dialogue, showing the failure of the Melians to avert destruction through appeals to justice, famously dramatizes the confrontation between naked power and morality (see Section 1.9). Horrified by the loss of lives during the Greek wars, Socrates in Plato's *Republic* (c. 360 B.C.E.) implored the Greeks not to enslave their enemies (whether Greeks or others), not to ravage their lands, not to burn their houses, and not to kill innocents (see Section 1.10). Aristotle (c. 350 B.C.E.) likewise regarded self-defense and the establishment of peace as the only legitimate purpose of military action. If war had to be waged, it should never be for the purpose of enslavement or despotism, but for the good of the governed (see Section 1.11).

1.9 Thucydides: On Justice Versus Power: "The Melian Dialogue" (*The History of the Peloponnesian War*, c. 411 B.C.E.)¹²

... The Melians are colonists of the Lacedaemonians who would not submit to Athens like the other islanders. At first they were neutral and took no part. But when the Athenians tried to coerce them

by ravaging their lands, they were driven into open hostilities. The generals, Cleomedes the son of Lycomedes and Tisias the son of Tisimachus, encamped with the Athenian forces on the island. But before they did the country any harm they sent envoys to negotiate with the Melians. Instead of bringing these envoys before the people, the Melians desired them to explain their errand to the

12 Thucydides, *The History of the Peloponnesian War*, translated by Benjamin Jowett (New York: Prometheus, 1998).

magistrates and to the dominant class. They spoke as follows:

85 “Since we are not allowed to speak to the people, lest, forsooth, a multitude should be deceived by seductive and unanswerable arguments which they would hear set forth in a single uninterrupted oration (for we are perfectly aware that this is what you mean in bringing us before a select few), you who are sitting here may as well make assurance yet surer. Let us have no set speeches at all, but do you reply to each several statement of which you disapprove, and criticize it at once. Say first of all how you like this mode of proceeding.”

86 The Melian representatives answered: “The quiet interchange of explanations is a reasonable thing, and we do not object to that. But your warlike movements, which are present not only to our fears but to our eyes, seem to belie your words. We see that, although you may reason with us, you mean to be our judges; and that at the end of the discussion, if the justice of our cause prevail and we therefore refuse to yield, we may expect war; if we are convinced by you, slavery.”

87 Ath.: “Nay, but if you are only going to argue from fancies about the future, or if you meet us with any other purpose than that of looking your circumstances in the face and saving your city, we have done; but if this is your intention we will proceed.”

88 Mel.: “It is an excusable and natural thing that men in our position should neglect no argument and no view which may avail. But we admit that this conference has met to consider the question of our preservation; and therefore let the argument proceed in the manner which you propose.”

89 Ath.: ... “You and we should say what we really think, and aim only at what is possible, for we both alike know that into the discussion of human affairs the question of justice only enters where there is equal power to enforce it, and that the powerful exact what they can, and the weak grant what they must.”

90 Mel.: “Well, then, since you set aside justice and invite us to speak of expediency, in our judgment it is certainly expedient that you should respect a principle which is for the common good; that to every man when in peril a reasonable claim should be accounted a claim of right, and that any plea which he is disposed to urge, even if failing of the point a little, should help his cause. Your interest in this principle is quite as great as ours inasmuch as you, if you fall, will incur the heaviest vengeance, and will be the most terrible example to mankind.”

91 Ath.: “The fall of our empire, if it should fall, is not an event to which we look forward with dismay; for ruling states such as Lacedaemon are not cruel to their vanquished enemies. With the Lacedaemonians, however, we are not now contending; the real danger is from our many subject states, who may of their own motion rise up and overcome their masters. But this is a danger which you may leave to us. And we will now endeavor to show that we have come in the interests of our empire, and that in what we are about to say we are only seeking the preservation of your city. For we want to make you ours with the least trouble to ourselves, and it is for the interests of us both that you should not be destroyed.”

92 Mel.: “It may be your interest to be our masters, but how can it be ours to be your slaves?”

93 Ath.: “To you the gain will be that by submission you will avert the worst; and we shall be all the richer for your preservation.”

94 Mel.: “But must we be your enemies? Will you not receive us as friends if we are neutral and remain at peace with you?”

95 Ath.: “No, your enmity is not half so mischievous to us as your friendship; for the one is in the eyes of our subjects an argument of our power, the other of our weakness.”

96 Mel.: “But are your subjects really unable to distinguish between states in which you have no concern, and those which are

chiefly your own colonies, and in some cases have revolted and been subdued by you?"

97 Ath.: "Why, they do not doubt that both of them have a good deal to say for themselves on the score of justice, but they think that states like yours are left free because they are able to defend themselves, and that we do not attack them because we dare not. So that your subjection will give us an increase of security, as well as an extension of empire. For we are masters of the sea, and you who are islanders, and insignificant islanders too, must not be allowed to escape us."

98 Mel.: "But do you not recognize another danger? For, once more, since you drive us from the plea of justice press upon us your doctrine of expediency, we must show you what is for our interest, and, if it be for yours also, may hope to convince you: — Will you not be making enemies of all who are now neutrals? When they see how you are treating us they will expect you some day to turn against them; and if so, are you not strengthening the enemies whom you already have, and bringing upon you others who, if they could help, would never dream of being your enemies at all?"

99 Ath.: "We do not consider our really dangerous enemies to be any of the peoples inhabiting the mainland who, secure in their freedom, may defer indefinitely any measures of precaution which they take us, but islanders who, like you, happen to be under no control, and all who may be already irritated by the necessity of submission to our empire — these are our real enemies, for they are the most reckless and most likely to bring themselves as well as us into a danger which they cannot but foresee."

100 Mel.: "Surely then, if you and your subjects will brave all this risk, you to preserve your empire and they to be quit of it, how base and cowardly would it be in us, who retain our freedom, not to do and suffer anything rather than be your slaves."

101 Ath.: "Not so, if you calmly reflect: for you are not fighting against equals to whom

you cannot yield without disgrace, but you are taking counsel whether or not you resist an overwhelming force. The question is not one of honor but of prudence."

102 Mel.: "But we know that the fortune of war is sometimes and not always on the side of numbers. If we yield now, all is over; but if we fight there is yet a hope that we may stand upright."

103 Ath.: "Hope is a good comforter in the hour of danger, and when men have something else to depend upon, although hurtful, she is not ruinous. But when her spend-thrift nature has induced them to stake their all, they see her as she is in the moment of their fall, and not till then. While the knowledge of her might enable them to be ware of her, she never fails. You are weak and a single turn of the scale might be your ruin. Do not you be thus deluded; avoid the error of which so many are guilty, who, although they might still be saved if they would take the natural means, when visible grounds of confidence forsake them, have recourse to the invisible, to prophecies and oracles and the like, which ruin men by the hopes which they inspire in them."

104 Mel.: "We know only too well how hard the struggle must be against you and against fortune, if she does not mean to be impartial. Nevertheless we do not despair of fortune; for we hope to stand as high as you in the favor of heaven, because we are righteous and you against whom we contend are righteous; and we are satisfied that our deficiency in power will be compensated by the aid of our allies the Lacedaemonians; they cannot refuse to help us, if only because we are their kinsmen, and for the sake of their own honor. And therefore our confidence is not so utterly blind as you suppose."

105 Ath.: "As for the Gods, we expect to have quite as much of their favor as you: for we are not doing or claiming anything which goes beyond common opinion, about divine or men's desires about human things...." "And then as to the Lacedaemonians — when you imagine that

out of very shame they will assist you, we admire the innocence of your idea, but we do not envy you the folly of it. The Lacedaemonians are exceedingly virtuous among themselves, and according to their national standard of morality. But, in respect of their dealings with others, although many things might be said, they can be described in few words — of all men whom we know they are the most notorious for identifying what is pleasant with what is honorable, and what is expedient with what is just. But how inconsistent is such a character with your present blind hope of deliverance!”

106 Mel.: “That is the very reason why we trust them; they will look to their interest, and therefore will not be willing to betray the Melians, who are their own colonist lest they should be distrusted by their friends in Hellas and play into the hands of their enemies.

107 Ath.: “But do you not see that the path of expediency is safe, whereas justice and honor involve danger in practice, and such dangers the Lacedaemonians seldom care to face.”

108 Mel.: “On the other hand, we think that whatever perils there may be, they will be ready to face them for our sakes, and will consider danger less dangerous where we are concerned. For if they need our aid we are close at hand, and they can better trust our loyal feeling because we are their kinsmen....

111 Ath.: Your strongest grounds are hopes deferred, and what power you have is not to be compared with that which is already arrayed against you. Unless after we have withdrawn you mean to come, as even now you may, to a wiser conclusion, you are showing a great want of sense. For surely you cannot dream of flying to that false sense of honor which has been the ruin of so many when danger and dishonor were staring them in the face. Many men with their eyes still open to the consequences have found the word ‘honor’ too much for them, and have suffered a mere name to lure them on, until it has drawn down upon

them real and irretrievable calamities; through their own folly they have incurred a worse dishonor than fortune would have inflicted upon them. If you are wise you will not run this risk; you ought to see that there can be no disgrace in yielding to a great city which invites you to become her ally on reasonable terms, keeping your own land, and merely paying tribute; and that you will certainly gain no honor if, having to choose between two alternatives, safety and war, you obstinately prefer the worse. To maintain our rights against equals, to be politic with superiors, and to be moderate towards inferiors is the path of safety. Reflect once more when we have withdrawn, and say to yourselves over and over again that you are deliberating about your one and only country, which may be saved or may be destroyed by a single decision.”

112 The Athenians left the conference: the Melians, after consulting among themselves, resolved to persevere in their refusal.

113 The Athenian envoys returned to the army; and the generals, when they found that the Melians would not yield, immediately commenced hostilities. They surrounded the town of Melos with a wall, dividing the work among the several contingents. They then left troops of their own and of their allies to keep guard both by land and by sea, and retired with the greater part of their army; the remainder carried on the blockade....

115 Later the Athenians put to death all who were of military age, and made slaves of the women and children. They then colonized the island, sending thither five hundred settlers of their own.

1.10 Plato: On How to Treat One’s Enemy (*The Republic*, c. 360 B.C.E.)¹³

“[H]ow will our soldiers treat their enemies?”

“In what respect?”

“First, over slavery. Do you think it is right for Greek states to sell Greeks into slavery, or to allow

13 Plato, *The Republic*, translated by Desmond Lee, second edition (London: Penguin Books, 2003).

others to do so, so far as they can prevent it? Ought they not rather to make it their custom to spare their fellows, for fear of falling under barbarian domination?"

"It would be infinitely better to spare them."

"There will then be no Greek slave in our state, and it will advise other Greek states to follow suit."

"Certainly. That would encourage them to let each other alone and turn against the barbarian."

"Then is it a good thing to strip the dead, after a victory, of anything but their arms? It gives the cowards an excuse not to pursue the enemy who are still capable of fight, if they can pretend they are doing their duty by poking about among the dead. Indeed, many an army has been lost before now by this habit of plunder."

"It surely has."

And don't you think there's something low and mean about plundering a corpse, and a kind of feminine small-mindedness in treating the body as an enemy when the fighting spirit which fought in it has left it and flown? It's rather like the dog's habit of snarling at the stones thrown at it, but keeping clear of the person who's throwing them."

"Yes, it's very like that."

"So we'll have no stripping of corpses and no refusal to allow burial."

"I entirely agree," he said.

"Nor shall we dedicate the arms of our enemies in our temples, particularly if they are the arms of fellow-Greeks and if we have any concern for friendship with them. On the contrary, we shall be afraid that we should desecrate a temple by offering them the arms of our own kin, unless indeed Apollo rules otherwise."

"Quite right."

"Then what about devastating the lands and burning the houses of Greek enemies? How will your soldiers treat their enemies over that?"

"I'd like to know what you think about it."

"I don't think they ought to do either, but confine themselves to carrying off the year's harvest. Shall I tell you why?"

"Please do."

"I think that the two terms 'war' and 'civil strife' reflect a real difference between two types

of dispute. And the two types I mean are the one internal and domestic, the other external and foreign; and we call a domestic dispute 'civil strife,' and an external one 'war.'"

"What you say is very much to the point."

"Then do you think it equally to the point if I say that all relations between Greek and Greek are internal and domestic, and all relations between Greek and barbarian foreign and external?"

"Admirable."

"Then when Greek fights barbarian or barbarian Greek we shall say they are at war and are natural enemies, and that their quarrel is properly called a 'war'; but when Greek fights Greek we shall say that they are naturally friends, but that Greece is sick and torn by faction, and that the quarrel should be called 'civil strife.'"

"I agree with your view."

"Consider, then," I went on, "what happens in civil strife in its normal sense, that is to say, when there is civil war in a single state. If the two sides ravage each other's land and burn each other's houses, we think it an outrage, and regard two parties who dare to lay waste the country which bore and bred them as lacking in all patriotism. But we think it reasonable, if the victors merely carry off their opponents' crops and remember that they can't go on fighting for ever but must come to terms some time."

"Yes, because the last frame of mind is the more civilized."

"Well, then," I said, "your city will be Greek, won't it?"

"It must be."

"And its people good and civilized?"

"Certainly."

"Then they will love their fellow-Greeks, and think of Greece as their own land, in whose common religion they share."

"Yes, certainly."

"And any dispute with Greeks they will regard as civil strife, because it is with their own people, and so won't call it 'war.'"

"That's true."

"So they will fight in the hope of coming to terms."

“Yes, they will.”

“They will in fact correct them in a friendly way, rather than punish them with enslavement and destruction; they will act in a spirit of correction, not of enmity.”

“Exactly.”

“It follows that they will not, as Greeks, devastate Greek lands or burn Greek dwellings; nor will they admit that the whole people of a state — men, women, and children — are their enemies, but only the hostile minority who are responsible for the quarrel. They will not therefore devastate the land or destroy the houses of the friendly majority, but press their quarrel only until the guilty minority are brought to justice by the innocent victims.”

“For myself,” he said, “I agree that our citizens ought to behave in this way to their enemies; though when they are fighting barbarians they should treat them as the Greeks now treat each other.”

“Then let us lay it down as a law for our Guardians, that they are neither to ravage land nor burn houses.”

“We will do so,” he agreed; “it is a good rule, like all our others.”

1.11 Aristotle: On the Purpose of War (*Politics*, c. 350 B.C.E.)¹⁴

Book 7, Part XIV

The whole of life is further divided into two parts, business and leisure, war and peace, and of actions some aim at what is necessary and useful, and some at what is honorable. And the preference given to one or the other class of actions must necessarily be like the preference given to one or other part of the soul and its actions over the other; there must be war for the sake of peace, business for the sake of leisure, things useful and necessary for the sake of things honorable. All these points the statesman should keep in view when he frames his laws; he should consider the parts of the soul and their functions, and above all the better and the end; he should also remember the diversities of human lives and actions. For men must be able to engage in business and go to war, but leisure and peace are better; they must

do what is necessary and indeed what is useful, but what is honorable is better. On such principles children and persons of every age which requires education should be trained. Whereas even the Hellenes of the present day who are reputed to be best governed, and the legislators who gave them their constitutions, do not appear to have framed their governments with a regard to the best end, or to have given them laws and education with a view to all the virtues, but in a vulgar spirit have fallen back on those which promised to be more useful and profitable. Many modern writers have taken a similar view: they commend the Lacedaemonian constitution, and praise the legislator for making conquest and war his sole aim, a doctrine which may be refuted by argument and has long ago been refuted by facts. For most men desire empire in the hope of accumulating the goods of fortune; and on this ground Thibron and all those who have written about the Lacedaemonian constitution have praised their legislator, because the Lacedaemonians, by being trained to meet dangers, gained great power. But surely they are not a happy people now that their empire has passed away, nor was their legislator right. How ridiculous is the result, if, when they are continuing in the observance of his laws and no one interferes with them, they have lost the better part of life! These writers further err about the sort of government which the legislator should approve, for the government of freemen is nobler and implies more virtue than despotic government. Neither is a city to be deemed happy or a legislator to be praised because he trains his citizens to conquer and obtain dominion over their neighbors, for there is great evil in this. On a similar principle any citizen who could, should obviously try to obtain the power in his own state- the crime which the Lacedaemonians accuse king Pausanias of attempting, although he had so great honor already. No such principle and no law having this object is either statesmanlike or useful or right. For the same things are best both for individuals and for states, and these are the things which the legislator ought to implant in the minds of his citizens.

Neither should men study war with a view to the enslavement of those who do not deserve to be

14 Aristotle, *Politics*, in *Aristotle*, translated by E. Barker (Oxford: Oxford University Press, 1998).

enslaved; but first of all they should provide against their own enslavement, and in the second place obtain empire for the good of the governed, and not for the sake of exercising a general despotism, and in the third place they should seek to be masters only over those who deserve to be slaves. Facts, as well as arguments, prove that the legislator should direct

all his military and other measures to the provision of leisure and the establishment of peace. For most of these military states are safe only while they are at war, but fall when they have acquired their empire; like unused iron they lose their temper in time of peace. And for this the legislator is to blame, he never having taught them how to lead the life of peace.

Justice for Whom?

If Hammurabi's Code (c. 1700 B.C.E.) included legal protection for widows, sick wives, and daughters, women were not granted the same rights as men, and their rights varied depending upon their social status. For instance, an adulterous wife – and her lover – was subject to death at her husband's discretion, but a betrayed wife did not enjoy a similar prerogative. Similarly, slaves were endowed with far fewer rights than patricians or freemen. While Mesopotamian slaves were acquired in war or purchased in markets at home and abroad, their fate was slightly better than that of Roman slaves: they were able to marry and their masters did not have the power to take their lives (see Section 1.12).

Socrates, as expressed through the voice of Plato, was unique among the ancients for his position on women. Not only did he encourage the fair treatment of women, who had few rights in ancient Greece, but Plato was among the first Western thinkers to assert, in *The Republic* (c. 360 B.C.E.), that women had abilities similar to those of men and that, depending upon their individual capacities, they should receive the same kind of education, be entrusted to similar offices, and fulfill the same tasks as their male counterparts (see Section 1.13). Reflecting homosexual mores in Greek society, Socrates praised homosexual friendship as admirable. "If two males came together," he said in *The Symposium* (c. 360 B.C.E.), "they would have the satisfaction of sexual intercourse, and then relax, turn to their work and think about the other things in their life" (see Section 1.14).

While sympathetic to homosexuality, like his teacher Plato, Aristotle disagreed with Plato over the role of women and slaves in society. In contrast to Plato, Aristotle argued in *The Politics* (c. 350 B.C.E.) in defense of slavery. Because barbarians were less rational than Greeks, he maintained they were by nature suited to be enslaved as a "living tool." Aristotle also departed from Plato's view of women by asserting male superiority over women, and that this difference may "hold good for mankind in general" (see Section 1.15).

1.12 The Code of Hammurabi: On Women and Slaves (c. 1700 B.C.E.)¹⁵

§ 128

If a man has taken a (woman to) wife and has not drawn up a contract for her, that woman is not a wife.

§ 129

If a married lady is caught lying with another man they shall bind them and cast them into the water; if her husband wishes to let his wife live, then the king shall let his servant live.

§ 130

If a man has raped a married lady, who is dwelling in her father's house, that man shall be put to death; that woman then goes free.

§§ 131–132

If the husband of a married lady has accused her but she is not caught lying with another man, she shall take an oath by the life of a god and return to her house.

If a finger has been pointed at the married lady with regard to another man and she is not caught

15 *The Babylonian Laws*, edited by G. R. Driver and John C. Miles (Oxford: Clarendon Press, 1955).

lying with the other man, she shall leap into the holy river for her husband.

§§ 148–149

If a man has married a wife who falls ill [and] he sets his face to marry another woman, he may marry (her). He shall not divorce his wife, she shall dwell in the house which he has built, and he shall continue to maintain her so long as she lives.

If that woman does not consent to dwell in the house of her husband, he shall make good to her dowry which she brought from the house of her father and so she shall go [away].

§ 150

If a man has bestowed a field, a plantation, a house, or chattels on his wife (and) has executed a sealed tablet for her, after [the death of] her husband her sons shall not bring a claim (for it) against her; the mother shall give (the charge of) her estate to her son whom she loves. She shall not give (it) to another person.

§ 153

If a woman has procured the death of her husband on account of another man, they shall impale that woman.

§ 154

If a man commits incest with daughter, they shall banish that man from the city.

§§ 175–176

If either a slave of a palace or a slave of a servant has married a lady and she bears sons, the owner of the slave shall make no claim to the sons of the lady for slavery.

§§ 209–214

If a man strikes the daughter of a (free) man (and) causes her to lose the fruit of her womb, he shall pay shekels of silver for the fruit of her womb.

If that woman dies, they shall put his daughter to death.

If he causes the daughter of a servant to lose the fruit of her womb by striking her, he shall pay 5 shekels of silver.

If that woman dies, he shall pay 1/2 maneh of silver.

If he has struck the slave-girl of a (free) man and causes her to lose the fruit of her womb, he shall pay 2 shekels of silver.

If that slave-girl dies, he shall pay 1/3 maneh of silver.

§ 279

If a man will buy a slave (or) a slave-girl and he or she becomes liable to a claim, he who has sold him shall meet the claims.

§§ 280–282

If a man buys a man's slave (or) slave-girl in a foreign country and then, whenever they come (back) into the country, the owner of the slave or of the slave-girl discovers either his slave or his slave-girl, if that slave and slave-girl are natives of the country, their release shall be then granted without (any payment of) money.

If (they are) natives of another country, the buyer indeed shall state before a god (the amount of) the money which he has paid and the owner of the slave or the slave-girl shall give the money which he has paid to the merchant and shall redeem his slave or his slave-girl.

If the slave states to his master "Thou art not my master" his master shall convict him as his slave and cut off his ear.

1.13 Plato: On Women's Abilities (*The Republic*, c. 360 B.C.E.)¹⁶

... "For men born and educated like our citizens, the only way, in my opinion, of arriving at a right conclusion about the possession and use of women and children is to follow the path on which we originally started, when we said that the men were to be the guardians and watchdogs of the herd."

16 Plato, *The Republic*, translated by Benjamin Jowett (New York: Modern Library, 1941).

"True."

"Let us further suppose the birth and education of our women to be subject to similar or nearly similar regulations; then we shall see whether the result accords with our design."

"What do you mean?"

"What I mean may be put into the form of a question, I said: Are dogs divided into hets and shes, or do they both share equally in hunting and in keeping watch and in the other duties of dogs? Or do we entrust to the males the entire and exclusive care of the flocks, while we leave the females at home, under the idea that the bearing and suckling their puppies is labor enough for them?"

"No, he said, they share alike; the only difference between them is that the males are stronger and the females weaker."

"But can you use different animals for the same purpose, unless they are bred and fed in the same way?"

"You can not."

"Then, if women are to have the same duties as men, they must have the same nurture and education?"

"Yes."

"The education which was assigned to the men was music and gymnastic."

"Yes."

"Then women must be taught music and gymnastic and also the art of war, which they must practice like the men?"

"That is the inference, I suppose."

"I should rather expect, I said, that several of our proposals, if they are carried out, being unusual, may appear ridiculous."

"No doubt of it."

"Yes, and the most ridiculous thing of all will be the sight of women naked in the palaestra, exercising with the men, especially when they are no longer young; they certainly will not be a vision of beauty, any more than the enthusiastic old men who in spite of wrinkles and ugliness continue to frequent the gymnasia."

"Yes, indeed, he said: according to present notions the proposal would be thought ridiculous."

"But then, I said, as we have determined to speak our minds, we must not fear the jests of the

wits which will be directed against this sort of innovation; how they will talk of women's attainments both in music and gymnastic, and above all about their wearing armor and riding upon horseback! . . ."

"You are quite right, he replied, in maintaining the general inferiority of the female sex: although many women are in many things superior to many men, yet on the whole what you say is true."

"And if so, my friend, I said, there is no special faculty of administration in a state which a woman has because she is a woman, or which a man has by virtue of his sex, but the gifts of nature are alike diffused in both; all the pursuits of men are the pursuits of women also, but in all of them a woman is inferior to a man."

"Very true."

"Then are we to impose all our enactments on men and none of them on women?"

"That will never do."

"One woman has a gift of healing, another not; one is a musician, and another has no music in her nature?"

"Very true."

"And one woman has a turn for gymnastic and military exercises, and another is unwarlike and hates gymnastics?"

"Certainly."

"And one woman is a philosopher, and another is an enemy of philosophy; one has spirit, and another is without spirit?"

"That is also true."

"Then one woman will have the temper of a guardian, and another not. Was not the selection of the male guardians determined by differences of this sort?"

"Yes."

"Men and women alike possess the qualities which make a guardian; they differ only in their comparative strength or weakness."

"Obviously."

"And those women who have such qualities are to be selected as the companions and colleagues of men who have similar qualities and whom they resemble in capacity and in character?"

"Very true."

"And ought not the same natures to have the same pursuits?"

“They ought.”

“Then, as we were saying before, there is nothing unnatural in assigning music and gymnastic to the wives of the guardians — to that point we come round again.”

“Certainly not.”

“The law which we then enacted was agreeable to nature, and therefore not an impossibility or mere aspiration; and the contrary practice, which prevails at present, is in reality a violation of nature.”

“That appears to be true.”

“We had to consider, first, whether our proposals were possible, and secondly whether they were the most beneficial?”

“Yes.”

“And the possibility has been acknowledged?”

“Yes.”

“The very great benefit has next to be established?”

“Quite so.”

“You will admit that the same education which makes a man a good guardian will make a woman a good guardian; for their original nature is the same?...”

1.14 Plato: On Homosexuals (*The Symposium*, c. 360 B.C.E.)¹⁷

Pasanius: “Every activity in itself is neither right nor wrong. Take our present activity: we could be drinking or singing or discussing. None of these is right in itself; the character of the activity depends on the way it is done. If it is done rightly and properly, it is right; if it is not done properly, it is wrong. So not every type of loving and Love is right and deserves to be praised, but only the type that motivates us to love rightly.

Common Love is genuinely ‘common’ and indiscriminating in its effects; this is the kind of love that inferior people feel. People like this are attracted to women as much as boys, and to bodies rather than minds. They are attracted to partners with the least possible intelligence, because their sole aim is

to get what they want, and they don’t care whether they do this rightly or not. So the effect of love on them is that they act without discrimination: it is all the same to them whether they behave well or not. The reason is that their love derives from the goddess who is much younger than the other, and who, because of her origin, is partly female and partly male in character.

The other love derives from the Heavenly goddess, who has nothing of the female in her but only maleness; so this love is directed at boys. This goddess is also older, and so avoids abusive violence. That’s why those inspired with this love are drawn towards the male, feeling affection for what is naturally more vigorous and intelligent. You can also distinguish, within the general class of those attracted to boys, the ones who are motivated purely by the heavenly type of love. These are attracted to boys only when they start to have developed intelligence, and this happens around the time that they begin to grow a beard. I think that those who begin love-affairs at this point show their readiness to spend their whole lives together and to lead a fully shared life. They do not plan to trick the boy, catching him while he is still young and foolish, and then leaving with a laugh, running off to someone else.

There should even be a law against affairs with young boys, to prevent great effort being spent on something whose outcome is unclear. In the case of young boys, it is unclear whether they will end up good or bad in mind or body. Good men make this rule for themselves and are glad to do so....”

Aristophanes: “Zeus cut humans into two, as people cut sorb-apples in half before they preserve them or as they cut hard-boiled eggs with hairs.... [Then, Zeus] moved their genitals round to the front; until then, they had genitals on the back of their bodies, and sexual reproduction occurred not with each other but on the earth, as in the case of cicadas. So Zeus moved the genitals round to the front and in this way made them reproduce in each other, by means of the male acting inside the female. The aim of this was that, if a man met with

17 Plato, *The Symposium*, translated by Christopher Gill (London: Penguin Classics, 1991).

a woman and entwined himself with her, they would reproduce and the human race would be continued. Also, if two males came together, they would at least have the satisfaction of sexual intercourse, and then relax, turn to their work, and think about the other things in their life.

That's how, long ago, the innate desire of human beings for each other started. It draws the two halves of our original nature back together and tries to make one out of two and to heal the wound in human nature. Each of us is a matching half of a human being, because we've been cut in half like flatfish, making two out of one, and each of us is looking for his own matching half. Those men who are cut from the combined gender (the androgynous, as it was called then) are attracted to women, and many adulterers are from this group. Similarly, the women who are attracted to men and become adulteresses come from this group. Those women who are cut from the female gender are not at all interested in men, but are drawn much more towards women: female homosexuals come from this group.

Those who are cut from the male gender go for males. While they are boys, because they are slices of the male gender, they are attracted to men and enjoy sleeping with men and being embraced by them. These are the best of their generation, both as boys and young men, because they are naturally the bravest. Some people say that they are shameless, but that isn't true. It's not out of shamelessness that they do this but because they are bold, brave and masculine, and welcome the same qualities in others. Here is clear evidence of this: men like this are the only ones who, when grown up, end up as politicians. When they become men, they're sexually attracted by boys; they have no natural interest in getting married and having children, although they are forced to do this by convention. They are quite satisfied by spending their lives together and not getting married. In short, such people become lovers of boys and boys who love their male lovers, always welcoming their shared natural character."

1.15 Aristotle: On the Justification of Slavery (*Politics*, c. 350 B.C.E.)¹⁸

Chapter 5

There is a principle of rule and subordination in nature at large: it appears especially in the realm of animate creation. By virtue of that principle, the soul rules the body; and by virtue of it the master, who possesses the rational faculty of the soul, rules the slave, who possesses only bodily powers and the faculty of understanding the directions given by another's reason. But nature, though she intends, does not always succeed in achieving a clear distinction between men born to be masters and men born to be slaves.

1254^a17 We have next to consider whether there are, or are not, some people who are by nature such as are here defined; whether, in other words, there are some people for whom slavery is the better and just condition, or whether the reverse is the case and all slavery is contrary to nature. The issue is not difficult; whether we study it philosophically in the light of reason, or consider it empirically on the basis of the actual facts. The relation of ruler and ruled is one of those things which are not only necessary, but also beneficial; and there are species in which a distinction is already marked, immediately at birth, between those of its members who are intended for being ruled and those who are intended to rule. There are also many kinds both of ruling and ruled elements. (Moreover the rule which is exercised over the better sort of subjects is a better sort of rule — as, for example, rule exercised over a man is better than rule over an animal. The reason is that the value of something which is produced increases with the value of those contributing to it; and where one element rules and the other is ruled, there is something which they jointly produce.) In all cases where there is a compound, constituted of more than one part but forming one common entity, whether

18 Aristotle, *Politics*, in *Aristotle*, translated by E. Barker (Oxford: Oxford University Press, 1998).

the parts be continuous or discrete, a ruling element and a ruled can always be traced. This characteristic is present in animate beings by virtue of the whole constitution of nature; for even in things which are inanimate there is a sort of ruling principle, such as is to be found, for example, in a musical harmony. But such considerations perhaps belong to a more popular method of inquiry; and we may content ourselves here with saying that animate beings are composed, in the first place, of soul and body, with the former naturally ruling and the latter naturally ruled. When investigating the natural state of things; we must fix our attention, not on those which are in a corrupt, but on those which are in a natural condition. It follows that we must consider the man who is in the best state both of body and soul, and in whom the rule of soul over body is accordingly evident; for with vicious people or those in a vicious condition, the reverse would often appear to be true — the body ruling the soul as the result of their evil and unnatural condition...

1254^b27 It is nature's intention also to erect a physical difference between the bodies of freemen and those of the slaves, giving the latter strength for the menial duties of life, but making the former upright in carriage and (though useless for physical labor) useful for the various purposes of civic life — a life which tends, as it develops, to be divided into military service and the occupations of peace. The contrary of nature's intention, however, often happens: there are some slaves who have the bodies of freemen, as there are others who have a freeman's soul. But, if there were men who were as distinguished in their bodies alone as are the statues of the gods, all would agree that the others should be their slaves. And if this is true when the difference is one of the body, it may be affirmed with still greater justice when the difference is one of the soul; though it is not as easy to see the beauty of the soul as it is to see that of the body.

1254^b39 It is thus clear that, just as some are by nature free, so others are by nature slaves, and for these latter the condition of slavery is both beneficial and just...

1255^a21 There are some who, clinging, as they think, to a sort of justice (for law is a sort of justice), assume that slavery in war is just. Simultaneously, however, they contradict that assumption; for in the first place it is possible that the original cause of a war may not be just, and in the second place no one would ever say that someone who does not deserve to be in a condition of slavery is really a slave. If such a view were accepted, the result would be that men reputed to be of the highest rank would be turned into slaves or the children of slaves, if they [or their parents] happened to be captured and sold into slavery. This is the reason why they do not like to call such people slaves, but prefer the term to barbarians. But by this use of terms they are, in reality, only seeking to express that same idea of the natural slave which we began by mentioning. They are driven, in effect, to admit that there are some who are everywhere slaves, and others who are everywhere free. The same line of thought is followed in regard to good birth. Greeks regard themselves as well born not only in their own country, but absolutely and in all places; but they regard barbarians as well born only in their own country — thus assuming that there is one sort of good birth and freedom which is absolute, and another which is only relative...

Chapter 7

The training of slaves, and the art of using them properly. How they be justly acquired.

1255^b1 The argument makes it clear that the rule of the master and that of the statesman are different from one another, and that it is not the case that all kinds of rule are, as some thinkers hold, identical. One kind of rule is exercised over those who are naturally free; the

other over slaves; and again the rule exercised over a household by its head is that of a monarch (for all households are monarchically governed), while the rule of the statesman is rule over freemen and equals. Now masters are not so termed in virtue of any knowledge which they have acquired, but in virtue of their own endowment; and the same is true of slaves and freemen generally. But there may be a kind of knowledge which belongs to masters, and another which belongs to slaves; and the latter would be of the nature of the knowledge taught by the man of Syracuse, who instructed servants for pay in the discharge of their ordinary duties. Instruction in such subjects might be extended further: it might include, for example, the art of cookery and other similar forms of skilled domestic service. The reason why this might be done is that the duties differ; some are of a higher standing, even if others are needed more. As the proverb says:

Slave may go before slave, and master may go before master.

All such forms of knowledge are necessarily of a servile character. But there is also a form of knowledge belonging to the master, which consists in the use of slaves: a master is such in virtue not of acquiring, but of using slaves. This knowledge belonging to the master is something which has no great or majestic character: the master must simply know how to command what the slave must know how to do. This is why those who are in a position to escape from being troubled, by it delegate, the management of slaves to a steward, and spend on politics or philosophy the time they are thus able to save. The art of acquiring slaves for ownership differs both from the art of being a master and from that of being a slave — that is to say, when it is justly practiced; for in that case it is a particular form of the art of war, or of the art of hunting.

1255^b39 This should be an adequate account of the distinction between master and slave.

2. ASIAN AND AFRICAN RELIGIONS AND TRADITIONS

Epictetus' notion of a fearless attachment to liberty and detached love for the universe reminds us of the wisdom found in many Buddhist and Asian texts. Skeptics regarding claims of an Asian contribution to human rights would do well to acquaint themselves with the writings of Confucius, Kautilya, Asoka, and various Buddhist texts.

Confucius (551–479 B.C.E.) was one of the most influential thinkers and social philosophers of China, whose teachings have deeply influenced East Asia across the centuries. His *Analects* is a short collection of discussions with his disciples over a period of thirty to forty years, sometime during the Warring States period (479–221 B.C.E.), and compiled after his death. There, Confucius considered how a virtuous ruler should be chosen based on his own merits, including his moral conduct and devotion to his people. A ruler, Confucius taught, should exhort his people to extol his example, showing respect, tolerance, trustworthiness, and generosity toward others (see Section 2.1).

Inspired by a similar vision, the Indian political thinker, economist, and king maker during the Mauryan Empire, Kautilya (also known as Chanakaya, c. 350–275 B.C.E.), wrote *The Arthashastra* (c. 300 B.C.E.). This classic almanac explored how statecraft and strategy could be wedded to the moral teachings of the important Indian scriptures, the Vedas. A precursor to Machiavelli's *The Prince*, Kautilya's *Arthashastra* argued for a benevolent autocratic king with obligations to rule his subjects fairly, to manage a transparent judiciary and penal system, and to regulate an efficient and robust economy (see Section 2.2). The penalties detailed in *The Arthashastra*, while severe, nevertheless reveal an expectation that subjects deserved fair (though not equal) treatment under the law.

Kautilya's legacy influenced Asoka, the ruler of the Mauryan Empire of India. The early part of Asoka's reign was filled with bloody battles. Yet after his conquest of Kalinga, along the east coast of India, where 100,000 people were reportedly killed and thousands of men and women deported, Asoka renounced violence and converted to Buddhism. From that point onward, he based his kingdom on the dharma principles of nonviolence, tolerance for all religious sects and different opinions, obedience to parents, magnanimity toward friends, humane treatment of servants, and generosity toward all (see Section 2.3).

After the death of the historical Buddha, Siddhartha Gautama, Buddhism spread beyond northern India. It arrived in China during the first century from Central Asia by way of the Silk Road, the main trade route linking China to India and the Middle East. Drawn from a cosmological love for all living and nonliving beings, there are certain moral codes shared by all Buddhists, including a strict renunciation of killing, stealing, lying, ingesting intoxicants, and partaking in harmful sex.

Consistent with these moral codes, Chinese verses from the Mahaparinirvana Sutra (early fourth century) suggest that to have access to the Buddha Aksobhya's Pure Land (a paradisiacal realm in which devotees may be reborn after death) requires selfless performance of good deeds, along with a commitment not to injure living beings, to slander, to steal, or to ravish other men's wives, and so forth (see Section 2.4).

In west Africa, the Mande Charter codified the standards and expectations of the Mandingo Empire. Proclaimed in 1235 in Kurukan Fuga, now part of Mali, the Charter was passed on orally for centuries, but not recorded until the modern era. Now recognized by UNESCO as one of the world's oldest constitutions, the Charter quoted here was assembled by regional traditional experts in 1998 (see Section 2.5).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 1.

Liberty, Tolerance, and Codes of Justice

2.1 Confucius: On Rightful Conduct of Rulers and Subjects (*The Analects*, c. 479–221 B.C.E.)¹

Book I

2. Yu Tzu said, "It is rare for a man whose character is such that he is good as a son and obedient as a young man to have the inclination to transgress against his superiors; it is unheard of for one who has no such inclination to be inclined to start a rebellion. The gentleman devotes his efforts to the roots, for once the roots are established, the Way will grow therefrom. Being good as a son and obedient as a young man is, perhaps, the root of a man's character."
5. The Master said, "In guiding a state of a thousand chariots, approach your duties with reverence and be trustworthy in what you say; avoid excesses in expenditure and love your fellow men; employ the labor of the common people only in the right seasons."
6. The Master said, "A young man should be a good son at home and an obedient young man abroad, sparing of speech but trustworthy in what he says, and should

love the multitude at large but cultivate the friendship of his fellow men. If he has any energy to spare from such action, let him devote it to making himself cultivated."

8. The Master said, "A gentleman who lacks gravity does not inspire awe. A gentleman who studies is unlikely to be inflexible.
"Make it your guiding principle to do your best for others and to be trustworthy in what you say. Do not accept as friend anyone who is not as good as you.
"When you make a mistake, do not be afraid of mending your ways."
12. Yu Tzu said, "Of the things brought about by the rites, harmony is the most valuable. Of the ways of the Former Kings, this is the most beautiful, and is followed alike in matters great and small, yet this will not always work: to aim always at harmony without regulating it by the rites simply because one knows only about harmony will not, in fact, work."
14. The Master said, "The gentleman seeks neither a full belly nor a comfortable home. He is quick in action but cautious in speech. He goes to men possessed of the Way to be put right. Such a man can be described as eager to learn."

1 Confucius, *The Analects*, translated by D. C. Lau (London: Penguin Classics, 1979).

Book IV

1. The Master said, "Of neighborhoods benevolence is the most beautiful. How can the man be considered wise who, when he has the choice, does not settle in benevolence?"
2. The Master said, "One who is not benevolent cannot remain long in straitened circumstances, nor can he remain long in easy circumstances.
"The benevolent man is attracted to benevolence because he feels at home in it. The wise man is attracted to benevolence because he finds it to his advantage."
4. The Master said, "If a man sets his heart on benevolence, he will be free from evil."
6. The Master said, "I have never met a man who finds benevolence attractive or a man who finds unbenevolence repulsive. A man who finds benevolence attractive cannot be surpassed. A man who finds unbenevolence repulsive can, perhaps, be counted as benevolent, for he would not allow what is not benevolent to contaminate his person. "Is there a man who, for the space of a single day, is able to devote all his strength to benevolence? I have not come across such a man whose strength proves insufficient for the task. There must be such cases of insufficient strength, only I have not come across them."
7. The Master said, "In his errors a man is true to type. Observe the errors and you will know the man."
8. The Master said, "He has not lived in vain who dies the day he is told about the Way."

Book XII

5. Ssu-ma Niu appeared worried, saying, "All men have brothers. I alone have none." Tzu-hsia said, "I have heard it said: life and death are a matter of Destiny; wealth and honor depend on Heaven. The gentleman is reverent and does nothing amiss, is respectful towards others and observant of the rites, and all within the Four Seas are his brothers. What need is there for the gentleman to worry about not having any brothers?"

6. Tzu-chang asked about perspicacity. The Master said, "When a man is not influenced by standers which are assiduously repeated or by complaints for which he feels a direct sympathy, he can be said to be perspicacious. He can at the same time be said to be farsighted."
22. Fan Ch'ih asked about benevolence. The Master said, "Love your fellow men."
He asked about wisdom. The Master said, "Know your fellow men."
Fan Ch'ih failed to grasp his meaning. The Master said, "Raise the straight and set them over the crooked. This can make the crooked straight."
Fan Ch'ih withdrew and went to see Tzu-hsia, saying, "Just now, I went to see the Master and asked about wisdom. The Master said, 'Raise the straight and set them over the crooked. This can make the crooked straight' What did he mean?"
Tzu-hsia said, "Rich, indeed, is the meaning of these words. When Shun possessed the Empire, he raised Kao Yao from the multitude and by so doing put those who were not benevolent at a great distance. When T'ang possessed the Empire, he raised Yi Yin from the multitude and by so doing put those who were not benevolent at a great distance."
24. Tseng Tzu said, "A gentleman makes friends through being cultivated, but looks to friends for support in benevolence."

Book XV

10. Tzu-kung asked about the practice of benevolence. The Master said, "A craftsman who wishes to practice his craft well must first sharpen his tools. You should, therefore, seek the patronage of the most distinguished Counsellors and make friends with the most benevolent Gentlemen in the state where you happen to be staying."

Book XVIII

6. Tzu-chang asked Confucius about benevolence. Confucius said, "There are five things and whoever is capable of putting them into practice in the Empire is certainly 'benevolent.'"

"May I ask what they are?"

"They are respectfulness, tolerance, trustworthiness in word, quickness and generosity. If a man is respectful he will not be treated with insolence. If he is tolerant he will win the multitude. If he is trustworthy in word his fellow men will entrust him with responsibility. If he is quick he will achieve results. If he is generous he will be good enough to be put in a position over his fellow men."

8. The Master said, "Yu, have you heard about the six qualities and the six attendant faults?"

"No."

"Be seated and I shall tell you. To love benevolence without loving learning is liable to lead to foolishness. To love cleverness without loving learning is liable to lead to deviation from the right path. To love trustworthiness in word without loving learning is liable to lead to harmful behavior. To love forthrightness without loving learning is liable to lead to intolerance. To love courage without loving learning is liable to lead to indiscipline."

Book XX

Decide on standard weights and measures after careful consideration, and re-establish official posts fallen into disuse, and government measures will be enforced everywhere. Restore states that have been annexed, revive lines that have become extinct, raise men who have withdrawn from society and the hearts of all the common people in the Empire will turn to you.

What was considered of importance: the common people, food, mourning and sacrifice.

If a man is tolerant, he will win the multitude. If he is trustworthy in word, the common people will entrust him with responsibility. If he is quick he will achieve results. If he is impartial the common people will be pleased.

The distinction here between "the gentleman" and "the small man" is not, as is often the case, drawn between the ruler and the ruled but within the class of the ruled.

2.2 Kautilya: On the Penal System (*The Arthashastra*, c. 300 B.C.E.)²

Principles of the Penal Code

Only the Rule of Law can guarantee security of life and the welfare of the people. **{i.5.2}**

The maintenance of law and order by the use of punishment is the science of government (*dandaniti*). **{from 1.4.3}**

It is the power of punishment alone which, when exercised impartially in proportion to guilt and irrespective of whether the person punished is the king's son or the enemy, that protects this world and the next. **{3.1.42}**

A severe king [meting out unjust punishment] is hated by the people he terrorizes, while one who is too lenient is held in contempt by his own people. Whoever imposes just and deserved punishment is respected and honored. **{1.4.8-10}**

An innocent man who does not deserve to be penalized shall not be punished, for the sin of inflicting unjust punishment is visited on the king. He shall be freed of the sin only if he offers thirty times the unjust fine to *Varuna* (the god who chastises unjust behavior of kings) and then distributes it to Brahmins. **{4.13.42,43}**

The special circumstances of the person convicted and of the particular offense shall be

2 Kautilya, *The Arthashastra*, translated by L. N. Rangarajan (India Penguin Classics, 2004).

taken into account in determining the actual penalty to be imposed. **{3.20.20}**

Fines shall be fixed taking into account the customs (of the region and the community) and the nature of the offense. **{2.22.15}**

In all cases, the punishment prescribed shall be imposed for the first offense; it shall be doubled for the second and trebled for the third. If the offense is repeated a fourth time, any punishment, as the king pleases, may be awarded.¹ **{2.27.18}**

Leniency shall be shown in imposing punishments on the following: a pilgrim, an ascetic, anyone suffering from illness, hunger, thirst, poverty, fatigue from a journey, suffering from an earlier punishment, a foreigner or one from the countryside. **{3.20.21}**

Whenever *brahmacharis*, *vanaprasthas* or *sanyasins* have to pay fines, they may instead perform rituals and penances for the benefit of the King, for as many days as the amount of the fine (in panas). Likewise, heretics without money shall observe a fast for the number of days equivalent to the fine. This rule does not apply to [serious crimes such as] defamation, theft, assault and abduction; in such cases, the prescribed punishment shall be implemented. **{3.1638–1641}**

Thus, the king shall first reform [the administration], by punishing appropriately those officers who deal in wealth; they, duly corrected, shall use the right punishments to ensure the good conduct of the people of the towns and the countryside. **{4.9.28}**

Either due to the increase in criminality of the population or due to the misguided [greedy?] nature of kings, it has become customary to levy a surcharge of eight per cent on fines below one hundred panas and five per cent on fines above that; this is illegal. Only the basic fine [as prescribed in this text] is legal. **{3.17.15.16}**

Death Penalty

The cruel punishments listed below are prescribed by great sages in the *shastras*. [However,] for crimes which are not cruel, the simple death penalty [without torture] is equally just. **{4.11.26}**

Theft

Of cattle herds (more than 10 heads)	Death without torture	{4.11.15,16}
Stealing or killing a royal elephant or royal horse; stealing a royal chariot	Impalement	{4.11.7}
Theft of weapons or armor by anyone who is not a soldier	Death by a firing squad of archers	{4.11.22}
Damage to water works		
Breaking the dam of a reservoir	Death by drowning in the same place	{4.11.17}

Death as a result of scuffle or a fray

(No capital punishment if death occurs after seven days)

On the spot	Death with torture	{4.11.1}
Within seven days	Death without torture	{4.11.2}

Manslaughter

With a weapon	Death without torture	{4.11.5}
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Murder

With cruelty	Impalement	{4.11.7}
Murder during highway robbery		
Murder during housebreaking		

Poisoning

Poisoner — man or woman not pregnant (special provision of delayed implementation of punishment for pregnant women)	Death by drowning	{4.11.18}
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Sale of Human Flesh

Treason	Death	{4.10.15}
Anyone who tries to usurp the throne, attacks the royal residence, encourages enemies or jungle tribes to rebel, incites a revolt in the city, countryside or army	Death by burning from head to foot (Does not apply to Brahmins, who shall be blinded.)	{4.11.11,12}

Parricide, fratricide, etc.

Killing mother, father, son, brother, teacher, or ascetic	Death by burning the shaved head	{4.11.13}
Accidental death	Death without torture	{4.11.15}

Crimes by women

Murdering husband, guru, child or children, by a weapon, poisoning, or setting fire to the house	Death by being torn apart by bullocks	{4.11.19}
Prostitute murdering a client	Death by being burnt alive or by drowning	{2.27.22}

Arson

Setting fire to a pasture, a field, a threshing ground, a house, a productive forest or an elephant forest	Death by burning	{4.11.20}
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Mutilation

Mutilation	Equivalent Fine (in panas)
Thumb and forefinger	54
Tip of nose	54
All fingers of the [right] hand	100
Sinews of the feet	200
Middle and index fingers	200
A foot	300
A hand [usually right hand?]	400
An ear and the nose	500
Both feet	600
A hand and a foot	700
Blinding both eyes	800
Left hand and both feet	900
Both ears and nose	1000

{From 4.10.1,2,7-14; 4.12.1,3,7}

[For those who remove or cremate criminals executed by impaling them on a stake, the prescribed punishment is also death by impaling; the monetary equivalent in this case is the Highest SP {4.11.8}. There is no monetary equivalent to the cutting off of penis and testicles {4.13.30}.]

Miscellaneous Punishments**BRAHMINS**

[The punishment for a Brahmin guilty of a serious offense is branding and exile.]

The guilt of a Brahmin shall be displayed publicly and permanently so that he may be excluded

from all activities of Brahmins. The brand shall indicate the nature of the offense as follows:

Crime	Brand
Theft	A dog
Drinking alcoholic liquor	The vintner's flag
Murder	A headless torso
Rape of a teacher's wife	The female sexual organ

After publicly proclaiming a Brahmin's guilt and branding him, he shall be exiled or sent to [work in] the mines. {4.8.28,29}

Food and Drink Taboos

Eating or drinking prohibited things

If done voluntarily	Exile	{4.13.2}
Making someone eat or drink a prohibited thing depending on the varna of the person made to do so		
Brahmin	Highest SP	{4.13.1}
Kshatriya	Middle SP	
Vaishya	Lowest SP	
Sudra	54 panas	

Death by Being Gored by an Elephant

Being gored to death by an elephant is as meritorious as having the sacred bath at the end of the *Asvamedha* [horse] sacrifice. Hence, anyone who seeks such a death [voluntarily] shall make oblatory gifts of the following: airvaa of rice, a jar of wine, garlands and a piece of cloth to clean the tusks. **{4.13.15,16}**

Witchcraft and Black Magic

Performing magic or witchcraft is a punishable offense except when it is done in order to arouse love in a wife towards her husband, in a husband

towards his wife or in a suitor towards his beloved. **{4.13.28}**

Punishments

Mahout of an elephant which gores to death someone who did not volunteer	Highest SP	{4.13.17}
Anyone who practices witchcraft	Same results to be meted out	{4.13.27}
Causing injury by black magic	Middle SP	{4.13.29}

2.3 Asoka: On Religious Intolerance and Discrimination (*The Edicts*, c. 272–231 B.C.E.)³

Rock Edict VII

King Priyadarśi wishes members of all faiths to live everywhere in his kingdom.

For they all seek mastery of the senses and purity of mind. Men are different in their inclinations and passions, however, and they may perform the whole of their duties or only part.

Even if one is not able to make lavish gifts, mastery of the senses, purity of mind, gratitude, and steadfast devotion are commendable and essential.

Rock Edict XII

King Priyadarśi honors men of all faiths, members of religious orders and laymen alike, with gifts and various marks of esteem. Yet he does not value either gifts or honors as much as growth in the qualities essential to religion in men of all faiths.

This growth may take many forms, but its root is in guarding one's speech to avoid extolling one's own faith and disparaging the faith of others improperly or, when the occasion is appropriate, immoderately.

3 Asoka, *The Edicts of Asoka*, edited by N. A. Nikam and R. McKeon (Chicago: University of Chicago Press, 1958).

The faiths of others all deserve to be honored for one reason or another. By honoring them, one exalts one's own faith and at the same time performs a service to the faith of others. By acting otherwise, one injures one's own faith and also does disservice to that of others. For if a man extols his own faith and disparages another because of devotion to his own and because he wants to glorify it, he seriously injures his own faith.

Therefore concord alone is commendable, for through concord men may learn and respect the conception of Dharma accepted by others.

King Priyadarśi desires men of all faiths to know each other's doctrines and to acquire sound doctrines. Those who are attached to their particular faiths should be told that King Priyadarśi does not value gifts or honors as much as growth in the qualities essential to religion in men of all faiths.

Many officials are assigned to tasks bearing on this purpose the officers in charge of spreading Dharma, the superintendents of women in the royal household, the inspectors of cattle and pasture lands, and other officials.

The objective of these measures is the promotion of each man's particular faith and the glorification of Dharma.

2.4 Chinese Buddhist Verses: On Moral Conduct (Mahāparinirvāna Sūtra, Early Fourth Century)⁴

Do no injury to living beings,
Hold firmly to all the rules of restraint,
Accept the Buddha's exquisite teaching,
And you will be born in Aksobhya's Land.

Do not steal other people's property,
Always be kind and generous to all,
Everywhere build habitations for monks,
And you will be born in Aksobhya's Land.

Do not ravish others' wives and daughters,
Do not take your own wife at the wrong time,
Have your bed in keeping with the precepts,
And you will be born in Aksobhya's Land.

Keep watch on your mouth and avoid
false speech
Either for your own sake or for others,
In search of advantage or out of fear,
And you will be born in Aksobhya's Land.

Do not slander any good acquaintance,
Keep far away from evil company,
Let your mouth always speak agreeably,
And you will be born in Aksobhya's Land.

Be the same as all the bodhisattvas,
Always free from evil utterances,
So that men will gladly hear what you say,
And you will be born in Aksobhya's Land.

Even when you are playing and laughing
Do not utter inappropriate words,
Be careful always to speak timely words,
And you will be born in Aksobhya's Land.

Seeing others receive gain and service,
Let your thoughts be always those of gladness,
Never let knots of jealousy be tied,
And you will be born in Aksobhya's Land.

Cause no affliction to living beings,
Let your thoughts always be those of
kindness,
Do not employ evil expedients,
And you will be born in Aksobhya's Land.

Perverved views say there is no giving
To one's parents, no past and no future.
If you do not entertain such notions,
Then you will be born in Aksobhya's Land.

4 *Mahāparinirvāna Sūtra*, translated by Junjiro Takakusu (Buddhist Mahayana Texts), edited by E. B. Cowell (Oxford: Clarendon Press, 1894), in Richard Robinson, *Chinese Buddhist Verse* (London: John Murray, 1954), in John S. Strong, *The Experience of Buddhism: Sources and Interpretations* (Belmont, CA: Wadsworth Publishing Co., 1995).

Dig good wells beside roads in the desert,
Plant and cultivate orchards of fruit trees,
Always give nourishment to mendicants,
And you will be born in Aksobhya's Land.

2.5 The Mande Charter of Kurukan Fuga (c. 1235)⁵

1. The Great Mande Society is divided into sixteen clans of quiver carriers, five clans of marabouts, four groups of "nyamakalas" and one group of slaves. Each one has a specific activity and role.
2. The "nyamakalas" must devote themselves to tell the truth to the chiefs, to be their counsellors and to defend by the speech the established rulers and the order upon the whole territory.
3. The five clans of marabouts are our teachers and our educators in Islam. Everyone has to hold them in respect and consideration.
4. The society is divided into age groups. Those born during a period of three years in succession belong to the same age-group. The members of the intermediary class between young and old people, should be invited to take part in the making of important decisions concerning the society.
5. Everybody has a right to life and to the preservation of physical integrity. Accordingly,

any attempt to deprive one's fellow being of life is punished with death.

6. To win the battle of prosperity, the general system of supervision has been established to fight against laziness and idleness.
7. The *sanankunya* (joking relationship) and the *tanamannyonya* (blood pact) have been established among the Mandinka. Consequently any contention that occurs among these groups should not degenerate the respect for one another being the rule. Between brothers-in-law and sisters-in-law, between grandparents and grandchildren, tolerance should be the principle.
8. The Keita family is nominated reigning family upon the empire.
9. Children's education behooves the entire society. The paternal authority in onsequence falls to everyone.
10. We should offer condolences mutually.
13. Never offend the *Nyaras* (the talented).
22. Vanity is the sign of weakness and humility the sign of greatness.
23. Never betray one another. Respect your word of honor.
40. Respect kinship, marriage and the neighborhood.
42. In big assemblies, be satisfied with your lawful representatives.

Social and Economic Justice

While entitlements to property were recognized in many Asian societies, visionaries such as Confucius, Kautilya, Manu, and Buddha considered the limitation of wealth as essential to the achievement of peaceful and just societies. In *The Annalects* (c. 551–479 B.C.E.), Confucius taught his disciples how a benevolent leader needed to enhance the economic well-being of his people, because "where there is even distribution there is no such a thing as poverty, where there is harmony there is no such a thing as underpopulation and where there is stability, there is no such a thing as overturning" a ruler (see Section 2.6).

Driven by similar concerns, Kautilya's *Arthashastra* (c. 300 B.C.E.) outlined rules that both guaranteed individual ownership over property and protected labor rights, such as a worker's right to a salary for

5 The Charter of Kurukan Fuga was assembled in Guinea at the end of a regional workshop between traditional and modern communicators in March 1998. See "Inter-generational Forum on Endogenous Governance in West Africa," organized by Sahel and West Africa Club and the OECD (June 2006), Annex 1 (www.oecd.org/swac/events/38516561.pdf, accessed 10 August 2021). The more readable version quoted here is published by the Malian government (<https://ambamali.ca/kouroukan-fouga/>, accessed 10 August 2021).

work done, even if he is subsequently fired for negligence (see Section 2.7). *The Laws of Manu* is a foundational work of Hindu law and ancient Indian society (c. 200 B.C.E.). Having elaborated different rules for different castes, Manu argued that certain laws, such as the ones pertaining to property, were to be considered fundamental. “The king,” Manu maintained in *The Laws*, “must give back to men of all classes property taken by thieves; a king who uses it for himself commits the offense of a thief” (see Section 2.8). The notion of restitution of stolen property was also invoked in many Buddhist texts (see Section 2.9). Overall, Buddhist writings praised donations to the needy as spiritually more enriching than property accumulation (see Section 2.10).

In the Mande Charter, the mandate to help those in need was consistent with property rights, as individuals were allowed to satisfy their hunger from the fields of another, provided they were not also filling their pockets. Further, members of the community were charged with collective responsibility for the protection of crops and fruit-bearing trees during hunting and harvesting (see Section 2.11).

2.6 Confucius: On Fair Distribution and Education (*The Analects*, c. 551–479 B.C.E.)⁶

Book XVI

Confucius said: “Ch’iu, the gentleman detests those who, rather than saying outright that they want something, can be counted on to gloss over their remarks. What I have heard is that the head of a state or a noble family worries not about underpopulation but about uneven distribution, not about poverty but about instability.⁷ For where there is even distribution there is no such thing as poverty, where there is harmony there is no such thing as underpopulation and where there is stability there is no such thing as overturning. It is for this reason that when distant subjects are unsubmissive one cultivates one’s moral quality in order to attract them, and once they have come one makes them content. But you and Yu have not been able either to help your master to attract the distant subjects when they are unsubmissive or to preserve the state when it is disintegrating. Instead, you propose to resort to the use of arms within the state itself. I am afraid that Chi-sun’s worries lie not in Chuan Yi but within the walls of his palace.”

Book XX

2. Tzu-chang asked Confucius, “What must a man be like before he can take part in government?”

The Master said, “If he exalts the five excellent practices and eschews the four wicked practices he can take part in government.”

Tzu-chang said, “What is meant by the five excellent practices?”

The Master said, “The gentleman is generous without its costing him anything, works others hard without their complaining, has desires without being greedy, is casual without being arrogant, and is awe-inspiring without appearing fierce.”

Tzu-chang said, “What is meant by ‘being generous without its costing him anything?’”

The Master said, “If a man benefits the common people by taking advantage of the things around them that they find beneficial, is this not being generous without its costing him anything? If a man, in working others hard, chooses burdens they can support, who will complain? If, desiring benevolence, a man obtains it, where is the greed? The gentleman never dare neglect his manners whether he be dealing with the many or the few, the young or the old. Is this not being casual without being arrogant? The gentleman, with his robe and cap adjusted properly and dignified in his gaze,

6 Confucius, *The Analects*, translated by D. C. Lau (London: Penguin Classics, 1979).

7 The text is corrupt here. In the light of what follows, this passage should probably read: “...worries not about poverty but about uneven distribution, not about underpopulation but about disharmony, not about overturning but about instability.”

has a presence which inspires people who see him with awe. Is this not being awe-inspiring without appearing fierce?"

Book VII

2. The Master said, "Quietly to store up knowledge in my mind, to learn without flagging, to teach without growing weary, these present me with no difficulties."
3. The Master said, "It is these things that cause me concern: failure to cultivate virtue, failure to go more deeply into what I have learned, inability, when I am told what is right, to move to where it is, and inability to reform myself when I have defects."
7. The Master said, "I have never denied instruction to anyone who, of his own accord, has given me so much as a bundle of dried meat as a present."
8. The Master said, "I never enlighten anyone who has not been driven to distraction by trying to understand a difficulty or who has not got into a frenzy trying to put his ideas into words."

"When I have pointed out one corner of a square to anyone and he does not come back with the other three, I will not point it out to him a second time."

Book XV

8. The Master said, "To fail to speak to a man who is capable of benefiting is to let a man go to waste. To speak to a man who is incapable of benefiting is to let one's words go to waste. A wise man lets neither men nor words go to waste."
36. The Master said, "When faced with the opportunity to practice benevolence do not give precedence even to your teacher."

37. The Master said, "The gentleman is devoted to principle but not inflexible in small matters."
39. The Master said, "In instruction there is no separation into categories."
40. The Master said, "There is no point in people taking counsel together who follow different ways."

2.7 Kautilya: On Labor and Property Rights (*The Arthashastra*, c. 300 B.C.E.)⁸

Chapter XIV

RULES REGARDING LABORERS; AND CO-OPERATIVE UNDERTAKING

A servant neglecting or unreasonably putting off work for which he has received wages shall be fined 12 panas and be caught hold of till the work is done. He who is incapable to turn out work, or is engaged to do a mean job, or is suffering from disease, or is involved in calamities shall be shown some concession or he shall allow his master to get the work done by a substitute. The loss incurred by his master or employer owing to such delay shall be made good by extra work.

§185

An employer may be at liberty to get the work done by another provided there is no such adverse condition that the former shall not employ another servant to execute the work, nor shall the latter go elsewhere for work. My preceptor holds that not taking work on the part of an employer from his employee when the latter is ready, shall be regarded as work done by the laborer. But Kautilya objects to it; for wages are to be paid for work done, but not for work that is not done. If an employer, having caused his laborer to do a part of work, will not cause him to do the rest for which the latter may certainly be ready, then the unfinished portion of the work has to be regarded as finished. But owing to consideration of changes that have occurred in time and place or owing to bad workmanship of the

8 Kautilya, *The Arthashastra*, translated by L. N. Rangarajan (India Penguin Classics, 2004).

laborer, the employer may not be pleased with what has already been turned out by the laborer. Also the workman may, if unrestrained, do more than agreed upon and thereby cause loss to the employer.

The same rules shall apply to guilds of workmen (*sangha-bhrtāh*). Guilds of workmen shall have a grace of seven nights over and above the period agreed upon for fulfilling their engagement. Beyond that time they shall find substitutes and get the work completed. Without taking permission from their employers, they shall neither leave out anything undone nor carry away anything with them from the place of work. They shall be fined 24 panas for taking away anything and 12 panas for leaving out anything undone. Thus the rules regarding laborers. Guilds of workmen (*sangh-bhrtāh*, workmen employed by companies) as well as those who carry on any co-operative work (*sambhūya samutthāthārah*) shall divide their earnings (*vetanam*, wages) either equally or as agreed upon among themselves.

Cultivators or merchants shall, either at the end or in the middle of their cultivation or manufacture, pay to their laborers as much of the latter's share as is proportional to the work done. If the laborers, giving up work in the middle, supply substitutes, they shall be paid their wages in full.

But when commodities are being manufactured, wages shall be paid out according to the amount of work turned out; for such payment does not affect the favorable or unfavorable results on the way (i.e. in the sale of merchandise by pedlars).

§186

A healthy person who deserts his company after work has been begun shall be fined 12 panas; for none shall, of his own accord, leave his company. Any person who is found to have neglected his share of work by stealth shall be shown mercy (*abhayam*) for the first time, and given a proportional quality of work anew with promise of proportional share of earnings as well. In case of negligence for a second time or of going elsewhere, he shall be thrown out of the company (*pravāsanam*). If he is guilty of a

glaring offense (*mahāparādhe*), he shall be treated as the condemned.

Chapter XVI

§190

Whatever of the property of his own subjects the king brings back from the forests and countries of enemies, shall be handed over to its owner. Whatever of the property of citizens robbed by thieves the king cannot recover, shall be made good from his own pocket. If the king is unable to recover such things, he shall either allow any self-elected person (*svayamgraāha*) to fetch them, or pay an equivalent ransom to the sufferer. An adventurer may enjoy whatever the king graciously gives him out of the booty he has plundered from an enemy's country excepting the life of an *ārya* and the property belonging to gods, Brāhmanas or ascetics. Thus sale without ownership is dealt with.

As to the title of an owner to his property: The owners who have quitted their country where their property lies shall continue to have their title to it. When the owners other than, minors, the aged, those that are afflicted with disease or calamities, those that are sojourning abroad, or those that have deserted their country during national disturbances, neglect for ten years their property which is under the enjoyment of others, they shall forfeit their title to it...

2.8 Manu: On Property Rights (*The Laws, 9:27–60, c. 200 B.C.E.*)⁹

The king should protect the estate and other inherited property of a boy until he has come home (after his studies) or passed beyond his childhood. In the same way, he should protect women who are barren or have no sons, who have no families, who are faithful wives, widows, or ill. But if, while these women are alive, their own relatives take away this (property), a just king should punish them with the punishment for theft.

If the owner of any property has disappeared, the king should keep it in trust for three years; within three years the owner may take it, and after that the king may take it. If someone says, "This is mine," he

9 Manu, *The Laws of Manu*, translated by Wendy Doniger with Brian K. Smith (London: Penguin Classics, 1991).

should be questioned in accordance with the rules; if he describes the shape, the number, and so forth, he deserves that property as the owner. But if he does not accurately declare the time and place (of the loss) and the color, shape, and measurements of the lost property, then he deserves a fine equal to its value. Now, the king may take a sixth part of property (thus) lost and found, or a tenth, or a twelfth, bearing in mind the laws of good men. Property that has been lost and then found should be placed in the keeping of the appropriate people; if the king catches thieves trying to steal it he should have them killed by an elephant.

If a man says truthfully of a treasure-trove, "This is mine," the king should take a sixth part of it, or a twelfth. But if he lies, he should be fined an eighth of his own property, or a smaller fraction of the treasure, when its value has been calculated. And when a learned priest finds a treasure that was previously hidden, he may take it even without leaving anything, for he is the overlord of everything. But when the king finds ancient treasure hidden in the earth, he should give half to the twice-born and put half in his treasury. The king gets half of ancient treasures and minerals in the ground because he protects (it) and because he is the overlord of the earth.

The king must give back to men of all classes property taken by thieves; a king who uses it for himself commits the offense of a thief. Taking into consideration the laws of the castes, districts, guilds, and families, a king who knows justice should establish the particular law of each. Men who carry out their own innate activities and engage each in his own particular innate activity become dear to people even when they are far away....

When a creditor urges (the king) for the recovery of a debt from a debtor, he should make the debtor give the creditor the money that he has proven due him. He should make the debtor pay by forcing him through whatever means the creditor can use to obtain his own money. By law, by

legal action, by a trick, by the usual custom and, fifth, by force, he may recover money that has been lent. If a creditor recovers his money from a debtor by himself, the king should not prosecute him for recovering his own property. But if a man denies a debt that has been proven by a legal instrument, (the king) should make him pay the money to the creditor, as well as a small fine, according to his ability.

When a debtor has been told in court, "Pay," and he denies the debt, the plaintiff must call (a witness who was) at the place (where the debt was contracted), or adduce some other legal instrument. If he calls someone who was not at the place or if he takes back what he has stated or does not realize that his earlier and subsequent statements of fact do not harmonize; or if he states what he means to prove and then afterwards departs from it, or when questioned about a properly acknowledged statement of fact does not uphold it; or if he converses with witnesses in a place where they should not converse, or does not wish to answer a question put to him, or rushes out; or if he is told, "Speak," and does not speak, or does not prove what he has said, or does not know what comes first and what comes last, then he loses his case....

If (a debtor) falsely denies a certain sum of money, or (a creditor) falsely claims it, the king should make both of them pay a fine of double the amount, for they do not understand justice. If (a debtor) is brought to court by a creditor and, when questioned, denies (the debt), he must be proven (guilty) by at least three witnesses, in the presence of the king and the priests.

2.9 Mahayana Buddhism: On Altruism (*Bodhicaryāvatāra* of *Sāntideva*, c. Eighth Century)¹⁰

May I too, through whatever good I have accomplished by doing all this, become one who works for the complete alleviation of the sufferings of all beings.

10 *Bodhicaryāvatāra* of *Sāntideva*, edited by P. L. Vaidya, Buddhist Sanskrit Texts, no. 12 (Darbhanga: Mithila Institute, 1960), edited and translated by John S. Strong, *The Experience of Buddhism: Sources and Interpretations* (Belmont, CA: Wadsworth Publishing Co., 1995).

May I be medicine for the sick; may I also be their physician and attend to them until their disease no longer recurs.

With showers of food and water, may I eliminate the pain of hunger and thirst, and during the intermediate periods of great famine between eons, may I be food and drink.

And may I be an inexhaustible storehouse for the poor, and may I always be first in being ready to serve them in various ways.

So that all beings may achieve their aims, may I sacrifice, without regret, the bodies, as well as the pleasures that I have had, and the merit of all the good that I have accomplished and will accomplish in the past, present, and future.

Nirvāna means to renounce everything. My mind is set on nirvanaa, so because I am to renounce everything, it is best for me to give it to others.

2.10 Buddhism: On the Limitation of Property (Dhārmika Subhūti, c. Tenth Century)¹¹

Hungry Ghost (Preta) Realm

People who steal food become katapūtana pretas, who are deprived of energy and who feed on corpses.

Those who harm children and out of desire lead them astray are reborn as katapūtanas, feeding on fetal matter.

People who are vile and utterly wretched, selfish and ever-lusting, are reborn after death as pretas with goiters.

The person who hinders the practice of dāna and who gives nothing himself will become an emaciated preta with a big belly and a mouth the size of a needle.

The person who hoards his wealth for the sake of his family, without enjoying it or giving it away, is reborn as a preta who receives only what is given as funeral offerings made to the dead.

The person who wishes to deprive others of their wealth and who gives only to regret it immediately becomes a preta consuming excrement, phlegm, and vomit.

The person who, out of anger, speaks unkind words that cut to the quick will, as a result of that act, be for a long time a preta with a flaming mouth.

And the person who causes strife, who has a fierce disposition and no pity, will become a preta agitated by fear, feeding on worms and various kinds of insects...

Human Realm

Among gods, asuras, and humans, nonviolence leads to a long life; violence gives rise to a short life. Thus, one should abstain from violence.

Leprosy, consumption, fever, madness, and other human diseases are due to killing, tying up, and whipping creatures.

People who steal others' property and give out nothing whatsoever will never themselves become wealthy, strive as they may.

One who takes goods that were not given but who also gives gifts will, after death, first become wealthy but then exceedingly poor.

One who neither steals nor gives nor is excessively niggardly will, with great effort, obtain a lasting fortune in the next life.

People who do not steal others' property, who are generous and free from greed, obtain what they wish: great wealth that cannot be taken away.

One who, in this world, makes donations of alms food will be reborn ever-happy: endowed with long life, good complexion, strength, good fortune, and good health.

One who makes offerings of clothes will become modest, good looking, and well dressed, enjoying life and cutting a handsome figure.

People who happily, without regret, make a donation of a dwelling, will, in a future life, be endowed with palaces and everything they want.

11 Dhārmika Subhūti, *Sadgatikārikā*, in Paul Mus, ed., *La lumière sur les six voies* (Paris: Institut d'Ethnologie, 1939), edited and translated by John S. Strong, *The Experience of Buddhism: Sources and Interpretations* (Belmont, CA: Wadsworth Publishing Co., 1995).

By virtue of a gift of a lamp, a person will come to have good eyes; by the gift of a musical instrument, a good voice; by the gift of beds and seats, ease and comfort...

He who abstains from the wives of others will obtain the wives he desires; and he who stays away from his own wives, when the place and time are not right, will again be reborn as a man...

2.11 The Mande Charter of Kurukan Fuga (c. 1235)¹²

31. We should help those who are in need.
32. There are five ways to acquire property: buying, donation, exchange, work and inheriting. Any other form without convincing testimony is doubtful.

33. Any object found without a known owner becomes common property only after four years.
36. To satisfy one's hunger is not robbery if you don't take away anything in your bag or your pocket.
37. Fakombè is nominated chief of hunters. He is responsible for conserving the bush and its inhabitants for everyone's well-being.
38. Before setting fire to the bush, don't look down at the ground, raise your head in the direction of the top of the trees to see whether they bear fruits or flowers.
39. Domestic animals should be tied during cultivation and freed after the harvest. The dog, the cat, the duck and the poultry are not bound by the measure.

Justice, War, and Peace

Averting, even abolishing, warfare was also an issue of concern on the Asian continent. Living during a period of war among feudal states, the Chinese scholar Confucius (551–479 B.C.E.) urged rulers to ensure that, above all, people have enough to eat, maintaining that this was the best way to ward off wars (see Section 2.12). If a ruler fails to provide for his people, he “endanger[s] the altars to the gods of earth and grain” (the symbol of independence of the state) and should be replaced, claimed Mencius, (372 to 289 B.C.E.) (see Section 2.13). A disciple of Confucius and a Chinese official, Mencius wrote during the Warring State Period (319–312 B.C.E.). By Confucius' and Mencius' accounts, the Indian ruler Asoka would have undoubtedly been praised following the Kalinga war, having renounced all forms of violence and informed his people and neighboring countries of his unshakable resolution to live by his decision until the end of his reign (see Section 2.14).

In west Africa, the Mande Charter of Kurukan Fuga, first proclaimed in the thirteenth century after a major military victory, states simply: “You can kill the enemy, but not humiliate him” (see Section 2.15).

2.12 Confucius: On Peace and Economic Justice (*The Analects*, c. 551–479 B.C.E.)¹³

Book XII

7. Tzu-kung asked about government. The Master said, “Give them enough food, give them enough arms, and the common people will have trust in you.”

Tzu-kung said, “If one had to give up one of these three, which should one give up first?”
“Give up arms.”

Tzu-kung said, “If one had to give up one of the remaining two, which should one give up first?”

“Give up food. Death has always been with us since the beginning of time, but

12 The Charter of Kurukan Fuga was assembled in Guinea at the end of a regional workshop between traditional and modern communicators in March 1998. See “Intergenerational Forum on Endogenous Governance in West Africa,” organized by Sahel and West Africa Club and the OECD (June 2006), Annex 1 (www.oecd.org/swac/events/38516561.pdf, accessed 10 August 2021). The more readable version quoted here is published by the Malian government (<https://ambamali.ca/kouroukan-fouga/>, accessed 10 August 2021).

13 Confucius, *The Analects*, translated by D. C. Lau (London: Penguin Classics, 1979).

when there is no trust, the common people will have nothing to stand on.”

42. Tzu-lu asked about the gentleman. The Master said, “He cultivates himself and thereby achieves reverence.”

“Is that all?”

“He cultivates himself and thereby brings peace and security to his fellow men.”

“Is that all?”

“He cultivates himself and thereby brings peace and security to the people. Even Yao and Shun would have found the task of bringing peace and security to the people taxing.”

2.13 Mencius: On the Right to Overthrow a Tyrant (c. 372–289 B.C.E.)¹⁴

2. Book VII, Part B Mencius said, “How ruthless was King Hui of Liang! A benevolent man extends his love from those he loves to those he does not love. A ruthless man extends his ruthlessness from those he does not love to those he loves.”

“What do you mean?” asked Kungsun Ch’ou.

“King Hui of Liang sent his people to war, making pulp of them, for the sake of gaining further territory. He suffered a grave defeat and when he wanted to go to war a second time he was afraid he would not be able to win, so he herded the young men he loved to their death as well. This is what I meant when I said he extended his ruthlessness from those he did not love to those he loved.”

2. Mencius said, “In the Spring and Autumn period there were no just wars. There were only cases of one war not being quite as bad as another. A punitive expedition is a war waged by one in authority against his subordinates. It is not for peers to punish one another by war.”
4. Mencius said, “There are people who say, ‘I am expert at military formations; I am expert at waging war.’ This is a grave crime. If the ruler of a state is drawn to

benevolence he will have no match in the Empire. When he marched on the south, the northern barbarians complained; when he marched on the east, the western barbarians complained. They all said, ‘Why does he not come to us first?’”

“When King Wu marched on Yin, he had three hundred war chariots and three thousand brave warriors. He said, ‘Do not be afraid. I come to bring you peace, not to wage war on the people.’ And the sound of the people knocking their heads on the ground was like the toppling of a mountain. To wage a punitive war is to rectify. There is no one who does not wish himself rectified. What need is there for war?”

5. Mencius said, “A carpenter or a carriage-maker can pass on to another the rules of his craft, but he cannot make him skillful.”
6. Mencius said, “When Shun lived on dried rice and wild vegetables, it was as though he was going to do this for the rest of his life. But when he became Emperor, clad in precious robes, playing on his lute, with the two daughters [of Yao] in attendance, it was as though this was what he had been used to all his life.”
7. Mencius said, “Only now do I realize how serious it is to kill a member of the family of another man. If you killed his father, he would kill your father; if you killed his elder brother, he would kill your elder brother. This being the case, though you may not have killed your father and brother with your own hands, it is but one step removed.”
8. Mencius said, “In antiquity, a border station was set up as a precaution against violence. Today it is set up to perpetrate violence.”
9. Mencius said, “If you do not practice the Way yourself, you cannot expect it to be practiced even by your own wife and children.”
13. Mencius said, “There are cases of a ruthless man gaining possession of a state,

14 Mencius, *Mencius*, translated by D. C. Lau (London: Penguin Classics, 1970).

but it has never happened that such a man gained possession of the Empire.”

14. Mencius said, “The people are of supreme importance; the altars to the gods of earth and grain come next; last comes the ruler. That is why he who gains the confidence of the multitudinous people will be Emperor; he who gains the confidence of the Emperor will be a feudal lord; he who gains the confidence of a feudal lord will be a Counsellor. When a feudal lord endangers the altars to the gods of earth and grain¹⁵ he should be replaced. When the sacrificial animals are sleek, the offerings are clean and the sacrifices are observed at due times, and yet floods and droughts come, then the altars should be replaced.”

2.14 Asoka: On Peace and Justice (*The Edicts*, c. 272–231 B.C.E.)¹⁶

The Occasion and the Purpose of the Edicts

The Kalinga War, Asoka’s Change of Heart, and the Ideal of Conquest by Dharma

ROCK EDICT XIII

The Kalinga country was conquered by King Priyadarśi, Beloved of the Gods, in the eighth year of his reign. One hundred and fifty thousand persons were carried away captive, one hundred thousand were slain, and many times that number died.

Immediately after the Kalingas had been conquered, King Priyadarśi became intensely devoted to the study of Dharma, to the love of Dharma, and to the inculcation of Dharma.

The Beloved of the Gods, conqueror of the Kalingas, is moved to remorse now. For he has felt profound sorrow and regret because the conquest of a people previously unconquered induces slaughter, death, and deportation.

But there is a more important reason for the king’s remorse. The Brāhmanas and Sramanas [the

priestly and ascetic orders] as well as the followers of other religions and the householders — who all practiced obedience to superiors, parents, and teachers, and proper courtesy and firm devotion to friends, acquaintances, companions, relatives, slaves, and servants — all suffer from the injury, slaughter, and deportation inflicted on their loved ones. Even those who escaped calamity themselves are deeply afflicted by the misfortunes suffered by those friends, acquaintances, companions, and relatives for whom they feel an undiminished affection. Thus all men share in the misfortune, and this weighs on King Priyadarśi’s mind....

Against Aggression and Tension Between States

KALINGA EDICT II

King Priyadarśi says:

I command that the following instructions be communicated to my officials at Samāpā. Whenever something right comes to my attention, I want it put into practice and I want effective means devised to achieve it. My principal means to do this is to transmit my instructions to you.

All men are my children. Just as I seek the welfare and happiness of my own children in this world and the next, I seek the same things for all men.

Unconquered peoples along the borders of my dominions may wonder what my disposition is toward them. My only wish with respect to them is that they should not fear me, but trust me; that they should expect only happiness from me, not misery; that they should understand further that I will forgive them for offenses which can be forgiven; that they should be induced by my example to practice Dharma; and that they should attain happiness in this world and the next.

I transmit these instructions to you in order to discharge my debt [to them] by instructing

15 The symbol of independence of the state.

16 Asoka, *The Edicts of Asoka*, edited by N. A. Nikam and R. McKeon (Chicago: University of Chicago Press, 1958).

you and making known to you my will and my unshakable resolution and commitment. You must perform your duties in this way and establish their confidence in the King, assuring them that he is like a father to them, that he loves them as he loves himself, and that they are like his own children.

Having instructed you and informed you of my will and my unshakable resolution and commitment, I will appoint officials to carry out this program in all the provinces. You are able to inspire the border peoples with confidence in me and to advance their welfare and happiness in this world and the next. By doing so, you will also attain heaven and help me discharge my debts to the people.

This edict has been inscribed here so that my officials will work at all times to inspire the peoples of neighboring countries with

confidence in me and to induce them to practice Dharma.

This edict must be proclaimed every four months [at the beginning of the three seasons — hot, rainy, and cold] on Tissy days [i.e., when the moon is in the constellation containing Tigma, Sirius]; it may also be proclaimed in the intervals between those days; and on appropriate occasions it may be read to individuals.

By doing this, you will be carrying out my commands.

2.15 The Mande Charter of Kurukan Fuga (c. 1235)¹⁷

25. The ambassador does not risk anything in Manden.
41. You can kill the enemy, but not humiliate him.

Justice for Whom?

While the Hinduism of Kautilya's *Arthashastra* (c. 300 B.C.E.) also viewed women as inferior beings, it avows that a woman should nevertheless expect to receive protection from her husband, divorce by mutual consent, or be taken care of by her husband's family (if she becomes a widow). Punishment for adultery or rape varied, depending upon the caste of the victim and perpetrator. While slavery was recognized, Kautilya offered some protection to slaves by punishing masters who enslaved children younger than eight years old as well as those who impregnated female slaves without freeing them (see Section 2.16).

Caste regulations in India were further legislated in the *Laws of Manu* (c. 200 B.C.E.). There it is affirmed that a woman's subjugation to a man, whom she "should serve as a god," was absolute. "In childhood a woman should be under her father's control, in youth under her husband's, and when her husband is dead under her sons." She should never have independence (see Section 2.17). One should note the Buddhist repudiation of the caste system, and its relatively kinder view of women's plight, recognizing their "many disadvantages" on earth. Yet even under Buddhism, women were not granted the same privileges as men (see Section 2.18).

The Mande Charter codified marriage customs such as eligible age and dowry, and it also listed legitimate reasons for divorce: the impotence or incapability of the husband, or the madness of either spouse. The society was patrilineal, but women seem not to have been as powerless as in other places and times (see Section 2.19).

17 The Charter of Kurukan Fuga was assembled in Guinea at the end of a regional workshop between traditional and modern communicators in March 1998. See "Inter-generational Forum on Endogenous Governance in West Africa," organized by Sahel and West Africa Club and the OECD (June 2006), Annex 1 (www.oecd.org/swac/events/38516561.pdf, accessed 10 August 2021). The more readable version quoted here is published by the Malian government (<https://ambamali.ca/kouroukan-fouga/>, accessed 10 August 2021).

2.16 Kautilya: On Women, Slavery, and Homosexuality (*The Arthashastra*, c. 300 B.C.E.)¹⁸

Chapter II

If a woman after re-marriage attempts to take possession of her own property under the plea of maintaining her sons by her former husband, she shall be made to endow it in their name. If a woman has many male children by many husbands, then she shall conserve her property in the same condition as she had received from her husbands. Even that property which has been given her with full powers of enjoyment and disposal, a remarried woman shall endow in the name of her sons.

A barren widow who is faithful to the bed for her dead husband may, under the protection of her teacher, enjoy her property as long as she lives: for it is to ward off calamities that women are endowed with property. On her death, her property shall pass into the hands of kinsmen. If the husband is alive and the wife is dead, then her sons and daughters shall divide her property among themselves. If there are no sons, her daughters shall divide her property among themselves. If there are no sons, her daughters shall have it. In their absence her husband shall take that amount of money (*sulka*) which he had given her, and her relatives shall re-take whatever in the shape of gift or dowry they had presented her. Thus the determination of the property of a woman is dealt with.

REMARRIAGE OF MALES

If a woman either brings forth no (live) children, or has no male issue, or is barren, her husband shall wait for eight years before marrying another. If she bears only a dead child, he has to wait for ten years. If she brings forth only females, he has to wait for twelve years. Then if he is desirous to have sons, he may marry another. In case of violating this rule, he shall be made to pay her not only *sulka*, her property (*stridhana*) and an adequate monetary compensation (*adhivedanikamartham*), but also a fine of 24 panas to the government. Having given the

necessary amount of *sulka* and property (*stridhana*) even to those women who have not received such things on the occasion of their marriage with him, and also having given his wives the proportionate compensation and an adequate subsistence (*vrutti*), he may marry any number of women; for women are created for the sake of sons. If many or all of them are at the same time in menses, he shall lie with that woman among them whom he married earlier or who has a living son....

If a husband is of bad character, or is long gone abroad, or has become a traitor to his king, or is likely to endanger the life of his wife, or has fallen from his caste, or has lost virility, he may be abandoned by his wife....

Chapter III

MAINTENANCE OF WOMAN

A woman who has a right to claim maintenance for an unlimited period of time shall be given as much food and clothing as is necessary for her, or more than is necessary in proportion to the income of the maintainer. If the period (for which such things are to be given to her, with one-tenth of the amount in addition) is limited, then a certain amount of money, fixed proportion to the income of the maintainer, shall be given to her; so also if she has not been given her *sulka*, property, and compensation (due to her for allowing her husband to remarry). If she places herself under the protection of anyone belonging to her father-in-law's family or if she begins to live independently, then her husband shall not be sued (for her maintenance). Thus the determination of maintenance is dealt with....

ENMITY BETWEEN HUSBAND AND WIFE

A woman, who hates her husband, who has passed the period of seven turns of her menses, and who loves another, shall immediately return to her husband both the endowment and jewelry she has received from him, and allow him to lie down with another woman. A man, hating his wife, shall allow her to take shelter in the house of

18 Kautilya, *The Arthashastra*, translated by L. N. Rangarajan (India Penguin Classics, 2004).

a mendicant woman, or of her lawful guardians or of her kinsmen. If a man falsely denies his intercourse with his wife, though it be proved by eye-witness or through a spy, he shall pay a fine of 12 pana. A woman, hating her husband, cannot dissolve her marriage with him against his will. Nor can a man dissolve his marriage with his wife against her will. But from mutual enmity, divorce may be obtained.

Chapter IV

In the case of husbands who have long gone abroad, who have become ascetics; or who have been dead, their wives, having no issue, shall wait for them for the period of seven menses; but if they have given birth to children, they shall wait for a year. Then (each of these women) may marry the brother of her husband. If there are a number of brothers to her last husband, she shall marry such a one of them who is next in age to her former husband, or as is virtuous and capable of protecting her, or one who is the youngest and unmarried. If there are no brothers to her lost husband, she may marry one who belongs to the same gotra as her husband's or a relative, *i.e.*, of the same family. But if there are many such persons as can be selected in marriage, she shall choose one who is a near relation of her lost husband....

Chapter XII

[...] If a slave who is less than eight years old and has no relatives, no matter whether he is born a slave in his master's house, or fallen to his master's share of inheritance, or has been purchased or obtained by his master in any other way, is employed in mean avocations against his will or is sold or mortgaged in a foreign land; or if a pregnant female slave is sold, or pledged without any provision for her confinement, her master shall be punished with the first amercement. The purchaser and abettors shall likewise be punished.

Failure to set a slave at liberty on the receipt of a required amount of ransom shall be punished with a fine of 12 panas; putting a slave under confinement for no reason (*samrodhaschākaranāt*) shall likewise be punished.

The property of a slave shall pass into the hands of his kinsmen; in the absence of any kinsmen, his master shall take it.

When a child is begotten on a female slave by her master, both the child and its mother shall at once be recognized as free. If, for the sake of subsistence, the mother has to remain in her bondage, her brother and sister shall be liberated.

Selling or mortgaging the life of a male or a female slave once liberated shall be punished with a fine of 12 panas, with the exception of those who enslave themselves. Thus the rules regarding slaves.

POWER OF MASTERS OVER THEIR HIRED SERVANTS

Neighbors shall know the nature of agreement between a master and his servant. The servant shall get the promised wages. As to wages not previously settled, the amount shall be fixed in proportion to the work done and the time spent in doing it (*karmakālānurūpam* = at the rate prevailing at the time). Wages being previously unsettled, a cultivator shall obtain one tenth of the crops grown, a herdsman one tenth of the butter clarified, a trader one tenth of the sale proceeds. Wages previously settled shall be paid and received as agreed upon.

Artisans, musicians, physicians, buffoons, cooks and other workmen, serving of their own accord, shall obtain as much wages as similar persons employed elsewhere usually get or as much as experts (*kuśalāh*) shall fix....

No man shall have sexual intercourse with any woman against her will.

When a woman, being desirous of intercourse, yields herself to a man of the same caste and rank, she shall be fined 12 panas, while any other woman who is an abettor in the case shall be fined twice as much. Any woman who abets a man in having intercourse with a maiden against her will shall not only pay a fine of 100 panas, but also please the maiden, providing her with an adequate nuptial fee.

A woman who, of her own accord, yields herself to a man, shall be slave to the king.

For committing intercourse with a woman outside a village or for spreading false report regarding such things, double the usual fines shall be imposed....

When a man rescues a woman from enemies, forests, or floods, or saves the life of a woman who has been abandoned in forests, forsaken in famine, or thrown out as if dead, he may enjoy her as agreed upon during the rescue.

A woman of high caste, with children and having desire for sexual enjoyment, may be let off after receiving an adequate amount of ransom.

Those women who have been rescued from the hands of thieves, from floods, in famine; or in national calamities, or who, having been abandoned, missed, or thrown out as if dead in forests, have been taken home, may be enjoyed by the rescuer as agreed upon...

When a man performs witchcraft to win the sister of his own father or mother, the wife of a maternal uncle or of a preceptor, his own daughter-in-law, daughter, or sister, he shall have his limb cut off and also be put to death, while any woman who yields herself to such an offender shall also receive similar punishment. Any woman who yields herself to a slave, a servant, or a hired laborer shall be similarly punished.

A Kshatriya who commits adultery with an unguarded Brāhman woman shall be punished with the highest amercement; a *Vaiśya* doing the same shall be deprived of the whole of his property; and a *Śūdra* shall be burnt alive wound round in mats.

Whoever commits adultery with the queen of the land shall be burnt alive in a vessel.

A man who commits adultery with a woman of low caste shall be banished, with prescribed mark branded on his forehead, or shall be degraded to the same caste.

A *Śūdra* or a *śvapāka* who commits adultery with a woman of low caste shall be put to death, while the woman shall have her ears and nose cut off.

Adultery with a nun (*pravrajitā*) shall be punishable with a fine of 24 panas, while the nun who submits herself shall also pay a similar fine.

A man who forces his connection with a harlot shall be fined 12 panas...

A man having sexual intercourse with another man shall also pay the first amercement.

When a senseless man has sexual intercourse with beasts, he shall be fined 12 panas; when he commits the same act with idols (representatives) of goddesses (*daivatapratim*), he shall be fined twice as much....

2.17 Manu: On Women and the Caste System (*The Laws*, c. 200 B.C.E.)¹⁹

Chapter 3:8–19

A man should not marry a girl who is a redhead or has an extra limb or is sickly or has no body hair or too much body hair or talks too much or is sallow; or who is named after a constellation, a tree, or a river, or who has a low-caste name, or is named after a mountain, a bird, a snake, or has a menial or frightening name. He should marry a woman who does not lack any part of her body and who has a pleasant name, who walks like a goose or an elephant, whose body hair and hair on the head is fine, whose teeth are not big, and who has delicate limbs. A wise man will not marry a woman who has no brother or whose father is unknown, for fear that she may be an appointed daughter or that he may act wrongly.

A woman of the same class is recommended to twice-born men for the first marriage; but for men who are driven by desire, these are the women, in progressively descending order: According to tradition, only a servant woman can be the wife of a servant; she and one of his own class can be the wife of a commoner; these two and one of his own class for a king; and these three and one of his own class for a priest. Not a single story mentions a servant woman as the wife of a priest or a ruler, even in extremity. Twice-born men who are so infatuated as to marry women of lower caste quickly reduce their families, including the descendants, to the status of servants. A man falls when he weds a servant woman, according to Atri and to (Gautama) the son of Utathya, or when he has a son by her, according to Śaunaka, or when he has any children

19 Manu, *The Laws of Manu*, translated by Wendy Doniger with Brian K. Smith (London: Penguin Classics, 1991).

by her, according to Bhṛgu. A priest who climbs into bed with a servant woman goes to hell; if he begets a son in her, he loses the status of priest.

The ancestors and the gods do not eat the offerings to the gods, to the ancestors, and to guests that such a man makes with her, and so he does not go to heaven. No redemption is prescribed for a man who drinks the saliva from the lips of a servant woman or is tainted by her breath or begets a son in her...

Chapter 5:147–155

A girl, a young woman, or even an old woman should not do anything independently, even in (her own) house. In childhood a woman should be under her father's control, in youth under her husband's, and when her husband is dead, under her sons'. She should not have independence. A woman should not try to separate herself from her father, her husband, or her sons, for her separation from them would make both (her own and her husband's) families contemptible. She should always be cheerful, and clever at household affairs; she should keep her utensils well polished and not have too free a hand in spending. When her father, or her brother with her father's permission, gives her to someone, she should obey that man while he is alive and not violate her vow to him when he is dead...

A husband who performs the transformative ritual (of marriage) with Vedic verses always makes his woman happy, both when she is in her fertile season and when she is not, both here on earth and in the world beyond. A virtuous wife should constantly serve her husband like a god, even if he behaves badly, freely indulges his lust, and is devoid of any good qualities. Apart (from their husbands), women cannot sacrifice or undertake a vow or fast; it is because a wife obeys her husband that she is exalted in heaven...

Chapter 8:299–300

If a wife, a son, a slave, a menial servant, or a full brother has committed an offense, they may be

beaten with a rope with a split bamboo cane, but only on the back of the body, and never on the head; anyone who beats them anywhere else will incur the guilt of a thief...

Chapter 10:51–67

The dwellings of "Fierce" Untouchables and "Dog-cookers" should be outside the village; they must use discarded bowls, and dogs and donkeys should be their wealth. Their clothing should be the clothes of the dead, and their food should be in broken dishes; their ornaments should be made of black iron, and they should wander constantly. A man who carries out his duties should not seek contact with them; they should do business with one another and marry with those who are like them. Their food, dependent upon others, should be given to them in a broken dish, and they should not walk about in villages and cities at night. They may move about by day to do their work, recognizable by distinctive marks in accordance with the king's decrees; and they should carry out the corpses of people who have no relatives; this is a fixed rule. By the king's command, they should execute those condemned to death, always in accordance with the teachings, and they should take for themselves the clothing, beds, and ornaments of those condemned to death...

Giving up the body instinctively for the sake of a priest or cow or in the defense of women and children is the way for even the excluded (castes) to achieve success. Manu has said that non-violence, truth, not stealing, purification, and the suppression of the sensory powers is the duty of the four classes, in a nutshell. If someone born from a priest in a servant woman produces a child with someone of the higher (caste), the lower (caste) reaches the status of birth of the higher caste after the seventh generation. (Thus) a servant attains the rank of priest, and a priest sinks to the rank of servant; and you should know that this can happen to someone born of a ruler, too, or of a commoner.... But if this (question) should arise: "Which is higher, someone born by chance from a priest father in a non-Aryan²⁰

mother, or from a non-Aryan father in a mother of the priestly class?” This is the decision: “Someone born from an Aryan father in a non-Aryan woman may become an Aryan in high qualities; but someone born from a non-Aryan father in an Aryan mother is a non-Aryan.”

2.18 Mahayana Buddhism: On the Afflictions of Womanhood And Poverty (Sutra of the Medicine Buddha, Seventh Century)²¹

The eighth vow is this: ‘In a future lifetime, upon my enlightenment, if there are any women who feel coerced or oppressed by the many disadvantages of the female form and have given rise to the desire to let go of that form, they shall, after hearing my name be transformed into the male form. Accompanying this form are all the characteristics of the True Man, even unto the attainment of Buddhahood.’ ...

The twelfth vow is this: ‘In a future lifetime, upon my enlightenment, if there are any sentient beings who are without clothing due to poverty, who suffer day and night the afflictions of extreme heat and cold and the torment of insects, they shall be aided by hearing my name and concentrating on it. They shall be afforded that which they wish: the acquisition of many kinds of exquisite clothing, precious gems for adornment, flowered hair ornaments,

perfumed ointments, and musical entertainment. The full enjoyment of all these things shall evoke their complete satisfaction and contentment.’

2.19 The Mande Charter of Kurukan Fuga (c. 1235)²²

11. When your wife or your child runs away, stop running after them in the neighbour’s house.
12. The succession being patrilinear, never relinquish power to a son when one of his father’s brothers is still alive. Never relinquish power to a minor just because he has goods.
24. In Manden, do not maltreat the foreigners.
27. A girl can be given in marriage as soon as she is pubescent without age determination.
28. A young man can marry at age 20.
29. The dowry is fixed at 3 cows: one for the girl, two for the father and mother.
30. In Mande, divorce is tolerated for one of the following reasons: the impotence of the husband, the madness of one of the spouses, the husband’s incapability of assuming the obligations due to the marriage. The divorce should occur out of the village.

21 Hsing Yun, *Sutra of the Medicine Buddha: with Teachings, Dharma Rites, and Prayers by Venerable Master Hsing Yun*, translated and edited by Fo Guang Shan International Translation Center (Hacienda Heights, CA: Buddha’s Light Publications, 2019).

22 The Charter of Kurukan Fuga was assembled in Guinea at the end of a regional workshop between traditional and modern communicators in March 1998. See “Intergenerational Forum on Endogenous Governance in West Africa,” organized by Sahel and West Africa Club and the OECD (June 2006), Annex 1 (www.oecd.org/swac/events/38516561.pdf, accessed 10 August 2021). The more readable version quoted here is published by the Malian government (<https://ambamali.ca/kouroukan-fouga/>, accessed 10 August 2021).

3.

MONOTHEISTIC RELIGIONS

Liberty, Tolerance, and Codes of Justice

One can only marvel at how the same precepts as one encounters in the Hammurabi Codes and Buddhism are also found in monotheism. The Ten Commandments of the Hebrew Bible (see Section 3.1) represented a code of morality, justice, and mutual respect shared by the three monotheistic religions. Indeed, “thou shall not kill,” “thou shall not steal,” “thou shall not give false evidence against your neighbor,” and “thou shall not covet your neighbor’s wife,” among other tenets, find their equivalents in both the New Testament (see Section 3.2) and the Qur’an (see Section 3.3). Some of these injunctions directly translate into later formulations of rights, e.g., the right to life, the right to property, the right to just treatment under the law, and protection against calumny.

Like the secular and Asian traditions, these three religions preached universalism. Under one God, the creator of all that exists, all humankind is viewed as a unity (e.g., Micah’s vision in the Hebrew Bible), with no race existing for itself alone. The New Testament (c. 50) professes a similar universal ethics through the word of Jesus and his apostles. In Acts 17, Paul reminds the Athenians that God created all humankind, and that individuals of all races were equal under God’s tutelage. The Qur’an, like Judaism and Christianity, also provides universal moral guidance for all believers. The Qur’an, it should be noted, consists of 114 chapters (Surahs) that according to the Muslim tradition were revealed to Mohamed prior to his death in 632, with commentaries compiled at a later stage.

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 1.

3.1 The Hebrew Bible: On Universalism and Moral Injunctions¹

Genesis 2:7–9

The LORD God formed man [adam] from the dust of the earth [adamah]. He breathed into his nostrils the breath of life, and man became a living being. The LORD God planted

a garden in Eden, in the east, and placed there the man whom He had formed. And from the ground the LORD God caused to grow every tree that was pleasing to the sight and good for food, with the tree of life in the middle of the garden, and the tree of the knowledge of good and bad.

1 Hebrew Bible selections are from *Tanakh: A New Translation of the Holy Scriptures According to the Traditional Hebrew Text* (Philadelphia: Jewish Publication Society, 1985).

Genesis 9:6

Whoever sheds the blood of man,
By man shall his blood be shed;
For in His image
Did God make man.

Exodus 20:1–21 (The Ten Commandments)

God spoke all these words, saying:

I the LORD am your God who brought you out of the land of Egypt, the house of bondage: You shall have no other gods besides Me.

You shall not make for yourself a sculptured image, or any likeness of what is in the heavens above, or on the earth below, or in the waters under the earth. You shall not bow down to them or serve them. For I the LORD your God am an impassioned God, visiting the guilt of the parents upon the children, upon the third and upon the fourth generations of those who reject Me, but showing kindness to the thousandth generation of those who love Me and keep My commandments.

You shall not swear falsely by the name of the LORD your God; for the LORD will not clear one who swears falsely by His name.

Remember the sabbath day and keep it holy. Six days you shall labor and do all your work, but the seventh day is a sabbath day of the LORD your God: you shall not do any work—you, your son or daughter, your male or female slave, or your cattle, or the stranger who is within your settlements. For in six days the LORD made heaven and earth and sea, and all that is in them, and He rested on the seventh day; therefore the LORD blessed the sabbath day and hallowed it.

Honor your father and your mother, that you may long endure on the land that the LORD your God is assigning to you.

You shall not murder.

You shall not commit adultery.

You shall not steal.

You shall not bear false witness against your neighbor.

You shall not covet your neighbor's house: you shall not covet your neighbor's wife,

or his male or female slave, or his ox, or his ass, or anything that is your neighbor's.

All the people witnessed the thunder and lightning, the blare of the horn and the mountain smoking; and when the people saw it, they fell back and stood at a distance. "You speak to us," they said to Moses, "and we will obey; but let not God speak to us, lest we die." Moses answered the people, "Be not afraid; for God has come only in order to test you, and in order that the fear of Him may be ever with you, so that you do not go astray." So the people remained at a distance, while Moses approached the thick cloud where God was.

Exodus 21:22–25 (Talion Law)

When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning. But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.

Exodus 23:1–3

You must not carry false rumors; you shall not join hands with the guilty to act as a malicious witness: You shall neither side with the mighty to do wrong—you shall not give perverse testimony in a dispute so as to pervert it in favor of the mighty—nor shall you show deference to a poor man in his dispute.

Deuteronomy 16:18–20

You shall appoint magistrates and officials for your tribes, in all the settlements that the LORD your God is giving you, and they shall govern the people with due justice. You shall not judge unfairly: you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. Justice, justice shall you pursue, that you may thrive and occupy the land that the LORD your God is giving you.

Amos 9:7–12

To Me, O Israelites, you are
Just like the Ethiopians — declares the LORD.

True, I brought Israel up
From the land of Egypt,
But also the Philistines from Caphtor
And the Arameans from Kir.
Behold the LORD God has His eye
Upon the sinful kingdom:
I will wipe it off
The face of the earth!

But I will not wholly wipe out
The House of Jacob — declares the LORD.

For I will give the order
And shake the House of Israel—
Through all the nations—
As one shakes [sand] in a sieve,
And not a pebble falls to the ground.
All the sinners of My people
Shall perish by the sword,
Who boast,
“Never shall the evil
Overtake us or come near us.”

In that day,
I will set up again the fallen booth of David:
I will mend its breaches and set up its
ruins anew.
I will build it firm as in the days of old,
So that they shall possess the rest of Edom
And all the nations once attached to My name
—declares the LORD who will bring this to pass.

Isaiah 56:1–7

Thus said the LORD:
Observe what is right and do what is just;
For soon My salvation shall come,
And my deliverance be revealed.

Happy is the man who does this,
The man who holds fast to it:

Who keeps the sabbath and does not pro-
fane it,
And stays his hand from doing any evil.

Let not the foreigner say,
Who has attached himself to the LORD,
“The LORD will keep me apart from His
people”;
And let not the eunuch say,
“I am a withered tree.”
For thus said the LORD:
“As for the eunuchs who keep My sabbaths,
Who have chosen what I desire
And hold fast to My covenant—
I will give them, in My House
And within My walls,
A monument and a name
Better than sons or daughters.
I will give them an everlasting name
Which shall not perish.
As for the foreigners
Who attach themselves to the LORD,
To minister to Him,
And to love the name of the LORD,
To be His servants—
All who keep the sabbath and do not
profane it,
And who hold fast to My covenant—
I will bring them to My sacred mount
And let them rejoice in My house of prayer.
Their burnt offerings and sacrifices
Shall be welcome on My altar;
For My House shall be called
A house of prayer for all peoples.”

**3.2 The New Testament: On Universalism,
Faith, and the Law (c. 80)²**

**Matthew 5:17–24, 38–48 (The Sermon
on the Mount)**

‘Do not suppose that I have come to abolish
the law and the prophets; I did not come to
abolish, but to complete. Truly I tell you: so

2 New Testament selections are from the *Revised English Bible* (Cambridge: Cambridge University Press and Oxford University Press, 1989).

long as heaven and earth endure, not a letter, not a dot, will disappear from the law until all that must happen has happened. Anyone therefore who sets aside even the least of the law's demands, and teaches others to do the same, will have the lowest place in the kingdom of Heaven, whereas anyone who keeps the law, and teaches others to do so, will rank high in the kingdom of Heaven. I tell you, unless you show yourselves far better than the scribes and Pharisees, you can never enter the kingdom of Heaven.

'You have heard that our forefathers were told, "Do not commit murder; anyone who commits murder must be brought to justice." But what I tell you is this; Anyone who nurses anger against his brother must be brought to justice. Whoever calls his brother "good for nothing" deserves the sentence of the court; whoever calls him "fool" deserves hell-fire. So if you are presenting your gift at the altar and suddenly remember that your brother has a grievance against you, leave your gift where it is before the altar. First go and make your peace with your brother; then come back and offer your gift....

'You have heard that they were told, "An eye for an eye, a tooth for a tooth." But what I tell you is this: Do not resist those who wrong you. If anyone slaps you on the right cheek, turn and offer him the other also. If anyone wants to sue you and takes your shirt, let him have your cloak as well. If someone in authority presses you into service for one mile, go with him two. Give to anyone who asks; and do not turn your back on anyone who wants to borrow.

'You have heard that they were told, "Love your neighbour and hate your enemy." But what I tell you is this: Love your enemies and pray for your persecutors; only so can you be children of your heavenly Father, who causes the sun to rise on good and bad alike, and sends the rain on the innocent and the wicked. If you love only those who love you, what reward can you expect? Even the tax-collectors do as much as that. If you greet only your brothers, what is there extraordinary about that? Even the

heathen do as much. There must be no limit to your goodness, as your heavenly Father's goodness knows no bounds.

Matthew 22:34–40

Hearing that he had silenced the Sadducees, the Pharisees came together in a body, and one of them tried to catch him out with this question: 'Teacher, which is the greatest commandment in the law?' He answered, "'Love the Lord your God with all your heart, with all your soul, and with all your mind.'" That is the greatest, the first commandment. The second is like it: "Love your neighbour as yourself." Everything in the law and the prophets hangs on these two commandments.'

Acts 17:22–28

Paul stood up before the Council of the Areopagus and began: 'Men of Athens, I see that in everything that concerns religion you are uncommonly scrupulous. As I was going round looking at the objects of your worship, I noticed among other things an altar bearing the inscription "To an Unknown God". What you worship but do not know—this is what I now proclaim.

"The God who created the world and everything in it, and who is Lord of heaven and earth, does not live in shrines made by human hands. It is not because he lacks anything that he accepts service at our hands, for he is himself the universal giver of life and breath—indeed of everything. He created from one stock every nation of men to inhabit the whole earth's surface. He determined their eras in history and the limits of their territory. They were to seek God in the hope that, groping after him, they might find him; though indeed he is not far from each one of us, for in him we live and move, in him we exist; as some of your own poets have said, "We are also his offspring."

Revelation 7:9–12

After that I looked and saw a vast throng, which no one could count, from all races and tribes, nations and languages, standing before

the throne and the Lamb. They were robed in white and had palm branches in their hands, and they shouted aloud:

‘Victory to our God who sits on the throne, and to the Lamb!’

All the angels who stood round the throne and round the elders and the four living creatures prostrated themselves before the throne and worshipped God, crying:

‘Amen! Praise and glory and wisdom, thanksgiving and honour, power and might, be to our God for ever! Amen.’

3.3 The Qur’an: On Tolerance and Just Society (c. 632)³

Surah 2:168–170

O people, eat what is allowable and good in the earth,
and do not follow the footsteps of Satan.
He is a persuasive enemy for you:
He commands you to do what is evil and improper
and to say about God what you do not know.
When it is said to them,
‘Follow what God has sent down’,
they say, ‘No.’
We shall follow what we found our forefathers
doing.’
Even if their fathers had no understanding and
were not guided aright?

Surah 5:45 (Talion Law)

We prescribed for them in it;
a soul for a soul;
an eye for an eye;
a nose for a nose;
an ear for an ear;
a tooth for a tooth;
and wounds [carry] retaliation.
But whoever remits it as alms-giving,
it will be an expiation for him.

Those who do not judge by what God has sent down
– those are the wrong-doers.

Surah 49:9–13

If two parties of the believers fight
each other,
make things right between them.
If one party of them wrongs the other,
fight the one that does wrong
until it returns to God’s command.
If it returns, set things right between them
justly and act equitably.
God loves those who act equitably.
The believers are brethren.
Set things right between your two brothers and
fear God,
so that you may receive mercy.
O you who believe,
let not a people scorn another people who
may be better than them;
nor let women scorn women who may be
better than them.
Do not find fault with one another,
nor insult each other with nicknames.
Evil is the term ‘vicious conduct’, after belief.
Those who do not turn in repentance
– those are the wrong-doers.
O you who believe,
avoid much suspicion:
some suspicion is a sin.
Do not spy; nor be backbiters of one another.
Would one of you like to eat the flesh of his
brother
when he is dead?
You would hate it.
Fear God. God is Relenting and Compassionate.
O people, We have created you male and female
and made you races and tribes
that you may know one another.
The noblest of you in the sight of God is the
most god-fearing.
God is Knowing and Informed.

3 Qur’an selections are from *The Qur’an*, translated by Alan Jones (Middlesex, UK: Gibb Memorial Trust, 2007).

Social and Economic Justice

The avoidance of excessive wealth and a commitment to selfless charity were similarly encouraged by the three monotheist religions. The Hebrew Bible urged people to help secure both work and rest for the laborer, the poor, and the foreigner (see Section 3.4). In a similar vein, the New Testament condemned the greed and abuses of the rich and stipulated that those who live a frugal and altruistic life would have better prospects for a blissful afterlife in heaven (see Section 3.5). Charity is also a central injunction of the Qur'an, which reminds believers not to waste property vainly or show off, but to help the poor and the needy (see Section 3.6).

3.4 The Hebrew Bible: On the Welfare of the Poor, the Laborer, and the Stranger⁴

Exodus 22:21–26

You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt.

You shall not ill-treat any widow or orphan. If you do mistreat them, I will heed their outcry as soon as they cry out to Me, and My anger shall blaze forth and I will put you to the sword, and your own wives shall become widows and your children orphans.

If you lend money to My people, to the poor among you, do not act toward them as a creditor; exact no interest from them. If you take your neighbor's garment in pledge, you must return it to him before the sun sets; it is his only clothing, the sole covering for his skin. In what else shall he sleep? Therefore, if he cries out to Me, I will pay heed, for I am compassionate.

If you advance money to any poor man amongst My people, you are not to act like a moneylender; you must not exact interest from him.

If you take your neighbour's cloak in pawn, return it to him by sunset, because it is his only covering. It is the cloak in which he wraps his body; in what else can he sleep? If he appeals to Me, I shall listen, for I am full of compassion.

Exodus 23:6–12

You shall not subvert the rights of your needy in their disputes. Keep far from a false charge; do not bring death on those who are innocent

and in the right, for I will not acquit the wrongdoer. Do not take bribes, for bribes blind the clear-sighted and upset the pleas of those who are in the right.

You shall not oppress a stranger, for you know the feelings of the stranger, having yourselves been strangers in the land of Egypt.

Six years you shall sow your land and gather in its yield; but in the seventh you shall let it rest and lie fallow. Let the needy among your people eat of it, and what they leave let the wild beasts eat. You shall do the same with your vineyards and your olive groves.

Six days you shall do your work, but on the seventh day you shall cease from labor, in order that your ox and your ass may rest, and that your bondman and the stranger may be refreshed.

Leviticus 19:33–34

When a stranger resides with you in your land, you shall not wrong him. The stranger who resides with you shall be to you as one of your citizens; you shall love him as yourself, for you were strangers in the land of Egypt: I the LORD am your God.

Deuteronomy 15:1–11

Every seventh year you shall practice remission of debts. This shall be the nature of the remission: every creditor shall remit the due that he claims from his fellow; he shall not dun his fellow or kinsman, for the remission proclaimed is of the LORD. You may dun the

4 Hebrew Bible selections are from *Tanakh: A New Translation of the Holy Scriptures According to the Traditional Hebrew Text* (Philadelphia: Jewish Publication Society, 1985).

foreigner; but you must remit whatever is due you from your kinsmen.

There shall be no needy among you—since the LORD your God will bless you in the land that the LORD your God is giving you as a hereditary portion—if only you heed the LORD your God and take care to keep all this Instruction that I enjoin upon you this day. For the LORD your God will bless you as He has promised you: you will extend loans to many nations, but require none yourself; you will dominate many nations, but they will not dominate you.

If, however, there is a needy person among you, one of your kinsmen in any of your settlements in the land that the LORD your God is giving you, do not harden your heart and shut your hand against your needy kinsman. Rather, you must open your hand and lend him sufficient for whatever he needs. Beware lest you harbor the base thought, “The seventh year, the year of remission, is approaching,” so that you are mean to your needy kinsman and give him nothing. He will cry out to the LORD against you, and you will incur guilt. Give to him readily and have no regrets when you do so, for in return the LORD your God will bless you in all your efforts and in all your undertakings. For there will never cease to be needy ones in your land, which is why I command you: open your hand to the poor and needy kinsman in your land.

Deuteronomy 24:10–15

When you make a loan of any sort to your countryman, you must not enter his house to seize his pledge. You must remain outside, while the man to whom you made the loan brings the pledge out to you. If he is a needy man, you shall not go to sleep in his pledge; you must return the pledge to him at sundown, that he may sleep in his cloth and bless you; and it will be to your merit before the LORD your God.

You shall not abuse a needy and destitute laborer, whether a fellow countryman or a stranger in one of the communities of your land. You must pay him his wages on the same day, before the sun sets, for he is needy and urgently depends on it; else he will cry to the LORD against you and you will incur guilt.

Proverbs 14:21, 31

He who despises his fellow is wrong;
 He who shows pity for the lowly is happy....
 He who withholds what is due to the poor
 affronts his Maker;
 He who shows pity for the needy honors
 Him.

3.5 The New Testament: On Poverty, Greed and Charity (c. 80)⁵

Matthew 25:31–46

‘When the Son of Man comes in his glory and all the angels with him, he will sit on his glorious throne, with all the nations gathered before him. He will separate people into two groups, as a shepherd separates the sheep from the goats; he will place the sheep on his right hand and the goats on his left. Then the king will say to those on his right, “You have my Father’s blessing; come, take possession of the kingdom that has been ready for you since the world was made. For when I was hungry, you gave me food; when thirsty, you gave me drink; when I was a stranger, you took me into your home; when naked, you clothed me; when I was ill, you came to my help; when in prison, you visited me.” Then the righteous will reply, “Lord, when was it that we saw you hungry and fed you, or thirsty and gave you drink, a stranger and took you home, or naked and clothed you? When did we see you ill or in prison, and come to visit you?” And the king will answer, “Truly I tell you: anything you did for one of my brothers here, however insignificant, you did for me.” Then he will say to those on his left, “A curse is on you; go from

5 New Testament selections are from the *Revised English Bible* (Cambridge: Cambridge University Press and Oxford University Press, 1989).

my sight to the eternal fire that is ready for the devil and his angels. For when I was hungry, you gave me nothing to eat; when thirsty, nothing to drink; when I was a stranger, you did not welcome me; when I was naked, you did not clothe me; when I was ill and in prison, you did not come to my help.” And they in their turn will reply, “Lord, when was it that we saw you hungry or thirsty or a stranger or naked or ill or in prison, and did nothing for you?” And he will answer, “Truly I tell you: anything you failed to do for one of these, however insignificant, you failed to do for me.” And they will go away to eternal punishment, but the righteous will enter eternal life.’

Mark 10:17–25

As he was starting out on a journey, a stranger ran up, and, kneeling before him, asked, ‘Good Teacher, what must I do to win eternal life?’ Jesus said to him, ‘Why do you call me good? No one is good except God alone. You know the commandments: “Do not murder; do not commit adultery; do not steal; do not give false evidence; do not defraud; honour your father and mother.”’ ‘But Teacher,’ he replied, ‘I have kept all these since I was a boy.’ As Jesus looked at him, his heart warmed to him. ‘One thing you lack,’ he said. ‘Go, sell everything you have, and give to the poor, and you will have treasure in heaven; then come and follow me.’ At these words his face fell and he went away with a heavy heart; for he was a man of great wealth.

Jesus looked round at his disciples and said to them, ‘How hard it will be for the wealthy to enter the kingdom of God!’ They were amazed that he should say this, but Jesus insisted, ‘Children, how hard it is to enter the kingdom of God! It is easier for a camel to pass through the eye of a needle than for a rich man to enter the kingdom of God.’

Acts 2:42–45

They met constantly to hear the apostles teach and to share the common life, to break bread, and to pray. A sense of awe was felt

by everyone, and many portents and signs were brought about through the apostles. All the believers agreed to hold everything in common: they began to sell their property and possessions and distribute to everyone according to his need.

2 Corinthians 8:7–15

You are so rich in everything—in faith, speech, knowledge, and diligence of every kind, as well as in the love you have for us—that you should surely show yourselves equally lavish in this generous service! This is not meant as an order; by telling you how keen others are I am putting your love to the test. You know the generosity of our Lord Jesus Christ: he was rich, yet for your sake he became poor, so that through his poverty you might become rich.

Here is my advice, and I have your interests at heart. You made a good beginning last year both in what you did and in your willingness to do it. Now go on and finish it. Be as eager to complete the scheme as you were to adopt it, and give according to your means. If we give eagerly according to our means, that is acceptable to God; he does not ask for what we do not have. There is no question of relieving others at the cost of hardship to yourselves; it is a question of equality. At the moment your surplus meets their need, but one day your need may be met from their surplus. The aim is equality; as scripture has it, ‘Those who gathered more did not have too much, and those who gathered less did not have too little.’

James 5:1–6

Next a word to you who are rich. Weep and wail over the miserable fate overtaking you: your riches have rotted away; your fine clothes are moth-eaten; your silver and gold have corroded, and their corrosion will be evidence against you and consume your flesh like fire. You have piled up wealth in an age that is near its close. The wages you never paid to the men who mowed your fields are

crying aloud against you, and the outcry of the reapers has reached the ears of the Lord of Hosts. You have lived on the land in wanton luxury, gorging yourselves—and that on the day appointed for your slaughter. You have condemned and murdered the innocent one, who offers no resistance.

3.6 The Qur'an: On Social and Economic Aid (c. 632)⁶

Surah 2:215

They ask you what they are to spend,
 Say, 'Whatever good you spend
 should be for parents, close relatives,
 orphans, the destitute and travellers.
 Whatever good you do, God is aware of it.'

Surah 2:254

O you who believe,
 spend some of that which We have given you
 as provision
 before a day comes
 on which there will be neither bargain nor
 friendship nor intercession.
 The unbelievers are the wrong-doers.

Surah 2:268–273

Satan promises you poverty
 and urges you to immorality;
 but God promises you forgiveness and bounty
 from Himself.
 God is Embracing and Knowing.
 He gives wisdom to those whom He wishes.
 Those to whom wisdom is given have been
 given great good;
 but only those possessed of understanding are
 mindful.
 Whatever expenditure you make,
 whatever vows you make,
 God knows it.
 The wrong-doers have no helpers.
 If you make public your alms-giving,
 that is excellent;

but if you conceal it and give it to the poor,
 that is better for you.
 It will atone for some of your evil deeds
 for you.
 God is informed of what you do.
 Their guidance is not your responsibility,
 but God guides those whom He wishes.
 Whatever good thing you spend,
 it is for yourselves,
 when you spend only to seek God's face;
 and whatever good thing you spend will be
 repaid to you in full,
 and you will not be wronged
 – [It being] for the poor who are constrained in
 the way of God
 and are unable to travel in the land.
 The ignorant man supposes them to be rich
 because of their abstinence
 – but you will know them by their mark:
 they do not beg importunately from the
 people.
 Whatever good thing you spend, God is
 aware of it.

Surah 3:14–17

Love of the pleasures that come from women
 and children
 and heaped up hoards of gold and silver
 and branded horses and livestock and
 tilled land
 have been made to seem fair to the people.
 That is the enjoyment of the life of this
 world;
 but with God is fair resort.
 Say, 'Shall I tell you of something better
 than that?'
 For those who fear God,
 there are gardens with their Lord,
 through which rivers flow,
 in which they will remain for ever;
 and there are pure spouses and God's
 pleasure.
 God is observer of His servants,
 Who say, 'Our Lord, we believe.'

6 Qur'an selections are from *The Qur'an*, translated by Alan Jones (Middlesex, UK: Gibb Memorial Trust, 2007).

Forgive us our sins
and protect us from the punishment of the Fire'
– The patient, the truthful, the obedient,
those who spend and those who seek
pardon in the mornings.

Surah 4:29, 33

O you who believe,
do not consume your property among you in
vanity,

but let there be trading by mutual consent
among you.

Do not kill yourselves.

God is merciful toward you...

To everyone We have appointed heirs

for what parents and close relations leave;

and those with whom your right hands have
made a covenant,

give them their share.

God is witness over everything.

Justice, War, and Peace

From the conquest of Canaan to the last judgment, the Hebrew Bible and the New Testament frequently treated violence as not only justified, but divinely commanded. Enemies were vengefully slaughtered. Even idyllic descriptions of peace and prosperity were sometimes connected to anticipated military victory or divine judgment against one's enemies. Still, texts mitigating the excesses of war and memorably envisioning peace would later contribute to modern discourses of human rights. Isaiah spoke of a day when nations would "beat their swords into plowshares" (Isa. 2:4) and Micah of a time when "nation shall not lift a sword against nation, nor shall they learn war anymore" (Micah 4:3) (see Section 3.7).

The early Christians, more likely to suffer from state power than to exercise it, were encouraged to "turn the other cheek" (earlier, Section 3.2), respect authority, and "never to pay back evil for evil" (see Section 3.8). Yet once the Roman emperor Constantine (c. 280–337) adopted Christianity as the religion of the state, this pacifist belief was gradually altered.

The notion of requiring a just cause to embark on war, along with specific limits, also became part of Islamic teaching. In the Qur'an (c. 632), a war is just when waged for self-defense against internal or external aggression by non-Islamic populations, and against those who violate their oaths by breaking a treaty. Despite some radical interpretations of Islam today, one should note that the Qur'an calls for temperance during wartime and reminds readers of an ideal also found in rabbinic Judaism,⁷ that "whoever saves one will be as if he had saved the life of all the people" (see Section 3.9).

Medieval Catholic thinkers would further develop the notion of just war. Augustine (350–430), bishop of Hippo in Roman Africa, a dominant figure of the Western Roman Church, wrote *City of God* (413–426), a work that was prompted by the sacking of Rome by the Goths and other barbarians. Augustine recognized that the expansion of Rome and the imposition of its language on conquered nations inevitably bred wars – both outside and within its imperial frontiers. Augustine's goal, however, was a society freed from trouble and misfortune. "Peace should be the object of your desire," he wrote, and "war should be waged only as a necessity, and waged only that God may by it deliver men from the necessity and preserve them in peace." "Good men" could thus undertake wars, he argued, when obedience to God or right conduct "requires them to act" (see Section 3.10).

The Crusades prompted Italian Dominican theologian Thomas of Aquinas (1224/5–1274) to argue for additional just war guidelines. In his *Summa Theologica* (1265–1273), Aquinas drew his understanding of rationality and rights from the influx of Arabian science and Aristotelian ethics. Echoing Aristotle, he argued that natural rights, which he carefully distinguished from divine rights, should be the basis for justice, peace, and unity. Under what circumstances, he then asked, can wars be considered just?

7 Sanhedrin 37a.

Refuting various objections claiming the inherently sinful objectives of war, Aquinas quoted Augustine while arguing that wars were just if waged with self-restraint by sovereign authority for self-defense, for the sake of the common good, and with the intention of a peaceful end. Provided that the ends are just, he continued, wars can be undertaken either openly or by means of ambushes. Wars were unjust, on the other hand, if they were motivated by self-aggrandizement, the lust for power, or conducted with cruelty. He also viewed as unlawful the taking up of arms by clerics and bishops, who should only have recourse to spiritual arms. Private wars were sinful for Aquinas, for they derived from private passions and could not yield rational and peaceful ends. The idea of temperance in wartime would be expanded in modern times (see Section 3.11).

3.7 The Hebrew Bible: On War and Peace among Nations⁸

Deuteronomy 20:1–20

When you take the field against your enemies, and see horses and chariots—forces larger than yours—have no fear of them, for the LORD your God, who brought you from the land of Egypt, is with you. Before you join battle, the priest shall come forward and address the troops. He shall say to them, “Hear, O Israel! You are about to join battle with your enemy. Let not your courage falter. Do not be in fear, or in panic, or in dread of them. For it is the LORD your God who marches with you to do battle for you against your enemy, to bring you victory.”

Then the officials shall address the troops, as follows: “Is there anyone who has built a new house but has not dedicated it? Let him go back to his home, lest he die in battle and another dedicate it. Is there anyone who has planted a vineyard but has never harvested it? Let him go back to his home, lest he die in battle and another harvest it. Is there anyone who has paid the bride-price for a wife, but who has not yet married her? Let him go back to his home, lest he die in battle and another marry her.” The officials shall go on addressing the troops and say, “Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his.” When the officials have finished addressing the troops, army commanders shall assume command of the troops.

When you approach a town to attack it, you shall offer it terms of peace. If it responds peaceably and lets you in, all the people present there shall serve you at forced labor. If it does not surrender to you, but would join battle with you, you shall lay siege to it; and when the LORD your God delivers it into your hand, you shall put all its males to the sword. You may, however, take as your booty the women, the children, the livestock, and everything in the town—all its spoil—and enjoy the use of the spoil of your enemy, which the LORD your God gives you.

Thus you shall deal with all towns that lie very far from you, towns that do not belong to nations hereabout. In the towns of the latter peoples, however, which the LORD your God is giving you as a heritage, you shall not let a soul remain alive. No, you must proscribe them—the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites—as the LORD your God has commanded you, lest they lead you into doing all the abhorrent things that they have done for their gods and you stand guilty before the LORD your God.

When in your war against a city you have to besiege it a long time in order to capture it, you must not destroy its trees, wielding the ax against them. You may eat of them, but you must not cut them down. Are trees of the field human to withdraw before you into the besieged city? Only trees that you know do not yield food may be destroyed; you may cut them down for constructing siegeworks against the

8 Hebrew Bible selections are from *Tanakh: A New Translation of the Holy Scriptures According to the Traditional Hebrew Text* (Philadelphia: Jewish Publication Society, 1985).

city that is waging war on you, until it has been reduced.

Isaiah 2:2–4

In the days to come,
The Mount of the LORD's House
Shall stand firm above the mountains
And tower above the hills;
And all the nations
Shall gaze on it with joy.
And the many peoples shall go and say:
"Come, Let us go up to the Mount of the
LORD,
To the House of the God of Jacob;
That He may instruct us in His ways,
And that we may walk in His paths."
For instruction shall come forth from Zion,
The word of the LORD from Jerusalem.
Thus He will judge among the nations
And arbitrate for the many peoples,
And they shall beat their swords into plowshares
And their spears into pruning hooks:
Nation shall not take up
Sword against nation;
They shall never again know war.

Micah 4:1–5

In the days to come,
The Mount of the LORD's House shall stand
Firm above the mountains;
And it shall tower above the hills.
The peoples shall gaze on it with joy,
And the many nations shall go and shall say:
"Come,
Let us go up to the Mount of the LORD,
To the House of the God of Jacob;
That He may instruct us in His ways,
And that we may walk in His paths."
For instruction shall come forth from Zion,
The word of the LORD from Jerusalem.
Thus He will judge among the many
peoples,
And arbitrate for the multitude of nations,

However distant;
And they shall beat their swords into
plowshares
And their spears into pruning hooks.
Nation shall not take up Sword against
nation;
They shall never again know war;
But every man shall sit
Under his grapevine or fig tree
With no one to disturb him.
For it was the LORD of Hosts who spoke.
Though all the peoples walk
Each in the names of its gods,
We will walk
In the name of the LORD our God
Forever and ever.

3.8 New Testament: "Never Pay Back Evil for Evil" (c. 80)⁹

Romans 12:17–13:6

Never pay back evil for evil. Let your aims be such as all count honourable. If possible, so far as it lies with you, live at peace with all. My dear friends, do not seek revenge, but leave a place for divine retribution; for there is a text which reads, 'Vengeance is mine, says the Lord, I will repay.' But there is another text: 'If your enemy is hungry, feed him; if he is thirsty, give him a drink; by doing this you will heap live coals on his head.' Do not let evil conquer you, but use good to conquer evil.

Every person must submit to the authorities in power, for all authority comes from God, and the existing authorities are instituted by him. It follows that anyone who rebels against authority is resisting a divine institution, and those who resist have themselves to thank for the punishment they will receive. Governments hold no terrors for the law-abiding but only for the criminal. You wish to have no fear of the authorities? Then continue to do right and you will have their approval, for they are

9 New Testament selections are from the *Revised English Bible* (Cambridge: Cambridge University Press and Oxford University Press, 1989).

God's agents working for your good. But if you are doing wrong, then you will have cause to fear them; it is not for nothing that they hold the power of the sword, for they are God's agents of punishment bringing retribution on the offender. That is why you are obliged to submit. It is an obligation imposed not merely by fear of retribution but by conscience. That is also why you pay taxes. The authorities are in God's service and it is to this they devote their energies.

1 Peter 2:11–17

Dear friends, I appeal to you, as aliens in a foreign land, to avoid bodily desires which make war on the soul. Let your conduct among unbelievers be so good that, although they now malign you as wrongdoers, reflection on your good deeds will lead them to give glory to God on the day when he comes in judgement.

Submit yourselves for the sake of the Lord to every human authority, whether to the emperor as supreme, or to governors as his deputies for the punishment of those who do wrong and the commendation of those who do right. For it is God's will that by doing right you should silence ignorance and stupidity.

Live as those who are free; not however as though your freedom provided a cloak for wrongdoing, but as slaves in God's service. Give due honour to everyone: love your fellow-Christians, reverence God, honour the emperor.

3.9 The Qur'an: On Just War (c. 632)¹⁰

Surah 2:190–193, 216

Fight in the way of God against those who fight you,
but do not be the aggressors
– God does not love aggressors –
And kill them wherever you come upon them,

and drive them out of the places from which they drove you out.
Persecution is worse than killing.
Do not fight them at the Sacred Mosque until they fight you there.
If they fight you, kill them.
Such is the reward of the unbelievers.
If they desist
– God is Forgiving and Merciful.
Fight them until there is no dissension and until the religion is God's.
Then if they desist,
let the only enmity be against the wrong-doers...
Prescribed for you is fighting, though it is something you hate.
It may be that you hate a thing although it is good for you;
and likewise you may love a thing which is bad for you.
God knows when you do not know.

Surah 5:32

Because of that, We have prescribed for the Children of Israel that whoever kills a soul, other than in retaliation for [another] soul or for corruption in the land, will be as if he had killed all the people; and whoever saves one will be as if he had saved the life of all the people.

Surah 9:12–15

But if they break their oaths after they have pledged them
and make thrusts against your religion,
fight the leaders of unbelief
– they have no binding oaths –
so that they desist.
Will you not fight a people who broke their oaths
and intended to drive out the messenger,
and took the initiative against you first?

10 Qur'an selections are from *The Qur'an*, translated by Alan Jones (Middlesex, UK: Gibb Memorial Trust, 2007).

Do you fear them?
 God is more deserving of your fear,
 if you are believers.
 Fight them and God will punish them by
 your hands
 and will shame them and help you against
 them
 and heal the breasts of a people who believe;
 And He will remove the anger in their hearts.
 God relents towards those whom He wishes.
 God is Knowing and Wise.

3.10 Augustine of Hippo: On Just War (397–427)

Contra Faustum, BOOK XXII, chapters 74–76¹¹

What is the evil in war? Is it the death of some who will soon die in any case, that others may live in peaceful subjection? This is mere cowardly dislike, not any religious feeling. The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like; and it is generally to punish these things, when force is required to inflict the punishment, that, in obedience to God or some lawful authority, good men undertake wars, when they find themselves in such a position as regards the conduct of human affairs, that right conduct requires them to act, or to make others act in this way.... But there is no need here to enter on the long discussion of just and unjust wars.

A great deal depends on the causes for which men undertake wars, and on the authority they have for doing so; for the natural order which seeks the peace of mankind, ordains that the monarch should have the power of undertaking war if he thinks it advisable, and that the soldiers should perform their military duties in behalf of the peace and safety of the community. When war is undertaken

in obedience to God, who would rebuke, or humble, or crush the pride of man, it must be allowed to be a righteous war; for even the wars which arise from human passion cannot harm the eternal well-being of God, nor even hurt His saints; for in the trial of their patience, and the chastening of their spirit, and in bearing fatherly correction, they are rather benefited than injured. No one can have any power against them but what is given him from above. For there is no power but of God, who either orders or permits. Since, therefore, a righteous man, serving it may be under an ungodly king, may do the duty belonging to his position in the State in fighting by the order of his sovereign — for in some cases it is plainly the will of God that he should fight, and in others, where this is not so plain, it may be an unrighteous command on the part of the king, while the soldier is innocent, because his position makes obedience a duty, — how much more must the man be blameless who carries on war on the authority of God, of whom every one who serves Him knows that He can never require what is wrong?

Letter CLXXXIX to Boniface, paragraph 6¹²

Think, then, of this first of all, when you are arming for the battle, that even your bodily strength is a gift of God; for, considering this, you will not employ the gift of God against God. For, when faith is pledged, it is to be kept even with the enemy against whom the war is waged, how much more with the friend for whom the battle is fought! Peace should be the object of your desire; war should be waged only as a necessity, and waged only that God may by it deliver men from the necessity and preserve them in peace. For peace is not sought in order to the kindling of war, but war is waged in order that peace may be obtained. Therefore, even in waging war, cherish the spirit of a peacemaker, that, by conquering those whom you attack, you may lead them back to the advantages of peace; for our Lord

11 *Nicene and Post-Nicene Fathers*, Series 1, Vol. 4, edited by Philip Schaff (Buffalo, NY: Christian Literature Publishing Co., 1887).

12 *Nicene and Post-Nicene Fathers*, Series 1, Vol. 1, edited by Philip Schaff (Buffalo, NY: Christian Literature Publishing Co., 1887).

says: “Blessed are the peacemakers; for they shall be called the children of God.” If, however, peace among men be so sweet as procuring temporal safety, how much sweeter is that peace with God which procures for men the eternal felicity of the angels! Let necessity, therefore, and not your will, slay the enemy who fights against you. As violence is used towards him who rebels and resists, so mercy is due to the vanquished or the captive, especially in the case in which future troubling of the peace is not to be feared.

De Civitate Dei (City of God), Book 1, chapter 21¹³

...[T]here are some exceptions made by the divine authority to its own law, that men may not be put to death. These exceptions are of two kinds, being justified either by a general law, or by a special commission granted for a time to some individual. And in this latter case, he to whom authority is delegated, and who is but the sword in the hand of him who uses it, is not himself responsible for the death he deals. And, accordingly, they who have waged war in obedience to the divine command, or in conformity with His laws, have represented in their persons the public justice or the wisdom of government, and in this capacity have put to death wicked men; such persons have by no means violated the commandment, “Thou shalt not kill.”

De Civitate Dei (City of God), Book XIX, chapter 12

That even the fierceness of war and all the disquietude of men make towards this one end of peace, which every nature desires

Whoever gives even moderate attention to human affairs and to our common nature, will recognize that if there is no man who does not wish to be joyful, neither is there any one who does not wish to have peace. For even they who make war

desire nothing but victory — desire, that is to say, to attain to peace with glory. For what else is victory than the conquest of those who resist us? And when this is done there is peace. It is therefore with the desire for peace that wars are waged, even by those who take pleasure in exercising their warlike nature in command and battle. And hence it is obvious that peace is the end sought for by war. For every man seeks peace by waging war, but no man seeks war by making peace. For even they who intentionally interrupt the peace in which they are living have no hatred of peace, but only wish it changed into a peace that suits them better: They do not, therefore, wish to have no peace, but only one more to their mind.

3.11 Thomas Aquinas: On Just War (*Summa Theologica*, 1265–1273)¹⁴

Whether It Is Always Sinful to Wage War?

Obj. 1. It would seem that it is always sinful to wage war. Because punishment is not inflicted except for sin. Now those who wage war are threatened by Our Lord with punishment; according to Matth. xxvi. 52: *All that take the sword shall perish with the sword.* Therefore all wars are unlawful.

Obj. 2. Further, whatever is contrary to a Divine precept is a sin. But war is contrary to a Divine precept, for it is written (Matth. v. 39): *But I say to you not to resist evil;* and (Rom. xii. 19): *Not revenging yourselves, my dearly beloved, but give place unto wrath.* Therefore war is always sinful.

Obj. 3. Further, nothing, except sin, is contrary to an act of virtue. But war is contrary to peace. Therefore war is always a sin.

Obj. 4. Further, the exercise of a lawful thing is itself lawful, as is evident in scientific exercises. But warlike exercises which take place in tournaments are forbidden by the

13 *Nicene and Post-Nicene Fathers*, Series 1, Vol. 2, edited by Philip Schaff (Buffalo, NY: Christian Literature Publishing Co., 1887).

14 Thomas Aquinas, *Summa Theologica*, edited by Fathers of the English Dominican Province (Hampshire, UK: Eyre & Spottiswoode, 1947).

Church, since those who are slain in these trials are deprived of ecclesiastical burial. Therefore it seems that war is a sin in itself.

ON THE CONTRARY, Augustine says in a sermon on the son of the centurion: *If the Christian Religion forbade war altogether, those who sought salutary advice in the Gospel would rather have been counseled to cast aside their arms, and to give up soldiering altogether. On the contrary, they were told: "Do violence to no man; ... and be content with your pay." If he commanded them to be content with their pay, he did not forbid soldiering.*

I answer that, In order for a war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged. For it is not the business of a private individual to declare war, because he can seek for redress of his rights from the tribunal of his superior. Moreover it is not the business of a private individual to summon together the people, which has to be done in wartime. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evil-doers, according to the words of the Apostle (Rom. xiii. 4): *He beareth not the sword in vain: for he is God's minister, an avenger to execute wrath upon him that doth evil;* so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies. Hence it is said to those who are in authority (Ps. lxxxi. 4): *Rescue the poor and deliver the needy out of the hand of the sinner,* and for this reason Augustine says (*Contra Faust* xxii. 75): *The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority.*

Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault. Wherefore Augustine says (*QQ in Hept.*, qu. x, *super Jos*): *A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to*

make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly.

Thirdly, it is necessary that the belligerents should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil. Hence Augustine says (*De Verb Dom.*): True religion looks upon as peaceful those wars that are waged not for motives of aggrandizement, or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good. For it may happen that the war is declared by the legitimate authority, and for a just cause, and yet be rendered unlawful through a wicked intention. Hence Augustine says (*Contra Faust*. xxii. 74): *The passion for inflicting harm, the cruel thirst for vengeance, a pacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war.*

Reply Obj. 1. As Augustine says (*Contra Faust*. xxii. 70): *To take the sword is to arm oneself in order to take the life of anyone, without the command or permission of superior or lawful authority.* On the other hand, to have recourse to the sword (as a private person) by the authority of the sovereign or judge, or [as a public person] through zeal for justice, and by the authority, so to speak, of God, is not to take the sword, but to use it as commissioned by another, wherefore it does not deserve punishment. And yet even those who make sinful use of the sword are not always slain with the sword, yet they always perish with their own sword, because, unless they repent, they are punished eternally for their sinful use of the sword.

Reply Obj. 2. Such like precepts, as Augustine observes (*De Serm. Don in Monte* L 19), should always be borne in readiness of mind, so that we be ready to obey them, and, if necessary, to refrain from resistance or self-defense. Nevertheless it is necessary sometimes for a man to act otherwise for the common good, or for the good of those with whom he is fighting. Hence Augustine says (*Ep. ad Marcellin.* cxxxviii): *Those whom we have to punish with a kindly severity, it is*

necessary to handle in many ways against their will. For when we are stripping a man of the lawlessness of sin, it is good for him to be vanquished, since nothing is more hopeless than the happiness of sinners, whence arises a guilty impunity, and an evil will, like an internal enemy.

Reply Obj. 3. Those who wage war justly aim at peace, and so they are not opposed to peace, except to the evil peace, which Our Lord *came not to send upon earth* (Matth. x. 34). Hence Augustine says (*Ep. ad Benif.* clxxxix): *We do not seek peace in order to be at*

war, but we go to war that we may have peace. Be peaceful therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace.

Reply Obj. 4. Manly exercises in warlike feats of arms are not all forbidden, but those which are inordinate and perilous, and end in slaying or plundering. In olden times warlike exercises presented no such danger, and hence they were called *exercises of arms or bloodless wars*, as Jerome states in an epistle.

Justice for Whom?

The universalist stance of the three monotheist religions – Judaism, Christianity, and Islam – was also undermined by these religions' attitudes toward slaves, women, and homosexuals. Slave owners did not have absolute power over their slaves. Masters were urged to treat their slaves in a just and humane way and to enable them to earn their freedom after a seven-year limit or for a certain sum of money. Yet none of the three monotheist religions called for an ending to slavery.

Despite encouragement to take care of women and admonitions not to inflict pain on widows or pregnant women, women were always subordinate to men, and at times were regarded as the property of their husbands. An Israelite woman could not divorce her husband unless her husband agreed – even if he had committed adultery. The Christian wife was condemned to learn in silence under the authority of her husband. Muslim women were subjected to the loss of child custody once divorced and entitled to only half the inheritance of a comparable male heir.

Concerning homosexuality, the three religions were even less charitable. Drawing from Leviticus 18:22 and 20:13, Paul warned: “No fornicators or idolaters, none who are guilty of adultery or homosexual perversion ... will possess the kingdom of God.” Along with Judaism and Christianity, Islam condemned same-sex intimate behavior, and the Islamic Sharia religious laws even consider it a crime. One may question, given the severity of some punishments and the lesser rights enjoyed by women, slaves, and homosexuals, the extent to which the ancient traditions contributed to the development of human rights. However, as the forces of history unveiled conflicting power relations and created conjunctural opportunities for the inclusion of new social participants, these previously overlooked historical agents would eventually become visible, forcefully asserting their liberty and equality, contributing to the pursuit of justice and peace with visions rooted in, but broader and deeper than, those advanced in ancient times (see Sections 3.12 to 3.14).

3.12 The Hebrew Bible: On Women, Slavery, and Homosexuality¹⁵

Leviticus 18:23

Do not lie with a male as one lies with a woman; it is an abhorrence.

Leviticus 20:10–21

If a man commits adultery with a married woman, committing adultery with another man's wife, the adulterer and the adulteress shall be put to death. If a man lies with his father's wife, it is the nakedness of his father

15 Hebrew Bible selections are from *Tanakh: A New Translation of the Holy Scriptures According to the Traditional Hebrew Text* (Philadelphia: Jewish Publication Society, 1985).

that he has uncovered; the two shall be put to death—their bloodguilt is upon them. If a man lies with his daughter-in-law, both of them shall be put to death; they have committed incest—their bloodguilt is upon them. If a man lies with a male as one lies with a woman, the two of them have done an abhorrent thing; they shall be put to death—their bloodguilt is upon them. If a man marries a woman and her mother, it is depravity; both he and they shall be put to the fire, that there be no depravity among you. If a man has carnal relations with a beast, he shall be put to death; and you shall kill the beast. If a woman approaches any beast to mate with it, you shall kill the woman and the beast; they shall be put to death—their bloodguilt is upon them.

If a man marries his sister, the daughter of either his father or his mother, so that he sees her nakedness and she sees his nakedness, it is a disgrace; they shall be excommunicated in the sight of their kinsfolk. He has uncovered the nakedness of his sister, he shall bear his guilt. If a man lies with a woman in her infirmity and uncovers her nakedness, he has laid bare her flow and she has exposed her blood flow; both of them shall be cut off from among their people. You shall not uncover the nakedness of your mother's sister or of your father's sister, for that is laying bare one's own flesh; they shall bear their guilt. If a man lies with his uncle's wife, it is his uncle's nakedness that he has uncovered. They shall bear their guilt: they shall die childless. If a man marries the wife of his brother, it is indecency. It is the nakedness of his brother that he has uncovered; they shall remain childless.

Deuteronomy 15:12–17

If a fellow Hebrew, man or woman, is sold to you, he shall serve you six years, and in the seventh year you shall set him free. When you set him free, do not let him go empty-handed: Furnish him out of the flock, threshing floor, and vat, with which the LORD your God

has blessed you. Bear in mind that you were slaves in the land of Egypt and the LORD your God redeemed you; therefore I enjoin this commandment upon you today.

But should he say to you, "I do not want to leave you"—for he loves you and your household and is happy with you—you shall take an awl and put it through his ear into the door, and he shall become your slave in perpetuity. Do the same with your female slave.

Deuteronomy 21:10–14 (Women as Spoils of War)

When you take the field against your enemies, and the LORD your God delivers them into your power and you take some of them captive, and you see among the captives a beautiful woman and you desire her and would take her to wife, you shall bring her into your house, and she shall trim her hair, pare her nails, and discard her captive's garb. She shall spend a month's time in your house lamenting her father and mother; after that you may come to her and possess her, and she shall be your wife. Then, should you no longer want her, you must release her outright. You must not sell her for money: since you had your will of her, you must not enslave her.

Deuteronomy 22:22–29

If a man is found lying with another man's wife, both of them—the man and the woman with whom he lay—shall die. Thus you will sweep away evil from Israel.

In the case of a virgin who is engaged to a man—if a man comes upon her in town and lies with her, you shall take the two of them out to the gate of that town and stone them to death: the girl because she did not cry for help in the town, and the man because he violated another man's wife. Thus you will sweep away evil from your midst. But if the man comes upon the engaged girl in the open country, and the man lies with her by force, only the man who lay with her shall die, but you shall do nothing to the girl. The girl did not incur

the death penalty, for this case is like that of a man attacking another and murdering him. He came upon her in the open; though the engaged girl cried for help, there was no one to save her.

If a man comes upon a virgin who is not engaged and he seizes her and lies with her, and they are discovered, the man who lay with her shall pay the girl's father fifty [shekels of] silver, and she shall be his wife. Because he has violated her, he can never have the right to divorce her.

3.13 The New Testament: On Women, Slavery, and Homosexuality (c. 80)¹⁶

John 8:2–11

Early in the morning he came to the temple courts again. All the people came to him, and he sat down and began to teach them. The experts in the law and the Pharisees brought a woman who had been caught committing adultery. They made her stand in front of them and said to Jesus, "Teacher, this woman was caught in the very act of adultery. In the law Moses commanded us to stone to death such women. What then do you say?" (Now they were asking this in an attempt to trap him, so that they could bring charges against him.) Jesus bent down and wrote on the ground with his finger. When they persisted in asking him, he stood up straight and replied, "Whoever among you is guiltless may be the first to throw a stone at her." Then he bent over again and wrote on the ground.

Now when they heard this, they began to drift away one at a time, starting with the older ones, until Jesus was left alone with the woman standing before him. Jesus stood up straight and said to her, "Woman, where are they? Did no one condemn you?" She replied, "No one, Lord." And Jesus said, "I do not condemn

you either. Go, and from now on do not sin any more."

Romans 1:18–27

Divine retribution is to be seen at work, falling from heaven on all the impiety and wickedness of men and women who in their wickedness suppress the truth. For all that can be known of God lies plain before their eyes; indeed God himself has disclosed it to them. Ever since the world began his invisible attributes, that is to say his everlasting power and deity, have been visible to the eye of reason, in the things he has made. Their conduct, therefore, is indefensible; knowing God, they have refused to honour him as God, or to render him thanks. Hence all their thinking has ended in futility, and their misguided minds are plunged in darkness. They boast of their wisdom, but they have made fools of themselves, exchanging the glory of the immortal God for an image shaped like mortal man, even for images like birds, beasts, and reptiles.

For this reason God has given them up to their own vile desires, and the consequent degradation of their bodies. They have exchanged the truth of God for a lie, and have offered reverence and worship to created things instead of to the Creator. Blessed is he for ever, Amen. As a result God has given them up to shameful passions. Among them women have exchanged natural intercourse for unnatural, and men too, giving up natural relations with women, burn with lust for one another; males behave indecently with males, and are paid in their own persons the fitting wage of such perversion.

1 Corinthians 6:9–11

Surely you know that wrongdoers will never possess the kingdom of God. Make no mistake: no fornicator or idolater, no adulterer or

16 New Testament selections are from the *Revised English Bible* (Cambridge: Cambridge University Press and Oxford University Press, 1989).

sexual pervert, no thief, extortioner, drunkard, slanderer, or swindler will possess the kingdom of God. Such were some of you; but you have been washed clean, you have been dedicated to God, you have been justified through the name of the Lord Jesus and through the Spirit of our God.

Galatians 3:28

There is no such thing as Jew and Greek, slave and freeman, male and female; for you are all one person in Christ Jesus.

Ephesians 5:21–6:9

Be subject to one another out of reverence for Christ.

Wives, be subject to your husbands as though to the Lord; for the man is the head of the woman, just as Christ is the head of the church. Christ is, indeed, the saviour of that body; but just as the church is subject to Christ, so must women be subject to their husbands in everything.

Husbands, love your wives, as Christ loved the church and gave himself up for it, to consecrate and cleanse it by water and word, so that he might present the church to himself all glorious, with no stain or wrinkle or anything of the sort, but holy and without blemish. In the same way men ought to love their wives, as they love their own bodies. In loving his wife a man loves himself. For no one ever hated his own body; on the contrary, he keeps it nourished and warm, and that is how Christ treats the church, because it is his body, of which we are living parts. 'This is why' (in the words of scripture) 'a man shall leave his father and mother and be united to his wife, and the two shall become one flesh.' There is hidden here a great truth, which I take to refer to Christ and to the church. But it applies also to each one of you: the husband must love his wife as his very self, and the wife must show reverence for her husband.

Children, obey your parents; for it is only right that you should. 'Honour your father and

your mother' is the first commandment to carry a promise with it: 'that it may be well with you and that you may live long on the earth.'

Fathers, do not goad your children to resentment, but bring them up in the discipline and instruction of the Lord.

Slaves, give single-minded obedience to your earthly masters with fear and trembling, as if to Christ. Do it not merely to catch their eye or curry favour with them, but as slaves of Christ do the will of God wholeheartedly. Give cheerful service, as slaves of the Lord rather than of men. You know that whatever good anyone may do, slave or free, will be repaid by the Lord.

Masters, treat your slaves in the same spirit: give up using threats, and remember that you both have the same Master in heaven; there is no favouritism with him.

1 Timothy 2:8–15

It is my desire, therefore, that everywhere prayers be said by the men of the congregation, who shall lift up their hands with a pure intention, without anger or argument. Women must dress in becoming manner, modestly and soberly, not with elaborate hair-styles, not adorned with gold or pearls or expensive clothes, but with good deeds, as befits women who claim to be religious. Their role is to learn, listening quietly and with due submission. I do not permit women to teach or dictate to the men; they should keep quiet. For Adam was created first, and Eve afterwards; moreover it was not Adam who was deceived; it was the woman who, yielding to deception, fell into sin. But salvation for the woman will be in the bearing of children, provided she continues in faith, love, and holiness, with modesty.

Philemon 1–2, 9–20

From Paul, a prisoner of Christ Jesus, and our colleague Timothy, to Philemon our dear friend and fellow-worker, together with Apphia our sister, and Archippus our comrade-in-arms, and the church that meets at your house....

Ambassador as I am of Christ Jesus, and now his prisoner, I, Paul, appeal to you about my child, whose father I have become in this prison. I mean Onesimus, once so useless to you, but now useful indeed, both to you and to me. In sending him back to you I am sending my heart. I should have liked to keep him with me, to look after me on your behalf, here in prison for the gospel, but I did not want to do anything without your consent, so that your kindness might be a matter not of compulsion, but of your own free will. Perhaps this is why you lost him for a time to receive him back for good—no longer as a slave, but as more than a slave: as a dear brother, very dear to me, and still dearer to you, both as a man and as a Christian.

If, then, you think of me as your partner in the faith, welcome him as you would welcome me. If he did you any wrong and owes you anything, put it down to my account. Here is my signature: Paul. I will repay you—not to mention that you owe me your very self. Yes, brother, I am asking this favour of you as a fellow-Christian; set my mind at rest.

3.14 The Qur’an: On Women, Slavery, and Homosexuality (c. 632)¹⁷

Surah 2:187

On nights of fasting it is lawful for you to have intercourse with your wives. They are a garment for you and you are a garment for them. God is aware that you were deceiving yourselves and He has relented towards you and forgiven you. So now [you may] have intercourse with them. And seek what God has prescribed for you and eat and drink until the white thread is distinct to you

from the black thread at dawn. Then complete the fast through to the night and do not have intercourse with them when you should be at your devotions in the mosque.

Those are God’s bounds – keep well within them. Thus God makes clear His signs to the people so that they may protect themselves.

Surah 2:222–223

They ask you about menstruation. Say, ‘It is a vexation. Withdraw from women during menstruation and do not approach them until they are clean. When they are clean, come to them as God has commanded you.’ God loves those who repent, and He loves those who keep themselves clean. Your women are a tillage. Go to your tillage as you wish, and send forward [good deeds] for yourselves.

Surah 2:231–233

When ye divorce Women and they fulfill The term of their (‘Iddah), Either take them back On equitable terms Or set them free On equitable terms; But do not take them back To injure them, (or) to take Undue advantage, If any one does that, He wrongs his own soul. Do not treat Allah’s Signs As a jest, But solemnly rehearse

17 Qur’an selections are from *The Qur’an*, translated by Alan Jones (Middlesex, UK: Gibb Memorial Trust, 2007).

Allah's favors on you,
 And the fact that He
 Sent down to you
 The Book
 And Wisdom,
 For your instruction.
 And fear Allah,
 And know that Allah
 Is well-acquainted
 With all things.

Surah 2:226–229

For those who forswear their women
 there is a wait of four months;
 if they return, God is Forgiving and Merciful.
 If they decide on divorce
 – God is Hearing and Knowing.
 Divorced women shall wait by themselves for
 three menstrual cycles.
 It is not lawful for them to conceal what God
 has created in their wombs,
 if they believe in God and the Last Day.
 In that period their husbands would do better
 to take them back
 if they desire to set things right.
 Women have the same rights as obligations in
 what is recognized as proper,
 though men have a rank above them.
 God is Mighty and Wise.
 Divorce is twice;
 then retention with humanity
 or setting free with kindness.

Surah 4:1, 7–9, 19–21

O people, fear your Lord,
 who created you from a single soul
 and who created from it its fellow
 and who spread many men and women from
 the two of them;
 and fear God,
 through whom you seek rights from one
 another and from the ties of relationship
 God is a watcher over you....
 Men have a share of what parents and
 kinsmen leave,

and so too do women,
 whether it is little or much
 – a share laid down.
 When the kinsmen and the orphans and the
 destitute are present at the division,
 provide for them out of it
 and speak to them properly.
 Let there be fear on the part of those
 who, if they left weak offspring behind them,
 would be afraid for them.
 Let them fear God and speak in an upright
 fashion....

O you who believe,
 it is not lawful for you to inherit women
 against their will
 or to coerce them that you may take away
 part of what you have given them
 unless they commit a flagrant
 indecency.
 Consort with them properly.
 If you dislike them,
 perhaps you dislike something when God has
 put much good into it.
 If you wish to replace a wife by another
 and you have given one of them a large sum,
 take nothing from it.
 Would you take it by calumny and mani-
 fest sin?
 How can you take it after you have come
 together with one another,
 and they have taken a binding pledge
 from you?

Surah 4:34

Men are overseers of women
 because God has granted some of them
 bounty in preference to others
 and because of the possessions which
 they spend.
 Righteous women are obedient,
 guarding the invisible
 because God has guarded [them].
 Admonish those women whose rebelliousness
 you fear,
 shun them in [their] resting-places

and hit them.
 If they obey you, do not seek a [further] way
 against them.
 God is Exalted and Great.

Surah 4:91–93

You will find others who wish to be secure
 from you and from their own people,
 but whenever they are returned to temptation,
 they are turned on their heads in it.
 If they do not keep aloof from you
 and do not offer you peace or restrain
 their hands,
 take them and kill them wherever you
 find them.
 Against these We have given you a clear
 authority.
 A believer should not kill a believer,
 unless [it happens] by mistake.
 Whoever kills a believer by mistake,
 must set free a believing slave
 and pay blood-money to the victim's family,
 unless they remit it as alms.
 If the victim is from a people who are hos-
 tile to you
 but is [nevertheless] a believer,
 [the recompense is] the freeing of a
 believing slave.
 If he comes from a people with whom you
 have a covenant,
 blood-money is to be handed over to
 his family
 and there must be the freeing of a
 believing slave.
 Whoever does not find [the means for that]
 must fast for two consecutive months,
 a penance from God.
 God is Knowing and Wise.
 Whoever kills a believer wilfully,
 his reward is Jahannam,
 in which he will dwell for ever.
 God will be angry with him

and will curse him
 and prepare a terrible torment for him.

Surah 24:30–33

Tell the believing men to lower their gaze
 and to guard their private parts.
 That is purer for them.
 God is informed of what they do.
 Tell the believing women to lower their gaze
 and to guard their private parts
 and to show only those of their ornaments
 that normally appear
 and to draw their coverings over the openings
 in their garments
 and to reveal their ornaments only to their
 husbands
 or their sons or their step-sons
 or their brothers or the sons of their brothers
 or sisters
 or their women or what their right hands
 possess¹⁸
 or their male attendants who have no desire
 or children who have no knowledge of
 women's nakedness.
 And let them not stamp their feet
 so that the ornaments which they conceal
 are known.
 O believers, all of you turn in repentance
 so that you may prosper.
 Marry off the unmarried among you and the
 righteous among your male and female
 slaves.
 If they are poor, God will give them suffi-
 ciency from His bounty.
 God is Embracing and Knowing.
 Let those who do not find [the means for]
 marriage
 remain chaste until God gives them suffi-
 ciency from His bounty.
 Such of those whom your right hands
 possess
 who seek the document,

18 This is apparently a euphemism for slaves.

write it for them if you know some good
 in them;
 and give them some of the wealth of God
 that He has given to you.
 Do not force your young women to
 prostitution,
 so that you may seek the chance gain of the
 life of this world,
 if they wish to preserve their chastity.
 If any one compels them, God will be
 Forgiving and Compassionate to them
 after the compulsion laid on them.

Surah 26:165–166

‘Do you come to the males of created beings,
 and leave alone the wives that your Lord has
 created for you?
 No! You are a people who transgress!’

Surah 29:28–34

And [recall] Lot: when he said to his people,
 ‘You commit indecency
 such as no created being has ever done
 before.
 Do you really approach men
 and bar the way and commit what is disreput-
 able in your assembly?’

The only answer of his folk was to say,
 ‘Bring God’s torment to us, if you are telling
 the truth.’
 He said, ‘My Lord, help me against the people
 who wreak mischief.’
 When Our messengers brought Abraham the
 good news,
 they said, ‘We are going to destroy the people
 of this settlement.
 Its people have been wrong-doers.’
 He said, ‘Lot is in [the settlement].’
 They said, ‘We are well aware of who is there.
 We shall save him and his family,
 except for his wife,
 who will be one of those who tarry.’
 When our messengers came to Lot,
 he was troubled about them
 for he had no power to protect them;
 but they said, ‘Do not fear or grieve.
 We shall rescue you and your family,
 except for your wife,
 who will be one of those who tarry.
 We are going to bring down
 on the people of this settlement abomination
 from heaven
 because they have been profligates.’

PART II

THE LEGACY OF EARLY LIBERALISM AND THE ENLIGHTENMENT

Introduction

The early ethical heritage of human rights can be found in the ancient world – in India, China, and the Mediterranean – and in monotheistic religions – Judaism, Christianity, and Islam. Notions of human dignity and social justice were discussed in a number of important works. Our modern conception of human rights, however, originated primarily in Europe and America. The story of the modern inception of human rights is embedded in the technological, political, economic, and social transformation associated with the Western Enlightenment and the relative decline of rival civilizations.

The birth of secular universalism took the form of an assault on the intellectual and political edifice of Roman Catholicism. That structure, seemingly impregnable during the Middle Ages, collapsed under the blows struck by the Renaissance and the Protestant Reformation, opening up room for the emergence of humanist thought. Christian ethics thus shifted from a docile dependence on revealed knowledge toward freedom of religion and opinion. Simultaneously, feudal authoritarianism grounded on divine inspiration yielded to the modern concept of the nation-state, justified by its protection of natural and individual rights. The monopolistic feudal economy gave way to mercantilism and later to capitalism and free markets based on the individual's right to private property. Finally, a religious tradition that had often sanctioned merciless and arbitrary killings was now confronted with laws premised on every individual's right to life, and with an insistence that even warfare must conform to universal standards of justice.

These developments laid the foundations for the English, American, and French revolutions. The demands of these social movements would be encapsulated in the English Bill of Rights (1689), the U.S. Declaration of Independence (1776), and the French Declaration of the Rights of Man and Citizen (see all three documents in Part VI). The religious notion of human dignity was spelled out in the rights to life, civil liberty, and property; these essential rights became the credo of the new age. To promote these liberties, Enlightenment thinkers envisioned the spread of commercial enterprises and republican institutions, whose advance could also usher in an age of enduring peace. If war was not altogether condemned, its pursuit was greatly restricted under new guidelines of just war.

Most revolutions do not take place without reactionary setbacks. Unsurprisingly, there were many discussions on how best to implement new conceptions of rights. Would commercial enterprise favor

peace between states more effectively than agricultural production? Can a commonwealth of republican institutions usher in an age of enduring peace, based on enduring liberties? If war is at times necessary, what is a just war, and what should be the guidelines to mitigate it? Finally, the concept of universality remained far from all inclusive. A majority of Enlightenment thinkers divided active citizens (white, propertied men) from passive citizens (propertyless persons and women in general). While the slave trade continued, and anti-Semitism prevailed in law throughout the Western world, France was the first country to emancipate slaves, grant full citizenship to Jews, and decriminalize homosexuality. These “passive” marginalized voices would continue to seek equal rights in the centuries to come, and would later find recognition in the Universal Declaration of Human Rights.

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 2.

Questions for Part II

1. Is the separation between religion and the state essential for the development of human rights?
2. Is torture ever acceptable? If so, under what circumstances?
3. Should there be a limit to the freedom of expression?
4. What limits, if any, should be placed on the right to property?
5. Does free trade lead to peace? If so, how?
6. Does democracy (or republicanism) lead to peace? If so, how?
7. What conditions will lead to perpetual peace?
8. Should political participation be limited to active citizens? What is the rationale for exclusion of passive citizens?
9. Should political participation be limited to active citizens? What is the rationale for exclusion of passive citizens?

II.1 United Nations: Universal Declaration of Human Rights (1948): Articles 1–3¹

Article 1

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.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

1 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

4. LIBERAL VISIONS OF HUMAN RIGHTS

The Fight for Freedom of Expression and Against Religious Oppression

The intellectual architects of the Enlightenment envisioned freedom of expression and religion as central to the new liberal state. The Church and its dogmatic monopoly over earthly affairs had so far protected the divine right of kings, as well as the political and economic privileges of the nobility and the clergy. A revolution in thought, calling for the end of Catholic censorship, for the separation of church and state, and for the rights to life and property, was now under way.

Famous for poems like *Paradise Lost* (1667) and *Paradise Regained* (1671), the English poet John Milton (1608–1674) gained early notoriety for his eloquent argument for freedom of the press. Written in response to a censorship act of the Parliament and inspired by Isocrates' oration to the Areopagus (the high court of Athens), Milton's *Areopagitica: A Speech for the Liberty of Unlicensed Printing* (1644) became a powerful reminder for future generations of the "liberty to know, to utter, and to argue freely according to conscience" (see Section 4.2).

In the spirit of Milton, British political thinker John Locke (1632–1704) wrote *A Letter Concerning Toleration* (1689) amidst fear that Catholicism might take over England. To ward off civil unrest, Locke argued for the toleration of different religions rather than their suppression. Because forced conversion was not the path to salvation, he argued, religion should remain separate from the state. To what degree that separation should exist continues to be widely debated in liberal and illiberal democracies (see Section 4.3).

Across the Channel, French writer and philosopher François-Marie Arouet, known as Voltaire (1694–1778), carried Locke's torch of tolerance throughout the last bitter decade of the French Ancien Regime. Those who suffered persecution because of their religious beliefs would find in Voltaire one of their most persuasive defenders. A deist at heart, Voltaire authored a number of publications – *The Lisbon Disaster* (1756), *Candide* (1759), *The Tragedy of Tancred* (1760), *Treatise on Toleration* (1763), and the *Philosophical Dictionary* (1764) – denouncing any form of religious fanaticism that persecutes so-called heretics. Decrying the power of the clergy, which perpetuated evil and suppressed the individual's capacity to think for herself, he hailed the greater tolerance within several non-Christian societies (see Sections 4.4–4.5). From Milton to Voltaire, these views would be later transcribed in Articles 18–19 of the Universal Declaration of Human Rights.

For a historical context of this period and human rights themes, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 2.

4.1 United Nations: Universal Declaration of Human Rights (1948): Articles 18–19¹

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

4.2 John Milton: On Censorship (*Areopagitica*, 1644)²

If ye [Parliament] be thus resolved, as it were injury to think ye were not, I know not what should withhold me from presenting ye with a fit instance wherein to show both that love of truth which ye eminently profess, and that uprightness of your judgement which is not wont to be partial to yourselves; by judging over again that Order which ye have ordained to regulate printing: – that no book, pamphlet, or paper shall be henceforth printed, unless the same be first approved and licensed by such, or at least one of such, as shall be thereto appointed....

I deny not, but that it is of greatest concernment in the Church and Commonwealth, to have a vigilant eye how books demean themselves as well as men; and thereafter to confine, imprison, and do sharpest justice on them as malefactors. For books are not absolutely dead things, but do contain a potency of life in them to be as active as that soul was whose progeny they are; nay, they do preserve as in a vial the purest efficacy and extraction of that

living intellect that bred them. I know they are as lively, and as vigorously productive, as those fabulous dragon's teeth; and being sown up and down, may chance to spring up armed men. And yet, on the other hand, unless wariness be used, as good almost kill a man as kill a good book. Who kills a man kills a reasonable creature, God's image; but he who destroys a good book kills reason itself, kills the image of God, as it were in the eye. Many a man lives a burden to the earth; but a good book is the precious life-blood of a master spirit, embalmed and treasured up on purpose to a life beyond life. 'Tis true, no age can restore a life, whereof perhaps there is no great loss; and revolutions of ages do not oft recover the loss of a rejected truth, for the want of which whole nations fare the worse. We should be wary therefore what persecution we raise against the living labors of public men, how we spill that seasoned life of man, preserved and stored up in books; since we see a kind of homicide may be thus committed, sometimes a martyrdom, and if it extend to the whole impression, a kind of massacre; whereof the execution ends not in the slaying of an elemental life, but strikes at that ethereal and fifth essence, the breath of reason itself, slays an immortality rather than a life....

Besides another inconvenience, if learned men be the first receivers out of books and dispreaders both of vice and error, how shall the licensers themselves be confided in, unless we can confer upon them, or they assume to themselves above all others in the land, the grace of infallibility and uncorruptedness? And again, if it be true that a wise man, like a good refiner, can gather gold out of the drossiest volume, and that a fool will be a fool with the best book, yea or without book; there is no reason that we should deprive a wise man of any advantage to his wisdom, while we seek to restrain from a fool, that which being restrained will be no hindrance to his folly. For if there should be so much exactness always used to keep that from him which

1 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

2 John Milton, *Areopagitica: A speech of Mr. John Milton for the Liberty of Unlicenc'd Printing, to the Parliament of England* (London: public domain, 1644).

is unfit for his reading, we should in the judgement of Aristotle not only, but of Solomon and of our Saviour, not vouchsafe him good precepts, and by consequence not willingly admit him to good books; as being certain that a wise man will make better use of an idle pamphlet, than a fool will do of sacred Scripture....

If we think to regulate printing, thereby to rectify manners, we must regulate all recreation and pastimes, all that is delightful to man. No music must be heard, no song be set or sung, but what is grave and Doric. There must be licensing dancers, that no gesture, motion, or deportment be taught our youth but what by their allowance shall be thought honest; for such Plato was provided of. It will ask more than the work of twenty licensers to examine all the lutes, the violins, and the guitars in every house; they must not be suffered to prattle as they do, but must be licensed what they may say. And who shall silence all the airs and madrigals that whisper softness in chambers? The windows also, and the balconies must be thought on; there are shrewd books, with dangerous frontispieces, set to sale; who shall prohibit them, shall twenty licensers? ...

Another reason, whereby to make it plain that this Order will miss the end it seeks, consider by the censoring quality which ought to be in every licenser. It cannot be denied but that he who is made judge to sit upon the birth or death of books, whether they may be wafted into this world or not, had need to be a man above the common measure, both studious, learned, and judicious; there may be else no mean mistakes in the censure of what is passable or not; which is also no mean injury. If he be of such worth as behaves him, there cannot be a more tedious and unpleasing journey-work, a greater loss of time levied upon his head, than to be made the perpetual reader of un-chosen books and pamphlets, of times huge volumes....

I never found cause to think that the tenth part of learning stood or fell with the clergy: nor could I ever but hold it for a sordid and unworthy speech

of any churchman who had a competency left him. If therefore ye be loath to dishearten utterly and discontent, not the mercenary crew of false pretenders to learning, but the free and ingenuous sort of such as evidently were born to study, and love learning for itself, not for lucre or any other end but the service of God and of truth, and perhaps that lasting fame and perpetuity of praise which God and good men have consented shall be the reward of those whose published labors advance the good of mankind, then know that, so far to distrust the judgment and the honesty of one who hath but a common repute in learning, and never yet offended, as not to count him fit to print his mind without a tutor and examiner, lest he should drop a schism, or something of corruption, is the greatest displeasure and indignity to a free and knowing spirit that can be put upon him....

Lords and Commons cannot make us now less capable, less knowing, less eagerly pursuing of the truth, unless ye first make yourselves, that made us so, less the lovers, less the founders of our true liberty. We can grow ignorant again, brutish, formal and slavish, as ye found us; but you then must first become that which ye cannot be, oppressive, arbitrary and tyrannous, as they were from whom ye have freed us. That our hearts are now more capacious, our thoughts more erected to the search and expectation of greatest and exactest things, is the issue of your own virtue propagated in us; ye cannot suppress that, unless ye reinforce an abrogated and merciless law, that fathers may dispatch at will their own children.... Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties....

4.3 John Locke: On the Separation of Religion and State (*A Letter Concerning Toleration*, 1689)³

... No man can, if he would conform his faith to the dictates of another. All the life and power of true religion consist in the inward and full persuasion of the mind; and faith is not faith without believing.

3 John Locke, *A Letter Concerning Toleration* (London: public domain, 1689).

Whatever profession we make, to whatever outward worship we conform, if we are not fully satisfied in our own mind that the one is true, and the other well pleasing unto God, such profession and such practice, far from being any furtherance, are indeed great obstacles to our salvation. For in this manner, instead of expiating other sins by the exercise of religion, I say, in offering thus unto God Almighty such a worship as we esteem to be displeasing unto Him, we add unto the number of our other sins those also of hypocrisy, and contempt of His Divine Majesty.

In the second place, the care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God. And such is the nature of the understanding, that it cannot be compelled to the belief of anything by outward force. Confiscation of estate, imprisonment, torments, nothing of that nature can have any such efficacy as to make men change the inward judgment that they have framed of things.

It may indeed be alleged that the magistrate may make use of arguments, and thereby draw the heterodox into the way of truth, and procure their salvation. I grant it; but this is common to him with other men. In teaching, instructing, and redressing the erroneous by reason, he may certainly do what becomes any good man to do. Magistracy does not oblige him to put off either humanity or Christianity; but it is one thing to persuade, another to command; one thing to press with arguments, another with penalties. This civil power alone has a right to do; to the other goodwill is authority enough. Every man has commission to admonish, exhort, convince another of error, and, by reasoning, to draw him into truth; but to give laws, receive obedience, and compel with the sword, belongs to none but the magistrate. And upon this ground, I affirm that the magistrate's power extends not to the establishing of any articles of faith, or forms of worship, by the force of his laws. For laws are of no force at all without penalties, and penalties in this case are absolutely impertinent, because they are not proper to convince the

mind. Neither the profession of any articles of faith, nor the conformity to any outward form of worship (as has been already said), can be available to the salvation of souls, unless the truth of the one, and the acceptableness of the other unto God, be thoroughly believed by those that so profess and practice. But penalties are no way capable to produce such belief. It is only light and evidence that can work a change in men's opinions; which light can in no manner proceed from corporal sufferings, or any other outward penalties.

In the third place, the care of the salvation of men's souls cannot belong to the magistrate; because, though the rigor of laws and the force of penalties were capable to convince and change men's minds, yet would not that help at all to the salvation of their souls. For there being but one truth, one way to heaven, what hope is there that more men would be led into it if they had no rule but the religion of the court, and were put under the necessity to quit the light of their own reason, and oppose the dictates of their own consciences, and blindly to resign themselves up to the will of their governors, and to the religion which either ignorance, ambition, or superstition had chanced to establish in the countries where they were born? In the variety and contradiction of opinions in religion, wherein the princes of the world are as much divided as in their secular interests, the narrow way would be much straitened; one country alone would be in the right, and all the rest of the world put under an obligation of following their princes in the ways that lead to destruction; and that which heightens the absurdity, and very ill suits the notion of a Deity, men would owe their eternal happiness or misery to the places of their nativity.

These considerations, to omit many others that might have been urged to the same purpose, seem unto me sufficient to conclude that all the power of civil government relates only to men's civil interests, is confined to the care of the things of this world, and hath nothing to do with the world to come.

Let us now consider what a church is. A church, then, I take to be a voluntary society of men, joining themselves together of their own accord in order to

the public worshipping of God in such manner as they judge acceptable to Him, and effectual to the salvation of their souls.

I say it is a free and voluntary society. Nobody is born a member of any church; otherwise the religion of parents would descend unto children by the same right of inheritance as their temporal estates, and everyone would hold his faith by the same tenure he does his lands, than which nothing can be imagined more absurd. Thus, therefore, that matter stands. No man by nature is bound unto any particular church or sect, but everyone joins himself voluntarily to that society in which he believes he has found that profession and worship which is truly acceptable to God...

What I say concerning the mutual toleration of private persons differing from one another in religion, I understand also of particular churches which stand, as it were, in the same relation to each other as private persons among themselves: nor has any one of them any manner of jurisdiction over any other; no, not even when the civil magistrate (as it sometimes happens) comes to be of this or the other communion. For the civil government can give no new right to the church, nor the church to the civil government. So that, whether the magistrate join himself to any church, or separate from it, the church remains always as it was before — a free and voluntary society. It neither requires the power of the sword by the magistrate's coming to it, nor does it lose the right of instruction and excommunication by his going from it. This is the fundamental and immutable right of a spontaneous society — that it has power to remove any of its members who transgress the rules of its institution; but it cannot, by the accession of any new members, acquire any right of jurisdiction over those that are not joined with it. And therefore peace, equity, and friendship are always mutually to be observed by particular churches, in the same manner as by private persons, without any pretence of superiority or jurisdiction over one another.

4.4 Voltaire: *Treatise on Tolerance* (1763)⁴

Should we at present go and sack Rome, as the troops of Charles the Fifth did, because Pope Sixtus the Fifth, in the year 1585, granted a nine years' indulgence to all Frenchmen who would take up arms against their sovereign? No, surely it is enough if we prevent the court of Rome from ever being guilty of such excesses in the future.

The rage inspired by a spirit of controversy, and the abuse made of the Christian religion from want of properly understanding it, has occasioned as much bloodshed, and produced as many calamities in Germany, England, and even in Holland, as in France; and yet, at present, the difference in religion occasions no disturbances in those countries; but the Jew, the Catholic, the Lutheran, the Calvinist, the Anabaptist, the Socinian, the Moravian, and a multitude of other sects live in brotherly harmony together, and contribute equally to the good of society....

Let us now for a while quit our own little sphere, and take a survey of the rest of the globe. The Grand Seignior peaceably rules over subjects of twenty different religions; upwards of two hundred thousand Greeks live unmolested within the walls of Constantinople; the mufti himself nominates the Greek patriarch, and presents him to the Emperor; and, at the same time, allows the residence of a Latin patriarch. The Sultan appoints Latin bishops for some of the Greek isles. The form used on this occasion is as follows: "I command such a one to go and reside as bishop in the Isle of Chios, according to the ancient custom and idle ceremonies of these people." The Ottoman Empire swarms with Jacobins, Nestorians, Monothelites, Cophti, Christians of St. John, Guebres, and Banians; and the Turkish annals do not furnish us with one single instance of a rebellion occasioned by any of these different sects.

Go into India, Persia, and Tartary, and you will meet with the same toleration and the same

4 Voltaire, *The Works of Voltaire: A Contemporary Version*, translated by William F. Fleming (Paris: E.R. DuMont, 1901 [public domain]).

tranquility. Peter the Great encouraged all kinds of religions throughout his vast empire; trade and agriculture have been gainers by it, and no injury ever happened therefrom to the body politic.

We do not find that the Chinese government, during the course of four thousand years that it has existed, has ever adopted any other religion than that of the Noachides, which consists in the simple worship of one God; and yet it tolerates the superstitions of Fo, and that of a multitude of bonzes; which might be productive of dangerous consequences did not the wisdom of the tribunals keep them within proper bounds.

It is true that the great Yong-T-Chin, the most wise and magnanimous of all the emperors of China, drove the Jesuits out of his kingdom; but this was not because that prince himself was non-tolerant, but, on the contrary, because the Jesuits were so.

They themselves, in their letters, have given us the speech the emperor made to them on that occasion: "I know," said he, "that your religion admits not of toleration; I know how you have behaved in the Manilas and in Japan; you deceived my father, but think not to deceive me in the same manner." And if we read the whole of the conversation which he deigned to hold with them, we must confess him to be the wisest and most clement of all princes. How could he indeed, with any consistency, keep in his kingdom European philosophers, who, under the pretence of teaching the use of thermometers and eolipiles, had found means to debauch a prince of the blood? But what would this emperor have said had he read our histories, and had he been acquainted with the times of the League and the Gunpowder Plot?

It was sufficient for him to be informed of the outrageous and indecent disputes between those Jesuits, Dominicans, Capuchins, and secular priests who were sent as missionaries into his dominions from one extremity of the globe to preach the truth; instead of which they employed their time in mutually pronouncing damnation against one another.

The emperor, then, did no more than send away a set of foreigners who were disturbers of the public peace. But with what infinite goodness did he dismiss them! and with what paternal care did he provide for their accommodation in their journey, and to prevent their meeting any insult on their way! This very act of banishment might serve as an example of toleration and humanity.

4.5 Voltaire: "Fanaticism" (*Philosophical Dictionary*, 1764)⁵

Fanaticism is, in reference to superstition, what delirium is to fever, or rage to anger. He who is involved in ecstasies and visions, who takes dreams for realities, and his own imaginations for prophecies, is a fanatical novice of great hope and promise, and will probably soon advance to the highest form, and kill man for the love of God.

Bartholomew Diaz was a fanatical monk. He had a brother at Nuremberg called John Diaz, who was an enthusiastic adherent to the doctrines of Luther, and completely convinced that the pope was Antichrist, and had the sign of the beast. Bartholomew, still more ardently convinced that the pope was god upon earth, quits Rome, determined either to convert or murder his brother; he accordingly murdered him! Here is a perfect case of fanaticism....

The most striking example of fanaticism is that exhibited on the night of St. Bartholomew, when the people of Paris rushed from house to house to stab, slaughter, throw out of the window, and tear in pieces their fellow citizens not attending mass....

There is no other remedy for this epidemical malady than that spirit of philosophy, which, extending itself from one to another, at length civilizes and softens the manners of men and prevents the access of the disease. For when the disorder has made any progress, we should, without loss of time, fly from the seat of it, and wait till the air has become purified from contagion. Law and religion are not completely efficient

5 Voltaire, *The Works of Voltaire: A Contemporary Version*, translated by William F. Fleming (Paris: E.R. DuMont, 1901 [public domain]).

against the spiritual pestilence. Religion, indeed, so far from affording proper nutriment to the minds of patients laboring under this infectious and infernal distemper, is converted, by the diseased process of their minds, into poison. These malignant devotees have incessantly before their eyes the example of Ehud, who assassinated the king of Eglon; of Judith, who cut off the head of Holofernes while in bed with him; of Samuel, hewing in pieces King Agag; of Jehoiada the priest, who murdered his queen at the horse-gate. They do not perceive that these instances, which are respectable in antiquity, are in the present day abominable. They derive their fury from religion, decidedly as religion condemns it.

Laws are yet more powerless against these paroxysms of rage. To oppose laws to cases of such a description would be like reading a decree of council to a man in a frenzy. The persons in question are fully convinced that the Holy Spirit which animates and fills them is above all laws; that their own enthusiasm is, in fact, the only law which they are bound to obey.

What can be said in answer to a man who says he will rather obey God than men, and who consequently feels certain of meriting heaven by cutting your throat? ...

Fanatics are nearly always under the direction of knaves, who place the dagger in their hands. These knaves resemble Montaigne's "Old Man of the Mountain," who, it is said, made weak persons imagine, under his treatment of them, that they really had experienced the joys of paradise, and promised them a whole eternity of such delights if

they would go and assassinate such as he should point out to them. There has been only one religion in the world which has not been polluted by fanaticism and that is the religion of the learned in China. The different sects of ancient philosophers were not merely exempt from this pest of human society, but they were antidotes to it: for the effect of philosophy is to render the soul tranquil, and fanaticism and tranquillity are totally incompatible. That our own holy religion has been so frequently polluted by this infernal fury must be imputed to the folly and madness of mankind. ...

Fanatics do not always fight the battles of the Lord. They do not always assassinate kings and princes. There are tigers among them, but there are more foxes.

What a tissue of frauds, calumnies, and robberies has been woven by fanatics of the court of Rome against fanatics of the court of Calvin, by Jesuits against Jansenists, and vice versa! And if you go farther back you will find ecclesiastical history, which is the school of virtues, to be that of atrocities and abominations, which have been employed by every sect against the others. They all have the same bandage over their eyes whether marching out to burn down the cities and towns of their adversaries, to slaughter the inhabitants, or condemn them to judicial execution; or when merely engaged in the comparatively calm occupation of deceiving and defrauding, of acquiring wealth and exercising domination. The same fanaticism blinds them; they think that they are doing good. Every fanatic is a conscientious knave, but a sincere and honest murderer for the good cause.

The Right to Life (The Cases Against Torture and Capital Punishment)

Entrusting individuals with the capacity to reason also invigorated efforts to end the human carnage caused by waves of religious fanaticism during the Thirty Years' War (1618–1648). Because conflicting interpretations of revelation could not ensure respect for human life, British political philosopher Thomas Hobbes (1588–1679) sought to establish a system of peace by showing that individuals, once they entered a social covenant, should be guaranteed a right to life – i.e., a right to personal security. In Hobbes' *Leviathan* (1652) that need was seen to be so essential that individuals would choose to grant absolute power to a sovereign authority in exchange for effective protection. Yet, Hobbes maintained, if the sovereign failed to undertake this mission or threatened the lives of its citizens, then the contract would be void. Despite Hobbes' minimal standard of what constitutes basic rights, his views were revolutionary for his time. By basing sovereignty on natural rights, Hobbes

opened the door to three hundred years of debate over what would become the liberal basis for human rights (see Section 4.8).

In *Treatise on Crimes and Punishment* (1766), Italian criminologist and economist Cesare Beccaria (1738–1794) offered further reflection on the protection of individual life, arguing against torture and the death penalty. Indebted to Montesquieu, Beccaria's work was the first succinct treatise on rights governing criminal justice. Punishment, he claimed, should be related to the severity of the offense, imposed only when a defendant's guilt was proven, and only insofar as it promoted security and order. Any penalty exceeding these purposes, he maintained, was tyrannical. Torture was therefore an unacceptable method to seek truth and justice. Well in advance of his time, Beccaria was also the first modern writer to argue for the abolition of capital punishment. "The death penalty," he wrote, "is not a matter of right." It is an act of war of society against the citizen that becomes necessary under extreme circumstances, when the nation "stands to gain or lose its freedom, or in periods of anarchy" (see Section 4.9). These positions would later find their way into a number of declarations, including the Universal Declaration of Human Rights, Articles 3, 5–12.

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 2.

4.6 United Nations: Universal Declaration of Human Rights (1948): Articles 3 and 5–12⁶

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled to full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
2. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

6 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

4.7 United Nations: International Covenant on Civil and Political Rights (Adopted 1966, Entry into Force 1976): Part III, Article 6⁷

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

4.8 Thomas Hobbes: On the Inalienable Right to Life (*The Leviathan*, 1652)⁸

Chapter XIV: Of the First and Second Natural Laws, and of Contracts

The right of nature, which writers commonly call *Jus Naturale*, is the liberty each man has to use his own power as he sees fit for the preservation of his own nature—that is to say, of his own life—and consequently of doing anything which in his own judgment and reason he conceives are the best means to do so.

By liberty is understood—according to the proper signification of the word—the absence of external impediments; which impediments may often take away part of a man’s power to do what he would, but cannot hinder him from using the power left to him according as his judgment and reason shall dictate to him.

A law of nature (*Lex Naturalis*) is a precept or general rule found out by reason by which a man is forbidden to do that which is destructive to his life or takes away the means of preserving it, and to omit that by which he thinks it may be best preserved. . . . *Jus* and *lex* (right and law) ought to be distinguished because right consists in the liberty to do or to forbear, whereas law determines and binds 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.

7 Resolution adopted by the UN General Assembly: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, A/RES/2200A (XXI), adopted 16 December 1966, entry into force 23 March 1976. [https://undocs.org/pdf?symbol=en/A/RES/2200\(XXI\)](https://undocs.org/pdf?symbol=en/A/RES/2200(XXI))

8 Thomas Hobbes, *The Essential Leviathan: A Modernized Edition*, edited by Nancy A. Stanlick and Daniel P. Collette (Indianapolis: Hackett Publishing Co., 2016).

Because the natural condition of man ... is a condition of war of every one against everyone, in which case everyone is governed by his own reason, there is nothing he can make use of that may not be a help to him in preserving his life against his enemies. It follows that in such a condition, every man has a right to everything, even to one another's body. Therefore as long as this natural right of every man to everything endures, there can be no security to any man (no matter how strong or wise he is) of living out the time which nature ordinarily allows men to live.

Consequently, it is a precept or general rule of reason, "that every man ought to endeavour peace, as far as he has hope of obtaining it, and when he cannot obtain it, that he may seek and use all helps and advantages of war." The first branch of this rule contains the first, the fundamental law of nature, which is "to seek peace and follow it." The second, the sum of the right of nature, is: "by all means we can, to defend ourselves."

From this fundamental law of nature by which men are commanded to endeavour peace is derived this second law: "that a man be willing, when others are too, as far as for peace and defense of himself he shall think it necessary, to lay down this right to all things and be contented with so much liberty against other men as he would allow other men against himself." As long as every man holds this right of doing anything he likes, so long are men in the condition of war. But if other men will not lay down their right as well as he, then there is no reason for anyone to divest himself of his because that would be to expose himself to prey (which no man is bound to) rather than to dispose himself to peace. This is that law of the Gospel, "Whatsoever you require that others should do to you, do you to them." And that law of all men, *Quod tibi feiri non vis, alteri ne feceris*. [What you do not want done to yourself, do not do to another.]

To lay down a man's right to anything is to forfeit the liberty of hindering another person to use his own right to the same thing. For he who renounces or passes away his right does not give to any other man a right which he did not have before because there is nothing to which every man did

not have a right by nature. Instead, he only stands out of another's way so he may enjoy his original right without hindrance.... So the effect which comes to one man by another man's defect of right is so much diminution of impediments to the use of his own original right.

Right is laid aside either by simply renouncing it or by transferring it to another. Simple renunciation is done when he does not care to whom the benefit goes. By transferring, he intends the benefit to some certain person or persons. When a man has in either manner abandoned or granted away his right, then he is said to be obliged or bound not to hinder those to whom such a right is granted or abandoned, and the benefit of it. He ought, and it is his duty, not to make void that voluntary act of his own and that such hindrance is injustice and injury, as being *sine jure* [without right], the right being before renounced or transferred. So that injury or injustice in the controversies of the world is somewhat like what scholars in their disputations called absurdity. For as it is there called an absurdity to contradict what one maintained in the beginning, so in the world it is called injustice and injury voluntarily to undo that which from the beginning he had voluntarily done. The way by which a man either simply renounces or transfers his right is a declaration or signification by some voluntary and sufficient sign or signs that he does so renounce or transfer, or has so renounced or transferred the same to he who accepts it. These signs are either words only, or actions only, or (as it happens most often) both words and actions. And the same are the bonds by which men are bound and obliged. They are bonds that do not have their strength from their own nature (for nothing is more easily broken than a man's word) but from fear of some evil consequence upon the rupture.

Whenever a man transfers or renounces his right, it is either in consideration of some right reciprocally transferred to himself or for some other good for which he hopes by doing so. This is the case because it is a voluntary act, and of the voluntary acts of every man, the object is some good to himself. Therefore there are some rights which no man can be understood by any words or other signs

to have abandoned or transferred. A man cannot lay down the right of resisting those who assault him by force to take away his life, because he cannot be understood to aim thereby at any good to himself. The same may be said of wounds and chains and imprisonment, both because there is no benefit consequent to such patience as there is to the patience of suffering another to be wounded or imprisoned. Also because a man cannot tell when he sees men proceed against him by violence whether they intend his death or not. And last, the motive, an end for which renouncing and transferring a right is introduced is nothing else but the security of a man's person in his life and in the means of preserving his life as not to be weary of it. Therefore, if a man by words or other signs seems to despoil himself of the end for which those signs were intended, he is not to be understood as if he meant it or that it was his will, but that he was ignorant of how such words and actions were to be interpreted.

The mutual transfer of a right is that which men call contract. There is a difference between transferring right to a thing and transferring or delivering the thing itself. For the thing may be delivered together with the translation of the right, as in buying and selling with ready money or exchange of goods or lands, and it may be delivered sometime after.

One of the contractors may deliver the thing contracted for on his part and leave the other to perform his part at some determinate time after and in the meantime be trusted. And then the contract on his part is called pact or covenant. Or both parts may contract now and perform hereafter, in which case he who is to perform in time to come, being trusted, his performance is keeping of promise or faith and failing performance (if it is voluntary) is violation of faith....

In contracts, the right passes not only where the words are of the present or past, but also where they are of the future because all contract is mutual transfer or change of right. Therefore, he who promises only because he has already received the benefit for which he promised is to be understood as if he intended the right should pass. For unless he was content to have his words so understood, the other would not have performed his part first. And

for that cause in buying, selling, and other acts of contract, a promise is equivalent to a covenant, and therefore it is obligatory....

Men are freed of their covenants in two ways—by performing or by being forgiven. Performance is the natural end of obligation and forgiveness the restitution of liberty, as being a retransferring of that right in which the obligation consisted.

Covenants entered into by fear in the condition of mere nature are obligatory. For example, if I covenant to pay a ransom or service for my life to an enemy I am bound by it. For it is a contract in which one receives the benefit of life and the other is to receive money or service for it. Consequently where no other law (as in the condition of mere nature) forbids the performance, the covenant is valid. Therefore if prisoners of war are trusted with the payment of their ransom they are obliged to pay it. If a weaker prince makes a disadvantageous peace with a stronger out of fear, he is bound to keep it unless (as has been said before) there arises some new and just cause to fear to renew the war. Even in commonwealths, if I am forced to redeem myself from a thief by promising him money, I am bound to pay it until the civil law discharges me. For whatever I may lawfully do without obligation, the same I may lawfully covenant to do through fear and what I lawfully covenant, I cannot lawfully break.

A former covenant makes void a later. For a man who has passed away his right to one man today hath it not to pass tomorrow to another, and therefore the later promise passes no right, but is null.

A covenant not to defend myself from force by force is always void. For (as I have showed before) no man can transfer or lay down his right to save himself from death, wounds, and imprisonment (avoiding those is the only end in laying down any right) and therefore the promise of not resisting force in no covenant transfers any right, nor is obliging. For though a man may covenant thus, "Unless I do so or so, kill me," he cannot covenant thus, "Unless I do so or so, I will not resist you when you come to kill me." For man by nature chooses the lesser evil, which is danger of death in resisting rather than the greater, which is certain and present

death in not resisting. And this is granted to be true by all men in that they lead criminals to execution and prison with armed men, notwithstanding that such criminals have consented to the law by which they are condemned.

A covenant to accuse oneself without assurance of pardon is, likewise, invalid. For in the condition of nature where every man is judge, there is no place for accusation, and in the civil state the accusation is followed with punishment which, being force, a man is not obliged not to resist. The same is also true of the accusation of those [by] whose condemnation a man falls into misery, as of a father, wife, or benefactor. For the testimony of such an accuser, if it is not willingly given, is presumed to be corrupted by nature and therefore not to be received. Where a man's testimony is not to be credited, he is not bound to give it. Also, accusations upon torture are not to be reputed as testimonies, for torture is to be used but as means of conjecture and light in the further examination and search of truth. What is in that case confessed tends to the ease of him who is tortured and not to informing the torturers, and therefore ought not to have the credit of sufficient testimony. Whether he delivers himself by true or false accusation, he does it by the right of preserving his own life.

4.9 Cesare Beccaria: On Torture and the Death Penalty (*Treatise on Crimes and Punishments*, 1766)⁹

Chapter 2: The Right to Punish

Every punishment which is not derived from absolute necessity is tyrannous, says the great Montesquieu, a proposition which may be generalized as follows: every act of authority between one man and another which is not derived from absolute necessity is tyrannous. Here, then, is the foundation of the sovereign's right to punish crimes: the necessity of defending the repository of the public well-being from the usurpations of individuals. The juster the punishments, the more

sacred and inviolable is the security and the greater the freedom which the sovereign preserves for his subjects. If we consult the human heart, we find in it the fundamental principles of the sovereign's true right to punish crimes, for it is vain to hope that any lasting advantage will accrue from public morality if it be not founded on ineradicable human sentiments. Any law which differs from them will always meet with a resistance that will overcome it in the end, in the same way that a force, however small, applied continuously, will always overcome a sudden shock applied to a body.

No man has made a gift of part of his freedom with the common good in mind; that kind of fantasy exists only in novels. If it were possible, each one of us would wish that the contracts which bind others did not bind us. Every man makes himself the center of all the world's affairs.

(The multiplication of the human race, however gradual, greatly exceeded the means that a sterile and untended nature provides for the satisfaction of man's ever-evolving needs, and brought primitive men together. The first unions inescapably gave rise to others to resist them, and so the state of war was translated from individuals to nations.)

Thus it was necessity which compelled men to give up a part of their freedom; and it is therefore certain that none wished to surrender to the public repository more than the smallest possible portion consistent with persuading others to defend him. The sum of these smallest possible portions constitutes the right to punish; everything more than that is no longer justice, but an abuse; it is a matter of fact not of right. Note that the word "right" is not opposed to the word "power," but the former is rather a modification of the latter, that is to say, the species which is of the greatest utility to the greatest number. And by "justice" I mean nothing other than the restraint necessary to hold particular interests together, without which they would collapse into the old state of unsociability. Any punishment that goes beyond the need to preserve this bond is unjust by its very nature. We must be careful not to attach any

9 Cesare Beccaria, *On Crimes and Punishments and Other Writings*, edited by Richard Bellamy, translated by Richard Davies (Cambridge: Cambridge University Press, 1995).

notion of something real to this word "justice," such as a physical force or an actual entity. It is simply a way whereby humans conceive of things, a way which influences beyond measure the happiness of all. Nor do I speak here of that justice which flows from God and whose direct bearing is on the punishments and rewards of the after-life.

Chapter 16: Of Torture

The torture of a criminal while his trial is being put together is a cruelty accepted by most nations, whether to compel him to confess a crime, to exploit the contradictions he runs into, to uncover his accomplices, to carry out some mysterious and incomprehensible metaphysical purging of his infamy, (or, lastly, to expose other crimes of which he is guilty but with which he has not been charged).

No man may be called guilty before the judge has reached his verdict; nor may society withdraw its protection from him until it has been determined that he has broken the terms of the compact by which that protection was extended to him. By what right, then, except that of force, does the judge have the authority to inflict punishment on a citizen while there is doubt about whether he is guilty or innocent? This dilemma is not a novelty: either the crime is certain or it is not; if it is certain, then no other punishment is called for than what is established by law and other torments are superfluous because the criminal's confession is superfluous; if it is not certain, then an innocent man should not be made to suffer, because in law, such a man's crimes have not been proven. Furthermore, I believe it is a willful confusion of the proper procedure to require a man to be at once accuser and accused, in such a way that physical suffering comes to be the crucible in which truth is assayed, as if such a test could be carried out in the sufferer's muscles and sinews. This is a sure route for the acquittal of robust ruffians and the conviction of weak innocents. Such are the evil consequences of adopting this spurious test of truth, but a test worthy of a cannibal, that the ancient Romans, for all their barbarity on many other counts, reserved only for their slaves, the victims of a fierce and overrated virtue....

Another absurd ground for torture is the purging of infamy, that is, when a man who has been attainted by the law has to confirm his own testimony by the dislocation of his bones. This abuse should not be tolerated in the eighteenth century. It presupposes that pain, which is a sensation, can purge infamy, which is a mere moral relation. Is torture perhaps a crucible and the infamy some impurity? It is not hard to reach back in time to the source of this absurd law, because even the illogicalities which a whole nation adopts always have some connection with its other respected commonplaces. It seems that this practice derives from religious and spiritual ideas, which have had so much influence on the ideas of men in all nations and at all times. An infallible dogma tells us that the stains springing from human weakness, but which have not earned the eternal anger of the great Being, have to be purged by an incomprehensible fire. Now, infamy is a civil stain and, since pain and fire cleanse spiritual and incorporeal stains, why should the spasms of torture not cleanse the civil stain of infamy? I believe that the confession of guilt, which in some courts is a prerequisite for conviction, has a similar origin, for, before the mysterious court of penitence, the confession of sin is an essential part of the sacrament. It is thus that men abuse the clearest illuminations of revealed truth; and, since these are the only enlightenment to be found in times of ignorance, it is to them that credulous mankind will always turn and of them that it will make the most absurd and far-fetched use. But infamy is a sentiment which is subject neither to the law nor to reason, but to common opinion. Torture itself causes real infamy to its victims. Therefore, by this means, infamy is purged by the infliction of infamy.

The third ground for torture concerns that inflicted on suspected criminals who fall into inconsistency while being investigated, as if both the innocent man who goes in fear and the criminal who wishes to cover himself would not be made to fall into contradiction by fear of punishment, the uncertainty of the verdict, the apparel and magnificence of the judge, and by their own ignorance, which is the common lot both of most knaves and of the innocent; as if the inconsistencies into which men normally fall even when they

are calm would not burgeon in the agitation of a mind wholly concentrated on saving itself from a pressing danger.

This shameful crucible of the truth is a standing monument to the law of ancient and savage times, when ordeal by fire, by boiling water and the lottery of armed combat were called the *judgments* of God, as if the links in the eternal chain which originates from the breast of the First Mover could be continually disrupted and uncoupled at the behest of frivolous human institutions. The only difference which there might seem to be between torture and ordeal by fire or boiling water is that the result of the former seems to depend on the will of the criminal, and that of the latter on purely physical and external factors; but this difference is only apparent and not real. Telling the truth in the midst of spasms and beatings is as little subject to our will as is preventing without fraud the effects of fire and boiling water. Every act of our will is always proportional to the force of the sensory impression which gives rise to it; and the sensibility of every man is limited. Therefore, the impression made by pain may grow to such an extent that, having filled the whole of the sensory field, it leaves the torture victim no freedom to do anything but choose the quickest route to relieving himself of the immediate pain. Thus the criminal's replies are as necessitated as are the effects of fire and boiling water. And thus the sensitive but guiltless man will admit guilt if he believes that, in that way, he can make the pain stop. All distinctions between the guilty and the innocent disappear as a consequence of the use of the very means which was meant to discover them.

(It would be redundant to make this point twice as clear by citing the numerous cases of innocent men who have confessed their guilt as a result of the convulsions of torture. There is no nation nor age which cannot cite its own cases, but men do not change nor do they think out the consequences of their practices. No man who has pushed his ideas beyond what is necessary for life, has not sometimes headed towards nature, obeying her hidden and indistinct calls; but custom, that tyrant of the mind, repulses and frightens him.)...

A strange consequence which necessarily follows from the use of torture is that the innocent are put in a worse position than the guilty. For, if both are tortured, the former has everything against him. Either he confesses to the crime and is convicted, or he is acquitted and has suffered an unwarranted punishment. The criminal, in contrast, finds himself in a favorable position, because if he staunchly withstands the torture he must be acquitted and so has commuted a heavier sentence into a lighter one. Therefore, the innocent man cannot but lose and the guilty man may gain.

The law which calls for torture is a law which says: *Men, withstand pain, and if nature has placed in you an inextinguishable self-love, if she has given you an inalienable right to self-defense, I create in you an entirely opposite propensity, which is a heroic self-hatred, and I order you to denounce yourselves, telling the truth even when your muscles are being torn and your bones dislocated.*

(Torture is given to discover if a guilty man has also committed other crimes to those with which he is charged. The underlying reasoning here is as follows: *You are guilty of one crime, therefore you may be of a hundred others; this doubt weighs on me and I want to decide the matter with my test of the truth; the laws torture you because you are guilty, because you may be guilty, or because I want you to be guilty.*)

Finally, torture is applied to a suspect in order to discover his accomplices in crime. But if it has been proven that torture is not a fit means of discovering the truth, how can it be of any use in unmasking the accomplices, which is one of the truths to be discovered? As if a man who accuses himself would not more readily accuse others. And can it be right to torture a man for the crimes of others? Will the accomplices not be discovered by the examination of witnesses, the interrogation of the criminal, the evidence and the *corpus delicti*, in short, by the very means which ought to be used to establish the suspect's guilt? Generally, the accomplices flee as soon as their partner is captured; the uncertainty of their fate condemns them to exile and frees the nation of the danger of further offenses, while the punishment of the criminal in custody serves its sole purpose, which is that of discouraging with fear other men from perpetrating a similar crime.

Chapter 28: The Death Penalty

I am prompted by this futile excess of punishments, which have never made men better, to inquire whether the death penalty is really useful and just in a well-organized state. By what right can men presume to slaughter their fellows? Certainly not that right which is the foundation of sovereignty and the laws. For these are nothing but the sum of the smallest portions of each man's own freedom; they represent the general will which is the aggregate of the individual wills. Who has ever willingly given up to others the authority to kill him? How on earth can the minimum sacrifice of each individual's freedom involve handing over the greatest of all goods, life itself? And even if that were so, how can it be reconciled with the other principle which denies that a man is free to commit suicide, which he must be, if he is able to transfer that right to others or to society as a whole?

Thus, the death penalty is not a matter of *right*, as I have just shown, but is an act of war on the part of society against the citizen that comes about when it is deemed necessary or useful to destroy his existence. But if I can go on to prove that such a death is neither necessary nor useful, I shall have won the cause of humanity.

There are only two grounds on which the death of a citizen might be held to be necessary. First, when it is evident that even if deprived of his freedom, he retains such connections and such power as to endanger the security of the nation, when, that is, his existence may threaten a dangerous revolution in the established form of government. The death of a citizen becomes necessary, therefore, when the nation stands to gain or lose its freedom, or in periods of anarchy, when disorder replaces the laws. But when the rule of law calmly prevails, under a form of government behind which the people are united, which is secured from without and from within, both by its strength and, perhaps more efficacious than force itself, by public opinion, in which the control of power is in the hands of the true sovereign, in which wealth buys pleasures and not influence, then I do not see any need to destroy a citizen, unless his death is the true and only brake to

prevent others from committing crimes, which is the second ground for thinking the death penalty just and necessary.

Although men, who always suspect the voice of reason and respect that of authority, have not been persuaded by the experience of centuries, during which the ultimate penalty has never dissuaded men from offending against society, nor by the example of the citizens of Rome, nor by the twenty years of the reign of the Empress Elizabeth of Muscovy, in which she set the leaders of all peoples an outstanding precedent, worth at least as much as many victories bought with the blood of her motherland's sons, it will suffice to consult human nature to be convinced of the truth of my claim.

It is not the intensity, but the extent of a punishment which makes the greatest impression on the human soul. For our sensibility is more easily and lastingly moved by minute but repeated impressions than by a sharp but fleeting shock. Habit has universal power over every sentient creature. Just as a man speaks and walks and goes about his business with its help, so moral ideas are only impressed on his mind by lasting and repeated blows. It is not the terrible but fleeting sight of a felon's death which is the most powerful brake on crime, but the long-drawn-out example of a man deprived of freedom, who having become a beast of burden, repays the society which he has offended with his labor. Much more potent than the idea of death, which men always regard as vague and distant, is the efficacious because often repeated reflection that *I too shall be reduced to so dreary and so pitiable a state if I commit similar crimes.*

For all its vividness, the impression made by the death penalty cannot compensate for the forgetfulness of men, even in the most important matters, which is natural and speeded by the passions. As a general rule, violent passions take hold of men but not for long; thus they are suited to producing those revolutions which make normal men into Persians or Spartans; whereas the impressions made in a free and peaceful state should be frequent rather than strong.

For most people, the death penalty becomes a spectacle and for the few an object of compassion

mixed with scorn. Both these feelings occupy the minds of the spectators more than the salutary fear which the law claims to inspire. But with moderate and continuous punishments it is this last which is the dominant feeling, because it is the only one. The limit which the lawgiver should set to the harshness of punishments seems to depend on when the feeling of compassion at a punishment, meant more for the spectators than for the convict, begins to dominate every other in their souls.

(If a punishment is to be just, it must be pitched at just that level of intensity which suffices to deter men from crime. Now there is no-one who, after considering the matter, could choose the total and permanent loss of his own freedom, however profitable the crime might be. Therefore, permanent penal servitude in place of the death penalty would be enough to deter even the most resolute soul: indeed, I would say that it is more likely to. Very many people look on death with a calm and steadfast gaze, some from fanaticism, some from vanity, a sentiment that almost always accompanies a man to the grave and beyond, and some from a last desperate effort either to live no more or to escape from poverty. However, neither fanaticism nor vanity survives in manacles and chains, under the rod and the yoke or in an iron cage; and the ills of the desperate man are not over, but are just beginning. Our spirit withstands violence and extreme but fleeting pains better than time and endless fatigue. For it can, so to speak, condense itself to repel the former, but its tenacious elasticity is insufficient to resist the latter.

With the death penalty, every lesson which is given to the nation requires a new crime; with permanent penal servitude, a single crime gives very many lasting lessons. And, if it is important that men often see the power of the law, executions ought not to be too infrequent; they therefore require there to be frequent crimes; so that, if this punishment is to be effective, it is necessary that it not make the impression that it should make. That is, it must be both useful and useless at the same time. If it be said that permanent penal servitude is as grievous as death, and therefore as cruel, I reply

that, if we add up all the unhappy moments of slavery, perhaps it is even more so, but the latter are spread out over an entire life, whereas the former exerts its force only at single moment. And this is an advantage of penal servitude, because it frightens those who see it more than those who undergo it. For the former thinks about the sum of unhappy moments, whereas the latter is distracted from present unhappiness by the prospect of future pain. All harms are magnified in the imagination, and the sufferer finds resources and consolations unknown and unsuspected by the spectators, who put their own sensibility in the place of the hardened soul of the wretch.)

A thief or murderer who has nothing to weigh against breaking the law except the gallows or the wheel reasons pretty much along the following lines. (I know that self-analysis is a skill which we acquire with education; but just because a thief would not express his principles well, it does not mean that he lacks them.) *What are these laws which I have to obey, which have such a gulf between me and the rich man: He denies me the penny I beg of him, brushing me off with the demand that I should work, something he knows nothing about. Who made these laws? Rich and powerful men, who have never condescended to visit the filthy hovels of the poor, who have never broken moldy bread among the innocent cries of starving children and a wife's tears. Let us break these ties, which are pernicious to most people and only useful to a few and idle tyrants; let us attack injustice at its source. I shall return to my natural state of independence; for a while I shall live free and happy on the fruits of my courage and industry; perhaps the day for suffering and repentance will come, but it will be brief, and I shall have one day of pain for many years of freedom and pleasure. King of a small band of men, I shall put to rights the iniquities of fortune, and I shall see these tyrants blanch and cower at one whom they considered, with insulting ostentation, lower than their horses and dogs. Then, religion comes into the mind of the ruffian, who makes ill-use of everything, and, offering an easy repentance and near-certainty of eternal bliss, considerably diminishes for him the horror of the last tragedy.*

But a man who sees ahead of him many years, or even the remainder of his life, passed in slavery and suffering before the eyes of his fellow citizens, with whom he currently lives freely; and sociably, the slave of those laws by which he was protected, will make a salutary calculation, balancing all of that against the uncertainty of the outcome of his crimes, and the shortness of the time in which he could enjoy their fruit. The continued example of those whom he now sees as the victims of their own lack of foresight will make a stronger impression on him than would a spectacle which hardens more than it reforms him.

The death penalty is not useful because of the example of savagery it gives to men. If our passions or the necessity of war have taught us how to spill human blood, laws, which exercise a moderating influence on human conduct, ought not to add to that cruel example, which is all the more grievous the more a legal killing is carried out with care and pomp. It seems absurd to me that the laws, which are the expression of the public will, and which hate and punish murder, should themselves commit one, and that, to deter citizens from murder, they should decree a public murder. What are the true and most useful laws? Those contracts and terms that everyone would want to obey and to propose so long as the voice of private interest, which is always listened to, is silent or in agreement with the public interest. What are everyone's feelings about the death penalty? We can read them in the indignation and contempt everyone feels for the hangman, who is after all the innocent executor of the public will, a good citizen who contributes to the public good, as necessary an instrument of public security within the state as the valiant soldier is without. What, then, is the root of this conflict? And why is this feeling ineradicable in men, in spite of reason? It is because, deep within their souls, that part which still retains elements of their primitive nature, men have always believed that no-one and nothing should hold the power of life and death over them but necessity, which rules the universe with its iron rod.

What are men to think when they see the wise magistrates and the solemn ministers of justice order a convict to be dragged to his death with slow ceremony, or when a judge, with cold equanimity and even with a secret complacency in his own authority, can pass by a wretch convulsed in his last agonies, awaiting the *coup de grâce*, to savor the comforts and pleasures of life? *Ah!*, they will say, *these laws are nothing but pretexts for power and for the calculated and cruel; formalities of justice; they are nothing but a conventional language for killing us all the more surely, like the pre-selected victims of a sacrifice to the insatiable god of despotism. Murder, which we have preached to us as a terrible crime, we see instituted without disgust and without anger. Let us profit from this example. From the descriptions we have been given of it, violent death seemed to be a terrible thing, but we see it to be the work of a minute. How much the less it will be for him who, unaware of its coming, is spared almost everything about it which is most painful!* This is the horrific casuistry which, if not clearly, at least confusedly, leads men — in whom, as we have seen, the abuse of religion can be more powerful than religion itself — to commit crimes.

If it is objected that almost all times and almost all places have used the death penalty for some crimes, I reply that the objection collapses before the truth, against which there is no appeal, that the history of mankind gives the impression of a vast sea of errors, among which a few confused truths float at great distances from each other. Human sacrifices were common to almost all nations; but who would dare to justify them? That only a few societies have given up inflicting the death penalty, and only for a brief time, is actually favorable to my argument, because it is what one would expect to be the career of the great truths, which last but a flash compared with the long and dark night which engulfs mankind. The happy time has not yet begun in which the truth, like error hitherto, is the property of the many. Up until now, the only truths which have been excepted from this universal rule have been those which the infinite Wisdom wished to distinguish from the others by revealing them. The voice of a philosopher is too weak against the

uproar and the shouting of those who are guided by blind habit. But what I say will find an echo in the hearts of the few wise men who are scattered across the face of the earth. And if truth, in the face of the thousand obstacles which, against his wishes, keep it far from the monarch, should arrive

at his throne, let him know that it arrives with the secret support of all men, and let him know that its glory will silence the blood-stained reputation of conquerors and that the justice of future ages will award him peaceful trophies above those of the Titusts, the Antonines and the Trajans.

The Right to Property

The English, American, and French revolutions were fought to overturn feudal or monarchical monopolies and to advance individuals' rights to life, civil liberties, and property. While most political thinkers and revolutionary leaders viewed the right to property as inviolable, some began to debate the extent to which it should be limited. As early as the English Revolution (1640–1648), Gerard Winstanley (1609–1676), a leader of the English Diggers, warned against abuses of the right to property. In his famous political tract entitled "A Declaration from the Poor Oppressed of England" (1649), he pointed out that the right to property, so adamantly defended by John Lillburn, the leader of the Levellers, would end up subjugating one group of individuals to another. He therefore called upon England to become "a common Treasury of livelihood to all, without respect of persons" (see Section 4.11).

John Locke (1632–1704) reclaimed Lillburn's position during the conservative settlement of the Glorious Revolution (1688), arguing in his *Second Treatise* (1690) that every man has a property in his person and that the labor of his body is ultimately his own. He shared, however, the concerns of the Diggers when he warned against the excessive and wasteful accumulation of property. He hence urged the more fortunate to always leave enough for everyone's subsistence (see Section 4.12).

To avoid the widening of social and economic gaps, French philosopher Jean-Jacques Rousseau (1712–1768) considered property, in his *Geneva Manuscript* (c. 1756), as an inviolable right, but added that when necessary, the state could legitimately claim private property on behalf of the common good (see Section 4.13). In the footsteps of Rousseau, the French revolutionary Maximilien de Robespierre (1758–1794) warned Jacobin compatriots in his April 24, 1793, speech, "On Property Rights," to revise the *French Declaration of the Rights of Man and Citizen* (1789) by adding a clause limiting the accumulation of property. Though he regarded the right to property as inviolable, such a right, he claimed, "carries moral responsibilities." He proposed work or relief for the needy, a progressive tax on incomes, and universal education, all to be secured by the state. In short, "property rights should not be exercised as to prejudice the security, or the liberty, or the existence or the property of our fellowmen" (see Section 4.14). In *Agrarian Justice* (1797), Thomas Paine can be considered a precursor of the modern idea of a universal basic income. He detailed a plan to tax land owners and let that money be used to compensate the landless and give them some financial security. The fund would be distributed to the elderly and the disabled, plus a disbursement to every young man and woman on turning age 21 to help them start out in life (see Section 4.15). In *Reflections on the Revolution in France* (1790), Edmund Burke's conservatism counters Paine's more radical liberal position with verve, justifying both inequality and inheritance as a natural predisposition best safeguarded against the incompetence of the masses (see Section 4.16).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 2.

4.10 United Nations: Universal Declaration of Human Rights (1948): Article 17¹⁰

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

4.11 Gerrard Winstanley: “A Declaration from the Poor Oppressed People of England” (1649)¹¹

WE whose names are subscribed, do in the name of all the poor oppressed people in *England*, declare unto you, that call your selves Lords of Manors, and Lords of the Land, That in regard the King of Righteousness, our Maker, hath inlightened our hearts so far, as to see, That the earth was not made purposely for you, to be Lords of it, and we to be your Slaves, Servants, and Beggars; but it was made to be a common Livelihood to all, without respect of persons: And that your buying and selling of Land, and the Fruits of it, one to another, is *the cursed thing*, and was brought in by War; which hath, and still does establish murder, and theft, in the hands of some branches of Mankind over others, which is the greatest outward burden, and unrighteous power, that the Creation groans under: For the power of enclosing Land, and owning Propriety, was brought into the Creation by your Ancestors by the Sword; which first did murder their fellow Creatures, Men, and after plunder or steal away their Land, and left this Land successively to you, their Children. And therefore, though you did not kill or thieve, yet you hold that cursed thing in your hand, by the power of the Sword; and so you justify the wicked deeds of your Fathers; and that sin of your Fathers, shall be visited upon the Head of you, and your Children, to the third and fourth Generation, and longer too, tell your bloody and thieving power be rooted out of the Land.

And further, in regard the King of Righteousness hath made us sensible of our burdens, and the cries and groanings of our hearts are come before him: We take it as a testimony of love from him, that our hearts begin to be freed from slavish fear of men, such as you are; and that we find Resolutions in us, grounded upon the inward law of Love, one towards another, To Dig and Plough up the Commons, and waste Lands through England; and that our conversation shall be so unblameable, That your Laws shall not reach to oppress us any longer, unless you by your Laws will shed the innocent blood that runs in our veins.

For though you and your Ancestors got your Propriety by murder and theft, and you keep it by the same power from us, that have an equal right to the Land with you, by the righteous Law of Creation, yet we shall have no occasion of quarreling (as you do) about that disturbing devil, called Particular Propriety: For the Earth, with all her Fruits of Corn, Cattle, and such like, was made to be a common Storehouse of Livelihood to all Mankind, friend and foe, without exception.

And to prevent all your scrupulous Objections, know this, That we must neither buy nor sell; Money must not any longer (after our work of the Earths community is advanced) be the great god, that hedges in some, and hedges out others; for Money is but part of the Earth: And surely, the Righteous Creator, who is King, did never ordain, That unless some of Mankind, do bring that Mineral (Silver and Gold) in their hands, to others of their own kind, that they should neither be fed, nor be clothed; no surely, For this was the project of Tyrant-flesh (which Land-lords are branches of) to set his Image upon Money. And they make this unrighteous Law, That none should buy or sell, eat, or be clothed, or have any comfortable Livelihood among men, unless they did bring his Image stamped upon Gold or Silver in their hands....

10 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

11 Gerrard Winstanley, “A Declaration from the Poor Oppressed of England, Directed to all that call themselves, or are called Lords of Manors, through this Nation; That have begun to cut, or that through fear and covetousness, do intend to cut down the Woods and Trees that grow upon the Commons and Waste Land,” 1649 (public domain).

For after our work of the Earthly community is advanced, we must make use of Gold and Silver, as we do of other metals, but not to buy and sell withal; for buying and selling is the great cheat, that robs and steals the Earth one from another: It is that which makes some Lords, others Beggars, some Rulers, others to be ruled; and makes great Murderers and Thieves to be prisoners, and hangers of little ones, or of sincere-hearted men.

And while we are made to labor the Earth together, with one consent and willing mind; and while we are made free, that every one, friend and foe, shall enjoy the benefit of their Creation, that is, To have food and payment from the Earth, their Mother; and every one subject to give account of this thoughts, words and actions to none, but to the one only righteous Judge, and Prince of Peace, the Spirit of Righteousness that dwells, and that is now rising up to rule in every Creature, and in the whole Globe. We say, while we are made to hinder no man of his Privileges given him in his Creation, equal to one, as to another; what Law then can you make, to take hold upon us, but Laws of Oppression and Tyranny, that shall enslave or spill the blood of the Innocent? And so your Selves, your Judges, Lawyers, and Justices, shall be found to be the greatest Transgressors, in and over Mankind.

But to draw nearer to declare our meaning, what we would have, and what we shall endeavor to the uttermost to obtain, as moderate and righteous Reason directs us; seeing we are made to see our Privileges, given us in our Creation, which have hitherto been denied to us, and our Fathers, since the power of the Sword began to rule, And the secrets of the Creation have been locked up under the traditional, parrot-like speaking, from the Universities, and Colleges for Scholars, And since the power of the murdering, and thieving Sword, formerly, as well as now of late years, hath set up a Government, and maintains that Government; for what are prisons, and putting others to death, but the power of the Sword; to enforce people to that Government which was got by Conquest and Sword, and cannot stand of it self, but by the same murdering power? That Government that is got over people by the Sword, and kept by the Sword,

is not set up by the King of Righteousness to be his Law, but by Covetousness, the great god of the world; who hath been permitted to reign for a time, times, and dividing of time, and his government draws to the period of the last term of his allotted time; and then the Nations shall see the glory of that Government that shall rule in Righteousness, without either Sword or Spear,

And seeing further, the power of Righteousness in our hearts, seeking the Livelihood of others, as well as our selves, hath drawn forth our bodies to begin to dig, and plough, in the Commons and waste Land, for the Reasons already declared,

And seeing and finding our selves poor, wanting Food to feed upon, while we labor the Earth, to cast in Seed, and to wait till the first Crop comes up; and wanting Ploughs, Carts, Corn, and such materials to plant the Commons withal, we are willing to declare our condition to you, and to all, that have the Treasury of the Earth, locked up in your Bags, Chests, and Barns, and will offer up nothing to this public Treasury; but will rather see your fellow-Creatures starve for want of Bread, that have an equal right to it with your selves, by the Law of Creation: But this by the way we only declare to you, and to all that follow the subtle art of buying and selling the Earth, with her Fruits, merely to get the Treasury thereof into their hands, to lock it up from them, to whom it belongs; that so, such covetous, proud, unrighteous, selfish flesh, may be left without excuse in the day of Judgment.

And therefore, the main thing we aim at, and for which we declare our Resolutions to go forth, and act, is this, To lay hold upon, and as we stand in need, to cut and fell, and make the best advantage we can of the Woods and Trees, that grow upon the Commons, To be a stock for our selves, and our poor Brethren, through the Land of England, to plant the Commons withal; and to provide us bread to eat, till the Fruit of our labors in the Earth bring forth increase; and we shall meddle with none of your Proprieties (but what is called Commonage) till the Spirit in you, make you cast up your Lands and Goods, which were got, and still is kept in your hands by murder, and theft; and then we shall take it from the Spirit, that hath conquered you, and not from our Swords, which is an abominable, and unrighteous

power, and a destroyer of the Creation: But the Son of man comes not to destroy, but to save.

And we are moved to send forth this Declaration abroad, to give notice to every one, whom it concerns, in regard we hear and see, that some of you, that have been Lords of Manors, do cause the Trees and Woods that grow upon the Commons, which you pretend a Royalty unto, to be cut down and sold; for your own private use, whereby the Common Land, which your own mouths do say belongs to the poor, is impoverished, and the poor oppressed people robbed of their Rights, while you give them cheating words, by telling some of our poor oppressed Brethren, That those of us that have begun to Dig and Plough up the Commons, will hinder the poor; and so blind their eyes, that they see not their Privilege, while you, and the rich Free-holders, make the most profit of the Commons, by your overstocking of them with Sheep and Cattle; and the poor that have the name to own the Commons have the least share therein; nay, they are checked by you, if they cut Wood, Heath, Turf, or Furseys, in places about the Common, where you disallow.

Therefore we are resolved to be cheated no longer, nor be held under the slavish fear of you no longer, seeing the Earth was made for us, as well as for you: And if the Common Land belongs to us who are the poor oppressed, surely the woods that grow upon the Commons belong to us likewise: therefore we are resolved to try the uttermost in the light of reason, to know whether we shall be free men, or slaves. If we lie still, and let you steal away our birthrights, we perish; and if we Petition we perish also, though we have paid taxes, given free quarter, and ventured our lives to preserve the Nation's freedom as much as you, and therefore by the law of contract with you, freedom in the land is our portion as well as yours, equal with you: And if we strive for freedom, and your murdering, governing Laws destroy us, we can but perish.

Therefore we require, and we resolve to take both Common Land, and Common woods to be a livelihood for us, and look upon you as equal with us, not above us, knowing very well, that England,

the land of our Nativity, is to be a common Treasury of livelihood to all, without respect of persons...

Signed for and in the behalf of all the poor oppressed people of England, and the whole world.

4.12 John Locke: On Property (*The Second Treatise*, 1690)¹²

Chapter II

4. To understand political power right and derive it from its original, we must consider what state all men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law (of nature), without asking leave or depending upon the will of any other man. A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature and the use of the same faculties, should also be equal one amongst another without subordination or subjection; unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him by an evident and dear appointment an undoubted right to dominion and sovereignty...
6. But though this be a state of liberty, yet it is not a state of license; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of nature has a law of nature to govern it, which obliges every one; and reason, which is that law, teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions...

12 John Locke, *The Second Treatise of Government* (London, 1690 [public domain]).

Chapter V

26. God, who has given the world to men in common, has also given them reason to make use of it to the best advantage of life and convenience. The earth and all that is therein is given to men for the support and comfort of their being. And though all the fruits it naturally produces and beasts it feeds belong to mankind in common, as they are produced by the spontaneous hand of nature; and nobody has originally a private dominion exclusive of the rest of mankind in any of them, as they are thus in their natural state; yet, being given for the use of men, there must of necessity be a means to appropriate them some way or other before they can be of any use or at all beneficial to any particular man. The fruit or venison which nourishes the wild Indian, who knows no enclosure and is still a tenant in common, must be his, and so his, i.e., a part of him, that another can no longer have any right to it before it can do him any good for the support of his life.
27. Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature has provided and left it in, he has mixed his labor with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature has placed it in, it has by this labor something annexed to it that excludes the common right of other men. For this labor being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left in common for others.
28. He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has

certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask, then, When did they begin to be his? When he digested or when he ate or when he boiled or when he brought them home? Or when he picked them up? And it is plain, if the first gathering made them not his, nothing else could. That labor put a distinction between them and common; that added something to them more than nature, the common mother of all, had done; and so they became his private right. And will anyone say he had no right to those acorns or apples he thus appropriated because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to him-self what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in commons, which remain so by compact, that it is the taking any part of what is common and removing it out of the state nature leaves it in which begins the property, without which the common is of no use. And the taking of this or that part does not depend on the express consent of all the commoners. Thus the grass my horse has bit, the turfs my servant has cut, and the ore I have I digged in any place where I have a right to them in common with others, become my property without the assignation or consent of anybody. The labor that was mine, removing them out of that common state they were in, has fixed my property in them.

29. By making an explicit consent of every commoner necessary to any one's appropriating to himself any part of what is given in common, children or servants could not cut the meat which their father or master had provided for them in common without assigning to every one his peculiar part. Though the water running in the fountain be every one's, yet who can doubt but that in the pitcher is his only who drew it out?

His labor has taken it out of the hands of nature where it was common and belonged equally to all her children, and has thereby appropriated it to himself.

30. Thus this law of reason makes the deer that Indian's who has killed it; it is allowed to be his goods who has bestowed his labor upon it, though before it was the common right of every one. And amongst those who are counted the civilized part of mankind, who have made and multiplied positive laws to determine property, this original law of nature, for the beginning of property in what was before common, still takes place; and by virtue thereof what fish any one catches in the ocean, that great and still remaining common of mankind, or what ambergris any one takes up here, is, by the labor that removes it out of that common state nature left it in, made his property who takes that pains about it. And even amongst us, the hare that anyone is hunting is thought his who pursues her during the chase; for, being a beast that is still looked upon as common and no man's private possession, whoever has employed so much labor about any of that kind as to find and pursue her has thereby removed her from the state of nature wherein she was common, and has begun a property.
31. It will perhaps be objected to this that "if gathering the acorns, or other fruits of the earth, etc., makes a right to them, then any one may engross as much as he will." To which I answer: not so. The same law of nature that does by this means give us property does also bound that property, too. "God has given us all things richly" (I Tim. vi. 17), is the voice of reason confirmed by inspiration. But how far has he given it us? To enjoy. As much as any one can make use of to any advantage of life before it spoils, so much he may by his labor fix a property in; whatever is beyond this is more than his share and belongs to others. Nothing was made by God for man

to spoil or destroy. And thus considering the plenty of natural provisions there was a long time in the world, and the few spenders, and to how small a part of that provision the industry of one man could extend itself and engross it to the prejudice of others, especially keeping within the bounds set by reason of what might serve for his use, there could be then little room for quarrels or contentions about property so established.

32. But the chief matter of property being now not the fruits of the earth and the beasts that subsist on it, but the earth itself, as that which takes in and carries with it all the rest, I think it is plain that property in that, too, is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labor does, as it were, enclose it from the common. Nor will it invalidate his right to say everybody else has an equal title to it, and therefore he cannot appropriate, he cannot enclose, without the consent of all his fellow commoners — all mankind. God, when he gave the world in common to all mankind, commanded man also to labor, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth, i.e., improve it for the benefit of life, and therein lay out something upon it that was his own, his labor. He that in obedience to this command of God subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him...
34. God gave the world to men in common, but since he gave it them for their benefit and the greatest conveniences of life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational — and labor was to be his title to it — not to the

fancy or covetousness of the quarrelsome and contentious. He that had as good left for his improvement as was already taken up needed not complain, ought not to meddle with what was already improved by another's labor; if he did, it is plain he desired the benefit of another's pains which he had no right to, and not the ground which God had given him in common with others to labor on, and whereof there was as good left as that already possessed, and more than he knew what to do with, or his industry could reach to.

35. It is true, in land that is common in England or any other country where there are plenty of people under government who have money and commerce, no one can enclose or appropriate any part without the consent of all his fellow commoners; because this is left common by compact, i.e., by the law of the land, which is not to be violated. And though it be common in respect of some men, it is not so to all mankind, but is the joint property of this country or this parish. Besides, the remainder after such enclosure would not be as good to the rest of the commoners as the whole was when they could all make use of the whole; whereas in the beginning and first peopling of the great common of the world it was quite otherwise. The law man was under was rather for appropriating. God commanded, and his wants forced, him to labor. That was his property which could not be taken from him wherever he had fixed it. And hence subduing or cultivating the earth and having dominion, we see, are joined together. The one gave title to the other. So that God, by commanding to subdue, gave authority so far to appropriate; and the condition of human life which requires labor and material to work on necessarily introduces private possessions.
36. The measure of property nature has well set by the extent of men's labor and the conveniences of life. No man's labor could subdue or appropriate all, nor could his enjoyment consume more than a small

part, so that it was impossible for any man, this way, to entrench upon the right of another, or acquire to himself a property to the prejudice of his neighbor, who would still have room for as good and as large a possession — after the other had taken out his — as before it was appropriated. This measure did confine every man's possession to a very moderate proportion, and such as he might appropriate to himself without injury to anybody, in the first ages of the world, when men were more in danger to be lost by wandering from their company in the then vast wilderness of the earth than to be straitened for want of room to plant in. And the same measure may be allowed still without prejudice to anybody, as full as the world seems; for supposing a man or family in the state they were at first peopling of the world by the children of Adam or Noah, let him plant in some inland, vacant places of America; we shall find that the possessions he could make himself, upon the measures we have given, would not be very large, nor, even to this day, prejudice the rest of mankind, or give them reason to complain or think themselves injured by this man's encroachment, though the race of men have now spread themselves to all the corners of the world and do infinitely exceed the small number which was at the beginning. Nay, the extent of ground is of so little value without labor that I have heard it affirmed that in Spain itself a man may be permitted to plough, sow, and reap, without being disturbed, upon land he has no other title to but only his making use of it. But, on the contrary, the inhabitants think themselves beholden to him who by his industry on neglected and consequently waste land has increased the stock of corn which they wanted. But be this as it will, which I lay no stress on, this I dare boldly affirm — that the same rule of property, viz., that every man should have as much as he could make use of, would hold still in the

world without straightening anybody, since there is land enough in the world to suffice double the inhabitants, had not the invention of money and the tacit agreement of men to put a value on it introduced — by consent — larger possessions and a right to them; which how it has done, I shall by-and-by show more at large.

37. This is certain, that in the beginning, before the desire of having more than man needed had altered the intrinsic value of things which depends only on their usefulness to the life of man, or had agreed that a little piece of yellow metal which would keep without wasting or decay should be worth a great piece of flesh or a whole heap of corn, though men had a right to appropriate, by their labor, each one to himself as much of the things of nature as he could use, yet this could not be much, nor to the prejudiced of others, where the same plenty was still left to those who would use the same industry. To which let me add that he who appropriates land to himself by his labor does not lessen but increase the common stock of mankind; for the provisions serving to the support of human life produced by one acre of enclosed and cultivated land are — to speak much, within compass — ten times more than those which are yielded by an acre of land of an equal richness lying waste in common. And therefore he that encloses land, and has a greater plenty of the conveniences of life from ten acres than he could have from a hundred left to nature, may truly be said to give ninety acres to mankind; for his labor now supplies him with provisions out of ten acres which were by the product of a hundred lying in common. I have here rated the improved land very low in making its product but as ten to one, when it is much

nearer a hundred to one; for I ask whether in the wild woods and uncultivated waste of America, left to nature, without any improvement, tillage, or husbandry, a thousand acres yield the needy and wretched inhabitants as many conveniences of life as ten acres equally fertile land do in Devonshire, where they are well cultivated.

Before the appropriation of land, he who gathered as much of the wild fruit, killed, caught, or tamed as many of the beasts as he could; he that so employed his pains about any of the spontaneous products of nature as any way to alter them from the state which nature put them in, by placing any of his labor on them, did thereby acquire a propriety in them; but, if they perished in his possession without their due use, if the fruits rotted or the venison putrified before he could spend it, he offended against the common law of nature and was liable to be punished; he invaded his neighbor's share, for he had no right further than his use called for any of them and they might serve to afford him conveniences of life.

4.13 Jean-Jacques Rousseau: On the Limits of Property (*The Geneva Manuscript* or the First Draft of the Social Contract, c. 1756)¹³

Book I: Preliminary Concepts of the Social Body

This passage from the state of nature to the social state produces a remarkable change in man, by substituting justice for instinct in his behavior and giving his actions moral relationships which they did not have before. Only then, when the voice of duty replaces physical impulse, and right replaces appetite, does man, who until that time only considered himself find, that he is forced to act upon other principles and to consult his reason before heeding his inclinations. But although in this state he deprives himself of several advantages given him

13 Jean-Jacques Rousseau, *Social Contract, Discourse on the Virtue Most Necessary for a Hero, Political Fragments, and Geneva Manuscript*, edited and translated by Roger D. Masters and Christopher Kelly (Hanover, NH: University Press of New England, 1994).

by nature, he gains such great ones, his faculties are exercised and developed, his ideas broadened, his feelings ennobled, and his whole soul elevated to such a point that if the abuses of this new condition did not often degrade him even beneath the condition he left, he ought ceaselessly to bless the happy moment that tore him away from it forever, and that changed him from a stupid, limited animal into an intelligent being and a man.

Let us reduce the pros and cons to easily compared terms. What man loses by the social contract is his natural freedom and an unlimited right to everything he needs; what he gains is civil freedom and the proprietorship of everything he possesses. In order not to be mistaken in these estimates, one must distinguish carefully between natural freedom, which is limited only by the force of the individual, and civil freedom, which is limited by the general will; and between possession, which is only the effect of force or the right of the first occupant, and property, which can only be based on a legal title.

ON REAL ESTATE

Each member of the community gives himself to it at the moment of its formation, just as he currently is — both himself and all his force, which includes the goods he holds. It is not that by this act possession, in changing hands, changes its nature and becomes property in the hands of the sovereign. But as the force of the State is incomparably greater than that of each private individual, public possession is by that very fact stronger and more irrevocable, without being more legitimate, at least in relation to Foreigners. For in relation to its members, the State is master of all their goods through a solemn convention, the most sacred right known to man. But with regard to other States, it is so only through the right of the first occupant, which it derives from the private individuals, a right less absurd, less odious than that of conquest and yet which, when well examined, proves scarcely more legitimate.

So it is that the combined and contiguous lands of private individuals become public territory, and the right of sovereignty, extending from

the subjects to the ground they occupy, comes to include both property and persons, which places those who possess land in a greater dependency and turns even their force into security for their loyalty. This advantage does not appear to be well-known to Ancient monarchs, who seem to have considered themselves leaders of men rather than masters of the country. Thus they only called themselves Kings of the Persians, the Scythians, the Macedonians, whereas ours more cleverly call themselves Kings of France, Spain, England. By thus holding the land, they are quite sure to hold its inhabitants.

What is admirable in this alienation is that far from plundering private individuals of their goods, by accepting them the community thereby only assures them of legitimate disposition, changes usurpation into a true right, and use into property. Then, with their title respected by all the members of the State and maintained with all its force against Foreigners, through a transfer that is advantageous to the community and even more so to themselves, they have, so to speak, acquired all they have given — an enigma easily explained by the distinction between the rights of the sovereign and of the proprietor to the same resource.

It can also happen that men start to unite before possessing anything, and that subsequently taking over a piece of land sufficient for all, they use it in common or else divide it among themselves either equally or according to certain proportions established by the sovereign. But however the acquisition is made, the right of each private individual to his own goods is always subordinate to the community's right to all, without which there would be neither solidity in the social bond nor real force in the exercise of sovereignty.

I shall end this chapter with a comment that should serve as the basis of the whole social system. It is that rather than destroying natural equality, the fundamental compact on the contrary substitutes a moral and legitimate equality for whatever physical inequality nature may have placed between men, and that although they may be naturally unequal in force or in genius, they all become equal through convention and by right.

4.14 Maximilien de Robespierre: *On Property Rights (1793)*¹⁴

First, I shall propose to you a few articles that are necessary to complete your theory on property; and do not let this word “property” alarm anyone. Mean spirits, you whose only measure of value is gold, I have no desire to touch your treasures, however impure may have been the source of them. You must know that the agrarian law, of which there has been so much talk, is only a bogey created by rogues to frighten fools. I can hardly believe that it took a revolution to teach the world that extreme disparities in wealth lie at the root of many ills and crimes, but we are not the less convinced that the realization of an equality of fortunes is a visionary’s dream. For myself, I think it to be less necessary to private happiness than to the public welfare. It is far more a question of lending dignity to poverty than of making war on wealth. Fabricius’ cottage has no need to envy the palace of Crassus. I would as gladly be one of the sons of Aristides, reared in the Prytaneum at the cost of the Republic, than to be the heir presumptive of Xerxes, born in the filth of courts and destined to occupy a throne draped in the degradation of the peoples and dazzling against the public misery.

Let us then in good faith pose the principles that govern the rights of property; it is all the more necessary to do so because there are none that human prejudice and vice have so consistently sought to shroud in mystery.

Ask that merchant in human flesh what property is. He will tell you, pointing to the long bier that he calls a ship and in which he has herded and shackled men who still appear to be alive: “Those are my property; I bought them at so much a head.” Question that nobleman, who has lands and ships or who thinks that the world has been turned upside down since he has had none, and he will give you a similar view of property.

Question the august members of the Capetian dynasty.¹⁵ They will tell you that the most sacred of

all property rights is without doubt the hereditary right that they have enjoyed since ancient times to oppress, to degrade, and to attach to their person legally and royally the 25 million people who lived, at their good pleasure, on the territory of France.

But to none of these people has it ever occurred that property carries moral responsibilities. Why should our Declaration of Rights appear to contain the same error in its definition of liberty, “the most valued property of man, the most sacred of the rights that he holds from nature”? We have justly said that this right was limited by the rights of others. Why have we not applied the same principle to property, which is a social institution, as if the eternal laws of nature were less inviolable than the conventions evolved by man? You have drafted numerous articles in order to ensure the greatest freedom for the exercise of property, but you have not said a single word to define its nature and its legitimacy, so that your declaration appears to have been made not for ordinary men, but for capitalists, profiteers, speculators and tyrants. I propose to you to rectify these errors by solemnly recording the following truths:

1. Property is the right of each and every citizen to enjoy and to dispose of the portion of goods that is guaranteed to him by law.
2. The right of property is limited, as are all other rights, by the obligation to respect the property of others.
3. It may not be so exercised as to prejudice the security, or the liberty, or the existence, or the property of our fellow men.
4. All moldings in property and all commercial dealings which violate this principle are unlawful and immoral.

You also speak of taxes in such a way as to establish the irrefutable principle that they can only be the expression of the will of the people or of

14 Maximilien de Robespierre, excerpts from *Robespierre*, edited by George Rudé (Englewood Cliffs, N.J.: Prentice-Hall, 1967). The speech on property was delivered on April 24, 1793.

15 The French royal family.

its representatives. But you omit an article that is indispensable to the general interest: you neglect to establish the principle of a progressive tax. Now, in matters of public finance, is there a principle more solidly grounded in the nature of things and in eternal justice than that which imposes on citizens the obligations to contribute progressively to state expenditure according to their incomes — that is, according to the material advantages that they draw from the social system?

I propose that you should record this principle in an article conceived as follows: “Citizens whose incomes do not exceed what is required for their subsistence are exempted from contributing to state expenditure; all others must support it progressively according to their wealth.”

The Committee¹⁶ has also completely neglected to record the obligations of brotherhood that bind together the men of all nations, and their right to mutual assistance. It appears to have been unaware of the roots of the perpetual alliance that unite the peoples against tyranny. It would seem that your declaration has been drafted for a human herd planted in an isolated corner of the globe and not for the vast family of nations to which nature has given the earth for its use and habitation.

I propose that you fill this great gap by adding the following articles. They cannot fail to win the regard of all peoples, though they may, is true, have the disadvantage of estranging you irrevocably from kings. I confess that this disadvantage does not frighten me, nor will it frighten all others who have no desire to be reconciled to them. Here are four articles:

1. The men of all countries are brothers, and the different people must help one another according to their ability, as though they were citizens of a single state.
2. Whoever oppresses a single nation declares himself the enemy of all.
3. Whoever makes war on a people to arrest the progress of liberty and to destroy the

rights of man must be prosecuted by all, not as ordinary enemies, but as rebels, brigands and assassins.

4. Kings, aristocrats and tyrants, whoever they be, are slaves in rebellion against the sovereign of the earth, which is the human race, and against the legislator of the universe, which is nature....

4.15 Thomas Paine: On the Origin of Universal Basic Income (*Agrarian Justice*, 1797)¹⁷

[...]There could be no such thing as landed property originally. Man did not make the earth, and, though he had a natural right to occupy it, he had no right to locate as his property in perpetuity any part of it; neither did the Creator of the earth open a land-office, from whence the first title-deeds should issue. Whence then, arose the idea of landed property? I answer as before, that when cultivation began the idea of landed property began with it, from the impossibility of separating the improvement made by cultivation from the earth itself, upon which that improvement was made.

The value of the improvement so far exceeded the value of the natural earth, at that time, as to absorb it; till, in the end, the common right of all became confounded into the cultivated right of the individual. But there are, nevertheless, distinct species of rights, and will continue to be, so long as the earth endures.

It is only by tracing things to their origin that we can gain rightful ideas of them, and it is by gaining such ideas that we, discover the boundary that divides right from wrong, and teaches every man to know his own. I have entitled this tract “Agrarian Justice” to distinguish it from “Agrarian Law.”

Nothing could be more unjust than agrarian law in a country improved by cultivation; for though every man, as an inhabitant of the earth, is a joint proprietor of it in its natural state, it does not follow that he is a joint proprietor of cultivated

16 The Constitutional Committee of the National Convention.

17 Thomas Paine, *Agrarian Justice: Opposed to Agrarian Law, and to Agrarian Monopoly, Being a Plan for Meliorating the Condition of Man* (1797 [public domain]).

earth. The additional value made by cultivation, after the system was admitted, became the property of those who did it, or who inherited it from them, or who purchased it. It had originally no owner. While, therefore, I advocate the right, and interest myself in the hard case of all those who have been thrown out of their natural inheritance by the introduction of the system of landed property, I equally defend the right of the possessor to the part which is his.

Cultivation is at least one of the greatest natural improvements ever made by human invention. It has given to created earth a tenfold value. But the landed monopoly that began with it has produced the greatest evil. It has dispossessed more than half the inhabitants of every nation of their natural inheritance, without providing for them, as ought to have been done, an indemnification for that loss, and has thereby created a species of poverty and wretchedness that did not exist before.

In advocating the case of the persons thus dispossessed, it is a right, and not a charity, that I am pleading for. But it is that kind of right which, being neglected at first, could not be brought forward afterwards till heaven had opened the way by a revolution in the system of government. Let us then do honor to revolutions by justice, and give currency to their principles by blessings.

Having thus in a few words, opened the merits of the case, I shall now proceed to the plan I have to propose, which is,

To create a national fund, out of which there shall be paid to every person, when arrived at the age of twenty-one years, the sum of fifteen pounds sterling, as a compensation in part, for the loss of his or her natural inheritance, by the introduction of the system of landed property:

And also, the sum of ten pounds per annum, during life, to every person now living, of the age of fifty years, and to all others as they shall arrive at that age.

Means by which the Fund is to be Created

I have already established the principle, namely, that the earth, in its natural uncultivated state was, and ever would have continued to be, the common

property of the human race; that in that state, every person would have been born to property; and that the system of landed property, by its inseparable connection with cultivation, and with what is called civilized life, has absorbed the property of all those whom it dispossessed, without providing, as ought to have been done, an indemnification for that loss.

The fault, however, is not in the present possessors. No complaint is tended, or ought to be alleged against them, unless they adopt the crime by opposing justice. The fault is in the system, and it has stolen perceptibly upon the world, aided afterwards by the agrarian law of the sword. But the fault can be made to reform itself by successive generations; and without diminishing or deranging the property of any of present possessors, the operation of the fund can yet commence, and in full activity, the first year of its establishment, or soon after, as I shall show.

It is proposed that the payments, as already stated, be made to every person, rich or poor. It is best to make it so, to prevent invidious distinctions. It is also right it should be so, because it is in lieu of the natural inheritance, which, as a right, belongs to every man, over and above property he may have created, or inherited from those who did. Such persons as do not choose to receive it can throw it into the common fund.

Taking it then for granted that no person ought to be in a worse condition when born under what is called a state of civilization, than he would have been had he been born in a state of nature, and that civilization ought to have made, and ought still to make, provision for that purpose, it can only be done by subtracting from property a portion equal in value to the natural inheritance it has absorbed.

Various methods may be proposed for this purpose, but that which appears to be the best (not only because it will operate without deranging any present possessors, or without interfering with the collection of taxes or emprints necessary for the purposes of government and the Revolution, but because it will be the least troublesome and the most effectual, and also because the subtraction will be made at a time that best admits it) is at the moment that property is passing by the death of

one person to the possession of another. In this case, the bequeather gives nothing; the receiver pays nothing. The only matter to him is that the monopoly of natural inheritance, to which there never was a right, begins to cease in his person. A generous man would not wish it to continue, and a just man will rejoice to see it abolished.[...]

There are, in every country, some magnificent charities established by individuals. It is, however, but little that any individual can do, when the whole extent of the misery to be relieved is considered. He may satisfy his conscience, but not his heart. He may give all that he has, and that all will relieve but little. It is only by organizing civilization upon such principles as to act like a system of pulleys, that the whole weight of misery can be removed.

The plan here proposed will reach the whole. It will immediately relieve and take out of view three classes of wretchedness—the blind, the lame, and the aged poor; and it will furnish the rising generation with means to prevent their becoming poor; and it will do this without deranging or interfering with any national measures.

To show that this will be the case, it is sufficient to observe that the operation and effect of the plan will, in all cases, be the same as if every individual were voluntarily to make his will and dispose of his property in the manner here proposed.

But it is justice, and not charity, that is the principle of the plan. In all great cases it is necessary to have a principle more universally active than charity; and, with respect to justice, it ought not to be left to the choice of detached individuals whether they will do justice or not. Considering, then, the plan on the ground of justice, it ought to be the act of the whole growing spontaneously out of the principles of the revolution, and the reputation of it ought to be national and not individual.

A plan upon this principle would benefit the revolution by the energy that springs from the consciousness of justice. It would multiply also the national resources; for property, like vegetation, increases by offsets. When a young couple begin the world, the difference is exceedingly great whether they begin with nothing or with fifteen pounds apiece. With this aid they could buy

a cow, and implements to cultivate a few acres of land; and instead of becoming burdens upon society, which is always the case where children are produced faster than they can be fed, would be put in the way of becoming useful and profitable citizens. The national domains also would sell the better if pecuniary aids were provided to cultivate them in small lots.

It is the practice of what has unjustly obtained the name of civilization (and the practice merits not to be called either charity or policy) to make some provision for persons becoming poor and wretched only at the time they become so. Would it not, even as a matter of economy, be far better to adopt means to prevent their becoming poor? This can best be done by making every person when arrived at the age of twenty-one years an inheritor of something to begin with.

The rugged face of society, checkered with the extremes of affluence and want, proves that some extraordinary violence has been committed upon it, and calls on justice for redress. The great mass of the poor in countries are become an hereditary race, and it is next to impossible them to get out of that state of themselves. It ought also to be observed that this mass increases in all countries that are called civilized. re persons fall annually into it than get out of it.

Though in a plan of which justice and humanity are the foundation principles, interest ought not to be admitted into the calculation, yet it is always of advantage to the establishment of any plan to show that it beneficial as a matter of interest. The success of any proposed plan submitted to public consideration must finally depend on the numbers interested in supporting it, united with the justice of its principles.

The plan here proposed will benefit all, without injuring any. It will consolidate the interest of the republic with that of the individual. To the numerous class dispossessed of their natural inheritance by the system of landed property it will be an act of national justice. To persons dying possessed of moderate fortunes it will operate as a tontine to their children, more beneficial than the sum of money paid into the fund: and it will give to the

accumulation of riches a degree of security that none of old governments of Europe, now tottering on their foundations, can give.[...]

I have made the calculations stated in this plan, upon what is called personal, as well as upon landed property. The reason for making it upon land is already explained; and the reason for taking personal property into the calculation is equally well founded though on a different principle. Land, as before said, is the free gift of the Creator in common to the human race. Personal property is the effect of society; and it is as impossible for an individual to acquire personal property without the aid of society, as it is for him to make land originally.

Separate an individual from society, and give him an island or a continent to possess, and he cannot acquire personal property. He cannot be rich. So inseparably are the means connected with the end, in all cases, that where the former do not exist the latter cannot be obtained. All accumulation, therefore, of personal property, beyond what a man's own hands produce, is derived to him by living in society; and he owes on every principle of justice, of gratitude, and of civilization, a part of that accumulation back again to society from whence the whole came. [...]

The superstitious awe, the enslaving reverence, that formerly surrounded affluence, is passing away in all countries, and leaving the possessor of property to the convulsion of accidents. When wealth and splendor, instead of fascinating the multitude, excite emotions of disgust; and, instead of drawing forth admiration, it is beheld as an insult on wretchedness; when the ostentatious appearance it makes serves call the right of it in question, the case of property becomes critical, and it is only in a system of justice that the possessor can contemplate security.

To remove the danger, it is necessary to remove the antipathies, and this can only be done by making property productive of a national blessing, extending to every individual. When the riches of one man above other shall increase the national

fund in the same proportion; when it shall be seen that the prosperity of that fund depends on the prosperity of individuals; when the more riches a man acquires, the better it shall be for the general mass; it is then that antipathies will cease, and property be placed on the permanent basis of national interest and protection. [...]

Counterpoint

4.16 Edmund Burke: On Inheritance and the Principle of Inequality (*Reflections on the Revolution in France, 1790*)¹⁸

Nothing is a due and adequate representation of a state that does not represent its ability as well as its property. But as ability is a vigorous and active principle, and as property is sluggish, inert, and timid, it never can be safe from the invasion of ability unless it be, out of all proportion, predominant in the representation. It must be represented, too, in great masses of accumulation, or it is not rightly protected. The characteristic essence of property, formed out of the combined principles of its acquisition and conservation, is to be unequal. The great masses, therefore, which excite envy and tempt rapacity must be put out of the possibility of danger. Then they form a natural rampart about the lesser properties in all their gradations. The same quantity of property, which is by the natural course of things divided among many, has not the same operation. Its defensive power is weakened as it is diffused. In this diffusion each man's portion is less than what, in the eagerness of his desires, he may flatter himself to obtain by dissipating the accumulations of others. The plunder of the few would indeed give but a share inconceivably small in the distribution to the many. But the many are not capable of making this calculation; and those who lead them to rapine never intend this distribution.

The power of perpetuating our property in our families is one of the most valuable and interesting circumstances belonging to it, and that which tends the most to the perpetuation of society itself. It makes

18 Edmund Burke, *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* (1790 [public domain]).

our weakness subservient to our virtue, it grafts benevolence even upon avarice. The possessors of family wealth, and of the distinction which attends hereditary possession (as most concerned in it), are the natural securities for this transmission. With us the House of Peers is formed upon this principle. It is wholly composed of hereditary property and hereditary distinction, and made, therefore, the third of the legislature and, in the last event, the sole judge of all property in all its subdivisions. The House of Commons, too, though not necessarily, yet in fact, is always so composed, in the far greater part. Let those large proprietors be what they will—and they have their chance of being amongst the best—they are, at the very worst, the ballast in the vessel of the commonwealth. For though hereditary wealth and the rank which goes with it are too much idolized by creeping sycophants and the blind, abject admirers of power, they are too rashly slighted in shallow speculations of the petulant, assuming, short-sighted coxcombs of philosophy. Some decent, regulated preeminence, some preference (not exclusive appropriation) given to birth is neither unnatural, nor unjust, nor impolitic.

It is said that twenty-four millions ought to prevail over two hundred thousand. True; if the constitution of a kingdom be a problem of arithmetic. This sort of discourse does well enough with the lamp-post for its second; to men who may reason calmly, it is ridiculous. The will of the many and their interest must very often differ, and great will be the difference when they make an evil choice. A government of five hundred country attorneys and obscure curates is not good for twenty-four millions of men, though it were chosen by eight and forty millions, nor is it the better for being guided by a dozen of persons of quality who have betrayed their trust in order to obtain that power. At present, you seem in everything to have strayed out of the high road of nature. The property of

France does not govern it. Of course, property is destroyed and rational liberty has no existence. All you have got for the present is a paper circulation and a stock-jobbing constitution; and as to the future, do you seriously think that the territory of France, upon the republican system of eighty-three independent municipalities (to say nothing of the parts that compose them), can ever be governed as one body or can ever be set in motion by the impulse of one mind? When the National Assembly has completed its work, it will have accomplished its ruin. These commonwealths will not long bear a state of subjection to the republic of Paris. They will not bear that this body should monopolize the captivity of the king and the dominion over the assembly calling itself national. Each will keep its own portion of the spoil of the church to itself, and it will not suffer either that spoil, or the more just fruits of their industry, or the natural produce of their soil to be sent to swell the insolence or pamper the luxury of the mechanics of Paris. In this they will see none of the equality, under the pretense of which they have been tempted to throw off their allegiance to their sovereign as well as the ancient constitution of their country. There can be no capital city in such a constitution as they have lately made. They have forgot that, when they framed democratic governments, they had virtually dismembered their country. The person whom they persevere in calling king has not power left to him by the hundredth part sufficient to hold together this collection of republics. The republic of Paris will endeavor, indeed, to complete the debauchery of the army, and illegally to perpetuate the assembly, without resort to its constituents, as the means of continuing its despotism. It will make efforts, by becoming the heart of a boundless paper circulation, to draw everything to itself; but in vain. All this policy in the end will appear as feeble as it is now violent.

5. HOW TO PROMOTE A LIBERAL CONCEPTION OF HUMAN RIGHTS

Just War and the Right to Rebel

If life, liberty, and property were the principal revolutionary pursuits of the Enlightenment, considerations on how to protect or maintain these achievements, within and beyond national borders, would also preoccupy some of the greatest minds of that era. What should be the criteria for a just war? And how should a just war be waged? Could free trade and republican states – based on the separation of powers – prevent wars and perpetuate peace? These were questions that thinkers from Hugo Grotius to Immanuel Kant debated, offering insights that continue to shape today's discussions over war and peace.

Drawing from the ancients, Dutch jurist and political thinker Hugo Grotius (1583–1645) was an early contributor to these discussions. His lasting fame rests on his *Law of War and Peace* (1625). Anxious to put an end to the religious wars of the Reformation, Grotius, inspired by the Greek and Roman natural law theorists and by medieval scholars like Aquinas, articulated his own theory of just war. He began by distinguishing the laws of nations from laws within the state. The laws of nations defined moral human conduct prior to and during war, not only within individual states, but also within the larger society of humankind, of which states were only part. Yet unlike municipal laws, these laws of nations were advisory rather than compulsory. They informed nations of their range of permissible actions, as well as the mutual advantage of abiding by the rule of nature and reason. He went on to stipulate criteria for distinguishing justifiable from unjustifiable wars and called upon heads of state to temper their conduct during wartime. Grotius' contribution to international law and human rights transcended his time to exert a contemporary influence (see Section 5.2).

While drafting new laws of nations was a commendable endeavor, the constitutions of states also needed to be reframed to prevent tyranny and the occurrence of war. In light of the abusive character of the king's authority before the Glorious Revolution, John Locke's *Second Treatise* (1690) argued that individual rights would be reliably protected only in a government in which the three basic powers – legislative, executive, and federative – were separated. The separation of powers could not only avert the rightful rebellion of oppressed and unrepresented peoples against a tyrant, but also restrain whimsical wars waged by an unrestrained executive (see Section 5.3).

Drawing from the lessons of the Seven Years' War (1756–1763), Rousseau believed that a state should be seen as more than the aggregation of atomistic individuals, as Locke had envisioned. Instead, a representative and peaceful state should reflect the general will, based on organic and

mutual cooperation of the people (*The Geneva Manuscript*, c. 1756). Further, to avert animosity between states generated by rivalries over trade, Rousseau's *Consideration on Government of Poland* (1772) called, against the new commercial spirit of his time, for economic self-sufficiency and independence, as a better way to advance humanity's natural predisposition toward peace (*The State of War*, c. 1753–1755) (see Section 5.6).

Adam Smith's (1723–1790) *The Wealth of the Nations* (1776), however, would ultimately prevail as the most influential theory on capitalism and free trade. Central to his thesis was the idea that capital is best employed for the production and distribution of wealth under conditions of noninterference by governments (i.e., *laissez-faire*). Concerned that state or private monopolies would generate economic inefficiency and injustice, Smith defended the long-term benefits of economic competition. Contrary to Rousseau, Smith encouraged individuals to pursue their commercial self-interest under the supervision of an "invisible hand" (*The Theory of Moral Sentiments*, 1759). The resulting economic competition, he believed, would ultimately lead to the greatest possible economic efficiency and societal wealth (see Sections 5.7 and 5.8 on free trade and mutual advantage).

The influence of John Locke and Adam Smith can be found in the writings of the famous English and American political thinker Thomas Paine (1737–1809), also known for his internationalist activism during the American and French revolutions. His *Rights of Man* (1791–1792), a classic in the literature of human rights, not only supported basic universal rights – life, liberty, and property – but also argued that republican governance, the separation of powers, and the proliferation of commerce were the best means to achieve peace. The spreading spirit of republicanism and markets, he suggested, "may prompt a confederation for nations to abolish [war]" (see Section 5.9).

Revolutionary warfare was, however, an essential means to that end, argued Maximilien de Robespierre (1758–1794) in his speech to the national convention (December 4, 1793). Anticipating modern debates about emergency laws, Robespierre argued that certain liberties may be provisionally suspended during wartime. Those who attack the nature of revolutionary laws, Robespierre explained, are "foolish or perverse sophists; their only object is to resurrect tyranny and to destroy the fatherland. When they invoke the literal application of constitutional principles, it is only to violate them with impunity" (see Section 5.10).

German political philosopher Immanuel Kant (1724–1804), who had welcomed the aspirations of the French revolutionaries, later became a critic of the French revolutionary government. Since the preservation of the life of an individual was always an end in itself, life could not be sacrificed for a higher cause. Hence, rights within and between nations could only be achieved by peaceful means. Like Paine before him, Kant considered in *Perpetual Peace* (1795) why republican states, with their separation of powers, offered the only political structure in which individuals could preserve their basic rights and prevent leaders from waging arbitrary wars. To secure a just peace among nations, Kant imagined in *The Metaphysics of Morals* (1797) the formation of a confederation of republican states that would prevent aggression, encourage the expansion of commerce, and promote republican governance, a combination that would ultimately lead to perpetual peace (see Sections 5.11 and 5.12).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 2.

5.1 United Nations: Universal Declaration of Human Rights (1948), Preamble¹

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort; to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom...

5.2 Hugo Grotius: On the Rights of War and Peace (*The Law of War and Peace*, 1625)²

Prolegomena

15. Since it is a rule of law of nature to abide by pacts (for it was necessary that among men there be some method of obligating themselves one to another, and no other natural method can be imagined), out of this source the bodies of municipal law have arisen. For those who had associated themselves with some group or had

subjected themselves to a man or to men, had, either expressly promised, or from the nature of the transaction must be understood impliedly to have promised, that they would conform to that which should have been determined, in the one case by the majority, in the other by those upon whom authority had been conferred.

What is said, therefore, in accordance with the view not only of Carneades but also of others, that "Expediency is, as it were, the mother of what is just and fair,"³ is not true, if we wish to speak accurately. For the very nature of man, which even if we had no lack of anything would lead us into the mutual relations of society, is the mother of the law of nature. But the mother of municipal law is that obligation which arises from mutual consent; and since this obligation derives its force from the law of nature, nature may be considered, so to say, the great-grandmother of municipal law.

The law of nature nevertheless has the reinforcement of expediency; for the Author of nature willed that as individuals we should be weak, and should lack many things needed in order to live properly, to the end that we might be the more constrained to cultivate the social life. But expediency afforded an opportunity also for municipal law, since that kind of association of which we have spoken, and subjection, to authority, have their roots in expediency. From this it follows that those who prescribe laws for others in so doing are accustomed to have, or ought to have, some advantage in view.

17. But just as the laws of each state have in view the advantage of that state, so by mutual consent it has become possible that

1 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

2 Hugo Grotius, *The Law of War and Peace*, translated by Francis W. Kelsey (Oxford: Clarendon Press, 1925).

3 In regard to this passage, Acron, or some other ancient interpreter of Horace (*Sat.* I, iii. 98): "The poet is writing in opposition to the teachings of the Stoics. He wishes to show that justice does not have its origin in nature but is born of expediency." For the opposite view, see Augustine's argument, *On Christian Doctrine*, Book III, chap. xiv.

certain laws should originate as between all states, or a great many States; and it is apparent that the laws thus originating had in view the advantage, not of particular states, but of the great society of states. And this is what is called the law of nations, whenever we distinguish that term from the law of nature.

18. Wrongly, moreover, does Carneades ridicule justice as folly. For since, by his own admission, the national who in his own country obeys its laws is not foolish, even though, out of regard for that law, he may be obliged to forgo certain things advantageous for himself, so that nation is not foolish which does not press its own advantage to the point of disregarding the laws common to nations. The reason in either case is the same. For just as the national, who violates the law of his country in order to obtain an immediate advantage, breaks down that by which the advantages of himself and his posterity are for all future time assured, so the state which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace. Even if no advantage were to be contemplated from the keeping of the law, it would be a mark of wisdom, not of folly, to allow ourselves to be drawn towards that to which we feel that our nature leads....
25. Least of all should that be admitted which some people imagine, that in war all laws are in abeyance. On the contrary war ought not to be undertaken except for the enforcement of rights; when once undertaken, it should be carried on only within the bounds of law and good faith.... But in order that wars may be justified, they must be carried on with not less scrupulousness than judicial processes are wont to be....
28. Fully convinced, by the considerations which I have advanced, that there is a common law among nations, which is valid alike for war and in war, I have had many and weighty

reasons for undertaking to write upon this subject. Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have, once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes....

Book II, Chapter I: The Causes of War: Defense of Self and Property

- II. — *Justifiable causes include defense, the obtaining of that which belongs to us or is our due, and the inflicting of punishment*
 2. Authorities generally assign to wars three justifiable causes, defense, recovery of property, and punishment. All three you may find in Camillus's declaration with reference to the Gauls: "All things which it is right to defend, to recover, and to avenge." In this enumeration the obtaining of what is owed to us was omitted, unless the word "recover" is used rather freely....
- III. — *War for the defense of life is permissible*
We said above that if an attack by violence is made on one's person, endangering life, and no other way of escape is open, under such circumstances war is permissible, even though it involve the slaying of the assailant. As a consequence of the general acceptance of this principle we showed that in some cases a private war may be lawful.
This right of self-defense, it should be observed, has its origin directly, and chiefly, in the fact that nature commits to each his own protection, not in the injustice or crime of the aggressor. Wherefore, even if the assailant be blameless, as for instance a soldier acting in good faith, or one who mistakes me for some one else, or one

who is rendered irresponsible by madness or by sleeplessness — this, we read, has actually happened to some — the right of self-defense is not thereby taken away; it is enough that I am not under obligation to suffer what such an assailant attempts, any more than I should be if attacked by an animal belonging to another.

IV. — *War in defense of life is permissible only against an actual assailant*

1. It is a disputed question whether innocent persons can be cut down or trampled upon when by getting in the way they hinder the defense or flight by which alone death can be averted. That this is permissible, is maintained even by some theologians. And certainly, if we look to nature alone, in nature there is much less regard for society than concern for the preservation of the individual....

VIII. — *Not to take advantage of the right of defense is permissible*

We said above, that while it is permissible to kill him who is making ready to kill, yet the man is more worthy of praise who prefers to be killed rather than to kill.

XI. — *By the law of nature it is permissible to kill in defense of property*

We may now come to injuries that are attempted upon property.

If we have in view expletive justice only, I shall not deny that in order to preserve property a robber can even be killed, in case of necessity. For the disparity between property and life is offset by the favorable position of the innocent party and the odious role of the robber, as we have said above. From this it follows, that if we have in view this right only, a thief fleeing with stolen property can be felled with a missile, if the property cannot otherwise be recovered.

Chapter XXII: On Unjust Causes [of Wars]

I. — *The distinction between justifiable and persuasive causes is explained*

1. We said above, when we set out to treat the causes of wars, that some were justifiable, others persuasive. Polybius, who was the first to observe this distinction, calls the former “pretexts,” because they are wont to be openly alleged (Livy sometimes employs the term “claim”), and the latter by the name of the class, “causes.”

2. Thus in the war of Alexander against Darius the “pretext” was the avenging of the injuries which the Persians had inflicted upon the Greeks, while the “cause” was the desire for renown, empire, and riches, to which was added a great expectation of an easy victory arising from the expeditions of Xenophon and Agesilaus. The “pretext” of the Second Punic War was the dispute over Saguntum, but the cause was the anger of the Carthaginians at the agreements which the Romans had extorted from them in times of adversity, and the encouragement which they derived from their successes in Spain, as was observed by Polybius....

II. — *Wars which lack causes of either sort are wars of savages*

There are some who rush into war without a cause of either sort, led, as Tacitus says, by the desire of incurring danger for its own sake. But the offense of these men is more than human; Aristotle calls it “the savagery of wild beasts.” Concerning such persons Seneca wrote: “I can say that this is not cruelty, but ferocity which delights in savagery. We can call it madness; for there are various sorts of madness, and none is more unmistakable than that which turns to the slaughter and butchery of men.”

Altogether similar to this expression of opinion is that of Aristotle, in the last book of the *Nicomachean Ethics*: “For anyone would seem to be absolutely murderous

if he should make enemies of his friends in order that there might be fighting and bloodshed." Said Dio of Prusa: "To wage war and to fight without a pretext, what else is this than utter madness and a craving for evils arising therefrom?" ...

III. — *Wars which have persuasive but not justifying causes are wars of robbers*

1. In most cases those who go to war have persuasive causes, either with or without justifiable causes. There are some indeed who clearly ignore justifiable causes. To these we may apply the dictum uttered by the Roman jurists, that the man is a robber who, when asked the origin of his possession, adduces none other than the fact of possession.

With regard to those who advocate war Aristotle says: "Do they often times give no thought to the injustice of enslaving neighbors and those who have done no wrong?" ...

XII. — *An unjust cause of war also is the desire to rule others against their will on the pretext that it is for their good*

Not less iniquitous is it to desire by arms to subdue other men, as if they deserved to be enslaved, and were such as the philosophers at times call slaves by nature. For even if something is advantageous for any one, the right is not forthwith conferred upon me to impose this upon him by force. For those who have the use of their reason ought to have the free choice of what is advantageous or not advantageous, unless another has acquired a certain right over them....

Book III, Chapter IV

XIX. — *Whether rape is contrary to the law of nations*

1. You may read in many places that the raping of women in time of war is permissible, and in many others that it is not permissible. Those who

sanction rape have taken into account only the injury done to the person of another, and have judged that it is not inconsistent with the law of war that everything which belongs to the enemy should be at the disposition of the victor. A better conclusion has been reached by others, who have taken into consideration not only the injury but the unrestrained lust of the act; also, the fact that such acts do not contribute to safety or to punishment, and should consequently not go unpunished in war any more than in peace.

The latter view is the law not of all nations, but of the better ones. Thus Marcellus, before capturing Syracuse, is said to have taken pains for the protection, of chastity, even in the case of the enemy....

Chapter XI: Moderation with Respect to the Right of Killing in a Lawful War

I. — *In a lawful war certain acts are devoid of moral justice; a condition which is explained*

1. Not even in a lawful war ought we to admit that which is said in the line,
He, who refuses what is just, yields all.

Cicero's point of view is better: "There are certain duties which must be performed even toward those from whom you have received an injury. There is in fact a limit to vengeance and to punishment." The same writer praises the ancient days of Rome, when the issues of wars were either mild or in accordance with necessity.

Seneca calls those persons cruel who "have a reason for punishing, but observe no limit." Aristides, in his second speech *On Leuctra*, says: "Men may, men may indeed be unjust in avenging themselves, if they carry vengeance beyond measure. He, who

in punishing goes so far as to do what is unjust, becomes a second wrong-doer.” ...

IV. — *In this matter it is an obligation of humanness not to make the fullest use of one’s right*

1. But we must keep in mind that which, we have recalled elsewhere also, that the rules of love are broader than the rules of law. He who is rich will be guilty of heartlessness if, in order that he himself may exact the last penny, he deprives a needy debtor of all his small possessions; and even much more guilty if the debtor has incurred the debt by his goodness — for instance, if he has gone surety for a friend — and has used none of the money for his own advantage, “for,” as Quintilian the Father says, “the peril of a bondsman is worthy of commiseration.” Nevertheless so hard a creditor does nothing contrary to his right according to a strict interpretation.
2. Therefore humanity requires that we leave to them that do not share in the guilt of the war, and that have incurred no obligation in any other way than as sureties, those things which we can dispense with more easily than they, particularly if it is quite clear that they will not recover from their own state what they have lost in this way....

Chapter XIV: Moderation in Regard to Prisoners of War

- I. — *To what extent, in accordance with moral justice, it is permissible to take men captive*
 1. In those places where custom sanctions the captivity and slavery of men, this ought to be limited primarily, if we have regard to moral justice, in the same way as in the case of property; with the result that, in fact, such acquisition may be permitted so far

as the amount of either an original or derivative debt allows, unless perhaps on the part of the men themselves there is some special crime which equity would suffer to be punished with loss of liberty. To this degree, then, and no further, he who wages a lawful war has a right over the captured subjects of the enemy, and this right he may legitimately transfer to others.

2. Furthermore in this case also it will be the task of equity and goodness to employ those distinctions which were noted above, when we discussed the question of killing enemies. Demosthenes, in his letter “For the Children of Lyncurgus,” praises Philip of Macedon for not having enslaved all who were among his enemies. “For,” said Demosthenes, “he did not consider the same punishment for all either fair or right, but, examining the case in the light of what each had deserved, he acted in such matters as a judge.”

5.3 John Locke: On the Separation of Powers and the Right to Rebel (*The Second Treatise*, 1690)⁴

Chapter II

7. And that all men may be restrained from invading others rights and from doing hurt to one another, and the law of nature be observed, which wills the peace and preservation of all mankind, the execution of the law of nature is, in that state, put into every man’s hands, whereby everyone has a right to punish the transgressors of that law to such a degree as may hinder its violation; for the law of nature would, as all other laws that concern men in this world, be in vain if there were nobody that in that state of nature had a power to execute that law and thereby preserve the innocent and restrain offenders. And

4 John Locke, *The Second Treatise of Government* (London, 1690 [public domain]).

if anyone in the state of nature may punish another for any evil he has done, everyone may do so; for in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, everyone must needs have a right to do.

8. And thus in the state of nature one man comes by a power over another; but yet no absolute or arbitrary power to use a criminal, when he has got him in his hands, according to the passionate heats or boundless extravagance of his own will; but only to reattribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint; for these two are the only reasons why one man may lawfully do harm to another, which is that we call punishment. In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men for their mutual security; and so he becomes dangerous to mankind, the tie which is to secure them from injury and violence being slighted and broken by him. Which being a trespass against the whole species and the peace and safety of it provided for by the law of nature, every man upon this score, by the right he has to preserve mankind in general, may restrain, or, where it is necessary, destroy things noxious to them, and so may bring such evil on any one who has transgressed that law, as may make him repent the doing of it and thereby deter him, and by his example others, from doing the like mischief. And in this case, and upon this ground, *every man has a right to punish the offender and be executioner of the law of nature...*

Chapter X: Of the Forms of a Commonwealth

132. The majority, having, as has been shown, upon men's first uniting into society, the whole power of the community naturally in them, may employ all that power in making

laws for the community from time to time, and executing those laws by officers of their own appointing; and then the form of the government is a perfect democracy; or else may put the power of making laws into the hands of a few select men, and their heirs or successors: and then it is an oligarchy; or else into the hands of one man: and then it is a monarchy; if to him and his heirs: it is an hereditary monarchy; if to him only for life, but upon his death the power only of nominating a successor to return to them: an elective monarchy. And so accordingly of these the community may make compounded and mixed forms of government, as they think good. And if the legislative power be at first given by the majority to one or more persons only for their lives, or any limited time, and then the supreme power to revert to them again — when it is so reverted, the community may dispose of it again anew into what hands they please and so constitute a new form of government depending upon the placing of the supreme power, which is the legislative — it being impossible to conceive that an inferior power should prescribe to a superior, or any but the supreme make laws — according as the power of making laws is placed, such is the form of the commonwealth....

Chapter XII: Of the Legislative, Executive, and Federative Power of the Commonwealth

143. The legislative power is that which has a right to direct how the force of the commonwealth shall be employed for preserving the community and the members of it. But because those laws which are constantly to be executed, and whose force is always to continue, may be made in a little time, therefore there is no need that the legislative should be always in being, not having always business to do. And because it may be too great a temptation to human frailty, apt to grasp at power,

for the same persons who have the power of making laws to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making and execution, to their own private advantage, and thereby come, to have a distinct interest from the rest of the community contrary to the end of society and government; therefore, in well ordered commonwealths, where the good of the whole is so considered as it ought, the legislative power is put into the hands of diverse persons who, duly assembled, have by themselves, or jointly with others, a power to make laws; which when they have done, being separated again, they are themselves subject to the laws they have made, which is a new and near tie upon them to take care that they make them for the public good.

144. But because the laws that are at once and in a short time made have a constant and lasting force and need a perpetual execution or an attendance thereunto; therefore, it is necessary there should be a power always in being which should see to the execution of the laws that are made and remain in force. And thus the legislative and executive power come often to be separated....

Chapter XIX

222. The reason why men enter into society is the preservation of their property; and the end why they choose and authorize a legislative is that there may be laws made and rules set as guards and fences to the properties of all the members of the society to limit the power and moderate the dominion of every part and member of the society; for since it can never be supposed to be the will of the society that the legislative should have a power to destroy that which every one designs to secure by entering into society, and for

which the people submitted themselves to legislators of their own making. Whenever the legislators endeavor to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people who are thereupon absolved from any further obedience, and are left to the common refuge which God has provided for all men against force and violence. Whensoever therefore, the legislative shall transgress this fundamental rule of society, and either by ambition, fear, folly, or corruption, endeavor to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people, by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty and, by the establishment of a new legislative, such as they shall think fit, provide for their own safety and security, which is the end for which they are in society. What I have said here concerning the legislative in general holds true also concerning the supreme executor, who having a double trust put in him — both to have a part in the legislative and the supreme execution of the law — acts against both when he goes about to set up his own arbitrary will as the law of the society. He acts also contrary to his trust when he either employs the force, treasure, and offices of the society to corrupt the representatives and gain them to his purposes, or openly pre-engages the electors and prescribes to their choice such whom he has by solicitations, threats, promises, or otherwise won to his designs, and employs them to bring in such who have promised beforehand what to vote and what to enact. Thus to regulate candidates and electors, and new-model the ways of election, what is it but to cut up

the government by the roots, and poison the very fountain of public security? For the people, having reserved to themselves the choice of their representatives, as the fence to their properties could do it for no other end but that they might always be freely chosen, and, so chosen, freely act and advise as the necessity of the commonwealth and the public good should upon examination and mature debate be judged to require. This those who give their votes before they hear the debate and have weighed the reasons on all sides are not capable of doing. To prepare such an assembly as this, and endeavor to set up the declared abettors of his own will for the true representatives of the people and the lawmakers of the society, is certainly as great a breach of trust and as perfect a declaration of a design to subvert the government as is possible to be met with. To which if one shall add rewards and punishments visibly employed to the same end, and all the arts of perverted law made use of to take off and destroy all that stand in the way of such a design, and will not comply and consent to betray the liberties of their country, it will be past doubt what is doing. What power they ought to have in the society who thus employ it contrary to the trust that went along with it in its first institution is easy to determine; and one cannot but see that he who has once attempted any such thing as this cannot any longer be trusted.

223. To this perhaps it will be said that, the people being ignorant and always discontented, to lay the foundation of government in the unsteady opinion and uncertain humor of the people is to expose it to certain ruin; and no government will be able long to subsist if the people may set up a new legislative whenever they take offense at the old one. To this I answer: Quite the contrary. People are not so easily got out of their old forms as some are apt to suggest. They are hardly to be prevailed

with to amend the acknowledged faults in the frame they have been accustomed to. And if there be any original defects, or adventitious ones introduced by time or corruption, it is not an easy thing to get them changed, even, when all the world sees there is an opportunity for it. This slowness and aversion in the people to quit their old constitutions has in the many revolutions which have been seen in this kingdom, in this and former ages, still kept us to, or after some interval of fruitless attempts still brought us back again to, our old legislative of king, lords, and commons; and whatever provocations have made the crown be taken from some of our princes' heads, they never carried the people so far as to place it in another line.

224. But it will be said this hypothesis lays a ferment for frequent rebellion. To which answer: First, no more than any other hypothesis; for when the people are made miserable, and find themselves exposed to the ill-usage of arbitrary power, cry up their governors as much as you will for sons of Jupiter; let them be sacred or divine, descended or authorized from heaven, give them out from whom or what you please, the same will happen. The people generally ill-treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. They will wish and seek for the opportunity, which in the change, weakness, and accidents of human affairs seldom delays long to offer itself. He must have lived but a little while in the world who has not seen examples of this in his time, and he must have read very little who cannot produce examples of it in all sorts of governments in the world.
225. Secondly, I answer, such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be born by the people without mutiny

or murmur. But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under and see whither they are going, it is not to be wondered that they should then rouse themselves and endeavor to put the rule into such hands which may secure to them the ends for which government was at first erected, and without which ancient names and specious forms are so far from being better that they are much worse than the state of nature or pure anarchy — the inconveniences being all as great and as near, but the remedy farther off and more difficult.

226. Thirdly, I answer that this doctrine of a power in the people of providing for their safety anew by a new legislative, when their legislators have acted contrary to their trust by invading their property, is the best fence against rebellion, and the probablest means to hinder it; for rebellion being an opposition, not to persons, but authority which is founded only in the constitutions and laws of the government, those, whoever they be, who by force break through, and by force justify their violation of them, are truly and properly rebels; for when men, by entering into society and civil government, have excluded force and introduced laws for the preservation of property, peace, and unity amongst themselves, those who set up force again in opposition to the laws do rebel are — that is, bring back again the state of war — and are properly rebels; which they who are in power, by the pretense they have to authority, the temptation of force they have in their hands, and the flattery of those about them, being likeliest to do, the properest way to prevent the evil is to show them the danger and injustice of it who are under the greatest temptation to run into it.
227. In both the forementioned cases, when either the legislative is changed or the

legislators act contrary to the end for which they were constituted, those who are guilty are guilty of rebellion; for if any one by force takes away the established legislative of any society, and the laws of them made pursuant to their trust, he thereby takes away the umpirage which every one had consented to for a peaceable decision of all their controversies, and a bar to the state of war amongst them. They who remove or change the legislative take away this decisive power which nobody can have but by the appointment and consent of the people, and so destroying the authority which the people did, and nobody else can set up, and introducing a power which the people has not authorized, they actually introduce a state of war which is that of force without authority; and thus by removing the legislative established by the society — in whose decisions the people acquiesced and united as to that of their own will — they unite the knot and expose the people anew to the state of war. And if those who by force take away the legislative are rebels, the legislators themselves, as has been shown, can be no less esteemed so, when they who were set up for the protection and preservation of the people, their liberties and properties, shall by force invade and endeavor to take them away; and so they putting themselves into a state of war with those who made them the protectors and guardians of their peace, are properly, and with the greatest aggravation, *rebellantes*, rebels....

229. The end of government is the good of mankind. And which is best for mankind? That the people should be always exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed when they grow exorbitant in the use of their power and employ it for the destruction and not the preservation of the properties of their people?

240. Here, it is like, the common question will be made: Who shall be judge whether the prince or legislative act contrary to their trust? This, perhaps, ill-affected and factious men may spread amongst the people, when the prince only makes use of his due prerogative. To this I reply: The people shall be judge; for who shall be judge whether his trustee or deputy acts well and according to the trust reposed in him but he who deposes him and must, by having deposed him, have still a power to discard him when he fails in his trust? If this be reasonable in particular cases of private men, why should it be otherwise in that of the greatest moment where the welfare of millions is concerned, and also where the evil, if not prevented, is greater and the redress very difficult, dear, and dangerous?
242. If a controversy arise betwixt a prince and some of the people in a matter where the law is silent or doubtful, and the thing be of great consequence, I should think the proper umpire in such a case should be the body of the people; for in cases where the prince has a trust reposed in him and is dispensed from the common ordinary rules of the law, there if any men find themselves aggrieved and think the prince acts contrary to or beyond that trust, who so proper to judge as the body of the people (who, at first, lodged that trust in him) how far they meant it should extend? But if the prince, or whoever they be in the administration, decline that way of determination, the appeal then lies nowhere but to heaven; force between either persons who have no known superior on earth, or which permits no appeal to a judge on earth, being properly a state of war wherein the appeal lies only to heaven; and in that state the injured party must judge for himself when he will think fit to make use of that appeal and put himself upon it.
243. To conclude, the power that every individual gave the society when he entered into it can never revert to the individuals again as long as the society lasts, but will always remain in the community, because without this there can be no community, no commonwealth, which is contrary to the original agreement; so also when the society has placed the legislative in any assembly of men, to continue in them and their successors with direction and authority for providing such successors, the legislative can never revert to the people while that government lasts, because having provided a legislative with power to continue for ever, they have given up their political power to the legislative and cannot resume it. But if they have set limits to the duration of their legislative and made this supreme power in any person or assembly only temporary, or else when by the miscarriages of those in authority it is forfeited, upon the forfeiture, or at the determination of the time set, it reverts to the society, and the people have a right to act as supreme and continue the legislative in themselves, or erect a new form, or under the old form place it in new hands, as they think good.

5.4 Jean-Jacques Rousseau: On Peace and War (*The State of War*, c. 1753–1755)⁵

Man is naturally peaceful and timid; at the least danger, his first reaction is to flee; he only fights through the force of habit and experience. Honor, interest, prejudices, vengeance, all those passions which make him brave danger and death, are remote from him in the state of nature. It is only when he has entered into society with other men that he decides to attack another, and he only becomes a soldier after he has become a citizen. There are no strong natural dispositions to make war on all one's fellow men. But I am lingering too long over a system both revolting and absurd, which has already been refuted a hundred times.

5 Jean-Jacques Rousseau, *The State of War*, in *The Political Writings of Jean-Jacques Rousseau*, edited and translated by Charles Edwyn Vaughan (Cambridge: Cambridge University Press, 1915).

There is then no general war between men; and the human species has not been created solely in order to engage in mutual destruction. It remains to consider war of an accidental and exceptional nature which can arise between two or more individuals...

I can conceive that, in the unarbitrated quarrels which can arise in the state of nature, a man whose anger has been roused can sometimes kill another, either by open force or by surprise. But if a real war were to take place, imagine the strange position which this same man would have to be in if he could only preserve his life at the expense of that of another...

Everything inclines natural man to peace; the sole needs he knows are eating and sleeping, and only hunger drags him from idleness. He is made into a savage continually ready to torment his fellow men because of passions of which he knows nothing. On the contrary, these passions, aroused in the bosom of society by everything that can inflame them, are considered not to exist there at all. A thousand writers have dared to say that the body politic is passionless, and that there is no other *raison d'état* than reason itself. As if no one saw that, on the contrary, the essence of society consists in the activity of its members, and that a state without movement would be nothing but a corpse. As if all the world's histories do not show us that the best-constituted societies are also the most active and that the continual action and reaction of all their members, whether within or without, bear witness to the vigor of the whole body.

Protectionism Versus Free Trade

5.5 Jean-Jacques Rousseau: On the General Will and Commercial Inequity (*The Geneva Manuscript* or the First Draft of the Social Contract, c. 1756)⁶

Chapter III: On the Fundamental Compact

Man is born free, but everywhere is in chains. One who believes himself the master of others is nonetheless a greater slave than they. How did this change occur? No one knows. What can make it

legitimate? It is not impossible to say. If I were to consider only force, as others do, I would say that as long as the people is constrained to obey and does so; it does well. As soon as it can shake off the yoke and does so, it does even better. For in recovering its freedom by means of the same right used to steal it, either the people is well justified in taking it back, or those who took it away were not justified in doing so. But the social order is a sacred right that serves as a basis for all the others. However, this right does not have its source in nature; it is therefore based on a convention. The problem is to know what this convention is and how it could have been formed.

As soon as man's needs exceed his faculties and the objects of his desire expand and multiply, he must either remain eternally unhappy or seek a new form of being from which he can draw the resources he no longer finds in himself. As soon as obstacles to our self-preservation prevail, by their resistance, over the force each individual can use to conquer them, the primitive state can no longer subsist and the human race would perish if art did not come to nature's rescue. Since man cannot engender new forces but merely unite and direct existing ones, he has no other means of self-preservation except to form, by aggregation, a sum of forces that can prevail over the resistance; set them to work by a single motivation; make them act conjointly; and direct them toward a single object. This is the fundamental problem which is solved by the institution of the State.

If, then, these conditions are combined and everything that is not of the essence of the social Compact is set aside, one will find that it can be reduced to the following terms: "Each of us puts his will, his goods, his force, and his person in common, under the direction of the general will, and in a body we all receive each member as an inalienable part of the whole." Instantly, in place of the private person of each contracting party, this act of association produces a moral and collective body, composed of as many members as there are voices in the assembly, and to which the common self gives formal unity, life, and will. This public person,

6 Jean-Jacques Rousseau, *Social Contract, Discourse on the Virtue Most Necessary for a Hero, Political Fragments, and Geneva Manuscript*, edited and translated by Roger D. Masters and Christopher Kelly (Hanover, NH: University Press of New England, 1994).

formed thus by the union of all the others, generally assumes the name body politic which its members call *State* when it is passive, *Sovereign* when active, *Power* when comparing it to similar bodies. As for the members themselves, they take the name *People* collectively, and individually are called *Citizens* as members of the *City* or participants in the sovereign authority, and *Subjects* as subject to the Laws of the State. But these terms, rarely used with complete precision, are often mistaken for one another, and it is enough to know how to distinguish them when the meaning of discourse so requires.

This formula shows that the primitive act of confederation includes a reciprocal engagement between the public and private individuals, and that each individual, contracting with himself so to speak, finds that he is doubly engaged, namely toward private individuals as a member of the sovereign and toward the sovereign as a member of the State. But it must be noted that the maxim of Civil Right that no one can be held responsible for engagements toward himself cannot be applied here, because there is a great difference between being obligated to oneself, or to a whole of which one is a part. It must further be noted that the public deliberation that can obligate all of the subjects to the sovereign — due to the two different relationships in which each of them is considered — cannot for the opposite reason obligate the sovereign toward itself, and that consequently it is contrary to the nature of the body politic for the sovereign to impose on itself a law that it cannot break. Since the sovereign can only be considered in a single relationship, it is then in the situation of a private individual contracting with himself. It is apparent from this that there is not, nor can there be, any kind of fundamental Law that is obligatory for the body of People. This does not mean that this body cannot perfectly well enter an engagement toward another, at least insofar as this is not contrary to its nature, because with reference to the foreigner, it becomes a simple Being or individual.

As soon as this multitude is thus united in a body, one could not harm any of its members without attacking the body in some part of its existence, and it is even less possible to harm the body

without the members feeling the effects. For in addition to the common life in question, all risk also that part of themselves which is not currently at the disposition of the sovereign and which they enjoy in safety only under public protection. Thus duty and interest equally obligate the two contracting parties to be of mutual assistance, and the same persons should seek to combine in this double relationship all the advantages that are dependent on it. But there are some distinctions to be made insofar as the sovereign, formed solely by the private individuals composing it, never has any interest contrary to theirs, and as a consequence the sovereign power could never need a guarantee toward the private individuals, because it is impossible for the body ever to want to harm its members. The same is not true of the private individuals with reference to the sovereign, for despite the common interest, nothing would answer for their engagements to the sovereign if it did not find ways to be assured of their fidelity. Indeed, each individual can, as a man, have a private will contrary to or differing from the general will he has as a Citizen. His absolute and independent existence can bring him to view what he owes the common cause as a free contribution, the loss of which will harm others less than its payment burdens him; and considering the moral person which constitutes the state as a Being produced by reason because it is not a man, he might wish to enjoy the rights of the Citizen without wanting to fulfill the duties of a subject, an injustice whose spread would soon cause the ruin of the body politic.

In order for the social contract not to be an ineffectual formula, therefore, the sovereign must have some guarantees, independently of the consent of the private individuals, of their engagements toward the common cause. The oath is ordinarily the first of such guarantees, but since it comes from a totally different order of things and since each man, according to his inner maxims, modifies to his liking the obligation it imposes on him, it is rarely relied on in political institutions; and it is with reason that more real assurances, derived from the thing itself, are preferred. So the fundamental compact tacitly includes this engagement,

which alone can give force to all the others: that whoever refuses to obey the general will shall be constrained to do so by the entire body. But it is important here to remember carefully that the particular, distinctive character of this compact is that the people contracts only with itself; that is, the people in a body, as sovereign, with the private individuals composing it, as subjects — a condition that creates all the ingenuity and functioning of the political machine, and alone renders legitimate, reasonable, and without danger engagements that without it would be absurd, tyrannical, and subject to the most enormous abuse....

5.6 Jean-Jacques Rousseau: On Isolationism and Protectionism (*Consideration on Government of Poland, 1772*)⁷

Chapter XI: The Economic System

... But if perchance you wish to be a free nation, a peaceful nation, a wise nation, a nation that fears nobody and needs nobody, a nation that is sufficient unto itself and happy, then you must use another method altogether, namely this: keep alive — or bring back to life — simple customs, wholesome tastes, and a spirit that is martial but not ambitious. Instill courage and unselfishness into the hearts of your people. Employ the masses of your population in agriculture and the arts necessary for life. Cause money to become an object of contempt and, if possible, useless besides; and make it your business, with an eye to the great things you are to accomplish, to discover some more powerful and dependable incentive. As you travel this path, to be sure, the reports of your celebrations, your negotiations, and your exploits will fill no newspapers. No philosophers will fawn upon you. No poets will write songs about you. You will seldom be the talk of Europe, which may even profess to view you with disdain. You will live, however, in an atmosphere of true abundance, of justice, and of freedom. No one will pick quarrels with you. People will, rather, fear you, while pretending not to....

Rich peoples, in point of fact, have always been beaten and taken over by poor peoples. Is it certain that money is what keeps things going in a good government? Systems of finance are a modern invention; they have produced nothing, so far as I can see, that is good or great either. The governments of ancient times were ignorant of the very word “finance,” and yet they accomplished things with men that are wonderful to contemplate. Money, at best, merely supplements men; and that which supplements is never so valuable as that which is supplemented. Poles do this for me: let the others have all the money in the world, or at least content yourselves with such of it as the others — since they need your wheat more than you need their gold — will find it necessary to give you. Believe me: to live abundantly is better than to live opulently. Be better off than mere wealth will ever make you, by providing yourselves with plenty. Tend your fields, and do not bother your heads about other things. You will harvest your gold soon enough, and in larger amounts than you need for the oil and wine you want. For, with those exceptions, Poland has in quantity — or is in position to produce — pretty much everything it requires.

Heads and hearts and hands are what you need to keep yourselves happy and free; they are the makings of a strong state and a prosperous people. Systems of finance produce venal hearts; for once a man makes up his mind that he is interested only in gain, he profits more by playing the knave than by being an honest man. Where money is used, it is easily diverted and concealed; what is intended for one purpose is utilized for another; those who handle money soon learn how to divert it — and what are all the officials assigned to keep watch on them, except so many more rascals whom one sends along to go shares with them? If all riches were public and obvious, if gold, in moving from place to place, left behind it visible traces that were impossible to conceal, money would be the most convenient instrument there could be for purchasing services, courage, fidelity, virtues....

7 Jean-Jacques Rousseau, *The Government of Poland*, translated by Willmoore Kendall (Cambridge, MA: Hackett, 1985).

**5.7 Adam Smith: On Individual Liberties,
Free Trade and Mutual Advantage
(*The Wealth of Nations*, 1776)⁸**

Book I

CHAPTER II: THE PRINCIPLE WHICH OCCASIONS THE
DIVISION OF LABOR

This division of labor, from which so many advantages are derived, is not originally the effect of any human wisdom, which foresees and intends that general opulence to which it gives occasion. It is the necessary, though very slow and gradual, consequence of a certain propensity in human nature which has in view, no such extensive utility; the propensity to truck, barter, and exchange one thing for another...

When an animal wants to obtain something either of a man or of another animal, it has no other means of persuasion but to gain the favor of those whose service it requires. A puppy fawns upon its dam, and a spaniel endeavors by a thousand attractions to engage the attention of its master who is at dinner, when it wants to be fed by him. Man sometimes uses the same arts with his brethren, and when he has no other means of engaging them to act according to his inclinations, endeavors by every servile and fawning attention to obtain their good will. He has not time, however, to do this upon every occasion. In civilized society, he stands at all times in need of the co-operation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few persons. In almost every other race of animals each individual, when it is grown up to maturity, is entirely independent, and in its natural state has occasion for the assistance of no other living creature. But man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favor, and show them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind, proposes

to do this. Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity, but to their self-love and never talk to them of our own necessities, but of their advantages. Nobody but a beggar chooses to depend chiefly upon the benevolence of his fellow-citizens. Even a beggar does not depend upon it entirely. The charity of well-disposed people, indeed, supplies him with the whole fund of his subsistence. But if though this principle ultimately provides him with all the necessaries of life which he has occasion for, it neither does nor can provide him with them as he has occasion for them. The greater part of his occasional wants are supplied in the same manner as those of other people, by treaty, by barter, and by purchase. With the money which one man gives him he purchases food. The old clothes which another bestows upon him he exchanges for other old clothes which suit him better, or for lodging, or for food, or for money, with which he can buy either food, clothes, or lodging, as he has occasion.

As it is by treaty, by barter, and by purchase, that we obtain from one another the greater part of those mutual good offices which we stand in need of, so it is this same trucking disposition which originally gives occasion to the division of labor.

CHAPTER III: DIVISION OF LABOR LIMITED BY EXTENT OF
THE MARKET

Capitals are increased by parsimony, and diminished by prodigality and misconduct. Whatever a person saves from his revenue he adds to his capital, and either employs it himself in maintaining an additional number of productive hands, or enables some other person to do so by lending it to him for an interest, that is, for a share of the profits. As the

8 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, edited by Edwin Cannan (London: Methuen, 1904 [public domain]).

capital of an individual can be increased only by what he saves from his annual revenue or his annual gains, so the capital of a society, which is the same with that of all the individuals who compose it, can be increased only in the same manner.

Parsimony, and not industry, is the immediate cause of the increase of capital. Industry, indeed, provides the subject which parsimony accumulates. But whatever industry might acquire, if parsimony did not save and store up, the capital would never be the greater. Parsimony, by increasing the fund which is destined for the maintenance of productive hands, tends to increase the number of those hands whose labor adds to the value of the subject upon which it is bestowed. It tends therefore to increase the exchangeable value of the annual produce of the land and labor of the country. It puts into motion an additional quantity of industry, which gives an additional value to the annual produce....

Great nations are never impoverished by private, though they sometimes are by public prodigality and misconduct. The whole, or almost the whole public revenue, is in most countries employed in maintaining unproductive hands. Such are the people who compose a numerous and splendid court, a great ecclesiastical establishment, great fleets and armies, who in time of peace produce nothing, and in time of war acquire nothing which can compensate the expense of maintaining them, even while the war lasts. Such people, as they themselves produce nothing, are all maintained by the produce of other men's labor. When multiplied to an unnecessary number, they may in a particular year consume so great a share of this produce as not to leave a sufficiency for maintaining the productive laborers, who should reproduce it next year. The next year's produce will be less than that of the foregoing, and if the same disorder should continue, that of the third year will be still less than that of the second. Those unproductive hands who should be maintained by a part only of the spare revenue of the people, may consume so great a share of their whole revenue, and thereby oblige so great a number to encroach upon their capitals, the funds destined for the maintenance of productive labor, that all the frugality and good conduct of

individuals may not be able to compensate the waste and degradation of produce occasioned by this violent and forced encroachment....

Book IV

CHAPTER II: OF RESTRAINTS UPON THE IMPORTATION FROM FOREIGN COUNTRIES OF SUCH GOODS AS CAN BE PRODUCED AT HOME

... Every individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of the society, which he has in view. But the study of his own advantage, naturally, or rather necessarily, leads him to prefer that employment which is most advantageous to the society.

I. Every individual endeavors to employ his capital as near home as he can, and consequently as much as he can in the support of domestic industry, provided always that he can thereby obtain the ordinary, or not a great deal less than the ordinary profits of stock.

Thus, upon equal or nearly equal profits, every wholesale merchant naturally prefers the home trade to the foreign trade of consumption, and the foreign trade of consumption to the carrying trade. In the home trade his capital is never so long out of his sight as it frequently is in the foreign trade of consumption. He can know better the character and situation of the person whom he trusts, and if he should happen to be deceived, he knows better the laws of the country from which he must seek redress. In the carrying trade, the capital of the merchant is, as it were, divided between two foreign countries, and no part of it is ever necessarily brought home, or placed under his own immediate view and command. The capital which an Amsterdam merchant employs in carrying corn from Konningsberg to Lisbon, and fruit and wine from Lisbon to Konningsberg, must generally be the one half of it at Konningsberg and the other half at Lisbon. No part of it need ever come to Amsterdam. The natural residence of such a merchant should either be at Konningsberg or Lisbon, and it can only be some very particular circumstances which can make him prefer the residence of Amsterdam. The uneasiness,

however, which he feels at being separated so far from his capital, generally determines him to bring part both of the Konningsberg goods which he destines for the market of Lisbon, and the Lisbon goods which he destines for that of Konningsberg, to Amsterdam, and though this necessarily subjects him to a double charge of loading and unloading, as well as to the payment of some duties and customs, yet for the sake of having some part of his capital always under his own view and command, he willingly submits to this extraordinary charge; and it is in this manner that every country which has any considerable share of the carrying trade, becomes always the emporium, or general market, for the goods of all the different countries whose trade it carries on. The merchant, in order to save a second loading and unloading, endeavors always to sell in the home market as much of the goods of all those different countries as he can, and thus, so far as he can, to convert his carrying trade into a foreign trade of consumption. A merchant, in the same manner, who is engaged in the foreign trade of consumption, when he collects goods for foreign markets, will always be glad, upon equal or nearly equal profits, to sell as great a part of them at home as he can. He saves himself the risk and trouble of exportation, when, so far as he can, he thus converts his foreign trade of consumption into a home trade. Home is in this manner the center, if I may say so, round which the capitals of the inhabitants of every country are continually circulating, and towards which they are always tending, though by particular causes they may sometimes be driven off and repelled from it toward more distant employments. But a capital employed in the home trade, it has already been shown, necessarily puts into motion a greater quantity of domestic industry, and gives revenue and employment to a greater number of the inhabitants of the country, than an equal capital employed in the foreign trade of consumption: and one employed in the foreign trade of consumption has the same advantage over an equal capital employed in the carrying trade. Upon equal or only nearly equal profits, therefore, every individual naturally inclines to employ his capital in the manner in which it is likely to afford the greatest

support to domestic industry, and to give revenue and employment to the greatest number of people of his own country.

II. Every individual who employs his capital in the support of domestic industry, necessarily endeavors so to direct that industry, that its produce may be of the greatest possible value.

The produce of industry is what it adds to the subject or materials upon which it is employed. In proportion as the value of this produce is great or small, so will likewise be the profits of the employer. But it is only for the sake of profit that any man employs a capital in the support of industry, and he will always, therefore, endeavor to employ it in the support of that industry of which the produce is likely to be of the greatest value, or to exchange for the greatest quantity either of money or of other goods.

But the annual revenue of every society is always precisely equal to the exchangeable value of the whole annual produce of its industry, or rather is precisely the same thing with that exchangeable value. As every individual, therefore, endeavors as much as he can both to employ his capital in the support of domestic industry, and so to direct that industry that its produce may be of the greatest value, every individual necessarily labors to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. By preferring the support of domestic to that of foreign industry, he intends only his own security and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good. It is an affectation, indeed, not very common among merchants, and very few words need be employed in dissuading them from it.

What is the species of domestic industry which his capital can employ, and of which the produce is likely to be of the greatest value, every individual, it is evident, can, in this local situation, judge much better than any statesman or lawgiver can do for him. The statesman, who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted to no single person, to no council or senate whatever, and would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it...

Were all nations to follow the liberal system of free exportation and free importation, the different states into which a great continent was divided would so far resemble the different provinces of a great empire. As among the different provinces of a great empire the freedom of the inland trade appears, both from reason and experience; not only the best palliative of a dearth, but the most effectual preventative of a famine; so would the freedom of the exportation and importation trade be among the different states into which a great continent was divided. The larger the continent, the easier the communication through all the different parts of it, both by land and by water, the less would any one particular part of it ever be exposed to either of these calamities: the scarcity of any one country being more likely to be relieved by the plenty of some other. But very few countries have entirely adopted this liberal system. The freedom of the corn trade is almost everywhere more or less restrained, and, in many countries, is confined by such absurd regulations, as frequently aggravate the unavoidable misfortune of a dearth into the dreadful calamity of a famine. The demand of such countries for corn may frequently become so great and so urgent, that a small state in their neighborhood, which happened at the same time to be laboring under some degree of dearth, could not venture to supply them without exposing itself to the like dreadful calamity. The very bad policy of one country may thus render it in some measure dangerous and imprudent to establish what would otherwise be the

best policy in another. The unlimited freedom of exportation would be much less dangerous in great states, in which, the growth being much greater, the supply could seldom be much affected by any quantity of corn that was likely to be exported. In a Swiss canton, or in some of the little states of Italy, it may, perhaps, sometimes be necessary to restrain the exportation of corn. In such great countries as France or England it scarce ever can. To hinder, besides, the farmer from sending his goods at all times to the best market, is evidently to sacrifice the ordinary laws of justice to an idea of public utility, to a sort of reasons of state; an act of legislative authority which ought to be exercised only, which can be pardoned only, in cases of the most urgent necessity. The price at which the exportation of corn is prohibited, if it is ever to be prohibited, ought always to be a very high price.

The laws concerning corn may everywhere be compared to the laws concerning religion. The people feel themselves so much interested in what relates either to their subsistence in this life, or to their happiness in a life to come, that government must yield to their prejudices, and, in order to preserve the public tranquility, establish that system which they approve of. It is upon this account, perhaps, that we so seldom find a reasonable system established with regard to either of those two capital objects...

The improvement and prosperity of Great Britain, which has been so often ascribed to those laws, may very easily be accounted for by other causes. That security which the laws in Great Britain give to every man, that he shall enjoy the fruits of his own labor, is alone sufficient to make any country flourish, notwithstanding these and twenty other absurd regulations of commerce; and this security was perfected by the revolution, much about the same time that the bounty was established. The natural effort of every individual to better his own condition, when suffered to exert itself with freedom and security, is so powerful a principle, that it is alone, and without any assistance, not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human

laws too often encumbers its operations; though the effect of these obstructions is always more or less either to encroach upon its freedom, or to diminish its security. In Great Britain industry is perfectly secure; and though far from being perfectly free, it is as free or freer than in any other part of Europe....

It is thus that the private interests and passions of individuals naturally dispose them to turn their stock towards the employments which in ordinary cases are most advantageous to the society. But, if from this natural preference, they should turn too much of it towards those employments, the fall of profit in them and the rise of it in all others, immediately dispose them to alter this faulty distribution. Without any intervention of law, the private interests and passions of men naturally lead them to divide and distribute the stock of every society, among all the different employments carried on in it, as nearly as possible in the proportion which is most agreeable to the interest of the whole society.

All the different regulations of the mercantile system necessarily derange more or less this natural and most advantageous distribution of stock. But those which concern the trade to America and the East Indies derange it, perhaps, more than any other; because the trade to those two great continents absorbs a greater quantity of stock than any other two branches of trade. The regulations, however, by which this derangement is effected in those two different branches of trade are not altogether the same. Monopoly is the great engine of both: but it is a different sort of monopoly. Monopoly of one kind or another seems to be the sole engine of the mercantile system.

In the trade to America every nation endeavors to engross as much as possible the whole market of its own colonies, by fairly excluding all other nations from any direct trade to them. During the greater part of the sixteenth century, the Portuguese endeavored to manage the trade of the East Indies in the same manner, by claiming the sole right of sailing in the Indian seas, on account of the merit of having first found out the road to them. The Dutch still continue to exclude all other European nations from any direct trade to their spice islands. Monopolies of this kind are evidently established against all other European nations, who are thereby not only excluded from a trade to which it might

be convenient for them to turn some part of their stock, but are obliged to buy the goods which that trade deals in somewhat dearer than if they could import them themselves directly from the countries which produce them....

But since the fall of the power of Portugal, no European nation has claimed the exclusive right of sailing in the Indian seas, of which the principal ports are now open to the ships of all European nations. Except in Portugal, however, and within these few years, in France, the trade to the East Indies has in every European country been subjected to an exclusive company. Monopolies of this kind are properly established against the very nation which erects them. The greater part of that nation are thereby not only excluded from a trade to which it might be convenient for them to turn some part of their stock, but are obliged to buy the goods which that trade deals in somewhat dearer than if it was open and free to all their countrymen. Since the establishment of the English East Indian Company, for example, the other inhabitants of England, over and above being excluded from the trade, must have paid in the price of the East India goods which they have consumed, not only for all the extraordinary profits which the company may have made upon those goods in consequence of their monopoly, but for all the extraordinary waste which the fraud and abuse, inseparable from the management of the affairs of so great a company, must necessarily have occasioned. The absurdity of this second kind of monopoly, therefore, is much more manifest than that of the first. [East India Company dissolved.]

Both these kinds of monopolies derange more or less the natural distribution of the stock of the society; but they do not always derange it in the same way.

Monopolies of the first kind always attract to the particular trade in which they are established, a greater proportion of the stock, of the society than what would go to that trade of its own accord.

Monopolies of the second kind may sometimes attract stock towards the particular trade in which they are established, and sometimes repel it from that trade according to different circumstances. In poor countries they naturally attract towards that trade more stock than would otherwise go to it. In

rich countries they naturally repel from it a good deal of stock which would otherwise go to it...

All systems either of preference or of restraint, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord. Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men. The sovereign is completely discharged from a duty, in the attempting to perform which, he must always be deposed to innumerable delusions, and for the proper performance of which no human wisdom or knowledge could ever be sufficient: the duty of superintending the industry of private people, and of directing it towards the employments most suitable to the interest of the society. According to the system of natural liberty, the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understandings: I. the duty of protecting the society from the violence and invasion of other independent societies; II. the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and III. the duty of erecting and maintaining certain public works and certain public institutions, which it can never be for the interest of any individual, or small number of individuals, to erect and maintain, because the profit could never repay the expense to any individual or small number of individuals, though it may frequently do much more than repay it to a great society...

5.8 Adam Smith: *The Theory of Moral Sentiments* (1759)⁹

Part IV

CHAPTER 1

... The earth, by these labors of mankind, has been obliged to redouble her natural fertility, and to

maintain a greater multitude of inhabitants. It is to no purpose that the proud and unfeeling landlord views his extensive fields, and without a thought for the wants of his brethren, in imagination consumes himself the whole harvest that grows upon them. The homely and vulgar proverb, that the eye is larger than the belly, never was more fully verified than with regard to him. The capacity of his stomach bears no proportion to the immensity of his desires, and will receive no more than that of the meanest peasant. The rest he is obliged to distribute among those who prepare, in the nicest manner, that little which he himself makes use of, among those who fit up the palace in which this little is to be consumed, among those who provide and keep in order all the different baubles and trinkets which are employed in the economy of greatness; all of whom thus derive from his luxury and caprice that share of the necessaries of life which they would in vain have expected from his humanity or his justice. The produce of the soil maintains at all times nearly that number of inhabitants which it is capable of maintaining. The rich only select from the heap what is most precious and agreeable. They consume little more than the poor; and in spite of their natural selfishness and rapacity, though they mean only their own conveniency, though the sole end which they propose from the labors of all the thousands whom they employ be the gratification of their own vain and insatiable desires, they divide with the poor the produce of all their improvements. They are led by an invisible hand to make nearly the same distribution of the necessaries of life which would have been made had the earth been divided into equal portions among all its inhabitants; and thus, without intending it, without knowing it, advance the interest of the society, and afford means to the multiplication of the species. When providence divided the earth among a few lordly masters, it neither forgot nor abandoned those who seemed to have been left out in the partition. These last, too, enjoy their share of all that it produces. In what constitutes the real happiness of human life, they are in no respect

9 Adam Smith, *The Theory of Moral Sentiments: Or, An Essay Towards an Analysis of the Principles by which Men Naturally Judge Concerning the Conduct and Character, First of Their Neighbours, and Afterwards of Themselves. To which is Added, a Dissertation on the Origin of Languages* (London: Henry G. Bohn, 1853 [public domain]).

inferior to those who would seem so much above them. In ease of body and peace of mind, all the different ranks of life are nearly upon a level, and the beggar, who suns himself by the side of the highway, possesses that security which kings are fighting for...

Republicanism, International Law and Global Governance

5.9 Thomas Paine: On Just Revolutionary Wars, Commerce and Republicanism (*The Rights of Man*, 1791–1792)¹⁰

... If any generation of men ever possessed the right of dictating the mode by which the world should be governed for ever, it was the first generation that existed; and if that generation did it not, no succeeding generation can show any authority for doing it, nor can set any up. The illuminating and divine principle of the equal rights of man (for it has its origin from the Maker of man) relates, not only to the living individuals, but to generations of men succeeding each other. Every generation is equal in rights to generations which preceded it, by the same rule that every individual is born equal in rights with his contemporary...

Man did not enter into society to become worst than he was before, nor to have fewer rights than he had before, but to have those rights better secured. His natural rights are the foundation of all his civil rights. But in order to pursue this distinction with more precision, it will be necessary to mark the different qualities of natural and civil rights.

A few words will explain this. Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation some natural right pre-existing in the individual, but to the enjoyment of

which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.

From this short review it will be easy to distinguish between that class of natural rights which man retains after entering into society and those which he throws into the common stock as a member of society.

The natural rights which he retains are all those in which the *power* to execute is as perfect in the individual as the right itself. Among this class, as is before mentioned, are all the intellectual rights, or rights of the mind; consequently religion is one of those rights. The natural rights which are not retained, are all those in which, though the right is perfect in the individual, the power to execute them is defective. They answer not his purpose. A man, by natural right, has a right to judge in his own cause; and so far as the right of the mind is concerned, he never surrenders it. But what availeth it him to judge, if he has not power to redress? He therefore deposits this right in the common stock of society, and takes the arm of society, of which he is a part, in preference and in addition to his own. Society *grants* him nothing. Every man is a proprietor in society, and draws on the capital as a matter of right.

From these premises two or three certain conclusions will follow:

First, That every civil right grows out of a natural right; or, in other words, is a natural right exchanged.

Secondly, That civil power properly considered as such is made up of the aggregate of that class of the natural rights of man, which becomes defective in the individual in point of power, and answers not his purpose, but when collected to a focus becomes competent to the purpose of every one.

Thirdly, That the power produced from the aggregate of natural rights, imperfect in power in the individual, cannot be applied to invade the natural rights which are retained in the individual, and

10 Thomas Paine, *Rights of Man: Being An Answer To Mr. Burke's Attack On The French Revolution* (London: J.S. Jordan, 1791–1792 [public domain]).

in which the power to execute is as perfect as the right itself.

We have now, in a few words, traced man from a natural individual to a member of society, and shown, or endeavored to show, the quality of the natural rights retained, and of those which are exchanged for civil rights. Let us now apply these principles to governments....

From the Revolutions of America and France, and the symptoms that have appeared in other countries, it is evident that the opinion of the world is changing with respect to systems of Government, and that revolutions are not within the compass of political calculations. The progress of time and circumstances, which men assign to the accomplishment of great changes, is too mechanical to measure the force of the mind, and the rapidity of reflection, by which revolutions are generated: All the old governments have received a shock from those that already appear, and which were once more improbable, and are a greater subject of wonder, than a general revolution in Europe would be now.

When we survey the wretched condition of man, under the monarchical and hereditary systems of Government, dragged from his home by one power, or driven by another, and impoverished by taxes more than by enemies, it becomes evident that those systems are bad, and that a general revolution in the principle and construction of Governments is necessary.

What is government more than the management of the affairs of a Nation? It is not, and from its nature cannot be, the property of any particular man or family, but of the whole community, at whose expense it is supported; and though by force and contrivance it has been usurped into an inheritance, the usurpation cannot alter the right of things. Sovereignty, as a matter of right, appertains to the Nation only, and not to any individual; and a Nation has at all times an inherent indefensible right to abolish any form of Government it finds inconvenient, and to establish such as accords with its interest, disposition and happiness. The romantic and barbarous distinction of men into Kings and subjects, though it may suit the condition of courtiers, cannot that of citizens; and is

exploded by the principle upon which Governments are now founded. Every citizen is a member of the Sovereignty, and, as such, can acknowledge no personal subjection; and his obedience can be only to the laws.

When men think of what Government is, they must necessarily suppose it to possess a knowledge of all the objects and matters upon which its authority is to be exercised. In this view of Government, the republican system, as established by America and France, operates to embrace the whole of a Nation; and the knowledge necessary to the interest of all the parts is to be found in the center, which the parts by representation form: But the old Governments are on a construction that excludes knowledge as well as happiness; Government by Monks, who knew nothing of the world beyond the walls of a Convent, is as consistent as government by Kings.

What were formerly called Revolutions were little more than a change of persons, or an alteration of local circumstances. They rose and fell like things of course, and had nothing in their existence or their fate that could influence beyond the spot that produced them. But what we now see in the world, from the Revolutions of America and France, are a renovation of the natural order of things, a system of principles as universal as truth and the existence of man, and combining moral with political happiness and national prosperity.

“I. Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.

“II. The end of all political associations is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

“III. The nation is essentially the source of all sovereignty; nor can any INDIVIDUAL, or ANY BODY OF MEN, be entitled to any authority which is not expressly derived from it.”

In these principles, there is nothing to throw a Nation into confusion by inflaming ambition.

They are calculated to call forth wisdom and abilities, and to exercise them for the public good, and not for the emolument or aggrandisement of particular descriptions of men or families. Monarchical sovereignty, the enemy of mankind, and the source of misery, is abolished; and the sovereignty itself is restored to its natural and original place, the Nation. Were this the case throughout Europe, the cause of wars would be taken away.

It is attributed to Henry the Fourth of France, a man of enlarged and benevolent heart, that he proposed, about the year 1610, a plan for abolishing war in Europe. The plan consisted in constituting an European Congress, or as the French authors style it, a Pacific Republic; by appointing delegates from the several Nations who were to act as a Court of arbitration in any disputes that might arise between nation and nation.

Had such a plan been adopted at the time it was proposed, the taxes of England and France, as two of the parties, would have been at least ten millions sterling annually to each Nation less than they were at the commencement of the French Revolution.

To conceive a cause why such a plan has not been adopted (and that instead of a Congress for the purpose of *preventing* war, it has been called only to *terminate* a war, after a fruitless expense of several years) it will be necessary to consider the interest of Governments as a distinct interest to that of Nations.

Whatever is the cause of taxes to a Nation, becomes also the means of revenue to Government. Every war terminates with an addition of taxes, and consequently with an addition of revenue; and in any event of war, in the manner they are now commenced and concluded, the power and interest of Governments are increased. War, therefore, from its productiveness, as it easily furnishes the pretense of necessity for taxes and appointments to places and offices, becomes a principal part of the system of old Governments; and to establish any mode to abolish war, however advantageous it might be to Nations, would be to take from such Government the most lucrative of its branches. The frivolous

matters upon which war is made, show the disposition and avidity of Governments to uphold the system of war, and betray the motives upon which they act.

Why are not Republics plunged into war, but because the nature of their Government does not admit of an interest distinct from that of the Nation? Even Holland, though an ill-constructed Republic, and with a commerce extending over the world, existed nearly a century without war: and the instant the form of Government was changed in France, the republican principles of peace and domestic prosperity and economy arose with the new Government; and the same consequences would follow the cause in other Nations.

As war is the system of Government on the old construction, the animosity which Nations reciprocally entertain, is nothing more than what the policy of their Governments excites to keep up the spirit of the system. Each Government accuses the other of perfidy, intrigue, and ambition, as a means of heating the imagination of their respective Nations, and incensing them to hostilities. Man is not the enemy of man, but through the medium of a false system of Government. Instead, therefore, of exclaiming against the ambition of Kings, the exclamation should be directed against the principle of such Governments; and instead of seeking to reform the individual, the wisdom of a Nation should apply itself to reform the system.

Whether the forms and maxims of Governments which are still in practice, were adapted to the condition of the world at the period they were established, is not in this case the question. The older they are, the less correspondence can they have with the present state of things. Time, and change of circumstances and opinions, have the same progressive effect in rendering modes of Government obsolete as they have upon customs and manners. Agriculture, commerce, manufactures, and the tranquil arts, by which the prosperity of Nations is best promoted, require a different system of Government, and a different species of knowledge to direct its operations, than what might have been required in the former condition of the world.

As it is not difficult to perceive, from the enlightened state of mankind, that hereditary Governments are verging to their decline, and that Revolutions on the broad basis of national sovereignty and Government by representation, are making their way in Europe, it would be an act of wisdom to anticipate their approach, and produce Revolutions by reason and accommodation, rather than commit them to the issue of convulsions.

From what we now see, nothing of reform in the political world ought to be held improbable. It is an age of Revolutions, in which everything may be looked for. The intrigue of Courts, by which the system of war is kept up, may provoke a confederation of Nations to abolish it and an European Congress to patronize the progress of free Government, and promote the civilization of Nations with each other, is an event nearer in probability, than once were the revolutions and alliance of France and America.

5.10 Maximilien de Robespierre: *On Revolutionary Government (1793)*¹¹

Citizen Representatives of the People,

... We shall first outline the principles and the needs underlying the creation of a revolutionary government; next we shall expound the cause that threatens to throttle it at birth.

The theory of revolutionary government is as new as the Revolution that created it. It is as pointless to seek its origins in the books of the political theorists, who failed to foresee this revolution, as in the laws of the tyrants, who are happy enough to abuse their exercise of authority without seeking out its legal justification. And so this phrase is for the aristocracy a mere subject of terror or a term of slander, for tyrants an outrage and for many an enigma. It behooves us to explain it to all in order that we may rally good citizens, at least, in support of the principles governing the public interest.

It is the function of government to guide the moral and physical energies of the nation toward the purposes for which it was established. The object of constitutional government is to preserve the Republic; the object of revolutionary government is to establish it.

Revolution is the war waged by liberty against its enemies; a constitution is that which crowns the edifice of freedom once victory has been won and the nation is at peace.

The revolutionary government has to summon extraordinary activity to its aid precisely because it is at war. It is subjected to less binding and less uniform regulations, because the circumstances in which it finds itself are tempestuous and shifting, above all because it is compelled to deploy, swiftly and incessantly, new resources to meet new and pressing dangers.

The principal concern of constitutional government is civil liberty; that of revolutionary government, public liberty. Under a constitutional government little more is required than to protect the individual against abuses by the state, whereas revolutionary government is obliged to defend the state itself against the factions that assail it from every quarter.

To good citizens revolutionary government owes the full protection of the state; to the enemies of the people it owes only death.

These ideas are in themselves sufficient to explain the origin and the nature of the laws that we term revolutionary. Those who call them arbitrary or tyrannical are foolish or perverse sophists who seek to reconcile white with black and black with white: they prescribe the same system for peace and war, for health and sickness; or rather their only object is to resurrect tyranny and to destroy the fatherland. When they invoke the literal application of constitutional principles, it is only to violate them with impunity. They are cowardly assassins who, in order to strangle the Republic in its infancy without danger to themselves, try to throttle it with

11 Maximilien de Robespierre, excerpts from *Robespierre*, edited by George Rudé (Englewood Cliffs, N.J.: Prentice-Hall, 1967). This speech was delivered on December 4, 1793.

vague maxims which they have no intention of observing...

The task of firmly establishing the French Republic is not a child's game. It cannot be the work of indifference or idle fancy, nor can it be the chance outcome of the impact of all the rival claims of individuals or of all the revolutionary interests and groups. It took wisdom as well as power to create the universe. By handing over to men drawn from your own ranks the formidable task of continuously watching over the destinies of France, you have assumed the obligation of lending them the full support of your confidence and strength. If the revolutionary government is not sustained by the energy, intelligence, patriotism and good will of all the people's representatives, how will it summon up the strength to meet and defeat that arrayed against it by Europe's invading armies and by all the enemies of liberty who are pressing in on every side?

Woe unto us if we open our minds to the treacherous insinuations of our enemies, whose only hope of victory lies in our division. Woe unto us if we break the bond of union instead of knitting it more closely and if we allow private interest or injured vanity to guide us rather than fatherland and truth.

Thanks to five years of treason and tyranny, thanks to our credulity and lack of foresight and to the pusillanimity that followed too brief an exercise of vigor, Austria and England, Russia, Prussia and Italy have had time to set up in our country a secret government to challenge the authority of our own. They have also their committees, their treasury and their undercover agents. This government assumes whatever strength we deny to ours; it has the unity which ours has lacked, the policies that we have been too often willing to forego, the sense of continuity and concert whose need we have too often failed to appreciate...

With these aims in view, we propose the following decree:¹²

The National Convention decrees: ...

Article II. The Committee of Public Safety shall, without delay, present its report on the means proposed to improve the organization of the Revolutionary Tribunal.

Article III. The benefits and rewards granted by earlier decrees to the defenders of the country wounded in its defense, or to their widows or children, are increased by one third.

Article IV. There shall be established a commission with the task of assuring to them the enjoyment of the rights provided by the law...

5.11 Immanuel Kant: On Republican Peace and Cosmopolitan Order (*Perpetual Peace*, 1795)¹³

First Definitive Article of a Perpetual Peace:

THE CIVIL CONSTITUTION OF EVERY STATE SHALL BE REPUBLICAN.

A *republican constitution* is founded upon three principles: firstly, the principle of *freedom* for all members of a society (as men); secondly, the principle of the *dependence* of everyone upon a single common legislation (as subjects); and thirdly, the principle of legal *equality* for everyone (as citizens). It is the only constitution which can be derived from the idea of an original contract, upon which all rightful legislation of a people must be founded. Thus as far as right is concerned, republicanism is in itself the original basis of every kind of civil constitution, and it only remains to ask whether it is the only constitution which can lead to a perpetual peace.

The republican constitution is not only pure in its origin (since it springs from the pure concept of right); it also offers a prospect of attaining the desired result, i.e. a perpetual peace, and the reason for this is as follows—If, as is inevitably the case under this constitution, the consent of the citizens is required to decide whether or not war is to

12 The proposed decree has been adopted by the National Convention.

13 Immanuel Kant, *Perpetual Peace and The Metaphysics of Morals*. In *Kant: Political Writings*, translated by H. B. Nisbet, edited by H. S. Reiss (Cambridge: Cambridge University Press, 1991).

be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise. For this would mean calling down on themselves all the miseries of war, such as doing the fighting themselves, supplying the costs of the war from their own resources, painfully making good the ensuing devastation, and, as the crowning evil, having to take upon themselves a burden of debt which will embitter peace itself and which can never be paid off on account of the constant threat of new wars. But under a constitution where the subject is not a citizen, and which is therefore not republican, it is the simplest thing in the world to go to war. For the head of state is not a fellow citizen, but the owner of the state, and a war will not force him to make the slightest sacrifice so far as his banquets, hunts, pleasure palaces and court festivals are concerned. He can thus decide on war, without any significant reason, as a kind of amusement, and unconcernedly leave it to the diplomatic corps (who are always ready for such purposes) to justify the war for the sake of propriety...

5.12 Immanuel Kant: On Republican Peace and Cosmopolitan Order (*The Metaphysics of Morals*, 1797)¹⁴

Section I. The Right of a State

§46

The legislative power can belong only to the united will of the people. For since all right is supposed to emanate from this power, the laws it gives must be absolutely incapable of doing anyone an injustice. Now if someone makes dispositions for another person, it is always possible that he may thereby do him an injustice, although this is never possible in the case of decisions he makes for himself (for *volenti non fit iniuria*). Thus only the unanimous and combined will of everyone whereby each decides the same for all and all decide the same for each — in other words, the general united will of the people — can legislate.

The members of such a society (*societas civilis*) or state who unite for the purpose of legislating are known as *citizens* (*cives*), and the three rightful attributes which are inseparable from the nature of a citizen as such are as follows: firstly, lawful *freedom* to obey no law other than that to which he has given his consent; secondly, civil *equality* in recognizing no-one among the people as superior to himself, unless it be someone whom he is just as morally entitled to bind by law as the other is to bind him; and thirdly, the attribute of civil *independence* which allows him to owe his existence and sustenance not to the arbitrary will of anyone else among the people, but purely to his own rights and powers as a member of the commonwealth (so that he may not, as a civil personality, be represented by anyone else in matters of right).

Fitness to vote is the necessary qualification which every citizen must possess. To be fit to vote, a person must have an independent position among the people. He must therefore be not just a part of the commonwealth, but a member of it; i.e. he must by his own free will actively participate in a community of other people. But this latter quality makes it necessary to distinguish between the *active* and the *passive* citizen, although the latter concept seems to contradict the definition of the concept of a citizen altogether. The following examples may serve to overcome this difficulty. Apprentices to merchants or tradesmen, servants who are not employed by the state, minors (*naturaliter vel civiliter*), women in general and all those who are obliged to depend for their living (i.e. for food and protection) on the offices of others (excluding the state) — all of these people have no civil personality, and their existence is, to speak, purely inherent. The woodcutter whom I employ on my premises; the blacksmith in India who goes from house to house with his hammer, anvil and bellows to do work with iron, as opposed to the European carpenter or smith who can put the products of his work up for public sale; the domestic tutor as opposed to the academic, the tithe-holder as opposed to the farmer; and so

14 Immanuel Kant, *Perpetual Peace and The Metaphysics of Morals*. In *Kant: Political Writings*, translated by H.B. Nisbet, edited by H.S. Reiss (Cambridge: Cambridge University Press, 1991).

on — they are all mere auxiliaries to the commonwealth, for they have to receive orders or protection from other individuals, so that they do not possess civil independence.

This dependence upon the will of others and consequent inequality does not, however, in any way conflict with the freedom and equality of all men as *human beings* who together constitute a people. On the contrary, it is only by accepting these conditions that such a people can become a state and enter into a civil constitution. But all are not equally qualified within this constitution to possess the right to vote, i.e. to be citizens and not just subjects among other subjects. For from the fact that as passive members of the state, they can demand to be treated by all others in accordance with laws of natural freedom and equality, it does not follow that they also have a right to influence or organize the state itself as active members, or to co-operate in introducing particular laws. Instead, it only means that the positive laws to which the voters agree, of whatever sort they may be, must not be at variance with the natural laws of freedom and with the corresponding equality of all members of the people whereby they are allowed to work their way up from their passive condition to an active one....

C

Indirectly, i.e. in so far as he takes the duty of the people upon himself, the supreme commander has the right to impose taxes upon the people for their own preservation, e.g. for the *care of the poor*, for *foundling hospitals* and *church activities*, or for what are otherwise known as charitable or pious institutions.

For the general will of the people has united to form a society which must constantly maintain itself, and to this end, it has subjected itself to the internal power of the state so as to preserve those members of the society who cannot do so themselves. The nature of the state thus justifies the government in compelling prosperous citizens to provide the means of preserving those who are unable to provide themselves with even the most rudimentary necessities of nature. For since their existence itself is an act of submission to the

protection of the commonwealth and to the care it must give them to enable them to live, they have committed themselves in such a way that the state has a right to make them contribute their share to maintaining their fellow citizens. This may be done by taxing the citizens' property or their commercial transactions, or by instituting funds and using the interest from them — not for the needs of the state (for it is rich), but for the needs of the people. The contributions should not be *purely* voluntary (for we are here concerned only with the *rights* of the state as against subjects), they must in fact be compulsory political impositions. Some voluntary contributions such as lotteries, which are made from profit-seeking motives, should not be permitted, since they create greater than usual numbers of poor who become a danger to public property.

It might at this point be asked whether the poor ought to be provided for by *current contributions* so that each generation would support its own members, or by gradually accumulated *capital funds* and *pious foundations* at large (such as widows' homes, hospitals, etc.). Funds must certainly not be raised by begging, which has close affinities with robbery, but by lawful taxation. The first arrangement (that of current contributions) must be considered the only one appropriate to the rights of the state, for no-one who wishes to be sure of his livelihood can be exempt from it. These contributions increase with the numbers of poor, and they do not make poverty a means of support for the indolent (as is to be feared in the case of pious foundations), so that the government need not impose an *unjust* burden on the people....

Section II: International Right

§ 55

If we consider the original right of free states in the state of nature to make war upon one another (for example, in order to bring about a condition closer to that governed by right), we must first ask what right the state has *as against its own subjects* to employ them in a war on other states, and to expend or hazard their possessions or even their lives in the

process. Does it not then depend upon their own judgment whether they wish to go to war or not? May they simply be sent thither at the sovereign's supreme-command?

This right might seem an obvious consequence of the right to do what one wishes with one's own property. Whatever someone has himself substantially *made* is his own undisputed property....

Now one can say that vegetables (e.g. potatoes) and domestic animals, in quantity at least, are *made* by human beings, and that they may therefore be used, expended or consumed (i.e. killed) at will. One might therefore appear justified in saying that the supreme power in the state, the sovereign, has the right to lead his subjects to war as if on a hunt, or into battle as if on an excursion, simply because they are for the most part produced by the sovereign himself.

But while this legal argument (of which monarchs are no doubt dimly aware) is certainly valid in the case of animals, which can be the *property* of human beings, it is absolutely impermissible to apply it to human beings themselves, particularly in their capacity as citizens. For a citizen must always be regarded as a co-legislative member of the state (i.e. not just as a means, but also as an end in himself), and he must therefore give his free consent through his representatives not only to the waging of war in general, but also to every particular declaration of war. Only under this limiting condition may the state put him to service in dangerous enterprises.

We shall therefore have to derive the right under discussion from the *duty* of the sovereign towards the people, not vice versa. The people must be seen to have given their consent to military action, and although they remain passive in this capacity (for they allow themselves to be directed) they are still acting spontaneously and they represent the sovereign himself....

§ 57

The most problematic task in international right is that of determining rights in wartime. For it is very difficult to form any conception at all of such rights and to imagine any law whatsoever in this lawless

state without involving oneself in contradictions (*inter arma silent leges*). The only possible solution would be to conduct the war in accordance with principles which would still leave the states with the possibility of abandoning the state of nature in their external relations and of entering a state of right.

No war between independent states can be a *punitive* one (*bellum punitivum*). For a punishment can only occur in a relationship between a superior (*imperantis*) and a subject (*subditum*), and this is not the relationship which exists between states. Nor can there be a *war of extermination* (*bellum internecium*) or a *war of subjugation* (*bellum subiugatorium*); for these would involve the moral annihilation of a state, and its people would either merge with those of the victorious state or be reduced to bondage. Not that this expedient, which a state might resort to in order to obtain peace, would in itself contradict the rights of a state. But the fact remains that the only concept of antagonism which the idea of international right includes is that of an antagonism regulated by principles of external freedom. This requires that violence be used only to preserve one's existing property, but not as a method of further acquisition; for the latter procedure would create a threat to one state by augmenting the power of another.

The attacked state is allowed to use any means of defense except those whose use would render its subjects unfit to be citizens. For if it did not observe this condition, it would render itself unfit in the eyes of international right to function as a person in relation to other states and to share equal rights with them. It must accordingly be prohibited for a state to use its own subjects as spies, and to use them, or indeed foreigners, as poisoners or assassins (to which class the so-called sharpshooters who wait in ambush on individual victims also belong), or even just to spread false reports. In short, a state must not use such treacherous methods as would destroy that confidence which is required for the future establishment of a lasting peace.

It is permissible in war to impose levies and contributions on the conquered enemy, but not to plunder the people, i.e. to force individual persons to part with their belongings (for this would be robbery, since it was not the conquered people who waged

the war, but the state of which they were subjects which waged it *through them*). Bills of receipt should be issued for any contributions that are exacted, so that the burden imposed on the country or province can be distributed proportionately when peace is concluded.

§ 58

The right which applies *after* a war, i.e. with regard to the peace treaty at the time of its conclusion and also to its later consequences, consists of the following elements. The victor sets out the conditions, and these are drawn up in a *treaty* on which agreement is reached with the defeated party in order that peace may be concluded. A treaty of this kind is not determined by any pretended right which the victors possess over his opponent because of an alleged injury the latter has done him; the victor should not concern himself with such questions, but should rely only on his own power for support. Thus he cannot claim compensation for the costs of war, for he would then have to pronounce his opponent unjust in waging it. And even if this argument should occur to him, he could not make use of it, or else he would have to maintain that the war was a punitive one, which would in turn mean that he had committed an offense in waging it himself. A peace treaty should also provide for the exchange of prisoners without ransom, whether the numbers on both sides are equal or not.

The vanquished state and its subjects cannot forfeit their civil freedom through the conquest of the country. Consequently, the former cannot be degraded to the rank of a colony or the latter to the rank of bondsmen. Otherwise, the war would have been a punitive one, which is self-contradictory....

It is even less possible to infer the rightful existence of *slavery* from the military conquest of a people, for one would then have to assume that the war had been a punitive one. Least of all would this justify hereditary slavery, which is completely absurd, for the guilt of a person's crime cannot be inherited.

It is implicit in the very concept of a peace treaty that it includes an *amnesty*.

§ 59

The *rights of peace* are as follows: firstly, the right to remain at peace when nearby states are at war (i.e. the right of *neutrality*); secondly, the right to secure the continued maintenance of peace once it has been concluded (i.e. the right of *guarantee*); and thirdly, the right to form *alliances* or confederate leagues of several states for the purpose of communal defense against any possible attacks from internal or external sources — although these must never become leagues for promoting aggression and internal expansion.

§ 60

The rights of a state against an *unjust enemy* are unlimited in quantity or degree, although they do have limits in relation to quality. In other words, while the threatened state may not employ *every* means to assert its own rights, it may employ an intrinsically permissible means to whatever degree its own strength allows. But what can the expression of “an unjust enemy” mean in relation to the concepts of international right, which requires that every state should act as judge of its own cause just as it would do in a state of nature? It must mean someone whose publicly expressed will, whether expressed in word or in deed, displays a maxim which would make peace among nations impossible and would lead to a perpetual state of nature if it were made into a general rule. Under this heading would come violations of public contracts, which can be assumed to affect the interests of all nations. For they are a threat to their freedom, and a challenge to them to unite against such misconduct and to deprive the culprit of the power to act in a similar way again. But this does *not* entitle them to *divide up the offending state among themselves* and to make it disappear, as it were, from the face of the earth. For this would be an injustice against the people, who cannot lose their original right to unite into a commonwealth. They can only be made to accept a new constitution of nature that is unlikely to encourage their warlike inclinations.

Besides, the expression “an unjust enemy” is a *pleonasm* if applied to any situation in a state of nature, for this state is itself one of injustice.

A just enemy would be one whom I could not resist without injustice. But if this were so, he would not be my enemy in any case.

§ 61

Since the state of nature among nations (as among individual human beings) is a state which one ought to abandon in order to enter a state governed by law, all international rights, as well as all the external property of states such as can be acquired or preserved by war, are purely *provisional* until the state of nature has been abandoned. Only within a universal *union of states* (analogous to the union through which a nation becomes a state) can such rights and property acquire *peremptory* validity and a true *state of peace* be attained. But if an international state of this kind extends over too wide an area of land, it will eventually become impossible to govern it and thence to protect each of its members, and the multitude of corporations this would require must again lead to a state of war. It naturally follows that *perpetual peace*, the ultimate end of all international alliances designed to *approach* the idea itself by a continual process, are not impracticable. For this is a project based upon duty, hence also upon the rights of man and of states, and it can indeed be put into execution.

Such a *union of several states* designed to preserve peace may be called a *permanent congress of states*, and all neighboring states are free to join it. A congress of this very kind (at least as far as the formalities of international right in relation to the preservation of peace are concerned) found expression in the assembly of the States General at The Hague in the first half of this century. To this assembly, the ministers of most European courts and even of the smallest republics brought their complaints about any aggression suffered by one of their number at the hands of another. They thus thought of all Europe as a single federated state, which they accepted as an arbiter in all their public disputes. Since then, however, international right has disappeared from cabinets, surviving only in books, or it has been consigned to the obscurity of the archives as a form of empty deduction after violent measures have already been employed.

In the present context, however, a *congress* merely signifies a voluntary gathering of various states which can be *dissolved* at any time, not an association which, like that of the American states, is based on a political constitution and is therefore indissoluble. For this is the only means of realizing the idea of public international right as it ought to be instituted, thereby enabling the nations to settle their disputes in a civilized manner by legal proceedings, not in a barbaric manner (like that of the savages) by acts of war.

Section III: Cosmopolitan Right

§ 62

The rational idea, as discussed above, of a *peaceful* (if not exactly amicable) international community of all those of the earth's peoples who can enter into active relations with one another, is not a philanthropic principle of ethics, but a principle of *right*. Through the spherical shape of the planet they inhabit (*globus terraqueus*), nature has confided them all within an area of definite limits. Accordingly, the only conceivable way in which anyone can possess habitable land on earth is by possessing a part within a determinate whole in which everyone has an original right to share. Thus all nations are *originally* members of a community of the land. But this is not a *legal community* of possession (*communio*) and utilization of the land, nor a community of ownership. It is a community of reciprocal action (*commercium*) which is physically possible, and each member of it accordingly has constant relations with all the others. Each may offer to have commerce with the rest, and they all have a right to make such overtures without being treated by foreigners as enemies. This right, in so far as it affords the prospect that all nations may unite for the purpose of creating certain universal laws to regulate the intercourse they may have with one another, may be termed *cosmopolitan* (*ius cosmopoliticum*).

The oceans may appear to cut nations off from the community of their fellows. But with the art of navigation, they constitute the greatest natural incentive to international commerce, and the greater the number of neighboring coastlines

there are (as in the Mediterranean), the livelier this commerce will be. Yet these visits to foreign shores, and even more so, attempts to settle on them with a view to linking them with the motherland, can also occasion evil and violence in one part of the globe with ensuing repercussions which are felt everywhere else. But although such abuses are possible, they do not deprive the world's citizens of the right to *attempt* to enter into a community with everyone else and to visit all regions of the earth with this intention. This does not, however, amount to a right to settle on another nation's territory (*ius incolatus*), for the latter would require a special contract.

But one might ask whether a nation may establish a *settlement alongside another nation* (*accolatus*) in newly discovered regions, or whether it may take possession of land in the vicinity of a nation which has already settled in the same area, even without the latter's consent. The answer is that the right to do so is incontestable, so long as such settlements are established sufficiently far away from the territory of the original nation for neither party to interfere with the other in their use of the land. But if the nations involved are pastoral or hunting peoples (like the Hottentots, the Tunguses, and most native American nations) who rely upon large tracts of wasteland for their sustenance, settlements should not be established by violence, but only by treaty; and even then, there must be no attempt to exploit the ignorance of the natives in persuading them to give up their territories. Nevertheless, there are plausible enough arguments for the use of violence on the grounds that it is in the best interests of the world as a whole. For on the one hand, it may bring culture to uncivilized peoples (this is the excuse with which even Busching tries to extenuate the bloodshed which accompanied the introduction of Christianity into Germany); and on the other, it may help us to purge our country of depraved characters, at the same time affording the hope that they or their offspring will become reformed in another continent (as in New Holland). But all these supposedly good intentions cannot wash away the stain of injustice from the means which are used to implement them. Yet one might object that the whole world would

perhaps still be in a lawless condition if men had had any such compunction about using violence when they first created a law-governed state. But this can as little annul the above condition of right as can the plea of political revolutionaries that the people are entitled to reform constitutions by force if they have become corrupt, and to act completely unjustly for once and for all, in order to put justice on a more secure basis and ensure that it flourishes in the future.

Conclusion

... Now, moral-practical reason within us pronounces the following irresistible veto: *There shall be no war*, either between individual human beings in the state of nature, or between separate states, which, although internally law-governed, still live in a lawless condition in their external relationships with one another. For war is not the way in which anyone should pursue his rights. Thus it is no longer a question of whether perpetual peace is really possible or not, or whether we are not perhaps mistaken in our theoretical judgment if we assume that it is. On the contrary, we must simply act as if it could really come about which is perhaps impossible, and turn our efforts towards realizing it and towards establishing that constitution which seems most suitable for this purpose (perhaps that of republicanism in all states, individually and collectively). By working towards this end, we may hope to terminate the disastrous practices of war, which up till now has been the main object to which all states, without exception, have accommodated their internal institutions. And even if the fulfillment of this pacific intention were forever to remain a pious hope, we should still not be deceiving ourselves if we made it our maxim to work unceasingly towards it, for it is our duty to do so. To assume, on the other hand, that the moral law within us might be misleading, would give rise to the execrable wish to dispense with all reason and to regard ourselves, along with our principles, as subject to the same mechanism of nature as the other animal species.

It can indeed be said that this task of establishing a universal and lasting peace is not

just a part of the theory of right within limits of pure reason, but its entire ultimate purpose. For the condition of peace is the only state in which the property of a large number of people living together as neighbors under a single constitution can be guaranteed by laws. The rule on which this constitution is based must not simply be derived from the experience of those who have hitherto fared best under it, and then set up as a norm for others. On the contrary, it should be derived *a priori* by reason from the absolute ideal of a rightful association of men under public laws. For all particular examples are deceptive (an example can only illustrate a point, but does not prove anything), so that one must have recourse to metaphysics. And even those who scorn metaphysics admit its necessity involuntarily when they say, for example (as they

often do): “The best constitution is that in which the power rests with laws instead of with men.” For what can be more metaphysically sublime than this idea, although by admission of those who express it, it also has a well-authenticated objective reality which can easily be demonstrated from particular instances as they arise. But no attempt should be made to put it into practice overnight by revolution, i.e., by forcibly overthrowing a defective constitution which has existed in the past; for there would then be an interval of time during which the condition of right would be nullified. If we try instead to give it reality by means of gradual reforms carried out in accordance with definite principles, we shall see that it is the only means of continually approaching the supreme political good — perpetual peace.

6. HUMAN RIGHTS FOR WHOM?

Those who were marginalized from the political and economic process would eventually challenge their exclusion from prevailing conceptions of universal human rights. Despite Kant's effort to defend universal collective responsibility to protect the needy from economic hardship, he entrusted, in the revolutionary spirit of his time, only "active citizens" – i.e., property-holding males – with the right to vote, as opposed to "passive citizens" – i.e., all females and men without property. The question of who constitutes an active citizen was the subject of great debates and social upheavals throughout the Enlightenment and beyond. The indigenous populations of the European colonies, African slaves, the propertyless, women, Jews (among other religious minorities), and their defenders would demand their full-fledged rights under the transforming rainbow of universalism.

The fate of Native Americans had already alarmed a Spanish Dominican missionary in the Americas, Bartolomé de Las Casas (1474–1566), the first European to expose the oppression of the Indians by the Europeans, as he called for the abolition of Indian slavery. In his *Defense of the Indians* (c. 1548), addressed to Charles V, the emperor of Spain, Las Casas argued against theologian and royal historian Ginés de Sepúlveda's defense of the enslavement of American Indians. Challenging Sepúlveda's belief that Indians were wicked, he pointed out that "if such a huge part of mankind is barbaric, it would follow that God's design has for the most part been ineffective." Following Aristotelian thought and Evangelical faith, he asserted the ability of all of God's creatures to reason and to be brought gently to Christianity. Las Casas advanced a view of Christianity that supports human emancipation (see Section 6.2).

The same sentiments prevailed in Hugo Grotius's *The Law of War and Peace* (1625). There, he affirmed the rights of strangers and refugees – rights that would later be embodied in the Universal Declaration of Human Rights and other international legal documents. "It ought to be permissible, for those who pass through a country, by water or by land," wrote Grotius, "to sojourn for a time, for the sake of health, or for any other good reasons." Moreover, "those who have been driven from their homes" have the right to acquire a permanent residence in another country, in submission to the government there (see Section 6.3).

Strangers and refugees, and particularly former slaves, were hardly welcome even in countries like England, known for its relatively liberal laws. Olaudah Equiano, a.k.a. Gustavus Vassa (1745–1797), wrote in *Interesting Narrative* (1789) about his continuing ill treatment both as a former slave and as a stranger on English soil. His ability to convey with eloquence the horrendous condition of slaves on slave ships and plantations, deeply moved a section of English society and helped galvanize the antislavery cause (see Section 6.4).

The case against slavery was also strengthened by the purely economic argument offered by Adam Smith in his *Wealth of Nations* (1776). For Smith, emancipating both slaves and serfs and allowing them to acquire property would increase their productivity. “A slave... who can acquire nothing but his maintenance,” explained Smith, “consults his own ease by making the land produce as little as possible over and above that maintenance.” With a similar logic, he argued against the tithe (the landlords’ tax imposed on serfs to cultivate their lands) as nothing more than a “great hindrance” to productivity (see Section 6.5).

Despite the progress of the French Revolution in this regard, new taxes or property requirements were imposed on male citizens (the only sex eligible to be considered active citizens) as a prerequisite for visiting or holding public office. Maximilien de Robespierre was one of the first during the Enlightenment to defend universal male suffrage without such a sine qua non. In a speech to the National Convention in September 1791, Robespierre argued that the rights attached to citizens “do not depend on the fortune that each man possesses, or on the amount of tax for which he is assessed, because it is not taxes that make us citizens: citizenship merely obliges a man to contribute to public expenditure in proportion to his means” (see Section 6.6).

Despite setbacks, the French Revolution recognized foreigners who fought for the French republic as citizens. In this spirit, Immanuel Kant in *Perpetual Peace* (1795) was ready to go further, recognizing that it was time to entertain a right to hospitality. In this matter, he argued that strangers on foreign soil should not be seen as hostile but should be able to claim a right to open visitation (see Section 6.7).

The French playwright and pamphleteer Olympe de Gouges (1748–1793) criticized the French Declaration of the Rights of Man and the Citizen for its exclusion of women’s rights and concerns. In her 1790 “Declaration of the Rights of Women,” addressed to Queen Marie-Antoinette, whom she had hoped to convert to the women’s cause, de Gouges asserted women’s natural rights as equal to the rights that male citizens enjoyed in the 1789 Declaration. At a time when women were still viewed as passive citizens, dependent socially and economically on men, she added special provisions to protect them (e.g., the requirement that fathers recognize their children, and various other protections to be secured by the state for unmarried women). Opposed to the execution of Louis XVI, she herself was guillotined in 1793 (see Section 6.8).

A close observer and commentator of the French Revolution, the English writer Mary Wollstonecraft (1759–1797) brought de Gouges’ fight to Great Britain. Wollstonecraft’s essays in *A Vindication of the Rights of Woman* (1792) were passionate and insightful pleas for educational, social, and political equality for women. Focusing on the limited opportunities afforded middle class women, she deplored their dependence upon their husbands, their acquisition of manners rather than morals, and the requirements that they remain innocent and blindly submit to authority. It was essential for women, explained Wollstonecraft, to strengthen their minds and moral sense of responsibility through public co-education. Like men, they should be exposed to more challenging intellectual and professional activities (including political ones). In short, she concludes: “Make women rational creatures and free citizens, and they will become good wives and mothers – that is, if men do not neglect the duties of husbands and fathers” (see Section 6.9).

The Jews (or at least male Jews) would fare better than women in the law. Amidst heated opposition to the emancipation of Jews, Adrien Duport made a speech to the National Assembly in 1791 to persuade his colleagues that the Jewish question should not be a special issue, particularly after “having declared ... how all peoples of the earth could become French citizens and how all French citizens could become active citizens.” Duport’s motion to allow Jews to become active citizens was passed on September 27, 1791, making France the first country to emancipate its Jewish population (see Section 6.10). For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 2.

6.1 United Nations: Universal Declaration of Human Rights (1948), Articles 2 and 4¹

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, non-self-governing or under any other limitation of sovereignty.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

6.2 Bartolomé de Las Casas (*In Defense of the Indians*, c. 1548)²

Illustrious Prince:

... I have thought advisable to bring to the attention of Your Highness that there has come into my hands a certain brief synopsis in Spanish of a work that Ginés de Sepúlveda is reported to have written in Latin. In it he gives four reasons, each of which, in his opinion, proves beyond refutation that war against the Indians is justified, provided that it be waged properly and the laws of war be observed, just as, up to the present, the kings of Spain have commanded that it be waged and carried out....

If Sepúlveda's opinion (that campaigns against the Indians are lawful) is approved, the most holy faith of Christ, to the reproach of the name Christian, will be hateful and detestable

to all the peoples of that world to whom the word will come of the inhuman crimes that the Spaniards inflict on that unhappy race, so that neither in our lifetime nor in the future will they want to accept our faith under any condition, for they see that its first heralds are not pastors but plunderers, not fathers but tyrants, and that those who profess it are ungodly, cruel, and without pity in their merciless savagery....

For now, as a sort of assault on the first argument for Sepúlveda's position, we should recognize that there are four kinds of barbarians, according to the Philosopher in Books 1 and 3 of the *Politics* and in Book 7 of the *Ethics*, and according to Saint Thomas and other doctors in various places.

First, barbarian in the loose and broad sense of the word means any cruel, inhuman, wild, and merciless man acting against human reason out of anger or native disposition, so that, putting aside decency, meekness, and humane moderation, he becomes hard, severe, quarrelsome, unbearable, cruel, and plunges blindly into crimes that only the wildest beasts of the forest would commit. Speaking of this kind of barbarian, the Philosopher says in the *Politics* that just as the man who obeys right reason and excellent laws is superior to all the animals, so too, if he leaves the path of right reason and law, he is the wickedest, worst, and most inhuman of all animals.³...

Indeed, our Spaniards are not unacquainted with a number of these practices. On the contrary, in the absolutely inhuman things they have done to those nations they have surpassed all other barbarians....

The second kind of barbarian includes those who do not have a written language that corresponds to the spoken one, as the Latin language does with ours, and therefore they do

1 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

2 Bartolomé de Las Casas, *In Defense of the Indians*, translated by Stefford Poole (DeKalb, IL: Northern Illinois University Press, 1974).

3 Aristotle, Book I, chap. 2.

not know how to express in it what they mean. For this reason they are considered to be uncultured and ignorant of letters and learning...

The third kind of barbarian, in the proper and strict meaning of the word, are those who, either because of their evil and wicked character or the barrenness of the region in which they live, are cruel, savage, sottish, stupid, and strangers to reason. They are not governed by law or right, do not cultivate friendships, and have no state or politically organized community. Rather, they are without ruler, laws, and institutions...

Barbarians of this kind (or better, wild men) are rarely found in any part of the world and are few in number when compared with the rest of mankind, as Aristotle notes at the beginning of the seventh book of the *Ethics*. This kind of barbarian is savage, imperfect, and the worst of men, and they are mistakes of nature or freaks in a rational nature...

And since a rational nature is provided for and guided by divine providence for its own sake in a way superior to that of other creatures, not only in what concerns the species but also each individual, it evidently follows that it would be impossible to find in a rational nature such a freak or mistake of nature, that is, one that does not fit the common notion of man, except very rarely and in far fewer instances than in other creatures. For the good and all-powerful God, in his love for mankind, has created all things for man's use and protects him whom he has endowed with so many qualities by a singular affection and care (as we have said), and guides his actions and enlightens each one's mind and disposes him for virtue in accordance with the ability given to him...

Again, if we believe that such a huge part of mankind is barbaric, it would follow that God's design has for the most part been ineffective, with so many thousands of men deprived of the natural light that is common

to all peoples. And so there would be a great reduction in the perfection of the entire universe — something that is unacceptable and unthinkable for any Christian...

We find that for the most part men are intelligent, far sighted, diligent, and talented, so that it is impossible for a whole region or country to be slow witted and stupid, moronic, or suffering from similar natural defects or abnormalities...

The Philosopher [Aristotle] adds that it is lawful to catch or hunt barbarians of this type like wild beasts so that they might be led to the right way of life. Two points must be noted here. First, to force barbarians to live in a civilized and human way is not lawful for anyone and everyone, but only for monarchs and the rulers of states. Second, it must be borne in mind that barbarians must not be compelled harshly in the manner described by the Philosopher, but are to be gently persuaded and lovingly drawn to accept the best way of life. For we are commanded by divine law to love our neighbor as ourselves, and since we want our own vices to be corrected and uprooted gently, we should do the same to our brothers, even if they are barbarians...

From Christ, the eternal truth, we have the command "You must love your neighbor as yourself."⁴ And again Paul says "Love is not selfish,"⁵ but seeks the things of Jesus Christ. Christ seeks souls, not property. He who alone is the immortal king of kings thirsts not for riches, not for ease and pleasures, but for the salvation of mankind, for which, fastened to the wood of the cross, he offered his life. He who wants a large part of mankind to be such that, following Aristotle's teachings, he may act like a ferocious executioner toward them, press them into slavery, and through them grow rich, is a despotic master, not a Christian; a son of Satan, not of God; a plunderer, not a shepherd; a person who is led by the spirit

4 Matthew 22:39.

5 Corinthians 13:5.

of the devil, not heaven. If you seek Indians so that gently, mildly, quietly, humanely, and in a Christian manner you may instruct them in the word of God and by your labor bring them to Christ's flock, imprinting the gentle Christ on their minds, you perform the work of an apostle and will receive an imperishable crown of glory from our sacrificed lamb. But if it be in order that by sword, fire, massacre, trickery, violence, tyranny, cruelty, and an inhumanity that is worse than barbaric you may destroy and plunder utterly harmless peoples who are ready to renounce evil and receive the word of God, you are children of the devil and the most horrible plunderers of all. "My yoke," says Christ, "is easy and my burden light."⁶ You impose intolerable burdens and destroy the creatures of God, you who ought to be life to the blind and light to the ignorant...

Now if we shall have shown that among our Indians of the western and southern shores (granting that we call them barbarians and that they are barbarians) there are important kingdoms, large numbers of people who live settled lives in a society, great cities, kings, judges and laws, persons who engage in commerce, buying, selling, lending, and the other contracts of the law of nations, will it not stand proved that the Reverend Doctor Sepulveda has spoken wrongly and viciously against peoples like these, either out of malice or ignorance of Aristotle's teaching, and, therefore, has falsely and perhaps irreparably slandered them before the entire world? From the fact that the Indians are barbarians it does not necessarily follow that they are incapable of government and have to be ruled by others, except to be taught about the Catholic faith and to be admitted to the holy sacraments. They are not ignorant, inhuman, or bestial. Rather, long before they had heard the word Spaniard they had properly organized states, wisely ordered by excellent laws, religion, and

custom. They cultivated friendship and, bound together in common fellowship, lived in populous cities in which they wisely administered the affairs of both peace and war justly and equitably, truly governed by laws that at very many points surpass ours...

[T]hey are so skilled in every mechanical art that with every right they should be set ahead of all the nations of the known world on this score, so very beautiful in their skill and artistry are the things this people produces in the grace of its architecture, its painting, and its needlework...

In the liberal arts that they have been taught up to now, such as grammar and logic, they are remarkably adept. With every kind of music they charm the ears of their audience with wonderful sweetness. They write skillfully and quite elegantly, so that most often we are at a loss to know whether the characters are handwritten or printed...

Since every nation by the eternal law has a ruler or prince, it is wrong for one nation to attack another under pretext of being superior in wisdom or to overthrow other kingdoms. For it acts contrary to the eternal law, as we read in Proverbs: "Do not displace the ancient landmark, set up by your ancestors."⁷ This is not an act of wisdom, but of great injustice and a lying excuse for plundering others. Hence every nation, no matter how barbaric, has the right to defend itself against a more civilized one that wants to conquer it and take away its freedom. And, moreover, it can lawfully punish with death the more civilized as a savage and cruel aggressor against the law of nature. And this war is certainly more just than the one that, under pretext of wisdom, is waged against them...

Sepulveda's final argument that everyone can be compelled, even when unwilling, to do those things that are beneficial to him, if taken without qualification, is false in the extreme...

6 Matthew 11:30.

7 Hebrew Bible, Proverbs 22:28.

Paul says: “All government comes from God.”⁸ However, as long as unbelievers do not accept the Christian faith or are not cleansed by the waters of baptism, and especially those who have never heard anything about the Church or the Catholic people, they are in no way disposed or proportionate recipients for the exercise of the Pope’s power or his contentious jurisdiction....

However, as soon as they enter Christ’s sheepfold they belong to the jurisdiction of the Christian Church, they are a part and members of the Christian people, as is evident from what has been said. And then the Pope can judge them by his power and, in the contained in law, compel them by his jurisdiction.⁹

Thus unbelievers who are completely outside the Church are not subject to the Church, nor do they belong to its territory or competence....

[O]ur main conclusion is proved principally by the fact that it is not the business of the Church to punish worshipers of idols [Indians] because of their idolatry whenever it is not its business to punish unbelief, because the unbelief of Jews and Saracens is much more serious and damnable than the unbelief of idolaters [Indians]. In the former, the definition of unbelief and the gravity of the sin are truly verified, whereas in the latter there is the obstacle of ignorance and deprivation in reference to hearing the word of God (as has already been explained). The Jews and the Saracens have heard the words of Christ, and the preaching of apostolic men and the words of gospel truth have daily beat against their hard hearts. But since they do not embrace the teaching of the gospel because of the previously mentioned pertinacity and insolence of their minds, they are guilty of a wicked malice. However, the worshipers of idols, at least in the case of the Indians, about whom this disputation has been

undertaken, have never heard the teaching of Christian truth even through hearsay; so they sin less than the Jews or Saracens, for ignorance excuses to some small extent....

Therefore since the Church does not punish the unbelief of the Jews even if they live within the territories of the Christian religion, much less will it punish idolaters who inhabit an immense portion of the earth, which was unheard of in previous centuries, who have never been subjects of either the Church or her members, and who have not even known what the Church is.

6.3 Hugo Grotius: On the Rights of the Stranger and the Refugee (*The Law of War and Peace*, 1625)¹⁰

Book II, Chapter II

XV. – THE RIGHT OF TEMPORARY SOJOURN

1. To those who pass through a country, by water or by land, it ought to be permissible to sojourn for a time, for the sake of health, or for any other good reason; for this also finds place among the advantages which involve no detriment. So in Virgil, when the Trojans were forbidden to sojourn in Africa, Illoneus dared to appeal to the gods as judges. The Greeks viewed as well founded the complaint of the people of Megara against the Athenians, who forbade the Megarians to enter their harbors, “contrary to common right,” as Plutarch says. To the Lacedaemonians no cause for war seemed more just.
2. A natural consequence of this is that it is permissible to build a temporary hut, for example on the seashore, even if we admit that possession of the coast has been taken by a people. For when Pomponius said that

8 Romans 13:1.

9 Decretals, 2, I, 13.

10 Hugo Grotius, *The Law of War and Peace*, translated by Francis W. Kelsey (Oxford: Clarendon Press, 1925).

an order of the praetor must be obtained before one would be allowed to erect any building on a public shore or in the sea reference was made to permanent structures. To such the lines of the poet refer:

The fish are conscious that a narrower bound

Is drawn the seas around by masses huge hurled down into the deep.

XVI. THOSE WHO HAVE BEEN DRIVEN FROM THEIR HOMES HAVE THE RIGHT TO ACQUIRE A PERMANENT RESIDENCE, IN ANOTHER COUNTRY, IN SUBMISSION TO THE GOVERNMENT THERE IN AUTHORITY.

Furthermore a permanent residence ought not to be denied to foreigners who, expelled from their homes, are seeking a refuge, provided that they submit themselves to the established government and observe any regulations which are necessary in order to avoid strafes. This fair distinction the divine poet observes when he represents Aeneas as offering the following terms:

Latinus, as my sire, his arms shall keep, and as my sire his sovereign sway shall hold Inviolate.

In the work of the Halicarnassian, Latinus himself says that the cause of Aeneas is just, if Aeneas had been forced to come to his country by the lack of an abiding-place.

“It is characteristic of barbarians to drive away strangers,” says Strabo, following Eratosthenes; and in this respect the Spartans failed to gain approval. In the opinion of Ambrose, also, those who keep foreigners out of their city are by no means worthy of approval...

6.4 Olaudah Equiano: On the Memoirs of an African Slave (*The Interesting Narrative*, 1789)¹¹

The first object which saluted my eyes when I arrived on the coast was the sea, and a slave-ship, which was then riding at anchor, and waiting for its cargo. These filled me with astonishment, which

was soon converted into terror, which I am yet at a loss to describe, nor the then feelings of my mind. When I was carried on board I was immediately handled, and tossed up, to see if I were sound, by some of the crew; and I was now persuaded that I had gotten into a world of bad spirits, and that they were going to kill me. Their complexions too differing so much from ours, their long hair, and the language they spoke, which was very different from any I had ever heard, united to confirm me in this belief. Indeed, such were the horrors of my views and fears at the moment, that, if ten thousand worlds had been my own, I would have freely parted with them all to have exchanged my condition with that of the meanest slave in my own country. When I looked round the ship too, and saw a large furnace of copper boiling, and a multitude of black people of every description chained together, every one of their countenances expressing dejection and sorrow, I no longer doubted of my fate, and, quite overpowered with horror and anguish, I fell motionless on the deck and fainted. When I recovered a little, I found some black people about me, who I believed were some of those who brought me on board, and had been receiving their pay; they talked to me in order to cheer me, but all in vain. I asked them if we were not to be eaten by those white men with horrible looks, red faces, and long hair? They told me I was not...

Soon after this, the blacks who brought me on board went off, and left me abandoned to despair. I now saw myself deprived of all chance of returning to my native country, or even the least glimpse of hope of gaining the shore, which I now considered as friendly; and I even wished for my former slavery in preference to my present situation, which was filled with horrors of every kind, still heightened by my ignorance of what I was to undergo. I was not long suffered to indulge my grief; I was soon put down under the decks, and there I received such a salutation in my nostrils as I had never experienced in my life; so that with the loathsomeness of the

11 Olaudah Equiano, *The Interesting Narrative of the Life of Olaudah Equiano, or Gustavus Vassa, the African, Written by Himself* (London: 1789 [public domain]).

stench, and crying together, I became so sick and low that I was not able to eat, nor had I the least desire to taste anything. I now wished for the last friend, Death, to relieve me; but soon, to my grief, two of the white men offered me eatables; and, on my refusing to eat, one of them held me fast by the hands, and laid me across, I think, the windlass, and tied my feet, while the other flogged me severely. I had never experienced any thing of this kind before; and although, not being used to the water, I naturally feared that element the first time I saw it; yet, nevertheless, could I have got over the nettings would have jumped over the side, but I could not; and, besides, the crew used to watch us very closely who were not chained down to the decks, lest we should leap into the water; and I have seen some of these poor African prisoners most severely cut for attempting to do so, and hourly whipped for not eating. This indeed was often the case with myself. In a little time after, amongst the poor chained men, I found some of my own nation, which in a small degree gave ease to my mind. I inquired of these what was to be done with us? They gave me to understand we were to be carried to these white people's country to work for them. I then was a little revived, and thought, if it were no worse than working, my situation was not so desperate: but still I feared I should be put to death, the white people looked and acted, as I thought, in so savage a manner; for I had never seen among any people such instances of brutal cruelty; and this not only shown towards us blacks, but also to some of the whites themselves. One white man in particular I saw, when we were permitted to be on deck, flogged so unmercifully with a large rope near the foremast, that he died in consequence of it; and they tossed him over the side as they would have done a brute. This made me fear these people the more; and expected nothing less than to be treated in the same manner...

Every circumstance I met with served only to render my state more painful, and heighten my apprehensions, and my opinion of the cruelty of the whites. One day they had taken a number of fishes; and when they had killed and satisfied themselves with as many as they thought fit, to

our astonishment who were on the deck, rather than give any of them to us to eat, as we expected, they tossed the remaining fish into the sea again, although we begged and prayed for some as well as we could, but in vain; and some of my countrymen, being pressed by hunger, took an opportunity, when they thought no one saw them, of trying to get a little privately; but they were discovered, and the attempt procured them some very severe floggings.

One day, when we had a smooth sea, and moderate wind, two of my wearied countrymen, who were chained together (I was near them at the time), preferring death to such a life of misery, somehow made through the nettings, and jumped into the sea: immediately another quite dejected fellow, who, on account of his illness, was suffered to be out of irons, also followed their example; and I believe many more would very soon have done the same, if they had not been prevented by the ship's crew, who were instantly alarmed. Those of us that were the most active were, in a moment, put down under the deck; and there was such a noise and confusion amongst the people of the ship as I never heard before, to stop her, and get the boat out to go after the slaves. However, two of the wretches were drowned, but they got the other, and afterwards flogged him unmercifully, for thus attempting to prefer death to slavery. In this manner we continued to undergo more hardships than I can now relate; hardships which are inseparable from this accursed trade. — Many a time we were near suffocation, from the want of fresh air, which we were often without for whole days together. This and the stench of the necessary tubs, carried off many...

Many merchants and planters now came on board, though it was in the evening. They put us in separate parcels, and examined us attentively. They also made us jump, and pointed to the land, signifying we were to go there...

The buyers rush at once into the yard where the slaves are confined, and make choice of that parcel they like best. The noise and clamor with which this is attended, and the eagerness visible in the countenances of the buyers, serve not a little to increase the apprehensions of the terrified Africans, who may well be supposed to consider them as

the ministers of that destruction to which they think themselves devoted. In this manner, without scruple, are relations and friends separated, most of them never to see each other again. I remember in the vessel in which I was brought over, in the men's apartment, there were several brothers, who, in the sale, were sold in different lots; and it was very moving on this occasion to see and hear their cries at parting. O, ye nominal Christians! might not an African ask you, learned you this from your God? who says unto you, Do unto all men as you would men should do unto you? Is it not enough that we are torn from our country and friends to toil for your luxury and lust of gain? Must every tender feeling be likewise sacrificed to your avarice? Are the dearest friends and relations, now rendered more dear by their separation from their kindred, still to be parted from each other, and thus prevented from cheering the gloom of slavery with the small comfort of being together and mingling their sufferings and sorrows? Why are parents to lose their children, brothers their sisters, or husbands their wives? Surely this is a new refinement in cruelty, which, while it has no advantage to atone for it, thus aggravates distress, and adds fresh horrors even to the wretchedness of slavery.

6.5 Adam Smith: On Slavery and Serfdom (*The Wealth of Nations*, 1776)¹²

Book III, Chapter 2

... The pride of man makes him love to domineer, and nothing mortifies him so much as to be obliged to condescend to persuade his inferiors. Wherever the law allows it, and the nature of the work can afford it, therefore, he will generally prefer the service of slaves to that of freemen. The planting of sugar and tobacco can afford the expense of slave-cultivation. The raising of corn, it seems, in the present times, cannot. In the English colonies, of which the principal produce is corn, the far greater part of the work is done by freemen. The late resolution of the Quakers in Pennsylvania to set at liberty all

their negro slaves may satisfy us that their number cannot be very great. Had they made any considerable part of their property, such a resolution could never have been agreed to. In our sugar colonies, on the contrary, the whole work is done by slaves, and in our tobacco colonies a very great part of it. The profits of a sugar-plantation in any of our West Indian colonies are generally much greater than those of any other cultivation that is known either in Europe or America; and the profits of a tobacco plantation, though inferior to those of sugar, are superior to those of corn, as has already been observed. Both can afford the expense of slave-cultivation, but sugar can afford it still better than tobacco. The number of negroes accordingly is much greater, in proportion to that of whites, in our sugar than in our tobacco colonies.

To the slave cultivators of ancient times gradually succeeded a species of farmers known at present in France by the name of Metayers. They are called in Latin, *Coloni Partiarum*. They have been so long in disuse in England that at present I know no English name for them. The proprietor furnished them with the seed, cattle, and instruments of husbandry, the whole stock, in short, necessary for cultivating the farm. The produce was divided equally between the proprietor and the farmer, after setting aside what was judged necessary for keeping up the stock, which was restored to the proprietor when the farmer either quitted, or was turned out of the farm.

Land occupied by such tenants is properly cultivated at the expense of the proprietor as much as that occupied by slaves. There is, however, one very essential difference between them. Such tenants, being freemen, are capable of acquiring property, and having a certain proportion of the produce of the land, they have a plain interest that the whole produce should be as great as possible, in order that their own proportion may be so. A slave, on the contrary, who can acquire nothing but his maintenance, consults his own ease by making the land produce as little as possible over and above that

12 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, edited by Edwin Cannan (London: Methuen, 1904 [public domain]).

maintenance. It is probable that it was partly upon account of this advantage, and partly upon account of the encroachments which the sovereign, always jealous of the great lords, gradually encouraged their villains to make upon their authority, and which seem at last to have been such rendered this species of servitude altogether inconvenient, that tenure in villanage gradually wore out through the greater part of Europe. The time and manner, however, in which so important a revolution was brought about, is one of the most obscure points in modern history. The church of Rome claims great merit in it; and it is certain that so early as the twelfth century, Alexander III published a bull for the general emancipation of slaves. It seems, however, to have been rather a pious exhortation than a law to which exact obedience was required from the faithful. Slavery continued to take place almost universally for several centuries afterwards, till it was gradually abolished by the joint operation of the two interests above mentioned, that of the proprietor on the one hand, and that of the sovereign on the other. A villain enfranchised, and at the same time allowed to continue in possession of the land, having no stock of his own, could cultivate it only by means of what the landlord advanced to him, and must, therefore, have been what the French call a *metayer*.

It could never, however, be the interest even of this last species of cultivators to lay out, in the further improvement of the land, any part of the little stock which they might save from their own share of the produce, because the lord, who laid out nothing, was to get one-half of whatever it produced. The tithe, which is but a tenth of the produce, is found to be a very great hindrance to improvement. A tax, therefore, which amounted to one-half must have been an effectual bar to it. It might be the interest of a *metayer* to make the land produce as much as could be brought out of it by means of the stock furnished by the proprietor; but it could never be his interest to mix any part of his own with it. In France, where five parts out of six of the whole kingdom are said to be still occupied by this species of cultivators, the proprietors complain that their *metayers* take every opportunity of employing the master's cattle rather in carriage than in cultivation;

because in the one case they get the whole profits to themselves, in the other they share them with their landlord. This species of tenants still subsist in some parts of Scotland. They are called steel-bow tenants. Those ancient English tenants, who are said by Chief Baron Gilbert and Doctor Blackstone who have been rather bailiffs of the landlord than farmers properly so called, were probably of the same kind.

To this species of tenancy succeeded, though by very slow degrees, farmers properly so called, who cultivated the land with their own stock, paying a rent certain to the landlord. When such farmers have a lease for a term of years, they may sometimes find it for their interest to lay out part of their capital in the further improvement of the farm; because they may sometimes expect to recover it, with a large profit, before the expiration of the lease. The possession even of such farmers, however, was long extremely precarious, and still is so in many parts of Europe. They could before the expiration of their term be legally ousted of their lease by a new purchaser; in England even by the fictitious action of a common recovery. If they were turned out illegally by the violence of their master, the action by which they obtained redress was extremely imperfect. It did not always reinstate them in the possession of the land but gave them damages which never amounted to the real loss. Even in England, the country perhaps of Europe where the yeomanry has always been most respected; it was not till about the 14th of Henry VII that the action of adjustment was invented, by which the tenant recovers, not damages only but possession, and in which his claim is not necessarily concluded by the uncertain decision of a single assize. This action has been found so effectual a remedy that, in the modern practice, when the landlord has occasion to sue for the possession of the land, he seldom makes use of the actions which properly belong to him as landlord, the writ of right or the writ of entry, but sues in the name of his tenant by the writ of adjustment. In England, therefore, the security of the tenant is equal to that of the proprietor. In England, besides, a lease for life of forty shillings a year value is a freehold, and entitles the

lessee to vote for a member of parliament; and as a great part of the yeomanry have freeholds of this kind, the whole order becomes respectable to their landlords on account of the political consideration which this gives them. There is, I believe, nowhere in Europe, except in England, any instance of the tenant building upon the land of which he had no lease, and trusting that the honor of his landlord would take no advantage of so important an improvement. Those laws and customs so favorable to the yeomanry have perhaps contributed more to the present grandeur of England than all their boasted regulations of commerce taken together...

6.6 Maximilien de Robespierre: On the Propertyless and Male Suffrage (1791)¹³

Why are we gathered in this legislative assembly? Doubtless to restore to the French nation the exercise of imprescriptible rights that belongs to every citizen. This is the main purpose of every political constitution. If it fulfills this obligation, it is just and free; if it fails to do so, it is nothing but a conspiracy against mankind.

You recognized this truth yourselves, and in a striking manner, when you decided, before beginning your great work, that a solemn declaration must be made of the sacred rights that serve as the immutable foundations on which it rests.

All men are born and remain free, and are equal at law.

Sovereignty derives from the nation as a whole.

The law is the expression of the general will. All citizens have the right to contribute to its making, either directly by themselves or through their freely elected representatives.

All citizens are admissible to every public office, and no distinction is made between them except in respect of their virtues and talents.

These are the principles that you have enshrined. It will now be readily seen which are the measures that I wish to combat; it is enough to

test them against these immutable laws of human society.

1. Can the law be termed an expression of the general will when the greater number of those for whom it is made can have no hand in its making? No. And yet to forbid such men as do not pay a tax equal to three days' wages the right even to choose the electors whose task it is to appoint the members of the legislative assembly — what is this but to deprive a majority of Frenchmen of the right to frame the laws? This provision is therefore essentially unconstitutional and antisocial.
2. Can men be said to enjoy equal rights when some are endowed with the exclusive right to be elected members of the legislative body or of other public institutions, others merely with that of electing them, while the rest are deprived of all these rights at once? No. Yet such are the monstrous distinctions drawn between them by the decrees that make man active or passive, or half active and half passive, according to the varying degrees of fortune that permit him to pay three days' wages in taxes, ten days, or a silver mark. All these provisions are, then, essentially unconstitutional and antisocial.
3. Are men admissible to all public posts, and is no distinction made except such as derive from their virtues and talents, when an inability to pay the required tax excludes them from every public office regardless of the virtues and talents that they may possess? No. All these provisions are therefore essentially unconstitutional and antisocial.
4. And again, is the nation sovereign when the greater part of the persons composing it is deprived of the political rights from

13 Maximilien de Robespierre, excerpts from *Robespierre*, edited by George Rudé (Englewood Cliffs, N.J.: Prentice-Hall, 1967).

which sovereignty derives its essence? No. And yet you have just seen that these same decrees deny them to the majority of Frenchmen. What would remain of your Declaration of Rights if these decrees were allowed to continue? It would become an empty formula. What would the nation become? A slave; for it is freedom to obey laws of which one is oneself the maker, but it is slavery to be compelled to submit to the will of another. What would your constitution become? One fit for an aristocracy. For aristocracy is that state in which one part of the citizens is sovereign and the rest is subject. And what kind of an aristocracy? The most intolerable of all: an aristocracy of the Rich.

All men *born* and *domiciled* in France are members of the body politic termed the French nation; that is to say, they are French citizens. They are so by the nature of things and by the first principle of the law of nations. The rights attaching to this title do not depend on the fortune that each man possesses, or on the amount of tax for which he is assessed, because it is not taxes that make us citizens: citizenship merely obliges a man to contribute to public expenditure in proportion to his means. You may give the citizens new laws, but you may not deprive them of their citizenship.

The upholders of the system that I am denouncing have themselves realized this truth; for, not daring to challenge the title of citizen in those whom they condemn to political disinheritance, they have confined themselves to destroying the principle of equality inherent in that title by drawing a distinction between active and passive citizens. Trusting in the ease with which men may be governed by words, they have sought to lead us off the scent by using this new expression as a cover for the most flagrant violation of the rights of man.

But who can be so stupid as not to perceive that such a phrase can neither invalidate the principle nor solve the problem? For, in the idiom of these subtle politicians, it is exactly the same thing to declare that certain citizens shall not be active as

to say that they shall no longer exercise the rights attaching to the title of citizen. Well, I shall ask them once more by what right they may thus strike their fellow citizens and constituents with paralysis and reduce them to inactivity; and I shall not cease protesting against this barbaric and insidious phrase which, if we do not hasten to efface it, will disgrace our language and our code of laws, so that the word "liberty" itself may not become meaningless and laughable.

What need I add to such self-evident truths? Nothing in regard to the representatives of a nation whose wishes and opinions have already anticipated my demand; but I still must reply to the contemptible sophisms by means of which the prejudices and ambitions of a certain class of men seek to buttress the disastrous doctrine that I here denounce. It is to them only that I now wish to speak.

The people, men of no property... the dangers of corruption... the example of England and of other nations reputed free: these are the arguments that are being used to confound justice and to combat reason.

One single sentence should be an adequate reply: the people, that great multitude whose cause I plead, have rights whose origin is the same as yours. Who has given you power to take them away?...

Nay, more. From the very efforts made by the enemies of the Revolution to degrade the people in your esteem and to degrade yours in the people's, by suggesting to you measures intended to stifle its voice or to weaken its energy, or to lead its patriotism astray, by hiding your decrees from it in order to prolong its ignorance of its rights; from the unwavering patience with which it has borne all its misfortunes in the expectation of a happier state of things; from this we learn that the people is the sole support of liberty. Who, then, could tolerate the idea of seeing it despoiled of its rights by the very revolution that is due to its courage and to the tender and generous devotion with which it defended its representatives! Is it to the rich and to the great that you owe this glorious insurrection that saved France and yourselves? Were not the soldiers who rallied to the service of the nation at arms men of the people? And to what class did their leaders

belong, those who would have led them against you? ... Did the people then take up arms to help you to defend its rights and its dignity, or was it to give you power to encompass its destruction? Did it aid you to break the yoke of feudal aristocracy in order to fall back under the yoke of an aristocracy of wealth?

Up to now, I have adopted the language of those who seem to mean by the word "people" a class of men set aside from their fellows and to whom they attach a certain label of contempt or inferiority. It is now time that I express myself more precisely, in recalling that the system we condemn disfranchises nine-tenths of the nation and that it even excludes from the lists of those it terms active citizens vast numbers of men who, even in the bad old days of pride and prejudice, were honored and distinguished for their education, their industry, even for their fortunes.

Such is, in fact, the nature of this institution that it provides for the most ridiculous anomalies; for, while taking wealth as the measure of the rights of citizenship, it departs from this very rule by attaching them to what are called direct taxes, although it is evident that a man who pays substantial indirect taxes may enjoy a larger fortune than one who is subjected to a moderate direct tax. But who would have thought it possible that the sacred rights of man should be made to depend on the changing nature of financial systems, on the variations and diversities that our system presents in the different parts of the same State? What sort of system is it where a man who is a citizen in one part of France ceases to be one either in part or in whole if he moves to another and where a man who is one today will no longer be one tomorrow if he should suffer an adverse turn of fortune!

What sort of system is it in which an honest man, despoiled by an unjust oppressor, sinks into the class of the *helots* while his despoiler is raised by this very crime into the ranks of the citizens; in which a father, as the number of his children increases, sees with a growing certainty that he

will not be able to leave them this title owing to the constant diminution of his divided inheritance; in which every father's son throughout half our land recovers his fatherland only at the point where he loses his father!... In short, what is the worth of my much vaunted right to belong to the sovereign body if the assessor of taxes has the power to deprive me of it by reducing my contribution by a cent and if it is subject at once to the caprice of man and the inconsistency of fortune?...

6.7 Immanuel Kant: On the Right to Hospitality (*Perpetual Peace*, 1795)¹⁴

III.—"The rights of men, as citizens of the world, shall be limited to the conditions of universal hospitality."

We are speaking here, as in the previous articles, not of philanthropy, but of right; and in this sphere hospitality signifies the claim of a stranger entering foreign territory to be treated by its owner without hostility. The latter may send him away again, if this can be done without causing his death; but, so long as he conducts himself peaceably, he must not be treated as an enemy. It is not a right to be treated as a guest to which the stranger can lay claim—a special friendly compact on his behalf would be required to make him for a given time an actual inmate—but he has a right of visitation. This right to present themselves to society belongs to all mankind in virtue of our common right of possession on the surface of the earth on which, as it is a globe, we cannot be infinitely scattered, and must in the end reconcile ourselves to existence side by side: at the same time, originally no one individual had more right than another to live in any one particular spot. Uninhabitable portions of the surface, ocean and desert, split up the human community, but in such a way that ships and camels—"the ship of the desert"—make it possible for men to come into touch with one another across these unappropriated regions and to take advantage of our common claim to the face of the earth with a view to a possible intercommunication.

14 Immanuel Kant, *Perpetual Peace and The Metaphysics of Morals*. In *Kant: Political Writings*, translated by H. B. Nisbet, edited by H. S. Reiss (Cambridge: Cambridge University Press, 1991).

The inhospitality of the inhabitants of certain sea coasts—as, for example, the coast of Barbary—in plundering ships in neighbouring seas or making slaves of shipwrecked mariners; or the behaviour of the Arab Bedouins in the deserts, who think that proximity to nomadic tribes constitutes a right to rob, is thus contrary to the law of nature. This right to hospitality, however—that is to say, the privilege of strangers arriving on foreign soil—does not amount to more than what is implied in a permission to make an attempt at intercourse with the original inhabitants. In this way far distant territories may enter into peaceful relations with one another. These relations may at last come under the public control of law, and thus the human race may be brought nearer the realisation of a cosmopolitan constitution.

Let us look now, for the sake of comparison, at the inhospitable behaviour of the civilised nations, especially the commercial states of our continent. The injustice which they exhibit on visiting foreign lands and races—this being equivalent in their eyes to conquest—is such as to fill us with horror. America, the negro countries, the Spice Islands, the Cape etc. were, on being discovered, looked upon as countries which belonged to nobody; for the native inhabitants were reckoned as nothing. In Hindustan, under the pretext of intending to establish merely commercial depots, the Europeans introduced foreign troops; and, as a result, the different states of Hindustan were stirred up to far-spreading wars. Oppression of the natives followed, famine, insurrection, perfidy and all the rest of the litany of evils which can afflict mankind.

China and Japan (Nipon) which had made an attempt at receiving guests of this kind, have now taken a prudent step. Only to a single European people, the Dutch, has China given the right of access to her shores (but not of entrance into the country), while Japan has granted both these concessions; but at the same time they exclude the Dutch who enter, as if they were prisoners, from

social intercourse with the inhabitants. The worst, or from the standpoint of ethical judgment the best, of all this is that no satisfaction is derived from all this violence, that all these trading companies stand on the verge of ruin, that the Sugar Islands, that seat of the most horrible and deliberate slavery, yield no real profit, but only have their use indirectly and for no very praiseworthy object—namely, that of furnishing men to be trained as sailors for the men-of-war and thereby contributing to the carrying on of war in Europe. And this has been done by nations who make a great ado about their piety, and who, while they are quite ready to commit injustice, would like, in their orthodoxy, to be considered among the elect.

The intercourse, more or less close, which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it. Hence the idea of a cosmopolitan right is no fantastical, high-flown notion of right, but a complement of the unwritten code of law—constitutional as well as international law—necessary for the public rights of mankind in general and thus for the realisation of perpetual peace. For only by endeavouring to fulfil the conditions laid down by this cosmopolitan law can we flatter ourselves that we are gradually approaching that ideal.

6.8 Olympe de Gouges: The Declaration of the Rights of Woman (1790)¹⁵

To the Queen: Madame,

Little suited to the language one holds to with kings, I will not use the adulation of courtiers to pay you homage with this singular production. My purpose, Madame, is to speak frankly to you; I have not awaited the epoch of liberty to thus explain myself; I bestirred myself as energetically in a time when the blindness of despots punished such noble audacity. When the whole empire accused you and held you

15 Olympe de Gouges, "The Declaration on the Rights of Women" in *Women in Revolutionary Paris 1789–1795*, edited and translated by Darline Gay Levy, Harriet Branson Applewhite, and Mary Durham Johnson (Urbana: University of Illinois Press, 1977).

responsible for its calamities, I alone in a time of trouble and storm, I alone had the strength to take up your defense. I could never convince myself that a princess, raised in the midst of grandeur, had all the vices of baseness. Yes, Madame, when I saw the sword raised against you, I threw my observations between that sword and you, but today when I see who is observed near the crowd of useless hirelings, and [when I see] that she is restrained by fear of the laws, I will tell you, Madame, what I did not say then.

If the foreigner bears arms into France, you are no longer in my eyes this falsely accused Queen, this attractive Queen, but an implacable enemy of the French. Oh, Madame, bear in mind that you are mother and wife; employ all your credit for the return of the Princes. This credit, if wisely applied, strengthens the father's crown, saves it for the son, and reconciles you to the love of the French. This worthy negotiation is the true duty of a queen. Intrigue, cabals, bloody projects will precipitate your fall, if it is possible to suspect that you are capable of such plots.

Madame, may a nobler function characterize you, excite your ambition, and fix your attentions. Only one whom chance has elevated to an eminent position can assume the task of lending weight to the progress of the Rights of Woman and of hastening its success. If you were less well informed, Madame, I might fear that your individual interests would outweigh those of your sex. You love glory; think, Madame, the greatest crimes immortalize one as much as the greatest virtues, but what a different fame in the annals of history. The one is ceaselessly taken as an example, and the other is eternally the execration of the human race.

It will never be a crime for you to work for the restoration of customs, to give your sex all the firmness of which it is capable. This is not the work of one day, unfortunately for the new regime. This revolution will happen only when all women are aware of their deplorable

fate, and of the rights they have lost in society. Madame, support such a beautiful cause; defend this unfortunate sex, and soon you will have half the realm on your side, and at least one-third of the other half.

Those, Madame, are the feats by which you should show and use your credit. Believe me, Madame, our life is a pretty small thing, especially for a Queen, when it is not embellished by people's affection and by the eternal delights of good deeds.

If it is true that the French arm all the powers against their own Fatherland, why? For frivolous prerogatives, for chimeras. Believe, Madame, if I judge by what I feel — the monarchical party will be destroyed by itself, it will abandon all tyrants, and all hearts will rally around the fatherland to defend it.

There are my principles, Madame. In speaking to you of my fatherland, I lose sight of the purpose of this dedication. Thus, any good citizen sacrifices his glory and his interests when he has none other than those of his country.

I am with the most profound respect,
Madame,

Your most humble and most obedient
servant,

de Gouges

The Rights of Woman

Man, are you capable of being just? It is a woman who poses the Declaration of the Rights... below question; you will not deprive her of that right at least. Tell me, who gives you sovereign empire to oppress my sex? Your strength? Your talents? Observe the Creator in his wisdom; survey in all her grandeur that nature with whom you seem to want to be in harmony, and give me, if you dare, an example of this tyrannical empire. Go back to the animals, consult the elements, study plants, finally glance at all the modifications of organic matter, and surrender to the evidence when offer you the means; search, probe, and distinguish, if you can, the sex in the administration of nature. Everywhere you will find them mingled, everywhere

they cooperate in harmonious togetherness in this immortal masterpiece.

Man alone has raised his exceptional circumstances to a principle. Bizarre, blind, bloated with science and degenerated — in a century of enlightenment and wisdom — into the crassest ignorance, he wants to command as a despot a sex which is in full possession of its intellectual faculties; he pretends to enjoy the Revolution and to claim his rights to equality in order to say nothing more about it.

Declaration of the Rights of Woman and the Female Citizen

For the National Assembly to decree in its last sessions, or in those of the next legislature:

Preamble

Mothers, daughters, sisters [and] representatives of the nation demand to be constituted into a national assembly. Believing that ignorance, omission, or scorn for the rights of woman are the only cause of public misfortunes and of the corruption of governments, [the women] have resolved to set forth in a solemn declaration the natural inalienable, and sacred rights of woman in order that this declaration constantly exposed before all the members of the society, will ceaselessly remind them of their rights and duties; in order that the authoritative acts of women and the authoritative acts of men may be at any moment compared with and respectful of the purpose of all political institutions and in order that citizens' demands, henceforth based on simple and incontestable principles, will always support the constitution, good morals, and the happiness of all.

Consequently, the sex that is as superior in beauty as it is in courage during the sufferings of maternity recognizes and declares in the presence and under the auspices of the Supreme Being, the following Rights of Woman and of Female Citizens.

Article I

Woman is born free and lives equal to man in her rights. Social distinctions can be based only on the common utility.

Article II

The purpose of any political association is the conservation of the natural and imprescriptible rights of woman and man; these rights are liberty, property, security, and especially resistance to oppression.

Article III

The principle of all sovereignty rests essentially with the nation, which is nothing but the union of woman and man; no body and no individual can exercise any authority which does not come expressly from it [the nation].

Article IV

Liberty and justice consist of restoring all that belongs to others; thus, the only limits on the exercise of the natural rights of woman are perpetual male tyranny; these limits are to be reformed by the laws of nature and reason.

Article V

Laws of nature and reason proscribe all acts harmful to society; everything which is not prohibited by these wise and divine laws cannot be prevented, and no one can be constrained to do what they do not command.

Article VI

The law must be the expression of the general will; all female and male citizens must contribute either personally or through their representatives to its formation; it must be the same for all: male and female citizens, being equal in the eyes of the law, must be equally admitted to all honors, positions, and public employment according to their capacity and without other distinctions besides those of their virtues and talents.

Article VII

No woman is an exception; she is accused, arrested, and detained in cases determined by law. Women, like men, obey this rigorous law.

Article VIII

The law must establish only those penalties that are strictly and obviously necessary, and no one can be

punished except by virtue of a law established and promulgated prior to the crime and legally applicable to women.

Article IX

Once any woman is declared guilty, complete rigor is [to be] exercised by the law.

Article X

No one is to be disquieted for his very basic opinions; woman has the right to mount the scaffold; she must equally have the right to mount the rostrum, provided that her demonstrations do not disturb the legally established public order.

Article XI

The free communication of thoughts and opinions is one of the most precious rights of woman, since that liberty assures the recognition of children by their fathers. Any female citizen thus may say freely, I am the mother of a child which belongs to you, without being forced by a barbarous prejudice to hide the truth; [an exception may be made] to respond to the abuse of this liberty in cases determined by the law.

Article XII

The guarantee of the rights of woman and the female citizen implies a major benefit; this guarantee must be instituted for the advantage of all, and not for the particular benefit of those to whom it is entrusted.

Article XIII

For the support of the public force and the expenses of administration, the contributions of woman and man are equal; she shares all the duties [*corvées*] and all the painful tasks; therefore, she must have the same share in the distribution of positions, employment, offices, honors, and jobs [*industrie*].

Article XIV

Female and male citizens have the right to verify, either by themselves or through their representatives, the necessity of the public contribution. This can

only apply to women if they are granted an equal share, not only of wealth, but also of public administration, and in the termination of the proportion, the base, the collection, and the duration of the tax.

Article XV

The collectivity of women, joined for tax purposes to the aggregate of men, has the right to demand an accounting of his administration from any public agent.

Article XVI

No society has a constitution without the guarantee of rights and the separation of powers; the constitution is null if the majority of individuals comprising the nation have not cooperated in drafting it.

Article XVII

Property belongs to both sexes whether united or separate; for each it is an inviolable and sacred right; no one can be deprived of it, since it is the true patrimony of nature, unless the legally determined public need obviously dictates it, and then only with a just and prior indemnity.

Postscript

Woman, wake up; the tocsin of reason is being heard throughout the whole universe; discover your rights. The powerful empire of nature is no longer surrounded by prejudice, fanaticism, superstition, and lies. The flame of truth has dispersed all the clouds of folly and usurpation. Enslaved man has multiplied his strength and needs recourse to yours to break his chains. Having become free, he has become unjust to his companion. Oh, women, women! When will you cease to be blind? What advantage have you received from the Revolution? A more pronounced scorn, a more marked disdain. In the centuries of corruption you ruled only over the weakness of men. The reclamation of your patrimony, based on the wise decrees of nature — what have you to dread from such a fine undertaking? The *bon mot* of the legislator of the marriage of Cana? Do you fear that our French legislators, correctors of that morality, long ensnared by political practices now out of date, will only say again

to you: women, what is there in common between you and us? Everything, you will have to answer. If they persist in their weakness in putting this non sequitur in contradiction to their principles, courageously oppose the force of reason to the empty pretensions of superiority; unite yourselves beneath the standards of philosophy; deploy all the energy of your character, and you will soon see these haughty men, not groveling at your feet as servile adorers, but proud to share with you the treasures of the Supreme Being. Regardless of what barriers confront you, it is in your power to free yourselves; you have only to want to. Let us pass now to the shocking tableau of what you have been in society; and since national education is in question at this moment, let us see whether our wise legislators will think judiciously about the education of women.

Women have done more harm than good. Constraint and dissimulation have been their lot. What force had robbed them of, ruse returned to them; they had recourse to all the resources of their charms, and the most irreproachable person did not resist them. Poison and the sword were both subject to them; they commanded in crime as in fortune. The French government, especially, depended throughout the centuries on the nocturnal administration of women; the cabinet kept no secret from their indiscretion; ambassadorial post, command, ministry, presidency, pontificate, college of cardinals; finally, anything which characterizes the folly of men, profane and sacred, all have been subject to the cupidity and ambition of this sex, formerly contemptible and respected, and since the revolution, respectable and scorned. In this sort of contradictory situation, what remarks could I not make! I have but a moment to make them, but this moment will fix the attention of the remotest posterity. Under the Old Regime, all was vicious, all was guilty; but could not the amelioration of conditions be perceived even in the substance of vices? A woman only had to be beautiful or amiable; when she possessed these two advantages, she saw a hundred fortunes at her feet. If she did not profit from them, she had a bizarre character or a rare philosophy which made her scorn wealth; then she was deemed to be like a crazy woman; the

most indecent made herself respected with gold; commerce in women was a kind of industry in the first class [of society], which, henceforth, will have no more credit. If it still had it, the revolution would be lost, and under the new relationships we would always be corrupted; however, reason can always be deceived [into believing] that any other road to fortune is closed to the woman whom a man buys, like the slave on the African coasts. The difference is great; that is known. The slave is commanded by the master; but if the master gives her liberty without recompense, and at an age when the slave has lost all her charms, what will become of this unfortunate woman? The victim of scorn, even the doors of charity are closed to her; she is poor and old, they say; why did she not know how to make her fortune? Reason finds other examples that are even more touching. A young, inexperienced woman, seduced by a man whom she loves, will abandon her parents to follow him; the ingrate will leave her after a few years, and the older she has become with him, the more human is his inconstancy; if she has children, he will likewise abandon them. If he is rich, he will consider himself excused from sharing his fortune with his noble victims. If some involvement binds him to his duties, he will deny them, trusting that the laws will support him. If he is married, any other obligation loses its rights. Then what laws remain to extirpate vice all the way to its root? The law of dividing wealth and public administration between men and women. It can easily be seen that one who is born into a rich family gains very much from such equal sharing. But the one born into a poor family with merit and virtue — what is her lot? Poverty and opprobrium. If she does not precisely excel in music or painting, she cannot be admitted to any public function when she has all the capacity for it. I do not want to give only a sketch of things; I will go more deeply into this in the new edition of all my political writings, with notes, which I propose to give to the public in a few days.

I take up my text again on the subject of morals. Marriage is the tomb of trust and love. The married woman can with impurity give bastards to her husband, and also give them the wealth which does not belong to them. The woman who is unmarried

has only one feeble right; ancient and inhuman laws refuse to her for her children the right to the name and the wealth of their father; no new laws have been made in this matter. If it is considered a paradox and an impossibility on my part to try to give my sex an honorable and just consistency, I leave it to men to attain glory for dealing with this matter; but while we wait, the way can be prepared through national education, the restoration of morals, and conjugal conventions.

Form for a Social Contract between Man and Woman

We, ___ and ___, moved by our own will, unite ourselves for the duration of our lives, and for the duration of our mutual inclinations, under the following conditions: We intend and wish to make our wealth communal, meanwhile reserving to ourselves the right to divide it in favor of our children and of those toward whom we might have a particular inclination, mutually recognizing that our property belongs directly to our children, from whatever bed they come, and that all of them without distinction have the right to bear the name of the fathers and mothers who have acknowledged them, and we are charged to subscribe to the law which punishes the renunciation of one's own blood. We likewise obligate ourselves, in case of separation, to divide our wealth and to set aside in advance the portion the law indicates for our children, and in the event of a perfect union, the one who dies will divest himself of half his property in his children's favor, and if one dies childless, the survivor will inherit by right, unless the dying person has disposed of half the common property in favor of one whom he judged deserving.

That is approximately the formula for the marriage act I propose for execution. Upon reading this strange document, I see rising up against me the hypocrites, the prudens, the clergy, and the whole infernal sequence. But how it [my proposal] offers to the wise the moral means of achieving the perfection of a happy government! I am going to give

in a few words the physical proof of it. The rich, childless Epicurean finds it very good to go to his poor neighbor to augment his family. When there is a law authorizing a poor man's wife to have a rich one adopt their children, the bonds of society will be strengthened and morals will be purer. This law will perhaps save the community's wealth and hold back the disorder which drives so many victims to the almshouses of shame, to a low station, and into degenerate human principles where nature has groaned for so long. May the detractors of wise philosophy then cease to cry out against primitive morals, or may they lose their point in the source of their citations.

Moreover, I would like a law which would assist widows and young girls deceived by the false promises of a man to whom they were attached; I would like, I say, this law to force an inconstant man to hold to his obligations or at least [to pay] an indemnity equal to his wealth. Again, I would like this law to be rigorous against women, at least those who have the effrontery to have recourse to a law which they themselves had violated by their misconduct, if proof of that were given. At the same time, as I showed in *Le Bonheur primitif de l'homme*, in 1788, that prostitutes should be placed in designated quarters. It is not prostitutes who contribute the most to the depravity of morals, it is the women of society. In regenerating the latter, the former are changed. This link of fraternal union will first bring disorder, but in consequence it will produce at the end a perfect harmony.

I offer a foolproof way to elevate the soul of women; it is to join them to all the activities of man; if man persists in finding this way impractical, let him share his fortune with woman, not at his caprice, but by the wisdom of laws. Prejudice falls, morals are purified, and nature regains all her rights. Add to this the marriage of priests and the strengthening of the king on his throne, and the French government cannot fail.

It would be very necessary to say a few words on the troubles which are said to be caused by the decree in favor of colored men in our islands. There is where nature shudders with horror; there is where reason and humanity have still not touched callous souls; there, especially, is where division and discord

stir up their inhabitants. It is not difficult to divine the instigators of these incendiary fermentations; they are even in the midst of the National Assembly; they ignite the fire in Europe which must inflame America. Colonists make a claim to reign as despots over the men whose fathers and brothers they are; and, disowning the rights of nature, they trace the source of [their rule] to the scantiest tint of their blood. These inhuman colonists say: our blood flows in their veins, but we will shed it all if necessary to glut our greed or our blind ambition. It is in these places nearest to nature where the father scorns the son; deaf to the cries of blood, they stifle all its attraction; what can be hoped from the resistance opposed to them? To constrain [blood] violently is to render it terrible; to leave [blood] still enchained is to direct all calamities towards America. A divine hand seems to spread liberty abroad throughout the realms of man; only the law has the right to curb this liberty if it degenerates into license, but it must be equal for all; liberty must hold the National Assembly to its decree dictated by prudence and justice. May it act the same way for the state of France and render her as attentive to new abuses as she was to the ancient ones which each day become more dreadful. My opinion would be to reconcile the executive and legislative power, for it seems to me that the one is everything and the other is nothing — whence comes, unfortunately perhaps, the loss of the French Empire. I think that these two powers, like man and woman, should be united but equal in force and virtue to make a good household....

6.9 Mary Wollstonecraft: *A Vindication of the Rights of Women* (1792)¹⁶

Introduction

I have turned over various books written on the subject of education, and patiently observed the conduct of parents and the management of schools; but what has been the result? — a profound conviction that the neglected education of my fellow-creatures

is the grand source of the misery I deplore, and that women, in particular, are rendered weak and wretched by a variety of concurring causes, originating from one hasty conclusion. The conduct and manners of women, in fact, evidently prove that their minds are not in a healthy state; for, like the flowers which are planted in too rich a soil, strength and usefulness are sacrificed to beauty; and the flaunting leaves, after having pleased a fastidious eye, fade, disregarded on the stalk, long before the season when they ought to have arrived at maturity. One cause of this barren blooming I attribute to a false system of education, gathered from the books written on this subject by men who, considering females rather as women than human creatures, have been more anxious to make them alluring mistresses than affectionate wives and rational mothers; and the understanding of the sex has been so bubbled by this specious homage, that the civilized women of the present century, with a few exceptions, are only anxious to inspire love, when they ought to cherish a nobler ambition, and by their abilities and virtues exact respect.

In a treatise, therefore, on female rights and manners, the works which have been particularly written for their improvement must not be overlooked, especially when it is asserted, in direct terms, that the minds of women are enfeebled by false refinement; that the books of instruction, written by men of genius, have had the same tendency as more frivolous productions; and that, in the true style of Mahometanism, they are treated as a kind of subordinate beings, and not as a part of the human species, when improvable reason is allowed to be the dignified distinction which raises men above the brute creation, and puts a natural scepter in a feeble hand.

Yet, because I am a woman, I would not lead my readers to suppose that I mean violently to agitate the contested question respecting the quality or inferiority of the sex; but as the subject lies in my way, and I cannot pass it over without subjecting the main tendency of my reasoning to misconstruction,

16 Mary Wollstonecraft, *A Vindication of the Rights of Woman, with Strictures on Political and Moral Subjects* (London, 1792 [public domain]).

I shall stop a moment to deliver, in a few words, my opinion. In the government of the physical world it is observable that the female in point of strength is, in general, inferior to the male. This is the law of Nature; and it does not appear to be suspended or abrogated in favor of woman. A degree of physical superiority cannot, therefore, be denied, and it is a noble prerogative! But not content with this natural pre-eminence, men endeavor to sink us still lower, merely to render us alluring objects for a moment; and women, intoxicated by the adoration which men, under the influence of their senses, pay them, do not seek to obtain a durable interest in their hearts, or to become the friends of the fellow-creatures who find amusement in their society...

The most perfect education, in my opinion, is such an exercise of the understanding as is best calculated to strengthen the body and form the heart. Or, in other words, to enable the individual to attain such habits of virtue as will render it independent. In fact, it is a farce to call any being virtuous whose virtues do not result from the exercise of its own reason. This was Rousseau's opinion respecting men; I extend it to women, and confidently assert that they have been drawn out of their sphere by false refinement, and not by an endeavor to acquire masculine qualities...

But in the education of women, the cultivation of the understanding is always subordinate to the acquirement of some corporeal accomplishment. Even when enervated by confinement and false notions of modesty, the body is prevented from attaining that grace and beauty which relaxed half-formed limbs never exhibit. Besides, in youth their faculties are not brought forward by emulation; and having no serious scientific study, if they have natural sagacity, it is turned too soon on life and manners. They dwell on effects and modifications, without tracing them back to causes; and complicated rules to adjust behavior are a weak substitute for simple principles.

As a proof that education gives this appearance of weakness to females, we may instance the example of military men, who are, like them, sent into the world before their minds have been stored with knowledge, or fortified by principles.

The consequences are similar; soldiers acquire a little superficial knowledge, snatched from the muddy current of conversation, and from continually mixing with society, they gain what is termed a knowledge of the world; and this acquaintance with manners and customs has frequently been confounded with a knowledge of the human heart. But can the crude fruit of casual observation, never brought to the test of judgment, formed by comparing speculation and experience, deserve such a distinction? Soldiers, as well as women, practice the minor virtues with punctilious politeness. Where is then the sexual difference, when the education has been the same? All the difference that I can discern arises from the superior advantage of liberty which enables the former to see more of life...

The great misfortune is this, that they both acquire manners before morals, and a knowledge of life before they have from reflection any acquaintance with the grand ideal outline of human nature. The consequence is natural. Satisfied with common nature, they become a prey to prejudices, and taking all their opinions on credit, they blindly submit to authority. So that if they have any sense, it is a kind of instinctive glance that catches proportions, and decides with respect to manners, but fails when arguments are to be pursued below the surface, or opinions analyzed...

Strengthen the female mind by enlarging it, and there will be an end to blind obedience; but as blind obedience is ever sought for by power, tyrants and sensualists are in the right when they endeavor to keep woman in the dark, because the former only want slaves, and the latter a plaything. The sensualist, indeed, has been the most dangerous of tyrants, and women have been duped by their lovers, as princes by their ministers, whilst dreaming that they reigned over them...

Women are therefore to be considered either as moral beings, or so weak that they must be entirely subjected to the superior faculties of men...

It appears to me necessary to dwell on these obvious truths, because females have been insulated, as it were; and while they have been stripped of the virtues that should clothe humanity, they have been decked with artificial graces that enable them to

exercise a short-lived tyranny. Love, in their bosoms, taking place of every nobler passion, their sole ambition is to be fair, to raise emotion instead of inspiring respect; and this ignoble desire, like the servility in absolute monarchies, destroys all strength of character. Liberty is the mother of virtue, and if women be, by their very constitution, slaves, and not allowed to breathe the sharp invigorating air of freedom, they must ever languish like exotics, and be reckoned beautiful flaws in nature....

I, therefore, will venture to assert that till women are more rationally educated, the progress of human virtue and improvement in knowledge must receive continual checks. And if it be granted that woman was not created merely to gratify the appetite of man, or to be the upper servant, who provides his meals and takes care of his linen, it must follow that the first care of those mothers or fathers who really attend to the education of females should be, if not to strengthen the body, at least not to destroy the constitution by mistaken notions of beauty and female excellence; nor should girls ever be allowed to imbibe the pernicious notion that a defect can, by any chemical process of reasoning, become an excellence....

But should it be proved that woman is naturally weaker than man, whence does it follow that it is natural for her to labor to become still weaker than nature intended her to be? Arguments of this cast are an insult to common sense, and savor of passion. The *divine right* of husbands, like the divine right of kings, may, it is to be hoped, in this enlightened age, be contested without danger; and though conviction may not silence many boisterous disputants, yet, when any prevailing prejudice is attacked, the wise will consider, and leave the narrowminded to rail with thoughtless vehemence at innovation....

In order to preserve [women's] innocence, as ignorance is courteously termed, truth is hidden from them, and they are made to assume an artificial character before their faculties have acquired any strength. Taught from their infancy that beauty is woman's scepter, the mind shapes itself to the body, and roaming round its gilt cage, only seeks to adore its prison. Men have various employments and pursuits which engage their attention, and

give a character to the opening mind; but women, confined to one, and having their thoughts constantly directed to the most insignificant part of themselves, seldom extend their views beyond the triumph of the hour. But were their understanding once emancipated from the slavery to which the pride and sensuality of man and their short-sighted desire, like that of dominion in tyrants, of present sway, has subjected them, we should probably read of their weaknesses with surprise....

Let not men then in the pride of power, use the same arguments that tyrannic kings and venal ministers have used, and fallaciously assert that woman ought to be subjected because she has always been so. But, when man, governed by reasonable laws, enjoys his natural freedom, let him despise woman, if she do not share it with him; and, till that glorious period arrives, in descanting on the folly of the sex, let him not overlook his own.

Women, it is true, obtaining power by unjust means, by practicing or fostering *vice*, evidently lose the rank which reason would assign them, and they become either abject slaves or capricious tyrants. They lose all simplicity, all dignity of mind, in acquiring power, and act as men are observed to act when they have been exalted by the same means.

It is time to effect a revolution in female manners — time to restore to them their lost dignity — and make them, as a part of the human species, labor by reforming themselves to reform the world. It is time to separate unchangeable morals from local manners. If men be demi-gods, why let us serve them! And if the dignity of the female soul be as disputable as that of animals — if their reason does not afford sufficient light to direct their conduct whilst unerring instinct is denied — they are surely of all creatures the most miserable! and, bent beneath the iron hand of destiny, must submit to be a *fair defect* in creation. But to justify the ways of Providence respecting them, by pointing out some irrefragable reason for thus making such a large portion of mankind accountable and not accountable, would puzzle the subtlest casuist....

Supposing a woman, trained up to obedience, be married to a sensible man, who directs her judgment without making her feel the servility of

her subjection, to act with as much propriety by this reflected light as can be expected when reason is taken at secondhand, yet she cannot ensure the life of her protector; he may die and leave her with a large family. A double duty devolves on her; to educate them in the character of both father and mother; to form their principles and secure their property. But, alas! she has never thought, much less acted for herself. She has only learned to please men, to depend gracefully on them; yet, encumbered with children, how is she to obtain another protector — a husband to supply the place of reason. A rational man, for we are not treading on romantic ground, though he may think her a pleasing docile creature, will not choose to marry *a family* for love, when the world contains many more pretty creatures. What is then to become of her? She either falls an easy prey to some mean fortune-hunter, who defrauds her children of their paternal inheritance, and renders her miserable; or becomes the victim of discontent and blind indulgence. Unable to educate her sons, or impress them with respect; for it is not a play on words to assert, that people are never respected, though filling an important station, who are not respectable; she pines under the anguish of unavailing impotent regret. The serpent's tooth enters into her very soul, and the vices of licentious youth bring her with sorrow, if not with poverty also, to the grave.

This is not an overcharged picture; on the contrary, it is a very possible case, and something similar must have fallen under every attentive eye.

I have, however, taken it for granted, that she was well disposed, though experience shows, that the blind may as easily be led into a ditch as along the beaten road. But supposing, no very improbable conjecture, that a being only taught to please must still find her happiness in pleasing; what an example of folly, not to say vice, will she be to her innocent daughters! The mother will be lost in the coquette, and, instead of making friends of her daughters, view them with eyes askance, for they are rivals — rivals more cruel than any other, because they invite a comparison, and drive her from the throne of beauty, who has never thought of a seat on the bench of reason.

It does not require a lively pencil, or the discriminating outline of a caricature, to sketch the domestic miseries and petty vices which such a mistress of a family diffuses. Still she only acts as a woman ought to act, brought up according to Rousseau's system. She can never be reproached for being masculine, or turning out of her sphere; nay, she may observe another of his grand rules, and, cautiously preserving her reputation free from spot, be reckoned a good kind of woman. Yet in what respect can she be termed good? She abstains, it is true, without any great struggle, from committing gross crimes; but how does she fulfill her duties? Duties! In truth she has enough to think of to adorn her body and nurse a weak constitution.

With respect to religion, she never presumed to judge for herself; but conformed, as a dependent creature should, to the ceremonies of the Church which she was brought up in, piously believing that wiser heads than her own have settled that business; and not to doubt is her point of perfection. She therefore pays her tithe of mint and cumin — and thanks her God that she is not as other women are. These are the blessed effects of a good education! These the virtues of man's helpmate!

I must relieve myself by drawing a different picture.

Let fancy now present a woman with a tolerable understanding, for I do not wish to leave the line of mediocrity, whose constitution, strengthened by exercise, has allowed her body to acquire its full vigor; her mind, at the same time, gradually expanding itself to comprehend the moral duties of life, and in what human virtue and dignity consist.

Formed thus by the discharge of the relative duties of her station, she marries from affection, without losing sight of prudence, and looking beyond matrimonial felicity, she secures her husband's respect before it is necessary to exert mean arts to please him and feed a dying flame, which nature doomed to expire when the object became familiar, when friendship and forbearance take place of a more ardent affection. This is the natural death of love, and domestic peace is not

destroyed by struggles to prevent its extinction. I also suppose the husband to be virtuous; or she is still more in want of independent principles.

Fate, however, breaks this tie. She is left a widow, perhaps, without a sufficient provision; but she is not desolate! The pang of nature is felt; but after time has softened sorrow into melancholy resignation, her heart turns to her children with redoubled fondness, and anxious to provide for them, affection gives a sacred heroic cast to her maternal duties. She thinks that not only the eye sees her virtuous efforts from whom all her comfort now must flow, and whose approbation is life; but her imagination, a little abstracted and exalted by grief, dwells on the fond hope that the eyes which her trembling hand closed, may still see how she subdues every wayward passion to fulfill the double duty of being the father as well as the mother of her children. Raised to heroism by misfortunes, she represses the first faint dawning of a natural inclination, before it ripens into love, and in the bloom of life forgets her sex — forgets the pleasure of an awakening passion, which might again have been inspired and returned. She no longer thinks of pleasing, and conscious dignity prevents her from priding herself on account of the praise which her conduct demands. Her children have her love, and her brightest hopes are beyond the grave, where her imagination often strays.

I think I see her surrounded by her children, reaping the reward of her care. The intelligent eye meets hers, whilst health and innocence smile on their chubby cheeks, and as they grow up the cares of life are lessened by their grateful attention. She lives to see the virtues which she endeavored to plant on principles, fixed into habits, to see her children attain a strength of character sufficient to enable them to endure adversity without forgetting their mother's example.

The task of life thus fulfilled, she calmly waits for the sleep of death, and rising from the grave, may say — "Behold, thou gavest me a talent, and here are five talents."

I wish to sum up what I have said in a few words, for I here throw down my gauntlet, and deny the existence of sexual virtues, not excepting

modesty. For man and woman, truth, if I understand the meaning of the word, must be the same; yet the fanciful female character, so prettily drawn by poets and novelists, demanding the sacrifice of truth and sincerity, virtue becomes a relative idea, having no other foundation than utility, and of that utility men pretend arbitrarily to judge, shaping it to their own convenience.

Women, I allow, may have different duties to fulfill; but they are human duties, and the principles that should regulate the discharge of them, I sturdily maintain, must be the same.

To become respectable, the exercise of their understanding is necessary, there is no other foundation for independence of character; I mean explicitly to say that they must only bow to the authority of reason, instead of being the modest slaves of opinion.

In the superior ranks of life how seldom do we meet with a man of superior abilities, or even common acquirements? The reason appears to me clear, the state they are born in was an unnatural one. The human character has ever been formed by the employments the individual, or class, pursues; and if the faculties are not sharpened by necessity, they must remain obtuse. The argument may fairly be extended to women; for, seldom occupied by serious business, the pursuit of pleasure gives that insignificance to their character which renders the society of the great so insipid. The same want of firmness, produced by a similar cause, forces them both to fly from themselves to noisy pleasures, and artificial passions, till vanity takes place of every social affection, and the characteristics of humanity can scarcely be discerned. Such are the blessings of civil governments, as they are at present organized, that wealth and female softness equally tend to debase mankind, and are produced by the same cause; but allowing women to be rational creatures, they should be incited to acquire virtues which they may call their own, for how can a rational being be ennobled by anything that is not obtained by its own exertions?...

Though I consider that women in the common walks of life are called to fulfill the duties of wives

and mothers, by religion and reason, I cannot help lamenting that women of a superior cast have not a road open by which they can pursue more extensive plans of usefulness and independence. I may excite laughter, by dropping an hint, which I mean to pursue, some future time, for I really think that women ought to have representatives, instead of being arbitrarily governed without having any direct share allowed them in the deliberations of government....

But, as the whole system of representation is now, in this country, only a convenient handle for despotism, they need not complain, for they are as well represented as a numerous class of hard-working mechanics, who pay for the support of royalty when they can scarcely stop their children's mouths with bread. How are they represented whose very sweat supports the splendid stud of an heir-apparent, or varnishes the chariot of some female favorite who looks down on shame? Taxes on the very necessities of life, enable an endless tribe of idle princes and princesses to pass with stupid pomp before a gaping crowd, who almost worship the very parade which costs them so dear....

But what have women to do in society? I may be asked, but to loiter with easy grace; surely you would not condemn them all to suckle fools and chronicle small beer! No. Women might certainly study the art of healing, and be physicians as well as nurses. And midwifery, decency seems to allot to them, though I am afraid, the word midwife, in our dictionaries, will soon give place to *accoucheur*, and one proof of the former delicacy of the sex be effaced from the language.

They might also study politics, and settle their benevolence on the broadest basis; for the reading of history will scarcely be more useful than the perusal of romances, if read as mere biography; if the character of the times, the political improvements, arts, etc., be not observed. In short, if it be not considered as the history of man; and not of particular men, who filled a niche in the temple of fame, and dropped into the black rolling stream of time, that silently sweeps all before it into the shapeless void called — eternity. — For shape, can it be called, “that shape hath none”?

Business of various kinds, they might likewise pursue, if they were educated in a more orderly manner, which might save many from common and legal prostitution. Women would not then marry for a support, as men accept of places under Government, and neglect the implied duties; nor would an attempt to earn their own subsistence, a most laudable one! sink them almost to the level of those poor abandoned creatures who live by prostitution. For are not milliners and mantua-makers reckoned the next class? The few employments open to women, so far, from being liberal, are menial; and when a superior education enables them to take charge of the education of children as governesses, they are not treated like the tutors of sons, though even clerical tutors are not always treated in a manner calculated to render them respectable in the eyes of their pupils, to say nothing of the private comfort of the individual. But as women educated like gentlewomen, are never designed for the humiliating situation which necessity sometimes forces them to fill; these situations are considered in the light of a degradation; and they know little of the human heart, who need to be told, that nothing so painfully sharpens sensibility as such a fall in life....

Parental Affection

Woman, however, a slave in every situation to prejudice, seldom exerts enlightened maternal affection; for she either neglects her children, or spoils them by improper indulgence. The affection of some women for their children is, as I have before termed it, frequently very brutish: for it eradicates every spark of humanity. Justice, truth, everything is sacrificed by these Rebekahs, and for the sake of their own children they violate the most sacred duties, forgetting the common relationship that binds the whole family on earth together. Yet, reason seems to say, that they who suffer one duty, or affection, to swallow up the rest, have not sufficient heart or mind to fulfill that one conscientiously. It then loses the venerable aspect of a duty, and assumes the fantastic form of a whim....

[U]nless the understanding of woman be enlarged, and her character rendered more firm,

by being allowed to govern her own conduct, she will have sufficient sense or command of temper to manage her children properly...

On National Education

The good effects resulting from attention to private education will ever be very confined, and the parent who really puts his own hand to the plough, will always, in some degree, be disappointed, till education becomes a grand national concern. A man cannot retire into a desert with his child, and if he did he could not bring himself back to childhood, and become the proper friend and playfellow of an infant or youth. And when children are confined to the society of men and women, they very soon acquire that kind of premature man-hood which stops the growth of every vigorous power of mind or body. In order to open their faculties they should be excited to think for themselves; and this can only be done by mixing a number of children together, and making them jointly pursue the same objects....

This train of reasoning brings me back to a subject, on which I mean to dwell, the necessity of establishing proper day-schools.

But, these should be national establishments, for whilst schoolmasters are dependent on the caprice of parents, little exertion can be expected from them, more than is necessary to please ignorant people. Indeed, the necessity of a master's giving the parents some sample of the boy's abilities, which during the vacation is shown to every visitor, is productive of more mischief than would at first be supposed. For it is seldom done entirely, to speak with moderation, by the child itself; thus the master countenances falsehood, or winds the poor machine up to some extraordinary exertion, that injures the wheels, and stops the progress of gradual improvement. The memory is loaded with unintelligible words, to make a show of, without the understanding's acquiring any distinct ideas: but only that education deserves emphatically to be termed cultivation of mind, which teaches young people how to begin to think. The imagination should not be allowed to debauch the understanding before it gained strength, or vanity will become the forerunner of vice: for every way of exhibiting the

acquirements of a child is injurious to its moral character...

When... I call women slaves, I mean in a political and civil sense: for indirectly they obtain too much power, and are debased by their exertions to obtain illicit sway.

Let an enlightened nation then try what effect reason would have to bring them back to nature, and their duty; and allowing them to share the advantages of education and government with man, see whether they will become better, as they grow wiser and become free. They cannot be injured by the experiment, for it is not the power of man to render them more insignificant than they are at present....

To render this practicable, day-schools for particular ages should be established by Government, in which boys and girls might be educated together. The school for the younger children, from five to nine years of age, ought to be absolutely free and open to all classes....

To prevent any of the distinctions of vanity, they should be dressed alike, and all obliged to submit to the same discipline, or leave the school. The schoolroom ought to be surrounded by a large piece of ground, in which the children might be usefully exercised, for at this age they should not be confined to any sedentary employment for more than an hour at a time. But these relaxations might all be rendered a part of elementary education, for many things improve and amuse the senses, when introduced as a kind of show, to the principles of which, dryly laid down, children would turn a deaf ear. For instance, botany, mechanics, and astronomy; reading, writing, arithmetic, natural history, and some simple experiments in natural philosophy, might fill up the day; but these pursuits should never encroach on gymnastic plays in the open air. The elements of religion, history, the history of man, and politics, might also be taught by conversations in the Socratic form....

These would be schools of morality — and the happiness of man, allowed to flow from the pure springs of duty and affection, what advances might not the human mind make? Society can only be happy and free in proportion as it is virtuous; but the

present distinctions, established in society, corrode all private, and blast all public virtue.

I have already inveighed against the custom of confining girls to their needle, and shutting them out from all political and civil employments; for by thus narrowing their minds they are rendered unfit to fulfill the peculiar duties which Nature has assigned them....

I speak of the improvement and emancipation of the whole sex, for I know that the behavior of a few women, who, by accident, or following a strong bent of nature, have acquired a portion of knowledge superior to that of the rest of their sex, has often been overbearing; but there have been instances of women who, attaining knowledge, have not discarded modesty, nor have they always pedantically appeared to despise the ignorance which they labored to disperse in their own minds. The exclamations then which any advice respecting female learning commonly produces, especially from pretty women, often arise from envy. When they chance to see that even the luster of their eyes, and the flippant sportiveness of refined coquetry, will not always secure them attention during a whole evening, should a woman of a more cultivated understanding endeavor to give a rational turn to the conversation, the common source of consolation is that such women seldom get husbands. What arts have I not seen silly women use to interrupt by *flirtation* — a very significant word to describe such a maneuver — a rational conversation, which made the men forget that they were pretty women.

But, allowing what is very natural to man, that the possession of rare abilities is really calculated to excite over-weening pride, disgusting in both men and women, in what a state of inferiority must the female faculties have rusted when such a small portion of knowledge as those women attained, who have sneeringly been termed learned women, could be singular? — sufficiently so to puff up the possessor, and excite envy in her contemporaries, and some of the other sex....

The conclusion which I wish to draw is obvious. Make women rational creatures and free citizens, and they will become good wives and mothers — that is, if men do not neglect the duties of husbands and fathers.

Discussing the advantages which a public and private education combined, as I have sketched, might rationally be expected to produce, I have dwelt most on such as are particularly relative to the female world, because I think the female world oppressed; yet the gangrene, which the vices engendered by oppression have produced, is not confined to the morbid part, but pervades society at large; so that when I wish to see my sex become more like moral agents, my heart bounds with the anticipation of the general diffusion of that sublime contentment which only morality can diffuse.

6.10 On The Admission of Jews to Rights of Citizenship (1791)¹⁷

Duport: I have one very short observation to make to the Assembly, which appears to be of the highest importance and which demands all its attention. You have regulated by the Constitution, Sirs, the qualities deemed necessary to become a French citizen, and an active citizen: that sufficed, I believe, to regulate all the incidental questions that could have been raised in the Assembly relative to certain professions, to certain persons. But there is a decree of adjournment that seems to strike a blow at these general rights: I speak of the Jews. To decide the question that concerns them, it suffices to lift the decree of adjournment that you have rendered and which seems to suspend the question in their regard. Thus, if you had not rendered a decree of adjournment on the question of the Jews, it would not have been necessary to do anything; for, having declared by your Constitution how all peoples of the earth could become French citizens and how all French citizens could become active citizens, there would have been no difficulty on this subject.

I ask therefore that the decree of adjournment be revoked and that it be declared relative to the

17 *The French Revolution and Human Rights: A Brief Documentary History*, translated, edited, and with an introduction by Lynn Hunt (Boston/New York: Bedford/St. Martin's, 1996), 99–101, citing *Archives parlementaires* 31 (1888): 372.

Jews that they will be able to become active citizens, like all the peoples of the world, by fulfilling the conditions prescribed by the Constitution. I believe that freedom of worship no longer permits any distinction to be made between the political rights of citizens on the basis of their beliefs and I believe equally that the Jews cannot be the only exceptions to the enjoyment of these rights, when pagans, Turks, Muslims, Chinese even, men of all the sects, in short, are admitted to these rights.

**Decree of the National Assembly,
27 September 1791**

The National Assembly, considering that the conditions necessary to be a French citizen and

to become an active citizen are fixed by the Constitution, and that every man meeting the said conditions, who swears the civic oath, and engages himself to fulfill all the duties that the Constitution imposes, has the right to all of the advantages that the Constitution assures;

Revokes all adjournments, reservations, and exceptions inserted into the preceding decrees relative to Jewish individuals who will swear the civic oath which will be regarded as a renunciation of all the privileges and exceptions introduced previously in their favor.



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PART III

THE SOCIALIST CONTRIBUTION AND THE INDUSTRIAL AGE

Introduction

With the British sociologist T. H. Marshall (1893–1981), Part III introduces readers to an analysis of human rights based on social and economic changes. In his *Citizenship and Social Class* (1950), Marshall provides an invaluable introduction to the development of citizenship, institutions, and rights in relationship to the changing nature of capitalism. He divides the notion of citizenship into three components: civil, political, and social rights. The first part is rooted in the Enlightenment, stretching backward to include Habeas Corpus, the Toleration Act, and freedom of the press. The second component is associated with the institution of voting rights, which emerged with the First British Reform Act of 1832. The third component began with the demand for free public education, which, along with other social rights, gained wider currency during the nineteenth century. But it was only during the twentieth century, Marshall argued, that social rights achieved equal partnership with the civil and political elements of citizenship – as reflected in the institution of the welfare state in the United States and Europe and Articles 20 to 26 of the 1948 United Nations Declaration of Human Rights (see Sections III.1 and III.2).

The call for broadening human rights during the nineteenth century coincided with the deplorable conditions experienced by the growing working class converging around new industrial sites. Placing the concept of civil and economic rights inherited from the Enlightenment in its historical and socioeconomic context, socialist radicals and reformers fought to extend universal suffrage and social rights to the dispossessed. While oscillating between calls for political reform and class war, they established, under Karl Marx's leadership, a new socialist international organization (The International Workingmen's Association, or the First International) to orchestrate worldwide working class action. One goal was to oppose the drift toward wars driven by geopolitical and imperialist interests. Under the organic principle of human emancipation, the First International was also devoted to ending slavery and advancing the rights of children, women, and marginalized minorities (see Chapters 8 and 9).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 3.

Questions for Part III

1. What is a historical materialist approach to history? What is the relevance of this approach compared to others?
2. Does the right to vote secure democracy? If so, how?
3. What is the connection between human rights and economic equality?
4. Should healthcare be regarded as a universal human right? Explain.
5. Should the wealthiest pay a higher portion of their income in taxes? Discuss.
6. Can inheritance tax be justified? If so, how?
7. To what extent is violence or revolution justified for political emancipation?
8. Is free market capitalism a necessary step toward socialism?
9. Is morality in peace similar to morality in war?
10. How do we assess conflicting rights of aggrieved groups?
11. To what extent are claims to women's rights similar?

III.1 T. H. Marshall: On Civil, Political, and Social Rights (*Citizenship and Social Class*, 1950)¹

THE DEVELOPMENT OF CITIZENSHIP TO THE END OF THE NINETEENTH CENTURY

I shall be running true to type as a sociologist if I begin by saying that I propose to divide citizenship into three parts. But the analysis is, in this case, dictated by history even more clearly than by logic. I shall call these three parts, or elements, civil, political and social. The civil element is composed of the rights necessary for individual freedom — liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice. The last is of a different order from the others, because it is the right to defend and assert all one's rights on terms of equality with others and by due process of law. This shows us that the institutions most directly associated with civil rights are the courts of justice. By the political element I mean the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body. The corresponding institutions are parliament and councils of local government. By the social

element I mean the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society. The institutions most closely connected with it are the educational system and the social services.²

In early times these three strands were wound into a single thread. The rights were blended because the institutions were amalgamated. As Maitland said: "The further back we trace our history the more impossible it is for us to draw strict lines of demarcation between the various functions of the State: the same institution is a legislative assembly, a governmental council and a court of law ... Everywhere, as we pass from the ancient to the modern, we see what the fashionable philosophy calls differentiation."³...

When the three elements of citizenship parted company they were soon barely on speaking terms. So complete was the divorce between them that it is possible, without doing too much violence to historical accuracy, to assign the formative period in the life of each to a different century — civil rights to the eighteenth, political to the nineteenth and social to the twentieth. These periods must, of course, be

1 T. H. Marshall, *Citizenship and Social Class and Other Essays* (Cambridge: Cambridge University Press, 1950).

2 By this terminology, what economists sometimes call "income from civil rights" would be called "income from social rights." Cf. H. Dalton, *Some Aspects of the Inequality of Incomes in Modern Communities*, Part 3, Chapters 3 and 4.

3 F. Maitland, *Constitutional History of England*, p. 105.

treated with reasonable elasticity, and there is some evident overlap, especially between the last two.

To make the eighteenth century cover the formative period of civil rights it must be stretched backwards to include Habeas Corpus, the Toleration Act, and the abolition of the censorship of the press; and it must be extended forwards to include Catholic Emancipation, the repeal of the Combination Acts, and the successful end of the battle for the freedom of the press associated with the names of Cobbett and Richard Carlile. It could then be more accurately, but less briefly, described as the period between the Revolution and the first Reform Act. By the end of that period, when political rights made their first infantile attempt to walk in 1832, civil rights had come to man's estate and bore, in most essentials, the appearance that they have today.⁴...

By the beginning of the nineteenth century this principle of individual economic freedom was accepted as axiomatic. You are probably familiar with the passage quoted by the Webbs from the report of the Select Committee of 1811, which states that:

No interference of the legislature with the freedom of trade, or with the perfect liberty of every individual to dispose of his time and of his labor in the way and on the terms which he may judge most conducive to his own interest, can take place without violating general principles of the first importance to the prosperity and happiness of the community.⁵

The repeal of the Elizabethan statutes followed quickly, as the belated recognition of a revolution which had already taken place.

The story of civil rights in their formative period is one of the gradual addition of new rights to a status that already existed and was held to appertain to all adult members of the community — or

perhaps one should say to all male members, since the status of women, or at least of married women, was in some important respects peculiar. This democratic, or universal, character of the status arose naturally from the fact that it was essentially the status of freedom, and in seventeenth-century England all men were free. Servile status, or villeinage by blood, had lingered on as a patent anachronism in the days of Elizabeth, but vanished soon afterwards. This change from servile to free labor has been described by Professor Tawney as “a high landmark in the development both of economic and political society,” and as “the final triumph of the common law” in regions from which it had been excluded for four centuries. Henceforth the English peasant “is a member of a society in which there is, nominally at least, one law for all men.”⁶ The liberty which his predecessors had won by fleeing into the free towns had become his by right. In the towns the terms “freedom” and “citizenship” were interchangeable. When freedom became universal, citizenship grew from a local into a national institution.

The story of political rights is different both in time and in character. The formative period began, as I have said, in the early nineteenth century, when the civil rights attached to the status of freedom had already acquired sufficient substance to justify us in speaking of a general status of citizenship. And, when it began, it consisted, not in the creation of new rights to enrich a status already enjoyed by all, but in the granting of old rights to new sections of the population. In the eighteenth century political rights were defective, not in content, but in distribution — defective, that is to say, by the standards of democratic citizenship. The Act of 1832 did little, in a purely quantitative sense, to remedy that defect. After it was passed the voters still amounted to less than one-fifth of the adult male population. The franchise was still a group monopoly, but it had taken the first step towards becoming a monopoly

4 The most important exception is the right to strike, but the conditions which made this right vital for the workman and acceptable to political opinion had not yet fully come into being.

5 Sidney and Beatrice Webb, *History of Trade Unionism*.

6 R. H. Tawney, *Agrarian Problem in the Sixteenth Century*, 1916, pp. 43–44.

of a kind acceptable to the ideas of nineteenth-century capitalism — a monopoly which could, with some degree of plausibility, be described as open and not closed. A closed group monopoly is one into which no man can force his way by his own efforts; admission is at the pleasure of the existing members of the group. The description fits a considerable part of the borough franchise before 1832; and it is not too wide of the mark when applied to the franchise based on freehold ownership of land. Freeholds are not always to be had for the asking, even if one has the money to buy them, especially in an age in which families look on their lands as the social, as well as the economic, foundation of their existence. Therefore the Act of 1832, by abolishing rotten boroughs and by extending the franchise to leaseholders and occupying tenants of sufficient economic substance, opened the monopoly by recognizing the political claims of those who could produce the normal evidence of success in the economic struggle.

It is clear that, if we maintain that in the nineteenth century citizenship in the form of civil rights was universal, the political franchise was not one of the rights of citizenship. It was the privilege of a limited economic class, whose limits were extended by each successive Reform Law. It can nevertheless be argued that citizenship in this period was not politically meaningless. It did not confer a right, but it recognized a capacity. No sane and law-abiding citizen was debarred by personal status from acquiring and recording a vote. He was free to earn, to save, to buy property or to rent a house) and to enjoy whatever political rights were attached to these economic achievements. His civil rights entitled him, and electoral reform increasingly enabled him, to do this.

It was, as we shall see, appropriate that nineteenth-century capitalist society should treat political rights as a secondary product of civil rights. It was equally appropriate that the twentieth century should abandon this position and attach political rights directly and independently to citizenship as such. This vital change of principle was put into effect when the Act of 1918, by adopting manhood suffrage, shifted the basis of political

rights from economic substance to personal status. I say "manhood" deliberately in order to emphasize the great significance of this reform quite apart from the second, and no less important, reform introduced at the same time — namely the enfranchisement of women. But the Act of 1918 did not fully establish the political equality of all in terms of the rights of citizenship. Remnants of an inequality based on differences of economic substance lingered on until, only last year, plural voting (which had already been reduced to dual voting) was finally abolished.

When I assigned the formative periods of the three elements of citizenship each to a separate century — civil rights to the eighteenth, political to the nineteenth and social to the twentieth — I said that there was a considerable overlap between the last two. I propose to confine what I have to say now about social rights to this overlap, in order that I may complete my historical survey to the end of the nineteenth century, and draw my conclusions from it, before turning my attention to the second half of my subject, a study of our present experiences and their immediate antecedents. In this second act of the drama social rights will occupy the center of the stage.

The original source of social rights was membership of local communities and functional associations. This source was supplemented and progressively replaced by a Poor Law and a system of wage regulation which were nationally conceived and locally administered. The latter — the system of wage regulation — was rapidly decaying in the eighteenth century, not only because industrial change made it administratively impossible, but also because it was incompatible with the new conception of civil rights in the economic sphere, with its emphasis on the right to work where and at what you pleased under a contract of your own making. Wage regulation infringed this individualist principle of the free contract of employment.

The Poor Law was in a somewhat ambiguous position. Elizabethan legislation had made of it something more than a means for relieving destitution and suppressing vagrancy, and its constructive aims suggested an interpretation of social welfare

reminiscent of the more primitive, but more genuine, social rights which it had largely superseded. The Elizabethan Poor Law was, after all, one item in a broad program of economic planning whose general object was, not to create a new social order, but to preserve the existing one with the minimum of essential change. As the pattern of the old order dissolved under the blows of a competitive economy, and the plan disintegrated, the Poor Law was left high and dry as an isolated survival from which the idea of social rights was gradually drained away. But at the very end of the eighteenth century there occurred a final struggle between the old and the new, between the planned (or patterned) society and the competitive economy. And in this battle citizenship was divided against itself; social rights sided with the old and civil with the new.

In his book *Origins of Our Time*, Karl Polanyi attributes to the Speenhamland system of poor relief an importance which some readers may find surprising. To him it seems to mark and symbolize the end of an epoch. Through it the old order rallied its retreating forces and delivered a spirited attack into the enemy's country. That, at least, is how I should describe its significance in the history of citizenship. The Speenhamland system offered, in effect, a guaranteed minimum wage and family allowances, combined with the right to work or maintenance. That, even by modern standards, is a substantial body of social rights, going far beyond what one might regard as the proper province of the Poor Law. And it was fully realized by the originators of the scheme that the Poor Law was being invoked to do what wage regulation was no longer able to accomplish. For the Poor Law was the last remains of a system which tried to adjust real income to the social needs and status of the citizen and not solely to the market value of his labor. But this attempt to inject an element of social security into the very structure of the wage system through the instrumentality of the Poor Law was doomed to failure, not only because of its disastrous practical consequences, but also because it was utterly obnoxious to the prevailing spirit of the times.

In this brief episode of our history we see the Poor Law as the aggressive champion of the social rights of citizenship. In the succeeding phase we find the attacker driven back far behind his original position. By the Act of 1834 the Poor Law renounced all claim to trespass on the territory of the wages system, or to interfere with the forces of the free market. It offered relief only to those who, through age or sickness, were incapable of continuing the battle, and to those other weaklings who gave up the struggle, admitted defeat, and cried for mercy. The tentative move towards the concept of social security was reversed. But more than that, the minimal social rights that remained were detached from the status of citizenship. The Poor Law treated the claims of the poor, not as an integral part of the rights of the citizen, but as an alternative to them — as claims which could be met only if the claimants ceased to be citizens in any true sense of the word. For paupers forfeited in practice the civil right of personal liberty, by internment in the workhouse, and they forfeited by law any political rights they might possess. This disability of disfranchisement remained in being until 1918, and the significance of its final removal has, perhaps, not been fully appreciated. The stigma which clung to poor relief expressed the deep feelings of a people who understood that those who accepted relief must cross the road that separated the community of citizens from the outcast company of the destitute.

The Poor Law is not an isolated example of this divorce of social rights from the status of citizenship. The early Factory Acts show the same tendency. Although in fact they led to an improvement of working conditions and a reduction of working hours to the benefit of all employed in the industries to which they applied, they meticulously refrained from giving this protection directly to the adult male — the citizen *par excellence*. And they did so out of respect for his status as a citizen, on the grounds that enforced protective measures curtailed the civil right to conclude a free contract of employment. Protection was confined to women and children, and champions of women's rights were quick to detect the implied insult. Women were protected because they were not citizens. If they wished to

enjoy full and responsible citizenship, they must forgo protection. By the end of the nineteenth century such arguments had become obsolete, and the factory code had become one of the pillars in the edifice of social rights.

The history of education shows superficial resemblances to that of factory legislation. In both cases the nineteenth century was, for the most part, a period in which the foundations of social rights were laid, but the principle of social rights as an integral part of the status of citizenship was either expressly denied or not definitely admitted. But there are significant differences...

The education of children has a direct bearing on citizenship, and, when the State guarantees that all children shall be educated, it has the requirements and the nature of citizenship definitely in mind. It is trying to stimulate the growth of citizens in the making. The right to education is a genuine social right of citizenship, because the aim of education during childhood is to shape the future adult. Fundamentally it should be regarded, not as the right of the child to go to school, but as the right of the adult citizen to have been educated. And it follows that the growth of public elementary education during the nineteenth century was the first decisive step on the road to the re-establishment of the social rights of citizenship in the twentieth...

THE EARLY IMPACT OF CITIZENSHIP ON SOCIAL CLASS

So far my aim has been to trace in outline the development of citizenship in England to the end of the nineteenth century. For this purpose I have divided citizenship into three elements, civil, political and social. I have tried to show that civil rights came first, and were established in something like their modern form before the first Reform Act was passed in 1832. Political rights came next, and their extension was one of the main features of the nineteenth century, although the principle of universal political citizenship was not recognized until 1918. Social rights, on the other hand, sank to a vanishing point in the eighteenth and early nineteenth centuries.

Their revival began with the development of public elementary education, but it was not until the twentieth century that they attained to equal partnership with the other two elements in citizenship...

III.2 United Nations: Universal Declaration of Human Rights (1948), Articles 20–26⁷

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.

7 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

3. Everyone who works has the right to just and favorable remuneration insuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond, his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

7. CHALLENGING THE LIBERAL VISION OF RIGHTS

Bearing in mind the atrocities that were committed under socialism and communism in the twentieth century, one cannot undermine the enormous contribution of the nineteenth century labor tradition to modern universal human rights discourse, as evidenced by the Universal Declaration of Human Rights (Articles 20–26). Following the Enlightenment's revolutionary heritage, socialist activists criticized the way morality and the civil, political, and economic rights advocated during the French Revolution ended up favoring the middle and upper class. Championing a broader materialist application of these principles, the labor movement across Europe grew rapidly with the advance of the nineteenth century industrial revolution. Assessing the reasons for historical setbacks, it called for opening the gates to freedom to previously marginalized individuals.

In that spirit, the German socialist Friedrich Engels (1820–1895), Karl Marx's lifelong intellectual and political companion, opposed the liberal and ahistorical character of human rights defended by German philosophers such as Eugen Dühring. “The concept of truth,” Engels asserted in *The Anti-Dühring* (1878), “had varied so much from nation to nation and from age to age, that they have often been in direct contradiction of each other.” He further maintained that moral theories of rights are the product of the dominant class at any given stage of economic development. A real human morality, he wrote, is possible only when class antagonisms are transcended in both ideological and material terms. Thus, the notions of free will and freedom are empty if they are not discussed in terms of historical necessity or of material contingencies and possibilities (see Section 7.1).

Working class conditions and legal rights, socialists argued, were greatly restricted by the new contingencies of capitalism. The unlimited pursuit of property rights, they maintained, mainly benefited those who were initially advantaged and precluded achievement of the universal political equality advocated by liberalism. Thus, efforts to address inequities in voting rights went hand in hand with hopes to redress economic and social disparities. Unsurprisingly, the political rights demands of the Chartist movement, a working class movement that gained its name from the People's Charter of 1838, rallied many radical associations to its cause. The charter demanded political rights, including manhood suffrage, voting by secret ballot, and an end to the need for a property qualification for parliament. From the Chartist movement to the Paris Commune to the establishment of labor parties throughout Europe and the United States, these demands would meet enormous opposition (see Section 7.2).

The June 1848 revolution that led to the restriction of manhood suffrage in France was one of these instances. The German socialist philosopher and activist Karl Marx (1818–1883) supported the Chartist movement in England and wrote in *The New York Daily Tribune* (1850) that the “carrying of universal suffrage in England would be a far more socialistic measure than anything which has been

honored with that name on the Continent." Many labor activists echoed his views. In Germany, for instance, prominent socialist writer and political leader Ferdinand Lassalle (1825–1864) advocated popular suffrage in his "Working Class Program," a program originally described in a speech in Berlin in 1862 that was then illegally published as a pamphlet. Lassalle, rejecting Marx's great skepticism regarding the ability of the German state to reform, believed that the working class could free itself through increased political participation (see Sections 7.3–7.4).

Among the various struggles for universal suffrage, the Paris Commune represents an important episode. The Commune of 1871 was the result of a civil uprising involving all the various revolutionary movements within Paris, accompanying the defeat of the French in the Franco-Prussian War. In the face of growing food shortages and incessant Prussian bombardment, the Parisian working class opted to elect a self-governing commune. They presented the "Manifesto of the Paris Commune" (1871), calling for universal manhood suffrage and a fairer, if not necessarily socialist, management of the economy. After two months of resistance, the government crushed the Paris Commune, leaving 30,000 dead and exiling 7,000 prisoners to the French colony of New Caledonia (see Section 7.5).

The bloodshed in Paris further galvanized the growing European labor movement, which regarded the right to vote as a political means to improve the social and economic conditions of the working class. For some on the left of the political spectrum, however, attainment of full political equality would require the repudiation of another right that had been central to the earlier Enlightenment tradition: the right to property. Thus, French socialist anarchist Pierre-Joseph Proudhon (1809–1865) went so far as to declare that property was theft. In *What Is Property? An Inquiry into Principle of Right and of Government* (1840), he favored the basic rights celebrated by the French Declaration of the Rights of Man and Citizen (1789), namely, the rights to liberty, equality, and security. Yet, "the rich man's right to property," he insisted, is irrationally favored over the "poor man's desire for property. What a contradiction!" While Proudhon emphasized mutual cooperation between social associations, he did not in fact condemn all types of property. He maintained that the rights of farmers to possess the land they work and of craftspeople to own their tools and workshops were essential for the preservation of liberty, as long as their possessions did not lead to the exploitation of the labor of others (see Section 7.6).

In the same spirit as Proudhon's efforts to improve the fate of the dispossessed, the French socialist politician and historian Louis Blanc (1811–1882) published *The Organization of Labor* (1840), a study that advocated a system of worker-owned workshops, to be started with state subsidies. When Blanc helped create such workshops, and Parisian workers rallied in defense of workers' rights in the 1848 June Days, the French provisional government violently crushed them in a bloodbath. In exile, Blanc wrote his introduction to the 1848 edition of *The Organization of Labor*, insisting forcefully that unless rooted in material well-being, civil and political rights were devoid of substance (see Section 7.7).

In that same tradition, Karl Marx encapsulated in his various speeches and writings many demands for social and economic rights that were not then secured by capitalism, including the right to the limitation of the working day (1866), the right to freedom of association (1866), universal healthcare and national public education for both sexes (1866–1869), the prohibition of child labor, the establishment of factory health and safety measures, the regulation of prison labor, and the establishment of effective liability law (1891) (see Sections 7.8–7.12).

These rights claims were challenged by conservatives, socialists, and libertarians alike. The famous evolutionary biologist Charles Darwin (1809–1882) argued that universal healthcare and other social supports were contrary to natural selection (see Section 7.13). His notion of the "survival of the fittest" would be further developed in social and economic Darwinism through such thinkers as British philosopher Herbert Spencer (1820–1903) and Austrian economist Frederick Hayek (1889–1992). Unlike Darwin, the liberal English philosopher John Stuart Mill trusted people's potential to improve their

intellect through the cultivation of the mind. For this reason, he argued, governments should ensure every citizen's opportunity to advance through education. Contrary to Marx, however, Mill maintained that debtors and the indigent had forfeited their right to vote, while better educated citizens should be given more votes for the benefit of all (see Sections 7.14–7.15). Without an educated citizenry, democracy could face rapid erosion toward despotism and the loss of fundamental liberties.

Despite these debates, social and economic rights proposed by socialists in the nineteenth century, together with their more universal application of previously articulated political rights, would later be embodied in key international human rights documents: the 1948 U.N. Universal Declaration of Human Rights, the 1966 U.N. Covenant for Civil and Political Rights, and the 1966 Covenant for Economic, Social, and Cultural Rights.

For further historical and theoretical context, please see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 3.

A Historical Materialist Approach

7.1 Friedrich Engels: On the Question of Class Morality and Rights Relative to History (*The Anti-Dühring*, 1878)¹

IX. Morality and Law – Eternal Truths

... If we have not made much progress with truth and error, we can make even less with good and bad. This antithesis belongs exclusively to the domain of morals, that is, a domain belonging to the history of mankind, and it is precisely in this field that final and ultimate truths are most sparsely sown. The conceptions of good and bad have varied so much from nation to nation and from age to age that they have often been in direct contradiction to each other. But all the same, someone may object, good is not bad and bad is not good; if good is confused with bad there is an end to all morality, and everyone can do and leave undone whatever he cares. This is also, stripped of all oracular phrases, Herr Dühring's opinion.² But the matter cannot be so simply disposed of. If it was such an easy business there would certainly be no dispute at all over good and bad; everyone would know what was good and what was bad. But how do things stand today? What morality is preached to us today? There is first Christian-feudal morality,

inherited from past periods of faith; and this again has two main subdivisions, Catholic and Protestant moralities, each of which in turn has no lack of further subdivisions from the Jesuit-Catholic and Orthodox-Protestant to loose "advanced" moralities. Alongside of these we find the modern bourgeois morality and with it too the proletarian morality of the future, so that in the most advanced European countries alone the past, present and future provide three great groups of moral theories which are in force simultaneously and alongside of one another. Which is then the true one? Not one of them, in the sense of having absolute validity; but certainly that morality which contains the maximum of durable elements is the one which, in the present, represents the overthrow of the present, represents the future: that is, the proletarian.

But when we see that the three classes of modern society, the feudal aristocracy, the bourgeoisie and the proletariat, each have their special morality, we can only draw the conclusion that men, consciously or unconsciously, derive their moral ideas in the last resort from the practical relations on which their class position is based — from the economic relations in which they carry on production and exchange.

But nevertheless there is much that is common to the three moral theories mentioned above — is

1 Fredrich Engels, "Herr Eugen Dühring's Revolution," *The Anti-Dühring* (New York: International Publishers, 1939).

2 Eugen Dühring (1833–1921) was a German thinker who developed thought closer to the French philosopher Auguste Comte, the founder of positivism and proponent to an immutable and linear view of moral progress.

this not at least a portion of a morality which is externally fixed? These moral theories represent three different stages of the same historical development, and have therefore a common historical background, and for that reason alone they necessarily have much in common. Even more. In similar or approximately similar stages of economic development moral theories must of necessity be more or less in agreement. From the moment when private property in movable objects developed, in all societies in which this private property existed there must be this moral law in common: Thou shall not steal. Does this law thereby become an eternal moral law? By no means. In a society in which the motive for stealing has been done away with, in which therefore at the very most only lunatics would ever steal, how the teacher of morals would be laughed at who tried solemnly to proclaim the eternal truth: Thou shall not steal!

We therefore reject every attempt to impose on us any moral dogma whatsoever as an eternal, ultimate and forever immutable moral law on the pretext that the moral world too has its permanent principles which transcend history and the differences between nations. We maintain on the contrary that all former moral theories are the product, in the last analysis, of the economic stage which society had reached at that particular epoch. And as society has hitherto moved in class antagonisms, morality was always a class morality; it has either justified the domination and the interests of the ruling class, or, as soon as the oppressed class has become powerful enough, it has represented the revolt against this domination and the future interests of the oppressed. That in this process there has on the whole been progress in morality, as in all other branches of human knowledge, cannot be doubted. But we have not yet passed beyond class morality. A really human morality which transcends class antagonisms and their legacies in thought becomes possible only at a stage of society which has not only overcome class contradictions but has even forgotten them in practical life. And now it is possible to appreciate the presumption shown by Herr Dühring in advancing his claim, from the midst of the old class society and

on the eve of a social revolution, to impose on the future classless society an eternal morality which is independent of time and changes in reality. Even assuming — what we do not know up to now — that he understands the structure of the society of the future at least in its main outlines.

Finally, one more revelation, which is ‘absolutely original’ but for that reason no less “going to the roots of things.” With regard to the origin of evil, we have “the fact that the *type of the cat* with the guile associated with it is found in animal form, and the similar fact that a similar type of character is found also in human beings.... There is therefore nothing mysterious about evil, unless someone wants to scent out something mysterious in the existence of that *cat* or of any animal of prey.” Evil is — the cat. The devil therefore has no horns or cloven hoof, but claws and green eyes. And Goethe committed an unpardonable error in presenting Mephistopheles as a black dog instead of the said cat. Evil is the cat! That is morality, not only for all worlds, but also — of no use to anyone!

X. *Morality and Law – Equality*

... The idea that all men, as men, have something in common, and that they are therefore equal so far as these common characteristics go, is of course primeval. But the modern demand for equality is something entirely different from that; this consists rather in deducing from those common characteristics of humanity, from that equality of men as men, a claim to equal political or social status for all human beings, or at least for all citizens of a state or all members of a society. Before the original conception of relative equality could lead to the conclusion that men should have equal rights in the state and in society, before this conclusion could appear to be something even natural and self-evident, however, thousands of years had to pass and did pass. In the oldest primitive communities equality of rights existed at most for members of the community; women, slaves and strangers were excluded from this equality as a matter of course. Among the Greeks and Romans the inequalities of men were of greater importance than any form of equality. It would necessarily have seemed idiotic

to the ancients that Greeks and barbarians, freemen and slaves, citizens and dependents, Roman citizens and Roman subjects (to use a comprehensive term) should have a claim to equal political status. Under the Roman Empire all these distinctions gradually disappeared, except the distinction between freemen and slaves, and in this way there arose, for the freemen at least, that equality as between private individuals on the basis of which Roman law developed — the complete elaboration of law based on private property which we know. But so long as the distinction between freemen and slaves existed, there could be no talk of drawing legal conclusions from the fact of general equality *as men*; and we saw this again quite recently, in the slave-owning states of the North American Union.

Christianity knew only *one* point in which all men were equal: that all were equally born in original sin — which corresponded perfectly with its character as the religion of the slaves and the oppressed. Apart from this is recognized, at most, the equality of the elect, which however was only stressed at the very beginning. The traces of common ownership which are also found in the early stages of the new religion can be ascribed to the solidarity of a prescribed sect rather than to real equalitarian ideas. Within a very short time the establishment of the distinction between priests and laymen put an end even to this tendency to Christian equality. The overrunning of Western Europe by the Germans abolished for centuries ideas of equality, through the gradual building up of a complicated social and political hierarchy such as had never before existed. But at the same time the invasion drew Western and Central Europe into the course of historical development, created for the first time a compact cultural area, and within this area also for the first time a system of predominant national states exerting mutual influence on each other and mutually holding each other in check. Thereby it prepared the ground on which alone the question of the equal status of men, of the rights of man, could at a later period be raised.

The feudal middle ages also developed in its womb the class which was destined in the future

course of its evolution to be the standard-bearer of the modern demand for equality: the bourgeoisie. Itself in its origin one of the “estates” of the feudal order, the bourgeoisie developed to predominantly handicraft industry and the exchange of products within feudal society to a relatively high level, when at the end of the fifteenth century the great maritime discoveries opened to it a new and more comprehensive career. Trade beyond the confines of Europe, which had previous been carried on only between Italy and the Levant, was now extended to America and India, and soon surpassed in importance both the mutual exchange between the various European countries and the internal trade within each separate country. American gold and silver flooded Europe and forced its way like a disintegrating element into every fissure, hole and pore of feudal society. Handicraft industry could no longer satisfy the rising demand; in the leading industries of the most advanced countries it was replaced by manufacture.

But this mighty revolution in the economic conditions of life in society was not followed immediately by any corresponding change in its political structure. The state order remained feudal, while society became more and more bourgeois. Trade on a large scale, that is to say, international and, even more, world trade, requires free owners of commodities who are unrestricted in their movements and have equal rights as traders exchange their commodities on the basis of laws that are equal for them all, at least in each separate place. The transition from handicraft to manufacture presupposes the existence of a number of free workers — free on the one hand from the fetters of the guild and on the other from the means whereby they could themselves utilize their labor power: workers who can contract with their employers for the hire of their labor power, and as parties to the contract have rights equal with his. And finally the equality and equal status of a human labor, because and in so far as it is *human* labor, found its unconscious but clearest expression in the law of value of modern bourgeois economics, according to which the value of a commodity is measured by the socially

necessary labor embodied in it.³ But where economic relations required freedom and equality of rights, the political system opposed them at every step with guild restrictions and special privileges. Local privileges, differential duties, exceptional laws of all kinds affected in trading not only foreigners or people living in the colonies, but often enough also whole categories of the nationals of each country; the privileges of the guilds everywhere and ever anew formed barriers to the path of development of manufacture. Nowhere was the path open and the chances equal for the bourgeois competitors — and yet this was the first and ever more pressing need.

The demand for liberation from feudal fetters and the establishment of equality of rights by the abolition of feudal inequalities was bound soon to assume wider dimensions from the moment when the economic advance of society first placed it on the order of the day. If it was raised in the interests of industry and trade, it was also necessary to demand the same equality of rights for the great mass of the peasantry who, in every degree of bondage from total serfdom upwards, were compelled to give the greater part of their labor time to their feudal lord without payment and in addition to render innumerable other dues to him and to the state. On the other hand, it was impossible to avoid the demand for the abolition also of feudal privileges, the freedom from taxation of the nobility, the political privileges of the various feudal estates. And as people were no longer living in a world empire such as the Roman Empire had been, but in a system of independent states dealing with each other on an equal footing and at approximately the same degree of bourgeois development, it was a matter of course that the demand for equality should assume a general character reaching out beyond the individual state, that freedom and equality should be proclaimed as *human rights*. And it is significant of the specifically bourgeois character of these human rights that the American Constitution, the first to recognize the rights of

man, in the same breath confirmed the slavery of the colored races in America: class privileges were proscribed, race privileges sanctified.

As is well known, however, from the moment when, like a butterfly from the chrysalis, the bourgeoisie arose out of the burghers of the feudal period, when this “estate” of the Middle Ages developed into a class of modern society, it was always and inevitably accompanied by its shadow, the proletariat. And in the same way the bourgeois demand for equality was accompanied by the proletarian demand for equality. From the moment when the bourgeois demand for the abolition of class *privileges* was put forward, alongside of it appeared the proletarian demand for the abolition of the *classes themselves* — at first in religious form, basing itself on primitive Christianity, and later drawing support from the bourgeois equalitarian theories themselves. The proletarians took the bourgeoisie at their word: equality must not be merely apparent, must not apply merely to the sphere of the state, but must also be real, must be extended to the social and economic sphere. And especially since the time when the French bourgeoisie, from the Great Revolution on, brought bourgeois equality to the forefront, the French proletariat has answered it blow for blow with the demand for social and economic equality, and equality has become the battle-cry particularly of the French proletariat.

The demand for equality in the mouth of the proletariat has therefore a double meaning. It is either — as was especially the case at the very start, for example in the peasants war — the spontaneous reaction against the crying social inequalities, against the contrast of rich and poor, the feudal lords and their serfs, surfeit and starvation; as such it is this simple expression of the revolutionary instinct, and finds its justification in that, and indeed only in that. Or, on the other hand, the proletarian demand for equality has arisen as the reaction against the bourgeois demand for equality, drawing more or less correct and more far-reaching demands from this bourgeois demand, and serving

3 This tracing of the origin of the modern ideas of equality to the economic condition of bourgeois society was first developed by Marx in *Capital* [note by F. Engels].

as an agitation means in order to rouse the workers against the capitalists on the basis of the capitalists' own assertions; and in this case it stands and falls with bourgeois equality itself. In both cases the real content of the proletarian demand for equality is the demand for the *abolition of classes*. Any demand for equality which goes beyond that, of necessity passes into absurdity. We have given examples of this, and shall find enough additional ones later when we come to Herr Dühring's fantasies of the future.

The idea of equality, therefore, both in its bourgeois and in its proletarian form, is itself a historical product, the creation of which required definite historical conditions; which in turn themselves presuppose a long previous historical development. It is therefore anything but an eternal truth. And if today it is taken for granted by the general public — in one sense or another — if, as Marx says, it “already possesses the fixity of a popular prejudice,” this is not the consequence of its axiomatic truth, but the result of the general diffusion and the continued appropriateness of the ideas of the eighteenth century. If therefore Herr Dühring is able without more ado to make his famous two men conduct their economic relations on the basis of equality, this is because it seems quite natural to popular prejudice. And in fact Herr Dühring calls his philosophy *natural* because it is derived from things which seem to him quite natural. But why they seem to him quite natural is a question which he does not ask.

XI. Morality and Law – Freedom and Necessity

... It is difficult to deal with morality and law without coming up against the question of so-called free will, of human responsibility, of the relation between freedom and necessity. And the philosophy of reality also has not only one but even two solutions of this problem.

“All false theories of freedom must be replaced by what we know from experience is the nature of the relation between rational judgment on the one hand and instinctive impulse on the other; a relation which *so to speak* unites them into a single mean force. The fundamental facts of this form of

dynamics must be drawn from observation, and for the calculation in advance of events which have not yet occurred must also be estimated *as closely as possible*, in general both as to their nature and magnitude. In this way the foolish delusions of inner freedom, which have been a source of worry and anxiety for thousands of years, are not only thoroughly cleared away, but are also replaced by something positive, which can be made use of for the practical regulation of life.”— On this basis freedom consists in rational judgment pulling a man to the right while irrational impulses pull him to the left, and in this parallelogram of forces the actual movement follows the direction of the diagonal. Freedom is therefore the mean between judgment and impulse, reason and unreason, and its degree in each individual case can be determined on the basis of experience by a “personal equation,” to use an astronomical expression. But a few pages later on we find: “We base moral responsibility on freedom, which however in our view means nothing more than susceptibility to conscious motives in accordance with our natural and acquired intelligence. All such motives operate with the inevitable force of natural law, notwithstanding our awareness of the possible contradiction in the actions; but it is precisely on this inevitable compulsion that we rely when we bring in the moral lever.”

This second definition of freedom, which quite unceremoniously gives a knock-out blow to the other, is again nothing but an extremely superficial rendering of the Hegelian conception of the matter. Hegel was the first to state correctly the relation between freedom and necessity. To him, freedom is the appreciation of necessity. “Necessity is *blind only in so far as it is not understood*.” Freedom does not consist in the dream of independence of natural laws, but in the knowledge of these laws, and in the possibility this gives of systematically making them work towards definite ends. This holds good in relation both to the laws of external nature and to those which govern the bodily and mental existence of men themselves — two classes of laws which we can separate from each other at most only in thought but not in reality. Freedom of the will therefore means nothing but the capacity to

make decisions with real knowledge of the subject. Therefore the *freer* a man's judgment is in relation to a definite question, with so much the greater *necessity* is the content of this judgment determined; while the uncertainty, rounded on ignorance, which seems to make an arbitrary choice among many different and conflicting possible decisions, shows by this precisely that it is not free, that it is controlled by the very object it should itself control. Freedom therefore consists in the control over ourselves and over external nature which is found on knowledge of natural necessity; it is therefore necessarily a product of historical development. The first men who separated themselves from the animal kingdom were in all essentials as unfree as the animals themselves, but each step forward in civilization was a step towards freedom. On the threshold of human history stands the discovery that mechanical motion can be transformed into heat the production of fire by friction; at the close of the development so far gone through stands the discovery that heat can be transformed into mechanical motion: the steam-engine. And, in spite of the gigantic and liberating revolution in the social world which the steam engine is carrying through — and which is not yet half completed — it is beyond question that the generation of fire by friction was of even greater effectiveness for the liberation of mankind. For the generation of fire by friction gave man for the first time control over one of the forces of Nature, and thereby separated him for ever from the animal kingdom. The steam engine will never bring about such a mighty leap forward in human development, however important it may seem in our eyes as representing all those powerful productive forces dependent on it — forces which alone make possible a state of society in which there are no longer class distinctions or anxiety over the means of subsistence for the individual, and in which for the first time there can be talk of real human freedom and of an existence in harmony with the established laws of Nature. But how young the whole of human history still is, and

how ridiculous it would be to attempt to ascribe any absolute validity to our present views, is evident from the simple fact that all past history can be characterized as the history of the epoch from the practical discovery of the transformation of mechanical motion into heat up to that of the transformation of heat into mechanical motion...

The Struggle for Voting Rights

7.2 Chartism: On the Petition for Voting Rights (1837)⁴

To the Honorable the Commons of Great Britain and Ireland. The Petition of the undersigned Members of the Working Men's Association and others sheweth —

That the only *rational use* of the institutions and laws of society is justly to protect, encourage, and support all that can be made to contribute to *the happiness of all the people*.

That, as the object to be obtained is mutual benefit, so ought the enactment of laws to be by mutual consent.

That obedience to laws can only be *justly enforced* on the certainty that those who are called on to obey them have had, either personally or by their representatives, the power to enact, amend, or repeal them.

That all those who are excluded from this share of political power are not justly included within the operation of the laws; to them the laws are only despotic enactments, and the legislative assembly from whom they emanate can only be considered parties to an unholy compact, devising plans and schemes for taxing and subjecting the many.

That the universal political right of every human being is superior and stands apart from all customs, forms, or ancient usage; a fundamental right not in the power of man to confer, or justly to deprive him of.

That to take away this sacred right from the *person* and to vest it in *property*, is a willful

4 "Petition Agreed to at the 'Crown and Anchor' Meeting, February 28th, 1837," in Frank F. Rosenblatt, *The Chartist Movement in Its Social and Economic Aspects* (New York: Columbia University, 1916 [public domain]).

perversion of justice and common sense, as the creation and security of property *are the consequences of society* — the great object of which is human happiness.

That any constitution or code of laws, formed in violation of men's political and social rights, are not rendered sacred by time nor sanctified by custom.

That the ignorance which originated, or permits their operation, forms no excuse for perpetuating the injustice; nor can aught but force or fraud sustain them, when any considerable number of the people perceive and feel their degradation.

That the intent and object of your petitioners are to present such facts before your Honorable house as will serve to convince you and the country at large that you do not represent the people of these realms; and to appeal to your sense of right and justice as well as to every principle of honor, for directly making such legislative enactments as shall cause the mass of the people to be represented; with the view of securing *the greatest amount of happiness to all classes of society*...

Your petitioners therefore respectfully submit to your Honorable House that these facts afford abundant proofs that you do not represent the numbers or the interests of the millions; but that the persons composing it have interests for the most part foreign or directly opposed to the true interests of the great body of the people.

That perceiving the tremendous power you possess over the lives, liberty and labor of the unrepresented millions — perceiving the *military and civil forces* at your command — the *revenue* at your disposal — the *relief of the poor* in your hands — the *public press* in your power, by enactments expressly excluding the working classes alone — moreover, the power of delegating to others the whole control of the *monetary arrangements* of the Kingdom, by which the laboring classes may be silently plundered or suddenly suspended from employment — seeing all these elements of power wielded

by your Honorable House as at present constituted, and fearing the consequences that may result if a thorough reform is not speedily had recourse to, your petitioners earnestly pray your Honorable House *to enact the following as the law of these realms*, with such other essential details as your Honorable House shall deem necessary.

A Law for Equally Representing the People of Great Britain and Ireland

EQUAL REPRESENTATION

That the United Kingdom be divided into 200 electoral districts; dividing, as nearly as possible, an equal number of inhabitants; and that each district do send a representative to Parliament.

UNIVERSAL SUFFRAGE

That every person producing proof of his being 21 years of age, to the clerk of the parish in which he has resided six months, shall be entitled to have his name registered as a voter. That the time for registering in each year be from the 1st of January to the 1st of March.

ANNUAL PARLIAMENTS

That a general election do take place on the 24th of June in each year, and that each vacancy be filled up a fortnight after it occurs. That the hours for voting be from six o'clock in the morning till six o'clock in the evening.

NO PROPERTY QUALIFICATIONS

That there shall be no property qualification for members; but on requisition, signed by 200 voters, in favor of any candidate being presented to the clerk of the parish in which they reside, such candidate shall be put in nomination. And the list of all the candidates nominated throughout the district shall be stuck on the church door in every parish, to enable voters to judge of their qualification.

VOTE BY BALLOT

That each voter must vote in the parish in which he resides. That each parish provide as many balloting boxes as there are candidates proposed in the

district; and that a temporary place be fitted up in each parish church for the purpose of secret voting. And, on the day of election, as each voter passes orderly on to the ballot, he shall have given to him, by the officer in attendance, a balloting ball, which he shall drop into the box of his favorite candidate. At the close of the day the votes shall be counted, by the proper officers, and the numbers stuck on the church doors. The following day the clerk of the district and two examiners shall collect the votes of all the parishes throughout the district, and cause the name of the successful candidate to be posted in every parish of the district.

SITTINGS AND PAYMENTS TO MEMBERS

That the members do take their seats in Parliament on the first Monday in October next after the election, and continue their sittings every day (Sundays excepted) till the business of the sitting is terminated, but not later than the 1st of September. They shall meet every day (during the Session) for business at 10 o'clock in the morning, and adjourn at 4. And every member shall be paid quarterly out of the public treasury £400 a year. That all electoral officers shall be elected by universal suffrage. By passing the foregoing as the law of the land, you will confer a great blessing on the people of England; and your petitioners, as is duty bound, will ever pray.

7.3 Karl Marx: On Universal Suffrage (1852)⁵

... We now come to the Chartists, the politically active portion of the British working class. The six points of the Charter which they contend for contain nothing but the demand of universal suffrage, and of the conditions without which universal suffrage would be illusory for the working class, such as the ballot, payment of members, annual general elections. But universal suffrage is the equivalent for political power for the working class of England, where the proletariat forms the large

majority of the population, where, in a long, though underground, civil war, it has gained a clear consciousness of its position as a class, and where even the rural districts know no longer any peasants, but only landlords, industrial capitalists (farmers), and hired laborers. The carrying of universal suffrage in England would, therefore, be a far more socialistic measure than anything which has been honored with that name on the Continent.

Its inevitable result, here, is the political supremacy of the working class...

7.4 Ferdinand Lassalle: On Universal and Direct Suffrage (*The Working Class Program*, 1862)⁶

... We will now consider the principle of the working class as the ruling principle of the community only in three of its relations: —

- (1) In relation to the formal means of its realization.
- (2) In relation to its moral significance.
- (3) In relation to the political conception of the object of the State, which is inherent in that principle.

We cannot on this occasion enter upon its other aspects, and even those to which we have referred can be only very cursorily examined in the short time that remains to us.

The formal means of carrying out this principle is the universal and direct suffrage which we have already discussed. I say universal and *direct* suffrage, gentlemen, not that mere universal suffrage which we had in the year 1848. The introduction of two degrees in the electoral act, namely, original electors and electors simply, is nothing but an ingenious method purposely introduced with the object of falsifying as far as possible the will of the people by means of the electoral act.

5 *The New York Tribune*, August 25, 1852, in *Karl Marx Selected Writings*, edited by David McLellan (Oxford: Oxford University Press, 1977).

6 Ferdinand Lassalle, "The Working Class Program," in *Socialist Thought: A Documentary History, Revised Edition*, edited by Albert Fried and Ronald Sanders (New York: Columbia University Press, 1992).

It is true that even universal and direct suffrage is no magic wand, gentlemen, which is able to protect you from temporary mistakes.

We have seen in France two bad elections following one another, in 1848 and 1849. But universal and direct suffrage is the *only* means which in the long run of itself corrects the mistakes to which its momentary wrong use may lead. It is that spear which heals the wounds it itself has made. It is impossible in the long run with universal and direct suffrage that the elected body should be any other than the exact and true likeness of the people which has elected it.

The people must therefore at all times regard universal and direct suffrage as its indispensable political weapon, as the most fundamental and important of its demands.

I will now glance at the *moral* significance of the principle of society which we are considering.

It is possible that the idea of converting the principle of the *lower classes* of society into the ruling principle of the State and the community may appear to be extremely dangerous and immoral, and to threaten the destruction of morality and education by a “modern barbarism.”

And it is no wonder that this idea should be so regarded at the present day since even public opinion, gentlemen — I have already indicated by what means, namely, the newspapers — receives its impressions from the mint of *capital*, and from the hands of the privileged wealthy Bourgeoisie.

Nevertheless this fear is only a prejudice, and it can be proved on the contrary, that the idea would exhibit the greatest advance and triumph of morality that the history of the world has ever recorded.

That view is a prejudice I repeat, and it is simply the prejudice of the *present time* which is dominated by privilege.

At another time, namely, that of the first French Republic of the year 1793 (of which I have already told you that I cannot enter into further particulars on this occasion, but that it was destined to perish by its own want of definite aims) the *opposite* prejudice prevailed. It was then a current dogma that all

the upper classes were immoral and corrupt, and that only the lower classes were good and moral. In the new declaration of the rights of man issued by the French convention, that powerful constituent assembly of France, this was actually laid down by a special article, namely, article nineteen, which runs as follows, “*Toute institution qui ne suppose le peuple bon, et le magistrat corruptible, est vicieuse.*” [“Every institution which does not assume that the people are good and the magistracy contemptible is vicious.”] You see that this is exactly the opposite to the happy faith now required, according to which there is no greater sin than to doubt of the goodwill and the virtue of the Government, while it is taken for granted that the *people* are a sort of tiger and a sink of corruption.

At the time of which we are speaking the opposite dogma had advanced so far, that almost every one who had a whole coat on his back was thought to be a bad man, or at least an object of suspicion; and virtue, purity, and patriotic morality were thought to be possessed only by those who had no decent clothes. It was the period of sansculottism.⁷

This view, gentlemen, is in fact founded on a *truth*, but it presents itself in an *untrue* and *perverted* form. Now there is nothing more dangerous than a truth which presents itself in an untrue perverted form. For in whatever way we deal with it, we are certain to go wrong. If we adopt such a truth in its untrue perverted form, it will lead at certain times to most pernicious destruction, as was the case with sansculottism. But if we regard the whole statement as untrue on account of its untrue perverted form, then we are much worse. For we have rejected a *truth*, and, in the case before us, a truth without the recognition of which not a single sound step in our political life can be taken.

The only course that remains open to us, therefore, is to set aside the untrue and perverted form of the statement, and to bring its true essence into distinct relief...

History, gentlemen, is a struggle with nature; with the misery, the ignorance, the poverty, the weakness, and consequent slavery in which we

7 Editor: Popular class during the French Revolution.

were involved when the human race came upon the scene in the beginning of history. The progressive *victory* over this weakness — this is the development of freedom which history displays to us.

In this struggle we should never have made one step forward, nor shall we ever advance one step more by acting the principle of *each one for himself, each one alone*.

It is *the State* whose function it is to carry on *this development of freedom*, this development of the human race until its freedom is attained.

The State is this unity of individuals into a moral whole, a unity which increases a million-fold the strength of *all* the individuals who are comprehended in it, and multiplies a million times the power which would be at the disposal of them *all* as individuals.

The object of the State, therefore, is not only to *protect* the personal freedom and property of the individual with which he is supposed according to the idea of the Bourgeoisie to have entered the State. On the contrary, the object of the State is precisely this, to place the individuals *through this* union in a position to attain to *such objects*, and reach such a *stage of existence* as they *never* could have reached as individuals; to make them capable of acquiring an amount of *education, power, and freedom* which would have been wholly unattainable by them as individuals.

Accordingly the object of the State is to bring man to positive expansion, and progressive development, in other words, to bring the destiny of man — that is the culture of which the human race is *capable* — into *actual existence*; it is the *training and development* of the human race to freedom.

7.5 Manifesto of the Paris Commune (1871)⁸

To the French people:

In the painful and terrible conflict that again threatens Paris with the horrors of a siege and bombardment; that causes French blood to

flow, sparing neither our brothers, our wives nor our children; crushed beneath cannonballs and rifle shot, it is necessary that public opinion not be divided, that the national conscience be troubled...

The Commune has the obligation to affirm and determine the aspirations and wishes of the populace of Paris, to define the character of the movement of March 18, misunderstood, unknown and slandered by the politicians seated at Versailles...

What does it ask for?

The recognition and consolidation of the Republic, the only form of government compatible with the rights of the people and the normal and free development of society.

The absolute autonomy of the Commune extended to all localities in France and assuring to each one its full rights, and to every Frenchman the full exercise of his faculties and abilities as man, citizen and producer.

The only limit to the autonomy of the Commune should be the equal right to autonomy for all communes adhering to the contract, whose association shall insure French unity.

The inherent rights of the Commune are:

The vote on communal budgets, receipts and expenses; the fixing and distribution of taxes; the direction of public services; the organization of its magistracy, internal police and education; the administration of goods belonging to the Commune.

The choice by election or competition of magistrates and communal functionaries of all orders, as well as the permanent right of control and revocation.

The absolute guarantee of individual freedom and freedom of conscience.

The permanent intervention of citizens in communal affairs by the free manifestation of their ideas, the free defense of

8 Manifesto of the Paris Commune (April 19, 1871), in *Paris Libre* (April 21, 1871), translated by Mitchell Abidor (marxists.org, 2005).

their interests, with guarantees given for these manifestations by the Commune, which alone is charged with overseeing and assuring the free and fair exercise of the right to gather and publicize.

The organization of urban defense and the National Guard, which elects its chiefs and alone watches over the maintenance of order in the city.

Paris wants nothing else as a local guarantee, on condition, of course, of finding in the great central administration — the delegation of federated Communes — the realization and the practice of the same principles.

But as an element of its autonomy, and profiting by its freedom of action, within its borders it reserves to itself the right to operate the administrative and economic reforms called for by the populace as it will; to create the institutions needed to develop and spread instruction, production, exchange and credit; to universalize power and property in keeping with the needs of the moment, the wishes of those concerned and the facts furnished by experience.

Our enemies are fooling themselves or are fooling the country when they accuse Paris of wanting to impose its will or its supremacy over the rest of the nation and to pretend to a dictatorship, which would be a veritable attack on the independence and sovereignty of other communes....

The Struggle for Economic, Educational, and Social Rights

7.6 Pierre-Joseph Proudhon (*What is Property? An Inquiry into the Principle of Right and of Government*, 1840)⁹

Chapter I: Method Pursued in This Work – The Idea of a Revolution

If I were asked to answer the following question: *What is slavery?* and I should answer in

one word, *It is murder*, my meaning would be understood at once. No extended argument would be required to show that the power to take from a man his thought, his will, his personality, is a power of life and death; and that to enslave a man is to kill him. Why, then, to this other question: *What is property?* may I not likewise answer, *It is robbery*, without the certainty of being misunderstood; the second proposition being no other than a transformation of the first? ...

Such an author teaches that property is a civil right, born of occupation and sanctioned by law; another maintains that it is a natural right, originating in labor, — and both of these doctrines, totally opposed as they may seem, are encouraged and applauded. I contend that neither labor, nor occupation, nor law, can create property; that it is an effect without a cause: am I censurable? ...

Nevertheless, I build no system. I ask an end to privilege, the abolition of slavery, equality of rights, and the reign of law. Justice, nothing else; that is the alpha and omega of my argument: to others I leave the business of governing the world....

§ 1. — PROPERTY AS A NATURAL RIGHT.

The Declaration of Rights has placed property in its list of the natural and inalienable rights of man, four in all: *liberty, equality, property, security*. What rule did the legislators of '93 follow in compiling this list? None. They laid down principles, just as they discussed sovereignty and the laws; from a general point of view, and according to their own opinion. They did every thing in their own blind way.

Nevertheless, if we compare these three or four rights with each other, we find that property bears no resemblance whatever to the others; that for the majority of citizens it exists only potentially, and as a dormant faculty without exercise; that for the others, who do enjoy it, it is susceptible of certain transactions and modifications which do not harmonize with the idea of a natural right; that, in practice, governments, tribunals, and laws do not

9 Pierre-Joseph Proudhon, *What is Property? An Inquiry into the Principle of Right and Government*, translated by Benjamin R. Tucker (New York: Humboldt Library of Science, 1902). Editor: For space considerations, some explanatory notes have been omitted.

respect it; and finally that everybody, spontaneously and with one voice, regards it as chimerical.

Liberty is inviolable. I can neither sell nor alienate my liberty; every contract, every condition of a contract, which has in view the alienation or suspension of liberty, is null: the slave, when he plants his foot upon the soil of liberty, at that moment becomes a free man. When society seizes a malefactor and deprives him of his liberty, it is a case of legitimate defense: whoever violates the social compact by the commission of a crime declares himself a public enemy; in attacking the liberty of others, he compels them to take away his own. Liberty is the original condition of man; to renounce liberty is to renounce the nature of man: after that, how could we perform the acts of man?

Likewise, equality before the law suffers neither restriction nor exception. All Frenchmen are equally eligible to office: consequently, in the presence of this equality, condition and family have, in many cases, no influence upon choice. The poorest citizen can obtain judgment in the courts against one occupying the most exalted station. Let the millionaire, Ahab, build a chateau upon the vineyard of Naboth: the court will have the power, according to the circumstances, to order the destruction of the chateau, though it has cost millions; and to force the trespasser to restore the vineyard to its original state, and pay the damages. The law wishes all property, that has been legitimately acquired, to be kept inviolate without regard to value, and without respect for persons.

The charter demands, it is true, for the exercise of certain political rights, certain conditions of fortune and capacity; but all publicists know that the legislator's intention was not to establish a privilege, but to take security. Provided the conditions fixed by law are complied with, every citizen may be an elector, and every elector eligible. The right, once acquired, is the same for all; the law compares neither persons nor votes. I do not ask now whether this system is the best; it is enough that, in the opinion of the charter and in the eyes of every one, equality before the law is absolute, and, like liberty, admits of no compromise.

It is the same with the right of security. Society promises its members no half-way protection, no

sham defense; it binds itself to them as they bind themselves to it. It does not say to them, "I will shield you, provided it costs me nothing; I will protect you, if I run no risks thereby." It says, "I will defend you against everybody; I will save and avenge you, or perish myself." The whole strength of the State is at the service of each citizen; the obligation which binds them together is absolute.

How different with property! Worshipped by all, it is acknowledged by none: laws, morals, customs, public and private conscience, all plot its death and ruin.

To meet the expenses of government, which has armies to support, tasks to perform, and officers to pay, taxes are needed. Let all contribute to these expenses: nothing more just. But why should the rich pay more than the poor? That is just, they say, because they possess more. I confess that such justice is beyond my comprehension.

Why are taxes paid? To protect all in the exercise of their natural rights — liberty, equality, security, and property; to maintain order in the State; to furnish the public with useful and pleasant conveniences.

Now, does it cost more to defend the rich man's life and liberty than the poor man's? Who, in time of invasion, famine, or plague, causes more trouble, — the large proprietor who escapes the evil without the assistance of the State, or the laborer who sits in his cottage unprotected from danger?

Is public order endangered more by the worthy citizen, or by the artisan and journeyman? Why, the police have more to fear from a few hundred laborers, out of work, than from two hundred thousand electors!...

But they say, the courts and the police force are established to restrain this mob; government is a company, not exactly for insurance, for it does not insure, but for vengeance and repression. The premium which this company exacts, the tax, is divided in proportion to property; that is, in proportion to the trouble which each piece of property occasions the avengers and repressers paid by the government.

This is any thing but the absolute and inalienable right of property. Under this system the poor and the rich distrust, and make war upon, each other.

But what is the object of the war? Property. So that property is necessarily accompanied by war upon property. The liberty and security of the rich do not suffer from the liberty and security of the poor; far from that, they mutually strengthen and sustain each other. The rich man's right of property, on the contrary, has to be continually defended against the poor man's desire for property. What a contradiction!...

To sum up: liberty is an absolute right, because it is to man what impenetrability is; to matter, — a *sine qua non* of existence; equality is an absolute right, because without equality there is no society; security is an absolute right, because in the eyes of every man his own liberty and life are as precious as another's. These three rights are absolute; that is, susceptible of neither increase nor diminution; because in society each associate receives as much as he gives, — liberty for liberty, equality for equality, security for security, body for body, soul for soul, in life and in death.

But property, in its derivative sense, and by the definitions of law, is a right outside of society; for it is clear that, if the wealth of each was social wealth, the conditions would be equal for all, and it would be a contradiction to say: *Property is a man's right to dispose at will of social property*. Then if we are associated for the sake of liberty, equality, and security, we are not associated for the sake of property; then if property is a *natural* right, this natural right is not *social*, but *anti-social*. Property and society are utterly irreconcilable institutions. It is as impossible to associate two proprietors as to join two magnets by their opposite poles. Either society must perish, or it must destroy property...

On Government

§ 3. —DETERMINATION OF THE THIRD FORM OF SOCIETY. CONCLUSION.

Then, no government, no public economy, no administration, is possible, which is based upon property.

Communism seeks *equality* and *law*. Property, born of the sovereignty of the reason, and the sense of personal merit, wishes above all things *independence* and *proportionality*. But communism, mistaking uniformity for law, and levelism for equality, becomes tyrannical and unjust. Property, by its despotism and encroachments, soon proves itself oppressive and anti-social.

The objects of communism and property are good — their results are bad. And why? Because both are exclusive, and each disregards two elements of society. Communism rejects independence and proportionality; property does not satisfy equality and law.

Now, if we imagine a society based upon these four principles, — equality, law, independence, and proportionality, — we find:

1. That *equality*, consisting only in *equality of conditions*, that is, of *means*, and not in *equality of comfort*, — which it is the business of the laborers to achieve for themselves, when provided with equal means, — in no way violates justice and *équité*.
2. That *law*, resulting from the knowledge of facts, and consequently based upon necessity itself, never clashes with independence.
3. That individual *independence*, or the autonomy of the private reason, originating in the difference in talents and capacities, can exist without danger within the limits of the law.
4. That *proportionality*, being admitted only in the sphere of intelligence and sentiment, and not as regards material objects, may be observed without violating justice or social equality.

This third form of society, the synthesis of communism and property, we will call *liberty*.¹⁰ In

10 *Libertas, liberare, libratio, libra* — liberty, to liberate, libration, balance (pound) — words which have a common derivation. Liberty is the balance of rights and duties. To make a man free is to balance him with others, that is, to put him on their level.

determining the nature of liberty, we do not unite communism and property indiscriminately; such a process would be absurd eclecticism. We search by analysis for those elements in each which are true, and in harmony with the laws of Nature and society, disregarding the rest altogether; and the result gives us an adequate expression of the natural form of human society, — in one word, liberty.

Liberty is equality, because liberty exists only in society; and in the absence of equality there is no society.

Liberty is anarchy, because it does not admit the government of the will, but only the authority of the law; that is, of necessity.

Liberty is infinite variety, because it respects all wills within the limits of the law. Liberty is proportionality, because it allows the utmost latitude to the ambition for merit, and the emulation of glory...

Liberty is not opposed to the rights of succession and bequest. It contents itself with preventing violations of equality. "Choose," it tells us, "between two legacies, but do not take them both." All our legislation concerning transmissions, entailments, adoptions, and, if I may venture to use such a word, *coadjutoreries*, requires remodeling.

Liberty favors emulation, instead of destroying it. In social equality, emulation consists in accomplishing under like conditions; it is its own reward. No one suffers by the victory.

Liberty applauds self-sacrifice, and honors it with its votes, but it can dispense with it. Justice alone suffices to maintain the social equilibrium. Self-sacrifice is an act of super-erogation. Happy, however, the man who can say, "I sacrifice myself."

Liberty is essentially an organizing force. To insure equality between men and peace among nations, agriculture and industry, and the centers of education, business, and

storage, must be distributed according to the climate and the geographical position of the country, the nature of the products, the character and natural talents of the inhabitants, in proportions so just, so wise, so harmonious, that in no place shall there ever be either an excess or a lack of population, consumption, and products. There commences the science of public and private right, the true political economy...

I have accomplished my task; property is conquered, never again to arise. Wherever this work is read and discussed, there will be deposited the germ of death to property; there, sooner or later, privilege and servitude will disappear, and the despotism of will give place to the reign of reason...

7.7 Louis Blanc: On the Material Basis for Health and Other Social Rights (*Organization of Labor, 1848*)¹¹

... But if it is necessary to become engaged in a program of social reform, it is no less necessary to pursue one of political reform. For if the first is the *end*, the second is the *means*. It is not enough to discover scientific processes appropriate for inaugurating the principle of association and for organizing labor in accordance with the rules of reason, justice and humanity. One must also find a way to realize the principle that has been adopted, and to enable the processes that have been discovered through study to bear fruit. Now, power is organized force. Power depends upon chambers, tribunals, soldiers — in other words, upon the triple force of laws, judgments and bayonets. Not to use it as an instrument is to encounter it as an obstacle.

Besides, the emancipation of the proletarians is a most complicated task; it is involved with too many questions, it upsets too many habits, it is contrary, not in reality but in appearance, to too many interests, for anyone to believe seriously that it could be brought about by a series of partial efforts and isolated attempts. All the force of the State

11 Louis Blanc, "Organization of Labor," in *Socialist Thought: A Documentary History, Revised Edition*, edited by Albert Fried and Ronald Sanders (New York: Columbia University Press, 1992).

must be applied in this task. The proletarians lack the instruments of labor, which they need in order to emancipate themselves: the function of the government is to provide them with these. If we had to define the State as we see it, we would say that the State is the banker for the poor.

Now, is it true, as M. de Lamartine¹² was not afraid to point out in a recent manifesto, that this conception “consists in seizing, in the name of the State, property and sovereignty over industries and labor, in suppressing all free will on the part of citizens who own property, who sell, buy, or consume; in arbitrarily creating or distributing products, in establishing maximum prices, in regulating wages, in completely substituting a dispossessed citizenry for an industrial and proprietary State”?

As God is our witness, we have never proposed anything of the sort! And if it is we that M. de Lamartine was pretending to refute, then he probably has not done us the honor of reading our work. What we ask, as will be seen further on, is that the State — once it has been democratically constituted — create social workshops, destined to replace the individual workshops gradually and without any sudden upheavals; we ask that the social workshops be governed by statutes incorporating the principle of association and having the form and power of law. But once it is founded and set in motion, the social workshop will be sufficient unto itself and will no longer have recourse to anything but its own organizing principle. After the first year, the associated laborers would freely choose administrators and leaders from among themselves; they would work out the division of the receipts among themselves; they would be occupied in discovering ways to expand the enterprise. How can anyone say that such a system opens the way to arbitrariness and tyranny? The State would found the social workshop, provide it with laws, and watch over the execution of those laws, to see that they are carried out for the good of everyone; but that would be the limit of its role. Is such a role, can such a role be tyrannical? Today, when the government arrests a thief who has been discovered

in somebody’s house, does anyone accuse the government of tyranny? Does anyone reproach it for having entered the domain of individual life, for having penetrated into the private affairs of families? Well, in our system, the State would be, with respect to the social workshops, only what it is today with respect to society as a whole. It would watch over the inviolability of the pertinent statutes, just as today it watches over the inviolability of the laws. It would be the supreme protector of the principle of association, without at the same time being allowed or enabled to absorb into itself the action of the associated laborers, just as today it is the supreme protector of the property principle, though it does not absorb into itself the action of the property-owners.

But are we for having the State intervene, at least from the standpoint of initiative, in the economic reformation of society? Have we avowed that our goal is to undermine competition, to withdraw industry from the regime of *laissez-faire, laissez-passer*? Most certainly, and far from denying it, we proclaim it aloud. Why? Because we want freedom.

Yes, freedom! That is what must be won; but real freedom, freedom for all, the freedom that is sought in vain wherever those immortal sisters, equality and fraternity, are absent.

If we were to ask why the freedom of the state of nature was judged false and destroyed, the first child who came along would be able to give us the right answer. The freedom of the state of nature was, *in fact*, only an abominable oppression, because it allied itself with inequality of strength, because it made the weak man the victim of the vigorous, the impotent man the prey of the agile. Now, in the present social regime, instead of the inequality of physical strength, we have inequality of the means of development; instead of the battle of body against body, we have that of capital against capital; instead of the abuse of physical superiority, we have the abuse of a superiority created by social conventions. In place of the weak we have the ignorant; in place of the impotent, the poor. Where, then, is freedom?

12 Editor: M. de Lamartine (1790–1869), a romantic poet and a member of the provisional government in France.

It most certainly exists for those who have the means of enjoying it and making it bear fruit, for those who own the soil, who have money, credit, and the thousand resources that culture and intelligence provide; these people have so much that they can even abuse it. But is it the same for that interesting and numerous class that has neither land, nor capital, nor credit, nor instruction — that has, in other words, nothing that would enable the individual to manage for himself and develop his faculties? And when society is thus divided, with immense strength on one side and immense weakness on the other, then competition is unleashed in its midst, competition that pits the rich against the poor, the wily speculator against the naive laborer, the client of some slick banker against the usurer's serf, the thoroughly accoutered athlete against the unarmed combatant, the nimble man against the paralytic! And this disorderly and permanent shock of power against impotence, this anarchy in the midst of oppression, this invisible tyranny unsurpassed in harshness by tyrannies that can be seen by the human eye — this is what they call freedom!

In other words, the son of a poor man, pulled by hunger off the road that takes him to school, forced to sell short his body and soul at the nearby spinning-mill in order to add a few pennies to the family earnings — this boy is free to develop his intelligence, if he wants to.

In other words, the worker, who will die if the debate goes on for too long, is free to discuss conditions with his employer! ...

These days, it is said, nothing succeeds like success. This is true, and to say that the social order is characterized by such an aphorism is enough to condemn it. For all notions of justice and humanity are turned upside down when the more ways of getting rich a person has the less he needs to use them, while the fewer ways of escaping misery he possesses the more miserable he is. Has the accident of birth thrown you among us in a completely deprived condition? Toil, suffer, die: no one allows credit to a poor man, and the doctrine of *laissez-faire* guarantees that he will be abandoned. Were you born in the midst of opulence? Have a good time, enjoy yourself, sleep: your money is making money for you. Nothing succeeds like success!

But the poor man, you say, has the *right* to better his position? So! and what difference does it make, if he has not the *power* to do so? What does the *right* to be cured matter to a sick man whom no one is curing?

Right, considered abstractly, is the mirage that has kept the people in an abused condition since 1789. Right is the dead metaphysical protection that replaced, for the people, the living protection that was owed them. Right, sterilely and pompously proclaimed in the charters, has only served to mask whatever was unjust about the inauguration of a regime of individualism, and whatever was barbarous about the abandonment of the poor man. It is because freedom was defined by the word "right" that people came to designate men who were slaves of hunger, cold, ignorance, chance, as "free" men. Let us say it then for once and for all: freedom consists, not only in the RIGHTS that have been accorded, but also in the POWER given men to develop and exercise their faculties, under the reign of justice and the safeguard of law.

And let it be noted that this is not a vain distinction; its meaning is profound, its consequences are immense. For, once it is admitted that a man must have the *power* to develop and exercise his faculties in order to be really free, the upshot is that society owes every one of its members both instruction, without which the human mind *cannot* grow, and the instruments of labor, without which human activity *cannot* achieve its fullest development. Now, how will society be made to give suitable instruction and the necessary instruments of labor to every one of its members, if not by the intervention of the State? It is therefore in the name of freedom that we are asking for the rehabilitation of the principle of authority. We want a strong government because, in the regime of inequality within which we are still vegetating, there are weak persons who need a social force to protect them. We want a government that will intervene in industry, because in an area where people make loans only to the rich, a social banker is needed who will lend to the poor. In a word, we are invoking the idea of power because the freedom of the future must be a reality.

For the rest, do not be deceived; this necessity for the intervention of governments is relative; it

derives solely from this state of weakness, misery and ignorance into which earlier tyrannies have plunged the people. If the dearest hope of our hearts is not deceived, a day will come when a strong and active government will no longer be needed, because there will no longer be inferior and subordinate classes in society. Until then, the establishment of a tutelary authority is indispensable. The seed-bed of socialism can be fertilized only by the wind of politics.

O, rich men, you are deceived when you become aroused against those who dedicate their waking hours to the calm and peaceful solution of social problems. Yes, the sacred cause of the poor man is your cause too. A solidarity of heavenly origin binds you to their misery through fear and links you by your own interest to their future deliverance. Only their emancipation is capable of opening up to you the real treasure, that of tranquil joy, which you have not known as yet; the virtue of the principle of fraternity is precisely that, as it lessens the sorrows of the poor, it adds to your joys. "Watch out," you have been told, "watch out for the war of the have-nots against those who have." Ah! if this unholy war were really a possibility, what then would one be forced to think, good God! of the social order that had given rise to it? Miserable sophists! They do not perceive that this regime whose defense they discuss in whispers would be condemned beyond repeal if its danger really merited the stigma of their alarm! What, then! there would be such an excess of suffering among *those who have not*, such hatred in their souls, and such an impetuous desire to revolt in the depths of society, that to pronounce the word "fraternity," Christ's word, would be a terrible imprudence, and would serve as a signal for some new *Jacquerie!* No, rest assured, violence is to be feared only where discussion is not permitted. Order has no better protection than study. Thank heaven, people today understand that, if anger sometimes chastises evil, it is nevertheless incapable of bringing about good,

that a blind and ferocious impatience would only pile up ruins under which the seeds of the ideas of justice and love would smother to death. It is not a question of taking wealth away; it is a question of fertilizing it so that it becomes universal. It is a question of raising the level of humanity for the good of all, without exception.

7.8 Karl Marx: On Limitation of the Working Day (1866)¹³

A preliminary condition, without which all further attempts at improvement and emancipation must prove abortive, is the *limitation of the working day*.

It is needed to restore the health and physical energies of the working class, that is, the great body of every nation, as well as to secure them the possibility of intellectual development, sociable intercourse, social and political action.

We propose *8 hours work* as the *legal limit* of the working day. This limitation being generally claimed by the workmen of the United States of America, the vote of the Congress will raise it to the common platform of the working classes all over the world.

For the information of continental members, whose experience of factory law is comparatively short-dated, we add that all legal restrictions will fail and be broken through by Capital if the *period of the day* during which the 8 working hours must be taken, be not fixed. The length of that period ought to be determined by the 8 working hours and the additional pauses for meals. For instance, if the different interruptions for meals amount to *one hour*, the legal period of the day ought to embrace 9 hours, say from 7 a.m. to 4 p.m., or from 8 a.m. to 5 p.m., etc. Nightwork to be but exceptionally permitted, in trades or branches of trades specified by law. The tendency must be to suppress all nightwork.

This paragraph refers only to adult persons, male or female, the latter, however, to be rigorously excluded from all *nightwork whatever*, and all sort of

13 Karl Marx, "Instructions for the Delegates of the Provisional General Council: The Different Questions," The International Workingmen's Association, Geneva Congress (1866), translated by Barrie Selman. First published in *Der Vorbote* Nos. 10 and 11, October and November 1866 and *The International Courier* Nos. 6/7, February 20, and Nos. 8/10, March 13, 1867.

work hurtful to the delicacy of the sex, or exposing their bodies to poisonous and otherwise deleterious agencies. By adult persons we understand all persons having reached or passed the age of 18 years.

7.9 Karl Marx: On Freedom of Association and Trade Unions (1866)¹⁴

(a) Their past.

Capital is concentrated social force, while the workman has only to dispose of his working force. The *contract* between capital and labor can therefore never be struck on equitable terms, equitable even in the sense of a society which places the ownership of the material means of life and labor on one side and the vital productive energies on the opposite side. The only social power of the workmen is their number. The force of numbers, however, is broken by disunion. The disunion of the workmen is created and perpetuated by their *unavoidable competition among themselves*.

Trades' Unions originally sprang up from the *spontaneous* attempts of workmen at removing or at least checking that competition, in order to conquer such terms of contract as might raise them at least above the condition of mere slaves. The immediate object of Trades' Unions was therefore confined to everyday necessities to expediences for the obstruction of the incessant encroachments of capital, in one word, to questions of wages and time of labor. This activity of the Trades' Unions is not only legitimate, it is necessary. It cannot be dispensed with so long as the present system of production lasts. On the contrary, it must be generalized by the formation and the combination of Trades' Unions throughout all countries. On the other hand, unconsciously to themselves, the Trades'

Unions were forming *centers of organization* of the working class, as the medieval municipalities and communes did for the middle class. If the Trades' Unions are required for the guerilla fights between capital and labor, they are still more important as *organized agencies for superseding the very system of wages labor and capital rule*.

(b) Their present.

Too exclusively bent upon the local and immediate struggles with capital, the Trades' Unions have not yet fully understood their power of acting against the system of wages slavery itself. They therefore kept too much aloof from general social and political movements. Of late, however, they seem to awoken to some sense of their great historical mission, as appears, for instance, from their participation, in England, in the recent political movement from the enlarged views taken of their function in the United States, and from the following resolution passed at the recent great conference of Trades' delegates at Sheffield:

That this Conference, fully appreciating the efforts made by the International Association to unite in one common bond of brotherhood the working men of all countries, most earnestly recommend to the various societies here represented, the advisability of becoming affiliated to that body, believing that it is essential to the progress and prosperity of the entire working community.

(c) Their future.

Apart from their original purposes, they must now learn to act deliberately as organizing centers of the working class in the broad interest of its *complete*

14 Karl Marx, "Instructions for the Delegates of the Provisional General Council: The Different Questions," The International Workingmen's Association, Geneva Congress (1866), translated by Barrie Selman. First published in *Der Vorbote* Nos. 10 and 11, October and November 1866 and *The International Courier* Nos. 6/7, February 20, and Nos. 8/10, March 13, 1867.

emancipation. They must aid every social and political movement tending in that direction. Considering themselves and acting as the champions and representatives of the whole working class, they cannot fail to enlist the non-society men into their ranks. They must look carefully after the interests of the worst paid trades, such as the agricultural laborers, rendered powerless by exceptional circumstances.

They must convince the world at large that their efforts, far from being narrow and selfish, aim at the emancipation of the downtrodden millions.

7.10 Karl Marx: On Education for Both Sexes (1866)¹⁵

We consider the tendency of modern industry to make children and juvenile persons of both sexes co-operate in the great work of social production, as a progressive, sound and legitimate tendency, although under capital it was distorted into an abomination. In a rational state of society every *child whatever*, from the age of 9 years, ought to become a productive laborer in the same way that no able-bodied adult person ought to be exempted from the general law of nature, viz.: to work in order to be able to eat, and work not only with the brain but with the hands too.

However, for the present, we have only to deal with the children and young persons of both sexes divided into *three classes*, to be treated differently;¹⁶ the first class to range from 9 to 12; the second, from 13 to 15 years; and the third, to comprise the ages of 16 and 17 years. We propose that the employment of the first class in any workshop or housework be legally restricted to *two*; that of the

second, to *four*, and that of the third, to *six* hours. For the third class, there must be a break of at least one hour for meals or relaxation.

It may be desirable to begin elementary school instruction before the age of 9 years; but we deal here only with the most indispensable antidotes against the tendencies of a social system which degrades the working man into a mere instrument for the accumulation of capital, and transforms parents by their necessities into slave-holders, sellers of their own children. The *right* of children and juvenile persons must be vindicated. They are unable to act for themselves. It is, therefore, the duty of society to act on their behalf.

If the middle and higher classes neglect their duties toward their offspring, it is their own fault. Sharing the privileges of these classes, the child is condemned to suffer from their prejudices.

The case of the working class stands quite different. The working man is no free agent. In too many cases, he is even too ignorant to understand the true interest of his child, or the normal conditions of human development. However, the more enlightened part of the working class fully understands that the future of its class, and, therefore, of mankind, altogether depends upon the formation of the rising working generation. They know that, before everything else, the children and juvenile workers must be saved from the crushing effects of the present system. This can only be effected by converting *social reason* into *social force*, and, under given circumstances, there exists no other method of doing so, than through *general laws*, enforced by the power of the state. In enforcing such laws, the working class do not fortify governmental power. On the contrary, they transform that power, *now* used against them, into their own agency. They effect by

15 Karl Marx, "Instructions for the Delegates of the Provisional General Council: The Different Questions," The International Workingmen's Association, Geneva Congress (1866), translated by Barrie Selman. First published in *Der Vorbote* Nos. 10 and 11, October and November 1866 and *The International Courier* Nos. 6/7, February 20, and Nos. 8/10, March 13, 1867.

16 Editor: Instead of this sentence the French and German texts have two sentences ending the preceding paragraph and beginning a new one: "However, for the present, we have only to deal with the children and young persons belonging to the working class. We deem it necessary, basing on physiology, to divide children and young persons of both sexes." The rest proceeds as in the English text.

a general act what they would vainly attempt by a multitude of isolated individual efforts.

Proceeding from this standpoint, we say that no parent and no employer ought to be allowed to use juvenile labor, except when combined with education.

By education we understand three things.

Firstly: *Mental education*.

Secondly: *Bodily education*, such as is given in schools of gymnastics, and by military exercise.

Thirdly: *Technological*¹⁷ *training*, which imparts the general principles of all processes of production, and simultaneously, initiates the child and young person in the practical use and handling of the elementary instruments of all trades.

A gradual and progressive course of mental, gymnastic, and technological training ought to correspond to the classification of the juvenile laborers. The costs of the technological schools ought to be partly met by the sale of their products.

The combination of paid productive labor, mental education, bodily exercise and polytechnic training, will raise the working class far above the level of the higher and middle classes.

It is self-understood that the employment of all persons from 9 to 17 years (inclusively) in nightwork and all health-injuring trades must be strictly prohibited by law.

7.11 Karl Marx: On National Education (1869)¹⁸

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Cit. Marx said there was a peculiar difficulty connected with this question. On the one hand a change of social circumstances was required to establish a proper system of education, on the other hand a proper system of education was required to bring about a change of social circumstances; we must therefore commence where we were.

The question treated at the congresses was whether education was to be national or private. National education had been looked upon as governmental, but that was not necessarily the case. In Massachusetts every township was bound to provide schools for primary education for all the children. In towns of more than 5,000 inhabitants higher schools for technical education had to be provided, in larger towns still higher. The state contributed something but not much. In Massachusetts one-eighth of the local taxes went for education, in New York one-fifth. The school committees who administered the schools were local, they appointed the schoolmasters and selected the books. The fault of the American system was that it was too much localized, the education given depended upon the state of culture prevailing in each district. There was a cry for a central supervision. The taxation for schools was compulsory, but the attendance of children was not. Property had to pay the taxes and the people who paid the taxes wanted that the money was usefully applied. Education might be national without being governmental. Government might appoint inspectors whose duty it was to see that the laws were obeyed, just as the factory inspectors looked after the observance of the factory acts, without any power of interfering with the course of education itself.

The Congress might without hesitation adopt that education was to be compulsory. As to children being prevented from working, one thing was certain: it would not reduce wages and people would get used to it.

The Proudhonists maintained that gratuitous education was nonsense, because the state had to pay for it; of course somebody had to pay, but not those who could least afford it. Was not in favor of gratuitous college education.

As Prussian education had been talked so much of he would conclude by observing that the Prussian system was only calculated to make good soldiers.

17 Editor: The German text has *polytechnical*.

18 Minutes of the General Council Meetings of August 10 and 17, 1869, International Workingmen's Association, in *Marx & Engels Collected Works* Vol. 3 (New York: International Publishers, 1975).

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Cit. Marx said: upon certain points we were unanimous.

The discussion had started with the proposition to reaffirm the Geneva resolution which demanded that mental education should be combined with bodily labor, with gymnastics and technological training; nothing had been said against that.

The technological training advocated by proletarian writers was meant to compensate for the deficiencies occasioned by the division [of] labor which prevented apprentices from acquiring a thorough knowledge of their business. This had been taken hold of and misconstrued into what the middle class understood by technical education.

As to Mrs. Law's Church budget¹⁹ it would be good policy for the Congress to declare against the Church.

Cit. Milner's proposition²⁰ was not suitable to be introduced in connection with the schools; it was a kind of education that the young must get from the adults in the everyday struggle of life. He could not accept Warren as a bible, it was a question upon which few could agree. We might add that such education cannot be given at school, but must be given by adults.

Nothing could be introduced either in primary or higher schools that admitted of party and class interpretation. Only subjects such as the physical sciences, grammar, etc., were fit matter for schools. The rules of grammar, for instance, could not differ, whether explained by a religious Tory or a free thinker. Subjects that admitted of different conclusions must be excluded and left for the adults

to such teachers as Mrs. Law, who gave instruction in religion.²¹

7.12 Karl Marx: On Social and Economic Rights (*Critique of the Gotha Program*, 1891)²²

... B. "The German Workers' Party demands as the intellectual and moral basis of the state:

1. Universal and *equal elementary education* through the state. Universal compulsory school attendance. Free instruction."

Equal elementary education? What idea lies behind these words? Is it believed that in present-day society (and it is only with this one has to deal) education can be *equal* for all classes? Or is it demanded that the upper classes also shall be compulsorily reduced to the modicum of education — the elementary school — that alone is compatible with the economic conditions not only of the wage workers but of the peasants as well.

"Universal compulsory school attendance. Free instruction." The former exists even in Germany, the second in Switzerland and in the United States in the case of elementary schools. If in some states of the latter country the higher educational institutions are also "free," that only means in fact defraying the cost of the education of the upper classes from the general tax receipts....

19 Harriet Law's proposition moved at the General Council meeting of August 17, 1869, meant the transfer of the Church's property and income to schools.

20 George Milner proposed at the Council meetings of August 10 and 17, 1869, that the children should be taught bourgeois political economy, which was unacceptable from the proletarian viewpoint and in practice would only increase the ideological influence of the ruling bourgeoisie on the rising generation. Milner particularly stressed the need to give the pupils an idea of the "value of labor" and distribution. He referred, in particular, to the American Utopian Socialist Warren, who preached the theory of "just exchange."

21 Editor: In the report of the General Council meeting of August 17, 1869, published in *The Bee-Hive*, No. 410, August 21, 1869, this part of Marx's speech is given as follows: "As to political economy, religion and other questions, they could not be admitted into the primary, nor even the higher schools; that was a kind of education which must rest with the adult, and must be left to the lecture room, to such schoolmasters as Mrs. Law."

22 Karl Marx, *Critique of the Gotha Program* (New York: International Publishers, 1938).

2. The paragraph on the schools should at least have demanded technical schools (theoretical and practical) in combination with the elementary school.

“Elementary education through the state” is altogether objectionable. Defining by a general law the financial means of the elementary schools, the qualifications of the teachers, the branches of instruction, etc., and, as happens in the United States, supervising the fulfillment of these legal prescriptions by means of state inspectors, is a very different thing from appointing the state as the educator of the people! Government and church should rather be equally excluded from any influence on the school...

“Normal working day” In no other country has the Workers’ Party restricted itself to such an indefinite demand, but has always fixed the length of the working day that it considers normal under the given circumstances.

3. *“Restriction of women’s labor and prohibition of child labor”*

The standardization of the working day must already include the restriction of women’s labor, in so far as it relates to the duration, intervals, etc., of the working day; otherwise it could only mean the exclusion of women’s labor from branches of industry that are specifically unhealthy for the female body or are objectionable morally for the female sex. If that is what was meant, then it ought to have been stated.

“Prohibition of child labor”! Here it was absolutely essential to state the age limits.

A general prohibition of child labor is incompatible with the existence of large-scale industry and hence an empty, pious aspiration.

Its realization — if it were possible — would be reactionary, since, with a strict regulation of the working time according to the different age groups and other safety

measures for the protection of children, an early combination of productive labor with education is one of the most potent means for the transformation of present-day society.

4. *“State supervision of factory, workshop and domestic industry”*

In regard to the Prusso-German state it should definitely have been demanded that the inspectors are only to be removable by a court of law; that any worker can denounce them to the courts for neglect of duty; that they must belong to the medical profession.

5. *“Regulation of prison labor”*

A petty demand in a general workers’ program. In any case, it should have been clearly stated that there is no intention from fear of competition to allow ordinary criminals to be treated like beasts, and especially that there is no desire to deprive them of their sole means of betterment, productive labor. This was surely the least one might have expected from socialists.

6. *“An effective liability law”*

It should have been stated what is understood by an “effective” liability law.

Incidentally, in connection with the normal working day, the part of factory legislation that deals with health regulations and safety measures has been overlooked. The liability law only comes into operation when these regulations are infringed...

Counterpoints

7.13 Charles Darwin: On the Superiority of the Fittest (*The Descent of Man*, 1871)²³

With savages, the weak in body or mind are soon eliminated; and those that survive commonly exhibit a vigorous state of health. We civilised men, on the other hand, do our utmost to check the process of elimination; we build asylums for the imbecile, the maimed, and the sick; we institute poor-laws; and

23 Charles Darwin, *The Descent of Man, and Selection in Relation to Sex* (New York: Appleton, 1872 [public domain]).

our medical men exert their utmost skill to save the life of every one to the last moment. There is reason to believe that vaccination has preserved thousands, who from a weak constitution would formerly have succumbed to small-pox. Thus the weak members of civilised societies propagate their kind. No one who has attended to the breeding of domestic animals will doubt that this must be highly injurious to the race of man. It is surprising how soon a want of care, or care wrongly directed, leads to the degeneration of a domestic race; but excepting in the case of man himself, hardly any one is so ignorant as to allow his worst animals to breed.

The aid which we feel impelled to give to the helpless is mainly an incidental result of the instinct of sympathy, which was originally acquired as part of the social instincts, but subsequently rendered, in the manner previously indicated, more tender and more widely diffused. Nor could we check our sympathy, even at the urging of hard reason, without deterioration in the noblest part of our nature. The surgeon may harden himself whilst performing an operation, for he knows that he is acting for the good of his patient; but if we were intentionally to neglect the weak and helpless, it could only be for a contingent benefit, with an overwhelming present evil. We must therefore bear the undoubtedly bad effects of the weak surviving and propagating their kind; but there appears to be at least one check in steady action, namely that the weaker and inferior members of society do not marry so freely as the sound; and this check might be indefinitely increased by the weak in body or mind refraining from marriage, though this is more to be hoped for than expected.

In every country in which a large standing army is kept up, the finest young men are taken by the conscription or are enlisted. They are thus exposed to early death during war, are often tempted into vice, and are prevented from marrying during the prime of life. On the other hand the shorter and feebler men, with poor constitutions, are left at home, and consequently have a much better chance of marrying and propagating their kind. . . .

Man accumulates property and bequeaths it to his children, so that the children of the rich have

an advantage over the poor in the race for success, independently of bodily or mental superiority. On the other hand, the children of parents who are short-lived, and are therefore on an average deficient in health and vigour, come into their property sooner than other children, and will be likely to marry earlier, and leave a larger number of offspring to inherit their inferior constitutions. But the inheritance of property by itself is very far from an evil; for without the accumulation of capital the arts could not progress; and it is chiefly through their power that the civilised races have extended, and are now everywhere extending their range, so as to take the place of the lower races. Nor does the moderate accumulation of wealth interfere with the process of selection. When a poor man becomes moderately rich, his children enter trades or professions in which there is struggle enough, so that the able in body and mind succeed best. The presence of a body of well-instructed men, who have not to labour for their daily bread, is important to a degree which cannot be over-estimated; as all high intellectual work is carried on by them, and on such work, material progress of all kinds mainly depends, not to mention other and higher advantages. No doubt wealth when very great tends to convert men into useless drones, but their number is never large; and some degree of elimination here occurs, for we daily see rich men, who happen to be fools or profligate, squandering away their wealth. . . .

In regard to the moral qualities, some elimination of the worst dispositions is always in progress even in the most civilised nations. Malefactors are executed, or imprisoned for long periods, so that they cannot freely transmit their bad qualities. Melancholic and insane persons are confined, or commit suicide. Violent and quarrelsome men often come to a bloody end. . . . Profligate women bear few children, and profligate men rarely marry; both suffer from disease. In the breeding of domestic animals, the elimination of those individuals, though few in number, which are in any marked manner inferior, is by no means an unimportant element towards success. This especially holds good with injurious characters which tend to reappear through reversion, such as blackness

in sheep; and with mankind some of the worst dispositions, which occasionally without any assignable cause make their appearance in families, may perhaps be reversions to a savage state, from which we are not removed by very many generations. This view seems indeed recognised in the common expression that such men are the black sheep of the family....

The remarkable success of the English as colonists, compared to other European nations, has been ascribed to their “daring and persistent energy”; a result which is well illustrated by comparing the progress of the Canadians of English and French extraction; but who can say how the English gained their energy? There is apparently much truth in the belief that the wonderful progress of the United States, as well as the character of the people, are the results of natural selection; for the more energetic, restless, and courageous men from all parts of Europe have emigrated during the last ten or twelve generations to that great country, and have there succeeded best....

Mr. J.S. Mill speaks, in his celebrated work, ‘Utilitarianism,’ ... of the social feelings as a “powerful natural sentiment,” and as “the natural basis of sentiment for utilitarian morality.” Again he says, “Like the other acquired capacities above referred to, the moral faculty, if not a part of our nature, is a natural out-growth from it; capable, like them, in a certain small degree of springing up spontaneously.” But in opposition to all this, he also remarks, “if, as in my own belief, the moral feelings are not innate, but acquired, they are not for that reason less natural.” It is with hesitation that I venture to differ at all from so profound a thinker, but it can hardly be disputed that the social feelings are instinctive or innate in the lower animals; and why should they not be so in man? ...

But it may be asked, how within the limits of the same tribe did a large number of members first become endowed with these social and moral qualities, and how was the standard of excellence raised? It is extremely doubtful whether the offspring of the more sympathetic and benevolent

parents, or of those who were the most faithful to their comrades, would be reared in greater numbers than the children of selfish and treacherous parents belonging to the same tribe. He who was ready to sacrifice his life, as many a savage has been, rather than betray his comrades, would often leave no offspring to inherit his noble nature. The bravest men, who were always willing to come to the front in war, and who freely risked their lives for others, would on an average perish in larger numbers than other men. Therefore, it hardly seems probable, that the number of men gifted with such virtues, or that the standard of their excellence, could be increased through natural selection, that is, by the survival of the fittest; for we are not here speaking of one tribe being victorious over another.

7.14 John Stuart Mill: On the Right to Education (*On Liberty*, 1859)²⁴

Is it not almost a self-evident axiom, that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen? Yet who is there that is not afraid to recognize and assert this truth? Hardly any one indeed will deny that it is one of the most sacred duties of the parents (or, as law and usage now stand, the father), after summoning a human being into the world, to give to that being an education fitting him to perform his part well in life towards others and towards himself. But while this is unanimously declared to be the father’s duty, scarcely anybody, in this country, will bear to hear of obliging him to perform it. Instead of his being required to make any exertion or sacrifice for securing education to the child, it is left to his choice to accept it or not when it is provided gratis! It still remains unrecognized, that to bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind, is a moral crime, both against the unfortunate offspring and against society; and that if the parent does not fulfil this obligation, the State ought to see it fulfilled, at the charge, as far as possible, of the parent.

24 John Stuart Mill, *On Liberty* (London, 1859 [public domain]).

Were the duty of enforcing universal education once admitted, there would be an end to the difficulties about what the State should teach, and how it should teach, which now convert the subject into a mere battle-field for sects and parties, causing the time and labor which should have been spent in educating, to be wasted in quarrelling about education. If the government would make up its mind to require for every child a good education, it might save itself the trouble of providing one. It might leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one else to pay for them. The objections which are urged with reason against State education, do not apply to the enforcement of education by the State, but to the State's taking upon itself to direct that education: which is a totally different thing. That the whole or any large part of the education of the people should be in State hands, I go as far as any one in deprecating. All that has been said of the importance of individuality of character, and diversity in opinions and modes of conduct, involves, as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for moulding people to be exactly like one another: and as the mould in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation, in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body. An education established and controlled by the State, should only exist, if it exist at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence. Unless, indeed, when society in general is in so backward a state that it could not or would not provide for itself any proper institutions of education, unless the government undertook the task; then, indeed, the government may, as the less of two great evils, take upon itself the business of schools

and universities, as it may that of joint-stock companies, when private enterprise, in a shape fitted for undertaking great works of industry does not exist in the country. But in general, if the country contains a sufficient number of persons qualified to provide education under government auspices, the same persons would be able and willing to give an equally good education on the voluntary principle, under the assurance of remuneration afforded by a law rendering education compulsory, combined with State aid to those unable to defray the expense.

The instrument for enforcing the law could be no other than public examinations, extending to all children, and beginning at an early age. An age might be fixed at which every child must be examined, to ascertain if he (or she) is able to read. If a child proves unable, the father, unless he has some sufficient ground of excuse, might be subjected to a moderate fine, to be worked out, if necessary, by his labor, and the child might be put to school at his expense. Once in every year the examination should be renewed, with a gradually extending range of subjects, so as to make the universal acquisition, and what is more, retention, of a certain minimum of general knowledge, virtually compulsory. Beyond that minimum, there should be voluntary examinations on all subjects, at which all who come up to a certain standard of proficiency might claim a certificate. To prevent the State from exercising through these arrangements, an improper influence over opinion, the knowledge required for passing an examination (beyond the merely instrumental parts of knowledge, such as languages and their use) should, even in the higher class of examinations, be confined to facts and positive science exclusively. The examinations on religion, politics, or other disputed topics, should not turn on the truth or falsehood of opinions, but on the matter of fact that such and such an opinion is held, on such grounds, by such authors, or schools, or churches. Under this system, the rising generation would be no worse off in regard to all disputed truths, than they are at present; they would be brought up either churchmen or dissenters as they now are, the State merely taking care that they should be instructed churchmen,

or instructed dissenters. There would be nothing to hinder them from being taught religion, if their parents chose, at the same schools where they were taught other things. All attempts by the State to bias the conclusions of its citizens on disputed subjects, are evil; but it may very properly offer to ascertain and certify that a person possesses the knowledge requisite to make his conclusions, on any given subject, worth attending to....

Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end. Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion. Until then, there is nothing for them but implicit obedience to an Akbar or a Charlemagne, if they are so fortunate as to find one. But as soon as mankind have attained the capacity of being guided to their own improvement by conviction or persuasion (a period long since reached in all nations with whom we need here concern ourselves), compulsion, either in the direct form or in that of pains and penalties for non-compliance, is no longer admissible as a means to their own good, and justifiable only for the security of others.

7.15 John Stuart Mill: On the Right to Vote (*Considerations on Representative Government*, 1861)²⁵

Whoever, in an otherwise popular government, has no vote, and no prospect of obtaining it, will either be a permanent malcontent, or will feel as one whom the general affairs of society do not concern; for whom they are to be managed by others; who “has no business with the laws except to obey them,” nor with public interests and concerns except as a looker-on. What he will know or care about them from this position may partly be measured by what an average woman of the middle class knows and cares about politics compared with her husband or brothers.

Independently of all these considerations, it is a personal injustice to withhold from any one, unless for the prevention of greater evils, the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has the same interest as other people. If he is compelled to pay, if he may be compelled to fight, if he is required implicitly to obey, he should be legally entitled to be told what for; to have his consent asked, and his opinion counted at its worth, though not at more than its worth. There ought to be no pariahs in a full-grown and civilized nation; no persons disqualified except through their own default. Every one is degraded, whether aware of it or not, when other people, without consulting him, take upon themselves unlimited power to regulate his destiny. And even in a much more improved state than the human mind has ever yet reached, it is not in nature that they who are thus disposed of should meet with as fair play as those who have a voice. Rulers and ruling classes are under a necessity of considering the interests and wishes of those who have the suffrage; but of those who are excluded, it is in their option whether they will do so or not; and, however honestly disposed, they are, in general, too fully occupied with things which they must attend to to have much room in their thoughts for any thing which they can with impunity disregard. No arrangement of the suffrage, therefore, can be permanently satisfactory in which any person or class is peremptorily excluded—in which the electoral privilege is not open to all persons of full age who desire to obtain it.

There are, however, certain exclusions, required by positive reasons, which do not conflict with this principle, and which, though an evil in themselves, are only to be got rid of by the cessation of the state of things which requires them. I regard it as wholly inadmissible that any person should participate in the suffrage without being able to read, write, and, I will add, perform the common operations of arithmetic. Justice demands, even when the suffrage does not depend on it, that the means of attaining these elementary acquirements should be within

25 John Stuart Mill, *Considerations on Representative Government* (London, 1861 [public domain]).

the reach of every person, either gratuitously, or at an expense not exceeding what the poorest, who can earn their own living, can afford. If this were really the case, people would no more think of giving the suffrage to a man who could not read, than of giving it to a child who could not speak; and it would not be society that would exclude him, but his own laziness. When society has not performed its duty by rendering this amount of instruction accessible to all, there is some hardship in the case, but it is a hardship that ought to be borne. If society has neglected to discharge two solemn obligations, the more important and more fundamental of the two must be fulfilled first; universal teaching must precede universal enfranchisement.

It is also important, that the assembly which votes the taxes, either general or local, should be elected exclusively by those who pay something towards the taxes imposed. Those who pay no taxes, disposing by their votes of other people's money, have every motive to be lavish and none to economize. As far as money matters are concerned, any power of voting possessed by them is a violation of the fundamental principle of free government, a severance of the power of control from the interest in its beneficial exercise. It amounts to allowing them to put their hands into other people's pockets for any purpose which they think fit to call a public one, which, in the great towns of the United States, is known to have produced a scale of local taxation onerous beyond example, and wholly borne by the wealthier classes. That representation should be coextensive with taxation, not stopping short of it, but also not going beyond it, is in accordance with the theory of British institutions. But to reconcile this, as a condition annexed to the representation, with universality, it is essential, as it is on many other accounts desirable, that taxation, in a visible shape, should descend to the poorest class.

However this may be, I regard it as required by first principles that the receipt of parish relief should be a peremptory disqualification for the franchise. He who can not by his labor suffice for his own support, has no claim to the privilege of helping himself to the money of others. By becoming dependent on the remaining members of

the community for actual subsistence, he abdicates his claim to equal rights with them in other respects. Those to whom he is indebted for the continuance of his very existence may justly claim the exclusive management of those common concerns to which he now brings nothing, or less than he takes away. As a condition of the franchise, a term should be fixed, say five years previous to the registry, during which the applicant's name has not been on the parish books as a recipient of relief.

In the long run, therefore (supposing no restrictions to exist but those of which we have now treated), we might expect that all, except that (it is to be hoped) progressively diminishing class, the recipients of parish relief, would be in possession of votes, so that the suffrage would be, with that slight abatement, universal. That it should be thus widely expanded is, as we have seen, absolutely necessary to an enlarged and elevated conception of good government. Yet in this state of things, the great majority of voters in most countries, and emphatically in this, would be manual laborers, and the two-fold danger, that of too low a standard of political intelligence, and that of class legislation, would still exist in a very perilous degree. It remains to be seen whether any means exist by which these evils can be obviated.

They are capable of being obviated if men sincerely wish it; not by any artificial contrivance, but by carrying out the natural order of human life, which recommends itself to every one in things in which he has no interest or traditional opinion running counter to it. In all human affairs, every person directly interested, and not under positive tutelage, has an admitted claim to a voice, and when his exercise of it is not inconsistent with the safety of the whole, can not justly be excluded from it. But (though every one ought to have a voice) that every one should have an equal voice is a totally different proposition. When two persons who have a joint interest in any business differ in opinion, does justice require that both opinions should be held of exactly equal value? If with equal virtue, one is superior to the other in knowledge and intelligence—or if with equal intelligence, one excels the other in virtue—the opinion, the

judgment of the higher moral or intellectual being is worth more than that of the inferior; and if the institutions of the country virtually assert that they are of the same value, they assert a thing which is not. One of the two, as the wiser or better man, has a claim to superior weight: the difficulty is in ascertaining which of the two it is; a thing impossible as between individuals, but, taking men in bodies and in numbers, it can be done with a certain approach to accuracy. There would be no pretense for applying this doctrine to any case which can with reason be considered as one of individual and private right. In an affair which concerns only one of two persons, that one is entitled to follow his own opinion, however much wiser the other may be than himself. But we are speaking of things which equally concern them both; where, if the more ignorant does not yield his share of the matter to the guidance of the wiser man, the wiser man must resign his to that of the more ignorant. Which of these modes of getting over the difficulty is most for the interest of both, and most conformable to the general fitness of things? If it be deemed unjust that either should have to give way, which injustice is greatest? that the better judgment should give way to the worse, or the worse to the better?

Now national affairs are exactly such a joint concern, with the difference that no one needs ever be called upon for a complete sacrifice of his own opinion. It can always be taken into the calculation, and counted at a certain figure, a higher figure being assigned to the suffrages of those whose opinion is entitled to greater weight. There is not in this arrangement any thing necessarily invidious to those to whom it assigns the lower degrees of influence. Entire exclusion from a voice in the common concerns is one thing: the concession to others of a more potential voice, on the ground of greater capacity for the management of the joint interests, is another. The two things are not merely different, they are incommensurable. Every one has a right to feel insulted by being made a nobody, and stamped as of no account at all. No one but a fool, and only a fool of a peculiar description, feels offended by the acknowledgment that there are others whose opinion, and even whose wish, is entitled to a

greater amount of consideration than his. To have no voice in what are partly his own concerns is a thing which nobody willingly submits to; but when what is partly his concern is also partly another's, and he feels the other to understand the subject better than himself, that the other's opinion should be counted for more than his own accords with his expectations, and with the course of things which in all other affairs of life he is accustomed to acquiesce in. It is only necessary that this superior influence should be assigned on grounds which he can comprehend, and of which he is able to perceive the justice.

I hasten to say that I consider it entirely inadmissible, unless as a temporary makeshift, that the superiority of influence should be conferred in consideration of property. I do not deny that property is a kind of test; education, in most countries, though any thing but proportional to riches, is on the average better in the richer half of society than in the poorer. But the criterion is so imperfect; accident has so much more to do than merit with enabling men to rise in the world; and it is so impossible for any one, by acquiring any amount of instruction, to make sure of the corresponding rise in station, that this foundation of electoral privilege is always, and will continue to be, supremely odious. To connect plurality of votes with any pecuniary qualification would be not only objectionable in itself, but a sure mode of compromising the principle, and making its permanent maintenance impracticable. The democracy, at least of this country, are not at present jealous of personal superiority, but they are naturally and must justly so of that which is grounded on mere pecuniary circumstances. The only thing which can justify reckoning one person's opinion as equivalent to more than one is individual mental superiority, and what is wanted is some approximate means of ascertaining that. If there existed such a thing as a really national education or a trustworthy system of general examination, education might be tested directly. In the absence of these, the nature of a person's occupation is some test. An employer of labor is on the average more intelligent than a laborer; for he must labor with his head, and not solely with his hands. A foreman is generally more

intelligent than an ordinary laborer, and a laborer in the skilled trades than in the unskilled. A banker, merchant, or manufacturer is likely to be more intelligent than a tradesman, because he has larger and more complicated interests to manage. In all these cases it is not the having merely undertaken the superior function, but the successful performance of it, that tests the qualifications; for which reason, as well as to prevent persons from engaging nominally in an occupation for the sake of the vote, it would be proper to require that the occupation should have been persevered in for some length of time (say three years). Subject to some such condition, two or more votes might be allowed to every person who exercises any of these superior functions. The liberal professions, when really and not nominally practiced, imply, of course, a still higher degree of instruction; and wherever a sufficient examination, or any serious conditions of education, are required before entering on a profession, its members could be admitted at once to a plurality of votes.... The time is not come for giving to such plans a practical shape, nor should I wish to be bound by the particular proposals which I have made. But it is to me evident that in this direction lies the true ideal of representative government; and that to work towards it by the best practical

contrivances which can be found is the path of real political improvement....

In the preceding argument for universal but graduated suffrage, I have taken no account of difference of sex. I consider it to be as entirely irrelevant to political rights as difference in height or in the color of the hair: All human beings have the same interest in good government; the welfare of all is alike affected by it, and they have equal need of a voice in it to secure their share of its benefits. If there be any difference, women require it more than men, since, being physically weaker, they are more dependent on law and society for protection. Mankind have long since abandoned the only premises which will support the conclusion that women ought not to have votes. No one now holds that women should be in personal servitude; that they should have no thought, wish, or occupation but to be the domestic drudges of husbands, fathers, or brothers. It is allowed to unmarried, and wants but little of being conceded to married women to hold property, and have pecuniary and business interests in the same manner as men. It is considered suitable and proper that women should think, and write, and be teachers. As soon as these things are admitted, the political disqualification has no principle to rest on.

8. HOW TO PROMOTE A SOCIALIST PERSPECTIVE OF HUMAN RIGHTS

Free Trade, Just War, and International Organizations

On Free Trade's Virtues and Injustices

The prevailing Enlightenment idea that republican institutions and commerce based on free trade would be sufficient to promote human rights domestically and globally, and would also extirpate war, was severely challenged during the industrial revolution. The expansion of capitalism, coinciding with the political and economic exclusion of disenfranchised masses and colonial wars, showed the insufficiency of the Enlightenment vision. In the face of miserable living conditions for ordinary workers in the industrializing world, and widespread suffering in the colonies of the capitalist powers, socialists debated whether workers' rights could be achieved through political reform or only by violent revolution.

With respect to free trade, Karl Marx (1818–1883) characterized that central underpinning of the liberal worldview as both progressive and pernicious. In the *The Communist Manifesto* (1848), he and Engels welcomed the revolutionary virtues of the bourgeoisie in promoting the “cosmopolitan character of production and consumption in every country” and credited the bourgeoisie for its progressive ability to eradicate parochial and feudal social structures. Marx's speech “On the Question of Free Trade” (1848), arguing for the repeal of the protectionist Corn Laws in Britain, proclaimed that in a revolutionary sense alone: “I am in favor of Free Trade.” His reason was that free trade would provide new political space for working class solidarity across borders. That support was offered despite his belief that initially “the Freedom of Capital” meant the freedom to crush workers' rights and wage wars to conquer new markets. In the long run, however, “the weapons with which the bourgeoisie felled feudalism to the ground are now turned against the bourgeoisie itself” (see Sections 8.1–8.2).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 3.

8.1 Karl Marx: *The Communist Manifesto* (1848)¹

Each step in the development of the bourgeoisie was accompanied by a corresponding political advance of that class. An oppressed class under the sway

of the feudal nobility, an armed and self-governing association in the medieval commune; here independent urban republic (as in Italy and Germany), there taxable “third estate” of the monarchy (as in France), afterward, in the period of manufacture proper, serving either the semi-feudal or the absolute

1 Karl Marx, *The Communist Manifesto*, in *Birth of the Communist Manifesto*, edited by Dirk J. Struik (New York: International Publishers, 1971).

monarchy as a counterpoise against the nobility, and, in fact, cornerstone of the great monarchies in general, the bourgeoisie has at last, since the establishment of Modern Industry and of the world market, conquered for itself, in the modern representative State, exclusive political sway. The executive of the modern State is but a committee for managing the common affairs of the whole bourgeoisie.

The bourgeoisie, historically, has played a most revolutionary part.

The bourgeoisie, wherever it has got the upper hand, has put an end to all feudal, patriarchal, idyllic relations. It has pitilessly torn asunder the motley feudal ties that bound man to his "natural superiors," and has left remaining no other nexus between man and man than naked self-interest, than callous "cash payment." It has drowned the most heavenly ecstasies of religious fervor, of chivalrous enthusiasm, of philistine sentimentalism, in the icy water of egotistical calculation. It has resolved personal worth into exchange value, and in place of the numberless indefeasible chartered freedoms has set up that single, unconscionable freedom — Free Trade. In one word, for exploitation, veiled by religious and political illusions, it has substituted naked, shameless, direct, brutal exploitation.

The bourgeoisie has stripped of its halo every occupation hitherto honored and looked up to with reverent awe. It has converted the physician, the lawyer, the priest, the poet, the man of science, into its paid wage-laborers.

The bourgeoisie has torn away from the family its sentimental veil, and has reduced the family relation to a mere money relation.

The bourgeoisie has disclosed how it came to pass that the brutal display of vigor in the Middle Ages, which Reactionists so much admire, found its fitting complement in the most slothful indolence. It has been the first to show what man's activity can bring about. It has accomplished wonders far surpassing Egyptian pyramids, Roman aqueducts and Gothic cathedrals; it has conducted expeditions that put in the shade all former Exoduses of nations and crusades.

The bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and

thereby the relations of production and with them the whole relations of society. Conservation of the old modes of production in unaltered form was, on the contrary, the first condition of existence for all earlier industrial classes. Constant revolutionizing of production, uninterrupted disturbance of all social conditions, everlasting uncertainty and agitation distinguish the bourgeois epoch from all earlier ones. All fixed, fast-frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses his real conditions of life and his relations with his kind.

The need of a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe. It must nestle everywhere, settle everywhere, establish connections everywhere.

The bourgeoisie has through its exploitation of the world market given a cosmopolitan character to production and consumption in every country. To the great chagrin of Reactionists, it has drawn from under the feet of industry the national ground on which it stood. All old-established national industries have been destroyed or are daily being destroyed. They are dislodged by new industries, whose introduction becomes a life and death question for all civilized nations, by industries that no longer work up indigenous raw material but raw material drawn from the remotest zones; industries whose products are consumed, not only at home, but in every quarter of the globe. In place of the old wants, satisfied by the production of the country, we find new wants, requiring for their satisfaction the products of distant lands and climes. In place of the old local and national seclusion and self-sufficiency, we have intercourse in every direction, universal interdependence of nations. And as in material, so also in intellectual production. The intellectual creations of individual nations become common property. National one-sidedness and narrow-mindedness become more and more impossible, and from the numerous national and local literatures there arises a world literature.

The bourgeoisie, by the rapid improvement of all instruments of production, by the immensely facilitated means of communication, draws all, even the most barbarian, nations into civilization. The cheap prices of its commodities are the heavy artillery with which it batters down all Chinese walls, with which it forces the barbarians' intensely obstinate hatred of foreigners to capitulate. It compels all nations, on pain of extinction, to adopt the bourgeois mode of production; it compels them to introduce what it calls civilization into their midst, i.e., to become bourgeois themselves. In a word, it creates a world after its own image.

The bourgeoisie has subjected the country to the rule of the towns. It has created enormous cities, has greatly increased the urban population as compared with the rural, and has thus rescued a considerable part of the population from the idiocy of rural life. Just as it has made the country dependent on the towns, so it has made barbarian and semibarbarian countries dependent on the civilized ones, nations of peasants on nations of bourgeois, the East on the West.

The bourgeoisie keeps doing away more and more with the scattered state of the population, of the means of production, and of property. It has agglomerated population, centralized means of production, and has concentrated property in a few hands. The necessary consequence of this was political centralization. Independent or but loosely connected provinces with separate interests, laws, governments, and systems of taxation became lumped together into one nation, with one government, one code of laws, one national class interest, one frontier and one customs tariff.

The bourgeoisie during its rule of scarce one hundred years has created more massive and more colossal productive forces than have all preceding generations together. Subjection of nature's forces to man, machinery, application of chemistry to industry and agriculture, steam navigation, railways, electric telegraphs, clearing of whole continents for cultivation, canalization of rivers, whole populations conjured out of the ground — what earlier century had even a presentiment that such productive forces slumbered in the lap of social labor?

We see then: the means of production and of exchange, of the foundation of which the bourgeoisie built itself up, were generated in feudal society. At a certain stage in the development of these means of production and of exchange, the conditions under which feudal society produced and exchanged, the feudal organization of agriculture and manufacturing industry, in a word, the feudal relations of property became no longer compatible with the already developed productive forces; they became so many fetters. They had to be burst asunder; they were burst asunder.

Into their place stepped free competition, accompanied by a social and political constitution adapted to it and by the economic and political sway of the bourgeois class.

A similar movement is going on before our own eyes. Modern bourgeois society with its relations of production, of exchange and of property, a society that has conjured up such gigantic means of production and of exchange, is like the sorcerer who is no longer able to control the powers of the nether world whom he has called up by his spells. For many a decade past the history of industry and commerce is but the history of the revolt of modern productive forces against modern conditions of production, against the property relations that are the conditions for the existence of the bourgeoisie and of its rule. It is enough to mention the commercial crises that by their periodical return put on trial, each time more threateningly, the existence of the entire bourgeois society. In these crises a great part not only of the existing products, but also of the previously created productive forces, are periodically destroyed. In these crises there breaks out an epidemic that in all earlier epochs would have seemed an absurdity — the epidemic of over-production. Society suddenly finds itself put back into a state of momentary barbarism; it appears as if a famine, a universal war of devastation had cut off the supply of every means of subsistence; industry and commerce seem to be destroyed; and why? Because there is too much civilization, too much means of subsistence, too much industry, too much commerce. The productive forces at the disposal of society no longer tend to further the development of the conditions

of bourgeois property; on the contrary, they have become too powerful for these conditions, by which they are fettered, and as soon as they overcome these fetters, they bring disorder into the whole of bourgeois society, endanger the existence of bourgeois property. The conditions of bourgeois society are too narrow to comprise the wealth created by them. And how does the bourgeoisie get over these crises? On the one hand by enforced destruction of a mass of productive forces; on the other, by the conquest of new market and by the more thorough exploitation of the old ones. That is to say, by paving the way for more extensive and more destructive crises and by diminishing the means whereby crises are prevented.

The weapons with which the bourgeoisie felled feudalism to the ground are now turned against the bourgeoisie itself....

8.2 Karl Marx: "Speech on the Question of Free Trade" (1848)²

... To sum up, what is Free Trade under the present conditions of society? Freedom of Capital. When you have torn down the few national barriers which still restrict the free development of capital, you will merely have given it complete freedom of action. So long as you let the relation of wages-labor to capital exist, no matter how favorable the conditions under which you accomplish the exchange of commodities, there will always be a class which exploits and a class which is exploited. It is really difficult to understand the presumption of the Free Traders who imagine that the more advantageous application of capital will abolish the antagonism between industrial capitalists and wageworkers. On the contrary. The only result will be that the antagonism of these two classes will stand out more clearly.

Let us assume for a moment that there are no more Corn Laws or national and municipal import duties; that in a word all the accidental circumstances which to-day the workingman may

look upon as a cause of his miserable condition have vanished, and we shall have removed so many curtains that hide from his eyes his true enemy.

He will see that capital released from all trammels will make him no less a slave than capital trammelled by import duties.

Gentlemen! Do not be deluded by the abstract word Freedom! Whose freedom? Not the freedom of one individual in relation to another, but freedom of Capital to crush the worker.

Why should you desire farther to sanction unlimited competition with this idea of freedom, when the idea of freedom itself is only the product of a social condition based upon Free Competition?

We have shown what sort of fraternity Free Trade begets between the different classes of one and the same nation. The fraternity which Free Trade would establish between the nations of the earth would not be more real, to call cosmopolitan exploitation universal brotherhood is an idea that could only be engendered in the brain of the bourgeoisie. Every one of the destructive phenomena to which unlimited competition gives rise within any one nation is reproduced in more gigantic proportions in the market of the world. We need not pause any longer upon Free Trade sophisms on this subject, which are worth just as much as the arguments of our prize essayists Messrs. Hope, Morse, and Greg.

For instance, we are told that Free Trade would create an international division of labor, and thereby give to each country those branches of production most in harmony with its natural advantages.

You believe perhaps, gentlemen, that the production of coffee and sugar is the natural destiny of the West Indies.

Two centuries ago, nature, which does not trouble itself about commerce, had planted neither sugar-cane nor coffee trees there. And it may be that in less than half a century you will find there neither coffee nor sugar, for the East Indies, by means of cheaper production, have already successfully broken down this so-called natural destiny of the West Indies.

2 Delivered to the Democratic Association of Brussels at its public meeting of January 9, 1848. First published in French as a pamphlet in the beginning of February 1848 in Brussels. Printed according to the American edition of 1888 and checked with the 1848 French edition.

And the West Indies, with their natural wealth, are as heavy a burden for England as the weavers of Dacca, who also were destined from the beginning of time to weave by hand.

One other circumstance must not be forgotten, namely that, just as everything has become a monopoly, there are also nowadays some branches of industry which prevail over all others, and secure to the nations which especially foster them the command of the market of the world. Thus in the commerce of the world cotton alone has much greater commercial importance than all the other raw materials used in the manufacture of clothing. It is truly ridiculous for the Free Traders to refer to the few specialties in each branch of industry, throwing them into the balance against the product used in everyday consumption, and produced most cheaply in those countries in which manufacture is most highly developed.

If the Free Traders cannot understand how one nation can grow rich at the expense of another, we need not wonder, since these same gentlemen also refuse to understand how in the same country one class can enrich itself at the expense of another.

Do not imagine, gentlemen, that in criticizing freedom of commerce we have the least intention of defending Protection.

One may be opposed to constitutionalism without being in favor of absolutism.

Moreover, the Protective system is nothing but a means of establishing manufacture upon a large scale in any given country, that is to say, of making it dependent upon the market of the world; and from the moment that dependence upon the market of the world is established, there is more or less dependence upon Free Trade too. Besides this, the Protective system helps to develop free competition within a nation. Hence we see that in countries where the bourgeoisie is beginning to make itself felt as a class, in Germany for example, it makes great efforts to obtain Protective duties. They serve the bourgeoisie as weapons against feudalism and absolute monarchy, as a means for the concentration of its own powers for the realization of Free Trade within the country.

But, generally speaking, the Protective system in these days is conservative, while the Free Trade system works destructively. It breaks up old nationalities and carries antagonism of proletariat and bourgeoisie to the uttermost point. In a word, the Free Trade system hastens the Social Revolution. In this revolutionary sense alone, gentlemen, I am in favor of Free Trade.

Just War: Violence or Political Reform?

The question of how best to advance human rights is still with us today. To what extent is force legitimate against a corrupted state before it crumbles, or before the state uses violence against militants and sweeps away human rights aspirations? Like Locke before him, Karl Marx (1848) depicted revolutions as an inevitable means to redress oppression. "The history of all existing hitherto society," he developed, "is the history of class struggles ... between oppressor and oppressed" (see Section 8.3). In *The Class Struggle in France* (1850), he explained his belief that a dictatorship of the proletariat would be "the necessary transit point to the abolition of class distinctions generally" (see Section 8.4). Yet Marx was not completely averse to the idea of reform. In his speech on the possibility of a nonviolent revolution, delivered in Amsterdam in 1872, his call for revolutionary means included caveats: namely, that in some countries, such as America, England, and Holland, where representative political systems were in place, workers might attain their objectives peacefully (see Section 8.5). That question of reform versus revolution would be echoed in fierce arguments that divided the political Left.

The exiled Polish socialist leader in Germany, Rosa Luxemburg (1870–1924), favored mass protest that required a certain organizational maturity on the part of the working class. In the face of colonial power, she advocated desertion by troops ordered to battle in World War I and supported the revolutionary overthrow of the capitalist regimes responsible for the war. In her *Junius Pamphlet*, published in 1916, Luxemburg condemned World War I as imperialist, depicting the horrific results of capitalist colonial rivalries for the lives of the working class. She further denounced the collaboration of European

social democratic parties, which had abandoned their longstanding pledges to oppose the impending war among the leading capitalist states, and had instead rushed to proclaim loyalty to their countries when the fighting began in August 1914. Luxemburg's pamphlet was written in 1915 and smuggled out of prison, where she had been sentenced for several years for giving an antiwar speech. Once out of prison, she led the Spartacus League (1914–1918) in grassroots demonstrations against the war. Though she warned against a premature effort to take over Berlin in 1919, she joined the uprising when it occurred. The German government crushed the rebellion, and she was murdered soon after by right-wing soldiers in 1919 (see Section 8.6).

In the same period, a crucial episode in the ongoing debate on what means were acceptable for achieving socialist human rights ends was the Russian Revolution of February 1917. Though the influential German Social-Democratic leader Karl Kautsky (1854–1938) regarded himself as a follower of Marx, he distinguished himself from other Marxists by condemning, in *The Dictatorship of the Proletariat* (1918), the dictatorial outcome of the Bolshevik Revolution as an unacceptable means to attain power and establish socialist rights. Building on Kantian ethics, he argued that democracy and socialism, or political reform, should be perceived as “means toward the same ends.” A nondemocratic organization of social labor, he insisted, is conducive to dictatorial power and the gradual decline of popular support. He thus argued that the political will and maturity of the working class – which depend upon the level of industrialization and parliamentary democracy – are essential prerequisites for achieving socialist rights (see Section 8.7).

Leon Trotsky (1879–1939), the principal organizer of the Red Army during the Russian civil war (1918–1921), attacked Kautsky's view of moral standards as inapplicable during the revolutionary process. In *Their Morals and Ours* (1938), he explained how violence had to be understood in terms of its objective, rather than as an isolated means. There is a difference, he maintained, “between a slaveholder who through cunning and violence shackles a slave in chains, and a slave who through cunning and violence breaks the chains.” “Does this imply that all means are permissible?” he asked. “That is permissible,” he answered, “which really leads to the liberation of humanity.” “A means,” he continued, “can only be justified by its ends,” which include the power of humanity over nature and the abolition of the exploitation of one person by another. In this respect, Trotsky intended to set himself apart from Stalin's oppressive regime. Yet at the same time, Trotsky denounced the “moral absolutism” and “hypocrisy” of liberals and social democrats regarding the conduct of the Bolsheviks, at a time when their revolution was endangered by a civil war waged on a five-thousand-mile front (see Section 8.8). Trotsky's contribution to the successful defense of that revolution went unrewarded, however, as Joseph Stalin (1879–1953) consolidated his rule, purging and murdering his rivals, including Trotsky. The Bolshevik dream of international socialist rights had yielded to a repressive bureaucratic state.

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 3.

8.3 Karl Marx: On the History of Class Warfare (*The Communist Manifesto*, 1848)³

Bourgeois and Proletarians

The history of all hitherto existing society is the history of class struggles. Freeman and slave, patrician

and plebeian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed, stood in constant opposition to one another, carried on an uninterrupted, now hidden, now open fight, a fight that each time ended, either in a revolutionary

3 Karl Marx, *The Communist Manifesto*, in *Birth of the Communist Manifesto*, edited by Dirk J. Struik (New York: International Publishers, 1971).

reconstitution of society at large, or in the common ruin of the contending classes.

In the earlier epochs of history, we find almost everywhere a complicated arrangement of society into various orders, a manifold gradation of social rank. In ancient Rome we have patricians, knights, plebeians, slaves, in the Middle Ages, feudal lords, vassals, guild-masters, journeymen, apprentices, serfs; in almost all of these classes, again, subordinate gradations.

The modern bourgeois society that has sprouted from the ruins of feudal society has not done away with class antagonisms. It has but established new classes, new conditions of oppression, new forms of struggle in place of the old ones.

Our epoch, the epoch of the bourgeoisie, possesses, however, this distinctive feature: It has simplified the class antagonisms. Society as a whole is more and more splitting up into two great hostile camps, into two great classes directly facing each other — bourgeoisie and proletariat.

From the serfs of the Middle Ages sprang the chartered burghers of the earliest towns. From these burgesses the first elements of the bourgeoisie were developed.

The discovery of America, the rounding of the Cape, opened up fresh ground for the rising bourgeoisie. The East Indian and Chinese markets, the colonization of America, trade with the colonies, the increase in the means of exchange and in commodities generally, gave to commerce, to navigation, to industry, an impulse never before known, and thereby, to the revolutionary element in the tottering feudal society, a rapid development...

We see, therefore, how the modern bourgeoisie is itself the product of a long course of development, of a series of revolutions in the modes of production and of exchange...

Altogether, collisions between the classes of the old society further the course of development of the proletariat in many ways. The bourgeoisie finds itself involved in a constant battle. At first with the aristocracy; later on, with those portions of the

bourgeoisie itself whose interests have become antagonistic to the progress of industry; at all times with the bourgeoisie of foreign countries. In all these battles it sees itself compelled to appeal to the proletariat, to ask for its help, and thus, to drag it into the political arena. The bourgeoisie itself, therefore, supplies the proletariat with its own elements of political and general education, in other words, it furnishes the proletariat with weapons for fighting the bourgeoisie....

8.4 Karl Marx: The Class Struggles in France (1850)⁴

... So swiftly had the march of the revolution ripened conditions that the friends of reform of all shades, the most moderate claims of the middle classes, were compelled to group themselves round the banner of the most extreme party of revolution, round the *red flag*...

Since it dreams of the peaceful achievement of its Socialism — allowing, perhaps, for a second February Revolution lasting a brief day or so — the coming historical process naturally appears to it as an *application of systems*, which the thinkers of society, whether in companies or as individual inventors, devise or have devised. Thus they become the eclectics or adepts of the existing socialist *systems*, of *doctrinaire Socialism*, which was the theoretical expression of the proletariat only as long as it had not yet developed further into a free historical movement of its own.

Thus, while *utopia, doctrinaire Socialism*, which subordinates the whole movement to one of its elements, which puts the cerebrations of the individual pedant in place of common, social production and, above all, wishes away the necessities of the revolutionary class struggles by petty tricks or great sentimental rhetoric — while this doctrinaire Socialism, which basically only idealizes present-day society, makes a shadowless picture of it and seeks to oppose its ideal to its reality, while this Socialism is ceded by the proletariat to the petty bourgeoisie, while the internal struggle

4 Karl Marx, *The Class Struggles in France*, in *Karl Marx and Frederick Engels' Collected Works*, Vol. 10 (New York: International Publishers, 1978).

between the different socialist leaders reveals each so-called system to be the pretentious adherence to one transitional position on the path, to social upheaval as opposed to another — the *proletariat* increasingly organizes itself around *revolutionary Socialism*, around *Communism*, for which the bourgeoisie itself has invented the name of *Blanqui*. This Socialism is the *declaration of the permanence of the revolution*, the *class dictatorship* of the proletariat as the necessary transit point to the *abolition of class distinctions generally*, to the abolition of all the relations of production on which they rest, to the abolition of all the social relations that correspond to these relations of production, to the revolutionizing of all the ideas that result from these social relations....

8.5 Karl Marx: On the Possibility of a Non-Violent Revolution (1872)⁵

In the 18th century the kings and potentates were in the habit of assembling at The Hague to discuss the interests of their dynasties.

It is there that we decided to hold our workers' congress despite the attempts to intimidate us. In the midst of the most reactionary population we wanted to affirm the existence, the spreading and hope for the future of our great Association.

When our decision became known, there was talk of emissaries we had sent to prepare the ground. Yes, we have emissaries everywhere, we do not deny it, but the majority of them are unknown to us. Our emissaries in The Hague were the workers, whose labor is so exhausting, just as in Amsterdam they are workers too, workers who toil for sixteen hours a day. Those are our emissaries, we have no others; and in all the countries in which we make an appearance we find them ready to welcome us, for they understand very quickly that the aim we pursue is the improvement of their lot.

The Hague Congress has achieved three main things:

It has proclaimed the necessity for the working classes to fight the old disintegrating society in the political as well as the social field; and we see with satisfaction that henceforth this resolution of the London Conference will be included in our Rules.

A group has been formed in our midst which advocates that the workers should abstain from political activity.

We regard it as our duty to stress how dangerous and fatal we considered those principles to be for our cause.

One day the worker will have to seize political supremacy to establish the new organization of labor; he will have to overthrow the old policy which supports the old institutions if he wants to escape the fate of the early Christians who, neglecting and despising politics, never saw their kingdom on earth.

But we by no means claimed that the means for achieving this goal were identical everywhere. We know that the institutions, customs and traditions in the different countries must be taken into account; and we do not deny the existence of countries like America, England, and if I knew your institutions better I might add Holland, where the workers may achieve their aims by peaceful means. That being true we must also admit that in most countries on the Continent it is force which must be the lever of our revolution; it is force which will have to be resorted to for a time in order to establish the rule of the workers.

The Hague Congress has endowed the General Council with new and greater powers. Indeed, at a time when the kings are assembling in Berlin and when from this meeting of powerful representatives of feudalism and the past there must result new and more severe measures of repression against us; at a time when persecution is being organized, the Hague Congress rightly believed that it was wise and necessary to increase the powers of its General Council and to centralize, in view of the impending struggle, activity which isolation would render impotent. And, by the way, who but our enemies could take alarm

5 Karl Marx, "On the Hague Congress" [a correspondent's report of a speech given at a meeting in Amsterdam on September 8, 1872, also known as "*La Liberté* Speech"], in *Karl Marx and Frederick Engels' Collected Works*, Vol. 23 (New York: International Publishers, 1984).

at the authority of the General Council? Has it a bureaucracy and an armed police to ensure that it is obeyed? Is not its authority solely moral, and does it not submit its decisions to the Federations which have to carry them out? In these conditions, kings, with no army, no police, no magistracy, and reduced to having to maintain their power by moral influence and authority, would be feeble obstacles to the progress of the revolution.

Finally, the Hague Congress transferred the seat of the General Council to New York. Many, even of our friends, seemed to be surprised at such a decision. Are they then forgetting that America is becoming the world of workers *par excellence*; that every year half a million men, workers, emigrate to that other continent, and that the International must vigorously take root in that soil where the worker predominates? Moreover, the decision taken by the Congress gives the General Council the right to co-opt those members whom it judges necessary and useful for the good of the common cause. Let us rely on its wisdom to choose men equal to the task and able to carry with a steady hand the banner of our Association in Europe.

Citizens, let us bear in mind this fundamental principle of the International: solidarity! It is by establishing this life-giving principle on a reliable base among all the workers in all countries that we shall achieve the great aim which we pursue. The revolution must display solidarity, and we find a great example of this in the Paris Commune, which fell because there did not appear in all the centers, in Berlin, Madrid, etc., a great revolutionary movement corresponding to this supreme uprising of the Paris proletariat.

For my part I will persist in my task and will constantly work to establish among the workers this solidarity which will bear fruit for the future. No, I am not withdrawing from the International, and the rest of my life will be devoted, like my efforts in the past, to the triumph of the social ideas which one day, be sure of it, will bring about the universal rule of the proletariat.

8.6 Rosa Luxemburg: On World War I and Imperialism (*The Junius Pamphlet*, 1916)⁶

Have we ever had a different conception of the role to be played by the working class in the great world war? Have we forgotten how we were wont to describe the coming event, only a few short years ago? "Then will come the catastrophe. All Europe will be called to arms, and sixteen to eighteen million men, the flower of the nations, armed with the best instruments of murder will make war upon each other. But I believe that behind this march there looms the final crash. Not we, but they themselves will bring it. They are driving things to the extreme, they are leading us straight into a catastrophe. They will harvest what they have sown. The *Goetterdaemmerung* of the bourgeois world is at hand. Be sure of that. It is coming." Thus spoke Bebel, the speaker of our group in the Reichstag in the Morocco debate.

An official leaflet published by the party, *Imperialism and Socialism*, that was distributed in hundreds of thousands of copies only a few years ago, closes with the words: "Thus the struggle against militarism daily becomes more and more clearly a decisive struggle between capital and labor. War, high prices and capitalism — peace, happiness for all, socialism! Yours is the choice. History is hastening onward toward a decision. The proletariat must work unceasingly at its world mission, must strengthen the power of its organization and the clearness of its understanding. Then, come what will, whether it will succeed, by its power, in saving humanity from the horrible cruelties of the world war, or whether capitalism shall sink back into history, as it was born, in blood and violence, the historic moment will find the working class prepared, and preparedness is everything."

The official handbook for socialist voters, in 1911, the date of the last Reichstag elections, contains, on page 42, the following comments on the expected world war: "Do our rulers and our ruling classes dare to demand this awful thing of

6 Rosa Luxemburg, "The Junius Pamphlet," in *Rosa Luxemburg Speaks*, edited with an introduction by Mary-Alice Waters (New York: Pathfinder Press, 1970).

the people? Will not a cry of horror, of fury and of indignation fill the country and lead the people to put an end to this murder? Will they not ask: 'For whom and for what? Are we insane that we should be treated thus or should tolerate such treatment?' He who dispassionately considers the possibility of a great European world war can come to no other conclusion.

"The next European war will be a game of *va banque*, whose equal the world has never seen before. It will be, in all probability, the last war."

With such words the Reichstag representatives won their 110 seats in the Reichstag.

When in the summer of 1911, the *Panther* made its spring to Agadir, and the noisy clamor of German imperialists brought Europe to the precipice of war, an international meeting in London, on the fourth of August, adopted the following resolution: "The German, Spanish, English, Dutch and French delegates of labor organizations hereby declare their readiness to oppose every declaration of war with every means in their power. Every nationality here represented pledges itself, in accordance with the decisions of its national and international congresses to oppose all criminal machinations on the part of the ruling classes."

But when in November 1912, the International Peace Congress met at Basel, when the long train of labor representatives entered the Minster, a presentiment of the coming hour of fate made them shudder and the heroic resolve took shape in every breast.

The cool, skeptical Victor Adler cried out: "Comrades, it is most important that we here, at the common source of our strength, that we, each and every one of us, take from hence the strength to do in his country what he can, through the forms and means that are at his disposal, to oppose this crime of war, and if it should be accomplished, if we should really be able to prevent war, let this be the cornerstone of our coming victory. That is the spirit that animates the whole International." ...

[But] on the thirtieth of July 1914 the central organ of the German social democracy cried out: "The socialist proletariat rejects all responsibility for the events that are being precipitated by

a ruling class that is blinded, and on the verge of madness. We know that for us new life will spring from the ruins. But the responsibility falls upon the rulers of today.

"For them it is a question of existence!

World history is the last judgment!"

And then came the awful, the incredible fourth of August, 1914.

Did it *have* to come? An event of such importance cannot be a mere accident. It must have its deep, significant, objective causes. But perhaps these causes may be found in the errors of the leader of the proletariat, the social democracy itself, in the fact that our readiness to fight has flagged, convictions have forsaken us...

Friedrich Engels once said: "Capitalist society faces a dilemma, either an advance to socialism or a reversion to barbarism." What does a "reversion to barbarism" mean at the present stage of European civilization? We have read and repeated these words thoughtlessly without a conception of their terrible import. At this moment one glance about us will show us what a reversion to barbarism in capitalist society means. *This world war* means a reversion to barbarism. The triumph of imperialism leads to the destruction of culture, sporadically during a modern war, and forever, if the period of world wars that has just begun is allowed to take its damnable course to the last ultimate consequence. Thus we stand today, as Friedrich Engels prophesied more than a generation ago, before the awful proposition: either the triumph of imperialism and the destruction of all culture, and, as in ancient Rome, depopulation, desolation, degeneration, a vast cemetery; or, the victory of socialism, that is, the conscious struggle of the international proletariat against imperialism, against its methods, against war. This is the dilemma of world history, its inevitable choice, whose scales are trembling in the balance awaiting the decision of the proletariat. Upon it depends the future of culture and humanity. In this war imperialism has been victorious. Its brutal sword of murder has dashed the scales, with overbearing brutality, down into the abyss of shame and misery. If the proletariat learns *from* this war and in this war to exert itself, to cast off its serfdom

to the ruling classes, to become the lord of its own destiny, the shame and misery will not have been in vain.

The modern working class must pay dearly for each realization of its historic mission. The road to the Golgotha of its class liberation is strewn with awful sacrifices. The June combatants, the victims of the Commune, the martyrs of the Russian Revolution — an endless line of bloody shadows. They have fallen on the field of honor, as Marx wrote of the heroes of the Commune, to be enshrined forever in the great heart of the working class. Now millions of proletarians are falling on the field of dishonor, of fratricide, of self-destruction, the slave-song on their lips. And that too has not been spared us. We are like the Jews whom Moses led through the desert. But we are not lost, and we will be victorious if we have not forgotten how to learn. And if the modern leaders of the proletariat do not know how to learn, they will go down “to make room for those who will be more able to cope with the problems of a new world.” ...

In refuting the existence of the class struggle, the social democracy has denied the very basis of its own existence. What is the very breath of its body, if not the class struggle? What role could it expect to play in the war, once having sacrificed the class struggle, the fundamental principle of its existence? The social democracy has destroyed its mission, for the period of the war, as an active political party, as a representative of working-class politics. It has thrown aside the most important weapon it possessed, the power of criticism of the war from the peculiar point of view of the working class. Its only mission now is to play the role of the gendarme over the working class under a state of military rule.

German freedom, that same German freedom for which, according to the declaration of the Reichstag group, Krupp cannons are now fighting, has been endangered by this attitude of the social democracy far beyond the period of the present war. The leaders of the social democracy are convinced that democratic liberties for the working class will come as a reward for its allegiance to the

fatherland. But never in the history of the world has an oppressed class received political rights as a reward for service rendered to the ruling classes. History is full of examples of shameful deceit on the part of the ruling classes, even when solemn promises were made before the war broke out. The social democracy has not assured the extension of liberty in Germany. It has sacrificed those liberties that the working class possessed before the war broke out...

The events that bore the present war did not begin in July 1914 but reach back for decades. Thread by thread they have been woven together on the loom of an inexorable natural development until the firm net of imperialist world politics has encircled five continents. It is a huge historical complex of events, whose roots reach deep down into the Plutonic deeps of economic creation, whose outermost branches spread out and point away into a dimly dawning new world, events before whose all-embracing immensity, the conception of guilt and retribution, of defense and offense, sink into pale nothingness.

Imperialism is not the creation of any one or of any group of states. It is the product of a particular stage of ripeness in the world development of capital, an innately international condition, an indivisible whole, that is recognizable only in all its relations, and from which no nation can hold aloof at will. From this point of view only is it possible to understand correctly the question of “national defense” in the present war.

The national state, national unity and independence were the ideological shield under which the capitalist nations of central Europe constituted themselves in the past century. Capitalism is incompatible with economic and political divisions, with the accompanying splitting up into small states. It needs for its development large, united territories, and a state of mental and intellectual development in the nation that will lift the demands and needs of society to a plane corresponding to the prevailing stage of capitalist production, and to the mechanism of modern capitalist class rule. Before capitalism could develop, it sought to create for itself a territory sharply defined by national limitations.

This program was carried out only in France at the time of the great revolution, for in the national and political heritage left to Europe by the feudal middle ages, this could be accomplished only by revolutionary measures. In the rest of Europe this nationalization, like the revolutionary movement as a whole, remained the patchwork of half-kept promises. The German Empire, modern Italy, Austria-Hungary, and Turkey, the Russian Empire and the British world empire are all living proofs of this fact. The national program could play a historic role only so long as it represented the ideological expression of a growing bourgeoisie, lusting for power, until it had fastened its class rule, in some way or other, upon the great nations of central Europe and had created within them the necessary tools and conditions of its growth. Since then, imperialism has buried the old bourgeois democratic program completely by substituting expansionist activity irrespective of national relationships for the original program of the bourgeoisie in all nations. The national phase, to be sure, has been preserved, but its real content, its function, has been perverted into its very opposite. Today the nation is but a cloak that covers imperialistic desires, a battle cry for imperialistic rivalries, the last ideological measure with which the masses can be persuaded to play the role of cannon fodder in imperialistic wars.

This general tendency of present-day capitalist policies determines the policies of the individual states as their supreme blindly operating law, just as the laws of economic competition determine the conditions under which the individual manufacturer shall produce.

Let us assume for a moment, for the sake of argument, for the purpose of investigating this phantom of "national wars" that controls social democratic politics at the present time, that in one of the belligerent states, the war at its outbreak was purely one of national defense. Military success would immediately demand the occupation of foreign territory. But the existence of influential capitalist groups interested in imperialistic annexations will awaken expansionist appetites as the war goes on. The imperialistic tendency that, at the beginning of hostilities, may have been existent only in

embryo, will shoot up and expand in the hothouse atmosphere of war until they will in a short time determine its character, its aims and its results.

Furthermore, the system of alliance between military states that has ruled the political relations of these nations for decades in the past makes it inevitable that each of the belligerent parties, in the course of war, should try to bring its allies to its assistance, again purely from motives of self-defense. Thus one country after another is drawn into the war, inevitably new imperialistic circles are touched and others are created. Thus England drew in Japan, and, spreading the war into Asia, has brought China into the circle of political problems and has influenced the existing rivalry between Japan and the United States, between England and Japan, thus heaping up new material for future conflicts. Thus Germany has dragged Turkey into the war, bringing the question of Constantinople, of the Balkans and of Western Asia directly into the foreground of affairs.

Even he who did not realize at the outset that the world war, in its causes, was purely imperialistic, cannot fail to see after a dispassionate view of its effects that war, under the present conditions, automatically and inevitably develops into a process of world division. This was apparent from the very first. The wavering balance of power between the two belligerent parties forces each, if only for military reasons, in order to strengthen its own position, or in order to frustrate possible attacks, to hold the neutral nations in check by intensive deals in peoples and nations, such as the German-Austrian offers to Italy, Rumania, Bulgaria and Greece on the one hand, and the English-Russian bids on the other. The "national war of defense" has the surprising effect of creating, even in the neutral nations, a general transformation, of ownership and relative power, always in direct line with expansionist tendencies. Finally the fact that all modern capitalist states have colonial possessions that will, even though the war may have begun as a war of national defense, be drawn into the conflict from purely military considerations, the fact that each country will strive to occupy the colonial possessions of its opponent, or at least to create

disturbances therein, automatically turns every war into an imperialistic world conflagration.

Thus the conception of even that modest, devout fatherland-loving war of defense that has become the ideal of our parliamentarians and editors is pure fiction, and shows, on their part, a complete lack of understanding of the whole war and its world relations...

Thus the serious dilemma between the national interests and international solidarity of the proletariat, the tragic conflict that made our parliamentarians fall "with heavy heart" to the side of imperialistic warfare, was a mere figment of the imagination, a bourgeois nationalist fiction. Between the national interests and the class interests of the proletariat, in war and in peace, there is actually complete harmony. Both demand the most energetic prosecution of the class struggle, and the most determined insistence on the social, democratic program.

But what action should the party have taken to give to our opposition to the war and to our war demands weight and emphasis? Should it have proclaimed a general strike? Should it have called upon the soldiers to refuse military service? Thus the question is generally asked. To answer with a simple yes or no were just as ridiculous as to decide: "When war breaks out we will start a revolution." Revolutions are not "made" and great movements of the people are not produced according to technical recipes that repose in the pockets of the party leaders. Small circles of conspirators may organize a riot for a certain day and a certain hour, can give their small group of supporters the signal to begin. Mass movements in great historical crises cannot be initiated by such primitive measures.

The best prepared mass strike may break down miserably at the very moment when the party leaders give the signal, may collapse completely before the first attack. The success of the great popular movements depends, aye, the very time and circumstance of their inception is decided, by a number of economic, political and psychological factors. The existing degree of tension between the classes, the degree of intelligence

of the masses and the degree or ripeness of their spirit of resistance — all these factors, which are incalculable, are premises that cannot be artificially created by any party. That is the difference between the great historical upheavals, and the small show-demonstrations that a well-disciplined party can carry out in times of peace, orderly, well-trained performances, responding obediently to the baton in the hands of the party leaders. The great historical hour itself creates the forms that will carry the revolutionary movements to a successful outcome, creates and improvises new weapons, enriches the arsenal of the people with weapons unknown and unheard of by the parties and their leaders...

The high stage of world industrial development in capitalist production finds expression in the extraordinary technical development and destructiveness of the instruments of war, as in their practically uniform degree of perfection in all belligerent countries. The international organization of war industries is reflected in the military instability that persistently brings back the scales, through all partial decisions and variations, to their true balance, and pushes a general decision further and further into the future. The indecision of military results, moreover, has the effect that a constant stream of new reserves, from the belligerent nations as well as from nations hitherto neutral, are sent to the front. Everywhere war finds material enough for imperialist desires and conflicts, itself creates new material to feed the conflagration that spreads out like a prairie fire. But the greater the masses, and the greater the number of nations that are dragged into this world war, the longer will it rage.

All of these things together prove, even before any military decision of victory or defeat can be established, that the result of the war will be: the economic ruin of all participating nations, and, in a steadily growing measure, of the formally neutral nations, a phenomenon entirely distinct from the earlier wars of modern times. Every month of war affirms and augments this effect, and thus takes away, in advance, the expected fruits of military victory for a decade to come. This, in the last analysis, neither victory nor defeat can alter; on the contrary, it makes a purely military decision

altogether doubtful, and increases the likelihood that the war will finally end through a general and extreme exhaustion. But even a victorious Germany, under such circumstances, even if its imperialist war agitators should succeed in carrying on the mass murder to the absolute destruction of their opponents, even if their most daring dreams should be fulfilled — would win but a Pyrrhic victory. A number of annexed territories, impoverished and depopulated, and a grinning ruin under its own roof, would be its trophies. Nothing can hide this, once the painted stage properties of financial war bond transactions, and the Potemkin villages of an “unalterable prosperity” kept up by war orders, are pushed aside.

The most superficial observer cannot but see that even the most victorious nation cannot count on war indemnities that will stand in any relation to the wounds that the war has inflicted. Perhaps they may see in the still greater economic ruin of the defeated opponents, England and France, the very countries with which Germany was most closely united by industrial relations, upon whose recuperation its own prosperity so much depends, a substitute and an augmentation for their victory. Such are the circumstances under which the German people, even after a victorious war, would be required to pay, in cold cash, the war bonds that were “voted” on credit by the patriotic parliament; i.e., to take upon their shoulders an immeasurable burden of taxation, and a strengthened military dictatorship as the only permanent tangible fruit of victory...

Capitalist desire for imperialist expansion, as the expression of its highest maturity in the last period of its life, has the economic tendency to change the whole world into capitalistically producing nations, to sweep away all superannuated, precapitalistic methods of production and society, to subjugate all the riches of the earth and all means of production to capital, to turn the laboring masses of the peoples of all zones into wage slaves. In Africa and in Asia, from the most northern regions to the southernmost point of South America and in the South Seas, the remnants of old communistic social groups, of feudal society, of patriarchal systems, and of ancient handicraft production are

destroyed and stamped out by capitalism. Whole peoples are destroyed, ancient civilizations are leveled to the ground, and in their place profiteering in its most modern forms is being established.

This brutal triumphant procession of capitalism through the world, accompanied by all the means of force, of robbery, and of infamy, has one bright phase: it has created the premises for its own final overthrow, it has established the capitalist world rule upon which, alone, the socialist world revolution can follow. This is the only cultural and progressive aspect of the great so-called works of culture that were brought to the primitive countries. To capitalist economists and politicians, railroads, matches, sewerage systems and warehouses are progress and culture. Of themselves such works, grafted upon primitive conditions, are neither culture nor progress, for they are too dearly paid for with the sudden economic and cultural ruin of the peoples who must drink down the bitter cup of misery and horror of two social orders, of traditional agricultural landlordism, of supermodern, superrefined capitalist exploitation, at one and the same time. Only as the material conditions for the destruction of capitalism and the abolition of class society can the effects of the capitalist triumphal march through the world bear the stamp of progress in a historical sense. In this sense imperialism, too, is working in our interest.

The present world war is a turning point in the course of imperialism. For the first time the destructive beasts that have been loosed by capitalist Europe over all other parts of the world have sprung with one awful leap, into the midst of the European nations. A cry of horror went up through the world when Belgium, that priceless little jewel of European culture, when the venerable monuments of art in northern France, fell into fragments before the onslaughts of a blind and destructive force. The “civilized world” that has stood calmly by when this same imperialism doomed tens of thousands of heroes to destruction, when the desert of Kalahari shuddered with the insane cry of the thirsty and the rattling breath of the dying, when in Putumayo, within ten years, forty thousand human beings were tortured to death by a band of European industrial

robber barons, and the remnants of a whole people were beaten into cripples, when in China an ancient civilization was delivered into the hands of destruction and anarchy, with fire and slaughter, by the European soldiery, when Persia gasped in the noose of the foreign rule of force that closed inexorably about her throat, when in Tripoli the Arabs were mowed down, with fire and swords, under the yoke of capital while their homes were razed to the ground — this civilized world has just begun to know that the fangs of the imperialist beast are deadly, that its breath is frightfulness, that its tearing claws have sunk deeper into the breasts of its own mother, European culture. And this belated recognition is coming into the world of Europe in the distorted form, of bourgeois hypocrisy, that leads each nation to recognize infamy only when it appears in the uniform of the other. They speak of German barbarism, as if every people that goes out for organized murder did not change into a horde of barbarians! They speak of Cossack horrors, as if war itself were not the greatest of all horrors, as if the praise of human slaughter in a socialist periodical were not mental Cossackdom in its very essence.

But the horrors of imperialist bestiality in Europe have had another effect, that has brought to the “civilized world” no horror-stricken eyes, no agonized heart. It is the mass destruction of the European proletariat. Never has a war killed off whole nations; never, within the past century, has it swept over all of the great and established lands of civilized Europe. Millions of human lives were destroyed in the Vosges, in the Ardennes, in Belgium, in Poland, in the Carpathians and on the Save; millions have been hopelessly crippled. But nine-tenths of these millions come from the ranks of the working class of the cities and the farms. It is our strength, our hope that was mowed down there, day after day, before the scythe of death. They were the best, the most intelligent, the most thoroughly schooled forces of international socialism, the bearers of the holiest traditions, of the highest

heroism, the modern labor movement, the vanguard of the whole world proletariat, the workers of England, France, Belgium, Germany and Russia who are being gagged and butchered in masses...

8.7 Karl Kautsky: On Political Reform and Socialism (*The Dictatorship of the Proletariat*, 1918)⁷

The Problem

For the first time in world history, the present Russian Revolution has made a socialist party the ruler of a great country. This is a far mightier event than the proletariat seizure of power over Paris in March 1871. But the Paris Commune surpasses the Soviet Republic in one important respect — it was the work of the whole proletariat. All socialist tendencies took part in it, none excluded itself or was excluded.

By contrast, the socialist party now ruling Russia today came to power in a struggle against other socialist parties. It exercises its power while excluding other socialist parties from its ruling bodies.

The antagonism between the two socialist tendencies does not rest on petty personal jealousies — it is the antagonism between two fundamentally different methods: the democratic and the dictatorial. Both tendencies have the same goal: to liberate the proletariat and therefore mankind by means of socialism. But the path followed by one is considered by the other to be a wrong path, which leads to ruin.

It is impossible to confront such a gigantic event as the proletarian struggle in Russia without taking part. Every one of us feels the necessity of taking sides, of being passionately committed. This is particularly necessary given that the problems occupying our Russian comrades today will be of practical significance for Western Europe tomorrow — in fact they already have a decisive influence on our propaganda and tactics.

7 Karl Kautsky, *Dictatorship of the Proletariat*, in *Karl Kautsky: Selected Political Writings*, edited by Patrick Goode (London: MacMillan, 1983).

We shall therefore examine what is the significance of democracy for the proletariat; what is meant by the dictatorship of the proletariat; and what conditions the dictatorship as a form of government creates for the proletariat's struggle for liberation.

Democracy and the Conquest of Political Power

In order to distinguish between democracy and socialism — by which is meant the socialization of the means of production and of production — it is sometimes argued that it is the latter which is the final goal and aim of our movement, while democracy is only a means towards this end and one which may, in certain cases, serve no purpose and even prove a hindrance.

However, a closer analysis reveals that it is not socialism as such which is our goal, but rather the abolition of “every form of exploitation and oppression, whether it be that of a class, a party, a sex or a race” (Erfurt Program).

We seek to achieve this goal by supporting the proletarian class struggle because as the lowest class, the proletariat cannot free itself without removing all the causes of exploitation and oppression, and because, of all exploited and oppressed classes, it is the industrial proletariat which is increasingly gathering the strength, the force and the urge to struggle, and whose victory is inevitable. This is why today every genuine opponent of exploitation and oppression, whatever his class of origin, must join the proletarian class struggle.

If in this struggle, we set ourselves the aim of the socialist mode of production, it is because under the present technical and economic conditions, this appears to be the only means of achieving our goal. If it were to be shown that we are mistaken in this matter and that the liberation of the proletariat and of humanity could be achieved solely or most appropriately on the basis of private property in the means of production, as Proudhon still believed, then we should be obliged to abandon socialism. This would not involve giving up our final goal at all: indeed the very interests of this goal would dictate that we abandon socialism.

Democracy and socialism cannot therefore be distinguished on the basis that one is a means and the other an end. Both are means towards the same end.

This distinction between them lies elsewhere. Without democracy, socialism as a means towards the liberation of the proletariat is inconceivable. Yet it is possible to have socialized production without democracy. Under primitive conditions it was possible for a communist economy to form a direct basis for despotism, as Engels pointed out in 1875 in connection with the village communism which has continued to exist in Russia and India down to our own day.

Under the so-called ‘culture’ system Dutch colonial policy in Java for a time based the organization of the agricultural production for the government which exploited the people, on a form of land communism.

The most striking example of a non-democratic organization of social labor is provided, however, by the Jesuit state of Paraguay in the eighteenth century. The Jesuits, as the ruling class, organized the labor of the native Indian population in a truly remarkable manner, using dictatorial powers, but without using force, for they had succeeded in gaining the support of their subjects.

But for modern man a patriarchal system of this kind would be intolerable. Such a system is only possible under conditions where the ruler far surpassed the ruled in terms of knowledge and where the latter are absolutely unable to raise themselves to the same level. A class or stratum which is waging a struggle for freedom cannot regard such a system of tutelage as its goal but most decisively reject it.

And so, for us, socialism without democracy is out of the question. When we speak of modern socialism we mean not only the social organization of production but also the democratic organization of society. Accordingly, for us, socialism is inseparably linked with democracy. There can be no socialism without democracy.

And yet this proposition cannot simply be reversed. Democracy is quite possible without socialism. Even pure democracy is conceivable

without socialism — for example, in small peasant communities, where there is complete equality of economic conditions for everyone, on the basis of private property in the means of production.

Why should democracy be an inappropriate means for achieving socialism?

It is a question of the conquest of political power. It is argued that if, in a democratic state previously ruled by the bourgeoisie, there is a possibility of the social democrats gaining a majority in parliamentary elections, the ruling classes will employ all means of force at their disposal to impede the rule of democracy. For this reason it is claimed that the proletariat cannot gain political power by means of democracy but only by means of revolution.

There is no doubt that, whenever the proletariat in a democratic state is gaining in strength, it is to be expected that the ruling classes will attempt to frustrate, by the use of force, the utilization of democracy by the rising class. But this does not prove the uselessness of democracy for the proletariat. If, under the above-mentioned conditions, the ruling classes have recourse to force, they do so precisely because they fear the consequences of democracy. Their acts of violence would in fact subvert democracy.

So the fact that we expect the ruling classes to attempt to destroy democracy does not represent grounds for asserting the worthlessness of democracy for the proletariat. Instead it points to the necessity for the proletariat to defend democracy tooth and nail. Of course, if the proletariat is told that democracy is basically a useless ornament, then it will not make the effort necessary to defend it. However, the majority of the proletariat is far too attached to its democratic rights to stand idly by while they are taken away. On the contrary, it is much more likely that they will defend their rights with such vigor that, if their opponents seek to abolish the rights of the people by acts of violence, their resolute defense will lead to a political overthrow. The more the proletariat cherishes democracy, the more passionately it adheres to it, the more likely is this to come about.

On the other hand, it must not be thought that the course of events here described is inevitable in

all cases. We need not be so faint-hearted. The more democratic the state is, the greater is the extent to which the instruments for exercising state power — including the military — are dependent upon the will of the people (the militia). Even in a democracy these instruments of power may be used to repress proletarian movements by force, in cases where the proletariat is still numerically weak — for example in an agrarian state, or where it is politically weak through lack of organization or consciousness. But if the proletariat in a democratic state reaches the stage where it becomes able in terms of strength and numbers to conquer political power through the use of existing liberties, then the ‘capitalist dictatorship’ will find itself hard-pressed to summon the resources necessary to abolish democracy by force.

Marx, in fact, considered it possible, and indeed probable, that in England, as in America, the proletariat would achieve political power by peaceful means. After the 1872 Hague congress of the International, he spoke at a public meeting in Amsterdam and said, among other things:

The worker will one day have to be in possession of political power in order to found the new organization of labor. He has to subvert the old political forms which maintain the institutions in force, if he does not wish to be like the Christians of old who neglected and despised such things, and to renounce the “kingdom of this world.”

However, we have never claimed that the ways of achieving this goal must be everywhere the same.

We know that the account must be taken of the institutions, the manners and the traditions of the various countries and we do not deny that there are countries such as America, England and perhaps, if I were better acquainted with your system, I might add Holland to the list, where the workers may be able to achieve their ends by peaceful means. But this is not true of all countries.

Whether or not Marx’s expectation will be fulfilled remains to be seen.

Undoubtedly, in the states referred to above, there do exist sections of the propertied classes which have a growing inclination to use force against the proletariat. But there are also other growing sections which respect the increasing power of the proletariat and desire to control its mood by means of concessions. Even though, for its duration, the War everywhere represented a constraint upon the political freedom of the popular masses, it nevertheless enabled the English proletariat to gain a considerable extension of voting rights. There is still no way of predicting today how democracy in the various states will influence the way in which the proletariat conquers power and to what extent it will mean that violent methods can be avoided by both sides in favor of peaceful ones. But there is no question of democracy losing its importance in the process. The forms of transition will certainly be very different in, on the one hand, a democratic republic where the people's rights have been firmly established for decades, if not for centuries, where these rights were conquered and retained or advanced by revolution and where, as a result, the ruling classes have learned to respect them, and, on the other hand, a community where a military despotism has hitherto enjoyed unrestrained control over the people through the use of the most powerful instruments and is thus accustomed to holding them in check.

But this influence of democracy on the mode of transition to a proletarian regime does not exhaust its importance for us in the pre-socialist period. Its most important function for us in this period is its indulgence on the maturing of the proletariat.

Democracy and the Maturity of the Proletariat

Socialism requires specific historical conditions which make it possible and necessary. This is no doubt generally recognized. Yet there is certainly no unanimity among us concerning the question of what the conditions are which must be fulfilled in order for a modern form of socialism to take shape in a country which is ripe for socialism. This lack of unity of such an important question is not a calamity — indeed it is a matter for rejoicing that we now have to occupy ourselves with the problem.

For this requirement stems from the fact that for most of us socialism is now no longer something which we expect to happen in a few centuries, as so many recent converts were assuring us at the beginning of the War. Socialism has now taken its place as a practical question on today's agenda.

And so what are the prerequisites for the transition to socialism?

Every conscious human action presupposes a will. The will to socialism is the first condition for bringing it about. This will is brought into being by the existence of large-scale industry. Where small industry predominates in society, the majority of the population consists of its owners. The number of those who own nothing is small and the aspirations of the man without property is to own a small enterprise. Under certain circumstances this aspiration can take on a revolutionary form but in such cases the revolution will not be a socialist one for it will simply set out to redistribute the existing wealth in a manner which ensures that everyone becomes an individual owner. Small industry always produces the desire to retain or gain private ownership of the means of production on the part of individual workers and not the will for collective ownership, i.e. socialism.

This will is first implanted in the masses when large-scale industry is already highly developed and its predominance over small industry unquestionable; when the dissolution of large-scale industry would be a retrograde, indeed an impossible, step; when the workers in the large-scale industry can aspire to ownership of the means of production only in collective forms; and when the small industries which exist are deteriorating so fast that their owners can no longer drive a good living from them. Under these conditions the will to socialism begins to grow.

But at the same time it is also large-scale industry which provides the material possibility for the establishment of socialism. The greater the number of separate enterprises in the country and the greater the extent to which they are independent of each other, the more difficult it is to organize them collectively. This difficulty diminishes as the number of businesses falls and as relations between them

become closer and more unified. Finally, in addition to the will and the material conditions which may be said to represent the raw materials of socialism, something else is required: the strength which actually brings it into being. Those who want socialism must become strong — stronger than those who do not want it.

This factor, too, is produced by the development of large-scale industry. It means an increase in the number of proletarians, who have an interest in socialism and a reduction in the number of capitalists, that is, a reduction relative to the number of proletarians. In relation to the non-proletarian intermediate strata — small farmers and petty bourgeoisie — the number of capitalists may for a time increase. But the fastest growing class in the state is the proletariat.

All these factors arise directly from economic development. They do not arise of themselves without human co-operation, but they do arise without the intervention of the proletariat, solely through the activities of the capitalists who have an interest in the growth of their large scale industries.

To begin with, this development is industrial and confined to the towns. There is only distant echo of it in agriculture. It is not from agriculture but from industry and the towns that socialism will gain its impetus. But in order for it to come about a fourth factor — in addition to the three already mentioned — is required: not only must the proletariat have an interest in socialism, not only must it have to hand the required material conditions and possess the strength necessary to bring socialism into being, but it must also have the capacity to maintain it in existence and to develop it along the appropriate lines. Only then can socialism be realized as a permanent mode of production.

If socialism is to be a possibility, then the maturity of the proletariat must be found together with the maturity of the material conditions provided by the appropriate stage of industrial development. The factor will not, however, be produced automatically by industrial development and the workings of the capitalist urge for profit without any intervention on the part of the proletariat. It must be obtained actively by means of opposition to capital.

As long as small industry predominates, there are two categories of propertyless persons. For the first category, consisting of apprentices and the sons of peasants, their lack of property condition is only a temporary condition. They expect to own property one day and so private ownership is in their interest. For the rest, the propertyless are made up of the lumpenproletariat, a class of parasites superfluous to — and indeed a burden upon — society, for they lack education, consciousness and cohesion. They are doubtless prepared to expropriate the owners where they can but they have neither the will nor the ability to set up a new type of economy.

The capitalist mode of production makes use of these propertyless hordes whose numbers increase dramatically in the early stages of capitalism. From useless, and indeed dangerous parasites, capitalism transforms them into the indispensable economic foundation of production and thereby of society. In this process both their numbers and their strength increase but they nevertheless remain ignorant, coarse and lacking in ability. Capitalism even attempts to force the whole working class down to this level. Overwork, the monotonous and soul-destroying character of work, female and child labor — by these means capitalism often succeeds in reducing the working classes below the level of the former lumpenproletariat. The pauperization of the proletariat is then accelerated to an alarming degree.

This pauperization gave rise to the first impulse towards socialism as an attempt to put an end to the increasing misery of the masses. However, it also seemed that this misery would render the proletariat forever incapable of emancipating itself. Bourgeois pity was to bring about its salvation by means of socialism.

It rapidly became apparent that nothing was to be expected from this pity. Only those who had an interest in socialism, namely the proletarians, could be expected to have sufficient strength to put socialism into practice. But had they not been reduced to despair? No, not all of them. There were still some strata which had retained the strength and courage necessary for the battle against misery. This small band was to succeed where the Utopians

had failed and was to conquer state power and bring socialism to the proletariat by means of a coup. This was the conceptions of Blanqui and Weitling. The proletarians, too ignorant and depraved to organize and rule themselves, were to be organized and ruled from above by a government composed of their elite, in somewhat the same manner as the Jesuits in Paraguay had organized and ruled the Indians ...

The proletarian class struggle as a mass struggle presupposes democracy. If not necessary "unconditional" and "pure democracy," at least that degree of democracy which is required to organize the masses and keep them regularly informed. This can never be done adequately by secret methods. Individual tracts are not a substitute for a thriving daily press. Masses cannot be organized clandestinely and, above all, a secret organization cannot be a democratic one. Such an organization invariably leads to the dictatorship of one individual or of a group of leaders. The common members are reduced to the function of executive instruments. Such a situation of this kind might become necessary for the oppressed strata if there was a complete lack of democracy but it would not further self-government of the masses but instead the Messiah-complexes of the leaders and their dictatorial habits...

In his letter of May 1875 criticizing the Gotha party program Marx writes:

Between capitalist and communist society lies the period of the revolutionary transformation of the one into the other. This period is also one of political transition in which the state can be nothing but the *revolutionary dictatorship of the proletariat*.

Unfortunately Marx failed to state precisely how he envisaged this dictatorship. Taken literally the word signifies the abolition (*Aufhebung*) of democracy. It can also be taken literally to mean the sovereign rule of a single person unfettered by any sort of law. A rule which should be distinguished from despotism by being regarded as a temporary emergency measure and not as a permanent institution of the state.

The use by Marx of the expression "dictatorship of the proletariat," that is the dictatorship of a class and not of a single person, makes it clear that he did not mean a dictatorship in the literal sense.

In the passage quoted above Marx was not talking about a *form of government* but of a *state of affairs* which most necessarily arise wherever the proletariat achieves political power. The fact that he did not have a form of government in mind is attested to, surely, by his opinion that in England and America the transition could occur peacefully and democratically.

Of course democracy does not as yet guarantee a peaceful transition but the latter is certainly not possible without democracy.

It is however quite unnecessary to resort to guesswork to discover Marx's views on the dictatorship of the proletariat. If he did not explain more fully what he understood by the expression in 1875 it might well have been because he had already done so some years earlier in 1871 in his pamphlet *On the Civil War in France* where he wrote:

The Commune was essentially a working-class government, the result of the struggle between the producing class against the appropriating class; at last the political form under which to work out the economic emancipation of labor had emerged.

Thus the Paris Commune was "the dictatorship of the proletariat" as Engels explicitly stated in his introduction to the third edition of Marx's pamphlet.

The commune was not so much the abolition of democracy as the widest application of democracy on the basis of universal suffrage. Government power was to be subject to universal suffrage.

The Commune was composed of town councilors elected from the various wards of Paris by *universal suffrage*.... *Universal suffrage* was to serve the people constituted in communes just as individual suffrage serves every other employer in his choice of workmen etc.

Time and again in this pamphlet Marx talks about universal suffrage of all the people rather than of the franchise of a specially privileged class. For him the dictatorship of the proletariat was a state of affairs which necessarily arose in a real democracy because of the overwhelming numbers of the proletariat.

Marx must not therefore be quoted by those who support dictatorship in opposition to democracy. Of course having said that it has still not been shown that they are wrong. They must however look for other arguments in support of their case.

In examining this question one must be careful not to confuse dictatorship as a *state of affairs* with dictatorship as a *form of government*. It is only the question of dictatorship as a form of government which is a subject of dispute in our ranks. Dictatorship as a form of government means depriving the opposition of their rights by abolishing their franchise, the freedom of the press and freedom of association. The question is whether the victorious proletariat needs to employ these measures and whether they will merely facilitate or are in fact indispensable to the building of socialism.

In the first instance it must be noted that when we speak of dictatorship as a form of government this cannot include the dictatorship of a class, for, as we have already seen, a class can only rule not govern. If one wishes to signify by dictatorship not merely a condition of rule but a specific form of government then one must either talk of the dictatorship of a single person or an organization or of a proletarian party — but not of the proletariat. The problem immediately becomes complicated when the proletariat splits into different parties. Then the dictatorship of one of these parties is in no way the dictatorship of the proletariat any longer but a dictatorship of one part of the proletariat over another. The situation becomes still more complex if the socialist parties are split over their relations vis-à-vis non-proletarian strata, if for instance one party was to come to power by means of an alliance between city proletarians and peasants. In this instance the dictatorship of the proletariat assumes very strange forms.

What are the reasons for thinking that the rule of the proletariat should and must of necessity take a form which is incompatible with democracy? Anyone who quotes Marx on the dictatorship of the proletariat must not forget that Marx is not dealing with a state of affairs that can only arise in special circumstances but with one that must occur in any event.

Now it may be assumed that as a rule the proletariat will only come to power when it represents the majority of the population or at least has its support. Next to its economic indispensability the proletariat's weapon in its political struggles consists in the huge mass of its numbers. It can only expect to carry the day against the resources of the ruling classes where it has the masses, that is the majority of the population, behind it. Marx and Engels were both of this opinion and that is why they declared in the *The Communist Manifesto*:

All previous movements were movements of minorities or in the interests of minorities. The proletarian movement is the independent movement of the immense majority in the interests of the immense majority.

This was also true of the Paris Commune. The first act of the new revolutionary regime was an appeal to the electorate. The poll was held in conditions of the greatest freedom and gave large majorities for the Commune in nearly all the districts of Paris. Sixty-five revolutionaries were elected as against twenty-one candidates from the opposition; of the latter fifteen were clearly reactionaries and six were Radical Republicans of the Gambetta faction. The sixty-five revolutionaries represented all the existing tendencies of French socialism. No matter how much they fought against each other no one group exercised a dictatorship over the others.

A government so strongly rooted in the masses has not the slightest reason to encroach upon democratic rights. It will not always be able to dispense with the use of force in instances where force is being used to crush democracy. Force can only be met with force.

However a government which knows that the masses are behind it will only use force to protect democracy and not to suppress it. It would be quite suicidal to dispense with universal suffrage, which is a government's surest foundation and a powerful source of tremendous moral authority.

Thus the suspension (*Aufhebung*) of democracy by dictatorship can only be a matter for consideration in exceptional circumstances, such as when an unusual combination of favorable circumstances enables a proletarian party to seize power even though the majority of the population does not support it or is in fact positively against it.

Such a chance victory is hardly possible where the people have been schooled in politics for decades and where the idea of political parties is well established. Surely such a state of affairs is merely indicative of very backward conditions. What if after a seizure of power the electorate votes against the socialist government? Should the latter do what has up until now been demanded of each and every government, that is bow to the will of the people and to resume its struggle for power on a democratic basis with resolute determination; or ought it to suppress democracy so as to stay in power?...

8.8 Leon Trotsky (*Their Morals and Ours*, 1938)⁸

Moral Precepts Obligatory upon All

Whoever does not care to return to Moses, Christ, or Mohammed; whoever is not satisfied with eclectic *hodge-podges* must acknowledge that morality is a product of social development; that there is nothing immutable about it; that it serves social interests; that these interests are contradictory; that morality more than any other form of ideology has a class character.

But do not elementary moral precepts exist, worked out in the development of humanity as a whole and indispensable for the existence of every collective body? Undoubtedly such precepts exist but the extent of their action is extremely limited

and unstable. Norms "obligatory upon all" become the less forceful the sharper the character assumed by the class struggle. The highest form of the class struggle is civil war, which explodes into midair all moral ties between the hostile classes.

Under "normal" conditions a "normal" person observes the commandment: "Thou shalt not kill!" But if one kills under exceptional conditions for self-defense, the jury acquits that person. If one falls victim to a murderer, the court will kill the murderer. The necessity of courts, as well as that of self-defense, flows from antagonistic interests. In so far as the state is concerned, in peaceful times it limits itself to *legalized* killings of individuals so that in time of war it may transform the "obligatory" commandment, "Thou shalt not kill!" into its opposite. The most "humane" governments, which in peaceful times "detest" war, proclaim during war that the highest duty of their armies is the extermination of the greatest possible number of people.

The so-called "generally recognized" moral precepts in essence preserve an algebraic, that is, an indeterminate character. They merely express the fact that people in their individual conduct are bound by certain common norms that flow from their being members of society. (The highest generalization of these norms is the "categorical imperative" of Kant. But in spite of the fact that it occupies a high position in the philosophic Olympus this imperative does not embody anything categorical because it embodies nothing concrete. It is a shell without content.)

This vacuity in the norms obligatory upon all arises from the fact that in all decisive questions people feel their class membership considerably more profoundly and more directly than their membership in "society." The norms of "obligatory" morality are in reality filled with class, that is, antagonistic content. The moral norm becomes the more categorical the less it is "obligatory upon all." The solidarity of workers, especially of strikers or barricade fighters, is incomparably more "categorical" than human solidarity in general.

8 Leon Trotsky, *Their Morals and Ours: The Class Foundations of Moral Practice* (New York: Pathfinder Press, 1973).

The bourgeoisie, which far surpasses the proletariat in the completeness and irreconcilability of its class consciousness, is vitally interested in imposing its moral philosophy upon the exploited masses. It is exactly for this purpose that the concrete norms of the bourgeois catechism are concealed under moral abstractions patronized by religion, philosophy, or by that hybrid which is called "common sense." The appeal to abstract norms is not a disinterested philosophical mistake but a necessary element in the mechanics of class deception. The exposure of this deceit which retains the tradition of thousands of years is the first duty of a proletarian revolutionist....

Morality and Revolution

Among the liberals and radicals there are not a few individuals who have assimilated the methods of the materialist interpretation of events and who consider themselves Maoists. This does not hinder them, however, from remaining bourgeois journalists, professors, or politicians. A Bolshevik is inconceivable, of course, without the materialist method, in the sphere of morality as well. But this method serves him not solely for the interpretation of events but rather for the creation of a revolutionary party of the proletariat. It is impossible to accomplish this task without complete independence from the bourgeoisie and their morality. Yet bourgeois public opinion now actually reigns in full sway over the official workers' movement from William Green in the United States, Leon Blum and Maurice Thorez in France, to Garcia Oliver in Spain. In this fact the reactionary character of the present period reaches its sharpest expression.

A revolutionary Marxist cannot begin to approach his historical mission without having broken morally from bourgeois public opinion and its agencies in the proletariat. For this, moral courage of a different caliber is required from that of opening wide one's mouth at meetings and yelling, "Down with Hitler!" "Down with Franco!" It is precisely this resolute, completely thought-out, inflexible rupture of the Bolsheviks from conservative moral philosophy not only of the big but of

the petty bourgeoisie that mortally terrorizes democratic phrasemongers, drawing-room prophets, and lobbying heroes. From this derive their complaints about the "amoralism" of the Bolsheviks.

Their identification of bourgeois morals with morals "in general" can best of all, perhaps, be verified at the extreme left wing of the petty bourgeoisie, precisely in the centrist parties of the so-called London Bureau. Since this organization "recognizes" the program of proletarian revolution, our disagreements with it seem, at first glance, secondary. Actually their "recognition" is valueless because it does not bind them to anything. They "recognize" the proletarian revolution as the Kantians recognized the categorical imperative, that is, as a holy principle but not applicable to daily life. In the sphere of practical politics they unite with the worst enemies of the revolution (reformists and Stalinists) for the struggle against us. All their thinking is permeated with duplicity and falsehood. If the centrists, according to a general rule, do not raise themselves to imposing crimes it is only because they forever remain in the byways of politics: they are, so to speak, petty pickpockets of history. For this reason they consider themselves called upon to regenerate the workers' movement with a new morality.

At the extreme left wing of this "left" fraternity stands a small and politically completely insignificant grouping of German emigres who publish the paper *Neuer Weg* (The New Road). Let us bend down lower and listen to these "revolutionary" indictors of Bolshevik amoralism. In a tone of ambiguous pseudo-praise the *Neuer Weg* proclaims that the Bolsheviks are distinguished advantageously from other parties by their absence of hypocrisy — they openly declare what others quietly apply in fact, that is, the principle "the end justifies the means." But according to the convictions of *Neuer Weg* such a "bourgeois" precept is incompatible with a "healthy socialist movement." "Lying and worse are not permissible means of struggle, as Lenin still considered them." The word "still" evidently signifies that Lenin did not succeed in overcoming his delusions only because he failed to live until the discovery of The New Road.

In the formula, “lying and worse,” “worse” evidently signifies violence, murder, and so on, since under equal conditions violence is worse than lying, and murder — the most extreme form of violence. We thus come to the conclusion that lying, violence, murder, are incompatible with a “healthy socialist movement.” What, however, is our relation to revolution? Civil war is the most severe of all forms of war. It is unthinkable not only without violence against tertiary figures but, under contemporary technique, without killing old men, old women, and children. Must one be reminded of Spain? The only possible answer of the “friends” of Republican Spain sounds like this: Civil war is better than fascist slavery. But this completely correct answer merely signifies that the *end* (democracy or socialism) justifies, under certain conditions, such *means* as violence and murder. Not to speak about lies! Without lies war would be as unimaginable as a machine without oil. In order to safeguard even the session of the Cortes (February 1, 1938) from fascist bombs, the Barcelona government several times deliberately deceived journalists and their own population. Could it have acted in any other way? Whoever accepts the end: victory over Franco, must accept the means: civil war with its wake of horrors and crimes.

Nevertheless, lying and violence “in themselves” warrant condemnation? Of course, even as does the class society which generates them. A society without social contradictions will naturally be a society without lies and violence. However there is no way of building a bridge to that society save by revolutionary, that is, violent means. The revolution itself is a product of class society and of necessity bears its traits. From the point of view of “eternal truths” revolution is of course “antimoral.” But this merely means that idealist morality is counterrevolutionary, that is, in the service of the exploiters.

“Civil war,” the philosopher caught unawares will perhaps respond, “is however a sad exception. But in peaceful times a healthy socialist movement should manage without violence and lying.” Such an answer however represents nothing less than a pathetic evasion. There is no impervious

demarcation between “peaceful” class struggle and revolution. Every strike embodies in an unexpanded form all the elements of civil war. Each side strives to impress the opponent with an exaggerated picture of its resoluteness to struggle and its material resources. Through their press, agents, and spies the capitalists labor to frighten and demoralize the strikers. From their side, the workers’ pickets, where persuasion does not avail, are compelled to resort to force. Thus “lying and worse” are an inseparable part of the class struggle even in its most elementary form. It remains to be added that the very conception of *truth* and *lie* was born of social contradictions....

Revolution and the Institution of Hostages

Lincoln’s significance lies in his not hesitating before the most severe means, once they were found to be necessary, in achieving a great historic aim posed by the development of a young nation. The question lies not even in which of the warring camps caused or itself suffered the greatest number of victims. History has different yardsticks for the cruelty of the Northerners and the cruelty of the Southerners in the Civil War. (A slaveholder who through cunning and violence shackles a slave in chains, and a slave who through cunning and violence breaks the chains — let not the contemptible eunuchs tell us that they are equals before a court of morality!)

After the Paris Commune had been drowned in blood and the reactionary knaves of the whole world dragged its banner in the filth of vilification and slander, there were not a few democratic Philistines who, adapting themselves to reaction, slandered the Communards for shooting sixty-four hostages headed by the Paris archbishop. Marx did not hesitate a moment in defending this bloody act of the Commune. In a circular issued by the General Council of the First International, which seethes with the fiery eruption of lava, Marx first reminds us of the bourgeoisie adopting the institution of hostages in the struggle against both colonial peoples and their own toiling masses and afterward refers to the systematic execution of the

Commune captives by the frenzied reactionaries, continuing: "... the Commune, to protect their [the captives'] lives, was obliged to resort to the Prussian practice of securing hostages."...

When the October Revolution was defending itself against the united forces of imperialism on a 5,000-mile front, the workers of the whole world followed the course of the struggle with such ardent sympathy that in their forums it was extremely risky to indict the "disgusting barbarism" of the institution of hostages. Complete degeneration of the Soviet state and the triumph of reaction in a number of countries was necessary before the moralists crawled out of their crevices ... to aid Stalin. If it is true that the repressions safeguarding the privileges of the new aristocracy have the same moral value as the revolutionary measures of the liberating struggle, then Stalin is completely justified,... if the proletarian revolution is not completely condemned.

Seeking examples of immorality in the events of the Russian civil war, Messrs. Moralists find themselves at the same time constrained to close their eyes to the fact that the Spanish revolution also produced an institution of hostages, at least during that period when it was a genuine revolution of the masses. If the indicters dare not attack the Spanish workers for their "disgusting barbarism," it is only because the ground of the Pyrenean peninsula is still too hot for them, it is considerably more convenient to return to 1919. This is already history, the old men have forgotten and the young ones have not yet learned. For the same reason pharisees of various hues return to Kronstadt and Makhkno with such obstinacy — here exists a free outlet for moral effluvia!

Dialectical Interdependence of End and Means

A means can be justified only by its end. But the end in its turn needs to be justified. From the Marxist point of view, which expresses the historical interests of the proletariat, the end is justified if it leads to increasing the power of humanity over nature and to the abolition of the power of one person over another.

"We are to understand then that in achieving this end anything is permissible?" demands the philistine sarcastically, demonstrating that he understood nothing. That is permissible, we answer, which *really* leads to the liberation of humanity. Since this end can be achieved only through revolution, the liberating morality of the proletariat of necessity is endowed with a revolutionary character. It irreconcilably counteracts not only religious dogma but all kinds of idealistic fetishes, these philosophic gendarmes of the ruling class. It deduces a rule for conduct from the laws of the development of society, thus primarily from the class struggle, this law of all laws.

"Just the same," the moralist continues to insist, "does it mean that in the class struggle against capitalists all means are permissible: lying, frame-up, betrayal, murder, and so on?" Permissible and obligatory are those and only those means, we answer, which unite the revolutionary proletariat, fill their hearts with irreconcilable hostility to oppression, teach them contempt for official morality and its democratic echoers, imbue them with consciousness of their own historic mission, raise their courage and spirit of self-sacrifice in the struggle. Precisely from this it flows that not all means are permissible. When we say that the end justifies the means, then for us the conclusion follows that the great revolutionary end spurns those base means and ways which set one part of the working class against other parts, or attempt to make the masses happy without their participation; or lower the faith of the masses in themselves and their organization, replacing it by worship for the "leaders." Primarily and irreconcilably, revolutionary morality rejects servility in relation to the bourgeoisie and haughtiness in relation to the toilers, that is, those characteristics in which petty-bourgeois pedants and moralists are thoroughly steeped.

These criteria do not, of course, give a ready answer to the question as to what is permissible and what is not permissible in each separate case. There can be no such automatic answers. Problems of revolutionary morality are fused with the problems of revolutionary strategy and tactics. The living

experience of the movement under the clarification of theory provides the correct answer to these problems.

Dialectical materialism does not know dualism between means and end. The end flows naturally from the historical movement. Organically the means are subordinated to the end. The immediate end becomes the means for a further end. In his play *Franz von Sickingen*, Ferdinand Lassalle puts the following words into the mouth of one of the heroes:

Do not only show the goal, show the path
as well.
For so closely interwoven with one another are
path and goal
That a change in one means a change in
the other,
And a different path gives rise to a different goal.

Lassalle's lines are not at all perfect. Still worse is the fact that in practical politics Lassalle himself diverged from the above expressed precept — it is sufficient to recall that he went as far as secret agreements with Bismarck! But the dialectical interdependence between means and end is expressed entirely correctly in the above-quoted sentences. Seeds of wheat must be sown in order to yield an ear of wheat.

Is individual terror, for example, permissible or impermissible from the point of view of “pure morals”? In this abstract form the question does not exist at all for us. Conservative Swiss bourgeois even now render official praise to the terrorist William Tell. Our sympathies are fully on the side of Irish, Russian, Polish, or Hindu terrorists in their struggle against national and political oppression. The assassinated Kirov, a rude satrap, does not call forth any sympathy. Our relation to the assassin remains neutral only because we know not what motives guided him. If it became known that Nikolaev acted as a conscious avenger for workers' rights trampled upon by Kirov, our sympathies would be fully on the side of the assassin. However, not the question of subjective motives but that of objective efficacy has for us the decisive significance. Are the given means

really capable of leading to the goal? In relation to individual terror, both theory and experience bear witness that such is not the case. To the terrorist we say: It is impossible to replace the masses; only in the mass movement can you find effective expression for your heroism. However, under conditions of civil war, the assassination of individual oppressors ceases to be an act of individual terror. If, we shall say, a revolutionist bombed General Franco and his staff into the air, it would hardly evoke moral indignation even from the democratic eunuchs. Under the conditions of civil war a similar act would be politically completely effective. Thus, even in the sharpest question — murder of man by man — moral absolutes prove futile. Moral evaluations, along with political ones, flow from the inner needs of struggle.

The liberation of the workers can come only through the workers themselves. There is, therefore, no greater crime than deceiving the masses, palming off defeats as victories, friends as enemies, bribing workers' leaders, fabricating legends, staging false trials, in a word, doing what the Stalinists do. These means can serve only one end: lengthening the domination of a clique already condemned by history. But they cannot serve to liberate the masses. That is why the Fourth International wages a life and death struggle against Stalinism.

The masses, of course, are not at all impeccable. Idealization of the masses is foreign to us. We have seen them under different conditions, at different stages and in addition in the biggest political shocks. We have observed their strong and weak sides. Their strong side — resoluteness, self-sacrifice, heroism — has always found its clearest expression in times of revolutionary upsurge. During this period the Bolsheviks headed the masses. Afterward a different historical chapter loomed when the weak side of the oppressed came to the forefront: heterogeneity, insufficiency of culture, narrowness of world outlook. The masses tired of the tension, became disillusioned, lost faith in themselves — and cleared the road for the new aristocracy. In this epoch the Bolsheviks (“Trotskyists”) found themselves isolated from the

masses. Practically speaking, we went through two such big historic cycles: 1897–1905, years of flood tide; 1907–1913, years of the ebb; 1917–1923, a period of upsurge unprecedented in history; finally, a new period of reaction, which has not ended even today. In these immense events the “Trotskyists” learned the rhythm of history, that is, the dialectics of the class struggle. They also learned, it seems, and to a certain degree successfully, how to subordinate their subjective plans and programs to this objective rhythm. They learned not to fall into despair over the fact that the laws of history do not depend upon their individual tastes and are not

subordinated to their own moral criteria. They learned to subordinate their individual tastes to the laws of history. They learned not to become frightened by the most powerful enemies if their power is in contradiction to the needs of historical development. They know how to swim against the stream in the deep conviction that the new historic flood will carry them to the other shore. Not all will reach that shore, many will drown. But to participate in this movement with open eyes and with an intense will — only this can give the highest moral satisfaction to a thinking being!

International Organizations

The question of whether the state (even a socialist one) could secure rights in a capitalist-dominated world had already been the subject of prolonged debates in nineteenth-century labor circles. While anarchists rejected the state as a vehicle for human rights, socialists were split between proponents of the revolutionary overthrow of the capitalist state and advocates of reform. Despite differences over tactics, most ultimately endorsed the development of an internationalist socialist organization able to synchronize global activism in support of workers' rights.

A year before the establishment of the First International (1864), Pierre-Joseph Proudhon, reflecting the anarchist trend, proposed in *The Principle of Federalism* (1863) the establishment of a federation as a way to balance two opposites: liberty and authority. Federation, he claimed, should guarantee the states their sovereignty, liberty, territory, security, and mutual prosperity. Yet the federal power should never exceed that of local or provincial authorities. He predicted that federal systems that guarantee political rights while excluding economic and labor protections would serve mainly to increase the power of private capital and commerce. To avoid financial exploitation under the umbrella of federalism, he proposed an agro-industrial system that, by means of social cooperatives (mutualism) and credit unions, would secure “the right to work and to education, and an organization of work which allows each laborer to become a skilled worker and an artist, each wage-earner to become his own master” (see Section 8.9).

To achieve this ideal would require nothing less than the solidarity of the working class across national boundaries. “Workers of the world, unite!” Karl Marx wrote in *The Communist Manifesto* (1848) and in his 1864 “Inaugural Address of the Working Men’s International Association” (or the First International). The numerous setbacks experienced by impoverished workers between 1848 and 1864, Marx explained, required an institution that would foster international solidarity and organized class action around political and welfare rights (see Section 8.10).

Building on the tradition of Hugo Grotius, Immanuel Kant, and Karl Marx, the British Fabian socialist Leonard Woolf (1880–1969) took the vision of internationalism to a new level. Woolf’s *International Government* (1916) called for global governance to enforce world peace. Writing soon before Woodrow Wilson’s (1856–1924) proposal for a League of Nations, he argued that the only alternative to war was the development of an international organization, one that would involve a degree of submission by each nation “to the expressed will of other nations.” Furthermore, he warned against “dosing international society with law in treaties unless you have a judge handy to decide the legal disputes.” He thus suggested for the first time the establishment of an international high court, to which the nations

would agree to submit, not all of their possible differences and disputes, but only such as were, by their very nature, legal or justiciable (see Section 8.11).

For additional historical and theoretical context, please see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 3.

8.9 Pierre-Joseph Proudhon: *The Principle of Federalism* (1863)⁹

Isolation of the Idea of Federation

Since in theory and in history authority and liberty succeed one another in a polar movement; since the former declines imperceptibly and withdraws, while the latter expands and becomes prominent; since this dual movement leads to a subordination such that authority becomes progressively the instrument of liberty; since, in other words, the liberal or contractual system gains the upper hand day by day over the authoritarian system, it is the idea of contract that we must take to be the principal idea in politics...

The political contract does not attain its full dignity and morality except where (1) it is *synallagmatic* and *commutative*, (2) it is confined, in its object, within definite limits — two conditions which are held to exist in the democratic system, but which, even there, are generally only a fiction. Can one say that in a representative and centralized democracy, or in a constitutional monarchy with restricted franchise, or even more in a communist republic such as Plato's, the political contract binding the citizen to the state can be equal and reciprocal? Can one say that these contracts, which remove from the citizens a half or two-thirds of their sovereignty and a quarter of their product, are confined within just limits? It would be closer to the truth to say that, as experience shows only too often, contracts in such systems are excessive, *onerous*, for they provide no compensation for a good many of those who are parties to them; and *aleatory*, for the promised advantage, inadequate as it is, is not even guaranteed.

In order for the political contract to become synallagmatic and commutative as the idea of

democracy requires, in order for it to remain within reasonable limits and to become profitable and convenient for all, the citizen who enters the association must (1) have as much to gain from the state as he sacrifices to it, (2) retain all his liberty, sovereignty, and initiative, except that which he must abandon in order to attain that special object for which the contract is made, and which the state must guarantee. So confined and understood, the political contract is what I shall call a federation.

Federation, from the Latin *foedus*, genitive *foederis*, which means pact, contract, treaty, agreement, alliance, and so on, is an agreement by which one or more heads of family, one or more towns, one or more groups of towns or states, assume reciprocal and equal commitments to perform one or more specific tasks, the responsibility for which rests exclusively with the officers of the federation...

The contract of federation has the purpose, in general terms, of guaranteeing to the federated states their sovereignty, their territory, the liberty of their subjects; of settling their disputes; of providing by common means for all matters of security and mutual prosperity; thus, despite the scale of the interests involved, it is essentially limited. The authority responsible for its execution can never overwhelm the constituent members; that is, the federal powers can never exceed in number and significance those of local or provincial authorities, just as the latter can never outweigh the rights and prerogatives of man and citizen. If it were otherwise, the community would become communistic; the federation would revert to centralized monarchy; the federal authority, instead of being a mere delegate and subordinate function as it should be, will be seen as dominant; instead of being confined to a specific

9 Pierre-Joseph Proudhon, *The Principle of Federalism*, translated by Richard Vernon (Toronto: University of Toronto Press, 1979).

task, it will tend to absorb all activity and all initiative; the confederated states will be reduced to administrative districts, branches, or local offices. Thus transformed, the body politic may be termed republican, democratic, or what you will; it will no longer be a state constituted by a plenitude of autonomies, it will no longer be a confederation. The same will hold, with even greater force, if for reasons of false economy as a result of deference, or for any other reason the federated towns, cantons or states charge one among their number with the administration and government of the rest. The republic will become unitary, not federal, and will be on the road to despotism....

The whole science of constitutions is here. I shall summarize it in three propositions.

1. Form groups of a modest size, individually sovereign, and unite them by a federal pact.
2. Within each federated state organize government on the principle of organic separation; that is, separate all powers that can be separated, define everything that can be defined, distribute what has been separated and defined among distinct organs and functionaries; leave nothing undivided; subject public administration to all the constraints of publicity and control.
3. Instead of absorbing the federated states and provincial and municipal authorities within a central authority, reduce the role of the center to that of general initiation, of providing guarantees and supervising, and make the execution of its orders subject to the approval of the federated governments and their responsible agents — just as, in a constitutional monarchy, every order by the king must be countersigned by a minister in order to become effective....

The federal system is applicable to all nations and all ages, for humanity is progressive in each of its generations and peoples; the policy of federation, essentially the policy of progress, consists

in ruling every people, at any given moment, by decreasing the sway of authority and central power to the point permitted by the level of consciousness and morality....

Economic Sanctions: The Agro-Industrial Federation

But there is more to be said. However impeccable in its logic the federal constitution may be, and whatever practical guarantees it may supply, it will not survive if economic factors tend persistently to dissolve it. In other words, political right requires to be buttressed by economic right. If the production and distribution of wealth are given over to chance; if the federal order serves merely to preserve the anarchy of capital and commerce; if, as a result of this misguided anarchy, society comes to be divided into two classes — one of landlords, capitalists, and entrepreneurs, the other of wage-earning proletarians, one rich, the other poor — then the political order will still be unstable. The working class, the most numerous and poorest of the classes, will eventually regard it as nothing but a trick; the workers will unite against the bourgeois, who in turn will unite against the workers; and federation will degenerate into unitary democracy, if the people are stronger, or, if the bourgeoisie is victorious, into a constitutional monarchy.

The anticipation of such a social war had led to the establishment of strong governments, so admired by theorists, who have seen confederations as frail things incapable of defending power from mass aggression, that is, of preserving government policy in defiance of the rights of the nation....

The twentieth century will open the age of federations, or else humanity will undergo another purgatory of a thousand years. The real problem to be resolved is not political but economic....

The reader may expect me to present a scheme of economic science as applied to federations, and to show in detail all that has to be done from this perspective. I shall simply say that after reforming the political order the federal government must necessarily proceed to a series of reforms in the economic realm. Here, in a few words, is what these reforms must be.

Just as, in a political context, two or more independent states may federate in order to guarantee mutually their territorial integrity or to protect their liberty, so too, in an economic context, confederation may be intended to provide reciprocal security in commerce and industry, or a *customs union*; or the object may be to construct and maintain means of transportation, such as roads, canals, and railways, or to organize credit, insurance, and so on. The purpose of such specific federal arrangements is to protect the citizens of the federated states from capitalist and financial exploitation, both within them and from the outside; in their aggregate they form, as opposed to the financial feudalism in the ascendant today, what I will call *an agro-industrial federation*.

I shall not go into this topic in any depth. Those of my readers who have followed my work to any extent for the last fifteen years will understand well enough what I mean. The purpose of industrial and financial feudalism is to confirm, by means of the monopoly of public services, educational privilege, the division of labor, interest on capital, inequitable taxation, and so on, the political neutralization of the masses, wage-labor or economic servitude, in short inequality of condition and wealth. The agro-industrial federation, on the other hand, will tend to foster increasing equality, by organizing all public services in an economical fashion and in hands other than the state's, through mutualism in credit and insurance, the equalization of the tax burden, guaranteeing the right to work and to education, and an organization of work which allows each laborer to become a skilled worker and an artist, each wage-earner to become his own master.

Such a revolution, it is clear, cannot be the work of a bourgeois monarchy or a unitary democracy; it will be accomplished by federation. It does not spring from the *unilateral* contract or the contract of *goodwill*, nor from the institutions of *charity*, but from bilateral and commutative contract.

Considered in itself, the idea of an industrial federation which serves to complement and support political federation is most strikingly justified by the principles of economics. It is the application on the largest possible scale of the principles

of mutualism, division of labor, and economic solidarity, principles which the will of the people will have transformed into positive laws....

1. The Helvetian Confederation consists of twenty-five sovereign states (nineteen cantons, six half-cantons), containing a population of two million, four hundred thousand inhabitants. It is therefore governed by twenty-five constitutions, comparable to our charters or constitutions of 1791, 1793, 1795, 1799, 1814, 1830, 1848, 1852, together with a federal constitution to which of course there is no parallel in France. The spirit of this constitution, which conforms to the principles outlined above, is contained in the following articles:

"Article 2. The purpose of confederation is to secure the independence of the nation against foreign powers, to maintain internal peace and order, to protect the rights and liberties of its members, and to increase their common prosperity."

"Article 3. The cantons are sovereign within the limits of federal sovereignty, and as such they exercise all rights which have not been delegated to the federal power."

"Article 5. The confederation guarantees to the cantons their territory, their sovereignty within the limits established by Article 3, their constitutions, the liberty and rights of their inhabitants, the constitutional rights of their citizens, as well as the rights and powers which the people have conferred."

Thus a confederation is not exactly a state; it is a group of sovereign and independent states, associated by a pact of mutual guarantees. Nor is a federal constitution the same as what is understood in France by a charter or constitution, an abridged statement of public law; the pact contains the conditions of association, that is, the rights and

reciprocal obligations of the states. What is called federal authority, finally, is no longer a government; it is an agency created by the states for the joint execution of certain functions which the states abandon, and which thus become federal powers.

In Switzerland the federal authority resides in a deliberative assembly elected by the citizens of the twenty-five cantons, and an executive council composed of seven members appointed by the assembly. The members of the assembly and the federal council are elected for three-year terms; since the federal constitution can be revised at any time, the powers of office, no less than its occupants, may be altered. Thus the federal power is in the full sense of the word an agent, under the strict control of his principals, whose power varies at their pleasure.

8.10 Karl Marx: “Inaugural Address of the Workingmen’s International Association” (1864)¹⁰

Working Men,

It is a great fact that the misery of the working masses has not diminished from 1848 to 1864, and yet this period is unrivaled for the development of its industry and the growth of its commerce....

In all countries of Europe it has now become a truth demonstrable to every unprejudiced mind, and only decried by those whose interest it is to hedge other people in a fool’s paradise, that no improvement of machinery, no appliance of science to production, no contrivances of communication, no new colonies, no emigration, no opening of markets, no free trade, nor all these things put together, will do away with the miseries of the industrious masses; but that, on the present false base, every fresh development of the productive powers of labor must tend to deepen social contrasts and point social antagonisms. Death of starvation rose almost to the rank of an institution, during this “intoxicating” epoch of economical progress, in the metropolis of the British Empire. That

epoch is marked in the annals of the world by the quickened return, the widening compass, and the deadlier effects of the social pest called a commercial and industrial crisis.

After the failure of the revolutions of 1848, all party organizations and party journals of the working classes were, on the Continent, crushed by the iron hand of force, the most advanced sons of labor fled in despair to the Transatlantic Republic, and the short-lived dreams of emancipation vanished before an epoch of industrial fever, moral marasme, and political reaction. The defeat of the continental working classes, partly owed to the diplomacy of the English Government, acting then as now in fraternal solidarity with the Cabinet of St. Petersburg, soon spread its contagious effects on this side of the Channel. While the rout of their continental brethren unmanned the English working classes, and broke their faith in their own cause, it restored to the landlord and the money-lord their somewhat shaken confidence. They insolently withdrew concessions already advertised. The discoveries of new goldlands led to an immense exodus, leaving an irreparable void in the ranks of the British proletariat. Others of its formerly active members were caught by the temporary bribe of greater work and wages, and turned into “political blacks.” All the efforts made at keeping up, or remodeling, the Chartist Movement, failed signally; the press organs of the working class died one by one of the apathy of the masses, and, in point of fact, never before seemed the English working class so thoroughly reconciled to a state of political nullity. If, then, there had been no solidarity of action between the British and the continental working classes, there was, at all events, a solidarity of defeat.

And yet the period passed since the revolutions of 1848 has not been without its compensating features. We shall here only point to two great facts.

After a thirty years’ struggle, fought with most admirable perseverance, the English working classes, improving a momentous split between the landlords and moneylords, succeeded in carrying

10 Karl Marx, “The Inaugural Address,” in *Karl Marx and Frederick Engels’ Collected Works*, vol. 20 (New York: International Publishers, 1984).

the Ten Hours' Bill. The immense physical, moral, and intellectual benefits hence accruing to the factory operatives, half-yearly chronicled in the reports of the inspectors of factories, are now acknowledged on all sides. Most of the continental governments had to accept the English Factory Act in more or less modified forms, and the English Parliament itself is every year compelled to enlarge its sphere of action. But besides its practical import, there was something else to exalt the marvelous success of this working men's measure. Through their most notorious organs of science, such as Dr. Ure, Professor Senior, and other sages of that stamp, the middle class had predicted, and to their hearts content proved, that any legal restriction of the hours of labor must sound the death knell of British industry, which, vampire like, could but live by sucking blood, and children's blood, too. In olden times, child murder was a mysterious rite of the religion of Moloch, but it was practiced on some very solemn occasions only, once a year perhaps, and then Moloch had no exclusive bias for the children of the poor. This struggle about the legal restriction of the hours of labor raged the more fiercely since, apart from frightened avarice, it told indeed upon the great contest between the blind rule of the supply and demand laws which form the political economy of the middle class, and social production controlled by social foresight, which forms the political economy of the working class. Hence the Ten Hours' Bill was not only a great practical success; it was the victory of a principle; it was the first time that in broad daylight the political economy of the middle class succumbed to the political economy of the working class.

But there was in store a still greater victory of the political economy of labor over the political economy of property. We speak of the co-operative movement, especially the co-operative factories raised by the unassisted efforts of a few bold "hands." The value of these great social experiments cannot be over-rated. By deed, instead of by argument, they have shown that production on a large scale, and in accord with the behests of modern science, may be carried on without the existence of a class of masters

employing a class of hands; that to bear fruit, the means of labor need not be monopolized as a means of dominion over, and of extortion against, the laboring man himself; and that, like slave labor, like serf labor, hired labor is but a transitory and inferior form, destined to disappear before associated labor plying its toil with a willing hand, a ready mind, and a joyous heart. In England, the seeds of the co-operative system were sown by Robert Owen; the working men's experiments, tried on the Continent, were, in fact, the practical upshot of the theories, not invented, but loudly proclaimed, in 1848.

At the same time, the experience of the period from 1848 to 1864 has proved beyond doubt that, however excellent in principle, and however useful in practice, co-operative labor, if kept within the narrow circle of the casual efforts of private workmen, will never be able to arrest the growth in geometrical progression of monopoly, to free the masses, nor even to perceptibly lighten the burden of their miseries. It is perhaps for this very reason that plausible noblemen, philanthropic middle-class spouters, and even keen political economists, have all at once turned nauseously complimentary to the very co-operative labor system they had vainly tried to nip in the bud by deriding it as the Utopia of the dreamer, or stigmatizing it as the sacrilege of the Socialist. To save the industrious masses, co-operative labor ought to be developed to national dimensions, and, consequently, to be fostered by national means. Yet, the lords of land and the lords of capital will always use their political privileges for the defense and perpetuation of their economical monopolies. So far from promoting, they will continue to lay every possible impediment in the way of the emancipation of labor. Remember the sneer with which, last session, Lord Palmerston put down the advocates of the Irish Tenants' Right Bill. The House of Commons, cried he, is a house of landed proprietors.

To conquer political power has therefore become the great duty of the working classes. They seem to have comprehended this, for in England, Germany, Italy, and France there have taken place simultaneous revivals, and simultaneous efforts are

being made at the political reorganization of the working men's party.

One element of success they possess — numbers; but numbers weigh only in the balance, if united by combination and led by knowledge. Past experience has shown how disregard of that bond of brotherhood which ought to exist between the workmen of different countries, and incite them to stand firmly by each other in all their struggles for emancipation, will be chastised by the common discomfiture of their incoherent efforts. This thought prompted the working men of different countries assembled on September 28, 1864, in public meeting at St. Martin's Hall, to found the International Association.

Another conviction swayed that meeting.

If the emancipation of the working classes requires their fraternal concurrence of different nations, how are they to fulfill that great mission with a foreign policy in pursuit of criminal designs, playing upon national prejudices, and squandering in piratical wars the people's blood and treasure? It was not the wisdom of the ruling classes, but the heroic resistance to their criminal folly by the working classes of England that saved the West of Europe from plunging headlong into an infamous crusade for the perpetuation and propagation of slavery on the other side of the Atlantic. The shameless approval, mock sympathy, or idiotic indifference, with which the upper classes of Europe have witnessed the mountain fortress of the Caucasus falling a prey to, and heroic Poland being assassinated by, Russia; the immense and unresisted encroachments of that barbarous power, whose head is at St. Petersburg, and whose hands are in every Cabinet of Europe, have taught the working classes the duty to master themselves the mysteries of international politics; to watch the diplomatic acts of their respective Governments; to counteract them, if necessary, by all means in their power; when unable to prevent, to combine in simultaneous denunciations, and to vindicate the simple laws of morals and justice, which ought to govern the relations of

private individuals, as the rules paramount of the intercourse of nations.

The fight for such a foreign policy forms part of the general struggle for the emancipation of the working classes.

Proletarians of all countries, Unite!

8.11 Leonard S. Woolf: On International Government and International Court (*International Government, 1916*)¹¹

Chapter III: International Law

... Ever since the time of Grotius there have been many customs and rules in the society of nations observed and admitted, by the nations, but at the beginning of the nineteenth century there were not even rudimentary organs, legislative or judicial, which could lay these rules down as law. In the nineteenth century there has been a rapid development in two directions.

In the first place, nations have attempted to substitute agreements or treaties for general rules. Treaties clearly do not, as a rule, *make* International Law; they are like contracts or agreements between individuals. Owing to the want of any law-making organ, nations have tried to regulate their relations to one another by an enormous number of such separate agreements. The efficacy of this system will be discussed when I deal with treaties. In the second place, for the first time in history, during the nineteenth century attempts were made on a considerable scale to make International Law in conferences and congresses. The success of these attempts will be considered when I come to deal with conferences and congresses; here it is sufficient to note that these nineteenth-century assemblies are undoubtedly the first signs of the growth of an International Legislative organ.

It is unnecessary for our immediate purpose to examine more closely into International Law, but it is advisable to state shortly a few facts about it which really require no detailed proof, but have great bearing upon our inquiry. A large number of its rules are quite definitely admitted, are acted upon

11 L. S. Woolf, *International Government: Two Reports* (London: Allen and Unwin, 1916 [public domain]).

every day, and really do help to regulate pacifically international society. On the other hand, much of it is vague and uncertain. This is due largely to two facts: there is no recognized international organ for making International Law, and no judicial organ for interpreting it. The consequences are two: whenever new circumstances arise which require a new rule of conduct for nations, the nations concerned have to set about making the new rule by bargaining and negotiation. If they cannot agree, either it remains uncertain what the law is, or the question has to be settled by war. Secondly, when there is already a rule, but nations disagree as to its interpretation, they again have to attempt by bargaining and negotiation to come to some agreement as to how it shall be interpreted. And, again, if they cannot agree, the only method left is to cut the knot by war.

Chapter IV: Treaties

Treaties perform in international society the part of anaesthetics in surgery; they get the patient into a condition which makes it possible to operate; but, unfortunately, up to the present, the means and instruments for operating have been wanting. It is no good giving gas to a man with toothache unless you have a dentist with his nippers on the premises; and it is no good dosing international society with law in treaties unless you have a judge handy to decide the legal disputes.

Chapter V: Conferences, Congresses, and the Concert of Europe

...Any form of international organization in which conferences or any other kind of deliberative and legislative organ are to decide on questions which at present are very likely to lead to war is useless, unless there is agreement as to what questions are to be so decided and machinery for submitting them automatically for decision. To say that such an organ is only to deal with international questions is to shirk the difficulty. Owing to our existing conception of "States," "nations," and "nationality," there will always be a wide divergence of opinion whether a question involving nationality is, or when it becomes, international. ...

The simplest way out of the difficulty is, of course, to say that the position of nationalities within States is always a right subject for international legislation. ...

[Y]et practically everyone, from Foreign Secretaries to public-house politicians, is obsessed by the mysterious sovereignty of sovereign Powers. The ordinary view is that the action of a nation is to be determined solely by its own ideals and desires. In a sense, therefore, any international question is not international, but domestic, and a sovereign Power always has to consider only two things — what it desires and whether it is strong enough to enforce its desire. But the whole of an international organization and authority implies an agreement that each nation is willing that its action will be, in part, determined by what other nations desire. Any kind of conference which is to *decide* things involves the submission of one nation to the expressed will of other nations. Perhaps the main thing is that we should see that we do not cease to be a nation, or, at any rate, a nation with "national honor," because we make that submission.

PART III: ARTICLES SUGGESTED FOR ADOPTION BY AN INTERNATIONAL CONFERENCE AT THE TERMINATION OF THE PRESENT WAR

... The new world that we have to face at the conclusion of the war will, perforce, start from the ruins of the old. All that will be immediately practicable can be presented as only a more systematic development of the rapidly multiplying Arbitration Treaties of the present century, and the conclusions of the two Conventions at The Hague. Only on some such lines, it is suggested, can we reasonably hope, at this juncture, to get the Governments of the world to come into the proposed agreement.

The alternative to war is law. What we have to do is to find some way of deciding differences between States, and of securing the same acquiescence in the decision as is now shown by individual citizens in a legal judgment. This involves the establishment of a Supernational Authority, which is the essence of our proposals.

What is suggested is, first, the establishment of an International High Court, to which the

nations shall agree to submit, not all their possible differences and disputes, but only such as are, by their very nature, "legal" or "justiciable." Experience warrants the belief that the decisions of such a judicial tribunal, *confined to the issues which the litigant States had submitted to it*, would normally be accepted by them. Provision is made, however, for a series of "sanctions other than war," principally economic and social in character, by which all the constituent States could bring pressure to bear on any State not obeying a decision of the Court.

Alongside the International High Court, but without authority over it, there should be an International Council, composed of representatives of such of the forty or fifty independent sovereign States of the world as may choose voluntarily to take part. It is proposed that this International Council should be differently regulated and organized according (1) as it acts as a World Legislature for codifying and amending international law, and for dealing with questions interesting only America or Europe respectively; or (2) is invoked by any constituent State, to mediate in any dispute not of a nature to be submitted to the International High Court. It is not suggested that the enactments or the decisions of the International Council should, except to a very limited extent, be binding on States unwilling to ratify or acquiesce in them. Subject to the provisions made to prevent the proceedings being brought to naught by a tiny and unimportant minority, on matters of secondary importance, it is suggested that the International Council must content itself, at any rate at the outset, with that "greatest common measure" which commands general assent.

Provision is made for an International Secretariat and an International Official Gazette, in which all treaties or agreements will be immediately published, no others being recognized or regarded as enforceable.

In view of the fact that no fewer than twenty-one out of the forty to fifty independent sovereign States of the world are in America, the suggestion is made that there should be separate Councils for

Europe and America respectively, with suitable provision in each case for the safeguarding of the interests of other States. Moreover, as the position of the eight Great Powers (Austria-Hungary, the British Empire, France, Germany, Italy, Japan, Russia, and the United States), which govern among them three-fourths of all the population of the world and control nine-tenths of its armaments, differs so greatly from that of the other two-score States, provision is made both for their meeting in separate Councils and for ratification of all proceedings by the Council of the Great Powers. It is nowhere suggested that any one of the eight Great Powers can — except by its own express ratification — be made subject to any enactment or decision of the International Council that it may deem to impair its independence or its territorial integrity, or to require any alteration of its internal laws.

It follows, accordingly, that each State retains the right to go to war if, after due delay, it chooses to do so.

What the several States are asked to bind themselves to are (a) to submit all disputes of the "legal" or "justiciable" kind (but no others) to the decision of the International High Court, unless some special tribunal is preferred and agreed to; (b) to lay before the International Council for inquiry, mediation, and eventual report, all disputes not "justiciable" by the International High Court or other tribunal; (c) in no case to proceed to any warlike operation, or commit any act of aggression, until twelve months after the dispute had been submitted to one or the other body; (d) to put in operation, if and when required, the sanctions (other than war) decreed by the International High Court; and, possibly the most essential of all these proposals, (e) *to make common cause, even to the extent of war, against any constituent State which violates this fundamental agreement.*

It remains to be said only that the adoption of this plan of preventing war — the establishment of the proposed Supernational Authority — is not dependent on, and need not wait for, the adhesion of all the independent sovereign States of the world.

9. HUMAN RIGHTS FOR WHOM?

Despite many revolutionary setbacks, the acceleration of capitalism and lingering authoritarian governments during the nineteenth century raised the political consciousness of marginalized individuals and their champions. Difficult industrial working conditions included the harsh treatment of children in the workplace, stirring support for laws limiting the working day of children and for providing public education. At the same time, the fight to broaden manhood suffrage intensified the political demands of the suffragette movement. As nation-states were consolidated, oppressed national minorities, including the Jews, demanded civil and political rights. As wars continued to ravage Europe, advocates for human rights also began to clamor for the rights of wounded soldiers and prisoners of war.

British socialist Robert Owen (1771–1858), who had become manager and part owner of the largest mills of Scotland, the New Lanark, sought ways pragmatically to implement his social vision. In his “Address to the Inhabitants of Lanark” (1816), Owen promised to improve the living conditions of his workers and their children. He placed great importance upon the education of the young and the improvement of their health and spirit – an attitude that was shared by many labor advocates, who realized with Owen that an uneducated working class would never be able to improve its political and economic situation (see Section 9.1).

Improving the political condition of minorities like the Jews also became a focus of attention in socialist circles. In *On the Jewish Question* (1843), Karl Marx rejected the idea that groups have intrinsic rights – religious or cultural – in isolation from the overall society. Opposing the liberal premises of the French Declaration of the Rights of Man and Citizen and the Constitutions of France, Pennsylvania and New Hampshire, he asserted that the eighteenth-century claim for human emancipation required a division between the individual as an egoistic being in civil society and the individual as an abstract citizen in the state. Jews, or any other group, he believed, reviewing the French Constitution of 1793, could not claim individual emancipation while the rest of society suffered from exploitation (see Section 9.2). In this spirit, Marx congratulated President Abraham Lincoln for ending slavery, thereby creating the social and political space needed for class solidarity between workers and emancipated slaves (see Section 9.3).

The formerly enslaved activist Sojourner Truth (1797–1883) spoke compellingly not just about the abolition of slavery, but also about the rights of women, to property, and to vote. In the 1840s, she was a member of the Northampton Association of Education and Industry in Massachusetts, a community that promoted social equality and supported itself through a worker-owned cooperative. Her most famous speech, later converted from Truth’s Dutch-accented New York dialect into stereotypical

Southern slave vernacular and popularized as “Ain’t I a Woman,” is included here in its more authentic, originally published version (see Section 9.4).

German socialist and co-founder of the German Social Democratic Party, August Bebel (1840–1913), pursued Marx’s and Engel’s position regarding the rights of another group: women. In *Women and Socialism* (1883) Bebel warned the women’s suffrage movement of his time that their frustrations would not end once they reached their political objectives, and that voting rights for women and equal career opportunities were essential but not sufficient for women’s civil emancipation. Only a minority of middle class women, he maintained, would be able to pursue higher education or civil service, leaving millions of women in misery. Women, he argued, cannot achieve real equality under capitalism, as long as women work for free in the household and gain low wages in the workplace. He thus encouraged all proletarian women to reach greater emancipation by joining their male worker’s struggle for a socialist transformation of society. Only such efforts would ensure full rights for women, including economic and intellectual independence and socialized childcare. In a socialist society, he wrote, “nurses, teachers, women friends, the rising female generation, all these will stand by her when she is in need of assistance” (see Section 9.5).

Clara Zetkin (1857–1933), a prominent figure in the German and international workers’ movement, offered a valuable analysis of women’s rights demands as shaped by their social classes. “There is a women question,” she stated, “for women of the proletariat, of the bourgeoisie and the intelligentsia, and of the Upper Thousands; it takes various forms depending upon the class situation of these strata.” Like Bebel, she also believed that the struggle of middle class suffragettes would be incomplete unless women also earned their economic independence vis-à-vis their husbands (see Section 9.6).

The socialization of childcare was one such prerequisite for economic independence, argued Bolshevik leader Lenin (1878–1924). Echoing Bebel and Zetkin, Lenin proposed in 1919 ways to achieve the emancipation of women, including freeing them from domestic housework. “Public dining rooms, *crèches*, kindergartens,” he wrote, “are examples of ... the simple everyday means, which assume nothing pompous, grandiloquent or solemn, but which in fact can emancipate women, which can in fact lessen and abolish their inferiority to men in regard to their role in social production and in social life” (see Section 9.7).

While not a socialist, Swiss businessman and social activist Henry Dunant (1828–1919) left a lasting humanitarian legacy that also broadened the scope of human rights. A witness to the suffering of unclaimed wounded and dying soldiers in the aftermath of the Battle of Solferino (1859), he called for the creation of the International Committee of the Red Cross (ICRC), an international medical agency established to help the wounded regardless of their side in a conflict. The 1864 Geneva Convention resulted in large measure from Dunant’s *A Memory of Solferino* (1862) and his humanitarian proposals for the treatment of prisoners in wartime. (See the selection on the rights of wounded soldiers in Section 9.8 and the selection from the Geneva Convention in Sections 15.9 and 15.10.)

Toward the fin de siècle, in spite of urbanization and greater visibility in the arts and other professional sectors, sexual minorities continued to be stigmatized even among most progressives, though with prominent exceptions. In 1897, the German socialist physician Magnus Hirschfeld (1868–1935) founded the world’s first gay rights organization, the Scientific-Humanitarian Committee. The committee circulated a petition to repeal paragraph 175 of the German Penal Code, which criminalized homosexuality. Notables such as Albert Einstein and Karl Kautsky signed the petition, as did August Bebel, who introduced it for discussion in the Reichstag. This effort was an ongoing attempt to repeal paragraph 175—one that would ultimately fail with the rise of Nazism (see Section 9.8).

For additional historical and theoretical context on these issues, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 3.

9.1 Robert Owen: On Children ("An Address to the Inhabitants of Lanark," 1816)¹

... This Institution,² when all its parts shall be completed, is intended to produce permanently beneficial effects; and, instead of longer applying temporary expedients for correcting some of your most prominent external habits, to effect a complete and thorough improvement in the internal as well as external character of the whole village. For this purpose the Institution has been devised to afford the means of receiving your children at an early age, as soon almost as they can walk. By this means many of you, mothers of families, will be enabled to earn a better maintenance or support for your children; you will have less care and anxiety about them; while the children will be prevented from acquiring any bad habits, and gradually prepared to learn the best.

The middle room of the story below will be appropriated to their accommodation; and in this their chief occupation will be to play and amuse themselves in severe weather: at other times they will be permitted to occupy the enclosed area before the building; for, to give children a vigorous constitution, they ought to be kept as much as possible in the open air. As they advance in years, they will be taken into the rooms on the right and left, where they will be regularly instructed in the rudiments of common learning; which, before they shall be six years old, they may be taught in a superior manner.

These stages may be called the first and second preparatory schools: and when your children shall have passed through them, they will be admitted into this place (intended also to be used as a chapel), which, with the adjoining apartment, is to be the general schoolroom for reading, writing, arithmetic, sewing, and knitting; all which, on the plan to be pursued, will be accomplished to a considerable extent by the time the children are ten

years old; before which age, none of them will be permitted to enter the works.

For the benefit of the health and spirits of the children both boys and girls will be taught to dance, and the boys will be instructed in military exercises; those of each sex who may have good voices will be taught to sing, and those among the boys who have a taste for music will be taught to play upon some instrument; for it is intended to give them as much diversified innocent amusement as the local circumstances of the establishment will admit.

The rooms to the east and west on the story below will also be appropriated in bad weather for relaxation and exercise during some part of the day, to the children who, in the regular hours of teaching, are to be instructed in these apartments.

In this manner is the Institution to be occupied during the day in winter. In summer, it is intended that they shall derive knowledge from a personal examination of the works of nature and of art, by going out frequently with some of their masters into the neighborhood and country around.

After the instruction of the children who are too young to attend the works shall have been finished for the day, the apartments shall be cleaned, ventilated, and in winter lighted and heated, and in all respects made comfortable, for the reception of other classes of the population. The apartments on this floor are then to be appropriated for the use of the children and youth of both sexes who have been employed at work during the day, and who may wish still further to improve themselves in reading, writing, arithmetic, sewing, or knitting; or to learn any of the useful arts: to instruct them in which, proper masters and mistresses, who are appointed, will attend for two hours every evening.

The three lower rooms, which in winter will also be well lighted and properly heated, will be thrown open for the use of the adult part of the population, who are to be provided with every accommodation

1 Robert Owen, "An Address to the Inhabitants of Lanark," in *Socialist Thought: A Documentary History*, revised edition, edited by Albert Fried and Ronald Sanders (New York: Columbia University Press, 1992).

2 Editor: Owen refers here to the new restructured community of Lanark.

requisite to enable them to read, write, account, sew, or play, converse, or walk about. But strict order and attention to the happiness of every one of the party will be enforced, until such habits shall be acquired as will render any formal restriction unnecessary; and the measures thus adopted will soon remove such necessity...

When you and your children shall be in the full possession of all that I am preparing for you, you will acquire superior habits; your minds will gradually expand; you will be enabled to judge accurately of the cause and consequences of my proceedings, and to estimate them at their value. You will then become desirous of living in a more perfect state of society, — a society which will possess within itself the certain means of preventing the existence of any injurious passions, poverty, crime, or misery; in which every individual shall be instructed, and his powers of body and mind directed, by the wisdom derived from the best previous experience, so that neither bad habits nor erroneous sentiments shall be known; — in which age shall receive attention and respect, and in which every injurious distinction shall be avoided, — even variety of opinions shall not create disorder or any unpleasant feeling; — a society in which individuals shall acquire increased health, strength, and intelligence, — in which their labor shall be always advantageously directed, — and in which they will possess every rational enjoyment.

In due time communities shall be formed possessing such characters, and be thrown open to those among you, and to individuals of every class and denomination, whose wretched habits and whose sentiments of folly have not been too deeply impressed to be obliterated or removed, and whose minds can be sufficiently relieved from the pernicious effects of the old system, to permit them to partake of the happiness of the new...

9.2 Karl Marx: *The Jewish Question* (1843)³

The German Jews desire emancipation. What kind of emancipation do they desire? Civic, political emancipation.

Bruno Bauer⁴ replies to them: No one in Germany is politically emancipated. We ourselves are not free. How are we to free you? You Jews are *egoists* if you demand a special emancipation for yourselves as Jews. As Germans, you ought to work for the political emancipation of Germany, and as human beings, for the emancipation of mankind, and you should feel the particular kind of your oppression and your shame not as an exception to the rule, but on the contrary as a confirmation of the rule.

Or do the Jews demand the same status as *Christian subjects of the state*? In that case they recognize that the *Christian state* is justified and they recognize too the regime of general oppression. Why should they disapprove of their special yoke if they approve of the general yoke? Why should the German be interested in the liberation of the Jew, if the Jew is not interested in the liberation of the German?

The *Christian state* knows only *privileges*. In this state the Jew has the privilege of being a Jew. As a Jew, he has rights which the Christians do not have. Why should he want rights which he does not have, but which the Christians enjoy?

In wanting to be emancipated from the Christian state, the Jew is demanding that the Christian state should give up its *religious* prejudice. Does he, the Jew, give up *his* religious prejudice? Has he then the right to demand that someone else should renounce his religion?

By its very nature, the Christian state is incapable of emancipating the Jew; but, adds Bauer, by his very nature the Jew cannot be emancipated. So

3 Karl Marx, "The Jewish Question," in *Karl Marx and Fredrick Engels' Collected Works*, Vol. 3 (New York: International Publishers, 1975).

4 Editor: Bruno Bauer (1809–1882) was a German philosopher and theologian. He was also known for radical rationalism in philosophy and Bible criticism. Marx refers here to Bruno Bauer, *Die Judenfrage* (The Jewish Question), Braunschweig, 1843.

long as the state is Christian and the Jew is Jewish, the one is as incapable of granting emancipation as the other is of receiving it.

The Christian state can behave towards the Jew only in the way characteristic of the Christian state, that is, by granting privileges, by permitting the separation of the Jew from the other subjects, but making him feel the pressure of all the other separate spheres of society, and feel it all the more intensely because he is in *religious* opposition to the dominant religion. But the Jew, too, can behave towards the state only in a Jewish way, that is, by treating it as something alien to him, by counterposing his imaginary nationality to the real nationality, by counterposing his illusory law to the real law, by deeming himself justified in separating himself from mankind, by abstaining on principle from taking part in the historical movement, by putting his trust in a future which has nothing in common with the future of mankind in general, and by seeing himself as a member of the Jewish people, and the Jewish people as the chosen people.

On what grounds then do you Jews want emancipation? On account of your religion? It is the mortal enemy of the state religion. As citizens? In Germany there are no citizens. As human beings? But you are no more human beings than those to whom you appeal.

Bauer has posed the question of Jewish emancipation in a new form, after giving a critical analysis of the previous formulations and solutions of the question. What, he asks, is the *nature* of the Jew who is to be emancipated and of the Christian state that is to emancipate him? He replies by a critique of the Jewish religion, he analyzes the *religious* opposition between Judaism and Christianity, he elucidates the essence of the Christian state — and he does all this audaciously, trenchantly, wittily, and with profundity, in a style of writing that is as precise as it is pithy and vigorous.

How then does Bauer solve the Jewish question? What is the result? The formulation of a question is its solution. The critique of the Jewish question is the answer to the Jewish question. The summary, therefore, is as follows:

We must emancipate ourselves before we can emancipate others.

The most rigid form of the opposition between the Jew and the Christian is the *religious* opposition. How is an opposition resolved? By making it impossible. How is *religious* opposition made impossible? By *abolishing religion*. As soon as Jew and Christian recognize that their respective religions are no more than *different stages in the development of the human mind*, different snake skins cast off by *history*, and that *man* is the snake who sloughed them, the relation of Jew and Christian is no longer religious but is only a critical, *scientific* and human relation. *Science* then constitutes their unity. But contradictions in science are resolved by science itself.

The *German Jew* in particular is confronted by the general absence of political emancipation and the strongly marked Christian character of the state. In Bauer's conception, however, the Jewish question has a universal significance, independent of specifically German conditions. It is the question of the relation of religion to the state, of the *contradiction between religious constraint and political emancipation*. Emancipation from religion is laid down as a condition, both to the Jew who wants to be emancipated politically, and to the state which is to effect emancipation and is itself to be emancipated...

If Bauer asks the Jews: Have you from your standpoint the right to want *political emancipation*? we ask the converse question: Does the standpoint of political emancipation give the right to demand from the Jew the abolition of Judaism and from man the abolition of religion? ...

We do not turn secular questions into theological questions. We turn theological questions into secular ones. History has long enough been merged in superstition, we now merge superstition in history. The question of the *relation of political emancipation to religion* becomes for us the question of the *relation of political emancipation to human emancipation*. We criticize the religious weakness of the political state by criticizing the political state in its *secular* form, *apart* from its weaknesses as regards religion. The contradiction between the state and a *particular religion*, for instance *Judaism*, is given by us a human form as the contradiction

between the state and *particular secular* elements; the contradiction between the state and *religion in general* as the contradiction between the state and its *presuppositions* in general.

The *political* emancipation of the Jew, the Christian, and in general of *religious* man is the *emancipation of the state* from Judaism, from Christianity, from *religion* in general. In its own form, in the manner characteristic of its nature, the state as a *state* emancipates itself from religion by emancipating itself from the *state religion*, that is to say, by the state as a state not professing any religion, but, on the contrary, asserting itself as state. The *political* emancipation from religion is not a religious emancipation that has been carried through to completion and is free from contradiction, because political emancipation is not a form of *human* emancipation which has been carried through to completion and is free from contradiction.

The limits of political emancipation are evident at once from the fact that the *state* can free itself from a restriction without man being *really* free from this restriction, that the state can be a *free state*⁵ without man being a *free man*...

The *political* elevation of man above religion shares all the defects and all the advantages of political elevation in general...

The state allows private property, education, occupation, to *act* in their *way*, i.e., as private property, as education, as occupation, and to exert the influence of their special nature. Far from abolishing these *real* distinctions, the state only exists on the presupposition of their existence; it feels itself to be a *political state* and asserts its *universality* only in opposition to these elements of its being...

The perfect political state is, by its nature, man's *species-life*, as *opposed* to his material life. All the preconditions of this egoistic life continue to exist in *civil society outside* the sphere of the state, but as qualities of civil society. Where the political state has attained its true development, man — not only in thought, in consciousness, but in *reality*, in *life* — leads a twofold life, a heavenly

and an earthly life: life in the *political community*, in which he considers himself a *communal being*, and life in *civil society*, in which he acts as a *private individual*, regards other men as a means, degrades himself into a means, and becomes the plaything of alien powers. The relation of the political state to civil society is just as spiritual as the relation of heaven to earth. The political state stands in the same opposition to civil society, and it prevails over the latter in the same way as religion prevails over the narrowness of the secular world, i.e., by likewise having always to acknowledge it, to restore it, and allow itself to be dominated by it. In his *most immediate* reality, in civil society, man is a secular being. Here, where he regards himself as a real individual, and is so regarded by others, he is a *fictitious* phenomenon. In the state, on the other hand, where man is regarded as a species-being, he is the imaginary member of an illusory sovereignty, is deprived of his real individual life and endowed with an unreal universality.

Man, as the adherent of a *particular* religion, finds himself in conflict with his citizenship and with other men as members of the community. This conflict reduces itself to the *secular* division between the *political* state and *civil society*...

Political emancipation is, of course, a big step forward. True, it is not the final form of human emancipation in general, but it is the final form of human emancipation *within* the hitherto existing world order. It goes without saying that we are speaking here of real, practical emancipation.

Man emancipates himself *politically* from religion by banishing it from the sphere of public law to that of private law. Religion is no longer the spirit of the *state*, in which man behaves — although in a limited way, in a particular form, and in a particular sphere — as a species-being, in community with other men. Religion has become the spirit of *civil society*, of the sphere of egoism, of *helium omnium contra omnes*. It is no longer the essence of *community*, but the essence of *difference*. It has become the expression of man's *separation* from his *community*,

5 A pun on the word *Freistaat*, i.e., republic, for if it is taken literally, it means "free state."

from himself and from other men — as it was *originally*. It is only the abstract avowal of specific perversity, *private whimsy*, and arbitrariness. The endless fragmentation of religion in North America, for example, gives it even *externally* the form of a purely individual affair. It has been thrust among the multitude of private interests and ejected from the community as such. But one should be under no illusion about the limits of political emancipation. The division of the human being into a *public man* and a *private man*, the *displacement* of religion from the state into civil society, this is not a stage of political emancipation but its *completion*; this emancipation therefore neither abolishes the *real* religiousness of man, nor strives to do so.

The *decomposition* of man into Jew and citizen, Protestant and citizen, religious man and citizen, is neither a deception directed *against* citizenship, nor is it a circumvention of political emancipation, it is *political emancipation* itself, the *political* method of emancipating oneself from religion. Of course, in periods when the political state as such is born violently out of civil society, when political liberation is the form in which men strive to achieve their liberation, the state can and must go as far as the *abolition of religion*, the *destruction* of religion. But it can do so only in the same way that it proceeds to the abolition of private property, to the maximum, to confiscation, to progressive taxation, just as it goes as far as the abolition of life, the *guillotine*. At times of special self-confidence, political life seeks to suppress its prerequisite, civil society and the elements composing this society, and to constitute itself as the real species-life of man devoid of contradictions. But it can achieve this only by coming into *violent* contradiction with its own conditions of life, only by declaring the revolution to be *permanent*, and therefore the political drama necessarily ends with the re-establishment of religion, private property, and all elements of civil society, just as war ends with peace.

Indeed, the perfect Christian state is not the so-called *Christian* state, which acknowledges Christianity as its basis, as the state religion, and therefore adopts an exclusive attitude towards other religions. On the contrary, the perfect Christian

state is the *atheistic* state, the *democratic* state, the state which relegates religion to a place among the other elements of civil society. The state which is still theological, which still officially professes Christianity as its creed, which still does not dare to proclaim itself *as a state*, has, in its *reality* as a state, not yet succeeded in expressing the *human* basis — of which Christianity is the high-flown expression — in a *secular, human* form. The so-called Christian state is simply nothing more than a *non-state*, since it is not Christianity as a religion, but only the *human background* of the Christian religion, which can find its expression in actual human creations...

Therefore we do not say to the Jews as Bauer does: You cannot be emancipated politically without emancipating yourselves radically from Judaism. On the contrary, we tell them: Because you can be emancipated politically without renouncing Judaism completely and incontrovertibly, *political emancipation* itself is not *human* emancipation. If you Jews want to be emancipated politically without emancipating yourselves humanly, the half-hearted approach and contradiction is not in you alone, it is inherent in the *nature* and *category* of political emancipation. If you find yourself within the confines of this category, you share in a general confinement. Just as the state *evangelizes* when, although it is a state, it adopts a Christian attitude towards the Jews, so the Jew *acts politically* when, although a Jew, he demands civic rights.

But if a man, although a Jew, can be emancipated politically and receive civic rights, can he lay claim to the so-called *rights of man* and receive them? Bauer *denies* it...

According to Bauer, man has to sacrifice the "*privilege of faith*" to be able to receive the universal rights of man. Let us examine for a moment the so-called rights of man, to be precise, the rights of man in their authentic form, in the form which they have among those who *discovered* them, the North Americans and the French. These rights of man are in part *political* rights, rights which can only be exercised in a community with others. Their content is *participation* in the *community*, and specifically in the *political* community, in the *life of the state*.

They come within the category of *political freedom*, the category of *civic rights*, which, as we have seen, in no way presuppose the incontrovertible and positive abolition of religion, nor therefore of Judaism. There remains to be examined the other part of the rights of man, the Rights of Man insofar as these differ from the Rights of the Citizen.

Included among them is freedom of conscience, the right to practice any religion one chooses. *The privilege of faith* is expressly recognized either as a right of man or as the consequence of a right of man, that of liberty.

Declaration of the Rights of Man and of the Citizen, 1791, Article 10: "No one is to be subjected to annoyance because of his opinions, even religious opinions." "The freedom of every man to practice the *religion* of which he is an adherent" is guaranteed as a right of man in Section I of the Constitution of 1791.

Declaration of the Rights of Man, etc., 1793, includes among the rights of man, Article 7: "The free exercise of religion." Indeed, in regard to man's right to express his thoughts and opinions, to hold meetings, and to exercise his religion, it is even stated: "The necessity of proclaiming these *rights* presupposes either the existence or the recent memory of despotism." Compare the Constitution of 1795, Section XIV, Article 354.

Constitution of Pennsylvania [1790]⁶, Article 9, § 3: "All men have received from nature the imprescriptible *right* to worship the Almighty according to the dictates of their conscience, and no one can be legally compelled to follow, establish or support against his will any religion or religious ministry. No human authority can, in any circumstances, intervene in a matter of conscience or control the forces of the soul."

Constitution of New Hampshire [1784], Articles 5 and 6: "Among these natural rights some are by nature inalienable since nothing can replace them. The rights of conscience are among them."

Incompatibility between religion and the rights of man is to such a degree absent from the concept of the *rights* of man that, on the contrary, a man's

right to be religious in any way he chooses, to practice his own particular religion, is expressly included among the rights of man. The *privilege of faith* is a *universal right of man*.

The *droits de l'homme*, the rights of man, are as *such* distinct from the *droits du citoyen*, the rights of the citizen. Who is *homme* as distinct from *citoyen*? None other than the *member of civil society*. Why is the *member of civil society* called "man," simply man; why are his rights called the *rights of man*? How is this fact to be explained? From the relationship between the political state and civil society, from the nature of political emancipation.

Above all, we note the fact that the so-called *rights of man*, the *droits de l'homme* as distinct from the *droits du citoyen*, are nothing but the rights of a *member of civil society*, i.e., the rights of egoistic man, of man separated from other men and from the community. Let us hear what the most radical Constitution, the Constitution of 1793, has to say:

Declaration of the Rights of Man and of the Citizen, Article 2. "These rights, etc., (the natural and imprescriptible rights) are: *equality, liberty, security, property*."

What constitutes *liberty*?

Article 6. "Liberty is the power which man has to do everything that does not harm the rights of others," or ... "Liberty consists in being able to do everything which does not harm others."

Liberty, therefore, is the right to do everything that harms no one else. The limits within which anyone can act *without harming* someone else are defined by law, just as the boundary between two fields is determined by a boundary post. It is a question of the liberty of man as an isolated monad, withdrawn into himself. Why is the Jew, according to Bauer, incapable of acquiring the rights of man?

"As long as he is a Jew, the restricted nature which makes him a Jew is bound to triumph over the human nature which should link him

6 Dates in brackets inserted by editor.

as a man with other men, and will separate him from non-Jews.”

But the right of man to liberty is based not on the association of man with man, but on the separation of man from man. It is the right of this separation, the *right* of the *restricted* individual, withdrawn into himself.

The practical application of man’s right to liberty is man’s right to *private property*.

What constitutes man’s right to private property?

Article 16 (Constitution of 1793): “The right of *property* is that which every citizen has of enjoying and of disposing *at his discretion* of his goods and income, of the fruits of his labor and industry.”

The right of man to private property is, therefore, the right to enjoy one’s property and to dispose of it at one’s discretion (*à son gré*), without regard to other men, independently of society, the right of self-interest. This individual liberty and its application form the basis of civil society. It makes every man see in other men not the *realization* of his own freedom, but the *barrier* to it. But, above all, it proclaims the right of man

“of enjoying and of disposing *at his discretion* of his goods and income, of the fruits of his labor and industry.”

There remain the other rights of man: *égalité* and *sûreté*.⁷

Égalité, used here in its non-political sense, is nothing but the equality of the *liberté* described above, namely: each man is to the same extent regarded as such a self sufficient monad. The Constitution of 1795 defines the concept of this equality, in accordance with its significance, as follows:

Article 3 (Constitution of 1795): “Equality consists in the law being the same for all, whether it protects or punishes.”

And *sûreté*?

Article 8 (Constitution of 1793): “Security consists in the protection afforded by society to each of its members for the preservation of his person, his rights, and his property.”

Security is the highest social concept of civil society, the concept of *police*, expressing the fact that the whole of society exists only in order to guarantee to each of its members the preservation of his person, his rights, and his property. It is in this sense that Hegel calls civil society “the state of need and reason.”⁸

The concept of security does not raise civil society above its egoism. On the contrary, security is the *insurance* of its egoism.

None of the so-called rights of man, therefore, go beyond egoistic man, beyond man as a member of civil society, that is, an individual withdrawn into himself, into the confines of his private interests and private caprice, and separated from the community. In the rights of man, he is far from being conceived as a species-being; on the contrary, species-life itself, society, appears as a framework external to the individuals, as a restriction of their original independence. The sole bond holding them together is natural necessity, need and private interest, the preservation of their property and their egoistic selves.

It is puzzling enough that a people which is just beginning to liberate itself, to tear down all the barriers between its various sections, and to establish a political community, that such a people solemnly proclaims (Declaration of 1791) the rights of egoistic man separated from his fellow men and from the community, and that indeed it repeats this proclamation at a moment when only the most heroic devotion can save the nation, and is therefore imperatively called for, at a moment when the sacrifice of all the interests of civil society must be the order of the day, and egoism must be punished as a crime. (*Declaration of the Rights of Man*, etc., of 1793.) This fact becomes still more puzzling when

7 Editor: Equality and security.

8 Editor: Hegel, *Grundlinien der Philosophie des Rechts, Werke*, Bd. VIII, S. 242.

we see that the political emancipators go so far as to reduce citizenship, and the *political community*, to a mere *means* for maintaining these so-called rights of man, that therefore the *citoyen* is declared to be the servant of egoistic *homme*, that the sphere in which man acts as a communal being is degraded to a level below the sphere in which he acts as a partial being, and that, finally, it is not man as *citoyen*, but man as bourgeois who is considered to be the *essential* and *true* man.

“The *aim* of all *political association* is the *preservation* of the natural and imprescriptible rights of man.” (*Declaration of the Rights*, etc., of 1791, Article 2.) “*Government* is instituted in order to guarantee man the enjoyment of his natural and imprescriptible rights.” (*Declaration*, etc., of 1793, Article 1.)

Hence even in moments when its enthusiasm still has the freshness of youth and is intensified to an extreme degree by the force of circumstances, political life declares itself to be a mere *means*, whose purpose is the life of civil society. It is true that its revolutionary practice is in flagrant contradiction with its theory. Whereas, for example, security is declared one of the rights of man, violation of the privacy of correspondence is openly declared to be the order of the day. Whereas the “*unlimited freedom of the press*” (Constitution of 1793, Article 122) is guaranteed as a consequence of the right of man to individual liberty, freedom of the press is totally destroyed, because “freedom of the press should not be permitted when it endangers public liberty.” (Robespierre jeune, *Histoire parlementaire de la Révolution française* by Buchez and Roux, vol. 28, p. 159.) That is to say, therefore: The right of man to liberty ceases to be a right as soon as it comes into conflict with political life, whereas in theory *political* life is only the guarantee of human rights, the rights of the individual, and therefore must be abandoned as soon as it comes into contradiction with its aim, with these rights of man. But practice is merely the exception, theory is the rule. But even if one were to regard revolutionary practice as the correct presentation of the relationship, there would still remain the puzzle of why the relationship is turned upside-down in the minds of the political emancipators and the *aim* appears as the means, while the means

appears as the aim. This optical illusion of their consciousness would still remain a puzzle, although now a psychological, a theoretical puzzle.

The puzzle is easily solved.

Political emancipation is at the same time the *dissolution* of the old society on which the state alienated from the people, the sovereign power, is based. Political revolution is a revolution of civil society. What was the character of the old society? It can be described in one word — feudalism. The character of the old civil society was *directly political*, that is to say, the elements of civil life, for example, property, or the family, or the mode of labor, were raised to the level of elements of political life in the form of seignory, estates, and corporations. In this form they determined the relation of the individual to the *state as a whole*, i.e., his *political* relation, that is, his relation of separation and exclusion from the other components of society. For that organization of national life did not raise property or labor to the level of social elements; on the contrary, it completed their *separation* from the state as a whole and constituted them as *discrete* societies within society. Thus, the vital functions and conditions of life of civil society remained nevertheless political, although political in the feudal sense, that is to say, they secluded the individual from the state as a whole and they converted the *particular* relation of his corporation to the state as a whole into his general relation to the life of the nation, just as they converted his particular civil activity and situation into his general activity and situation. As a result of this organization, the unity of the state, and also the consciousness, will and activity of this unity, the general power of the state, are likewise bound to appear as the *particular* affair of a ruler isolated from the people, and of his servants.

The political revolution which overthrew this sovereign power and raised state affairs to become affairs of the people, which constituted the political state as a matter of *general* concern, that is, as a real state, necessarily smashed all estates, corporations, guilds, and privileges, since they were all manifestations of the separation of the people from the community. The political revolution

thereby *abolished* the *political character of civil society*. It broke up civil society into its simple component parts; on the one hand, the *individuals*; on the other hand, the *material* and *spiritual elements* constituting the content of the life and social position of these individuals. It set free the political spirit, which had been, as it were, split up, partitioned and dispersed in the various blind alleys of feudal society. It gathered the dispersed parts of the political spirit, freed it from its intermixture with civil life, and established it as the sphere of the community, the *general concern* of the nation, ideally independent of those *particular elements* of civil life. A person's *distinct* activity and distinct situation in life were reduced to a merely individual significance. They no longer constituted the general relation of the individual to the state as a whole. Public affairs as such, on the other hand, became the general affair of each individual, and the political function became the individual's general function.

But the completion of the idealism of the state was at the same time the completion of the materialism of civil society. Throwing off the political yoke meant at the same time throwing off the bonds which restrained the egoistic spirit of civil society. Political emancipation was at the same time the emancipation of civil society from politics, from having even the *semblance* of a universal content.

Feudal society was resolved into its basic element — man, but man as he really formed its basis — *egoistic* man.

This *man*, the member of civil society, is thus the basis, the precondition, of the political state. He is recognized as such by this state in the rights of man.

The liberty of egoistic man and the recognition of this liberty, however, is rather the recognition of the *unrestrained* movement of the spiritual and material elements which form the content of his life.

Hence man was not freed from religion, he received religious freedom. He was not freed from property, he received freedom to own property.

He was not freed from the egoism of business, he received freedom to engage in business.

The *establishment of the political state* and the dissolution of civil society into independent *individuals* — whose relations with one another depend on *law*, just as the relations of men in the system of estates and guilds depended on *privilege* — is accomplished by *one and the same act*. Man as a member of civil society, *unpolitical* man, inevitably appears, however, as the *natural* man. The *droits de l'homme* appear as *droits naturels*, because *conscious activity* is concentrated on the *political act*. *Egoistic* man is the *passive* result of the dissolved society, a result that is simply *found in existence*, an object of *immediate certainty*, therefore a natural object. The political revolution resolves civil life into its component parts, without *revolutionizing* these components themselves or subjecting them to criticism. It regards civil society, the world of needs, labor, private interests, civil law, as the *basis of its existence*, as a *precondition* not requiring further substantiation and therefore as its *natural basis*. Finally, man as a member of civil society is held to be man *in the proper sense*, *homme* as distinct from the *citoyen*, because he is man in his sensuous, individual, *immediate* existence, whereas political man is only abstract, artificial man, man as an *allegorical, juridical* person. The real man is recognized only in the shape of the *egoistic* individual, the *true* man is recognized only in the shape of the *abstract citoyen*.

Therefore [Jean-Jacques] Rousseau correctly describes the abstract idea of political man as follows: "Whoever dares undertake to establish a people's institutions must feel himself capable of *changing*, as it were, *human nature*, of *transforming* each individual, who by himself is a complete and solitary whole, into a *part* of a larger whole, from which, in a sense, the individual receives his life and his being, of substituting a *limited* and *mental existence* for the physical and independent existence. He has to take from *men his own powers*, and give him in exchange alien powers which he cannot employ without the help of the other men."⁹

9 Editor: Jean Jacques Rousseau, *Social Contract*, Book II, London, 1782, p. 67.

All emancipation is a *reduction* of the human world and relationships to *man himself*.

Political emancipation is the reduction of man, on the one hand, to a member of civil society, to an egoistic, *independent* individual, and, on the other hand, to a *citizen*, a juridical person.

Only when the real, individual man reabsorbs in himself the abstract citizen, and as an individual human being has become a *species-being* in his everyday life, in his particular work, and in his particular situation, only when man has recognized and organized his "*forces pro-pres*" as *social forces*, and consequently no longer separates social power from himself in the shape of *political power*, only then will human emancipation have been accomplished....

9.3 Karl Marx: Letter to Abraham Lincoln on the Abolition of Slavery (1864)¹⁰

Sir: — We congratulate the American people upon your reelection by a large majority. If resistance to the Slave Power was the reserved watchword of your first election, the triumphant war cry of your reelection is, Death to Slavery.

From the commencement of the titanic American strife the workingmen of Europe felt instinctively that the star-spangled banner carried the destiny of their class. The contest for the territories which opened the dire epopee, was it not to decide whether the virgin soil of immense tracts should be wedded to the labor of the immigrant or prostituted by the tramp of the slave driver?

When an oligarchy of 300,000 slaveholders dared to inscribe, for the first time in the annals of the world, "slavery" on the banner of armed revolt; when on the very spots where hardly a century ago the idea of

one great democratic republic had first sprung up, whence the first declaration of the Rights of Man issued, and the first impulse given to the European revolution of the 18th century; when on those very spots counterrevolution, with systematic thoroughness, gloried in rescinding "the ideas entertained at the time of the formation of the old Constitution," and maintained "slavery to be a beneficent institution, indeed the only solution of the great problem of the relation of labor to capital," and cynically proclaimed property in man "the cornerstone of the new edifice"; then the working classes of Europe understood at once, even before the fanatic partisanship of the upper classes for the Confederate gentry had given its dismal warning, that the slaveholders' rebellion was to sound the tocsin for a general holy crusade of property against labor, and that for the men of labor, with their hopes for the future, even their past conquests were at stake in that tremendous conflict on the other side of the Atlantic. Everywhere they bore therefore patiently the hardships imposed upon them by the cotton crisis, opposed enthusiastically the proslavery intervention, importunities of their "betters," and from most parts of Europe contributed their quota of blood to the good cause.

While the workingmen, the true political power of the North, allowed slavery to defile their own republic; while before the Negro, mastered and sold without his concurrence, they boasted it the highest prerogative of the white-skinned laborer to sell himself and choose his own master; they were unable to attain the true freedom of labor or to support their European brethren in their struggle for emancipation, but this barrier to progress has been swept off by the red sea of civil war.

10 Karl Marx, "Letter to Abraham Lincoln on the Abolition of Slavery," in *Dynamics of Social Change: A Reader in Marxist Social Science*, edited by H. Selsam, D. Goldway, and H. Martel (New York: International Publishers, 1970). This address was signed by all the members of the General Council of the International Workingmen's Association (the First International) and was forwarded to President Lincoln through Charles Francis Adams, the minister of the United States in London. It was included in the minutes of the General Council for November 29, 1864 and published in the *Bee-Hive*, London, January 7, 1865.

The workingmen of Europe feel sure that as the American War of Independence initiated a new era of ascendancy for the middle class, so the American antislavery War will do for the working classes. They consider it an earnest of the epoch to come, that it fell to the lot of Abraham Lincoln, the single-minded son of the working class, to lead his country through the matchless struggle for the rescue of an enchained race and the reconstruction of a social world.

9.4 Sojourner Truth: On Women's Rights (1851)¹¹

May I say a few words? I want to say a few words about this matter:

I am a woman's rights.

I have as much muscle as any man, and can do as much work as any man.

I have plowed and reaped and husked and chopped and mowed, and can any man do more than that?

I have heard much about the sexes being equal; I can carry as much as any man, and can eat as much too, if I can get it.

I am as strong as any man that is now.

As for intellect, all I can say is, if women have a pint and man a quart – why can't she have her little pint full?

You need not be afraid to give us our rights for fear we will take too much, for we can't take more than our pint'll hold.

The poor men seem to be all in confusion, and don't know what to do.

Why children, if you have woman's rights, give it to her and you will feel better.

You will have your own rights, and they won't be so much trouble.

I can't read, but I can hear.

I have heard the bible and have learned that Eve caused man to sin.

Well if woman upset the world, do give her a chance to set it right side up again.

The Lady has spoken about Jesus, how he never spurned woman from him, and she was right.

When Lazarus died, Mary and Martha came to him with faith and love and besought him to raise their brother.

And Jesus wept – and Lazarus came forth.

And how came Jesus into the world?

Through God who created him and woman who bore him.

Man, where is your part?

But the women are coming up blessed be God and a few of the men are coming up with them.

But man is in a tight place, the poor slave is on him, woman is coming on him, and he is surely between a hawk and a buzzard.

9.5 August Bebel: *Woman And Socialism* (1883)¹²

Introduction

We are living in an age of great social transformations that are steadily progressing. In all strata of society we perceive an unsettled state of mind and an increasing restlessness, denoting a marked tendency toward profound and radical changes. Many questions have arisen and are being discussed with growing interest in ever widening circles. One of the most important of these questions and one that is constantly coming into greater prominence, is the woman question.

The woman question deals with the position that woman should hold in our social organism, and seeks to determine how she can best develop her powers and her abilities, in order to become a useful member of human society, endowed with equal rights and serving society according to her best capacity. From our point of view this question coincides with that other question: In what manner should society be organized to abolish oppression,

11 Sojourner Truth, "Speech to the Akron Women's Rights Convention," *Anti-Slavery Bugle* (New-Lisbon, Ohio), June 21, 1851. (Library of Congress copy available at: <https://chroniclingamerica.loc.gov/lccn/sn83035487/1851-06-21/ed-1/seq-4/>)

12 August Bebel, *Woman and Socialism* (New York: Socialist Literature Co., 1910).

exploitation, misery and need, and to bring about the physical and mental welfare of individuals and of society as a whole? To us then, the woman question is only one phase of the general social question that at present occupies all intelligent minds; its final solution can only be attained by removing social extremes and the evils which are a result of such extremes.

Nevertheless, the woman question demands our special consideration. What the position of woman has been in ancient society, what her position is to-day and what it will be in the coming social order, are questions that deeply concern at least one half of humanity. Indeed, in Europe they concern a majority of organized society, because women constitute a majority of the population. Moreover, the prevailing conceptions concerning the development of woman's social position during successive stages of history are so faulty, that enlightenment on this subject has become a necessity. Ignorance concerning the position of woman, chiefly accounts for the prejudice that the woman's movement has to contend with among all classes of people, by no means least among the women themselves. Many even venture to assert that there is no woman question at all, since woman's position has always been the same and will remain the same in the future, because nature has destined her to be a wife and a mother and to confine her activities to the home. Everything that is beyond the four narrow walls of her home and is not closely connected with her domestic duties, is not supposed to concern her.

In the woman question then we find two contending parties, just as in the labor question, which relates to the position of the workingman in human society. Those who wish to maintain everything as it is, are quick to relegate woman to her so-called "natural profession," believing that they have thereby settled the whole matter. They do not recognize that millions of women are not placed in a position enabling them to fulfill their natural function of wifehood and motherhood... They furthermore do not recognize that to millions of other women their "natural profession" is a failure, because to them marriage has become a yoke and a condition of slavery, and they are obliged to drag on

their lives in misery and despair. But these wiseacres are no more concerned by these facts than by the fact that in various trades and professions millions of women are exploited far beyond their strength, and must slave away their lives for a meager subsistence. They remain deaf and blind to these disagreeable truths, as they remain deaf and blind to the misery of the proletariat, consoling themselves and others by the false assertion that it has always been thus and will always continue to be so. That woman is entitled, as well as man, to enjoy all the achievements of civilization, to lighten her burdens, to improve her condition, and to develop all her physical and mental qualities, they refuse to admit. When, furthermore, told that woman — to enjoy full physical and mental freedom — should also be economically independent, should no longer depend for subsistence upon the good will and favor of the other sex, the limit of their patience will be reached. Indignantly they will pour forth a bitter edictment of the "madness of the age" and its "crazy attempts at emancipation." These are the old ladies of both sexes who cannot overcome the narrow circle of their prejudices. They are the human owls that dwell wherever darkness prevails, and cry out in terror whenever a ray of light is cast into their agreeable gloom.

Others do not remain quite as blind to the eloquent facts. They confess that at no time woman's position has been so unsatisfactory in comparison to general social progress, as it is at present. They recognize that it is necessary to investigate how the condition of the self-supporting woman can be improved; but in the case of married women they believe the social problem to be solved. They favor the admission of unmarried women only into a limited number of trades and professions. Others again are more advanced and insist that competition between the sexes should not be limited to the inferior trades and professions, but should be extended to all higher branches of learning and the arts and sciences as well. They demand equal educational opportunities and that women should be admitted to all institutions of learning, including the universities. They also favor the appointment of women to government positions, pointing out

the results already achieved by women in such positions, especially in the United States. A few are even coming forward to demand equal political rights for women. Woman, they argue, is a human being and a member of organized society as well as man, and the very fact that men have until now framed and administered the laws to suit their own purposes and to hold woman in subjugation, proves the necessity of woman's participation in public affairs.

It is noteworthy that all these various endeavors do not go beyond the scope of the present social order. The question is not propounded whether any of these proposed reforms will accomplish a decisive and essential improvement in the condition of women. According to the conceptions of bourgeois, or capitalistic society, the civic equality of men and women is deemed an ultimate solution of the woman question. People are either unconscious of the fact, or deceive themselves in regard to it, that the admission of women to trades and industries is already practically accomplished and is being strongly favored by the ruling classes in their own interest. But under prevailing conditions woman's invasion of industry has the detrimental effect of increasing competition on the labor market, and the result is a reduction in wages for both male and female workers. It is clear then, that this cannot be a satisfactory solution.

Men who favor these endeavors of women within the scope of present society, as well as the bourgeois women who are active in the movement, consider complete civic equality of women the ultimate goal. These men and women then differ radically from those who, in their narrow-mindedness, oppose the movement. They differ radically from those men who are actuated by petty motives of selfishness and fear of competition, and therefore try to prevent women from obtaining higher education and from gaining admission to the better paid professions. But there is no difference of class between them, such as exists between the worker and the capitalist.

If the bourgeois suffragists would achieve their aim and would bring about equal rights for men and women, they would still fail to abolish that

sex slavery which marriage, in its present form, is to countless numbers of women; they would fail to abolish prostitution; they would fail to abolish the economic dependence of wives. To the great majority of women it also remains a matter of indifference whether a few thousand members of their sex, belonging to the more favored classes of society, obtain higher learning and enter some learned profession, or hold a public office. The general condition of the sex as a whole is not altered thereby.

The female sex as such has a double yoke to bear. Firstly, women suffer as a result of their social dependence upon men, and the inferior position allotted to them in society; formal equality before the law alleviates this condition, but does not remedy it. Secondly, women suffer as a result of their economic dependence, which is the lot of women in general, and especially of the proletarian woman as it is of the proletarian men.

We see, then, that all women, regardless of their social position, represent that sex which during the evolution of society has been oppressed and wronged by the other sex, and therefore it is to the common interest of all women to remove their disabilities by changing the laws and institutions of the present state and social order. But a great majority of women is furthermore deeply and personally concerned in a complete reorganization of the present state and social order which has for its purpose the abolition of wageslavery, which at present weighs most heavily upon the women of the proletariat, as also the abolition of sex-slavery, which is closely connected with our industrial conditions and our system of private ownership.

The women who are active in the bourgeois suffrage movement, do not recognize the necessity of so complete a transformation. Influenced by their privileged social position, they consider the more radical aims of the proletarian woman's movement dangerous doctrines that must be opposed. The class antagonism that exists between the capitalist and working class and that is increasing with the growth of industrial problems, also clearly manifests itself then within the women's movement. Still these sister-women, though antagonistic to

each other on class lines, have a great many more points in common than the men engaged in the class struggle, and though they march in separate armies they may strike a united blow. This is true in regard to all endeavors pertaining to all equal rights of woman under the present social order; that is, her right to enter any trade or profession adapted to her strength and ability, and her right to civic and political equality. These are, as we shall see, very important and very far-reaching aims. Besides striving for these aims, it is in the particular interest of proletarian women to work hand in hand with proletarian men for such measures and institutions that tend to protect the working woman from physical and mental degeneration, and to preserve her health and strength for a normal fulfillment of her maternal function. Furthermore, it is the duty of the proletarian woman to join the men of her class in the struggle for a thorough-going transformation of society, to bring about an order that by its social institutions will enable both sexes to enjoy complete economic and intellectual independence.

Our goal then is, not only to achieve equality of men and women under the present social order, which constitutes the sole aim of the bourgeois woman's movement, but to go far beyond this, and to remove all barriers that make one human being dependent upon another, which includes the dependence of one sex upon the other. *This* solution of the woman question is identical with the solution of the social question. They who seek a complete solution of the woman question must, therefore, join hands with those who have inscribed upon their banner the solution of the social question in the interest of all mankind — the Socialists.

The Socialist Party is the only one that has made the full equality of women, their liberation from every form of dependence and oppression, an integral part of its program; not for reasons of propaganda, but from necessity. *For there can be no liberation of mankind without social independence and equality of the sexes...*

Woman in the Future

In the new society woman will be entirely independent, both socially and economically. She will

not be subjected to even a trace of domination and exploitation, but will be free and man's equal, and mistress of her own lot. Her education will be the same as man's, with the exception of those deviations that are necessitated by the differences of sex and sexual functions. Living under normal conditions of life, she may fully develop and employ her physical and mental faculties. She chooses an occupation suited to her wishes, inclinations and abilities, and works under the same conditions as man. Engaged as a practical working woman in some field of industrial activity, she may, during a second part of the day, be educator, teacher or nurse, during a third she may practice a science or an art, and during a fourth she may perform some administrative function. She studies, works, enjoys pleasures and recreation with other women or with men, as she may choose or as occasions may present themselves.

In the choice of love she is as free and unhampered as man. She woos or is wooed, and enters into a union prompted by no other considerations but her own feelings. This union is a private agreement, without the interference of a functionary, just as marriage has been a private agreement until far into the middle ages. Here Socialism will create nothing new, it will merely reinstate, on a higher level of civilization and under a different social form, what generally prevailed before private property dominated society.

Man shall dispose of his own person, provided that the gratification of his impulses is not harmful or detrimental to others. The satisfaction of the sexual impulse is as much the private concern of each individual, as the satisfaction of any other natural impulse. No one is accountable to any one else, and no third person has a right to interfere. What I eat and drink, how I sleep and dress is my private affair, and my private affair also is my intercourse with a person of the opposite sex. Intelligence and culture, personal independence, — qualities that will become natural, owing to the education and conditions prevailing in the new society, — will prevent persons from committing actions that will prove detrimental to themselves. Men and women of future society will possess far more self-control and a better knowledge of their own natures, than

men and women of to-day. The one fact alone, that the foolish prudery and secrecy connected with sexual matters will disappear, will make the relation of the sexes a far more natural and healthful one. If between a man and woman who have entered into a union, incompatibility, disappointment or revulsion should appear, morality commands a dissolution of the union which has become unnatural, and therefore immoral. As all those circumstances will have vanished that have so compelled a great many women either to choose celibacy or prostitution, men can no longer dominate over women. On the other hand, the completely changed social conditions will have removed the many hindrances and harmful influences that affect married life to-day and frequently prevent its full development or make it quite impossible.

The impediments, contradictions and unnatural features in the present position of woman are being recognized by ever wider circles, and find expression in our modern literature on social questions, as well as in modern fiction; only the form in which it is expressed sometimes fails to answer the purpose. That present day marriage is not suited to its purpose, is no longer denied by any thinking person. So it is not surprising that even such persons favor a free choice of love and a free dissolution of the marriage relation, who are not inclined to draw the resulting conclusions that point to a change of the entire social system. They believe that freedom in sexual intercourse is justifiable among members of the privileged classes only...

Compulsory marriage is the normal marriage to bourgeois society. It is the only "moral" union of the sexes; any other sexual union is "immoral." Bourgeois marriage is, — this we have irrefutably proved, — the result of bourgeois relations. Closely connected with private property and the right of inheritance, it is contracted to obtain "legitimate" children. Under the pressure of social conditions it is forced also upon those who have nothing to bequeath. It becomes a social law, the violation of which is punished by the state, by imprisonment of the men or women who have committed adultery and have become divorced.

But in Socialistic society there will be nothing to bequeath, unless house furnishings and personal belongings should be regarded as hereditary portions; so the modern form of marriage becomes untenable from this point of view also. This also settles the question of inheritance, which Socialism will not need to abolish. Where there is no private property, there can be no right of inheritance. So woman will *be free*, and the children she may have will not impair her freedom, they will only increase her pleasure in life. Nurses, teachers, women friends, the rising female generation, all these will stand by her when she is in need of assistance...

For thousands of years human society has passed through all phases of development, only to return to its starting point: communistic property and complete liberty and fraternity: but no longer only for the members of the gens, but for all human beings. That is what the great progress consists of. What bourgeois society has striven for in vain, in what it failed and was bound to fail, — to establish liberty, equality and fraternity for all, — will be realized by Socialism. Bourgeois society could merely advance the theory, but here, as in many other things, practice was contrary to the theories. Socialism will unite theory and practice.

But as mankind returns to the starting point of its development, it will do so on an infinitely higher level of civilization. If primitive society had common ownership in the gens and the clan, it was but in a coarse form and an undeveloped stage. The course of development that man has since undergone, has reduced common property to small and insignificant remnants, has shattered the gens and has finally atomized society; but in its various phases it has also greatly heightened the productive forces of society and the extensiveness of its demands; it has transformed the gentes and the tribes into nations, and has thereby again created a condition that is in glaring contradiction to the requirements of society. It is the task of the future to remove this contradiction by re-establishing the common ownership of property and the means of production on the broadest basis.

Society takes back what it has at one time possessed and has itself created, but it enables

all to live in accordance with the newly created conditions of life on the highest level of civilization. In other words, it grants to all what under more primitive conditions has been the privilege of single individuals or classes. Now woman, too, is restored to the active position maintained by her in primitive society; only she no longer is mistress, but man's equal.

"The end of the development of the state resembles the beginnings of human existence. Primitive equality is reinstated. The maternal material existence opens and closes the cycle of human affairs." Thus Backofen says in his book on the Matriarchate....

So men, proceeding from the most varied standpoints, arrive at the same conclusions, as a result of their scientific investigations. The complete emancipation of woman, and her establishment of equal rights with man is one of the aims of our cultured development, whose realization no power on earth can prevent. But it can be accomplished only by means of a transformation that will abolish the rule of man over man, including the rule of the capitalist over the laborer. Then only can humanity attain its fullest development. The "golden age" of which men have been dreaming, and for which they have been yearning for thousands of years, will come at last. Class rule will forever be at an end and with it the rule of man over woman.

9.6 Clara Zetkin: On Women's Rights and Social Classes (1896)¹³

The investigations of Bachofen, Morgan and others seem to prove that the social suppression of women coincided with the creation of private property. The contrast within the family between the husband as proprietor and the wife as non-proprietor became the basis for the economic dependence and the social illegality of the female sex. This social illegality represents, according to Engels, one of the first and oldest forms of class rule. He

states: "Within the family, the husband constitutes the bourgeoisie and the wife the proletariat." Nonetheless, a women's question in the modern sense of the word did not exist. It was only the capitalist mode of production which created the social transformation that brought forth the modern women's question by destroying the old family economic system which provided both livelihood and life's meaning for the great mass of women during the pre-capitalistic period. We must, however, not transfer to the ancient economic activities of women those concepts (the concepts of futility and pettiness), that we connect with the activities of women in our times. As long as the old type of family still existed, a woman found a meaningful life by productive activity. Thus she was not conscious of her social illegality even though the development of her potentials as an individual was strictly limited....

The women's question ... is only present within those classes of society who are themselves the products of the capitalist mode of production. Thus it is that we find no women's question in peasant circles that possess a natural (although severely curtailed and punctured) economy. But we certainly find a women's question within those classes of society who are the very children of the modern mode of production. There is a women's question for the women of the proletariat, the bourgeoisie, the intelligentsia and the Upper Ten Thousand. It assumes a different form according to the class situation of each one of these strata.

How does the women's question shape up as far as the Upper Ten Thousand are concerned? The woman of the Upper Ten Thousand, thanks to her property, may freely develop her individuality and live as she pleases. In her role as wife, however, she is still dependent upon her husband. The guardianship of the weaker sex has survived in the family law which still states: And he shall be your master. And how is the family of the Upper Ten Thousand constituted in which the wife is legally

13 Clara Zetkin, "Only in Conjunction with the Proletarian Woman Will Socialism Be Victorious," Speech at the Party Congress of the Social Democratic Party of Germany (October 16, 1896), in *Clara Zetkin: Selected Writings*, edited by Philip S. Foner, translated by Kai Schoenhals (Chicago: Haymarket Books, 2015).

subjugated by the husband? At its very founding, such a family lacks the moral prerequisites. Not individuality but money decides the matrimony. Its motto is: What capital joins, sentimental morality must not part. (Bravol) Thus in this marriage, two prostitutions are taken for one virtue. The eventual family life develops accordingly. Wherever a woman is no longer forced to fulfill her duties, she devolves her duties as spouse, mother and housewife upon paid servants. If the women of these circles have the desire to give their lives a serious purpose, they must, first of all, raise the demand to dispose of their property in an independent and free manner. This demand, therefore, represents the core of the demands raised by the women's movement of the Upper Ten Thousand. These women, in their fight for the realization of their demand vis-a-vis the masculine world of their class, fight exactly the same battle that the bourgeoisie fought against all of the privileged estates; i.e., a battle to remove all social differences based upon the possession of property...

How does the women's question appear in the circles of the petit-bourgeoisie, the middle class and the bourgeois intelligentsia? Here it is not property which dissolves the family, but mainly the concomitant symptoms of capitalist production. To the degree this production completes its triumphal march, the middle class and the petit-bourgeoisie are hurtling further and further towards their destruction. Within the bourgeois intelligentsia, another circumstance leads to the worsening of the living conditions: capitalism needs the intelligent and scientifically trained work force. It therefore favored an overproduction of mental-work proletarians and contributed to the phenomenon that the formerly respected and profitable societal positions of members of the professional class are more and more eroding. To the same degree, however, the number of marriages is decreasing; although on the one hand the material basis is worsening, on the other hand the individual's expectations of life are increasing, so that a man of that background will think twice or even thrice before he enters into a marriage. The age limit for the founding of a family is raised higher and higher

and a man is under no pressure to marry since there exist in our time enough societal institutions which offer to an old bachelor a comfortable life without a legitimate wife. The capitalist exploitation of the proletarian work force through its starvation wages, sees to it that there is a large supply of prostitutes which corresponds to the demand by the men. Thus within the bourgeois circles, the number of unmarried women increases all the time. The wives and daughters of these circles are pushed out into society so that they may establish for themselves their own livelihood which is not only supposed to provide them with bread but also with mental satisfaction. In these circles women are not equal to men in the form of possessors of private property as they are in the upper circles. The women of these circles have yet to achieve their economic equality with men and they can only do so by making two demands: The demand for equal professional training and the demand for equal job opportunities for both sexes. In economic terms, this means nothing less than the realization of free access to all jobs and the untrammelled competition between men and women. The realization of this demand unleashes a conflict of interest between the men and women of the bourgeoisie and the intelligentsia. The competition of the women in the professional world is the driving force for the resistance of men against the demands of bourgeois women's rights advocates. It is, pure and simple, the fear of competition. All other reasons which are listed against the mental work of women, such as the smaller brain of women or their allegedly natural avocation to be a mother are only pretexts. This battle of competition pushes the women of these social strata towards demanding their political rights so that they may, by fighting politically, tear down all barriers which have been created against their economic activity.

So far I have addressed myself only to the basic and purely economic substructure. We would, however, perform an injustice to the bourgeois women's rights movement if we would regard it as solely motivated by economics. No, this movement also contains a more profound spiritual and moral aspect. The bourgeois woman not only demands her own bread but she also requests spiritual

nourishment and wants to develop her individuality. It is exactly among these strata that we find these tragic, yet psychologically interesting Nora figures, women who are tired of living like dolls in doll houses and who want to share in the development of modern culture. The economic as well as the intellectual and moral endeavors of bourgeois women's rights advocates are completely justified.

As far as the proletarian woman is concerned, it is capitalism's need to exploit and to search incessantly for a cheap labor force that has created the women's question. It is for this reason, too, that the proletarian woman has become enmeshed in the mechanism of the economic life of our period and has been driven into the workshop and to the machines. She went out into the economic life in order to aid her husband in making a living, but the capitalist mode of production transformed her into an unfair competitor. She wanted to bring prosperity to her family, but instead misery descended upon it. The proletarian woman obtained her own employment because she wanted to create a more sunny and pleasant life for her children, but instead she became almost entirely separated from them. She became an equal of the man as a worker; the machine rendered muscular force superfluous and everywhere women's work showed the same results in production as men's work. And since women constitute a cheap labor force and above all a submissive one that only in the rarest of cases dares to kick against the thorns of capitalist exploitation, the capitalists multiply the possibilities of women's work in industry. As a result of all this, the proletarian woman has achieved her independence. But verily, the price was very high and for the moment they have gained very little. If during the Age of the Family, a man had the right (just think of the law of Electoral Bavaria!) to tame his wife occasionally with a whip, capitalism is now taming her with scorpions. In former times, the rule of a man over his wife was ameliorated by their personal relationship. Between an employer and his worker, however, exists only a cash nexus. The proletarian woman has gained her economic independence, but neither as a human being nor as a woman or wife has she had the possibility to develop her individuality. For

her task as a wife and a mother, there remain only the breadcrumbs which the capitalist production drops from the table.

Therefore the liberation struggle of the proletarian woman cannot be similar to the struggle that the bourgeois woman wages against the male of her class. On the contrary, it must be a joint struggle with the male of her class against the entire class of capitalists. She does not need to fight against the men of her class in order to tear down the barriers which have been raised against her participation in the free competition of the market place. Capitalism's need to exploit and the development of the modern mode of production totally relieves her of having to fight such a struggle. On the contrary, new barriers need to be erected against the exploitation of the proletarian woman. Her rights as wife and mother need to be restored and permanently secured. Her final aim is not the free competition with the man, but the achievement of the political rule of the proletariat. The proletarian woman fights hand in hand with the man of her class against capitalist society. To be sure, she also agrees with the demands of the bourgeois women's movement, but she regards the fulfillment of these demands simply as a means to enable that movement to enter the battle, equipped with the same weapons, alongside the proletariat.

Bourgeois society is not fundamentally opposed to the bourgeois women's movement, which is proven by the fact that in various states reforms of private and public laws concerning women have been initiated. There are two reasons why the accomplishment of these reforms seems to take an exceptionally long time in Germany: First of all, men fear the battle of competition in the liberal professions and secondly, one has to take into account the very slow and weak development of bourgeois democracy in Germany which does not live up to its historical task because of its class fear of the proletariat. It fears that the realization of such reforms will only bring advantages to Social-Democracy. The less a bourgeois democracy allows itself to be hypnotized by such a fear, the more it is prepared to undertake reforms. England is a good example. England is the only

country that still possesses a truly powerful bourgeoisie, whereas the German bourgeoisie, shaking in fear of the proletariat, shies away from carrying out political and social reforms. As far as Germany is concerned, there is the additional factor of widespread Philistine views. The Philistine braid of prejudice reaches far down the back of the German bourgeoisie. To be sure, this fear of the bourgeois democracy is very shortsighted. The granting of political equality to women does not change the actual balance of power. The proletarian woman ends up in the proletariat, the bourgeois woman in the bourgeois camp. We must not let ourselves be fooled by Socialist trends in the bourgeois women's movement which last only as long as bourgeois women feel oppressed....

9.7 Vladimir I. Lenin: On the Emancipation of Women (1919)¹⁴

... Take position of women. Not a single democratic party in the world, not even in any of the most advanced bourgeois republics, has done in this sphere in tens of years a hundredth part of what we did in the very first year we were in power. In the literal sense, we did not leave a single brick standing of the despicable laws which placed women in a state of inferiority compared with men, of the laws restricting divorce, of the disgusting formalities attending divorce proceedings, of the laws on illegitimate children and on searching for their fathers, etc. To the shame of the bourgeoisie and of capitalism, be it said numerous survivals of these laws, exist in all civilized countries. We have the right a thousand times to be proud of what we have done in this sphere. But the more thoroughly we have cleared the ground of the lumber of the old, bourgeois, laws and institutions, the more apparent has it become to us that we have only cleared the ground for the structure; the structure itself has not been built as yet.

Notwithstanding all the liberating laws that have been passed, woman continues to be a *domestic slave*, because *petty housework* crushes,

strangles, stultifies and degrades her, chains her to the kitchen and to the nursery, and wastes her labor on barbarously unproductive, petty, nerve-racking, stultifying and crushing drudgery. The real *emancipation of women*, real Communism, will begin only when a mass struggle (led by the proletariat which is in power) is started against this petty domestic economy, or rather when it is *transformed on a mass scale* into large-scale socialist economy.

Do we in practice devote sufficient attention to this question, which, theoretically, is indisputable for every Communist? Of course not. Do we devote sufficient care to the *young shoots* of Communism which have already sprung up in this sphere? Again we must say emphatically, No! Public dining rooms, *crèches*, kindergartens — these are examples of the shoots, the simple everyday means, which assume nothing pompous, grandiloquent or solemn, but which can *in fact emancipate women*, which can in fact lessen and abolish their inferiority to men in regard to their role in social production and in social life. These means are not new, they (like all the material prerequisites for socialism) were created by large-scale capitalism; but under capitalism they remained, first, a rarity, and second, and what is particularly important, either *profit-making* enterprises, with all the worst features of speculation, profiteering, cheating and fraud, or the “acrobatics of bourgeois philanthropy,” which the best workers quite rightly hated and despised.

There is no doubt that the number of these institutions in our country has greatly increased and that they are *beginning* to change in character. There is no doubt that there is far more *organizing talent* among the working women and peasant women than we are aware of, people who are able to organize in a practical way and enlist large numbers of workers, and a still larger number of consumers, for this purpose without the abundance of phrases, fuss, squabbling and chatter about plans, systems, etc., which our swelled-headed “intelligentsia” or halfbaked “Communists” always suffer from. But we do not *nurse* these new shoots with sufficient care.

14 Vladimir Lenin, *Women and Society* (New York: International Publishers, 1970).

Look at the bourgeoisie! How well it is able to advertise what it requires! See how what the capitalists regard as “model” enterprises are praised in millions of copies of *their* newspapers; see how “model” bourgeois enterprises are transformed into objects of national pride! Our press does not take the trouble, or hardly takes the trouble, to describe the best dining rooms or *crèches*, to secure by daily exhortation the transformation of some of them into models. It does not give them enough publicity, does not describe in detail what saving in human labor, what conveniences for the consumer, what a saving in products, what emancipation of women from domestic slavery and what an improvement in sanitary conditions can be achieved with *exemplary Communist labor* for the whole of society, for all the toilers.

9.8 J. Henry Dunant: On the Rights of Wounded Soldiers (*A Memory of Solferino, 1862*)¹⁵

... At the entrance to the church was a Hungarian who never ceased to call out, begging for a doctor in heartbreaking Italian. A burst of grapeshot had ploughed into his back which looked as if it had been furrowed with steel claws, laying bare a great area of red quivering flesh. The rest of his swollen body was all black and green, and he could find no comfortable position to sit or lie in. I moistened great masses of lint in cold water and tried to place this under him, but it was not long before gangrene carried him off...

The feeling one has of one's own utter inadequacy in such extraordinary and solemn circumstances is unspeakable. It is, indeed, excessively distressing to realize that you can never do more than help those who are just before you — that you must keep waiting men who are calling out and begging you to come. When you start to go somewhere, it is hours before you get there, for you are stopped by one begging for help, then by another, held up at every step by the crowd of poor wretches who press before and about you.

Then you find yourself asking: “Why go to the right, when there are all these men on the left who will die without a word of kindness or comfort, without so much as a glass of water to quench their burning thirst?”

The moral sense of the importance of human life; the humane desire to lighten a little the torments of all these poor wretches, or restore their shattered courage; the furious and relentless activity which a man summons up at such moments: all these combine to create a kind of energy which gives one a positive craving to relieve as many as one can...

If an international relief society had existed at the time of [the Battle of] Solferino, what endless good they could have done!...

There is need, therefore, for voluntary orderlies and volunteer nurses, zealous, trained and experienced, whose position would be recognized by the commanders or armies in the field, and their mission facilitated and supported. The personnel of military field hospitals is always inadequate, and would still be inadequate if the number of aids were two or three times as many, and this will always be the case. The only possible way is to turn to the public. It is inevitable, it will always be inevitable, for it is through the cooperation of the public that we can expect to attain the desired goal. The imploring appeal must therefore be made to men of all countries and of all classes, to the mighty ones of this world, and to the poorest workman: for all can, in one way or another, each in his own sphere and within his own limitations, do something to help the good work forward. Such an appeal is made to ladies as well as to men — to the mighty princess seated on the steps of the throne — to the poor devoted orphan serving maid — to the poor widow alone in the world and anxious to devote her last strength to the welfare of her neighbor. It is an appeal which is addressed equally to General and Corporal: to the philanthropist and to the writer who, in the quiet of his study, can give his talent to publications relating to a question which concerns all the human race and in a more particular sense,

15 J. Henry Dunant, *A Memory of Solferino* (Geneva, Switzerland: International Committee of the Red Cross, 1939, 1959).

concerns every nation, every district, and every family, since no man can say with certainty that he is forever safe from the possibility of war... It is the more important to reach an agreement and concert measures in advance, because when hostilities once begin, the belligerents are already ill-disposed to each other, and thenceforth regard all questions from the one limited standpoint of their own subjects.

Humanity and civilization call imperiously for such an organization as is here suggested. It seems as if the matter is one of actual duty, and that in carrying it out the cooperation of every man of influence, and the good wishes at least of every decent person, can be relied upon with assurance. Is there in the world a prince or a monarch who would decline to support the proposed societies, happy to be able to give full assurance to his soldiers that they will be at once properly cared for if they should be wounded? Is there any Government that would hesitate to give its patronage to a group endeavoring in this manner to preserve the lives of useful citizens, for assuredly the soldier who receives a bullet in the defense of his country deserves all that country's solicitude? Is there a single officer, a single general, considering his troops as "his boys," who would not be anxious to facilitate the work of volunteer helpers? Is there a military commissary, or a military doctor, who would not be grateful for the assistance of a detachment of intelligent people, wisely and properly commanded and tactful in their work?

Last of all — in an age when we hear so much of progress and civilization, is it not a matter of urgency, since unhappily we cannot always avoid wars, to press forward in a human and truly civilized spirit the attempt to prevent, or at least to alleviate, the horrors of war?

The practical execution of this proposal, on a large scale, would certainly call for somewhat considerable funds, but there would never be difficulty about the necessary money. In wartime, all and sundry would hasten to give their contributions or bring their mite in response to the committee's

appeals. There is no coldness or indifference among the public when the country's sons are fighting. After all, the blood that is being spilled in battle is the same that runs in the veins of the whole nation. It must not be thought, therefore, that there is any danger of the enterprise being checked by obstacles of this kind. It is not there that the difficulty lies. The whole problem lies in serious preparation for work of this kind, and in the actual formation of the proposed societies.

If the new and frightful weapons of destruction which are now at the disposal of the nations, seem destined to abridge the duration of future wars, it appears likely, on the other hand, that future battles will only become more and more murderous. Moreover, in this age when surprise plays so important a part, is it not possible that wars may arise, from one quarter or another, in the most sudden and unexpected fashion? And do not these considerations alone constitute more than adequate reason for taking precautions against surprise?

9.9 August Bebel: On Homosexual Rights ("Speech to the Reichstag," 1898)¹⁶

Representatives: Understandable is the position of those who, deeply offended by certain distasteful aspects of our public and private life, endeavor to make the fullest use of the criminal code to remedy these evils and wipe them off the face of the earth. My friends and I are also prepared to second a large number of the provisions which Dr. Spahn and his colleagues have proposed in the draft before us, but by no means all. On the one hand, this draft goes too far from our standpoint, and on the other, not far enough. In particular, once reform has been accomplished in this area, we should have to consider whether there may not be still other comparable provisions of our penal code that have at least as much right and as much need to be revised as the paragraphs here proposed.

Gentlemen, the penal code exists to be enforced — that is to say, so that the authorities who have the primary responsibility for maintaining

16 August Bebel, "Speech to the Reichstag," *Speeches of August Bebel*, translated by John Lauritsen (New York: International Publishers, 1928).

compliance with and respect for the law should be dutifully watchful for violations and act accordingly. But there are provisions of our penal code, some of them contained in the motion before us, where the authorities, although fully aware that these provisions are systematically violated by a great number of people, men as well as women, only in the rarest cases bother to call for action on the part of the prosecutor. Here I have particularly in mind the section with the provisions of Paragraph 175 — it has to do with “unnatural fornication.”... am informed by the best sources that the police of that city do not bring the names of men who commit offenses which Paragraph 175 makes punishable by imprisonment to the attention of the district attorney as seen as they have become aware of the fact, but rather add the names of the persons involved to the list of those who for the same reasons are already in their files. (Hear! Hear! [from the Left])

The number of these persons is so great and reaches so far into all levels of society, that if the police here scrupulously carried out their duty, the Prussian State would immediately be compelled to build two new penitentiaries just to take care of those offenses against Paragraph 175 that are committed in Berlin alone. (Commotion. Hear! Hear!)

That is not an exaggeration, Herr von Levetzow; it has to do with thousands of persons from all walks of life. But then it further raises the question of whether the provisions of Paragraph 175 should apply not only to men, but also to women who on their part commit the same offense. What is just in the case of one sex, is fair for the other. But gentlemen, I'll tell you this: if in this area the Berlin police did their duty all the way — I want to say a word about this — then there would be a scandal such as the world have never known, a scandal compared with which the Panama scandal, the Dreyfus scandal, the Lützow-Ledert and the Tausch-Normann scandals are pure child's play. Perhaps this is one of the reasons why the offense punishable under this Paragraph is treated with such extraordinary laxity on the part of the police. Gentlemen, Paragraph 175 is part of the penal code, and because it is there, it must be enforced. However, if for whatever reasons this part of the criminal law cannot be enforced, or can be enforced only selectively, then the question arises whether this provision of the penal code can equitably be retained.... The petition, for reasons that understandably I don't wish to go into fully at this moment, advocated a revision of the penal code so as to repeal the relevant provisions of Paragraph 175.

PART IV

THE RIGHT TO SELF-DETERMINATION AND THE IMPERIAL AGE

Introduction

The struggle for self-determination became a central feature of world politics during the twentieth century, but it was hardly a new concept. These discourses coincide with two main historical waves: the collapse of the Austro-Hungarian and Ottoman empires before and soon after World War I and the dismantling of European imperialism in Asia, the Middle East, and Africa soon after World War II. The great human rights activist, stateswoman, and diplomat Eleanor Roosevelt (1884–1962) understood well that history, offering in her “Universal Validity of Man’s Right to Self-Determination” (1952) an insightful historical introduction to that subject – an introduction that informs the selections of Part IV. While self-determination was invoked in the nineteenth-century writings of German and other European nationalists, and redefined later by European socialists, Roosevelt explained, it was its promotion by U.S. President Woodrow Wilson that made it a principle of international diplomacy. Yet Wilson’s support for self-determination did not extend to those living under colonial rule, and demands for the right to self-determination in the colonized world were put on the backburner at the Treaty of Versailles (1919).

The tragic events of World War II, however, greatly weakened the imperial powers of Europe, leaving them unable to resist the intensifying claims to self-determination that had arisen in Asia, Africa, and the Americas. If self-determination must now be recognized as an inalienable right, Roosevelt maintained, it needed to be considered in relation to its impact on other nationalities, to ensure its consistency with the framework of universality and responsibility. In this context, Roosevelt asked questions similar to those posed earlier by Rosa Luxemburg and Vladimir Lenin:

Does self-determination mean the right of secession? Does self-determination constitute a right of fragmentation or a justification for the fragmentation of nations? Does self-determination mean the right of people to sever association with another power regardless of the economic effect upon both parties, regardless of the effect upon their internal stability and their external security, regardless of the effect upon their neighbors or the international community? Obviously not.

Roosevelt's questions illuminate the often overlooked problems associated with the vague codification of the right to self-determination in Common Article 1 of the U.N. Covenant of Civil and Political Rights (1966) and the U.N. Covenant of Economic, Social, and Cultural Rights (1966).

Drawing on Eleanor Roosevelt's historical understanding of the right to self-determination, selections are included from John Stuart Mill to convey the nineteenth-century liberal understanding of self-determination and Luxemburg and Lenin for their socialist perspectives on human rights and Wilson, the League of Nations, and the Polish Minority Treaty (see Chapter 16) are illustrations of the interwar consensus among the major powers on the right to self-determination; and, finally, Mahatma Gandhi, Sati' al-Husri, Ho Chi Minh, and Frantz Fanon provide non-western, anticolonial contributions on the right to a national homeland.

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 4.

Questions for Part IV

1. How did Eleanor Roosevelt consider the rights of self-determination to be limited?
2. Assess John Stuart Mill's argument regarding colonial responsibility for bringing colonized people to political maturity and self-determination.
3. How does Mazzini challenge the notion of individual rights? Can these rights coexist with people's right to a country? Explain.
4. Should all people/nationalities have a nation-state? What are the limits, if any?
5. What were the main points of contention between Lenin and Luxemburg regarding the right to self-determination?
6. Is Frantz Fanon justifying violence to evict foreign powers and reassert the right of self-determination to colonized people? Compare his views with Gandhi's notion of passive resistance?
7. Given the scale of conflicts and misery in the post-colonial world, was it wrong for the great powers to relinquish their colonies?
8. What conditions are necessary for self-determination according to Sati Al Husri and Ho Chi-Min? Do their positions differ? How so?

IV.1 Eleanor Roosevelt: "The Universal Validity of Man's Right to Self-Determination" (1952)¹

... The desire of every people to determine its own destiny, free from dictation or control by others, is one of the most deep-seated of all human feelings. Throughout history groups of individuals having common bonds of language, religion, and culture have developed a sense of solidarity as a people and have tended to resent any effort of the outsider,

the foreigner, to interfere with them. So strong is this feeling that men of many peoples have at various times been willing to lay down their lives to be free from domination by others.

The fact that wars have sometimes resulted from the failure of one people to respect the wishes of another led us all as members of the United Nations to agree that one of our major purposes is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." In our present

1 Eleanor Roosevelt, "The Universal Validity of Man's Right to Self-Determination," U.N. Press Release (November 18, 1952), *Department of State Bulletin* 27 (December 8, 1952): 917-919.

discussion we find ourselves faced with the problem not only of giving greater moral weight to this principle but at the same time giving it clearer definition so that it may have universal validity in the complex world of today.

While the underlying concept of self-determination is, I suppose, as old as human society, the term “self-determination” is relatively new. It appears to have been used first with regard to the nineteenth-century struggle of certain European peoples for a separate national existence. It occurs in the writings of the radical German philosophers of 1848 as *Selbstbestimmungsrecht*, which was translated into English as “the right of self-determination of nations” in a resolution adopted by a Conference of European Socialists in 1915. As a number of speakers, including the representatives of Egypt and the United Kingdom have pointed out, this phrase was given wide currency as a principle of international diplomacy by an American President, Woodrow Wilson. However, as several speakers have also reminded us, Woodrow Wilson from the beginning recognized that the principle of self-determination has its limitations. Because I think it important that we keep President Wilson’s thought in this matter clearly in mind, I should like to quote again the statement he made in setting forth his four principles before the U.S. Congress on February 11, 1918. He asserted that all well defined national aspirations shall be accorded the utmost satisfaction that can be afforded them without introducing new, or perpetuating old, elements of discord and antagonism that would be likely in time to break the peace of Europe and consequently the world.

Today we discuss the question of self-determination in quite a different and much more complex setting. The stage is no longer Europe alone; it is worldwide. In a single resolution of a few paragraphs, we are setting forth certain guidelines for the respect of a principle, not only in Europe but in Asia, Africa, and the Americas as well. Consider for a moment the wide variety of cultures of the peoples with whose self-determination we are concerned — the culture of the spear and the earthen hut, the culture of vast rural peasantries,

the complex culture of industrial cities, and confused combinations of culture. The complexity would seem to me enough to make us cautious lest we be too precise, narrow, or rigid in drawing up rules for promoting respect for the principle of self-determination.

In this debate, as with any resolution we adopt, we are molding for generations to come a principle of international conduct. If self-determination is a right which belongs to all people, it is inappropriate for us to express ourselves here in a general resolution with respect only to certain people. Our words and phrases must be made to apply as much to those who once exercised the right and had it snatched from them as to those who have never possessed it.

We, like others before us, would ask ourselves therefore, what may constitute a “people” to whom the principle of self-determination shall be applied. What are their characteristics? What are their cultural or political or geographical boundaries?

In our search for an answer we find the very concept of a “people” undergoing rapid evolution. Possibly the very first group of human beings seeking to maintain itself as an entity free from the control of others was the family or kinship group. The trend of history, in varying degrees and with numerous setbacks, seems to have been that larger and larger groups of once separate peoples have been formed and have come to think of themselves as a single people. Almost every nation represented at this table is composed of disparate elements of population that have been combined in one way or another into a unified or federated political system.

Here differences among formerly separate peoples either have been or are being submerged and new and larger peoples are emerging. This process of evolution and merger is still going on. It is a trend which diminishes the possibilities of conflict. Must we not exercise the greatest care lest anything we do here tend to freeze the pattern of peoples along present lines and thus instead of promoting the unity of mankind, emphasize certain obstacles to such unity?

We in the United States have gained the conviction from our own experience that the combination

of peoples is a process of enrichment. Right here in New York City the number of persons of Irish descent total nearly 550,000, more than in the city of Dublin; the Italian population, similarly defined, is well over 1,000,000 and exceeds the population of Naples. New York has more people of Jewish origin than all Israel. Our 12,000 Arabic-speaking people are the equivalent of a small Middle Eastern city. Yet, as I am sure you have seen demonstrated many times, their children are not Irishmen, Italians, Jews or Arabs. They are Americans.

We do not claim for one moment that the process of creating a new people is easy or that we have fully succeeded in doing so for all elements of the population, but we know it can be done and we are convinced that this process is to be preferred to clinging overzealously to the separateness of peoples.

At the same time we believe it is possible and desirable to retain a good deal of diversity within large political entities. Through our federated system of government, each state and each community preserves for its people the maximum voice in their own affairs. Louisiana has continued its legal system adopted from France, passed on from the earnest settlers of the region. Arizona and New Mexico have Spanish as one of the official languages of their legislatures. Throughout the country, people worship in Norwegian and Russian, publish newspapers in German and Greek, broadcast over the radio in a variety of tongues. In every state, county, and town the people decide for themselves who shall teach in their schools and what shall be taught. Their policemen come from their own communities and are subject to their control.

This is self-determination exercised to a high degree, yet without sacrificing cooperation in the larger fields of common interest. Each element of the national community contributes to the national government, takes part in it, and helps to shape the decisions which lead to a national destiny. Yet it must be equally clear that to grant the automatic exercise of the absolute right of political self-determination to every distinct section of our population would be detrimental to the interests of

the population as a whole. And such considerations would apply to the territories whose future rises or falls with ours.

In this context we might ask ourselves: Does self-determination mean the right of secession? Does self-determination constitute a right of fragmentation or a justification for the fragmentation of nations? Does self-determination mean the right of people to sever association with another power regardless of the economic effect upon both parties, regardless of the effect upon their internal stability and their external security, regardless of the effect upon their neighbors or the international community? Obviously not.

As I have suggested, the concept of self-determination of peoples is a valid vital principle, but like most other principles it cannot be applied in absolute or rigid terms. Surely it is not consonant with realities to suggest that there are only two alternatives — independence or slavery. Just as the concept of individual human liberty carried to its logical extreme would mean anarchy, so the principle of self-determination of peoples given unrestricted application could result in chaos. Is either principle thereby invalidated? Certainly not! On the contrary, we feel sure that human freedoms can find their fullest expression only in the context of responsibility.

The resolution before us, in at least one other respect, raises the question of absolutes. It speaks of granting the right of self-determination, upon a “demand for self-government,” by ascertaining the wishes of the people through a plebiscite.

We are compelled to ask, is this not an extremely limited concept of self-determination? Is the demand for self-government the only question on which the people should be consulted? Is the plebiscite the only method of consultation?

Were self-determination synonymous with self-government, we would find these questions easier to answer. But self-determination, as applied to non-self-governing territories, whose peoples have not had the opportunity to attain their full political growth, is a much more complicated matter. It has application at all stages along the road to self-government.

Self-determination is a process. It is in essence the process of democracy as contrasted with the process of dictation in any society developed or underdeveloped. It is, as has been said by other speakers, a process which involves responsibilities as well as rights. It is the process by which people develop their own laws and provide their own justice. This means not merely the right to compose a code of law, nor even the actual writing of a code; it also means general agreement to abide by the laws in the interests of society as a whole, even though one's individual or group freedoms are thereby limited. Self-determination is the process by which people agree to finance their own affairs, spread their burdens among themselves, and see that individual contributions to the common good are made. Self-determination is the building of roads and schools; not just deciding to build them, but finding the engineers, the money, the workmen, the teachers, and seeing the job through.

These matters are the essence of self-determination. If self-determination can be increasingly developed in all phases of the life of a people, their self-governing or independent institutions, when achieved, will be strong and lasting. If we conceive of self-determination as synonymous with self-government, we ignore the nature of the process by which true self-government is attained. Mistaking the form for the substance, we might in fact jeopardize the very rights we seek to promote.

There are not only many aspects of the life of any people to which the principle of self-determination can be applied; there are also many ways of learning the wishes of the people, and they must be appropriate to the question involved, as well as to the literacy and understanding of the citizens.

Furthermore, as I indicated a moment ago, it would be unfortunate if we limited our concept of self-determination to the non-self-governing world. We have seen in our own time flagrant examples of peoples and nations, vigorous and proud and

independent, which have been overrun by a conqueror and subjected to his dictatorial control. These peoples and nations are entitled to the restoration of their independence.

At a time in history when the freedoms of so many individuals and peoples have been destroyed or are seriously threatened, it is, in the view of my delegation, important that the United Nations reaffirm the principle of self-determination and promote international respect for it. It is important that it do so for all peoples, and not solely for peoples in some form of colonial status. In considering the recommendations to this end drafted by the Commission on Human Rights, my delegation would strongly urge that we consider them within the framework of universality and of responsibility lest we frustrate the very purpose for which the principle of self-determination was set forth in the charter — that is, “to develop friendly relations among nations.”

IV.2 United Nations: Universal Declaration of Human Rights (1948), Preamble, Articles 1–2, 15²

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, ...

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the

2 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

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.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

IV.3 United Nations: International Covenant on Civil and Political Rights and International Covenant On Economic, Social, and Cultural Rights (Adopted 1966, Entry into Force 1976), Article 1³

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

3 Resolution adopted by the UN General Assembly: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, A/RES/2200A (XXI), adopted 16 December 1966, entry into force 3 January 1976. [https://undocs.org/pdf?symbol=en/A/RES/2200\(XXI\)](https://undocs.org/pdf?symbol=en/A/RES/2200(XXI))

10. ON THE NATIONAL QUESTION

A first wave of major discourses on nationalism and self-determination coincided with the industrial revolution, the spread of secessionist movements, and the crumbling of empires in the late nineteenth century. The liberal thinker Giuseppe Mazzini (1805–1872), a major contributor to Italian unification, maintained that individual rights as understood by the French Declaration of the Rights of Man and Citizen proved to be insufficient if they were not secured by a country. He asked: “And where the rights of an individual or of many individuals clash with the right of a country, to what tribunal are we to appeal?” Here, argues Mazzini, one can no longer speak of utility and self-interest, but of duty, virtue, and sacrifice to a nation. Mazzini acknowledged in his *Duties of Man* (written in 1844 and 1858, with the 1848 revolution in between) that fervent nationalism often proves to be destructive. Mazzini advocated a united Europe, in which national singularities would be transcended in a Pan-European harmony (see Section 10.1)

The British political theorist John Stuart Mill (1806–1873) cautioned against an unconditional right to self-determination, supporting such claims only in particular instances. In *Consideration on Representative Government* (1861), he maintained that the homogeneity of national identity, a “united public opinion,” was necessary for the establishment of free political institutions. The unified nation, rather than the multinational state, constituted the fundamental political unity. Its existence was a necessary precondition for free government, together with an educated citizenry. The other prerequisites were economic and social development, and those nations that lagged behind, like India, were legitimate objects of an “enlightened” colonialism, for which the British provided a model (see Section 10.2).

In his essay, “What is a Nation?” (1882), the French Orientalist Ernest Renan (1823–1892) departed further from the concept of individual rights and interests. It is not religion, state, civilization, or economic interest that constitutes a nation, he argued, but “a common heroic past, great leaders and true glory.” A nation is “a soul, a spiritual principle.” A nation is legitimized, Renan wrote, by great solidarities based on the consciousness of past sacrifice and the willingness to make future ones, reaffirmed in a sort of “plebiscite repeated daily.” It is the existence of the nation alone that guarantees individual liberties. Although Renan understood the shortcomings of such a “spiritual principle,” he regarded the triumph of the nation as the “law of the age” (see Section 10.3).

With the collapse of the Ottoman and Austro-Hungarian empires, socialists deepened their engagement with the question of self-determination. In *The National Question and Autonomy* (1909), Rosa Luxemburg (1871–1919), the Polish socialist leader exiled in Germany, argued that claims for national rights were usually pointless and counterproductive. Any alliance of the working class with

the nationalist bourgeoisie of oppressed countries, she maintained, would likely subvert the future establishment of democratic and socialist regimes. Instead, she favored claims to self-determination by oppressed people only so long as their economies could survive independence. Attacking the Polish nationalists of her day, Luxemburg argued that secession from Russia would undermine the interests of the Polish proletariat. Such rights were utopian for industrially backward countries, like Poland and Czechoslovakia, whose economic development depended on the market of their mother country (see Section 10.4).

Luxemburg's views were controversial in socialist and progressive circles. In *The Right of Nations to Self-Determination* (1914), Lenin embraced some aspects of her views while diverging from others. With Luxemburg, he argued that nationalism from above was different than nationalism from below, distinguishing the oppressive nationalism of tsarist Russia from the justifiable nationalism of oppressed Poland. Yet contrary to Luxemburg, he maintained that the right to national self-determination should not be determined by economic factors alone, as victimized people should have a right to evict foreign powers from their lands. Lenin further argued against Luxemburg that workers striving for emancipation should consider tactical alliances with elements of the nationalist bourgeoisie in their countries in order to thwart imperial colonial claims (see Section 10.5).

From a very different ideological perspective, President Woodrow Wilson (1856–1924) proclaimed, in his “Fourteen Points Address” to Congress (1918), the right of ethnic groups to national self-determination: “It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with another, whether they be strong or weak.” These rights, he hoped, could be realized by a League of Nations, which would establish national borders around homogeneous ethnic groups, thereby presumably removing a major cause of war (see Section 10.6). The League of Nation's attempt to advance the Wilsonian vision of self-determination, based on the concept of national cohesion, led to the reestablishment of Poland and the carving out of independent states from the old Austro-Hungarian Empire (see the Covenant of the League of Nations [1919], and the Polish Minority Treaty [1919] in Chapter 16).

As Europe unraveled into a second World War, another wave of nationalism spread throughout the world. Colonized people seized the opportunity to call for their right to a homeland. The preeminent Indian nationalist and pacifist leader Mahatma Gandhi (1869–1948) launched his campaign for Indian self-determination before the end of World War II. Choosing a path that was unique for his time, he proposed that “passive resistance is ... superior to the forces of weapons, for without drawing a drop of blood it produces far-reaching results; it is the reverse of resistance by arms” (see Section 10.7). Passive resistance, Gandhi asserted in the same spirit as the ancient Greek Stoic Epictetus, required one's ability to stand up for one's principles by courageously facing death. India, he further argued, should be ready to sacrifice itself for its independence, but only through nonviolent means (see Section 10.8). Nonviolence was essential, he maintained, because there cannot be any separation between means and ends (see Section 10.9). One cannot expect to achieve independence against tyranny by using the same tools as one's oppressor. If socialism, he claimed, is an end “as pure as crystal,” it requires “crystal-like” means to achieve it. Although Gandhi called for the equal distribution of wealth, he believed, unlike many revolutionary socialists, that equality could be achieved by means of passive resistance (see Section 10.10).

The question of national independence and national unity was also an important concern in the colonized countries of the Middle East. In the early twentieth century, fragmented European spheres of domination gradually supplanted the Ottoman Empire's control over the Arab world. Arab nationalist thinker Sati' al-Husri saw the unification of the Arab world as a necessary means of resisting foreign

domination. Inspired by German Romantic thinkers, Sati' al-Husri approached the unity of the Arab world on a cultural and romantic plane. The whole Arab world, he hoped, would be combined into one nationally conscious and politically assertive community, united by a common geography, language, history, and tradition (see Section 10.11).

By that time, another notable independence movement was stirring in French Indochina. In 1919, at the Versailles Peace talks following World War I, Vietnamese nationalist Ho Chi Minh had appealed unsuccessfully for the independence of French Indochina. Following the Japanese occupation of Vietnam during World War II (an occupation in which Vichy France continued to administer the country), Ho returned to Vietnam to lead the Viet Minh Independence movement. Following the defeat of Germany and Japan in 1945, and the French refusal to allow independence, Ho drew upon the most famous words of the U.S. Declaration of Independence when drafting a similar declaration for Vietnam. Ho reminded the international community that “all men are created equal; they are endowed by their Creator with certain unalienable Rights; among these are Life, Liberty, and the pursuit of Happiness.” These inalienable rights, he maintained, must be extended to all peoples, including the Vietnamese (see Section 10.12).

The brutality of colonialism was vividly recounted by the West Indian psychoanalyst and social philosopher Frantz Fanon (1925–1961). The Algerian war of independence against France (1954–1962) had taught Fanon the importance of violent struggle as a means to empower colonized peoples. Violence, he argued in *The Wretched of the Earth* (1963), was a “cleansing force” that “frees the native from his inferiority complex and from his despair and inaction.” Yet having internalized the methods of colonial domination, local elites tended to perpetuate – even after decolonization – the unequal social and economic structures they had inherited. While acknowledging that independence would create new problems, Fanon maintained that the very process of fighting for nationhood could awaken political consciousness, forge an indigenous cultural identity, and ultimately make possible true independence based on equitable political and economic arrangements (see Section 10.13).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 4.

10.1 Giuseppe Mazzini: On the Right to Country (*The Duties of Man*, 1844, 1858)¹

I. *To the Italian Working-Men (1844)*

For the last fifty years whatever has been done for the cause of progress and of good against absolute governments and hereditary aristocracies has been done in the name of the Rights of Man; in the name of liberty as the means, and of well-being as the object of existence. All the acts of the French Revolution and of the revolutions which

followed and imitated it were consequences of a Declaration of the Rights of Man. All the works of the philosophers who prepared it were based upon a theory of liberty, and upon the need of making known to every individual his own rights. All the revolutionary schools preached that man is born for happiness, that he has the right to seek it by all the means in his power; that no one has the right to impede him in this search, and that he has the right of overthrowing all the obstacles which he may encounter on his path. And the obstacles were

1 Giuseppe Mazzini, *An Essay on the Duties of Man, Addressed to Workingmen* (New York, Funk & Wagnalls, 1892 [public domain]).

overthrown; liberty was conquered. It endured for years in many countries; in some it still endures. Has the condition of the people improved? Have the millions who live by the daily labour of their hands gained the least fraction of the well-being hoped for and promised to them?

No; the condition of the people has not improved; rather it has grown and grows worse in nearly every country, and especially here where I write the price of the necessaries of life has gone on continually rising, the wages of the working-man in many branches of industry falling, and the population multiplying. In nearly every country the lot of workers has become more uncertain, more precarious, and the labour crises which condemn thousands of working-men to idleness for a time have become more frequent. The yearly increase of emigration from one country to another, and from Europe to other parts of the world, and the ever-growing number of beneficent institutions, the increase of poor rates and provisions for the destitute, are enough to prove this. The latter prove also that public attention is waking more and more to the ills of the people; but their inability to lessen those ills to any visible extent points to a no less continual increase of poverty among the classes which they endeavour to help.

And nevertheless, in these last fifty years, the sources of social wealth and the sum of material blessings have steadily increased. Production has doubled. Commerce, amid continual crises, inevitable in the utter absence of organisation, has acquired a greater force of activity and a wider sphere for its operations. Communication has almost everywhere been made secure and rapid, and the price of commodities has fallen in consequence of the diminished cost of transport. And, on the other hand, the idea of rights inherent in human nature is today generally accepted; accepted in word and, hypocritically, even by those who seek to evade it in deed. Why, then, has the condition of the people not improved? Why is the consumption of products, instead of being divided equally among all the members of the social body in Europe, concentrated in the hands of a small number of men forming a new aristocracy? Why has the new

impulse given to industry and commerce produced, not the wellbeing of the many, but the luxury of the few?

The answer is clear to those who will look a little closely into things. Men are creatures of education, and act only according to the principle of education given to them. The men who have promoted revolutions hitherto have based them upon the idea of the rights belonging to the individual; the revolutions conquered liberty — individual liberty, liberty of teaching, liberty of belief, liberty of trade, liberty in everything and for everybody. But of what use was the recognition of their rights to those who had no means of exercising them? What did liberty of teaching mean to those who had neither time nor means to profit by it, or liberty of trade to those who had nothing to trade with, neither capital nor credit? In all the countries where these principles were proclaimed society was composed of a small number of individuals who possessed the land, the credit, the capital, and of vast multitudes of men who had nothing but their own hands and were forced to give the labour of them to the former class, on any terms, in order to live, and forced to spend the whole day in material and monotonous toil. For these, constrained to battle with hunger, what was liberty but an illusion and a bitter irony? To make it anything else it would have been necessary for the men of the well-to-do classes to consent to reduce the hours of labour, to increase the remuneration, to institute free and uniform education for the masses, to make the instruments of labour accessible to all, and to provide a bonus fund for the working-man endowed with capacity and good intentions. But why should they do it? Was not well-being the supreme object in life? Were not material blessings desirable before all other things? Why should they lessen their own enjoyment for the advantage of others? Let those who could, help themselves. When society has secured to everybody who can use them the free exercise of the rights belonging to human nature, it does all that is required of it. If there be any one who is unable from the fatality of his own circumstances to exercise any of these rights, he must resign himself and not blame others.

It was natural that they should say thus, and thus, in fact, they did say. And this attitude of mind towards the poor in the classes privileged by fortune soon became the attitude of every individual towards every other. Each man looked after his own rights and the improvement of his own condition without seeking to provide for others; and when his rights clashed with those of others, there was war; not a war of blood, but of gold and of cunning; a war less manly than the other, but equally destructive; cruel war, in which those who had the means and were strong relentlessly crushed the weak or the unskilled. In this continual warfare, men were educated in egoism and in greed for material welfare exclusively. Liberty of belief destroyed all community of faith. Liberty of education produced moral anarchy. Men without a common tie, without unity of religious belief and of aim, and whose sole vocation was enjoyment, sought every one his own road, not heeding if pursuing it they were trampling upon the heads of their brothers — brothers in name and enemies in fact. To this we are come today, thanks to the theory of *rights*.

Certainly rights exist; but where the rights of an individual come into conflict with those of another, how can we hope to reconcile and harmonise them, without appealing to something superior to all rights? And where the rights of an individual, or of many individuals, clash with the rights of the Country, to what tribunal are we to appeal? If the right to *well-being*, to the greatest possible well-being, belongs to every living person, who will solve the difficulty between the working-man and the manufacturer? If the right to existence is the first and inviolable right of every man, who shall demand the sacrifice of that existence for the benefit of other men? Will you demand it in the name of Country, of Society, of the multitude of your brothers? What is Country, in the opinion of those of whom I speak, but the place in which our individual rights are most secure? What is Society but a collection of men who have agreed to bring the strength of the many in support of the rights of each? And after having taught the individual for fifty years that Society is established for the purpose of *assuring to him the exercise of his rights*, would you

ask him to sacrifice them all to Society, to submit himself, if need be, to continuous toil, to prison, to exile, for the sake of improving it? After having preached to him everywhere that the object of life is *well-being*, would you all at once bid him give up well-being and life itself to free his country from the foreigner, or to procure better conditions for a class which is not his own? After having talked to him for years of *material* interests, how can you maintain that, finding wealth and power in his reach, he ought not to stretch out his hand to grasp them, even to the injury of his brothers? . . .

We must convince men that they, sons of one only God, must obey one only law, here on earth; that each one of them must live, not for himself, but for others; that the object of their life is not to be more or less happy, but to make themselves and others better; that to fight against injustice and error for the benefit of their brothers is not only a *right* but a *duty*; a duty not to be neglected without sin, — the duty of their whole life.

Italian Working-men, my Brothers! understand me fully. When I say that the knowledge of their *rights* is not enough to enable men to effect any appreciable or lasting improvement, I do not ask you to renounce these rights; I only say that they cannot exist except as a consequence of duties fulfilled, and that one must begin with the latter in order to arrive at the former. And when I say that by proposing *happiness, well-being, or material* interest as the aim of existence, we run the risk of producing egoists, I do not mean that you should never strive after these things. I say that material interests pursued alone, and not as a means, but as an end, lead always to this most disastrous result . . .

V. Duties to Country (1858)

Your first Duties — first, at least, in importance — are, as I have told you, to Humanity. You are *men* before you are *citizens* or *fathers*. If you do not embrace the whole human family in your love, if you do not confess your faith in its unity — consequent on the unity of God — and in the brotherhood of the Peoples who are appointed to reduce that unity to fact — if wherever one of your

fellow-men groans, wherever the dignity of human nature is violated by falsehood or tyranny, you are not prompt, being able, to succour that wretched one, or do not feel yourself called, being able, to fight for the purpose of relieving the deceived or oppressed — you disobey your law of life, or do not comprehend the religion which will bless the future.

But what can *each* of you, with his isolated powers, *do* for the moral improvement, for the progress of Humanity? You can, from time to time, give sterile expression to your belief; you may, on some rare occasion, perform an act of *charity* to a brother not belonging to your own land, no more. Now, *charity* is not the watchword of the future faith. The watchword of the future faith is *association*, fraternal cooperation towards a common aim, and this is as much superior to *charity* as the work of many uniting to raise with one accord a building for the habitation of all together would be superior to that which you would accomplish by raising a separate hut each for himself, and only helping one another by exchanging stones and bricks and mortar. But divided as you are in language, tendencies, habits, and capacities, you cannot attempt this common work. The *individual* is too weak, and Humanity too vast. *My God*, prays the Breton mariner as he puts out to sea, *protect me, my ship is so little and Thy ocean so great!* And this prayer sums up the condition of each of you, if no means is found of multiplying your forces and your powers of action indefinitely. But God gave you this means when he gave you a Country, when, like a wise overseer of labour, who distributes the different parts of the work according to the capacity of the workmen, he divided Humanity into distinct groups upon the face of our globe, and thus planted the seeds of nations...Between these Countries there will be harmony and brotherhood. And then the work of Humanity for the general amelioration, for the discovery and application of the real law of life, carried on in association and distributed according to local capacities, will be accomplished by peaceful and progressive development; then each of you, strong in the affections and in the aid of many millions of men speaking the same language, endowed with the same tendencies, and educated by the same historic tradition, may

hope by your personal effort to benefit the whole of Humanity....

Without Country you have neither name, token, voice, nor rights, no admission as brothers into the fellowship of the Peoples. You are the bastards of Humanity. Soldiers without a banner, Israelites among the nations, you will find neither faith nor protection; none will be sureties for you. Do not beguile yourselves with the hope of emancipation from unjust social conditions if you do not first conquer a Country for yourselves; where there is no Country there is no common agreement to which you can appeal; the egoism of self-interest rules alone, and he who has the upper hand keeps it, since there is no common safeguard for the interests of all. Do not be led away by the idea of improving your material conditions without first solving the national question. You cannot do it. Your industrial associations and mutual help societies are useful as a means of educating and disciplining yourselves; as an economic fact they will remain barren until you have an Italy. The economic problem demands, first and foremost, an increase of capital and production; and while your Country is dismembered into separate fragments — while shut off by the barrier of customs and artificial difficulties of every sort, you have only restricted markets open to you — you cannot hope for this increase. Today — do not delude yourselves — you are not the working-class of Italy; you are only fractions of that class; powerless, unequal to the great task which you propose to yourselves. Your emancipation can have no practical beginning until a National Government, understanding the signs of the times, shall, seated in Rome, formulate a Declaration of Principles to be the guide for Italian progress, and shall insert into it these words. *Labour is sacred, and is the source of the wealth of Italy.*

Do not be led astray, then, by hopes of material progress which in your present conditions can only be illusions. Your Country alone, the vast and rich Italian Country, which stretches from the Alps to the farthest limit of Sicily, can fulfil these hopes. You cannot obtain your rights except by obeying the commands of *Duty*. Be worthy of them, and you will have them. O my Brothers! love your Country.

Our Country is our home, the home which God has given us, placing therein a numerous family which we love and are loved by, and with which we have a more intimate and quicker communion of feeling and thought than with others; a family which by its concentration upon a given spot, and by the homogeneous nature of its elements, is destined for a special kind of activity. Our Country is our field of labour; the products of our activity must go forth from it for the benefit of the whole earth; but the instruments of labour which we can use best and most effectively exist in it, and we may not reject them without being unfaithful to God's purpose and diminishing our own strength. In labouring according to true principles for our Country we are labouring for Humanity; our Country is the fulcrum of the lever which we have to wield for the common good. If we give up this fulcrum we run the risk of becoming useless to our Country and to Humanity. Before *associating* ourselves with the Nations which compose Humanity we must exist as a Nation. There can be no association except among equals; and you have no recognised collective existence.

Humanity is a great army moving to the conquest of unknown lands, against powerful and wary enemies. The Peoples are the different corps and divisions of that army. Each has a post entrusted to it; each a special operation to perform; and the common victory depends on the exactness with which the different operations are carried out. Do not disturb the order of the battle. Do not abandon the banner which God has given you. Wherever you may be, into the midst of whatever people circumstances may have driven you, fight for the liberty of that people if the moment calls for it; but fight as Italians, so that the blood which you shed may win honour and love, not for you only, but for your Country. And may the constant thought of your soul be for Italy, may all the acts of your life be worthy of her, and may the standard beneath which you range yourselves to work for Humanity be Italy's. Do not say *I*; say *we*. Be every one of you an incarnation of your Country, and feel himself and make himself responsible for his fellow-countrymen; let each one of you learn to act in

such a way that in him men shall respect and love his Country.

Your Country is one and indivisible. As the members of a family cannot rejoice at the common table if one of their number is far away, snatched from the affection of his brothers, so you should have no joy or repose as long as a portion of the territory upon which your language is spoken is separated from the Nation.

Your Country is the token of the mission which God has given you to fulfil in Humanity. The faculties, the strength of *all* its sons should be united for the accomplishment of this mission. A certain number of common duties and rights belong to every man who answers to the *Who are you?* of the other peoples, *I am an Italian*. Those duties and those rights cannot be represented except by one single authority resulting from your votes. A Country must have, then, a *single* government. The politicians who call themselves federalists, and who would make Italy into a brotherhood of different states, would dismember the Country, not understanding the idea of Unity. The States into which Italy is divided today are not the creation of our own people; they are the result of the ambitions and calculations of princes or of foreign conquerors, and serve no purpose but to flatter the vanity of local aristocracies for which a narrower sphere than a great Country is necessary. What you, the people, have created, beautified, and consecrated with your affections, with your joys, with your sorrows, and with your blood, is the City and the Commune, not the Province or the State. In the City, in the Commune, where your fathers sleep and where your children will live, where you exercise your faculties and your personal rights, you live out your lives as *individuals*. It is of your City that each of you can say what the Venetians say of theirs: *Venezia la xe nostra: l'avemo falla nu* (Venice is our own: We have made her.) In your City you have need of *liberty* as in your Country you have need of *association*. The Liberty of the Commune and the Unity of the Country — let that, then, be your faith. Do not say Rome and Tuscany, Rome and Lombardy, Rome and Sicily; say Rome and Florence, Rome and Siena, Rome and Leghorn, and so through all the Communes of Italy. Rome

for all that represents Italian life; your Commune for whatever represents the individual life. All the other divisions are artificial, and are not confirmed by your national tradition.

A Country is a fellowship of free and equal men bound together in a brotherly concord of labour towards a single end. You must make it and maintain it such. A Country is not an aggregation, it is an *association*. There is no true Country without a uniform right. There is no true Country where the uniformity of that right is violated by the existence of caste, privilege, and inequality — where the powers and faculties of a large number of individuals are suppressed or dormant — where there is no common principle accepted, recognised, and developed by all. In such a state of things there can be no Nation, no People, but only a multitude, a fortuitous agglomeration of men whom circumstances have brought together and different circumstances will separate. In the name of your love for your Country you must combat without truce the existence of every privilege, every inequality, upon the soil which has given you birth. One privilege only is lawful — the privilege of Genius when Genius reveals itself in brotherhood with Virtue; but it is a privilege conceded by God and not by men, and when you acknowledge it and follow its inspirations, you acknowledge it freely by the exercise of your own reason and your own choice. Whatever privilege claims your submission in virtue of force or heredity, or any right which is not a common right, is a usurpation and a tyranny, and you ought to combat it and annihilate it. Your Country should be your Temple. God at the summit, a People of equals at the base. Do not accept any other formula, any other moral law, if you do not want to dishonour your Country and yourselves. Let the secondary laws for the gradual regulation of your existence be the progressive application of this supreme law.

And in order that they should be so, it is necessary that all should contribute to the making of them. The laws made by one fraction of the citizens only can never by the nature of things and men do

otherwise than reflect the thoughts and aspirations and desires of that fraction; they represent, not the whole country, but a third, a fourth part, a class, a zone of the country. The law must express the general aspiration, promote the good of all, respond to a beat of the nation's heart. The whole nation therefore should be, directly or indirectly, the legislator. By yielding this mission to a few men, you put the egoism of one class in the place of the Country, which is the union of *all* the classes.

A Country is not a mere territory; the particular territory is only its foundation. The Country is the idea which rises upon that foundation; it is the sentiment of love, the sense of fellowship which binds together all the sons of that territory. So long as a single one of your brothers is not represented by his own vote in the development of the national life — so long as a single one vegetates uneducated among the educated — so long as a single one able and willing to work languishes in poverty for want of work — you have not got a Country such as it ought to be, the Country of all and for all. *Votes, education, work* are the three main pillars of the nation; do not rest until your hands have solidly erected them. . . .

10.2 John Stuart Mill: *Considerations on Representative Government* (1861)²

Chapter XVI: Of Nationality, as Connected with Representative Government

A portion of mankind may be said to constitute a Nationality, if they are united among themselves by common sympathies, which do not exist between them and any others — which make them cooperate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves or a portion of themselves, exclusively. This feeling of nationality may have been generated by various causes. Sometimes it is the effect of identity of race and descent. Community of language, and community of religion, greatly contribute to it. Geographical limits are one of its causes. But the

2 John Stuart Mill, *Considerations on Representative Government* (London: Parker, Son, & Bourn, 1861 [public domain]).

strongest of all is identity of political antecedents; the possession of a national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past. None of these circumstances however are either indispensable, or necessarily sufficient by themselves. Switzerland has a strong sentiment of nationality, though the cantons are of different races, different languages, and different religions. Sicily has, throughout history, felt itself quite distinct in nationality from Naples, notwithstanding identity of religion, almost identity of language, and a considerable amount of common historical antecedents. The Flemish and the Walloon provinces of Belgium, notwithstanding diversity of race and language, have a much greater feeling of common nationality, than the former have with Holland, or the latter with France. Yet in general the national feeling is proportionally weakened by the failure of any of the causes which contribute to it. Identity of language, literature, and, to some extent, of race and recollections, have maintained the feeling of nationality in considerable strength among the different portions of the German name, though they have at no time been really united under the same government; but the feeling has never reached to making the separate States desire to get rid of their autonomy. Among Italians an identity far from complete, of language and literature, combined with a geographical position which separates them by a distinct line from other countries, and, perhaps more than everything else, the possession of a common name, which makes them all glory in the past achievements in arts, arms, politics, religious primacy, science, and literature, of any who share the same designation, give rise to an amount of national feeling in the population, which, though still imperfect, has been sufficient to produce the great events now passing before us, notwithstanding a great mixture of races, and although they have never, in either ancient or modern history, been under the same government, except while that government extended or was extending itself over the greater part of the known world.

Where the sentiment of nationality exists in any force, there is a *prima facie* case for uniting all

the members of the nationality under the same government, and a government to themselves apart. This is merely saying that the question of government ought to be decided by the governed. One hardly knows what any division of the human race should be free to do, if not to determine, with which of the various collective bodies of human beings they choose to associate themselves. But, when a people are ripe for free institutions, there is a still more vital consideration. Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist. The influences which form opinions and decide political acts are different in the different sections of the country. An altogether different set of leaders have the confidence of one part of the country and of another. The same books, newspapers, pamphlets, speeches, do not reach them. One action does not know what opinions, or what instigations, are circulating in another. The same incidents, the same acts, the same system of government, affect them in different ways; and each fears more injury to itself from the other nationalities, than from the common arbiter, the State. Their mutual antipathies are generally much stronger than jealousy of the government. That any one of them feels aggrieved by the policy of the common ruler is sufficient to determine another to support that policy. Even if all are aggrieved, none feel that they can rely on the others for fidelity in a joint resistance; the strength of none is sufficient to resist alone, and each may reasonably think that it consults its own advantage most by bidding for the favor of the government against the rest. Above all, the grand and only effectual security in the last resort against the despotism of the government is in that case wanting; the sympathy of the army with the people. The military are the part of every community in whom, from the nature of the case, the distinction between their fellow countrymen and foreigners is the deepest and strongest. To the rest of the people, foreigners are merely strangers; to the soldier, they are men against whom he may be

called, at a week's notice, to fight for life or death. The difference to him is that between friends and foes — we may almost say between fellow men and another kind of animals: for as respects the enemy, the only law is that of force, and the only mitigation, the same as in the case of other animals — that of simple humanity. Soldiers to whose feelings half or three-fourths of the subjects of the same government are foreigners, will have no more scruple in mowing them down, and no more desire to ask the reason why, than they would have in doing the same thing against declared enemies. An army composed of various nationalities has no other patriotism than devotion to the flag. Such armies have been the executioners of liberty through the whole duration of modern history. The sole bond which holds them together is their officers, and the government which they serve; and their only idea, if they have any, of public duty, is obedience to orders. A government thus supported, by keeping its Hungarian regiments in Italy and its Italian in Hungary, can long continue to rule in both places with the iron rod of foreign conquerors.

If it be said that so broadly marked a distinction between what is due to a fellow countryman and what is due merely to a human creature is more worthy of savages than of civilized beings, and ought, with the utmost energy, to be contended against, no one holds that opinion more strongly than myself. But this object, one of the worthiest to which human endeavor can be directed, can never, in the present state of civilization, be promoted by keeping different nationalities of anything like equivalent strength, under the same government. In a barbarous state of society, the case is sometimes different. The government may then be interested in softening the antipathies of the races, that peace may be preserved, and the country more easily governed. But when there are either free institutions, or a desire for them, in any of the peoples artificially tied together, the interest of the government lies in an exactly opposite direction. It is then interested in keeping up and unvenoming their antipathies; that they may be prevented from coalescing, and it may be enabled to use some of them as tools for the enslavement of others. The Austrian Court

has now for a whole generation made these tactics its principal means of government; with what fatal success, at the time of the Vienna insurrection and the Hungarian contest, the world knows too well. Happily there are now signs that improvement is too far advanced to permit this policy to be any longer successful.

For the preceding reasons, it is in general a necessary condition of free institutions that the boundaries of governments should coincide in the main with those of nationalities. But several considerations are liable to conflict in practice with this general principle. In the first place, its application is often precluded by geographical hindrances. There are parts even of Europe, in which different nationalities are so locally intermingled, that it is not practicable for them to be under separate governments. The population of Hungary is composed of Magyars, Slovaks, Croats, Serbs, Roumans, and in some districts, Germans, so mixed up as to be incapable of local separation; and there is no course open to them but to make a virtue of necessity, and reconcile themselves to living together under equal rights and laws. Their community of servitude, which dates only from the destruction of Hungarian independence in 1849, seems to be ripening and disposing them for such an equal union. The German colony of East Prussia is cut off from Germany by part of the ancient Poland, and being too weak to maintain separate independence, must, if geographical continuity is to be maintained, be either under a non-German government, or the intervening Polish territory must be under a German one. Another considerable region in which the dominant element of the population is German, the provinces of Courland, Estonia, and Livonia, is condemned by its local situation to form part of a Slavonian state. In Eastern Germany itself there is a large Slavonic population: Bohemia is principally Slavonic, Silesia and other districts partially so. The most united country in Europe, France, is far from being homogeneous: independently of the fragments of foreign nationalities at its remote extremities, it consists, as language and history prove, of two portions, one occupied almost exclusively by a Gallo-Roman population, while

in the other the Frankish, Burgundian, and other Teutonic races form a considerable ingredient.

When proper allowance has been made for geographical exigencies, another more purely moral and social consideration offers itself. Experience proves that it is possible for one nationality to merge and be absorbed in another: and when it was originally an inferior and more backward portion of the human race, the absorption is greatly to its advantage. Nobody can suppose that it is not more beneficial to a Breton, or a Basque of French Navarre, to be brought into the current of the ideas and feelings of a highly civilized and cultivated people — to be a member of the French nationality, admitted on equal terms to all the privileges of French citizenship, sharing the advantages of French protection, and the dignity and prestige of French power — than to sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit, without participation or interest in the general movement of the world. The same remark applies to the Welshman or the Scottish Highlander, as members of the British nation.

Whatever really tends to the admixture of nationalities, and the blending of their attributes and peculiarities in a common union, is a benefit to the human race. Not by extinguishing types, of which, in these cases, sufficient examples are sure to remain, but by softening their extreme forms, and filling up the intervals between them. The united people, like a crossed breed of animals (but in a still greater degree, because the influences in operation are moral as well as physical), inherits the special aptitudes and excellences of all its progenitors, protected by the admixture from being exaggerated into the neighboring vices. But to render this admixture possible, there must be peculiar conditions. The combinations of circumstances which occur, and which affect the result, are various.

The nationalities brought together under the same government may be about equal in numbers and strength, or they may be very unequal. If unequal, the least numerous of the two may either be the superior in civilization, or the inferior. Supposing it to be superior, it may either, through that superiority, be able to acquire ascendancy over

the other, or it may be overcome by brute strength and reduced to subjection. This last is a sheer mischief to the human race, and one which civilized humanity with one accord should rise in arms to prevent. The absorption of Greece by Macedonia was one of the greatest misfortunes which ever happened to the world: that of any of the principal countries of Europe by Russia would be a similar one.

If the smaller nationality, supposed to be the more advanced in improvement, is able to overcome the greater, as the Macedonians, reinforced by the Greeks, did Asia, and the English India, there is often a gain to civilization; but the conquerors and the conquered cannot in this case live together under the same free institutions. The absorption of the conquerors in the less advanced people would be an evil: these must be governed as subjects, and the state of things is either a benefit or a misfortune, according as the subjugated people have or have not reached the state in which it is an injury not to be under a free government, and according as the conquerors do or do not use their superiority in a manner calculated to fit the conquered for a higher stage of improvement. This topic will be particularly treated of in a subsequent chapter.

When the nationality which succeeds in overpowering the other is both the most numerous and the most improved; and especially if the subdued nationality is small, and has no hope of reasserting its independence; then, if it is governed with any tolerable justice, and if the members of the more powerful nationality are not made odious by being invested with exclusive privileges, the smaller nationality is gradually reconciled to its position, and becomes amalgamated with the larger. No Bas-Breton, nor even any Alsatian, has the smallest wish at the present day to be separated from France. If all Irishmen have not yet arrived at the same disposition towards England, it is partly because they are sufficiently numerous to be capable of constituting a respectable nationality by themselves; but principally because, until of late years, they had been so atrociously governed, that all their best feelings combined with their bad ones in rousing bitter resentment against the Saxon rule. This disgrace

to England, and calamity to the whole empire, has, it may be truly said, completely ceased for nearly a generation. No Irishman is now less free than an Anglo-Saxon, nor has a less share of every benefit either to his country or to his individual fortunes, than if he were sprung from any other portion of the British dominions. The only remaining real grievance of Ireland, that of the State Church, is one which half, or nearly half, the people of the larger island have in common with them. There is now next to nothing, except the memory of the past, and the difference in the predominant religion, to keep apart two races, perhaps the most fitted of any two in the world to be the completing counterpart of one another. The consciousness of being at last treated not only with equal justice but with equal consideration is making such rapid way in the Irish nation as to be wearing off all feelings that could make them insensible to the benefits which the less numerous and less wealthy people must necessarily derive from being fellow citizens instead of foreigners to those who are not only their nearest neighbors, but the wealthiest, and one of the freest, as well as most civilized and powerful, nations of the earth.

The cases in which the greatest practical obstacles exist to the blending of nationalities are when the nationalities which have been bound together are clearly equal in numbers and in the other elements of power. In such cases, each, confiding in its strength, and feeling itself capable of maintaining an equal struggle with any of the others, is unwilling to be merged in it: each cultivates with party obstinacy its distinctive peculiarities; obsolete customs, and even declining languages, are revived, to deepen the separation; each deems itself tyrannized over if any authority is exercised within itself by functionaries of a rival race; and whatever is given to one of the conflicting nationalities is considered to be taken from all the rest. When nations, thus divided, are under a despotic government which is a stranger to all of them, or which, though sprung from one, yet feeling greater interest in its own power than in any sympathies of nationality, assigns no privilege to either nation and chooses its instruments indifferently

from all; in the course of a few generations, identity of situation often produces harmony of feeling, and the different races come to feel towards each other as fellow countrymen; particularly if they are dispersed over the same tract of country. But if the era of aspiration to free government arrives before this fusion has been effected, the opportunity has gone by for effecting it. From that time, if the unrecognized nationalities are geographically separate, and especially if their local position is such that there is no natural fitness or convenience in their being under the same government (as in the case of an Italian province under a French or German yoke), there is not only an obvious propriety, but, if either freedom or concord is cared for, a necessity, for breaking the connection altogether. There may be cases in which the provinces, after separation, might usefully remain united by a federal tie: but it generally happens that if they are willing to forge complete independence, and become members of a federation, each of them has other neighbors with whom it would prefer to connect itself, having more sympathies in common, if not also greater community of interest....

Chapter XVIII: Of the Government of Dependencies by a Free State

Free States, like all others, may possess dependencies, acquired either by conquest or by colonization; and our own is the greatest instance of the kind in modern history. It is a most important question, how such dependencies ought to be governed.

It is unnecessary to discuss the case of small posts, like Gibraltar, Aden, or Heligoland, which are held only as naval or military positions. The military or naval object is in this case paramount, and the inhabitants cannot, consistently with it, be admitted to the government of the place; though they ought to be allowed all liberties and privileges compatible with that restriction, including the free management of municipal affairs; and as a compensation for being locally sacrificed to the convenience of the governing State, should be admitted to equal rights with its native subjects in all other parts of the empire.

Outlying territories of some size and population, which are held as dependencies, that is, which are subject, more or less, to acts of sovereign power on the part of the paramount country, without being equally represented (if represented at all) in its legislature, may be divided into two classes. Some are composed of people of similar civilization to the ruling country; capable of, and ripe for, representative government: such as the British possessions in America and Australia. Others, like India, are still at a great distance from that state.

In the case of dependencies of the former class, this country has at length realized, in rare completeness, the true principle of government. England has always felt under a certain degree of obligation to bestow on such of her outlying populations as were of her own blood and language, and on some who were not, representative institutions formed in imitation of her own: but until the present generation, she has been on the same bad level with other countries as to the amount of self-government which she allowed them to exercise through the representative institutions that she conceded to them. She claimed to be the supreme arbiter even of their purely internal concerns, according to her own, not their, ideas of how those concerns could be best regulated. This practice was a natural corollary from the vicious theory of colonial policy — once common to all Europe, and not yet completely relinquished by any other people — which regarded colonies as valuable by affording markets for our commodities, that could be kept entirely to ourselves: a privilege we valued so highly, that we thought it worth purchasing by allowing to the colonies the same monopoly of our market for their own productions, which we claimed for our commodities in theirs. This notable plan for enriching them and ourselves, by making each pay enormous sums to the other, dropping the greatest part by the way, has been for some time abandoned. But the bad habit of meddling in the internal government of the colonies did not at once terminate when we relinquished the idea of making any profit

by it. We continued to torment them, not for any benefit to ourselves, but for that of a section or faction among the colonists: and this persistence in domineering cost us a Canadian rebellion, before we had the happy thought of giving it up. England was like an ill brought-up elder brother, who persists in tyrannizing over the younger ones from mere habit, till one of them, by a spirited resistance, though with unequal strength, gives him notice to desist. We were wise enough not to require a second warning. A new era in the colonial policy of nations began with Lord Durham's Report; the imperishable memorial of that nobleman's courage, patriotism, and enlightened liberality, and of the intellect and practical sagacity of its joint authors, Mr. Wakefield and the lamented Charles Buller.³

It is now a fixed principle of the policy of Great Britain, professed in theory and faithfully adhered to in practice, that her colonies of European race, equally with the parent country, possess the fullest measure of internal self-government. They have been allowed to make their own free representative constitutions, by altering in any manner they thought fit the already very popular constitutions which we had given them. Each is governed by its own legislature and executive, constituted on highly democratic principles. The veto of the Crown and of Parliament, though nominally reserved, is only exercised (and that very rarely) on questions which concern the empire, and not solely the particular colony. How liberal a construction has been given to the distinction between imperial and colonial questions is shown by the fact that the whole of the unappropriated lands in the regions behind our American and Australian colonies have been given up to the uncontrolled disposal of the colonial communities; though they might, without injustice, have been kept in the hands of the Imperial Government, to be administered for the greatest advantage of future emigrants from all parts of the empire. Every colony has thus as full power over its own affairs as it could have if it were a member of even the loosest federation; and much fuller than would belong to it

3 I am speaking here of the *adoption* of this improved policy, not, of course, of its original suggestion. The honor of having been its earliest champion belongs unquestionably to Mr. Roebuck.

under the Constitution of the United States, being free even to tax at its pleasure the commodities imported from the mother country. Their union with Great Britain is the slightest kind of federal union; but not a strictly equal federation, the mother country retaining to itself the powers of a Federal Government, though reduced in practice to their very narrowest limits. This inequality is, of course, as far as it goes, a disadvantage to the dependencies, which have no voice in foreign policy, but are bound by the decisions of the superior country. They are compelled to join England in war, without being in any way consulted previous to engaging in it...

Thus far, of the dependencies whose population is in a sufficiently advanced state to be fitted for representative government. But there are others which have not attained that state, and which, if held at all, must be governed by the dominant country, or by persons delegated for that purpose by it. This mode of government is as legitimate as any other, if it is the one which in the existing state of civilization of the subject people, most facilitates their transition to a higher stage of improvement. There are, as we have already seen, conditions of society in which a vigorous despotism is in itself the best mode of government for training the people in what is specifically wanting to render them capable of a higher civilization. There are others, in which the mere fact of despotism has indeed no beneficial effect, the lessons which it teaches having already been only too completely learnt; but in which, there being no spring of spontaneous improvement in the people themselves, their almost only hope of making any steps in advance depends on the chances of a good despot. Under a native despotism, a good despot is a rare and transitory accident: but when the dominion they are under is that of a more civilized people, that people ought to be able to supply it constantly. The ruling country ought to be able to do for its subjects all that could be done by a succession of absolute monarchs, guaranteed by irresistible force against the precariousness of tenure attendant on barbarous despotisms, and qualified by their genius to anticipate all that experience has taught to the more advanced nation. Such is the ideal rule of a

free people over a barbarous or semi-barbarous one. We need not expect to see that ideal realized; but unless some approach to it is, the rulers are guilty of a dereliction of the highest moral trust which can devolve upon a nation: and if they do not even aim at it, they are selfish usurpers, on a par in criminality with any of those whose ambition and rapacity have sported from age to age with the destiny of masses of mankind.

As it is already a common, and is rapidly tending to become the universal, condition of the more backward populations, to be either held in direct subjection by the more advanced, or to be under their complete political ascendancy; there are in this age of the world few more important problems than how to organize this rule, so as to make it a good instead of an evil to the subject people; providing them with the best attainable present government, and with the conditions most favorable to future permanent improvement. But the mode of fitting the government for this purpose is by no means so well understood as the conditions of good government in a people capable of governing themselves. We may even say that it is not understood at all...

It is always under great difficulties, and very imperfectly, that a country can be governed by foreigners; even when there is no extreme disparity, in habits and ideas, between the rulers and the ruled. Foreigners do not feel with the people. They cannot judge, by the light in which a thing appears to their own minds, or the manner in which it affects their feelings, how it will affect the feelings or appear to the minds of the subject population. What a native of the country, of average practical ability, knows as it were by instinct, they have to learn slowly, and after all imperfectly, by study and experience. The laws, the customs, the social relations, for which they have to legislate, instead of being familiar to them from childhood, are all strange to them...

The utmost they can do is to give some of their best men a commission to look after it; to whom the opinion of their own country can neither be much of a guide in the performance of their duty, nor a competent judge of the mode in which it has been performed...

10.3 Ernest Renan: *What is a Nation?* (1882)⁴

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We are told by certain political theorists that a nation is, above all, a dynasty representing a former conquest that has been at first accepted, and then forgotten, by the mass of the people. According to these politicians, the grouping of provinces effected by a dynasty, its wars, marriages, and treaties, ends with the dynasty that has formed it. It is quite true that most modern nations have been made by a family of feudal origin, which has married into the country and provided some sort of centralizing nucleus. The boundaries of France in 1789 were in no way natural or necessary. The large area that the House of Capet had added to the narrow strip accorded by the Treaty of Verdun was indeed the personal acquisition of that family. At the time when the annexations were made no one thought about natural limits, the right of nations, or the wishes of provinces. Similarly, the union of England, Ireland, and Scotland was a dynastic performance. The only reason why Italy took so long to become a nation was that, until the present century, none of her numerous reigning families became a centre of union. It is an odd fact that she derives the royal title from the obscure island of Sardinia,⁵ a land which is scarcely Italian. Holland, self-created by an act of heroic resolution, has nonetheless entered into a close bond of marriage with the House of Orange, and would run serious risks, should this union ever be endangered.

Is, however, such a law absolute? Doubtless, it is not. Switzerland and the United States which have been formed, like conglomerates, by successive additions, are based on no dynasty. I will not discuss the question insofar as it concerns France. One would have to be able to read the future in order to do so. Let us merely observe that this great French line of kings had become so thoroughly identified with the national life that, on the morrow of its downfall, the nation was able to subsist without it.

Furthermore, the eighteenth century had entirely changed the situation. After centuries of humiliation, man had recovered his ancient spirit, his self-respect, and the idea of his rights. The words “mother country” and “citizen” had regained their meaning. Thus it was possible to carry out the boldest operation ever performed in history—an operation that may be compared to what, in physiology, would be an attempt to bring back to its former life a body from which brain and heart had been removed.

It must, therefore, be admitted that a nation can exist without any dynastic principle, and even that nations formed by dynasties can be separated from them without thereby ceasing to exist. The old principle, which takes into account only the fight of princes, can no longer be maintained: And, besides dynastic right, there exists also national right. On what criterion is this national right to be based? By what sign is it to be known? And from what tangible fact is it properly to be derived?

1. Many will boldly reply, from race. The artificial divisions, they say, the results of feudalism, royal marriages, and diplomatic congresses, have broken down. Race is what remains stable and fixed; and this it is that constitutes a right and a lawful title. The Germanic race, for example, according to this theory, has the right to retake the scattered members of the Germanic family, even when these members do not ask for reunion. The right of the Germanic family over such-and-such a province is better than the right of its inhabitants over themselves. A sort of primordial right is thus created analogous to the divine right of kings; and the principle of ethnography is substituted for that of nations. This is a very grave error, and if it should prevail, it would spell the ruin of European civilization. The principle of the primordial right of race is as narrow and as fraught with danger for true progress as the principle of nations is just and legitimate.

We admit that, among the tribes and cities of the ancient world, the fact of race was of capital importance. The ancient tribe and city were but an

4 Ernest Renan, *Qu'est-ce qu'une nation?*, translated by Ethan Rundell (Paris: Presses-Pocket, 1992).

5 The house of Savoy owes its royal title solely to the possession of Sardinia (1720).

extension of the family. In Sparta and Athens all citizens were related more or less closely to each other. It was the same among the Beni-Israel; and it is still so among the Arab tribes. But let us leave Athens, Sparta, and the Jewish tribe and turn to the Roman Empire. Here we have quite a different state of affairs. This great agglomeration of completely diverse towns and provinces, formed in the first place by violence and then held together by common interests, cuts at the very root of the racial idea. Christianity, characteristically universal and absolute, works even more effectively in the same direction. It contracts a close alliance with the Roman Empire, and, under the influence of these two incomparable unifying agents, the ethnographical argument is for centuries dismissed from the government of human affairs.

In spite of appearances, the barbarian invasions were a step further on this road. The barbarian kingdoms which were then cut out have nothing ethnographic about them; they were decided by the forces or whims of the conquerors, who were completely indifferent with regard to the race of the peoples whom they subjugated. Charlemagne reconstructed in his own way what Rome had already built, viz., a single empire composed of the most diverse races. The authors of the Treaty of Verdun, calmly drawing their two long lines from north to south, did not pay the slightest attention to the race of the peoples to right or left of them. The frontier changes which took place in the later Middle Ages were also devoid of all ethnographic tendencies. Let it be granted that the consistent policy of the Capets managed more or less to gather together, under the name of France, the territories of ancient Gaul; yet this was by no means the consequence of any tendency on the part of their inhabitants to unite themselves with their kindred. Dauphiné, Bresse, Provence, and Franche-Comté no longer remembered any common origin. The consciousness of Gallic race had been lost since the second century A.D., and it is only in modern times, and retrospectively, that the erudite have unearthed the peculiarities of the Gallic character.

Ethnographic considerations have, therefore, played no part in the formation of modern nations.

France is Celtic, Iberic, and Germanic. Germany is Germanic, Celtic, and Slav. Italy is the country in which ethnography finds its greatest difficulties. Here Gauls, Etruscans, Pelasgians, and Greeks are crossed in an unintelligible medley. The British Isles, taken as a whole, exhibit a mixture of Celtic and Germanic blood, the proportions of which are particularly difficult to define.

The truth is that no race is pure, and that to base politics on ethnographic analysis is tantamount to basing it on a chimera. The noblest countries, England, France, and Italy, are those where breeds are most mixed. Is Germany an exception in this respect? Is she a purely Germanic country? What a delusion to suppose it! All the South was Gallic; and all the East, starting from the Elbe, is Slav. And as for those areas which are said to be really pure from the racial point of view, are they in fact so? Here we touch on one of those problems concerning which it is most important to have clear ideas and to prevent misunderstandings....

I like ethnography very much, and find it a peculiarly interesting science. But as I wish it to be free, I do not wish it to be applied to politics. In ethnography, as in all branches of learning, systems change. It is the law of progress. Should nations then also change together with the systems? The boundaries of states would follow the fluctuations of the science; and patriotism would depend on a more or less paradoxical dissertation. The patriot would be told: "You were mistaken: You shed your blood in such-and-such a cause; you thought you were a Celt; no, you are a German." And then, ten years later, they will come and tell you that you are a Slav. Lest we put too great a strain upon science, let us excuse the lady from giving an opinion on problems in which so many interests are involved. For you may be sure that, if you make her the handmaid of diplomacy, you will often catch her in the very act of granting other favours. She has better things to do: So let us ask her just to tell the truth.

2. What we have said about race, applies also to language. Language invites union, without, however, compelling it. The United States and England, as also Spanish America and Spain, speak the same language without forming a single nation.

Switzerland, on the contrary, whose foundations are solid because they are based on the assent of the various parties, contains three or four languages. There exists in man a something which is above language: and that is his will. The will of Switzerland to be united, in spite of the variety of these forms of speech, is a much more important fact than a similarity of language, often attained by vexatious measures.

It is to the honour of France that she has never tried to attain unity of language by the use of coercion. Is it impossible to cherish the same feelings and thoughts and to love the same things in different languages? We were talking just now of the objections to making international politics dependent on ethnography. It would be no less objectionable to make them depend on comparative philology. Let us allow full liberty of discussion to these interesting branches of learning, and not mix them up with what would disturb their serenity. The political importance ascribed to languages comes from regarding them as tokens of race. Nothing could be more unsound. In Prussia, where nothing but German is now spoken, Russian was spoken a few centuries ago; in Wales, English is spoken; in Gaul and Spain, the original speech of *Alba Longa*; in Egypt, Arabic; and we could cite any number of other examples. Even in the beginning of things, similarity of language did not imply that of race. Take the proto-Aryan or proto-Semitic tribe. It contained slaves speaking the same language as their masters, whereas the slave very often differed from his master in race. We must repeat that these divisions into Indo-European, Semitic, and other languages, which have been laid down by comparative philologists with such admirable acumen, do not coincide with those laid down by anthropology. Languages are historical formations which afford little clue to the descent of those who speak them and which, in any case, cannot be permitted to fetter human liberty, when it is a question of deciding with what family one is to be linked for life and death.

This exclusive importance attributed to language has, like the exaggerated attention paid to race, its dangers and its objections. If you overdo it, you shut yourself up within a prescribed culture which you regard as the national culture. You are confined and immured, having left the open air of the great world outside to shut yourself up in a conventicle together with your compatriots. Nothing could be worse for the mind; and nothing could be more untoward for civilization. Let us not lose sight of this fundamental principle that man, apart from being penned up within the bounds of one language or another, apart from being a member of one race or another, or the follower of one culture or another, is above all a reasonable moral being. Above French, German, or Italian culture, there stands human culture. Consider the great men of the Renaissance. They were neither French, nor Italian, nor German. By their intercourse with the ancient world, they had rediscovered the secret of the true education of the human mind, and to that they devoted themselves body and soul. How well they did!

3. Nor can religion provide a satisfactory basis for a modern nationality. In its origin, religion was connected with the very existence of the social group, which itself was an extension of the family. The rites of religion were family rites. The religion of Athens was the cult of Athens itself, of its mythical founders, its laws and customs. This religion, which did not involve any dogmatic theology, was, in the full sense of the words, a state religion. Those who refused to practice it were not Athenians. At bottom it was the cult of the personified Acropolis; and to swear on the altar of *Aglauros*⁶ amounted to an oath to die for one's country. This religion was the equivalent of our drawing lots for military service or of our cult of the national flag. To refuse to participate in such cult would have been tantamount to a refusal nowadays to serve in the army, and to a declaration that one was not an Athenian. On the other hand, it is clear that such a cult as this meant nothing for those who were not Athenians; so there was no proselytizing to compel foreigners

6 *Aglauros*, who gave her life to save her country, represents the Acropolis itself.

to accept it, and the slaves of Athens did not practice it. The same was the case in certain small republics of the Middle Ages. No man was a good Venetian if he did not swear by St. Mark; nor a good citizen of Amalfi if he did not set St. Andrew above all the other saints in Paradise. In these small societies, acts, which in later times became the grounds for persecution and tyranny, were justifiable and were as trivial as it is with us to wish the father of the family many happy returns of his birthday or a happy new year.

What was true of Sparta and Athens was no longer so in the kingdoms that emerged from the conquests of Alexander, and still less so in the Roman Empire. The persecutions carried out by Antiochus Epiphanes to induce the Eastern world to worship the Olympian Jove, like those of the Roman Empire to maintain the farce of a state religion, were mistaken, criminal, and really absurd. Nowadays the situation is perfectly clear, since the masses no longer have any uniform belief. Everyone believes and practices religion in his own way according to his capacities and wishes. State religion has ceased to exist; and a man can be a Frenchman, an Englishman, or a German, and at the same time a Catholic, a Protestant, or a Jew, or practice no form of worship at all. Religion has become a matter to be decided by the individual according to his conscience, and nations are no longer divided into Catholic and Protestant. Religion which, fifty-two years ago, was so important a factor in the formation of Belgium, is still equally so in the heart of every man; but it is now barely to be reckoned among the reasons that determine national frontiers.

4. Community of interest is certainly a powerful bond between men. But do interests suffice to make a nation? I do not believe it. Community of interest brings about commercial treaties. Nationality, which is body and soul both together, has its sentimental side: And a Customs Union is not a country.

5. Geography, and what we call natural frontiers, certainly plays a considerable part in the division of nations. Geography is one of the essential factors of history. Rivers have guided races: Mountains have impeded them. The former have favoured,

while the latter have restricted, historic movements. But can one say, as some people believe, that a nation's boundaries are to be found written on the map, and that it has the right to award itself as much as is necessary to round off certain outlines, or to reach such-and-such a mountain or river, which are regarded as in some way dispensing the frontier *a priori*? I know no doctrine more arbitrary or fatal than this, which can be used to justify all kinds of violence. In the first place, is it the mountains, or is it the rivers that constitute these alleged natural frontiers? It is indisputable that mountains separate; but rivers tend rather to bring together. Then again all mountains cannot divide states. Which are those that separate and those that do not? From Biarritz to Tornea there is not one estuary which is more like a boundary than another. If History had so decreed, then the Loire, the Seine, the Meuse, the Elbe, and the Oder would have, as much as the Rhine has, this character of national frontier, which has been the cause of so many infringements of that fundamental right, which is the will of men. People talk of strategic grounds. Nothing is absolute; and it is evident that much must be conceded to necessity. But these concessions must not go too far. Otherwise, everyone will demand what suits him from a military point of view and we shall have endless warfare. No; it is not the soil any more than the race which makes a nation. The soil provides the substratum, the field for struggle and labour: Man provides the soul. Man is everything in the formation of this sacred thing that we call a people. Nothing that is material suffices here. A nation is a spiritual principle, the result of the intricate workings of history; a spiritual family and not a group determined by the configuration of the earth.

We have now seen those things which do not suffice to create such a spiritual principle. They are race, language, interests, religious affinity, geography, and military necessity. What more then is required? In view of what I have already said, I shall not have to detain you very much longer.

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A nation is a soul, a spiritual principle. Two things, which are really only one, go to make up this soul

or spiritual principle. One of these things lies in the past, the other in the present. The one is the possession in common of a rich heritage of memories; and the other is actual agreement, the desire to live together, and the will to continue to make the most of the joint inheritance. Man, gentleman, cannot be improvised. The nation, like the individual, is the fruit of a long past spent in toil, sacrifice, and devotion. Ancestor worship is of all forms the most justifiable, since our ancestors have made us what we are. A heroic past, great men, and glory—I mean real glory—these should be the capital of our company when we come to found a national idea. To share the glories of the past, and a common will in the present; to have done great deeds together, and to desire to do more—these are the essential conditions of a people's being. Love is in proportion to the sacrifices one has made and the evils one has borne. We love the house that we have built and that we hand down to our successors. The Spartan song "We are what ye were, and we shall be what ye are," is, in its simplicity, the abridged version of every national anthem.

In the past, a heritage of glory and of grief to be shared; in the future, one common plan to be realized; to have suffered, rejoiced, and hoped together; these are things of greater value than identity of custom-houses and frontiers in accordance with strategic notions. These are things which are understood, in spite of differences in race and language. I said just now "to have suffered together," for indeed common suffering unites more strongly than common rejoicing. Among national memories, sorrows have greater value than victories; for they impose duties and demand common effort.

Thus we see that a nation is a great solid unit, formed by the realization of sacrifices in the past, as well as of those one is prepared to make in the future. A nation implies a past; while, as regards the present, it is all contained in one tangible fact, viz., the agreement and clearly expressed desire to continue a life in common. The existence of a nation is (if you will forgive me the metaphor) a daily plebiscite, just as that of the individual is a continual affirmation of life. I am quite aware that this is less metaphysical than the doctrine of divine

right, and smacks less of brute force than alleged historic right. According to the notions that I am expounding, a nation has no more right than a king to say to a province: "You belong to me; so I will take you." A province means to us its inhabitants; and if anyone has a right to be consulted in the matter, it is the inhabitant. It is never to the true interest of a nation to annex or keep a country against its will. The people's wish is after all the only justifiable criterion, to which we must always come back.

We have excluded from politics the abstract principles of metaphysics and theology; and what remains? There remains man, with his desires and his needs. But you will tell me that the consequences of a system that puts these ancient fabrics at the mercy of the wishes of usually unenlightened minds, will be the secession and ultimate disintegration of nations. It is obvious that in such matters no principles should be pushed too far, and that truths of this nature are applicable only as a whole and in a very general sort of way. Human wishes change indeed: But what in this world does not? Nations are not eternal. They have had beginnings and will have ends; and will probably be replaced by a confederation of Europe. But such is not the law of the age in which we live. Nowadays it is a good, and even a necessary, thing that nations should exist. Their existence is the guarantee of liberty, which would be lost, if the world had but one law and one master.

By their various, and often contrasting, attainments, the nations serve the common task of humanity; and all play some instrument in that grand orchestral concert of mankind, which is, after all, the highest ideal reality that we attain. Taken separately, they all have their weak points; and I often tell myself that a man who should have the vices that are held to be virtues in nations, a man battenning on empty glory, and so jealous, selfish, and quarrelsome as to be ready to draw his sword at the slightest provocation, would be the most intolerable creature. But such discordant details vanish when all is taken together. What sufferings poor humanity has endured and what trials await it yet! May it be guided by the spirit of wisdom and preserved from the countless dangers that beset the path!

And now, gentlemen, let me sum it all up. Man is the slave neither of his race, nor his language, nor his religion, nor of the windings of his rivers and mountain ranges. That moral consciousness which we call a nation is created by a great assemblage of men with warm hearts and healthy minds: And as long as this moral consciousness can prove its strength by the sacrifices demanded from the individual for the benefit of the community, it is justifiable and has the right to exist. If doubts arise concerning its frontiers, let the population in dispute be consulted: for surely they have a right to a say in the matter. This will bring a smile to the lips of the transcendental politicians, those infallible beings who spend their lives in self-deception and who, from the summit of their superior principles, cast a pitying eye upon our commonplaces. "Consult the population! Stuff and nonsense! This is only another of these feeble French ideas that aim at replacing diplomacy and war by methods of infantile simplicity." Well, gentlemen, let us wait a while. Let the kingdom of the transcendentalists endure for its season; and let us learn to submit to the scorn of the mighty. It may be, that after many fruitless fumbings, the world will come back to our modest empirical solutions. The art of being right in the future is, at certain times, the art of resigning oneself to being old-fashioned.

10.4 Rosa Luxemburg: *The National Question and Autonomy* (1909)⁷

I. The Right of Nations to Self-Determination

Among other problems, the 1905 revolution in Russia has brought into focus the nationality question. Until now, this problem has been urgent only in Austria-Hungary. At present, however, it has become crucial also in Russia, because the revolutionary development made all classes and all political parties acutely aware of the need to solve the nationality question as a matter of practical politics. All the newly formed or forming parties in

Russia, be they radical, liberal, or reactionary, have been forced to include in their programs some sort of a position on the nationality question, which is closely connected with the entire complex of the state's internal and external policies. For a workers' party, nationality is a question both of program and of class organization. The position a workers' party assumes on the nationality question, as on every other question, must differ in method and basic approach from the positions of even the most radical bourgeois parties, and from the positions of the pseudo-socialistic, petit bourgeois parties. Social democracy, whose political program is based on the scientific method of historical materialism and the class struggle, cannot make an exception with respect to the nationality question. Moreover, it is only by approaching the problem from the standpoint of scientific socialism that the politics of social democracy will offer a solution which is essentially uniform, even though the program must take into account the wide variety of forms of the nationality question arising from the social, historical, and ethnic diversity of the Russian empire.

In the program of the Social Democratic Labor Party (RSDLP) of Russia, such a formula, containing a general solution of the nationality question in all its particular manifestations, is provided by the ninth point; this says that the party demands a democratic republic whose constitution would insure, among other things, "*that all nationalities forming the state have the right to self-determination.*"

This program includes two more extremely important propositions on the same matter. These are the seventh point, which demands the abolition of classes and the full legal equality of all citizens without distinction of *sex, religion, race, or nationality*, and the eighth point, which says that the several ethnic groups of the state should have the right to schools conducted in their respective national languages at state expense, and the right to use their languages at assemblies and on an equal level with the state language in all state and public functions. Closely connected to the nationality question is the

⁷ Rosa Luxemburg, *The National Question – Selected Writings by Rosa Luxemburg*, edited and introduced by Horace B. Davis, (New York: Monthly Review Press, 1976).

third point of the program, which formulates the demand for wide self-government on the local and provincial level in areas which are characterized by special living conditions and by the special composition of their populations. Obviously, however, the authors of the program felt that the equality of all citizens before the law, linguistic rights, and local self-government were not enough to solve the nationality problem, since they found it necessary to add a special paragraph granting each nationality the “right to self-determination.”

What is especially striking about this formula is the fact that it doesn't represent anything specifically connected with socialism nor with the politics of the working class. “The right of nations to self-determination” is at first glance a paraphrase of the old slogan of bourgeois nationalism put forth in all countries at all times: “the right of nations to freedom and independence.”...

//.

The general and cliché-like character of the ninth point in the program of the Social Democratic Labor Party of Russia shows that this way of solving the question is foreign to the position of Marxian socialism. A “right of nations” which is valid for all countries and all times is nothing more than a metaphysical cliché of the type of “rights of man” and “rights of the citizen.” Dialectic materialism, which is the basis of scientific socialism, has broken once and for all with this type of “eternal” formula. For the historical dialectic has shown that there are no “eternal” truths and that there are no “rights.” In the words of Engels, “What is good in the here and now, is an evil somewhere else, and vice versa” — or, what is right and reasonable under some circumstances becomes nonsense and absurdity under others. Historical materialism has taught us that the real content of these “eternal” truths, rights, and formulae is determined only by the *material* social conditions of the environment in a given historical epoch.

On this basis, scientific socialism has revised the entire store of democratic clichés and ideological metaphysics inherited from the bourgeoisie. Present-day social democracy long since stopped

regarding such phrases as “democracy,” “national freedom,” “equality,” and other such beautiful things as eternal truths and laws transcending particular nations and times. On the contrary, Marxism regards and treats them only as expressions of certain definite historical conditions, as categories which, in terms of their material content and therefore their political value, are subject to constant change, which is the *only* “eternal” truth.

When Napoleon or any other despot of his ilk uses a plebiscite, the extreme form of political democracy, for the goals of Caesarism, taking advantage of the political ignorance and economic subjection of the masses, we do not hesitate for a moment to come out wholeheartedly against that “democracy,” and are not put off for a moment by the majesty or the omnipotence of the people, which, for the metaphysicians of bourgeois democracy, is something like a sacrosanct idol.

When a German like Tassendorf or a tsarist gendarme, or a “truly Polish” National Democrat defends the “personal freedom” of strikebreakers, protecting them against the moral and material pressure of organized labor, we don't hesitate a minute to support the latter, granting them the fullest moral and historical right to *force* the unenlightened rivals into solidarity, although from the point of view of formal liberalism, those “willing to work” have on their side the right of “a free individual” to do what reason, or unreason, tells them.

When, finally, liberals of the Manchester School demand that the wage worker be left completely to his fate in the struggle with capital in the name of “the equality of citizens” we unmask that metaphysical cliché which conceals the most glaring economic inequality, and we demand, point-blank, the legal protection of the class of wage workers, thereby clearly breaking with formal “equality before the law.”

The nationality question cannot be an exception among all the political, social, and moral questions examined in this way by modern socialism. It cannot be settled by the use of some vague cliché, even such a fine-sounding formula as “the right of all nations to self-determination.” For such a formula expresses either absolutely nothing,

so that it is an empty, non-committal phrase, or else it expresses the unconditional duty of socialists to support all national aspirations, in which case it is simply false.

On the basis of the general assumptions of historical materialism, the position of socialists with respect to nationality problems depends primarily on the concrete circumstances of each case, which differ significantly among countries, and also change in the course of time in each country...

A glaring example of how the change of historical conditions influences the evaluation and the position of socialists with respect to the nationality question is the so-called Eastern question. During the Crimean War in 1855, the sympathies of all democratic and socialist Europe were on the side of the Turks and against the South Slavs who were seeking their liberty. The "right" of all nations to freedom did not prevent Marx, Engels, and Liebknecht from speaking against the Balkan Slavs and from resolutely supporting the integrity of the Turks. For they judged the national movements of the Slavic peoples in the Turkish empire not from the standpoint of the "eternal" sentimental formulae of liberalism, but from the standpoint of the material conditions which determined the *content* of these national movements...

III.

What is more, in taking such a stand Marx and Engels were not at all indulging in party or class egoism, and were not sacrificing entire nations to the needs and perspectives of Western European democracy, as it might have appeared.

It is true that it sounds much more generous, and is more flattering to the overactive imagination of the young "intellectual," when the socialists announce a general and universal introduction of freedom for all existing suppressed nations. But the tendency to grant all peoples, countries, groups, and all human creatures the right to freedom, equality, and other such joys by one sweeping stroke of the pen, is characteristic only of the youthful period of the socialist movement, and most of all of the phraseological bravado of anarchism.

The socialism of the modern working class, that is, scientific socialism, takes no delight in the radical and wonderful-sounding solutions of social and national questions, but examines primarily the real issues involved in these problems...

Actually, even if as socialists we recognized the immediate right of all nations to independence, the fates of nations would not change an iota because of this. The "right" of a nation to freedom as well as the "right" of the worker to economic independence are, under existing social conditions, only worth as much as the "right" of each man to eat off gold plates, which, as Nicolaus Chernyshevski wrote, he would be ready to sell at any moment for a ruble. In the 1840s the "right to work" was a favorite postulate of the Utopian Socialists in France, and appeared as an immediate and radical way of solving the social question. However, in the Revolution of 1848 that "right" ended, after a very short attempt to put it into effect, in a terrible fiasco, which could not have been avoided even if the famous "national workshops" had been organized differently. An analysis of the real conditions of the contemporary economy, as given by Marx in his *Capital*, must lead to the conviction that even if present-day governments were forced to declare a universal "right to work," it would remain only a fine-sounding phrase, and not one member of the rank and file of the reserve army of labor waiting on the sidewalk would be able to make a bowl of soup for his hungry children from that right.

Today, social democracy understands that the "right to work" will stop being an empty sound only when the capitalist regime is abolished, for in that regime the chronic unemployment of a certain part of the industrial proletariat is a necessary condition of production. Thus, social democracy does not demand a declaration of that imaginary "right" on the basis of the existing system, but rather strives for the abolition of the system itself by the class struggle, regarding labor organizations, unemployment insurance, etc., only as temporary means of help.

In the same way, hopes of solving all nationality questions within the capitalist framework by insuring to all nations, races, and ethnic groups the

possibility of “self-determination” is a complete utopia. And it is a utopia from the point of view that the objective system of political and class forces condemns many a demand in the political program of social democracy to be unfeasible in practice. For example, important voices in the ranks of the international workers’ movement have expressed the conviction that a demand for the universal introduction of the eight-hour day by legal enactment has no chance of being realized in bourgeois society because of the growing social reaction of the ruling classes, the general stagnation of social reforms, the rise of powerful organizations of businessmen, etc. Nonetheless, no one would dare call the demand for the eight-hour day a utopia, because it is in complete accordance with the progressive development of bourgeois society.

However, to resume: The actual possibility of “self-determination” for all ethnic groups or otherwise defined nationalities is a utopia precisely because of the trend of historical development of contemporary societies. Without examining those distant times at the dawn of history when the nationalities of modern states were constantly moving about geographically, when they were joining, merging, fragmenting, and trampling one another, the fact is that all the ancient states without exception are, as a result of that long history of political and ethnic upheavals, extremely mixed with respect to nationalities. Today, in each state, ethnic relics bear witness to the upheavals and intermixtures which characterized the march of historical development in the past.... Historical development, especially the modern development of capitalism, does not tend to return to each nationality its independent existence, but moves rather in the opposite direction....

The development of *world powers*, a characteristic feature of our times growing in importance along with the progress of capitalism, from the very outset condemns all small nations to political impotence. Apart from a few of the most powerful nations, the leaders in capitalist development, which possess the spiritual and material resources necessary to maintain their political and economic independence, “self-determination,” the independent existence of smaller and petty nations, is an illusion,

and will become even more so. The return of all, or even the majority of the nations which are today oppressed, to independence would only be possible if the existence of small states in the era of capitalism had any chances or hopes for the future. Besides, the big-power economy and politics — a condition of survival for the capitalist states — turn the politically independent, formally equal, small European states into mutes on the European stage and more often into scapegoats. Can one speak with any seriousness of the “self-determination” of peoples which are formally independent, such as Montenegrins, Bulgarians, Rumanians, the Serbs, the Greeks, and, as far as that goes, even the Swiss, whose very independence is the product of the political struggles and diplomatic game of the “Concert of Europe?” From this point of view, the idea of insuring all “nations” the possibility of self-determination is equivalent to reverting from Great-Capitalist development to the small medieval states, far earlier than the fifteenth and sixteenth centuries.

The other principal feature of modern development, which stamps such an idea as Utopian, is capitalist *imperialism*. The example of England and Holland indicates that under certain conditions a capitalist country can even completely skip the transition phase of “national state” and create at once, in its manufacturing phase, a colony-holding state. The example of England and Holland, which, at the beginning of the seventeenth century, had begun to acquire colonies, was followed in the eighteenth and nineteenth centuries by all the great capitalist states. The fruit of that trend is the continuous destruction of the independence of more and more new countries and peoples, of entire continents.

The very development of international trade in the capitalist period brings with it the inevitable, though at times slow ruin of all the more primitive societies, destroys their historically existing means of “self-determination,” and makes them dependent on the crushing wheel of capitalist development and world politics....

A general attempt to divide all existing states into national units and to re-tailor them on the model of national states and statelets is a completely hopeless, and historically speaking, reactionary undertaking.

IV. ... In a class society, "the nation" as a homogeneous sociopolitical entity does not exist. Rather, there exist within each nation, classes with antagonistic interests and "rights." There literally is not one social area, from the coarsest material relationships to the most subtle moral ones, in which the possessing class and the class conscious proletariat hold the same attitude, and in which they appear as a consolidated "national" entity. In the sphere of economic relations, the bourgeois classes represent the interests of exploitation — the proletariat the interests of work. In the sphere of legal relations, the cornerstone of bourgeois society is private property, the interest of the proletariat demands the emancipation of the propertyless man from the domination of property. In the area of the judiciary, bourgeois society represents class "justice," the justice of the well-fed and the rulers; the proletariat defends the principle of taking into account social influences on the individual, of humaneness. In international relations, the bourgeoisie represents the politics of war and partition, and at the present stage, a system of trade war; the proletariat demands a politics of universal peace and free trade. In the sphere of the social sciences and philosophy, bourgeois schools of thought and the school representing the proletariat stand in diametric opposition to each other. The possessing classes have their worldview; it is represented by idealism, metaphysics, mysticism, eclecticism; the modern proletariat has its theory — dialectic materialism. Even in the sphere of so-called universal conditions — in ethics, views on art, on behavior — the interests, worldview, and ideals of the bourgeoisie and those of the enlightened proletariat represent two camps, separated from each other by an abyss. And whenever the formal strivings and the interests of the proletariat and those of the bourgeoisie (as a whole or in its most progressive part) seem identical — for example, in the field of democratic aspirations — there, under the identity of forms and slogans, is hidden the most complete divergence of contents and essential politics.

There can be no talk of a collective and uniform will, of the self-determination of the

"nation" in a society formed in such a manner. If we find in the history of modern societies "national" movements, and struggles for "national interests," these are usually class movements of the ruling strata of the bourgeoisie, which can in any given case represent the interest of the other strata of the population only insofar as under the form of "national interests" it defends progressive forms of historical development, and insofar as the working class has not yet distinguished itself from the mass of the "nation" (led by the bourgeoisie) into an independent, enlightened political class...

For social democracy, the nationality question is, like all other social and political questions, primarily a *question of class interests*...

Society will win the ability to freely determine its national existence when it has the ability to determine its political being and the conditions of its creation. "Nations" will control their historical existence when human society controls its social processes.

Therefore, the analogy which is drawn by partisans of the "right of nations to self-determination" between that "right" and all democratic demands, like the right of free speech, free press, freedom of association and of assembly, is completely incongruous. These people point out that we support the freedom of association because we are the party of political freedom; but we still fight against hostile bourgeois parties. Similarly, they say, we have the democratic duty to support the self-determination of nations, but this fact does not commit us to support every individual tactic of those who fight for self-determination.

The above view completely overlooks the fact that these "rights," which have a certain superficial similarity, lie on completely different historical levels. The rights of association and assembly, free speech, the free press, etc., are the legal forms of existence of a mature bourgeois society. But "the right of nations to self-determination" is only a metaphysical formulation of an idea which in bourgeois society is completely nonexistent and can be realized only on the basis of a socialist regime....

V. Let us take a concrete example in an attempt to apply the principle that the “nation” should “determine itself.”

With respect to Poland at the present stage of the revolution, one of the Russian Social Democrats belonging to the editorial committee of the now defunct paper, *Iskra*, in 1906 explained the concept of the indispensable Warsaw constituent assembly in the following way:

If we start from the assumption that the political organization of Russia is the decisive factor determining the current oppression of the nationalities, then we must conclude that the proletariat of the oppressed nationalities and the annexed countries should be extremely active in the organization of an all-Russian constituent assembly.

This assembly could, if it wished, carry out its revolutionary mission, and break the fetters of force with which tsardom binds to itself the oppressed nationalities.

*And there is no other satisfactory, that is, revolutionary way of solving that question than by implementing the rights of the nationalities to determine their own fate.*⁸ The task of a united proletarian party of all nationalities in the assembly will be to bring about such a solution of the nationality question, and this task can be realized by the Party only insofar as it is based on the movement of the masses, on the pressure they put on the constituent assembly...

The presentation by the proletariat of the demand for a constituent assembly for Poland should not be taken to mean that the Polish nation would be represented in the all-Russian assembly by any delegation of the Warsaw sejm.

I think that such representation in the all-Russian assembly would not correspond to the interests of revolutionary development. It

would join the proletariat and bourgeois elements of the Polish sejm by bonds of mutual solidarity and responsibility, in contradiction to the real mutual relations of their interests.

In the all-Russian assembly, the proletariat and bourgeoisie of Poland should not be represented by one delegation. But this would occur even if a delegation were sent from the sejm to an assembly which included representatives of all the parties of the sejm proportionally to their numbers. In this case, the direct and independent representation of the Polish proletariat in the assembly would disappear, and the very creation of real political parties in Poland would be made difficult. Then the elections to the Polish sejm, whose main task is to define the political relations between Poland and Russia, would not show the political and social faces of the leading parties, as elections to an all-Russian assembly could do; for the latter type of elections would advance, besides the local, partial, historically temporary and specifically national questions, *the general questions of politics and socialism, which really divide contemporary societies.*⁹

The Russian Social Democratic Labor Party leaves the solution of the Polish question up to the Polish “nation.” The Polish Socialists should not pick it up but try, as hard as they can, to solve this question according to the interests and will of the proletariat. However, the party of the Polish proletariat is organizationally tied to the all-state party, for instance, the Social Democracy of the Kingdom of Poland and Lithuania is a part of the Russian Social Democratic Labor Party...

Let us suppose for the sake of argument, that in the federal constituent assembly, two contradictory programs are put forth from Poland: the autonomous program of national democracy and the autonomous program of Polish social democracy,

8 Emphasis in the entire citation is Luxemburg's.

9 Here as everywhere I speak of a definite manner of solving the nationality question for Poland, not touching those changes which may prove themselves indispensable while resolving this question for other nations. [Note by the author of the cited article.]

which are quite at odds with respect to internal tendency as well as to political formulation. What will the position of Russian social democracy be with regard to them? Which of the programs will it recognize as an expression of the will and “self-determination” of the Polish “nation?” Polish social democracy never had any pretensions to be speaking in the name of the “nation.” National democracy comes forth as the expresser of the “national” will. Let us also assume for a moment that this party wins a majority at the elections to the constituent assembly by taking advantage of the ignorance of the petit bourgeois elements as well as certain sections of the proletariat. In this case, will the representatives of the all-Russian proletariat, complying with the requirements of the formula of their program, come out in favor of the proposals of national democracy and go against their own comrades from Poland? Or will they associate themselves with the program of the Polish proletariat, leaving the “right of nations” to one side as a phrase which binds them to nothing? Or will the Polish Social Democrats be forced, in order to reconcile these contradictions in their program, to come out in the Warsaw constituent assembly, as well as in their own agitation in Poland, in favor of their own autonomous program, but in the federal constituent assembly, as members well aware of the discipline of the Social Democratic Party of Russia, for the program of national democracy, that is, against their own program?

Let us take yet another example. Examining the question in a purely abstract form, since the author has put the problem on that basis, let us suppose, to illustrate the principle, that in the national assembly of the Jewish population of Russia — for why should the right to create separate constituent assemblies be limited to Poland, as the author wants? — the Zionist Party somehow wins a majority and demands that the all-Russian constituent assembly vote funds for the emigration of the entire Jewish community. On the other hand, the class representatives of the Jewish proletariat

firmly resist the position of the Zionists as a harmful and reactionary utopia. What position will Russian social democracy take in this conflict?

It will have two choices. The “right of nations to self-determination” might be essentially identical with the determination of the national question by the proletariat in question — that is, with the nationality program of the concerned Social Democratic parties. In such a case, however, the formula of the “right of nations” in the program of the Russian party is only a mystifying paraphrase of the class position. Or, alternatively, the Russian proletariat as such could recognize and honor only the will of the national *majorities* of the nationalities under Russian subjugation, even though the proletariat of the respective “nations” should come out against this majority with their own class program. And in this case, it is a political dualism of a special type; it gives dramatic expression to the discord between the “national” and class positions; it points up the conflict between the position of the federal workers’ party and that of the parties of the particular nationalities which make it up.

10.5 Vladimir I. Lenin: *The Right of Nations to Self-Determination* (1914)¹⁰

What Is Self-Determination of Nations?

Naturally, this is the first question to arise when any attempt is made to consider what self-determination is, from a Marxist viewpoint. What is meant by that term? Should we seek for an answer in legal definitions deduced from all sorts of “general concepts” of law? Or should we seek an answer in the historical and economic study of the national movements? ...

Rosa Luxemburg, who declaims a great deal about the alleged abstract and metaphysical nature of the point in question ... succumb[s] to the sin of abstraction and metaphysics. It is Rosa Luxemburg herself who is continually straying into generalities about self-determination (including the very amusing speculation on the question of how the

10 Vladimir Lenin, *The Right of Nations to Self-Determination* (New York: International Publishers, 1970).

will of the nation is to be ascertained), without anywhere clearly and precisely asking herself whether the issue is determined by juridical definitions or by the experience of the national movements throughout the world.

A precise formulation of this question, which a Marxist cannot avoid, would at once have shaken nine-tenths of Rosa Luxemburg's arguments. This is not the first time national movements have arisen in Russia, nor are they peculiar to Russia alone. Throughout the world, the period of the final victory of capitalism over feudalism has been linked with national movements. The economic basis of those movements is the fact that in order to achieve complete victory for commodity production the bourgeoisie must capture the home market, must have politically united territories with a population speaking the same language, and all obstacles to the development of this language and to its consolidation in literature must be removed. Language is the most important means of human intercourse. Unity of language and its unimpeded development are most important conditions for genuinely free and extensive commercial intercourse on a scale commensurate with modern capitalism, for a free and broad grouping of the population in all its separate classes and lastly for the establishment of close connection between the market and each and every proprietor, big or little, seller and buyer.

Therefore, the tendency of every national movement is towards the formation of *national states*, under which these requirements of modern capitalism are best satisfied. The profoundest economic factors drive towards this goal, and therefore, for the whole of Western Europe, nay, for the entire civilized world, the *typical*, normal state for the capitalist period is the national state.

Consequently, if we want to learn the meaning of self-determination of nations, not by juggling with legal definitions, or "inventing" abstract definitions, but by examining the historical and economic conditions of the national movements, we shall inevitably reach the conclusion that self-determination of nations means the political separation of these nations from alien national bodies, the formation of an independent national state.

Later on we shall see still other reasons why it would be incorrect to understand the right to self-determination to mean anything but the right to separate state existence. At present, we must deal with Rosa Luxemburg's efforts to "dismiss" the unavoidable conclusion that the striving to form a national state rests on deep economic foundations....

For the question of the political self-determination of nations in bourgeois society, and of their independence as states, Rosa Luxemburg has substituted the question of their economic independence. This is as intelligent as if someone, in discussing the demand in the program for the supremacy of parliament, i.e., the assembly of people's representatives, in a bourgeois state, were to expound the perfectly correct conviction that big capital is supreme under any regime in a bourgeois country.

There is no doubt that the greater part of Asia, the most populous part of the world, consists either of colonies of the "Great Powers" or of states which are extremely dependent and oppressed as nations. But does this commonly known circumstance in any way shake the undoubted fact that in Asia itself the conditions for the most complete development of commodity production, for the freest, widest, and speediest growth of capitalism, have been created only in Japan, i.e., only in an independent national state? This state is a bourgeois state, therefore, it, itself, has begun to oppress other nations and to enslave colonies. We cannot say whether Asia will have time before the downfall of capitalism to become crystallized into a system of independent national states, like Europe; but it remains an undisputed fact that capitalism, having awakened Asia, has called forth national movements everywhere in that continent, too; that the tendency of these movements is towards the creation of national states there; that the best conditions for the development of capitalism are ensured precisely by such states. The example of Asia speaks *in favor* of Kautsky and *against* Rosa Luxemburg.

The example of the Balkan states also speaks against her, for everyone can see now that the best conditions for the development of capitalism in

the Balkans are created precisely in proportion to the creation of independent national states in that peninsula.

Therefore, Rosa Luxemburg notwithstanding, the example of the whole of progressive, civilized mankind, the example of the Balkans, and the example of Asia prove that Kautsky's proposition is absolutely correct: The national state is the rule and the "norm" of capitalism; the heterogeneous nation state represents backwardness, or is an exception. From the standpoint of national relations, the best conditions for the development of capitalism are undoubtedly provided by the national state. This does not mean, of course, that such a state, based on bourgeois relations, could eliminate the exploitation and oppression of nations. It only means that Marxists cannot ignore the powerful *economic* factors that give rise to the aspiration to create national states. It means that "self-determination of nations" in the program of the Marxists *cannot*, from a historical-economic point of view, have any other meaning than political self-determination, political independence, the formation of a national state....

While recognizing equality and an equal right to a national state, [the proletariat] attaches supreme value to the alliance of the proletarians of all nations, and evaluates every national demand, every national separation, *from the angle* of the class struggle of the workers. This call for practicalness is merely a call for the uncritical acceptance of bourgeois aspirations.

We are told: By supporting the right to secession you are supporting the bourgeois nationalism of the oppressed nations....

Our reply to this is: No, a "practical" solution of this question is important for the bourgeoisie. The important thing for the workers is to distinguish the *principles* of two trends. *If* the bourgeoisie of the oppressed nation fights against the oppressing one, we are always, in every case, and more resolutely than anyone else, *in favor*; for we are the staunchest and the most consistent enemies of oppression. But if the bourgeoisie of the oppressed nation stands for *its own* bourgeois nationalism we are opposed. We fight against the privileges and violence of the oppressing nation, but we do not condone the

strivings for privileges on the part of the oppressed nation.

If we do not raise and advocate the slogan of the *right* to secession we shall play into the hands, not only of the bourgeoisie, but also of the feudal landlords and the despotism of the *oppressing* nation. Kautsky long ago advanced this argument against Rosa Luxemburg, and the argument is indisputable. When Rosa Luxemburg, in her anxiety not to "assist" the nationalistic bourgeoisie of Poland, rejects the *right* to secession in the program of the *Russian* Marxists, she is *in fact* assisting the Great-Russian Black-Hundreds. She is in fact assisting opportunist resignation to the privileges (and worse than privileges) of the Great Russians.

Carried away by the struggle against nationalism in Poland, Rosa Luxemburg has forgotten the nationalism of the Great Russians, although *this* nationalism is the most formidable at the present time, it is the nationalism that is less bourgeois and more feudal, and it is the principal obstacle to democracy and to the proletarian struggle. The bourgeois nationalism of *every* oppressed nation has a general democratic content which is directed *against* oppression, and it is this content that we support *unconditionally*, while strictly distinguishing it from the tendency towards national exceptionalism, while fighting against the tendency of the Polish bourgeoisie to oppress the Jews, etc., etc.

This is "impractical" from the standpoint of a bourgeois and a philistine; but it is the only policy in the national question that is practical, that is based on principles, and that really furthers democracy, liberty, and proletarian unity.

The recognition of the right to secession for all; the appraisal of each concrete question of secession from the point of view of removing all inequality, all privileges, all exceptionalism.

Let us examine the position of an oppressing nation. Can a nation be free if it oppresses other nations? It cannot. The interests of the freedom of the Great-Russian population demand a struggle against such oppression. The long, age-long history of the suppression of the movements of the oppressed nations, the systematic propaganda in favor of such suppression on the part of the "upper" classes, have created enormous obstacles to the

cause of freedom of the Great-Russian people itself, in the form of prejudices, etc.

The Great-Russian Black-Hundreds deliberately foster and fan these prejudices. The Great-Russian bourgeoisie tolerates them or panders to them. The Great-Russian proletariat cannot achieve *its own* aims, cannot clear the road to freedom for itself unless it systematically combats these prejudices.

In Russia, the creation of an independent national state so far remains the privilege of one nation, the Great-Russian nation. We, the Great-Russian proletarians, defend no privileges, and we do not defend this privilege. In our fight we take the given state as our basis; we unite the workers of all nations in the given state; we cannot vouch for any particular path of national development, we are marching to our class goal by *all* possible paths.

But we cannot advance to that goal unless we combat all nationalism, unless we fight for the equality of the workers of all nations. Whether the Ukraine, for example, is destined to form an independent state is a matter that will be determined by a thousand factors, which cannot be foreseen. Without attempting idle "*guesses*," we firmly uphold what is beyond doubt: the right of the Ukraine to form such a state. We respect this right; we do not uphold the privileges of the Great Russians over the Ukrainians; we *teach* the masses to recognize that right, and to reject the *state* privileges of any nation.

In the leaps which all nations take in the period of bourgeois revolutions, clashes and struggle over the right to a national state are possible and probable. We proletarians declare in advance that we are *opposed* to Great-Russian privileges and this is what guides our entire propaganda and agitation.

In her quest for "practicalness" Rosa Luxemburg has overlooked the *principal* practical task both of the Great-Russian proletariat and of the proletariat of other nationalities: the task of daily agitation and propaganda against all state and national privileges and for the right, the equal right of all nations to their national state. This task is (at present) our principal task in the national question, for only in this way can we defend the interests of democracy and the alliance of all proletarians of all nations on an equal footing.

This propaganda may be "impractical" from the point of view of the Great-Russian oppressors as well as from the point of view of the bourgeoisie of the oppressed nations (both demand a *definite* "yes" or "no," and accuse the Social Democrats of being "vague"). In reality it is this propaganda, and only this propaganda, that ensures the really democratic, the really socialist education of the masses. Only such propaganda ensures the greatest chances of national peace in Russia, should she remain a heterogeneous national state, and the most peaceful (and for the proletarian class struggle, harmless) division into separate national states, should the question of such a division arise....

To accuse the supporters of freedom of self-determination, i.e., freedom to secede, of encouraging separatism, is as foolish and as hypocritical as accusing the advocates of freedom of divorce of wishing to destroy family ties. Just as in bourgeois society the defenders of privilege and corruption, on which bourgeois marriage rests, oppose freedom of divorce, so, in the capitalist state, repudiation of the right to self-determination, i.e., the right of nations to secede, is tantamount to defending the privileges of the dominating nation and police methods of administration as against democratic methods.

No doubt, the political corruption engendered by the relations prevailing in capitalist society sometimes leads members of parliament and journalists to indulge in frivolous and even in just nonsensical twaddle about a particular nation seceding. But only reactionaries can allow themselves to be frightened (or pretend to be frightened) by such twaddle. Those who stand by democratic principles, i.e., who insist that questions of state must be decided by the people, know very well that there is a very big difference between what the politicians prate about and what the people decide. The people know from daily experience the value of geographical and economic ties and the advantages of a big market and of a big state. They will, therefore, resort to secession only when national oppression and national friction make joint life absolutely intolerable and hinder all economic intercourse. In that case, the interests of capitalist development and of the freedom of the class struggle will be best served by secession....

The interests of the working class and of its struggle against capitalism demand complete solidarity and the closest unity of the workers of all nations; they demand strong opposition to the nationalistic policy of the bourgeoisie of every nationality. Hence, Social Democrats would be equally running counter to proletarian policy and subordinating the workers to the policy of the bourgeoisie if they were to repudiate the right of nations to self-determination, i.e., the right of an oppressed nation to secede, or if they were to support all the national demands of the bourgeoisie of the oppressed nations. It makes no difference to the wage worker whether he is exploited chiefly by the Great-Russian bourgeoisie rather than by the non-Russian bourgeoisie, or by the Polish bourgeoisie rather than the Jewish bourgeoisie, etc. The wage worker who understands his class interests is equally indifferent to the state privileges of the Great-Russian capitalists and to the promises of the Polish or Ukrainian capitalists to set up an earthly paradise when they obtain state privileges. Capitalism is developing and will continue to develop, in one way or another, both in united heterogeneous states and in separate national states.

In any case the wage workers will be exploited. And in order to be able to fight successfully against exploitation, the proletariat must be free of nationalism, must be absolutely neutral, so to speak, in the struggle for supremacy that is going on among the bourgeoisie of the various nations. If the proletariat of any one nation gives the slightest support to the privileges of "its" national bourgeoisie, this will inevitably rouse distrust among the proletariat of the other nation; it will weaken the international class solidarity of the workers and divide them, to the delight of the bourgeoisie. And repudiation of the right to self-determination, or secession, inevitably means, in practice, supporting the privileges of the dominating nation....

To sum up: From the point of view of the theory of Marxism in general the question of the right of self-determination presents no difficulties.

No one can seriously dispute the London resolution of 1896, or the fact that self-determination implies only the right to secession, or the fact that the formation of independent national states is the tendency of all bourgeois-democratic revolutions....

It is easy to understand that the recognition by the Marxists of the *whole of Russia*, and first and foremost by the Great Russians, of the *right of nations to secede* in no way precludes *agitation* against secession by Marxists of a particular *oppressed* nation, just as the recognition of the right to divorce does not preclude agitation against divorce in a particular case....

Such a state of affairs sets the proletariat of Russia a twofold, or, rather, a two-sided task: first, to fight against all nationalism and, above all, against Great-Russian nationalism; to recognize not only complete equality of rights for all nations in general, but also equality of rights as regards forming an independent state, i.e., the right of nations to self-determination, to secession. And second, precisely in the interests of the successful struggle against the nationalism of all nations in *any* form, it sets the task of preserving the unity of the proletarian struggle and of the proletarian organizations, of amalgamating these organizations into an international association, in spite of the bourgeois strivings for national segregation.

Complete equality of rights for all nations: the right of nations to self-determination; the amalgamation of the workers of all nations — this is the national program that Marxism, the experience of the whole world, and the experience of Russia, teaches the workers.

10.6 Woodrow Wilson: "The Fourteen Points Address" (1918)¹¹

An Address to a Joint Session of Congress

... It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind. The

11 Woodrow Wilson, "The Fourteen Points Address," message to Congress, January 8, 1918. www.archives.gov/historical-docs/todays-doc/index.html?dod-date=108

day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow now or at any other time the objects it has in view.

We entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible unless they were corrected and the world secured once for all against their recurrence. What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us. The program of the world's peace, therefore, is our program; and that program, the only possible program, as we see it, is this:

- I. 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.
- II. 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 for the enforcement of international covenants.
- III. 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.
- IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.
- V. 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 tide is to be determined.
- VI. 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 good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.
- VII. 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.

- VIII. 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 interests of all.
- IX. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.
- X. 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.
- XI. 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 into.
- XII. 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.
- XIII. 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.

- XIV. 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.

In regard to these essential rectifications of wrong and assertions of right we feel ourselves to be intimate partners of all the governments and peoples associated together against the Imperialists. We cannot be separated in interest or divided in purpose. We stand together until the end.

For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved; but only because we wish the right to prevail and desire a just and stable peace such as can be secured only by removing the chief provocations to war, which this program does remove. We have no jealousy of German greatness, and there is nothing in this program that impairs it. We grudge her no achievement or distinction of learning or of pacific enterprise such as have made her record very bright and very enviable. We do not wish to injure her or to block in any way her legitimate influence or power. We do not wish to fight her either with arms or with hostile arrangements of trade if she is willing to associate herself with us and the other peace-loving nations of the world in covenants of justice and law and fair dealing. We wish her only to accept a place of equality among the peoples of the world, — the new world in which we now live, — instead of a place of mastery.

Neither do we presume to suggest to her any alteration or modification of her institutions. But it is necessary, we must frankly say, and necessary as a preliminary to any intelligent dealings with her on our part, that we should know whom her spokesmen speak for when they speak to us, whether for the Reichstag majority or for the military party and the men whose creed is imperial domination.

We have spoken now, surely, in terms too concrete to admit of any further doubt or question. *An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak. Unless this principle be made its foundation no*

*part of the structure of international justice can stand.*¹² The people of the United States could act upon no other principle; and to the vindication of this principle they are ready to devote their lives, their honor, and everything that they possess. The moral climax of this the culminating and final war for human liberty has come, and they are ready to put their own strength, their own highest purpose, their own integrity and devotion to the test.

10.7 Mahatma Gandhi: “Passive Resistance” (1909)¹³

... We simply want to find out what is right and to act accordingly. The real meaning of the statement that we are a law abiding nation is that we are passive resisters. When we do not like certain laws, we do not break the heads of law-givers but we suffer and do not submit to the laws. That we should obey laws whether good or bad is a newfangled notion. There was no such thing in former days. The people disregarded those laws they did not like and suffered the penalties for their breach. It is contrary to our manhood if we obey laws repugnant to our conscience. Such teaching is opposed to religion and means slavery. If the Government were to ask us to go about without any clothing, should we do so? If I were a passive resister, I would say to them that I would have nothing to do with their law. But we have so forgotten ourselves and become so compliant that we do not mind any degrading law.

A man who has realized his manhood, who fears only God, will fear no one else. Man-made laws are not necessarily binding on him. Even the Government does not expect any such thing from us. They do not say: “You must do such and such a thing,” but they say: “If you do not do it, we will punish you.” We are sunk so low that we fancy that it is our duty and our religion to do what the law lays down. If man will only realize that it is unmanly to obey laws that are unjust, no man’s tyranny will enslave him. This is the key to self-rule or home-rule.

It is a superstition and ungodly thing to believe that an act of a majority binds a minority. Many examples can be given in which acts of majorities will be found to have been wrong and those of minorities to have been right. All reforms owe their origin to the initiation of minorities in opposition to majorities. If among a band of robbers a knowledge of robbing is obligatory, is a pious man to accept the obligation? So long as the superstition that men should obey unjust laws exists, so long will their slavery exist. And a passive resister alone can remove such a superstition.

To use brute force, to use gunpowder, is contrary to passive resistance, for it means that we want our opponent to do by force that which we desire but he does not. And if such a use of force is justifiable, surely he is entitled to do likewise by us. And so we should never come to an agreement. We may simply fancy, like the blind horse moving in a circle round a mill, that we are making progress. Those who believe that they are not bound to obey laws which are repugnant to their conscience have only the remedy of passive resistance open to them. Any other must lead to disaster.

READER: From what you say I deduce that passive resistance is a splendid weapon of the weak, but that when they are strong they may take up arms.

EDITOR: This is gross ignorance. Passive resistance, that is, soul-force, is matchless. It is superior to the force of arms. How, then, can it be considered only a weapon of the weak? Physical-force men are strangers to the courage that is requisite in a passive resister. Do you believe that a coward can ever disobey a law that he dislikes? Extremists are considered to be advocates of brute force. Why do they, then, talk about obeying laws? I do not blame them. They can say nothing else. When they succeed in driving out the English and they themselves become governors, they will want you and me to obey their laws. And that is a fitting thing for their constitution. But a passive

12 Editor’s emphasis.

13 Mahatma Gandhi, *The Writings of M.K. Gandhi*, edited by Raghavan Iyer (Ahmedabad, India: Navajivan Trust, 1990).

resister will say he will not obey a law that is against his conscience, even though he may be blown to pieces at the mouth of a cannon.

What do you think? Wherein is courage required — in blowing others to pieces from behind a cannon, or with a smiling face to approach a cannon and be blown to pieces? Who is the true warrior — he who keeps death always as a bosom-friend, or he who controls the death of others? Believe me that a man devoid of courage and manhood can never be a passive resister.

This however, I will admit: that even a man weak in body is capable of offering this resistance. One man can offer it just as well as millions. Both men and women can indulge in it. It does not require the training of an army; it needs no jiu-jitsu. Control over the mind is alone necessary, and when that is attained, man is free like the king of the forest and his very glance withers the enemy.

Passive resistance is an all-sided sword, it can be used anyhow; it blesses him who uses it and him against whom it is used. Without drawing a drop of blood it produces far-reaching results. It never rusts and cannot be stolen. Competition between passive resisters does not exhaust. The sword of passive resistance does not require a scabbard. It is strange indeed that you should consider such a weapon to be a weapon merely of the weak.

READER: You have said that passive resistance is a specialty of India. Have cannons never been used in India?

EDITOR: Evidently, in your opinion, India means its few princes. To me it means its teeming millions on whom depends the existence of its princes and our own.

Kings will always use their kingly weapons. To use force is bred in them. They want to command, but those who have to obey commands do not want guns: and these are in a majority throughout the

world. They have to learn either body-force or soul-force. Where they learn the former, both the rulers and the ruled become like so many madmen; but where they learn soul-force, the commands of the rulers do not go beyond the point of their swords, for true men disregard unjust commands. Peasants have never been subdued by the sword, and never will be. They do not know the use of the sword, and they are not frightened by the use of it by others. That nation is great which rests its head upon death as its pillow. Those who defy death are free from all fear. For those who are laboring under the delusive charms of brute-force, this picture is not overdrawn. The fact is that, in India, the nation at large has generally used passive resistance in all departments of life. We cease to cooperate with our rulers when they displease us. This is passive resistance....

READER: From what you say, then, it would appear that it is not a small thing to become a passive resister, and, if that is so, I should like you to explain how a man may become one.

EDITOR: To become a passive resister is easy enough but it is also equally difficult. I have known a lad of fourteen years become a passive resister; I have known also sick people do likewise; and I have also known physically strong and otherwise happy people unable to take up passive resistance. After a great deal of experience it seems to me that those who want to become passive resisters for the service of the country have to observe perfect chastity, adopt poverty, follow truth, and cultivate fearlessness.

Chastity is one of the greatest disciplines without which the mind cannot attain requisite firmness. A man who is unchaste loses stamina, becomes emasculated and cowardly. He whose mind is given over to animal passions is not capable of any great effort. This can be proved by innumerable instances. What, then, is a married person to do is the question that arises naturally; and yet it need not. When a husband and wife gratify the passions, it is no less an animal indulgence on that account. Such an indulgence, except for perpetuating the

race, is strictly prohibited. But a passive resister has to avoid even that very limited indulgence because he can have no desire for progeny. A married man, therefore, can observe perfect chastity. This subject is not capable of being treated at greater length. Several questions arise: How is one to carry one's wife with one, what are her rights, and other similar questions. Yet those who wish to take part in a great work are bound to solve these puzzles.

Just as there is necessity for chastity, so is there for poverty. Pecuniary ambition and passive resistance cannot well go together. Those who have money are not expected to throw it away, but they *are* expected to be indifferent about it. They must be prepared to lose every penny rather than give up passive resistance....

10.8 Mahatma Gandhi: "An Appeal to the Nation" (1924)¹⁴

Under the above heading Mr. Srish Chandra Chatterji and eighteen other signatories have issued a document which I copy below:

We are passing through a series of national crises the gravity of which can hardly be exaggerated. There are moments in the history of nations when a decisive move in the right direction often leads a nation to a triumphant goal and when that supreme moment is lost in vague imaginations or false and indecisive steps, it takes long centuries to retrieve the loss. India is passing through some such crisis and we are extremely fortunate that the crisis is not yet over. The whole world is shivering from the pains of Labor, the indications of a new life are manifest everywhere, and a regenerated India must find a place among the new-born nations of the world. This rejuvenated India cannot accept any over-lord, she must be a free and independent nation.

At a time when all the nations of the world are fighting for independence and liberty, at a time when our Indian heroes are championing

the cause of India's independence abroad, it is simply ridiculous and shameful that we Indians should hesitate to accept independence as our only legitimate and logical goal; we therefore appeal to our nation to declare in the open Congress in unmistakable terms that independence and complete independence is our destined goal, let there be no ambiguous phrases to qualify it, let it be preached in all its nakedness. It is the moral force of this ideal that creates nations.

We must educate the country from this very moment in a way so that the people may realize the significance of a republic and a federation. We may postpone it for the future only at the risk of a great national calamity. We therefore appeal to the Congress delegates to define Swaraj as a Federated Republic of the United States of India.

We also appeal to the delegates of this Congress to delete the words "by peaceful and legitimate means" from the Congress creed, so that men holding every shade of opinion may have no difficulty in joining the only national organization in the country, though for the present it may be retained as a part of the actual program of Congress work. Our time is short and we cannot dilate upon this point at any length, but we only say that means are after all means and our object and means should not be confounded with each other.

We are further of opinion that mere changing of the creed and passing of resolutions would not bring us independence. We therefore request the representatives of our nation to engage the whole strength and the whole resources of the Congress in organizing a band for national workers who will devote all their time and all their energy in the service of their motherland and who must be ready to suffer and even be ready to sacrifice their lives for the national cause. When the Congress is backed by an organization of this kind then and then alone will the Congress have any strength

14 Mahatma Gandhi, *The Writings of M.K. Gandhi*, edited by Raghavan Iyer (Ahmedabad, India: Navajivan Trust, 1990).

and only then can we expect the voice of the Congress to be respected.

The other items in our program should be:

- (1) Boycott of British goods.
- (2) Establishment or helping in the establishment of factories and cottage industries on strictly co-operative basis.
- (3) Helping the laborers and peasants of our land in obtaining their grievances redressed and organizing them for their own economic good and moral prosperity.
- (4) And finally to organize a federation of all the Asiatic races in the immediate future.

I know that this “appeal to the nation” has been before the public for some time. It contains nothing new. Nevertheless, it represents the views not merely of the signatories but of a large number of educated Indians. It will not therefore be a waste of energy to examine the contents....

10.9 Mahatma Gandhi: “Means and Ends” (1909–1947)¹⁵

Your belief that there is no connection between the means and the end is a great mistake. Through that mistake even men who have been considered religious have committed grievous crimes. Your reasoning is the same as saying that we can get a rose through planting a noxious weed. If I want to cross the ocean, I can do so only by means of a vessel; if I were to use a cart for that purpose, both the cart and I would soon find the bottom. “As is the God, so is the votary” is a maxim worth considering. Its meaning has been distorted and men have gone astray. The means may be likened to a seed, the end to a tree; and there is just the same inviolable connection between the means and the end as there is between the seed and the tree. I am not likely to obtain the result flowing from the worship of God by

laying myself prostrate before Satan. If, therefore, anyone were to say: “I want to worship God; it does not matter that I do so by means of Satan,” it would be set down as ignorant folly. We reap exactly as we sow.

Hind Swaraj, or India Home Rule, 1909

They say “means are after all means.” I would say “means are after all everything.” As the means so the end. There is no wall of separation between means and end. Indeed the Creator has given us control (and that too very limited) over means, none over the end. Realization of the goal is in exact proportion to that of the means. This is a proposition that admits of no exception.

Young India, July 17, 1924

I do not believe in short-violent-cuts to success.... However much I may sympathize with and admire worthy motives, I am an uncompromising opponent of violent methods even to serve the noblest of causes. There is, therefore, really no meeting-ground between the school of violence and myself. But my creed of nonviolence not only does not preclude me but compels me even to associate with anarchists and all those who believe in violence. But that association is always with the sole object of weaning them from what appears to me their error. For experience convinces me that permanent good can never be the outcome of untruth and violence. Even if my belief is a fond delusion, it will be admitted that it is a fascinating delusion.

Young India, December 11, 1924

Means and end are convertible terms in my philosophy of life.

Young India, December 26, 1924

... I do suggest that the doctrine [of non-violence] holds good also as between States

15 Mahatma Gandhi, *The Writings of M.K. Gandhi*, edited by Raghavan N. Iyer (Ahmedabad, India: Navajivan Trust, 1990).

and States. I know that I am treading on delicate ground if I refer to the late war. But I fear I must in order to make the position clear. It was a war of aggrandizement, as I have understood, on either part. It was a war for dividing the spoils of the exploitation of weaker races — otherwise euphemistically called the world commerce.... It would be found that before general disarmament in Europe commences, as it must some day, unless Europe is to commit suicide, some nation will have to dare to disarm herself and take large risks. The level of nonviolence in that nation, if that event happily comes to pass, will naturally have risen so high as to command universal respect. Her judgments will be unerring, her decisions firm, her capacity for heroic self-sacrifice will be great, and she will want to live as much for other nations as for herself.

Young India, October 8, 1925

Ahimsä and Truth are so intertwined that it is practically impossible to disentangle and separate them. They are like the two sides of a coin or rather a smooth unstamped metallic disc. Who can say, which is the obverse, and which the reverse? Nevertheless, *ahimsä* is the means; Truth is the end. Means to be means must always be within our reach, and so *ahimsä* is our supreme duty. If we take care of the means, we are bound to reach the end sooner or later. When once we have grasped this point final victory is beyond question. Whatever difficulties we encounter, whatever apparent reverses we sustain, we may not give up the quest for Truth which alone is being God Himself.

Yeranda Mandir, 1935

Socialism is a beautiful word and, so far as I am aware, in socialism all the members of society are equal — none low, none high. In the individual body, the head is not high because it is the top of the body, nor are the soles of the feet low because they touch the earth. Even as members of the individual body are equal, so are the members of society. This is socialism.

In it the prince and the peasant, the wealthy and the poor, the employer and the employee are all on the same level. In terms of religion, there is no duality in socialism. It is all unity. Looking at society all the world over, there is nothing but duality or plurality. Unity is conspicuous by its absence.... In the unity of my conception there is perfect unity in the plurality of designs.

In order to reach this state, we may not look on things philosophically and say that we need not make a move until all are converted to socialism. Without changing our life we may go on giving addresses, forming parties and hawk-like seize the game when it comes our way. This is no socialism. The more we treat it as game to be seized, the farther it must recede from us.

Socialism begins with the first convert. If there is one such you can add zeros to the one and the first zero will account for ten and every addition will account for ten times the previous number. If, however, the beginner is a zero, in other words, no one makes the beginning, multiplicity of zeros will also produce zero value. Time and paper occupied in writing zeros will be so much waste.

This socialism is as pure as crystal. It, therefore, requires crystal-like means to achieve it. Impure means result in an impure end. Hence the prince and the peasant will not be equaled by cutting off the prince's head, nor can the process of cutting off equalize the employer and the employed. One cannot reach truth by untruthfulness. Truthful conduct alone can reach truth. Are not nonviolence and truth twins? The answer is an emphatic "No." Nonviolence is embedded in truth and vice versa. Hence has it been said that they are faces of the same coin. Either is inseparable from the other. Read the coin either way—the spelling of words will be different; the value is the same. This blessed state is unattainable without perfect purity. Harbor impurity of mind or body and you have untruth and violence in you.

Therefore only truthful, nonviolent and purehearted socialists will be able to establish a socialistic society in India and the world.

Harijan, July 1947

10.10 Mahatma Gandhi: "Equal Distribution Through Nonviolence" (1940)¹⁶

In last week's article on the Constructive Program I mentioned equal distribution of wealth as one of the 13 items.

The real implication of equal distribution is that each man shall have the wherewithal to supply all his natural needs and no more. For example, if one man has a weak digestion and requires only a quarter of a pound of flour for his bread and another needs a pound, both should be in a position to satisfy their wants. To bring this ideal into being the entire social order has got to be reconstructed. A society based on non-violence cannot nurture any other ideal. We may not perhaps be able to realize the goal, but we must bear it in mind and work unceasingly to near it. To the same extent as we progress towards our goal we shall find contentment and happiness, and to that extent too shall we have contributed towards the bringing into being of a non-violent society.

It is perfectly possible for an individual to adopt this way of life without having to wait for others to do so. And if an individual can observe a certain rule of conduct, it follows that a group of individuals can do likewise. It is necessary for me to emphasize the fact that no one need wait for anyone else in order to adopt a right course. Men generally hesitate to make a beginning if they feel that the objective cannot be had in its entirety. Such an attitude of mind is in reality a bar to progress.

Now let us consider how equal distribution can be brought about through non-violence. The first step towards it is for him who has made this ideal part of his being to bring about

the necessary changes in his personal life. He would reduce his wants to a minimum, bearing in mind the poverty of India. His earnings would be free of dishonesty. The desire for speculation would be renounced. His habitation would be in keeping with the new mode of life. There would be self-restraint exercised in every sphere of life. When he has done all that is possible in his own life, then only will he be in a position to preach this ideal among his associates and neighbors.

Indeed at the root of this doctrine of equal distribution must lie that of the trusteeship of the wealthy for the superfluous wealth possessed by them. For according to the doctrine they may not possess a rupee more than their neighbors. How is this to be brought about? Nonviolently? Or should the wealthy be dispossessed of their possessions? To do this we would naturally have to resort to violence. This violent action cannot benefit society. Society will be the poorer, for it will lose the gifts of a man who knows how to accumulate wealth. Therefore the nonviolent way is evidently superior. The rich man will be left in possession of his wealth, of which he will use what he reasonably requires for his personal needs and will act as a trustee for the remainder to be used for the society. In this argument honesty on the part of the trustee is assumed.

As soon as a man looks upon himself as a servant of society, earns for its sake, spends for its benefit, then purity enters into his earnings and there is *ahimsa* in his venture. Moreover, if men's minds turn towards this way of life, there will come about a peaceful revolution in society, and that without any bitterness.

It may be asked whether history at any time records such a change in human nature. Such changes have certainly taken place in individuals. One may not perhaps be able to point to them in a whole society. But this

16 Mahatma Gandhi, *The Writings of M.K. Gandhi*, edited by Raghavan N. Iyer (Ahmedabad, India: Navajivan Trust, 1990).

only means that up till now there has never been an experiment on a large scale in non-violence. Somehow or other the wrong belief has taken possession of us that *ahimsa* is pre-eminently a weapon for individuals and its use should therefore be limited to that sphere. In fact this is not the case. *Ahimsa* is definitely an attribute of society. To convince people of this truth is at once my effort and my experiment. In this age of wonders no one will say that a thing or idea is worthless because it is new. To say it is impossible because it is difficult is again not in consonance with the spirit of the age. Things undreamt of are daily being seen, the impossible is ever becoming possible. We are constantly being astonished these days at the amazing discoveries in the field of violence. But I maintain that far more undreamt of and seemingly impossible discoveries will be made in the field of nonviolence. The history of religion is full of such examples. To try to root out religion itself from society is a wild goose chase. And were such an attempt to succeed, it would mean the destruction of society. Superstition, evil customs and other imperfections creep in from age to age and mar religion for the time being. They come and go. But religion itself remains, because the existence of the world in a broad sense depends on religion. The ultimate definition of religion may be said to be obedience to the law of God. God and His law are synonymous terms. Therefore God signifies an unchanging and living law. No one has ever really found Him. But *avatars* and prophets have, by means of their *tapasya*, given to mankind a faint glimpse of the eternal Law.

If, however, in spite of the utmost effort, the rich do not become guardians of the poor in the sense of the term and the latter are more and more crushed and die of hunger, what is to be done? In trying to find the solution to this riddle I have lighted on nonviolent noncooperation and civil disobedience as the right

and infallible means. The rich cannot accumulate wealth without the co-operation of the poor in society. Man has been conversant with violence from the beginning, for he has inherited this strength from the animal in nature. It was only when he rose from the state of a quadruped (animal) to that of a biped (man) that the knowledge of the strength of *ahimsa* entered into his soul. This knowledge has grown within him slowly but surely. If this knowledge were to penetrate to and spread amongst the poor, they would become strong and would learn how to free themselves by means of nonviolence from the crushing inequalities which have brought them to the verge of starvation.

I scarcely need to write anything about non-co-operation and civil disobedience, for the readers of *Harijanbandhu* are familiar with these and their working.

Harijanbandhu, 24 Aug. 1940

Harijan, 25 Aug. 1940

10.11 Sati' Al-Husri: "Muslim Unity and Arab Unity" (1944)¹⁷

I have read and heard many opinions and observations concerning Muslim unity and Arab unity, and which is to be preferred. I have been receiving for some time now various questions concerning this matter; Why, it is asked, are you interested in Arab unity, and why do you neglect Muslim unity? Do you not see that the goal of Muslim unity is higher than the goal of Arab unity, and that the power generated by Muslim union would be greater than that generated by Arab union? Do you not agree that religious feeling in the East is much stronger than national feeling? Why, then, do you want us to neglect the exploitation of this powerful feeling and to spend our energies in order to strengthen a weak feeling? Do you believe that the variety of languages will prevent the union of the Muslims? Do you not notice that the principles of communism, socialism, Freemasonry, and other systems unite people, of different languages,

17 Sati al-Husri, "Muslim Unity and Arab Unity," in *Arab Nationalism: An Anthology*, edited by Sylvia Kedourie and Sylvia G. Haim (Berkeley: University of California Press, 1962).

racess, countries, and climate; that none of these differences have prevented them from coming to understanding, from drawing nearer to one another, and from agreeing on one plan and one creed? Do you not know that every Muslim in Syria, Egypt, or Iraq believes that the Indian Muslim, the Japanese Muslim, or the European Muslim is as much his brother as the Muslim with whom he lives side by side? Whence, then, the impossibility of realizing Muslim union? Some say that Muslim unity is more powerful than any other and that its realization is easier than the realization of any other. What do you say to this? Some pretend, mistakenly, that the idea of Arab union is a plot the aim of which is to prevent the spread of the idea of Muslim union, in order to isolate some of the countries of the Muslim world and facilitate their continued subjugation. What is your opinion of this allegation?

I have heard and read, and I still hear and read, many similar questions which occur in conversations, in private letters, or in open letters. I have therefore thought to devote this essay to the full discussion of these problems and to the frank explanation of my view concerning them.

I think that the essential point which has to be studied and solved when deciding which to prefer, Muslim unity or Arab unity, may be summarized as follows: Is Muslim unity a reasonable hope capable of realization? Or is it a utopian dream incapable of realization? And assuming the first alternative, is its realization easier or more difficult than the realization of Arab unity? Does one of these two schemes exclude the other? And is there a way of realizing Muslim unity without realizing Arab unity? When we think about such questions and analyze them, we have, in the first place, to define clearly what we mean by Muslim unity and by Arab unity and to delimit without any ambiguity the use of the two expressions.

It goes without saying that Arab unity requires the creation of a political union of the different Arab countries, the inhabitants of which speak Arabic. As for Muslim unity, that naturally requires the creation of a political union of the different Muslim countries, the inhabitants of which profess the Muslim religion, regardless of the variety

of their languages and races. It is also well known that the Muslim world includes the Arab countries, Turkey, Iran, Afghanistan, Turkestan, parts of India, the East Indies, the Caucasus, North Africa, as well as parts of central Africa, without considering a few scattered units in Europe and Asia, as in Albania, Yugoslavia, Poland, China, and Japan. Further, there is no need to show that the Arab countries occupy the central portion of this far-flung world.

Whoever will examine these evident facts and picture the map of the Muslim world, noticing the position of the Arab world within it, will have to concede that Arab unity is much easier to bring about than Muslim unity, and that this latter is not capable of realization, assuming that it can be realized, except through Arab unity. It is not possible for any sane person to imagine union among Cairo, Baghdad, Tehran, Kabul, Haiderabad, and Bukhara, or Kashgar, Persia, and Timbuctoo, without there being a union among Cairo, Baghdad, Damascus, Mecca, and Tunis. It is not possible for any sane person to conceive the possibility of union among Turks, Arabs, Persians, Malayans, and Negroes, while denying unity to the Arabs themselves. If, contrary to fact, the Arab world were more extensive and wider than the Muslim world, it would have been possible to imagine a Muslim union without Arab union, and it would have been permissible to say that Muslim union is easier to realize than Arab union. But as the position is the exact opposite, there is no logical scope whatever for such statements and speculations. We must not forget this truth when we think and speak concerning Muslim unity and Arab unity. The idea of Muslim unity is, it is true, wider and more inclusive than the concept of Arab unity, but it is not possible to advocate Muslim unity without advocating Arab unity. We have, therefore, the right to assert that whoever opposes Arab unity also opposes Muslim unity. As for him who opposes Arab unity, in the name of Muslim unity or for the sake of Muslim unity, he contradicts the simplest necessities of reason and logic.

Having established this truth, to disagree with which is not logically possible, we ought to notice another truth, which is no less important. We must not forget that the expression "unity," in this

context, means political unity and we must constantly remember that the concept of Islamic unity greatly differs from that of Muslim brotherhood. Unity is one thing and affection another, political unity is one thing and agreement on a certain principle another. To advocate Muslim unity, therefore, is different from advocating the improvement of conditions in Islam and different also from advocating an increase in understanding, in affection, and in cooperation among Muslims. We can therefore say that he who talks about the principle of Muslim brotherhood, and discusses the benefits of understanding among the Muslims, does not prove that Muslim unity is possible. Contrariwise, he who denies the possibility of realizing Muslim unity does not deny the principle of Muslim brotherhood or oppose the efforts toward the awakening of the Muslims and understanding among them. What may be said concerning the ideal of brotherhood is not sufficient proof of the possibility of realizing Muslim unity. Further, it is not intelligent or logical to prove the possibility of realizing Muslim unity by quoting the example of Freemasonry or socialism or communism, because the Freemasons do not constitute a political unity and the socialist parties in the different European countries have not combined to form a new state. Even communism itself has not formed a new state, but has taken the place of the tsarist Russian state. We have, therefore, to distinguish quite clearly between the question of Muslim brotherhood and that of Muslim unity, and we must consider directly whether or not it is possible to realize Muslim unity in the political sense.

If we cast a general glance at history and review the influence of religions over the formation of political units, we find that the world religions have not been able to unify peoples speaking different languages, except in the Middle Ages, and that only in limited areas and for a short time. The political unity which the Christian church sought to bring about did not at any time merge the Orthodox world with the Catholic. Neither did the political unity which the papacy tried to bring about in the Catholic world last for any length of time. So it was also in the Muslim world; the political unity

which existed at the beginning of its life was not able to withstand the changes of circumstance for any length of time. Even the Abbasid caliphate, at the height of its power and glory, could not unite all the Muslims under its political banner. Similarly, the lands ruled by this caliphate did not effectively preserve their political unity for very long. Nor was it long after the founding of the caliphate that its control over some of the provinces became symbolic rather than real; it could not prevent the secession of these provinces and their transformation into independent political units. It deserves to be mentioned in this connection that the spread of the Muslim religion in some areas took place after the Muslim caliphate lost effectively unity and real power, so much so that in some countries Islam spread in a manner independent of the political authority, at the hands of missionary tradesmen, holy men, and dervishes. In short, the Muslim world, within its present extensive limits, never at any time formed a political unity. If their political unity could not be realized in past centuries, when social life was simple and political relations were primitive, when religious customs controlled every aspect of behavior and thought, it will not be possible to realize it in this century, when social life has become complicated, political problems have become intractable, and science and technology have liberated themselves from the control of tradition and religious beliefs.

I know that what I have stated here will displease many doctors of Islam; I know that the indications of history which I have set out above will have no influence over the beliefs of a great many of the men of religion, because they have been accustomed to discuss these matters without paying heed to historical facts or to the geographical picture; nor are they used to distinguishing between the meaning of religious brotherhood and the meaning of political ties. They have been accustomed to confuse the principles of Islamic brotherhood, in its moral sense, and the idea of Islamic unity, in its political sense. I think it useless to try to persuade these people of the falsity of their beliefs, but I think it necessary to ask them to remember what reason and logic require in this

respect. Let them maintain their belief in the possibility of realizing Islamic unity, but let them at the same time agree to the necessity of furthering Arab unity, at least as one stage toward the realization of the Islamic unity in which they believe. In any event, let them not oppose the efforts which are being made to bring about Arab unity, on the pretext of serving the Islamic unity which they desire. I repeat here what I have written above: Whoever opposes Arab unity, on the pretext of Muslim unity, contradicts the simplest requirements of reason and logic, and I unhesitatingly say that to contradict logic to this extent can be the result only of deceit or of deception. The deceit is that of some separatists who dislike the awakening of the Arab nation and try to arouse religious feeling against the idea of Arab unity, and the deception is that of the simple-minded, who incline to believe whatever is said to them in the name of religion, without realizing what hidden purposes might lurk behind the speeches. I therefore regard it as my duty to draw the attention of all the Muslim Arabs to this important matter and I ask them not to be deceived by the myths of the separatists on this chapter.

Perhaps the strangest and most misleading views that have been expressed regarding Arab unity and Islamic unity are the views of those who say that the idea of Arab unity was created to combat Islamic unity in order to isolate some Islamic countries, the better to exercise continuous power over them. I cannot imagine a view further removed from the realities of history and politics or more contradictory to the laws of reason and logic. The details I have mentioned above concerning the relation of Muslim unity to Arab unity are sufficient, basically, to refute such allegations. Yet I think it advisable to add to these details some observations for further proof and clarity. It cannot be denied that the British, more than any other state, have humored and indulged the Arab movement. This is only because they are more practiced in politics and quicker to understand the psychology of nations and the realities of social life. Before anybody else they realized the hidden powers lying in the Arab idea, and thought it wise, therefore, to

humor it somewhat, instead of directly opposing it. This was in order to preserve themselves against the harm they might sustain through it and to make it more advantageous to their interests.

We must understand that British policy is a practical policy, changing with circumstances and always making use of opportunities. We must not forget that it was Great Britain who, many times, saved the Ottoman state, then the depository of the Islamic caliphate, from Russian domination. She it was who halted Egyptian armies in the heart of Anatolia to save the seat of the Muslim caliphate from these victorious troops, and she it was who opposed the union of Egypt with Syria at the time of Muhammad Ali. Whoever, then, charges that the idea of Arab unity is a foreign plot utters a greater falsehood than any that has ever been uttered, and he is the victim of the greatest of deceptions. We must know full well that the idea of Arab unity is a natural idea. It has not been artificially started. It is a natural consequence of the existence of the Arab nation itself. It is a social force drawing its vitality from the life of the Arabic language, from the history of the Arab nation, and from the connectedness of the Arab countries. No one can logically pretend that it is the British who created the idea of Arab unity, unless he can prove that it is the British who have created the Arabic language, originating the history of the Arab nation and putting together the geography of the Arab countries. The idea of Arab unity is a natural concept springing from the depths of social nature and not from the artificial views which can be invented by individuals or by states. It remained latent, like many natural and social forces, for many centuries, as a result of many historical factors which cannot be analyzed here. But everything indicates that this period is now at an end, that the movement has come into the open and will manifest itself with ever-increasing power. It will, without any doubt, spread all over the Arab countries, to whom it will bring back their ancient glory and primeval youth; it will indeed bring back what is most fertile, most powerful, and highest in these countries. This ought to be the faith of the enlightened among the speakers of the *dad*.

10.12 Ho Chi Minh: “Declaration of Independence of the Democratic Republic of Vietnam” (1945)¹⁸

All men are created equal; they are endowed by their Creator with certain unalienable Rights; among these are Life, Liberty, and the pursuit of Happiness.

This immortal statement was made in the Declaration of Independence of the United States of America in 1776. In a broader sense, this means: All the peoples on the earth are equal from birth, all the peoples have a right to live, to be happy and free.

The Declaration of the French Revolution made in 1791 on the Rights of Man and the Citizen also states: “All men are born free and with equal rights, and must always remain free and have equal rights.”

Those are undeniable truths.

Nevertheless, for more than eighty years, the French imperialists, abusing the standard of Liberty, Equality, and Fraternity, have violated our Fatherland and oppressed our fellow citizens. They have acted contrary to the ideals of humanity and justice.

In the field of politics, they have deprived our people of every democratic liberty.

They have enforced inhuman laws; they have set up three distinct political regimes in the North, the Center, and the South of Viet-Nam in order to wreck our national unity and prevent our people from being united.

They have built more prisons than schools. They have mercilessly slain our patriots; they have drowned our uprisings in rivers of blood.

They have fettered public opinion; they have practiced obscurantism against our people.

To weaken our race they have forced us to use opium and alcohol.

In the field of economics, they have fleeced us to the backbone, impoverished our people and devastated our land.

They have robbed us of our rice fields, our mines, our forests, and our raw materials. They have monopolized the issuing of bank notes and the export trade.

They have invented numerous unjustifiable taxes and reduced our people, especially our peasantry, to a state of extreme poverty.

They have hampered the prospering of our national bourgeoisie; they have mercilessly exploited our workers.

In the autumn of 1940, when the Japanese fascists violated Indochina’s territory to establish new bases in their fight against the Allies, the French imperialists went down on their bended knees and handed over our country to them.

Thus, from that date, our people were subjected to the double yoke of the French and the Japanese. Their sufferings and miseries increased. The result was that, from the end of last year to the beginning of this year, from Quang Tri Province to the North of Viet-Nam, more than two million of our fellow citizens died from starvation. On March 9 [1945], the French troops were disarmed by the Japanese. The French colonialists either fled or surrendered, showing that not only were they incapable of “protecting” us, but that, in the span of five years, they had twice sold our country to the Japanese.

On several occasions before March 9, the Viet Minh League urged the French to ally themselves with it against the Japanese. Instead of agreeing to this proposal, the French colonialists so intensified their terrorist activities against the Viet Minh members that before fleeing they massacred a great number of our political prisoners detained at Yen Bay and Cao Bang.

Notwithstanding all this, our fellow citizens have always manifested toward the French a tolerant and humane attitude. Even after the Japanese *Putsch* of March, 1945, the Viet Minh League helped many Frenchmen to cross the frontier, rescued some of them from Japanese jails, and protected French lives and property.

18 Ho Chi Minh, “Declaration of Independence of the Democratic Republic of Vietnam,” in *Ho Chi Minh on Revolution: Selected Writings, 1920–66*, edited by Bernard Fall (New York: Frederick A. Praeger, 1967).

From the autumn of 1940, our country had in fact ceased to be a French colony and had become a Japanese possession.

After the Japanese had surrendered to the Allies, our whole people rose to regain our national sovereignty and to found the Democratic Republic of Viet-Nam.

The truth is that we have wrested our independence from the Japanese and not from the French.

The French have fled, the Japanese have capitulated, Emperor Bao Dai has abdicated. Our people have broken the chains which for nearly a century have fettered them and have won independence for the Fatherland. Our people at the same time have overthrown the monarchic regime that has reigned supreme for dozens of centuries. In its place has been established the present Democratic Republic....

10.13 Frantz Fanon: *The Wretched of the Earth* (1963)¹⁹

Concerning Violence

... Decolonization, which sets out to change the order of the world, is, obviously, a program of complete disorder. But it cannot come as a result of magical practices, or of a natural shock, or of a friendly understanding. Decolonization, as we know, is a historical process: that is to say that it cannot be understood, it cannot become intelligible nor clear to itself except in the exact measure that we can discern the movements which give it historical form and content. Decolonization is the meeting of two forces, opposed to each other by their very nature, which in fact owe their originality to that sort of substantification which results from and is nourished by the situation in the colonies. Their first encounter was marked by violence and their existence together — that is to say the exploitation of the native by the settler — was carried on by dint of a great array of bayonets and cannons. The settler and the native are old acquaintances. In fact, the

settler is right when he speaks of knowing “them” well. For it is the settler who has brought the native into existence and who perpetuates his existence. The settler owes the fact of his very existence, that is to say, his property, to the colonial system....

The naked truth of decolonization evokes for us the searing bullets and bloodstained knives which emanate from it. For if the last shall be first, this will only come to pass after a murderous and decisive struggle between the two protagonists. That affirmed intention to place the last at the head of things, and to make them climb at a pace (too quickly, some say) the well-known steps which characterize an organized society, can only triumph if we use all means to turn the scale, including, of course, that of violence.

You do not turn any society, however primitive it may be, upside down with such a program if you have not decided from the very beginning, that is to say from the actual formulation of that program, to overcome all the obstacles that you will come across in so doing. The native who decides to put the program into practice, and to become its moving force, is ready for violence at all times. From birth it is clear to him that this narrow world, strewn with prohibitions, can only be called in question by absolute violence.

The colonial world is a world divided into compartments. It is probably unnecessary to recall the existence of native quarters and European quarters, of schools for natives and schools for Europeans; in the same way we need not recall apartheid in South Africa. Yet, if we examine closely this system of compartments, we will at least be able to reveal the lines of force it implies. This approach to the colonial world, its ordering and its geographical layout will allow us to mark out the lines on which a decolonized society will be reorganized.

The colonial world is a world cut in two. The dividing line, the frontiers are shown by barracks and police stations. In the colonies it is the policeman and the soldier who are the official, instituted

19 Frantz Fanon, *The Wretched of the Earth*, translated by Constance Farrington (New York: Grove Press, 1963).

go-between, the spokesman of the settler and his rule of oppression. In capitalist societies the educational system, whether lay or clerical, the structure of moral reflexes handed down from father to son, the exemplary honesty of workers who are given a medal after fifty years of good and loyal service, and the affection which springs from harmonious relations and good behavior — all these aesthetic expressions of respect for the established order serve to create around the exploited person an atmosphere of submission and of inhibition which lightens the task of policing considerably. In the capitalist countries a multitude of moral teachers, counselors and “bewilderers” separate the exploited from those in power. In the colonial countries, on the contrary, the policeman and the soldier, by their immediate presence and their frequent and direct action maintain contact with the native and advise him by means of rifle butts and napalm not to budge. It is obvious here that the agents of government speak the language of pure force. The intermediary does not lighten the oppression, nor seek to hide the domination; he shows them up and puts them into practice with the clear conscience of an upholder of the peace; yet he is the bringer of violence into the home and into the mind of the native.

The zone where the natives live is not complementary to the zone inhabited by the settlers. The two zones are opposed, but not in the service of a higher unity. Obedient to the rules of pure Aristotelian logic, they both follow the principle of reciprocal exclusivity. No conciliation is possible, for of the two terms, one is superfluous. The settlers’ town is a strongly built town, all made of stone and steel. It is a brightly lit town; the streets are covered with asphalt, and the garbage cans swallow all the leavings, unseen, unknown and hardly thought about. The settler’s feet are never visible, except perhaps in the sea; but there you’re never close enough to see them. His feet are protected by strong shoes although the streets of his town are clean and even, with no holes or stones. The settler’s town is a well-fed town, an easygoing town; its belly is always full of good things. The settlers’ town is a town of white people, of foreigners.

The town belonging to the colonized people, or at least the native town, the Negro village, the medina, the reservation, is a place of ill fame, peopled by men of evil repute. They are born there, it matters little where or how; they die there, it matters not where, nor how. It is a world without spaciousness; men live there on top of each other, and their huts are built one on top of the other. The native town is a hungry town, starved of bread, of meat, of shoes, of coal, of light. The native town is a crouching village, a town on its knees, a town wallowing in the mire. It is a town of niggers and dirty Arabs. The look that the native turns on the settler’s town is a look of lust, a look of envy; it expresses his dreams of possession — all manner of possession: to sit at the settler’s table, to sleep in the settler’s bed, with his wife if possible. The colonized man is an envious man. And this the settler knows very well; when their glances meet he ascertains bitterly, always on the defensive, “They want to take our place.” It is true, for there is no native who does not dream at least once a day of setting himself up in the settler’s place.

This world divided into compartments, this world cut in two is inhabited by two different species. The originality of the colonial context is that economic reality, inequality, and the immense difference of ways of life never come to mask the human realities. When you examine at close quarters the colonial context, it is evident that what parcels out the world is to begin with the fact of belonging to or not belonging to a given race, a given species. In the colonies the economic substructure is also a superstructure. The cause is the consequence; you are rich because you are white, you are white because you are rich. . . .

The natives’ challenge to the colonial world is not a rational confrontation of points of view. It is not a treatise on the universal, but the untidy affirmation of an original idea propounded as an absolute. The colonial world is a Manichean world. It is not enough for the settler to delimit physically, that is to say with the help of the army and the police force, the place of the native. As if to show the totalitarian character of colonial exploitation the settler paints the native as a sort of quintessence of evil.

Native society is not simply described as a society lacking in values. It is not enough for the colonist to affirm that those values have disappeared from, or still better never existed in, the colonial world. The native is declared insensible to ethics; he represents not only the absence of values, but also the negation of values. He is, let us dare to admit, the enemy of values, and in this sense he is the absolute evil. He is the corrosive element, destroying all that comes near him; he is the deforming element, disfiguring all that has to do with beauty or morality; he is the depository of maleficent powers, the unconscious and irretrievable instrument of blind forces. Monsieur Meyer could thus state seriously in the French National Assembly that the Republic must not be prostituted by allowing the Algerian people to become part of it. All values, in fact, are irrevocably poisoned and diseased as soon as they are allowed in contact with the colonized race. The customs of the colonized people, their traditions, and their myths — above all, their myths — are the very sign of that poverty of spirit and of their constitutional depravity...

The violence with which the supremacy of white values is affirmed and the aggressiveness which has permeated the victory of these values over the ways of life and of thought of the native mean that, in revenge, the native laughs in mockery when Western values are mentioned in front of him. In the colonial context the settler only ends his work of breaking in the native when the latter admits loudly and intelligibly the supremacy of the white man's values. In the period of decolonization, the colonized masses mock at these very values, insult them, and vomit them up...

The native discovers that his life, his breath, his beating heart are the same as those of the settler. He finds out that the settler's skin is not of any more value than a native's skin; and it must be said that this discovery shakes the world in a very necessary manner. All the new, revolutionary assurance of the native stems from it. For if, in fact, my life is worth as much as the settler's, his glance no longer shrivels me up nor freezes me, and his voice no longer turns me into stone. I am no longer on tenterhooks in his presence; in fact, I don't give a damn for him. Not

only does his presence no longer trouble me, but I am already preparing such efficient ambushes for him, that soon there will be no way out but that of flight.

We have said that the colonial context is characterized by the dichotomy which it imposes upon the whole people. Decolonization unifies that people by the radical decision to remove from it its heterogeneity, and by unifying it on a national, sometimes a racial, basis. We know the fierce words of the Senegalese patriots, referring to the maneuvers of their president, Senghor: "We have demanded that the higher posts should be given to Africans; and now Senghor is Africanizing the Europeans." That is to say that the native can see clearly and immediately if decolonization has come to pass or not, for his minimum demands are simply that the last shall be first...

Nowadays a theoretical problem of prime importance is being set, on the historical plane as well as on the level of political tactics, by the liberation of the colonies: when can one affirm that the situation is ripe for a movement of national liberation? In what form should it first be manifested? Because the various means whereby decolonization has been carried out have appeared in many different aspects, reason hesitates and refuses to say which is a true decolonization, and which a false. We shall see that for a man who is in the thick of the fight it is an urgent matter to decide on the means and the tactics to employ: that is to say, how to conduct and organize the movement. If this coherence is not present there is only a blind will toward freedom, with the terribly reactionary risks which it entails.

What are the forces which in the colonial period open up new outlets and engender new aims for the violence of colonized peoples? In the first place there are the political parties and the intellectual or commercial elites. Now, the characteristic feature of certain political structures is that they proclaim abstract principles but refrain from issuing definite commands. The entire action of these nationalist political parties during the colonial period is action of the electoral type: a string of philosophico-political dissertations on the themes of the rights

of peoples to self-determination, the rights of man to freedom from hunger and human dignity, and the unceasing affirmation of the principle: "One man, one vote." The national political parties never lay stress upon the necessity of a trial of armed strength, for the good reason that their objective is not the radical overthrowing of the system. Pacifists and legalists, they are in fact partisans of order, the new order — but to the colonialist bourgeoisie they put bluntly enough the demand which to them is the main one: "Give us more power." On the specific question of violence, the elite are ambiguous. They are violent in their words and reformist in their attitudes. When the nationalist political leaders say something, they make quite clear that they do not really *think* it...

The peasantry is systematically disregarded for the most part by the propaganda put out by the nationalist parties. And it is clear that in the colonial countries the peasants alone are revolutionary, for they have nothing to lose and everything to gain. The starving peasant, outside the class system, is the first among the exploited to discover that only violence pays. For him there is no compromise, no possible coming to terms; colonization and decolonization are simply a question of relative strength. The exploited man sees that his liberation implies the use of all means, and that of force first and foremost.

At the decisive moment, the colonialist bourgeoisie, which up till then has remained inactive, comes into the field. It introduces that new idea which is in proper parlance a creation of the colonial situation: non-violence. In its simplest form this non-violence signifies to the intellectual and economic elite of the colonized country that the bourgeoisie has the same interests as they and that it is therefore urgent and indispensable to come to terms for the public good. Nonviolence is an attempt to settle the colonial problem around a green baize table, before any regrettable act has been performed or irreparable gesture made, before any blood has been shed. But if the masses, without waiting for the chairs to be arranged around the baize table, listen to their own voice and begin committing outrages and setting fire to buildings,

the elite and the nationalist bourgeois parties will be seen rushing to the colonialists to exclaim, "This is very serious! We do not know how it will end; we must find a solution — some sort of compromise."

This idea of compromise is very important in the phenomenon of decolonization, for it is very far from being a simple one. Compromise involves the colonial system and the young nationalist bourgeoisie at one and the same time. The partisans of the colonial system discover that the masses may destroy everything. Blown-up bridges, ravaged farms, repressions, and fighting harshly disrupt the economy. Compromise is equally attractive to the nationalist bourgeoisie, who since they are not clearly aware of the possible consequences of the rising storm, are genuinely afraid of being swept away by this huge hurricane and never stop saying to the settlers: "We are still capable of stopping the slaughter; the masses still have confidence in us; act quickly if you do not want to put everything in jeopardy." One step more, and the leader of the nationalist party keeps his distance with regard to that violence. He loudly proclaims that he has nothing to do with these Mau-Mau, these terrorists, these throat-slitters. At best, he shuts himself off in a no man's land between the terrorists and the settlers and willingly offers his services as go-between; that is to say, that as the settlers cannot discuss terms with these Mau-Mau, he himself will be quite willing to begin negotiations. Thus it is that the rear guard of the national struggle, that very party of people who have never ceased to be on the other side in the fight, find themselves somersaulted into the vanguard of negotiations and compromise — precisely because that party has taken very good care never to break contact with colonialism...

But it so happens that for the colonized people this violence, because it constitutes their only work, invests their characters with positive and creative qualities. The practice of violence binds them together as a whole, since each individual forms a violent link in the great chain, a part of the great organism of violence which has surged upward in reaction to the settler's violence in the beginning. The groups recognize each other and the future nation is already indivisible. The armed struggle

mobilizes the people; that is to say, it throws them in one way and in one direction.

The mobilization of the masses, when it arises out of the war of liberation, introduces into each man's consciousness the ideas of a common cause, of a national destiny, and of a collective history. In the same way the second phase, that of the building-up of the nation, is helped on by the existence of this cement which has been mixed with blood and anger. Thus we come to a fuller appreciation of the originality of the words used in these underdeveloped countries. During the colonial period the people are called upon to fight against oppression; after national liberation, they are called upon to fight against poverty, illiteracy, and underdevelopment. The struggle, they say, goes on. The people realize that life is an unending contest....

The Pitfalls of National Consciousness

History teaches us clearly that the battle against colonialism does not run straight away along the lines of nationalism. For a very long time the native devotes his energies to ending certain definite abuses: forced labor, corporal punishment, inequality of salaries, limitation of political rights, etc. This right for democracy against the oppression of mankind will slowly leave the confusion of neo-liberal universalism to emerge, sometimes laboriously, as a claim to nationhood. It so happens that the unpreparedness of the educated classes, the lack of practical links between them and the mass of the people, their laziness, and, let it be said, their cowardice at the decisive moment of the struggle will give rise to tragic mishaps.

National consciousness, instead of being the all-embracing crystallization of the innermost hopes of the whole people, instead of being the immediate and most obvious result of the mobilization of the people, will be in any case only an empty shell, a crude and fragile travesty of what it might have been. The faults that we find in it are quite sufficient explanation of the facility with which, when dealing with young and independent nations, the nation is passed over for the race, and the tribe is preferred to the state. These are the cracks in the

edifice which show the process of retrogression, that is so harmful and prejudicial to national effort and national unity. We shall see that such retrograde steps with all the weaknesses and serious dangers that they entail are the historical result of the incapacity of the national middle class to rationalize popular action, that is to say their incapacity to see into the reasons for that action....

The national economy of the period of independence is not set on a new footing. It is still concerned with the groundnut harvest, with the cocoa crop and the olive yield. In the same way there is no change in the marketing of basic products, and not a single industry is set up in the country. We go on sending out raw materials; we go on being Europe's small farmers, who specialize in unfinished products.

Yet the national middle class constantly demands the nationalization of the economy and of the trading sectors. This is because, from their point of view, nationalization does not mean placing the whole economy at the service of the nation and deciding to satisfy the needs of the nation. For them, nationalization does not mean governing the state with regard to the new social relations whose growth it has been decided to encourage. To them, nationalization quite simply means the transfer into native hands of those unfair advantages which are a legacy of the colonial period....

Seen through its eyes, its mission has nothing to do with transforming the nation; it consists, prosaically, of being the transmission line between the nation and a capitalism, rampant though camouflaged, which today puts on the mask of neo-colonialism. The national bourgeoisie will be quite content with the role of the Western bourgeoisie's business agent, and it will play its part without any complexes in a most dignified manner. But this same lucrative role, this cheap-Jack's function, this meanness of outlook and this absence of all ambition symbolize the incapability of the national middle class to fulfill its historic role of bourgeoisie. Here, the dynamic, pioneer aspect, the characteristics of the inventor and of the discoverer of new worlds which are found in all national bourgeoisies are lamentably absent....

The national bourgeoisie turns its back more and more on the interior and on the real facts of its undeveloped country, and tends to look toward the former mother country and the foreign capitalists who count on its obliging compliance. As it does not share its profits with the people, and in no way allows them to enjoy any of the dues that are paid to it by the big foreign companies, it will discover the need for a popular leader to whom will fall the dual role of stabilizing the regime and of perpetuating the domination of the bourgeoisie. The bourgeois dictatorship of underdeveloped countries draws its strength from the existence of a leader. We know that in the well-developed countries the bourgeois dictatorship is the result of the economic power of the bourgeoisie. In the underdeveloped countries on the contrary the leader stands for moral power, in whose shelter the thin and poverty-stricken bourgeoisie of the young nation decides to get rich.

The former colonial power increases its demands, accumulates concessions and guarantees and takes fewer and fewer pains to mask the hold it has over the national government. The people stagnate deplorably in unbearable poverty; slowly they awaken to the unutterable treason of their leaders. This awakening is all the more acute in that the bourgeoisie is incapable of learning its lesson. The distribution of wealth that it effects is not spread out between a great many sectors; it is not ranged among different levels, nor does it set up a hierarchy of half-tones....

There must be an economic program; there must also be a doctrine concerning the division of wealth and social relations. In fact, there must be an idea of man and of the future of humanity; that is to say that no demagogic formula and no collusion

with the former occupying power can take the place of a program. The new peoples, unawakened at first but soon becoming more and more clear minded, will make strong demands for this program. The African people and indeed all underdeveloped peoples, contrary to common belief, very quickly build up a social and political consciousness. What can be dangerous is when they reach the stage of social consciousness before the stage of nationalism. If this happens, we find in underdeveloped countries fierce demands for social justice which paradoxically are allied with often primitive tribalism. The underdeveloped peoples behave like starving creatures; this means that the end is very near for those who are having a good time in Africa. Their government will not be able to prolong its own existence indefinitely. A bourgeoisie that provides nationalism alone as food for the masses fails in its mission and gets caught up in a whole series of mishaps. But if nationalism is not made explicit, if it is not enriched and deepened by a very rapid transformation into a consciousness of social and political needs, in other words into humanism, it leads up a blind alley. The bourgeois leaders of underdeveloped countries imprison national consciousness in sterile formalism. It is only when men and women are included on a vast scale in enlightened and fruitful work that form and body are given to that consciousness. Then the flag and the palace where sits the government cease to be the symbols of the nation. The nation deserts these brightly lit, empty shells and takes shelter in the country, where it is given life and dynamic power. The living expression of the nation is the moving consciousness of the whole of the people; it is the coherent enlightened action of men and women....



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PART V

HUMAN RIGHTS IN THE ERA OF GLOBALIZATION AND POPULISM

Introduction

The impact of globalization on human rights has provoked heated debates since the end of the Cold War, debates well illustrated by the lively exchange between *New York Times* journalist Thomas Friedman and the director of the French monthly periodical *Le Monde Diplomatique*, Ignacio Ramonet. Friedman maintains that poor countries will benefit from greater immersion in the global market, as growing trade reduces poverty while fostering accountable and transparent institutions. Ramonet rejects Friedman's claim, arguing instead that globalization reflects the self-interest of the wealthiest states at the expense of the poor, leading to dangerous nationalist backlashes.

The debate between Friedman and Ramonet provides a useful introduction to the questions that the onset of globalization poses for human rights. Does economic globalization weaken or expand labor and development rights? Favor or hinder environmental rights? Bring peace or trigger conflict? Heighten or diminish human trafficking and forced migration? Bridge or intensify cultural divisions? Is globalization compatible with security and human rights? Twenty years after the collapse of the Soviet Union, many analysts were identifying economic globalization as one of the reasons for rising nationalism in the West, as a new age of counter-enlightenment challenges democracy and human rights. In "Human Rights in the Age of Populism," Micheline Ishay explains the roots of this new populism – from both the right and the left – in terms of the erosion of the international liberal order, the growth of socioeconomic inequity, and the decline of progressive alternative agendas. She argues that left-wing populism does not provide a comprehensive platform to counter the new surge of illiberalism. Instead, she offers human rights strategies that can move us beyond the racism, xenophobia, and misogyny of right-wing populism.

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 5.

V.1 Thomas L. Friedman and Ignacio Ramonet: “Dueling Globalizations” (1999)¹

DOS Capital

If there can be a statute of limitations on crimes, then surely there must be a statute of limitations on foreign-policy clichés. With that in mind, I hereby declare the “post-Cold War world” over...

Today’s globalization system has some very different attributes, rules, incentives, and characteristics, but it is equally influential. The Cold War system was characterized by one overarching feature: division. The world was chopped up, and both threats and opportunities tended to grow out of whom you were divided from. Appropriately, that Cold War system was symbolized by a single image: the Wall. The globalization system also has one overarching characteristic: integration. Today, both the threats and opportunities facing a country increasingly grow from whom it is connected to. This system is also captured by a single symbol: the World Wide Web. So in the broadest sense, we have gone from a system built around walls to a system increasingly built around networks.

Once a country makes the leap into the system of globalization, its elite begin to internalize this perspective of integration and try to locate themselves within a global context. I was visiting Amman, Jordan, in the summer of 1998 when I met my friend, Rami Khouri, the country’s leading political columnist, for coffee at the Hotel Inter-Continental. We sat down, and I asked him what was new. The first thing he said to me was “Jordan was just added to CNN’s worldwide weather highlights.” What Rami was saying was that it is important for Jordan to know that those institutions that think globally believe it is now worth knowing what the weather is like in Amman. It makes Jordanians feel more important and holds out the hope that they will profit by having more tourists or global investors visiting. The day after seeing Rami I happened to interview

Jacob Frenkel, governor of the Bank of Israel and a University of Chicago-trained economist. He remarked to me: “Before, when we talked about macroeconomics, we started by looking at the local markets, local financial system, and the interrelationship between them, and then, as an afterthought, we looked at the international economy. There was a feeling that what we do is primarily our own business and then there are some outlets where we will sell abroad. Now, we reverse the perspective. Let’s not ask what markets we should export to after having decided what to produce; rather, let’s first study the global framework within which we operate and then decide what to produce. It changes your whole perspective.”

Integration has been driven in large part by globalization’s defining technologies: computerization, miniaturization, digitization, satellite communications, fiber optics, and the Internet. And that integration, in turn, has led to many other differences between the Cold War and globalization systems.

Unlike the Cold War system, globalization has its own dominant culture, which is why integration tends to be homogenizing. In previous eras, cultural homogenization happened on a regional scale—Romanization of Western Europe and the Mediterranean world, the Islamization of Central Asia, the Middle East, North Africa, and Spain by the Arabs, or the Russification of Eastern and Central Europe, and parts of Eurasia, under the Soviets. Culturally speaking, globalization is largely the spread (for better and for worse) of Americanization — from Big Macs and iMacs to Mickey Mouse....

Thomas L. Friedman

A New Totalitarianism

Friedman notes, and rightly so, that everything is now interdependent and that, at the same time, everything is in conflict. He also observes that globalization embodies (or infects) every trend and

1 Thomas L. Friedman and Ignacio Ramonet, “Dueling Globalizations: A Debate between Thomas L. Friedman and Ignacio Ramonet,” *Foreign Policy* No. 16 (Fall 1999):110–116.

phenomenon at work in the world today — whether political, economic, social, cultural, or ecological. But he forgets to remark that there are groups from every nationality, religion, and ethnicity that vigorously oppose the idea of global unification and homogenization.

Furthermore, our author appears incapable of observing that globalization imposes the force of two powerful and contradictory dynamics on the world: fusion and fission. On the one hand, many states seek out alliances. They pursue fusion with others to build institutions, especially economic ones that provide strength — or safety — in numbers. Like the European Union, groups of countries in Asia, Eastern Europe, North Africa, North America, and South America are signing free-trade agreements and reducing tariff barriers to stimulate commerce, as well as reinforcing political and security alliances.

But set against the backdrop of this integration, several multinational communities are falling victim to fission, cracking or imploding into fragments before the astounded eyes of their neighbors. When the three federal states of the Eastern bloc — Czechoslovakia, the USSR, and Yugoslavia — broke apart, they gave birth to some 22 independent states! A veritable sixth continent!

The political consequences have been ghastly. Almost everywhere, the fractures provoked by globalization have reopened old wounds. Borders are increasingly contested, and pockets of minorities give rise to dreams of annexation, secession, and ethnic cleansing. In the Balkans and the Caucasus, these tensions unleashed wars (in Abkhazia, Bosnia, Croatia, Kosovo, Moldova, Nagorno-Karabakh, Slovenia, and South Ossetia)....

Magnates and Misfits

Globalization rests upon two pillars, or paradigms, which influence the way globalizers such as Friedman think. The first pillar is communication. It has tended to replace, little by little, a major driver of the last two centuries: progress. From schools to businesses, from families and law to government, there is now one command: Communicate.

The second pillar is the market. It replaces social cohesion, the idea that a democratic society must function like a clock. In a clock, no piece is unnecessary and all pieces are unified. From this eighteenth-century mechanical metaphor we can derive a modern economic and financial version. From now on, everything must operate according to the criteria of the “master market.” Which of our new values are most fundamental? Windfall profits, efficiency, and competitiveness.

In this market-driven, interconnected world, only the strongest survive. Life is a fight, a jungle. Economic and social Darwinism, with its constant calls for competition, natural selection, and adaptation, forces itself on everyone and everything. In this new social order, individuals are divided into “solvent” or “nonsolvent” — i.e., apt to integrate into the market or not. The market offers protection to the solvents only. In this new order, where human solidarity is no longer an imperative, the rest are misfits and outcasts.

Thanks to globalization, only activities possessing four principal attributes thrive — those that are planetary, permanent, immediate, and immaterial in nature. These four characteristics recall the four principal attributes of God Himself. And in truth, globalization is set up to be a kind of modern divine critic, requiring submission, faith, worship, and new rites. The market dictates the Truth, the Beautiful, the Good, and the Just. The “laws” of the market have become a new stone tablet to revere.

Friedman warns us that straying from these laws will bring us to ruin and decay. Thus, like other propagandists of the New Faith, Friedman attempts to convince us that there is one way, and one way alone — the ultraliberal way — to manage economic affairs and, as a consequence, political affairs. For Friedman, the political is in effect the economic, the economic is finance, and finances are markets. The Bolsheviks said, “All power to the Soviets!” Supporters of globalization, such as Friedman, demand, “All power to the market!” The assertion is so peremptory that globalization has become, with its dogma and high priests, a kind of new totalitarianism.

Ignacio Ramonet

Dos Capital 2.0

Ignacio Ramonet makes several points in his provocative and impassioned anti-globalization screed. Let me try to respond to what I see as the main ones...

Frankly, I can and do make a much stronger case for the downsides of globalization than Ramonet does. I know that globalization is hardly all good, but unlike Ramonet, I am not utterly blind to the new opportunities it creates for people — and I am not just talking about the wealthy few. Ask the high-tech workers in Bangalore, India, or Taiwan, or the Bordeaux region of France, or Finland, or coastal China, or Idaho what they think of the opportunities created by globalization. They are huge beneficiaries of the very market forces that Ramonet decries. Don't they count? What about all the human rights and environmental nongovernmental organizations that have been empowered by the Internet and globalization? Don't they count? Or do only French truck drivers count?

Ramonet says I am “incapable of observing that globalization imposes the force of two powerful contradictory dynamics on the world: fusion and fission.” Say what? Why does he think I called my book *The Lexus and the Olive Tree*? It is all about the interaction between what is old and inbred — the quest for community, nation, family, tribe, identity, and one's own olive tree — and the economic pressures of globalization that these aspirations must interact with today, represented by the Lexus. These age-old passions are bumping up against, being squashed by, ripping through, or simply learning to live in balance with globalization.

What Ramonet can accuse me of is a belief that for the moment, the globalization system has been dominating the olive-tree impulses in most places. Many critics have pointed out that my observation that no two countries have ever fought a war against each other while they both had a McDonald's was totally disproved by the war in Kosovo. This is utter nonsense. Kosovo was only a temporary exception that in the end proved my rule. Why did airpower work to bring the Balkan war to a close after only 78 days? Because NATO bombed the Serbian tanks and troops out of Kosovo? No way. Airpower alone

worked because NATO bombed the electricity stations, water system, bridges, and economic infrastructure in Belgrade — a modern European city, a majority of whose citizens wanted to be integrated with Europe and the globalization system. The war was won on the power grids of Belgrade, not in the trenches of Kosovo. One of the first things to be reopened in Belgrade was the McDonald's. It turns out in the end the Serbs wanted to wait in line for burgers, not for Kosovo.

Ramonet falls into a trap that often ensnares French intellectuals, and others, who rail against globalization. They assume that the rest of the world hates it as much as they do, and so they are always surprised in the end when the so-called little people are ready to stick with it. My dear Mr. Ramonet, with all due respect to you and Franz Fanon, the fact is the wretched of the earth want to go to Disney World, not to the barricades. They want the Magic Kingdom, not *Les Miserables*. Just ask them.

Finally, Ramonet says that I believe all the problems of globalization will be solved by the “invisible hand of the market.” I have no idea where these quotation marks came from, let alone the thought. It certainly is not from anything I have written. The whole last chapter of my book lays out in broad strokes what I believe governments — the American government in particular — must do to “democratize” globalization, both economically and politically. Do I believe that market forces and the Electronic Herd are very powerful today and can, at times, rival governments? Absolutely. But do I believe that market forces will solve everything? Absolutely not. Ramonet, who clearly doesn't know a hedge fund from a hedge hog, demonizes markets to an absurd degree. He may think governments are powerless against such monsters, but I do not.

I appreciate the passion of Ramonet's argument, but he confuses my analysis for advocacy. My book is not a tract for or against globalization, and any careful reader will see that. It is a book of reporting about the world we now live in and the dominant international system that is shaping it — a system driven largely by forces of technology that I did not start and cannot stop. Ramonet treats globalization as a choice, and he implicitly wants us

to choose something different. That is his politics. I view globalization as a reality, and I want us first to understand that reality and then, by understanding it, figure out how we can get the best out of it and cushion the worst. That is my politics....

Thomas L. Friedman

Let Them Eat Big Macs

It is truly touching when Thomas Friedman says, “The wretched of the earth want to go to Disney World, not to the barricades.” Such a sentence deserves a place in posterity alongside Queen Marie-Antoinette’s declaration in 1789, when she learned that the people of Paris were revolting and demanding bread: “Let them eat cake!”

My dear Mr. Friedman, do reread the 1999 Human Development Report from the United Nations Development Program. It confirms that 1.3 billion people (or one-quarter of humanity) live on less than one dollar a day. Going to Disney World would probably not displease them, but I suspect they would prefer, first off, to eat well, to have a decent home and decent clothes, to be better educated, and to have a job. To obtain these basic needs, millions of people around the world (their numbers grow more numerous each day) are without a doubt ready to erect barricades and resort to violence.

I deplore this kind of solution as much as Friedman does. But if we are wise, it should never come to that. Rather, why not allocate a miniscule part of the world’s wealth to the “wretched of the earth”? If we assigned just 1 percent of this wealth for 20 years to the development of the most unhappy of our human brothers, extreme misery might disappear, and with it, risks of endemic violence.

But globalization is deaf and blind to such considerations — and Friedman knows it. On the contrary, it worsens differences and divides and polarizes societies. In 1960, before globalization, the most fortunate 20 percent of the planet’s population were 30 times richer than the poorest 20 percent. In 1997, at the height of globalization, the most fortunate were 74 times richer than the world’s poorest! And this gap grows each day. Today, if you add up the gross national products of all the world’s

underdeveloped countries (with their 600 million inhabitants) they still will not equal the total wealth of the three richest people in the world. I am sure, my dear Mr. Friedman, that those 600 million people have only one thing on their minds: Disney World!

It is true that there is more to globalization than just the downsides, but how can we overlook the fact that during the last 15 years of globalization, per capita income has decreased in more than 80 countries, or in almost half the states of the world? Or that since the fall of communism, when the West supposedly arranged an economic miracle cure for the former Soviet Union — more or less, as Friedman would put it, new McDonald’s restaurants — more than 150 million ex-Soviets (out of a population of approximately 290 million) have fallen into poverty?

If you would agree to come down out of the clouds, my dear Mr. Friedman, you could perhaps understand that globalization is a symptom of the end of a cycle. It is not only the end of the industrial era (with today’s new technology), not only the end of the first capitalist revolution (with the financial revolution), but also the end of an intellectual cycle — the one driven by reason, as the philosophers of the eighteenth century defined it. Reason gave birth to modern politics and sparked the American and French Revolutions. But almost all that modern reason constructed — the state, society, industry, nationalism, socialism — has been profoundly changed. In terms of political philosophy, this transformation captures the enormous significance of globalization. Since ancient times, humanity has known two great organizing principles: the gods, and then reason. From here on out, the market succeeds them both.

Now the triumph of the market and the irresistible expansion of globalization cause me to fear an inevitable showdown between capitalism and democracy. Capitalism inexorably leads to the concentration of wealth and economic power in the hands of a small group. And this in turn leads to a fundamental question: How much redistribution will it take to make the domination of the rich minority acceptable to the majority of the world’s population? The problem, my dear Mr. Friedman, is that

the market is incapable of responding. All over the world, globalization is destroying the welfare state.

What can we do? How do we keep half of humanity from revolting and choosing violence? I know your response, dear Mr. Friedman: Give them all Big Macs and send them to Disney World!

Ignacio Ramonet

V.2 Micheline Ishay: “Human Rights In The Age of Populism” (2020)²

“When and if fascism comes to America it will not be labeled ‘made in Germany;’ it will not be marked with a swastika; it will not be called fascism; it will be called, of course, ‘Americanism.’” These words were attributed to Halford E. Luccock in a sermon at Yale in 1938.³ Today, the specter of fascism is again haunting Europe, the US, and the Middle East. Resisted by democratic institutions, it may not yet have sunk deep roots in Western soil, but fascism shows alarming vitality as populism, in its right-wing variant, progresses on both sides of the Atlantic and in the Middle East. Today, the counter-Enlightenment is advancing, and human rights is in retreat. Women, on the frontlines of human rights struggles throughout the world, are often the first to bear the brunt of these illiberal reversals.

With neither whimpers nor hoopla, the Universal Declaration of Human Rights (UDHR) celebrated its seventieth anniversary in 2018. Inaugurated on December 10, 1948 at the third session of the United Nations General Assembly, the UDHR was to become, in the words of Eleanor Roosevelt, a new Magna Carta for all people in a world that had just buried fascism.⁴ Meeting in the Great Hall of the Palais de Chaillot in Paris, the UN enjoyed an atmosphere of genuine solidarity as delegates from across the political spectrum acted

in defiance of the first skirmishes of the Cold War, evoking a sense of possibility. They believed the rights invoked in the Declaration would provide the framework for lasting peace in postwar Europe.

In 2018, however, the seventieth anniversary of the UDHR was celebrated in a very different climate, as resurgent populism and fascism threatened the very notion of universal rights. Whereas 1948 was lifting its face toward the future with renewed hope and a sense of urgency to rebuild societies from the ashes of war, contemporary politics turned an amnesic gaze toward the darkening clouds of the 1930s. We are now watching human rights slide down a steepening slope, with many questioning whether the very concept of human rights, let alone the UDHR and the mechanisms of the United Nations, has relevance for today.

The crisis of human rights and democracy in the US, Europe and beyond is a result of the rise of populism and alarming signs of fascism. Populism is not a novel phenomenon; it has historical manifestations that are all too familiar in the West. Populism and fascism climaxed in the West during the interwar period; they were, however, later countered by the progressive visions that shaped new internationalist political and economic structures after the Second World War. Three questions shape this essay: What are the conditions that lead to populism from the right or the left? Can left wing populism serve as a vehicle for the promotion of human rights? Finally, drawing from historical lessons, how can human rights strategies counter the dangers of populism?

To address these questions, this essay maintains, first, that populist and nationalist contagions emerge as a result of the erosion of the international liberal order, the growth of socio-economic inequity,

2 Micheline Ishay, “Human Rights in the Age of Populism,” in *The State of Human Rights: Historical Genealogies, Historical Controversies, and Cultural Imaginaries*, edited by Kerstin Schmidt (Heidelberg: Winter Universitätsverlag, 2020).

3 “Disguised Fascism Seen as a Menace; Professor Luccock Warns That It Will Bear the Misleading Label ‘Americanism,’” *New York Times*, September 12, 1938. Accessed December 9, 2018. <https://www.nytimes.com/1938/09/12/archives/disguised-fascism-seen-as-a-menace-prof-luccock-warns-that-it-will.html>.

4 Eleanor Roosevelt, “Statement to the United Nations General Assembly on the Universal Declaration of Human Rights” (December 9, 1948), *Eleanor Roosevelt Papers Project*, Columbian College of Arts and Sciences, George Washington University. Accessed March 6, 2019. <https://erpapers.columbian.gwu.edu/statement-united-nations-general-assembly-universal-declaration-human-rights-1948>.

and the decline of progressive alternative agendas. Second, it contends that left wing populism does not offer a sufficient progressive platform to counter illiberalism. Third, it argues that comprehensive human rights strategies based on the fundamental principles of freedom institutionalized after World War II can help us move us beyond the racism, xenophobia and misogyny of right-wing populism and the anti-internationalist myopia of left-wing populism.

1. Why Populism?

While there is no firm consensus about the meaning of populism, several characteristics help us define this social phenomenon. Born from a feeling of widespread disenchantment, populism rallies people from different social classes and anchors its action-driven message among groups who feel left out by the system, convinced that their voices are never heard. Populist regimes pursue agendas that draw wide support in the short run but often prove unsustainable in the long run, as ineffective social policies fail to match grandiose promises. While the support of “the people” is seen as the lynchpin of political legitimacy, populist regimes do not include the whole population, but rather rely on a certain ethnic or racial group said to be the “true” people.⁵ Finally, populist leaders tend to develop a cult of personality, claiming the mantle of charismatic authority that exists independently of institutions like political parties. The contagion of populist movements emerges in similar environments: when legitimate great powers lose their control over the international order, when states are unable to deliver sufficient social and economic goods to their population, and when civil society is fragmented. Antonio Gramsci, the early 20th century Italian communist leader, regarded these features as characteristic of non-hegemonic

civil societies, by which he meant societies in which no social group had achieved ideological or institutional preeminence and the apparatus of the state was weak. This combination of weak state structures and divided civil societies creates fertile ground for what Gramsci called “Bonapartism or Caesarism”—the appearance of a strongman who claims he will transcend the conflicts that are tearing society apart.⁶ For example, taking advantage of popular fatigue with the irresolvable contention among materialist ideologies (i.e., capitalism, liberalism, and socialism), Benito Mussolini proposed an anti-Enlightenment ideology based on the concept of a single organic community united by faith. In particular, by exploiting both the fear of Bolshevism and the fear of concentrated capitalist wealth, he forged an alliance among the Church, the military, and the “little men,” comprising what Marxists call the *petite bourgeoisie*.⁷

To bring together different segments of society, right-wing populists appeal to cultural pride, the myth of the nation, or religious identity. Calling lost sheep to the safety of the fold, they claim to transcend selfish instrumental and material interests and inspire a broad, yet thin, sense of national unity. Meanwhile, their illiberal and regressive agendas reshape the political terrain, their ideology scorching the land through various media, popular propaganda, and fake news. Right wing and religious movements step in to galvanize the poor and the disenfranchised, resurrect traditional communities, and restructure politics according to divine interpretations. As all these anti-Enlightenment movements reclaim the rights of the disenfranchised, they simultaneously convey a more sinister message, that the persecution or exclusion of minorities is essential to cleanse one’s nation—the “true people”—from alleged spoilers.

5 For an overview on populism, see Cas Mudde and Cristobal Roura Kaltwasser, *Populism: A Very Short Introduction* (UK: Oxford University Press), 2017.

6 Antonio Gramsci, *Selections from Prison Notebooks*, edited and translated by Quinn Hoare & Geoffrey Nowell Smith (New York: International Publishers) 1989, p. 219.

7 Eric Hobsbawm, *The Age of Extremes* (NY: Vintage Books, 1999), 222; see also Benito Mussolini, “Fascism,” in Micheline Ishay and alt. ed., *The Nationalism Reader* (NJ: Atlantic Highlands/Prometheus Press, 1999).

In the US, the counter-Enlightenment is back with a vengeance. It should be highlighted that democracy was already in crisis before Donald Trump came to power. Despite a significant economic recovery under the Obama administration, many still felt marginalized and excluded from the American social contract. Candidate Trump fed on the widespread sense, prevalent among working-class whites, that their lot had changed for the worse and that minorities and immigrants were cutting ahead of them in line for the benefits of economic recovery. American civil society had become increasingly fragmented, with neither major party bringing forward viable economic and social solutions for unifying disparate groups. With no clear champion offering a unifying and inclusive vision of the increasingly elusive American dream, nationalist and religious fervor filled the political void and tilted the 2016 election toward Trump. Unsurprisingly, his presidency has followed the formula of right-wing populists from the interwar period, mixing calls for national unity with the marginalization of excluded groups. He unifies much of the white Christian working class with his slogan, “Make America Great Again,” but minorities and immigrants are depicted as threatening that narrow conception of American solidarity.

Whenever the spirit of internationalism and human rights fails to deliver on its promise, people tend to revert to the certain, the familiar, the community, and the nation. The Middle East has proven no exception. Western and Middle Eastern populism and illiberalism mimic each other, creating an ironic alliance among authoritarian leaders like Trump, Putin, Erdogan, al-Sisi, and Netanyahu, who foment popular fear and accrue power by promising security to “the people.”

The Europeans, too, are in a state of democratic crisis. Which Europe will prevail? Will it be that of Marianne, the symbol of the French Revolution, celebrated for her universal ideas? Or Joan of Arc, the heroic young woman who defeated

France’s enemies during the Hundred Years’ War and was later reclaimed by nineteenth-century French nationalists? Unfortunately, the latter icon seems on the rise with the mobilization of France’s *Gilets Jaunes* and the growing popularity of France’s National Front. Elsewhere, similar illiberal parties are gaining traction: the Party of Freedom in the Netherlands, Alternative for Germany, Golden Dawn in Greece, Jobbik in Hungary, the Sweden Democrats, the Freedom Party in Austria, the People’s Party in Slovakia, the Lega in Italy, and the Tea Party and Alt-Right in the United States. These movements are all anti-establishment, anti-immigrant, anti-European, anti-globalist, anti-liberal, and anti-human rights.⁸

Western liberals felt betrayed after the election of Trump, just as they did after the Brexit referendum and every other attempt to fragment the European Union. But neither liberals nor progressives in the West have offered an alternative to populism and nationalism. Many still view this period as a bad farce, hoping it will simply go away, perhaps through another election. Meanwhile, America’s long-standing allies are wondering how they will absorb the next blow, and Trump’s own party cringes as he defies the liberal alliance in front of a worldwide audience.

2. Left Wing Populism?

Is right-wing populism best fought by invigorating left-wing populism? Followers of post-Marxist theorists like Chantal Mouffe and Ernesto Laclau have reaffirmed that the *vox populi* in civic engagement is essential to the revitalization of democracy—a perspective that has been embraced by left-wing populist parties like Podemos in Spain and Syriza in Greece.⁹ On the positive side, leftist populism brings to the table concerns shared by a broad segment of the population that is frustrated with Washington or Brussels and the growing affluent class, resistant to austerity measures, and angry about the lack of well-paying jobs; in the

8 Rogers Brubaker, “The New Language of European Populism,” *Foreign Affairs*, December 6, 2017.

9 Antonio Gramsci, *Hegemony and Socialist Strategy Toward a Radical Democratic Politics* (London: New York, Verso, 2001).

US, one can add the lack of affordable health care. Populism, to paraphrase the Mexican political theorist Benjamin Arditi, behaves like the drunken guest at a dinner party, voicing complaints that are usually repressed within the polite company of political elites.¹⁰

Left-wing populism, however, falls short: it is good as a first act, and dangerous as a second. Initially, it can mobilize the grass roots for protest and even social upheavals, but by favoring an anti-establishment and isolationist message, it quickly dissipates its potential political impact at home and abroad. Isolationism can dangerously merge left-wing populism with its right-wing cousin. In a world of “our workers” or “our interests” versus “theirs,” the line between Right and Left blurs under the flag of the nation.¹¹ Divergent popular opinions are chastised in the name of a monolithic and moral rectitude; and aggrieved groups are pitted against each other (African-Americans and Muslims against Jews, Jews and Christians against Muslims, etc.) as they compete for welfare gains. The new climate no longer unifies but instead marginalizes segments of civil society, exacerbating social polarity. Without an institutional domestic and international alternative (the UN, human rights, IGOS, NGOs) that incorporates disenfranchised people, an unanchored and fragmented civil society tends to bolster illiberalism, promoting a Manichean demarcation of those who are within and those who are outside the confines of citizenship.

While the elixir of nationalism unifies people, xenophobia rises against foreigners, who are depicted as spoilers stealing the jobs of Westerners, as carriers of infectious disease, as exploiters of the welfare state, or as terrorists. But waves of refugees seeking safe haven will continue as long as the perilous transit brings less fear than staying home. Inevitably, frustration will drive some toward

despair, from despair into anger, and from anger into terror. Unsurprisingly, nationalism in its most virulent expression fuels well other forms of extremism.

3. How should We Reclaim Human Rights Strategies?

To move beyond the racism, jingoism and patriarchal attitudes of right-wing populism and the anti-internationalist myopia of left-wing populism, one can draw useful strategic visions from history. Both the Republican and Democratic parties remain split between isolationist and interventionist forces, between global trade and economic protectionism. Isolationist voices grew louder in reaction to the disastrous intervention in Iraq, and economic protectionism was pitted against unregulated free trade, which had greatly impacted American workers. Franklin Roosevelt, on the eve of America’s involvement in World War II, transcended similar divides by explaining that a healthy economic recovery at home could not be sustained without a viable liberal world order, and that order would not survive unless Nazism was defeated through Allied intervention in Europe.

In his State of the Union speech in 1941, Roosevelt summarized this vision in his famous Four Freedoms: freedom of speech, freedom of religion, freedom from want, and freedom from fear.¹² These ideals were restated seven years later in the preamble to the Universal Declaration of Human Rights: “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.”¹³

10 Cas Mudde, “The Problem with Populism,” *The Guardian*, February 17, 2015, <https://www.theguardian.com/commentisfree/2015/feb/17/problem-populism-syriza-podemos-dark-side-europe>

11 Zeev Sternhell, “Fascist Ideology,” in Walter Laqueur, ed., *Fascism: A Reader’s Guide* (Berkeley: University of California Press, 1976), 315.

12 Franklin Roosevelt, “The Four Freedoms,” Franklin D. Roosevelt Presidential Library and Museum (January 6, 1941). Accessed December 10, 2018. http://www.fdrlibrary.marist.edu/_resources/images/msf/msf01407.

13 United Nations. Universal Declaration of Human Rights G.A. Res. 217A, United Nations General Assembly (December 10, 1948). Accessed December 10, 2018. <http://www.un.org/en/universal-declaration-human-rights/>.

Eleanor Roosevelt, who chaired the United Nations Human Rights Commission responsible for drafting that document, also lent her considerable influence to the improvement of what I call a fifth freedom: freedom from sexual discrimination.

How could these core principles be advanced today? The preamble of the UDHR further stipulated that its twenty eight articles of human rights were universal, inalienable and indivisible. This meant that every individual, regardless of sex, race and background, was born with such rights, and that rights were interdependent, namely that no clusters of rights could be elevated at the expense of other rights. These cardinal tenets have for decades advanced human cooperation and prosperity, shamed abusive governments, and at best, averted war and promoted peace — a history that realist critics often seem to forget. At the present time, it is important to recall that universal rights are fundamentally internationalist and antithetical to isolationism — whether it stems from a realist or a populist worldview. Today's populists use freedom of speech to propagate lies and harass political opponents, freedom of religion to marginalize women and minorities, freedom from want as applicable only to chosen citizens, and freedom from fear against the alleged barbarians within or at the gates. It is difficult to imagine how to counter populism and illiberal movements without restoring the universality of all these human rights pillars.

Roosevelt's first freedom, freedom of speech, was spelled out in the UDHR, which stated that everyone has the right to freedom of opinion and expression (Article 19, UDHR). Without such a right, there can be no path to inclusive political representation. Today this right to free expression is under attack even in the US, as ideas are shouted down by both the Right and the Left. It is, however, vital to democracy, despite the challenges of relativism, fake news, and the routine labeling of truthful reporting as lies. The right to expression should be upheld as often as possible. "True belief," John Stuart Mill reminds us, "becomes

knowledge by emerging victorious from the din of argument and discussion ... Without this process, true belief remains mere 'prejudice.'"¹⁴ At the same time, engaging one another, particularly in such a polarized atmosphere, requires a shared commitment to decency, civil discourse, and mutual resistance to ad hominem attacks, incendiary arguments, and conspiracy theories.

Unfortunately, discussion has been reduced to mere opinions or superficial arguments shaped by personal preferences and prejudices. Further, the traditional media has been weakened by corporate influence, whose reliance on ratings favors consumers' preferences and sensationalism at the expense of news that matters. Without the respectful and rational exercise of free speech, political dialogue and discourse are not distinguishable from propaganda that feeds fear and animates demagoguery.

In many developing countries, including many in the Middle East, freedom of expression is censored by authoritarian governments. Likewise, in the Visegrád countries of Hungary, the Czech Republic, Poland and Slovakia, it has been severely curtailed as a result of weakened independent judiciaries. In Western Europe, however, the media generally fares better than elsewhere, including the US, particularly in its capacity to educate and raise citizens' consciousness beyond soundbites, creating venues for substantive debates that stimulate critical thinking.

Involved citizens should demand and support in-depth analysis in popular — and especially in public — media, perhaps hosting a series of forums about important "big picture" ideas and policy challenges. Such forums could invite top scholars and experts from across the political spectrum (including serious conservatives, liberals, and democratic socialists), demonstrating for a mass audience the value of serious analysis based on facts, evidence, and logic. One reason to begin prior to the next American election in 2020 would be to attract crossover and undecided voters who respect ideas.

14 J. S. Mill: *'On Liberty' and Other Writings*, ed. by Stefan Collini (Cambridge: Cambridge University Press, 1989), chapter 2.

At a local level, similar forums could take the form of monthly meetings to cover selected domestic and foreign policy issues (e.g., race, gender, income inequality, education, the refugee crisis, the nuclear danger, global warming, etc.).

Freedom of worship, as later described in Article 18 of the UDHR, was FDR's second principle. Today, due to the populist fear that Christian and white cultural identity is under siege, "free exercise" is often understood as the right to protect privilege. In the US and Europe, it is not uncommon to hear people complaining about the corrupting religious influence of Muslim refugees, elitist multiculturalists, or secular humanists. For many, the preservation of cultural identity (in the face of an imagined anti-Christian threat) is at least partially rooted in the fear of losing economic advantages. For instance, in January 2018 Nebraska Governor Pete Ricketts proclaimed a Religious Freedom Day—an ironic proclamation in a state in which 96% of residents are Christian. Many of those believers wish to use the discourse of rights to protect what they call "freedom of religious conscience" in the workplace — in other words, the right to refuse employment or services to the LGBTQ community.

Most religions advocate for an organic view of the political body and a notion of global altruism to secure human dignity. From this perspective, all parts are connected to each other: when a tooth or limb aches, the rest of the body suffers; when communities are dispossessed or oppressed, the whole society ails; and when states fail to provide basic needs and rights, humanity despairs. In the defense of political power, however, professed religious tolerance is often superseded by attempts to safeguard given tribes. For example, during the Arab uprisings, freedom of (or from) worship was briefly celebrated with a burst of interfaith and secular activities, particularly when Copts, Muslims, and nonreligious Egyptians joined hands to overthrow the Mubarak government. After the Arab Spring, however, those fragile alliances broke down, and religious

particularism and intolerance returned under new authoritarian leaders. These sectarian positions mirror the cultural and religious superiority invoked so belligerently by Trump and his European populist counterparts who depict their "nation" in a hostile and defensive posture toward the rest of the world. Their world is no longer interconnected; it is a world of walls, a world in which perceived barbarians are at the gates, threatening the very social fabric of Western civilization.

The notions of individual dignity and universal interdependence must be understood more concretely in socio-political and economic terms. A secular tradition of the global contract reaffirmed by the historical struggles of human rights expressed clear expectations in the UDHR and ensuing international covenants, but this tradition is still missing in most countries' civic education.¹⁵ In the US, for example, public education is under assault, particularly from religious conservatives who oppose its secularism and multiculturalism. Few students, however, understand universal human rights as a concept that evolved throughout history: the ideals that American and French revolutionaries, such as Thomas Paine and Georges Danton, invoked to defeat absolutist regimes in the name of the age of Reason; the ones championed by the Swiss humanist Henry Dunant to end brutality in wartime; those advocated by Karl Marx during the First International as he rallied workers to fight against poverty in the new industrialized age. These are the same values advocated by leaders such as Rosa Luxemburg in the Second International, striving to defeat the global spread of social inequality and war, and later championed by FDR, with a Keynesian economic twist, in order to avert economic distress and prevent another world war.

With the attack on FDR's New Deal under the Reagan administration and after the fall of the Soviet Union, that tradition has given way to a neo-liberal version of internationalism, based on free trade and its associated destruction of workers' rights. For many on the left, human rights is nothing

15 "How to Teach Civics in School," *The Economist* (July 6, 2017). Accessed March 5, 2019. <https://www.economist.com/blogs/democracyinamerica/2017/07/civics-lessons>

more than hyper-neoliberalism, and human rights rhetoric simply a rationalization of Western imperialism.¹⁶ Human rights, however, cannot be reduced to unfettered globalization or the harmonious confluence of different cultural and religious identities. In this age of a rising counter-enlightenment, there has been no better time to unearth the legacy of the UDHR, with its indivisible aspirations, as a tested compass for a more promising path forward.

Freedom of speech and religion cannot thrive without FDR's third freedom, freedom from want (discussed in Article 25 of the UDHR). While populist instincts toward economic protectionism can guard homegrown industries against international competition, such moves do not always favor workers' rights the way their advocates expect. Instead, protectionist trade wars typically worsen the lot of the disenfranchised. After the Treaty of Versailles, for example, protectionist policies exacerbated national competition and geopolitical conflicts during the interwar period. Understanding the havoc of economic nationalism, John Maynard Keynes argued against protectionism and for a free trade regime, managed by an international organization, to secure social progress, reconstruct Europe's war-devastated economy, promote shared prosperity, and avert renewed world war.¹⁷

Today, a return to economic nationalist policies and withdrawal from international trade regimes threatens to reverse that progress and recall the economic climate that preceded World War II. In spite of the fact that the global economy is significantly more interdependent than it was after World War I, many progressives like Bernie Sanders, Elizabeth Warren, or Jeremy Corbyn tend to favor protectionist policies, arguing that free trade heightens economic inequity. That position is understandable but not always strategic. Trump's tariffs on imports from China and the European Union, intended to

encourage American consumers to buy American products, has not favored American workers. These countries have retaliated. The Chinese response to US tariff barriers had negative economic repercussions throughout the Midwest, as farmers took dramatic losses on soybeans and corn. Leftist protectionists should recall that almost two centuries ago, Karl Marx foresaw similar consequences from tariff barriers when he challenged British protectionist policies, as expressed in the Corn Law in 1848. Marx declared that he favored trade, for trade broke old national barriers and created bonds of solidarity between workers to secure social progress.¹⁸

Clearly, free trade belongs to the classical liberal tradition. Immanuel Kant had already argued in the *Metaphysics of Morals* that commerce and free trade would increase interdependence between nations. It was a lynchpin of liberalism (or republican ideals) and the safeguard of a cosmopolitan order. Adam Smith's *Wealth of Nations* argued that free trade would produce a middle class with the capacity to create a robust civil society, an important buffer against arbitrary regimes. But free trade is not a panacea against poverty. Free markets create competition, and competition yields winners and losers. In this world of competition and disparaged social welfare standards, the survival and needs of the "losers" must be far better protected in order to maintain stable liberal democracies.

With this in mind, the New Deal sought to lift American citizens from poverty and protect those facing an economic abyss. Roosevelt's aspirations for socio-economic rights ultimately succumbed to the political power of Reaganism and Thatcherism, which held that strong unions, high taxes on the rich, and redistributions of wealth were causing capital flight and impoverishing Western societies. Deregulation and privatization might have

16 See on the conflation between neoliberalism and human rights, Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge: Harvard University Press, 2018).

17 John Maynard Keynes, *The Economic Consequences of Peace*, with an Introduction by Robert Lekachman (London: Penguin, 1995).

18 Karl Marx, "On Free Trade's Virtues and Injustices," in Micheline Ishay, ed., *The Human Rights Reader: From Ancient Times to the Era of Globalization*, 2nd edition (NY, London: Routledge, 2007).

contributed to economic growth, but it also created widening socio-economic gaps, which would later pave the road to populism, nationalism and the current protectionist backlash.

Today, combatting populism and fascism will require a new Rooseveltian balancing act, supporting both free trade and domestic jobs. How can a strong social safety net be reclaimed at home, along with a global New Deal policy based on an equitable trade regime? Domestically, nations should implement rights to basic economic sufficiency (i.e., food, healthcare, education, shelter) as a floor, while also creating a “ceiling” — the redistribution of concentrated wealth via progressive income, wealth and inheritance taxes. With jobs leaving Western countries to areas with low wages and labor standards, it would be advisable both to incorporate labor rights into trade agreements and to pursue international New Deal policies stimulating economic development in the poorest regions.

Such efforts might also weaken the grip of intransigent authoritarianism and improve economic scarcity elsewhere. In the Middle East, for example, the economy of the entire region would greatly benefit from new transportation networks, financial structures, and a commitment to renewable energy across vast expanses of sun, sand, and water.¹⁹ Of course, the benefits would not be limited to that region. America’s Marshall Plan recognized the interconnectedness of the global economy, understanding that a stronger America depended on rebuilding a stronger Europe. In the same way, strengthening the West today requires a more prosperous and stable Middle East, among other critical regions. Domestic economic development would help address the flow of refugees that keeps fanning the flames of European and American nationalism. It would also reduce incentives for capital flight to regions with lower wages and labor standards. To secure these efforts, one should not overlook the role of global financial governance in redeveloping a framework that will promote economic safety

nets and shared prosperity between developed and developing states. We have seen, as a result of the financial crisis in 2008, developing countries taking seats at the IMF, and there have been corresponding signs of reform and innovation in global financial governance.

How can freedom from fear (later described in Article 23, UDHR,) be secured along the lines of human rights? It is worth noting that populism is based on a variety of fears. There are economic fears, including the loss of one’s job or health insurance, and the fears of debt burdened college students who worry they will be unable to secure jobs consistent with their level of education. There is also the more visceral fear of threats to physical survival, perhaps triggered by extreme economic duress, but also by violent conflict. The first type requires strong state policies that protect citizens’ living standards while preparing them for a globally changing workplace. The second requires viable security architectures that contain and reverse massive humanitarian crises, such as the unfolding tragedies in Syria and Yemen.

Westerners have become numb to the realities faced by refugees, forced by the relentless catastrophe of war to take unimaginable risks just to survive. The refugee crisis has exposed weaknesses and increased security and economic fears across Europe and the US. To restore safety to Middle Eastern populations and to create a more peaceful order, new security architectures will be needed, modeled on the role of NATO in postwar Europe. The Trump administration has taken the opposite path, disparaging NATO and the UN in the name of nationalism and heightening worldwide insecurity. Our need is not to dismantle such institutions but to reform and strengthen them, drawing greater involvement from the developing world and broadening their mission to connect economic growth with human security.

To stabilize Europe after World War II, mechanisms such as the United Nations, Bretton Woods, the International Monetary Fund, the

19 Micheline Ishay, *The Levant Express: The Arab Uprising, Human Rights and the Future of the Middle East* (New Haven: Yale University Press, 2019).

World Bank, and the North Atlantic Alliance were established as elements of an international liberal order designed to promote economic stability and establish a durable peace, recognizing the synergy between security and prosperity, both domestically and internationally. The Trump administration's elevation of nationalism as an alternative, mirroring corresponding trends in Europe, severely threatens those achievements.

What is so far absent from human rights discourse within Western countries is serious, practical recognition of the connection between perceived levels of domestic security (over jobs, over immigrants and refugees) and improving human economic welfare abroad. An emphasis on security rights, driven by fear, is too often an irresistible policy option for power-seeking leaders. But security rights cannot be sustained in the absence of long-term economic development, and political pledges to be tough on crime or seal borders do not address the security issues associated with poverty-driven crime or flights toward safer places. Turning away refugees and migrants may appease populist rage, but it cannot substitute for long-term economic development that enables them to safely remain in their native countries. In that sense freedom from fear is inseparable from the three freedoms discussed before.

No less than men, women have long aspired to freedom of speech, freedom of religion, freedom from want, and freedom from fear. They will not enjoy these freedoms, however, without freedom from sexual discrimination, which also constitutes a powerful antidote against populism and fascism. Patriarchalism is not the disease of any particular political order. It prevails everywhere. But it shows its ugliest face in fascist and theocratic regimes

and their sanctity of order, based on appeals to divine revelation or the myth of the nation. After all, Mussolini had reminded his people what he saw as the essence of men and women: "war is to a man what maternity is to a woman".²⁰

In Iran, human rights lawyer Nasrin Sotoudeh was recently sentenced to 38 years in jail and 148 lashes for protesting the wearing of the hijab.²¹ In Saudi Arabia, a number of women's rights activists, including the prominent figure Loujain al-Hathloul, were arrested and tortured just before the Kingdom lifted its ban on women drivers.²² Why would a regime use electric shocks, whipping, waterboarding and other forms of torture for such alleged offenses? Under fascist or religious radicalism, men are often willing to pledge unflinching loyalty to the state as long as they can remain masters in their household. The king's authority and the hierarchical structure itself remain unchallenged when male subjects are guaranteed to remain the sacred guardians of their wives and daughters.

Eleanor Roosevelt lent her considerable influence to the promotion of human rights after World War II, including what I call the fifth freedom: freedom from sexual discrimination. That struggle remains unfinished. As long as a patriarchal social and religious system keeps women silent in the public sphere, sexually dissatisfied, disempowered in the family, impoverished despite their education, and living in fear despite their growing resilience, pressure will build toward a new women's rights contagion—an overdue revolution that will almost certainly reorder families and destabilize autocratic regimes.

Despite the reaction against feminism that began in the 1980's, well documented by Susan Faludi's *Backlash*,²³ the feminist movement has

20 Benito Mussolini, "La guerra sta all'uomo, come la maternità alla donna," *Discorso al Parlamento in Scritti e discorsi* (Milan: Ulrico Hoepli, 1934) Vol. IX, 98.

21 Iliana Magra, "Iran Rights Lawyer Sentenced to 38 Years in Prison and 148 Lashes, Husband Says," *The New York Times* (March 13, 2019). Accessed March 15, 2019. <https://www.nytimes.com/2019/03/13/world/middleeast/nasrin-sotoudeh-iran-lawyer-lashes.html>

22 Sasha Ingber, "Saudi Women's Activists Arrested Prior To Lifting Of Driving Ban," NPR (May 20, 2018). Accessed March 15, 2019. <https://www.npr.org/sections/thetwo-way/2018/05/20/612830493/saudi-womens-activists-arrested-ahead-of-driving-ban>

23 Susan Faludi, *Backlash: The Undeclared War Against American Women* (New York: Crown Publishing Group, 1991).

been reawakened by the election of Donald Trump. Even for those who did not favor the candidacy of Hillary Clinton, the election of Trump—despite his misogynist history—came as a shock. Before that election, women's rights were in stagnation, if not retreat; Trump's victory unleashed renewed feminist determination to rally against sexual harassment and the gender wage gap. In the US, more women ran for major offices in 2018 than ever before, and a record number were elected to Congress.

With the #MeToo movement spreading globally, Western feminism might be overly focused, especially in the US, on issues that represent the tip of the iceberg, obsessing for instance over sexual misconduct in the workplace. That is not to say that sexual harassment and assault are not central to the women rights agenda. They are. What is especially troubling in the US, however, is the national obsession over sexuality as another way to monitor women's bodies. This collective fascination is indirectly reinforcing the Puritan conservative agenda, which aims to subordinate sexuality (particularly women's sexuality) toward imposing a religious moral order.

I would argue that a continuing granular regulation of the interaction between the sexes does not adequately challenge that conservative agenda. The

fascination with celebrity culture and media sensationalism may explain why issues of socialized childcare and universal healthcare are not receiving the attention they deserve; those issues must remain high on the women's rights agenda. As Elizabeth Warren recently observed, "not everyone is lucky enough to have an aunt" to take care of the children, as she did when she was a young working mother.²⁴

To conclude, a new liberal order based on these five fundamental freedoms demands popular agency from within. Reinvigorating democracy and human rights requires, as Eleanor Roosevelt reminds us, that we start at home. "Where, after all do universal human rights begin? In small places, close to home...Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination."²⁵ At the same time, if it begins at home, that struggle, with wide differences throughout the world, has to occur everywhere. The renewed women's movement has the critical capacity to galvanize such a broad progressive human rights program both nationally and internationally. If women are at the forefront of a comprehensive human rights agenda, they may well carry the torch of democratization, and provide the badly needed answer to populism and nationalism.

24 Elizabeth Warren, "My Plan for Universal Child Care," *Medium* (February 19, 2019). Accessed March 4, 2019. <https://medium.com/@teamwarren/my-plan-for-universal-child-care-762535e6c20a?sk=4ed76dbac4cac36c0a7944df8a0a5b30>.

25 Eleanor Roosevelt, "Where Do Human Rights Begin?" (March 27, 1953), in *Courage in a Dangerous World: The Political Writings of Eleanor Roosevelt*, edited by Allida M. Black (New York: Columbia University Press, 1999).



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11. REDEFINING RIGHTS

Questions for Chapter 11

1. Is globalization an asset or an obstacle to human rights?
2. Does economic globalization really threaten labor rights?
3. Is economic development always consistent with the human rights agenda?
4. Should economic rights precede political rights? How is this question understood by Milton Friedman and Amartya Sen?
5. What are the main pillars of the U.N. Guiding Principles of Business and Human Rights? What are the challenges?
6. What are opposing perspectives with regard to environmental rights?

On Labor and Development Rights

The American economist Milton Friedman, recipient of the Nobel Prize for Economics in 1976, epitomized the position that laissez-faire capitalism and globalization are crucial milestones for the spread of political freedom. In his 1991 address “Economic Freedom, Human Freedom, Political Freedom,” he reiterated his view, advanced in *Capitalism and Freedom* (1962, 2002), that “history suggests only that capitalism is a necessary [if not sufficient] condition for political freedom.” Reviewing developing economies, he warned that while economic freedom facilitates political freedom, once established, political freedom may succumb to collectivist pressures. In other words, political freedom has a tendency to destroy economic freedom (see Section 11.1).

From a different perspective on globalization, the American sociologist Charles Tilly argued in “Globalization Threatens Labor Rights” (1995) that because globalization has gradually undermined the capacity of states to monitor and control cross-border financial flows, states are losing the capacity to pursue effective social policies, including the enforcement of labor rights. The availability of low-wage foreign workers and the threat of capital flight have further intensified workers’ insecurity, in effect pitting workers in different countries against one another (see Section 11.2). Reaching a similar conclusion, Amnesty International observed in 1998 that “labor rights are human rights,” as it sought to promote alliances between labor unions and human rights organizations, to carve a broader space for human rights solidarity against the pressures of competitive economic interests and the prevailing neoliberal economic trends associated with globalization (see Section 11.3)

The Indian economist and Nobel Prize recipient (1998) Amartya Kumar Sen has been a forceful voice against the neoliberal economic position on human and labor rights. Best known for his work on

human development theory and welfare economics, he argued in his *Development as Freedom* (1999) that human rights (civil, political, and social rights) are inseparable elements of economic development. Sen offered a concept of human capability based on the premise, for example, that the right to vote is meaningless if the capability to vote (e.g., sufficient education, transportation to polls) does not exist. In other words, government and economic development policies should be evaluated in terms of the material and institutional capability available to citizens in their exercise of universal and indivisible rights (see Section 11.4)

John Ruggie focuses on similar difficulties regarding the incorporation of human rights norms in the business community. He drafted the Guiding Principles on Business and Human Rights, unanimously endorsed by the United Nations Human Rights Council in 2011. These principles were built on an interrelated three pillar framework: “Protect, Respect and Remedy,” providing a guiding blueprint for states, businesses, and civil society alike in support of human rights. These principles, Ruggie explains, are anchored in transnational social norms, whose protection through international law can pressure reluctant governments and businesses to adopt practices consistent with human rights (see Section 11.5).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 5.

11.1 Milton Friedman: “Economic Freedom, Human Freedom, Political Freedom” (1991)¹

... In 1962, when ... *Capitalism and Freedom* was published, the general intellectual climate of opinion was very different than it has since become....

In the 1950s and 1960s, socialist thinking was dominant; those of us who rejected that view were regarded as fringe eccentrics. Since then, there has been a reaction against such socialist thinking and a recognition of the importance of private enterprise and of private property. Unfortunately, as I shall note later, the reaction has been more in the climate of opinion than in practice. Talk and rhetoric have been one thing; actual practice has been very different.

What I want to talk about ... is the relationship among economic freedom, human freedom, and political freedom. In *Capitalism and Freedom*, I wrote: “Historical evidence speaks with a single voice on the relation between political freedom and a free market. I know of no example in time or place of a society that has been marked by a large measure of political freedom that has not also used

something comparable to a free market to organize the bulk of economic activity” (p. 9). I went on to point out that “history suggests only that capitalism is a necessary condition for political freedom. Clearly it is not a sufficient condition” (p. 10).

Both of those statements remain valid today, thirty years later. Over the centuries many non-free societies have relied on capitalism and yet have enjoyed neither human nor political freedom. Ancient Greece was fundamentally a capitalist society, but it had slaves. The U.S. South before the Civil War is another example of a society with slaves that relied predominantly on private property. Currently, South Africa has relied predominantly on private markets and private enterprise, yet it has not been a free society. Many Latin American countries are in the same position. They have been ruled by an oligarchy, and yet they have employed primarily private markets. So it is clear that capitalism is not a sufficient condition for human or political freedom, though it is a necessary condition.

While experience has not contradicted the statements I made, it has persuaded me that the

1 Milton Friedman, “Economic Freedom, Human Freedom, Political Freedom,” address delivered November 1, 1991, Hayward, California (Smith Center for Private Enterprise Studies).

dichotomy I stressed between economic freedom and political freedom is too simple. Even at this broad level, I am persuaded that it is important to consider a trichotomy: economic freedom, human freedom, and political freedom.

The example that persuaded me that the relationship was less simple than the one I had sketched in *Capitalism and Freedom* is Hong Kong as it developed in the 1950s and especially as it has developed in the period since *Capitalism and Freedom* was written. Hong Kong has been, though unfortunate, as the Mainland communist regime takes over, it will not remain, one of the freest, if not the freest, of countries in the world in every respect but one. Hong Kong has had an extraordinary degree of economic freedom: no tariffs and no import or export quotas, except as we in our wisdom have forced such quotas on Hong Kong in order to protect our industries from its efficiency. (It is truly absurd for the United States to force Hong Kong to limit the output of textiles so that our textile industry will not be bothered. That is no way for a great nation to behave.) Taxes have been very low, 10 to 12% of the national income. (In the United States today, government spending is 43% of the national income.) There are few regulations on business, no price controls, no wage controls.

Hong Kong's completely free economy has achieved marvels. Here is a place with no resources except a magnificent harbor, a small piece of land [with...] a population of 500,000 after World War II that has grown to a population close to six million over ten times as large and at the same time, the standard of life has multiplied more than fourfold. It has been one of the most rapidly growing countries in the world, a remarkable example of what free markets can do if left unrestricted. I may say that Hong Kong is not a place where most of us would want to live. It is not a place where most of the people there want to live. It is very crowded; it is a very small area. If other places would take them, the people would love to go. However, the remarkable thing is that under such adverse circumstances they have done so well.

In addition to economic freedom, Hong Kong has a great deal of human freedom. I have visited

many times and I have never seen any evidence of suppression of freedom of speech, freedom of the press, or any other human freedom that we regard as important.

However, in one respect Hong Kong has no freedom whatsoever. It has no political freedom. The Chinese who fled to Hong Kong were not free people. They were refugees from the communist regime and they themselves had been citizens of a regime that was very far from a free society. They did not choose freedom; it was imposed on them. It was imposed on them by outside forces. Hong Kong was governed by officials of the British Colonial Office, not by self chosen representatives. In the past couple of years, in trying to persuade the world that Britain has not done a dastardly deed in turning Hong Kong over to the communists, the British administration has tried to institute a legislative council and to give some evidence of political representation. However, in general, over the whole of that period, there has been essentially no direct political representation.

That brings out an enormous paradox, the one that as I said caused me to rethink the relationship among different kinds of freedom. The British colonies that were given their political freedom after World War II have for the most part destroyed the other freedoms. Similarly, at the very time officials of the British Colonial Office were imposing economic freedom on Hong Kong, at home in Britain a socialist government was imposing socialism on Britain... It shows how complex the relationship is between economic freedom and political freedom, and human freedom and political freedom. Indeed, it suggests that while economic freedom facilitates political freedom, political freedom, once established, has a tendency to destroy economic freedom.

Consider the example that I believe is most fascinating, India. It was given its political freedom by Britain over forty years ago. It has continued, with rare exceptions, to be a political democracy. It has continued to be a country where people are governed by representatives chosen at the ballot box, but it has had very little economic freedom and very limited human freedom. On the economic

side, it has had extensive controls over exports and imports, over foreign exchange, over prices, over wages. There have been some reforms in the past year or so, but until recently you could not establish any kind of enterprise without getting a license from the government. The effect of such centralized control of the economy has been that the standard of life for the great bulk of the Indians is no higher today than it was forty years ago when India was given its political freedom.

The situation is even more extreme if you consider that Hong Kong, which I started with, got zero foreign aid during its growth. India has been a major recipient; it got some \$55 billion of foreign aid over the past forty years. It is tempting to say that India failed to grow despite foreign aid. I believe that it was the other way: in part, India failed to grow because of foreign aid. Foreign aid provided the resources that enabled the government to impose the kind of economic policies it did.

What is true for India is true much more broadly. Foreign aid has done far more harm to the countries we have given it to than it has done good. Why? Because in every case, foreign aid has strengthened governments that were already too powerful. Mozambique, Tanzania, and many another African countries testify to the same effect as India.

To come back to Hong Kong, the only reason it did not get its political freedom is because the local people did not want political freedom. They knew very well that that meant the Chinese communists would take them over. In a curious way, the existence of the Chinese communist government was the major protection of the economic and human freedoms that Hong Kong enjoyed. Quite a paradoxical situation.

Hong Kong is by no means unique. Wherever the market plays a significant role, whether you have political freedom or not, human freedoms are more widespread and more extensive than where the market does not play any role. The totalitarian countries completely suppressed the market and also had the least human freedom.

Another fascinating example that brings out the complexity of the situation is Chile. Chile, as

you know, was first taken over by Salvador Allende and a socialist group. Allende came into power as a result of an election in which no one of the three major parties was able to get a majority, and subsequent political maneuvering, along with his promise to abide by the constitution. No sooner in office, however, than he reneged on his promise and proceeded to try to convert Chile into a full fledged communist state. The important thing for my purpose is what happened after Allende's policies provoked the military to overthrow him and set up a military junta led by General Pinochet to run the country.

Almost all military juntas are adverse to economic freedom for obvious reasons. The military is organized from the top down: the general tells the colonel, the colonel tells the captain, the captain tells the lieutenant, and so on. A market economy is organized from the bottom up: the consumer tells the retailer, the retailer tells the wholesaler, the wholesaler tells the producer, and the producer delivers. The principles underlying a military organization are precisely the reverse of those underlying a market organization.

Pinochet and the military in Chile were led to adopt free market principles after they took over only because they did not have any other choice. They tried for a while to have military officers run the economy. However, inflation doubled in the first eight or nine months of their regime. When rates of inflation reached 700 to 1,000% they had to do something. By accident, the only group of economists in Chile who were not tainted by a connection with the Allende socialists were the so called Chicago boys. They were called Chicago boys because they consisted almost entirely of economists who had studied at the University of Chicago and had received their Ph.D. degrees at the University of Chicago. They were untainted because the University of Chicago was almost the only institution in the United States at the time in which the economics department had a strong group of free market economists. So in desperation Pinochet turned to them.

I have nothing good to say about the political regime that Pinochet imposed. It was a terrible

political regime. The real miracle of Chile is not how well it has done economically; the real miracle of Chile is that a military junta was willing to go against its principles and support a free market regime designed by principled believers in a free market. The results were spectacular. Inflation came down sharply. After a transitory period of recession and low output that is unavoidable in the course of reversing a strong inflation, output started to expand, and ever since, the Chilean economy has performed better than any other South American economy.

The economic development and the recovery produced by economic freedom in turn promoted the public's desire for a greater degree of political freedom is exactly what happened, if I may jump from one continent to another, in China after 1976 when the regime introduced a greater measure of economic freedom in one sector of the economy, agriculture, with great success. That, too, generated pressure for more political freedom and was one of the major factors underlying the dissatisfaction that led to Tiananmen Square.

In Chile, the drive for political freedom, that was generated by economic freedom and the resulting economic success, ultimately resulted in a referendum that introduced political democracy. Now, at long last, Chile has all three things: political freedom, human freedom and economic freedom. Chile will continue to be an interesting experiment to watch to see whether it can keep all three or whether, now that it has political freedom, that political freedom will tend to be used to destroy or reduce economic freedom.

In order to understand the paradox that economic freedom produces political freedom but political freedom may destroy economic freedom, it is important to recognize that free private markets have a far broader meaning than the usual restriction to narrowly economic transactions. Literally, a market is simply a place where people meet, where people get together to make deals with one another. Every country has a market. At its most extreme totalitarian stage Russia had a market. But there are different kinds of markets. A private market is one in which the

people making deals are making them either on their own behalf or as agents for identifiable individuals rather than as agents of governments. In the Russian market, the market existed and deals were being made all over the lot, but people were dealing with one another not on their own behalf, not as representatives for other identifiable individuals, but supposedly as agents for the government, for the public at large. A private market is very different from a government market. In a strictly private market, all the deals are between individuals acting in their own interest or as agents for other identifiable individuals.

Finally, you can have a private market, but it may or may not be a free market. The question is whether all the deals are strictly voluntary. In a free private market, all the deals are strictly voluntary. Many of the cases of private markets that I cited before were not cases of free private markets. You have a private market in many of the Latin American countries, but they are not free private markets. You have a private market in India, but it is not a free private market because many voluntary deals are not permitted. An individual can deal with another to exchange a good or service only if he has the permission of the government. I may say a completely free private market exists nowhere in the world. Hong Kong is perhaps the closest approximation to it. However, almost everywhere what you have, at best, is a partly free, largely hampered, private market.

A free private market is a mechanism for achieving voluntary cooperation among people. It applies to any human activity, not simply to economic transactions. We are speaking a language. Where did that language come from? Did some government entity construct the language and instruct people to use it? Was there some government commission that developed the rules of grammar? No, the language we speak developed through a free private market. People communicated with one another, they wanted to talk with one another, the words they used gradually came to be one thing rather than another, and the grammar came to be one thing rather than another entirely as a result of free voluntary exchange.

Take another example, science. How did we develop the complicated structure of physics, economics, what will you? Again, it was developed and continues to develop as a result of a free private market in which scientists communicate with one another, exchange information with one another, because both parties to any exchange want to benefit.

A characteristic feature of a free private market is that all parties to a transaction believe that they are going to be better off by that transaction. It is not a zero sum game in which some can benefit only at the expense of others. It is a situation in which everybody thinks he is going to be better off.

A free private market is a mechanism for enabling a complex structure of cooperation to arise as an unintended consequence of Adam Smith's invisible hand, without any deliberate design. A free private market involves the absence of coercion. People deal with one another voluntarily, not because somebody tells them to or forces them to. It does not follow that the people who engage in these deals like one another, or know one another, or have any interest in one another. They may hate one another. Everyone of us, every day without recognizing it, engages in deals with people all over the world whom we do not know and who do not know us. No super planning agency is telling them to produce something for us. They may be of a different religion, a different color, a different race. The farmer who grows wheat is not interested in whether it is going to be bought by somebody who is black or white, somebody who is Catholic or Protestant; and the person who buys the wheat is not concerned about whether the person who grew it was white or black, Catholic or Protestant. So the essence of a free private market is that it is a situation in which everybody deals with one another because he or she believes he or she will be better off.

The essence of human freedom as of a free private market, is freedom of people to make their own decisions so long as they do not prevent anybody else from doing the same thing. That makes clear, I think, why free private markets are so closely related to human freedom. It is the only mechanism

that permits a complex interrelated society to be organized from the bottom up rather than the top down. However, it also makes clear why free societies are so rare. Free societies restrain power. They make it very hard for bad people to do harm, but they also make it very hard for good people to do good. Implicitly or explicitly, most opponents of freedom believe that they know what is good for other people better than other people know for themselves, and they want the power to make people do what is really good for them.

The recent absolutely remarkable phenomenon of the collapse of communism in Eastern Europe raises in acute form the issues that we have been discussing. There is much talk in those countries about moving to a free market, but so far very limited success. In the past, free markets have developed in all sorts of ways out of feudalism, out of military juntas, out of autocracy and mostly they have developed by accident rather than by design. It was a pure accident that Hong Kong achieved a free market. Insofar as anyone designed it, it was the colonial officials who were sent there; but it was a pure accident that they were favorable to, or at least not hostile to, a free market. It was an accident that a free market developed in the United States, nothing natural about it. We might very well have gone down a very different road. We started to go down a very different road in the 1830s when there was widespread governmental activity in the building of canals, in the building of toll ways, and the taking over of banks; there were state banks in Ohio, Illinois, and so on. What happened is that in the Panic of 1837 they all went broke, and that destroyed people's belief that the way to run a country was by government. That had a great deal to do with the subsequent widespread belief that small government was the best government.

While free societies have developed by accident in many different ways, there is so far no example of a totalitarian country that has successfully converted to a free society. That is why what is going on in Eastern Europe is so exciting. We are witnessing something that we have not seen before. We know and they know what needs to be done. It

is very simple. I tell the people in Eastern Europe when I see them that I can tell them what to do in three words: privatize, privatize, privatize. The problem is to have the political will to do so, and to do so promptly. It is going to be exciting to see whether they can do so.

However, the point that impresses me now and that I want to emphasize is that the problem is not only for them but for us. They have as much to teach us as we have to teach them. What was their problem under communism? Too big, too intrusive, too powerful a government. I ask you, what is our problem in the United States today? We have a relatively free system. This is a great country and has a great deal of freedom, but we are losing our freedom. We are living on our capital in considerable measure. This country was built up during 150 years and more in which government played a very small role. As late as 1929, total government spending in the United States never exceeded about 12% of the national income, about the same fraction as in Hong Kong in recent years. Federal government spending was about 3 to 4% of the national income except at the time of the Civil War and World War I. Half of that went for the military and half for everything else. State and local governments spent about twice as much. Again, local governments spent more than state governments. In the period between then and now, the situation has changed drastically. Total government spending, as I said, is 43% of national income, and two thirds of that is federal.

Moreover, in addition to what government spends directly, it exercises extensive control over the deals that people can make in the private market. It prevents you from buying sugar in the cheapest market; it forces you to pay twice the world price for sugar. It forces enterprises to meet all sorts of requirements about wages, hours, antipollution standards, and so on and on. Many of these may be good, but they are government dictation of how the resources shall be used. To put it in one word that should be familiar to us by now, it is socialist.

The United States today is more than 50% socialist in terms of the fraction of our resources that are controlled by the government. Fortunately,

socialism is so inefficient that it does not control 50% of our lives. Fortunately, most of that is wasted. People worry about government waste; I don't. I just shudder at what would happen to freedom in this country if the government were efficient in spending our money. The really fascinating thing is that our private sector has been so effective, so efficient, that it has been able to produce a standard of life that is the envy of the rest of the world on the basis of less than half the resources available to all of us.

The major problems that face this country all derive from too much socialism. If you consider our educational system at the elementary and secondary level, government spending per pupil has more than tripled over the past thirty years in real terms after allowing for inflation, yet test scores keep declining, dropout rates are high, and functional illiteracy is widespread. Why should that be a surprise? Schooling at the elementary and secondary level is the largest socialist enterprise in the United States next to the military. Now why should we be better at socialism than the Russians? In fact, they ought to be better; they have had more practice at it. If you consider medical care, which is another major problem now, total spending on medical care has gone from 4% of the national income to 13%, and more than half of that increase has been in the form of government spending. Costs have multiplied and it is reasonably clear that output has not gone up in anything like the same ratio. Our automobile industry can produce all the cars anybody wants to drive and is prepared to pay for. They do not seem to have any difficulty, but our government cannot produce the roads for us to drive on. The aviation industry can produce the planes, the airlines can get the pilots, but the government somehow cannot provide the landing strips and the air traffic controllers. I challenge anybody to name a major problem in the United States that does not derive from excessive government.

Crime has been going up, our prisons are overcrowded; our inner cities are becoming unlivable all as a consequence of good intentions gone awry, the good intentions in this case being to prevent the misuse of drugs. The results: very little if

any reduction in the use of drugs but a great many innocent victims. The harm which is being done by that program is far greater than any conceivable good. And the harm is not being done only at home. What business do we have destroying other countries such as Colombia because we cannot enforce our laws?

It is hard to be optimistic about how successful we can be in preserving our relatively free system. The collapse of the communist states in Eastern Europe was the occasion for a great deal of self-congratulation on our part. It introduced an element of complacency and smugness. We all said, "Oh my, how good we are! See, we must be doing everything right." But we did not learn the lesson that they had to teach us, and that lesson is that government has very real functions, but if it wanders beyond those functions and goes too far, it tends to destroy human and economic freedom.

I am nonetheless a long term optimist. I believe that the United States is a great country and that our problems do not arise from the people as such. They arise from the structure of our government. We are being misgoverned in all these areas but not because of bad motives or bad people. The people who run our government are the same kind of people as the people outside it. We mislead ourselves if we think we are going to correct the situation by electing the right people to government. We will elect the right people and when they get to Washington they will do the wrong things. You and I would; I am not saying that there is anything special about them.

The important point is that we in our private lives and they in their governmental lives are all moved by the same incentive: to promote our own self-interest. Armen Alchian once made a very important comment. He said, "You know, there is one thing you can trust everybody to do. You can trust everybody to put his interest above yours." That goes for those of us in the private sector; that goes for people in the government sector. The difference between the two is not in the people; it is not

in the incentives. It is in what it is in the self-interest for different people to do. In the private economy, so long as we keep a free private market, one party to a deal can only benefit if the other party also benefits. There is no way in which you can satisfy your needs at the expense of somebody else. In the government market, there is another recourse. If you start a program that is a failure and you are in the private market, the only way you can keep it going is by digging into your own pocket. That is your bottom line. However, if you are in the government, you have another recourse. With perfectly good intentions and good will nobody likes to say: "I was wrong." You can say, "Oh, the only reason it is a failure is because we haven't done enough. The only reason the drug program is a failure is because we haven't spent enough money on it." And it does not have to be your own money. You have a very different bottom line. If you are persuasive enough, or if you have enough control over power, you can increase spending on your program at the expense of the taxpayer. That is why a private project that is a failure is closed down while a government project that is a failure is expanded.

The only way we are really going to change things is by changing the political structure. The most hopeful thing I see on that side is the great public pressure at the moment for term limits. That would be a truly fundamental change.

I want to close on a slightly optimistic note. About 200 years ago, an English newspaper wrote: "There are 775,300,000 people in the World. Of these, arbitrary governments command 741,800,000 and the free ones [comprise only] 33 1/2 million.... On the whole, slaves are three and twenty times more numerous than men enjoying, in any tolerable degree, the rights of human nature."² I know of no such precise estimate for the present, but I made a rough estimate on the basis of the freedom surveys of Freedom House. I estimate that, while slaves still greatly outnumber free people, the ratio has fallen in the past two centuries from 23 to 1 to about 3 to 1. We are still very far from our goal of a completely free world, but, on the scale of

2 Cited in Forrest McDonald, *Novus Ordo Seclorum* (Lawrence: University Press of Kansas, 1985), p.9.

historical time, that is amazing progress, more in the past two centuries than in the prior two millennia. Let's hope and work to make sure that that keeps up. Thank you.

11.2 Charles Tilly: "Globalization Threatens Labor's Rights" (1995)³

... I will argue that globalization threatens established rights of labor through its undermining of state capacity to guarantee those rights. In reasoning about the causal chains involved, I will draw heavily on inferences from Western European history, the history I know best. The paper takes a considerable excursion back into that history on the ground that here, as so often, historical perspective clarifies what is now happening to the world, and what might happen next. Based on a reading of European history, ideas informing this essay run as follows: ...

2. Although in Western countries some groups of workers enjoyed rights enforced by municipalities and other organizations prior to 1800, states were rarely parties to such contracts before the nineteenth century. Otherwise said, workers enjoyed few rights at a national scale.

In Europe before 1800, different groups of workers frequently exercised rights, thus defined, to monopolize the production and sale of some commodity within a stipulated set of markets, to regulate the entry of new producers and purveyors into their trades, to bargain collectively with local employers over conditions of production and remuneration, to gain preferential access to local food supplies in times of crisis, to glean, hunt, and/or *pasture* on common or deserted land, to pursue grievances through courts, to participate as groups in public festivities, to select members of cross trade councils, and to discipline renegade members of their own trades. In general workers did not

enjoy shared worker-specific rights to organize trade unions, to strike against individual employers, to offer political candidates organized support, to address national political authorities directly, to bear arms, or to draw compensation for hardship from public funds. Although people exercised some individual rights as members of communities, churches, households, and other organizations, workers' rights generally took a categorical form, applying to individual workers only in so far as they qualified as bona fide members of local trades.

Before the nineteenth century, states rarely served as third parties to these rights. Instead, municipalities, parishes, local lords, sovereign courts, and similar smaller-scale authorities typically guaranteed the rights in question, arbitrated them, or served as their enforcers. In England, historians sometimes speak loosely as though the Statute of Laborers, Statute of Artificers, Poor Law, and Assize of Bread clearly established plebeian claims on the crown, but at most they justified appeals to those royally sanctioned autonomous intermediaries, county magistrates. Parliament did intervene in the food supply, for example, but almost exclusively by licensing or forbidding exports and authorizing commitment of food to troops; it left actual regulation of prices and supplies to local authorities. The crown, in its turn, intervened chiefly by sending armed forces to protect shipments or to break up crowds that were seizing grain. Eighteenth-century parliamentary legislation for Spitalfields weavers and merchant seamen stood out as exceptional, in no way giving other workers a warrant to call on the state for protection. Above all, workers' rights, where they existed, rested on the relations between particular groups of workers and municipalities, not national states.

3. Through intense struggles, incremental changes, and alterations in the organization of states, workers in capitalist countries acquired substantial collective rights after 1850 or so.

3 Charles Tilly, "Globalization Threatens Labor's Rights," *International Labor and Working-Class History*, No. 47 (Spring 1995), 1–23.

Those rights expanded irregularly through World War II.

The situation changed profoundly during the nineteenth century. Especially as a consequence of greatly expanded war-making, states intervened much more directly in their populations' lives after 1750, thereby generating new resistance, struggle, bargaining, and settlements in the form of rights. Significantly expanded state capacity, furthermore, meant that the state became party to a much wider range of transactions than before and became more attractive as an object of new demands. States that could conscript, tax, and police could also regulate working conditions, organize schools, and build highways. At the same time, concentration and nationalization of capital gave workers connections and central objects of claims they had not previously known....

5. Those rights attached workers collectively to particular states, and therefore depended on the capacity of those states to enforce workers' claims on others, notably on capitalists.

The variant chronologies of workers' rights make my point: Rights to strike, to associate, to call down sanctions against poor working conditions, to seek legal enforcement of contracts, to collect unemployment benefits, to earn pensions all depended not on the general ethos of Europeans or Westerners but on some particular state's readiness to validate the rights in question. One proof lies in the capacity of states to suspend some or all of those rights in times of war or civil strife, as most European states did during World War I.⁴ Another lies in the effective strategies for labor pursued by the leaders of different states, including Bismarck's simultaneous repression of trade-union organization and elaboration of insurance programs for

sickness, accident, and old age. Similarly, workers' reliance on state power to exclude foreign labor and thus to reinforce domestic labor's right to work embedded a given country's workers in their own state's capacity to control its borders.

Of course, the degree of embeddedness in particular states varied from institution to institution and from state to state. Bo Rothstein points out, for example, that European workers' movements had a choice between two types of unemployment-insurance scheme: "(1) as a compulsory system administered by government agencies and (2) as a voluntary but publicly supported scheme administered by unions or union-dominated funds," the latter being called the Ghent system for its origins in that Belgian city's legal arrangement.⁵ Sweden, Denmark, Finland, Iceland, and Belgium — in recent decades, the most highly unionized European countries — all adopted the Ghent system. In either system, the right to unemployment insurance depends ultimately on the state, much more so than in the nineteenth-century private accumulation of funds by unions and mutual-aid societies; in both systems workers surrender autonomy in favor of reliance on the state's greater financial capacity. However, the compulsory state system bypasses unions to establish direct connections between workers and state agencies, while the Ghent system establishes unions as privileged intermediaries.

Over the whole range of workers' rights — not only unemployment insurance but also health and welfare benefits, vocational training, occupational safety, minimum wages, unionization, and the right to strike — the actual exercise of rights depended heavily on the state's capacity and propensity to discipline capital. Much of labor politics in Western countries indeed pivots precisely on demands that the state enforce such rights in the face of capitalist resistance. In return, states can count on commitment of workers to their international

4 Leopold Harimson and Giulio Sapelli, eds., *Strikes, Social Conflict and the First World War. An International Perspective* (Milan: Fondazione Giangiacomo Feltrinelli 1992).

5 Bo Rothstein, "Labor-Market Institutions and Working-Class Strength," in *Structuring Politics. Historical Institutionalism in Comparative Analysis*, ed. Sven Steinmo, Kathleen Thelen, and Frank Longstreth (Cambridge: Cambridge University Press, 1992), 39–40.

policies, as socialist internationalists learned with consternation on the eve of World War I: On the whole, workers abandoned pacifism and international solidarity in favor of support for their own countries' war efforts.

6. In general, the same states' capacity to pursue social policies, including the enforcement of workers' rights, also depended on the creation of substantial, effective controls over the stocks and flows of persons, diseases, other biota, pollutants, weapons, drugs, money, other capital, technology, information, commodities, political practices, and cultural forms within well-delimited territories.

In addition to state controls over capitalists, the concession of many rights to workers entailed greatly enlarged intervention of states in stocks and flows that had previously escaped any more than light, intermittent state influences. State-guaranteed vocational education depended on state regulation or creation of a wide variety of educational institutions, while unemployment compensation assumed both extensive monitoring of employment and accumulation of large financial reserves. These institutions in their turn implied state capacity to observe and control the accumulation, expenditure, and transfer of an enormous range of resources; otherwise the effects of government policies would become unpredictable and the ability of government to meet their commitments shaky at best. Michael Mann refers to this sort of capacity as "infrastructural power":

the institutional capacity of a central state, despotic or not, to penetrate its territories and logistically implement decisions. This is collective power, "power through" society, coordinating social life through state infrastructures. Weber implied this also increased their despotic power over society. But this is not necessarily so. Infrastructural power is a two-way

street: It also enables civil society parties to control the state, as Marxists and pluralists emphasize. Increasing infrastructural power does not necessarily increase or reduce distributive, despotic power.⁶

Infrastructural power arises through delineation of state boundaries accompanied by monitoring and intervention in stocks and flows of a wide range of resources both within and across those boundaries.

7. After 1850 or so, capitalist states actually succeeded in imposing significant controls over most of these stocks and flows.

Mark me well: I am not arguing that the granting of rights to workers and to citizens in general caused the expansion of state power. I have in mind a rather different scenario. For millennia the rulers of most states acted chiefly to enhance their own war-making capacities, to maintain their own oligarchies in power, and to reinforce the perquisites of those oligarchies vis-à-vis the subject population; groups outside the ruling classes only gained autonomy or power when they served one of these activities, when they took advantage of contradictions among these activities (as when oligarchies became reluctant to wage war and crowns turned to merchants for loans) or when they were able to evade the state's reach.

After 1750 or so, however, a combination of (1) a great increase in the scale and cost of international war and (2) a strong turn toward recruitment of troops from among the country's own young men generated great expansions of state fiscal apparatus, consequent growth of state structures in general, widespread resistance, struggles between ordinary people and state officials over the means of war, and bargains establishing a modicum of citizens' rights. Expanded rights confronted states whose extractive capacity had enormously increased, which meant that the self-interested

6 Michael Mann, *The Sources of Social Power II: The Rise of Classes and Nation-States, 1760–1914* (Cambridge: Cambridge University Press, 1993), 59.

work a well-organized group could do by means of state intervention likewise increased. The paradoxical result: intensified commitment to the state's survival coupled with intensified struggle to turn the state to group advantage.

This scenario played itself out in a thousand ways: in unprecedented state budgets, new bureaucracies, serious attempts to define and control borders, establishment of public educational systems, creation of censuses and central statistical offices, organization of national maps and cadasters, founding of museums, movement away from excise to direct taxes, formation of political parties, issuing of passports and visas, standardization of calendar and clock times, patenting of inventions, imposition of military conscription, uniformization of legal tenders, installation of labor inspectors, starting of public health services, surveys of poverty, and much more. In general, the efforts had two aspects: circumscription and central control.

"Circumscription" denotes an increase in a state's capacity to limit stocks and flows of resources within and across national frontiers; it rests, among other things, on delineation and surveillance of those frontiers. In the nineteenth century, European states acted much more vigorously to monitor and contain the accumulation, movement, and transfer of capital, goods, persons, ideas, and technologies; as a result, they acquired enhanced means of influencing technological innovation, employment, investment, and supplies of money. They started rationalizing their borders, requiring passports of people who crossed them, and controlling the passage of valuable resources as well.

"Central control" denotes a state's intervention in populations, organizations, and activities throughout its territory through surveillance, coordination, and command. During the nineteenth century European states elaborated extensive controls over communications systems, transportation, public health, urban form, schools, working conditions, welfare and a wide range of other social activities. Central control included the redefinition and

standardization of culture, of shared understanding and their objectifications. From the nineteenth century onward, states promoted or undertook the organization of publications, ceremonies, museums, schools, and symbols favoring national identities, beliefs, histories, and languages; in the process, they came to define variant cultures as inferior, mistaken, and sometimes subversive. National narratives, furthermore, located the histories of particular states in the general history of Europe and of humanity.

8. As a result, citizens (including workers) demanded increasingly that states enact programs expanding and guaranteeing their rights, and thereby sanctioned even greater state control over such stocks and flows.

As this scenario implies, state budgets not only expanded, but shifted away from their previous enormous concentration on war and war-related debt service. They shifted toward collective goods such as highways, railroads, schools, and, eventually, welfare through a process of bargaining over disposition of expanded state capacity. After documenting the great expansion of fifteenth-century European states, Raymond Grew points out that in some respects rulers nevertheless withdrew from intervention: "A system of power based on law is endangered by laws it cannot enforce, and gradually, most nineteenth-century states abandoned efforts to control wages, consumption, prices, churches, strikes, labor organization, and the press."⁷ What actually happened in these instances, however, was that states circumscribed without exerting much central control—set limits, but did not regulate much within those limits. In the case of strikes and labor organization, as we have seen, the very setting of limits constrained workers to abandon forms of organization and action they have previously employed. In fact, European states took similar circumscriptive approaches to wages, consumption, prices, churches, and the press.

7 Raymond Grew, "The Nineteenth-Century European State," in *Statemaking and Social Movements. Essays in History and Theory*, ed. Charles Bright and Susan Harding (Ann Arbor, MI: University of Michigan, 1984), 101.

9. Both the globalization of many economic activities and the creation of powerful supra-national organizations are now undermining the capacity of states to monitor and control such stocks and flows — hence, undermining their capacity to pursue effective social policies, including the enforcement of workers' rights.

The news briefs with which this paper began indicate the swelling of a great flood, but they do not quite show how rising waters are affecting states' foundations. The effects are, I think, profound. With respect to labor migration, both the United States and the European Community have proved quite incapable of stemming the entry of illegal workers. With respect to capital, almost all states have proved vulnerable to threatened flights of investment and incompetent to monitor entries and exits of large amounts of money. With respect to illegal drugs, practically no country in the world has erected effective barriers to their movement, sale, or consumption. Weapons flow freely across state borders, as do diseases and pollutants. Television, radio, fax, and computer networks broadcast information, entertainment, and popular culture throughout the world despite efforts of many states to contain them. Astute pricing of interstate but intrafirm movements of goods allows multinational firms to evade taxation, while temporary employment, part-time employment, commission sales and subcontracting allow them to avoid statutory obligations to long-term employees. Multinational corporations, international banking syndicates, and large criminal organizations are engineering some of these changes, but so are multinational compacts such as the European Community.

A number of Western regimes, especially conservative regimes like those of Margaret Thatcher and Ronald Reagan, reacted to the decreasing effectiveness of state action by trying to shrink the state. As James Cronin remarks,

[W]hat is most distinctive historically about the Conservatives under Thatcher was their obsession with the state and with the institutional bases of power and policy. They displayed a particularly intense desire to limit the size and restructure the shape of the state itself, to reduce the extent to which government was held responsible for the economic and social welfare of its citizens, to diminish the capacity of the state to undertake or to avoid that responsibility and to eliminate those state institutions and policies that had provided support for Labor. In this they showed keen insight into recent politics and an intuitive understanding of the process by which the very structure of the state shapes politics: creating expectations and opportunities for placing demands upon government, opening or limiting the arena for political mobilization, offering or withdrawing the political recognition of interests that is so essential to their existence and successful mobilization.⁸

In other words, they responded to the state's overcommitment by denying commitments and destroying commitment-producing mechanisms.

Perhaps the most surprising effects of globalization on state activity, however, lie in the area of warfare. Given a Weberian conception of states as monopolists of violent means, one might have thought use of force the last place in which states would lose their grips. European states did, after all, accomplish an enormous disarming of their civilian populations between 1600 and 1900, while arming themselves so effectively that only defection of government troops made forceful seizures of power possible. With the Gulf war, the United States bid to make itself arms purveyor to the world. Yet the very involvement of major states — the United States, Russia, China, the United Kingdom, and France represent about 80 percent of world trade in major conventional weapons⁹ — promoted the acquisition of weapons by nonstate actors.

8 James E. Cronin, *The Politics of State Expansion. War, State and Society in Twentieth-Century Britain* (London: Routledge 1991), 247.

9 Ruth Leger Sivard, *World Military and Social Expenditures* (New York: World Priorities, Inc. 1993), 19.

The process had two dimensions: the swelling of international weapons shipments and a shift toward forms of war, including civil war, involving other forces than disciplined national armies. Each dimension promoted the other. Even within Europe, the former zones of Yugoslavia and the Soviet Union have thrown up dozens of armed forces that do not belong to recognized states. In the rest of the world, irregular forces have become so prominent and powerful that guerrilla war has displaced the engagement of centrally disciplined government troops as the dominant form of warfare.¹⁰ In Somalia, Liberia, Colombia, Mexico, Afghanistan, Sri Lanka, and many other places, so-called low-intensity conflict kills thousands of people every year.

States figure importantly in these conflicts not only as suppliers of arms, but also as supporters of intervention in the politics of other states, as inciters and objects of rebellion, as sponsors of death squads, as aspirations on the part of independence movements. Proliferation of genocide, politicide and expulsion of minorities as techniques of rule since 1945 bespeaks not disappearance but abuse of state power. Still, it is astonishing to what degree large-scale violence other than interstate war has increased since 1945, and to what extent states are losing their ability to contain that violence. The change testifies to weakened state capacity on a worldwide scale.

10. Current changes therefore threaten all rights embedded in states, including workers' rights.

Jelle Visser and Bernhard Ebbinghaus point out that worker power and union densities have been falling since about 1980 in the capitalist world as a whole even including the historic social democracies. "From a weakened position at home," they add,

trade unions face the double challenge of Europe: the further political and economic integration of the 12 member states of the European Community, and the demand for aid, development and support from Central and Eastern European countries. With the advance of economic integration and a European monetary Union, national sovereignty in matters of economic and social policies risks being limited, and customary union avenues for protecting and enhancing employee welfare and security in the national agenda will become more and more restrained. The internationalization of organizations and markets has eroded, and will further reduce, the remaining zones of national autonomy in social and economic policy-making. Given the advance of multinational firms and within-firm centralization of decision-making on strategic issues, and the arrival of supranational decision making in the European Community on the main economic and monetary issues, trade unions have no choice but to develop some transnational capacity for organization and action."¹¹

But, they point out, the diversity of European union movements poses two serious obstacles to any such joint effort: First, the sheer difficulty of finding common formulas for such variously organized structures; second, the strategic division between relatively powerful labor movements (which have the capacity to act but much to lose by leveling) and relatively powerless ones (which are in no position to lead continental collective action). So far European workers have managed to create a European Trade Union Confederation with many members and few powers as well as a few multinational federations within such sectors as mining and metalworking. Still, their capacity for effective action at a European scale remains trivial.

10 Martin van Creveld, *The Transformation of War* (New York: Free Press, 1991).

11 Jelle Visser and Bernhard Ebbinghaus, "Making the Most of Diversity? European Integration and Transnational Organization of Labor," in *Organized Interests and the European Community*, ed. Justin Greenwood, Jürgen R. Grote, and Karsten Ronit (London: Sage Publications, 1992), 206–207. publisher.

The circumstances Visser and Ebbinghaus describe result precisely from the embedding of labor's rights in particular European states over the last 150 years. As the scale of economic action rises and the free flow of resources among European Community economics accelerates, the capacity of individual states to intervene on behalf of labor, the utility of any such intervention, and the power of organized labor relative to international capital all decline. Since rights depend on enforceability, all state-based rights decline. That emphatically includes the rights of workers....

15. If workers are to enjoy collective rights in the new world order, they will have to invent new strategies at the scale of international capital.

To the extent that (a) rights emerge from organized struggle and (b) the current struggle still pits labor against capital, only collective action at an international scale has much prospect of providing gains for labor, or even of stemming labor's losses. The governments involved as guarantors, furthermore, will have to be international agencies, compacts, or consortia of existing states. No individual state will have the power to enforce workers' rights in the fluid world that is emerging.

11.3 Amnesty International: "Amnesty International on Human Rights and Labour Rights" (1998)¹²

Our rallying cry for May Day is "labor rights are human rights." This reminds us that people traditionally look to unions to protect their rights and the unions have the largest force of "human rights defenders" in the world. Human rights embrace the whole spectrum of standards that every person should expect as a minimum entitlement in any decent society, and they include rights in every realm of life, civil, political, social and cultural — from social security to health, from education to sexual orientation rights.

The broad human rights movement and the unions still have a lot to learn from each other and both could benefit from working more closely together. Organizing collectively into a union is one of the prime examples of action to prevent people's rights being violated and trade unions give us the models for mass action to respond to abuses of rights. Union solidarity action is a good illustration of organized activism by one branch of a movement to protect those at risk somewhere else. But apart from the campaigns of unions and rights organizations, what affects the state of labor rights and human rights are the same major social trends which are influencing every other aspect of life.

The theories of "neo-liberal economics" dominate current ideology and in reality, of the 100 largest economies in the world, 51 are now global corporations; only 49 are countries. The multinationals show the ever-increasing scope and power of globalization. They work on a super-national scale and organize their business like a world-wide game of Monopoly, moving their operations, plant, finance and workforce around like pieces on the map. They fragment production to suit their interests. They continue to gain more control over each process, more control over the workforce and more control over the market, merging, acquiring, and garnering more power. Mitsubishi is now larger than Indonesia, with the fourth largest population on earth. General Motors is bigger than Denmark, Toyota is bigger than Norway. Philip Morris is larger than New Zealand.

With the latest computer technologies they hold extensive data and monitor the behavior of millions of "citizen consumers"; with world-wide marketing and pin-sharp targeting, they manipulate and manage expectations, they penetrate our communities, our homes and our lives. They often push down wages and living standards, job-security and terms and conditions of employment.

Like super-powers, they have near-universal reach and supremacy and the rights of their staff, their suppliers, their customers and small businesses have all been subordinated to the rules of the new

12 Amnesty International, "Amnesty International on Human Rights and Labour Rights" (1998).

big game. Governments court these corporations and compete in offering them inducements. The human consequences of this new order are seen in the erosion of rights in the “maquiladoras” and sweatshops of Latin America, the factory/storage/living blocks of the export processing zones in the Far East. An alliance of women’s organizations said: “While women who wear Nike shoes in the United States are encouraged to perform to their best, the Indonesian, Vietnamese and Chinese women making the shoes often suffer from inadequate wages, corporal punishment, forced overtime and/or sexual harassment.” At the social and political level, the top 200 multi-national corporations have more economic power than the poorest four-fifths of humanity; the head of Microsoft has more money than twice the combined GDP of Uganda, Kenya and Tanzania. Through this sheer size, economic dominance and mobility, the multi-nationals can set the agenda for development, sway political decisions and have a major impact on the reality of human rights for very many people.

The global market means that governments have less control over economic matters. A lot of countries may look more social-democratic with the disappearance of many dictatorships, but the capacity and legitimacy of the state is in decline. At the same time traditional national governments are increasingly relinquishing power through privatizing public services, including parts of the military, security and police services as well as their utilities, major industries, etc. They have diminishing power to control mergers, take-overs and liquidations, may not know who plans to buy or sell a major industry or utility; a telephone, TV or water company may change ownership overnight.

“Peace-keeping” forces, prison detention and policing services are increasingly being privately run as corporations. Amnesty International and other NGOs have started developing techniques and learning from experience in exposing the involvement of corporations such as Shell, BP and Total in human rights violations in Nigeria, Colombia, Myanmar. This approach can effectively complement the efforts of unions and labor activists. Work on child labor exploitation, on apparel industries

and sports goods have shown what is possible, although there is still much to be done to develop this area of work.

The sheer weight of national debt in many poor countries, alongside the power of IMF, large transnational corporations and overseas investors, leaves the governments with little power to make their own choices or control their nation’s affairs. Rights and justice come very low on government priority lists compared to foreign debts. Human rights are undermined by extreme inequalities in power and wealth; injustice in access to food, fuel, shelter and the bare necessities of life go hand in hand with poverty and powerlessness leading to destitution, malnutrition, disease, illiteracy, unemployment.

The financial institutions like the IMF, the World Bank and the multi-national banks have a major impact on people’s rights. More and more states have taken their loans and accepted the social policies they impose such as the infamous Structural Adjustment Programs, which include cuts in public expenditure, unemployment, lower wages, reductions in welfare and public services — health, education, social security, transport, etc.

International finance can move massive capital funds very quickly from one side of the world to the other, just to speculate, and people’s rights suffer when the social fabric is torn apart by currency crises, national bank failure, government collapse. Let us hope that human rights will not be further eroded in the recently damaged “tiger economies” such as Indonesia and South Korea.

Thus overall, a new breed of world “super-bodies” seem to be emerging: the multi-national commercial corporations, the international banking and financial bodies and the regional inter-government economic organizations. These new super bodies normally share the same outlook, the same analysis and culture. Human rights and labor rights are not a priority on their agenda.

In some countries in recent years there have remained no effective social structures at all to protect rights of any sort, when the normal machinery of government collapsed altogether as a result of armed conflicts. Human rights suffer in these conditions, whether the reason is resistance to

oppression, competition among regional powers or “warlordism.” Witness the effects on all human rights in former Yugoslavia, Somalia, Rwanda, parts of the former Soviet Union, in Zaire, Sierra Leone or Liberia, East Timor. Amnesty International’s “concerns” arise in the increasingly widespread “limited,” “internal” or “low intensity” wars around the world.

Across the world, unprecedented numbers of people whose rights have been denied are on the move, migrant workers looking for a better life with basic rights and refugees fleeing violence or conditions of oppression. But their freedom of movement and their most basic rights are at risk as more and more barriers are erected to keep them out.

Human rights and labor rights are being affected by the amazing capacities and spread of computer and communications technologies, and by the applications of new science — genetic engineering, biotechnologies, wonder drugs, artificial intelligence. So many “great leaps forward,” but as ever, the question will be for whose benefit are they developed and who will have access to them? Who do they liberate and whose rights do they threaten?

Changes and threats to the environment and to eco-systems have major implications for all our rights as humans. Rights at work are threatened by toxic chemicals, new materials and waste products, rights to health services are threatened by pollution of the atmosphere, the right to life, liberty and security are put in jeopardy by meltdowns like Chernobyl, the Ogoni’s rights to own property and to freedom of movement are put at risk by soil contamination. And no one can avoid the effects of global warming. The actual effects of the economic system can make a mockery of its alleged rationality and rob us of our rights.

Amnesty International has a tradition of emphasizing the responsibilities of national governments, to “deliver” rights, to protect rights, to rectify violations. In the face of the decreasing functions and powers of governments, how should we respond, how can we globalize accountability?

Unions are familiar with the dilemma that the state is sometimes an ally, legislating or protecting

norms, and sometimes the “enemy,” sending police against demonstrations, demanding “registration” of unions, setting pay freezes, etc. The key issue is surely about accountability, the right to participate in government and the right to change it.

Labor rights and human rights organizations need to find ways of working which are effective with power structures that lie outside the familiar context of the company or the nation state. We have to influence decision-makers in distant multinational company HQs, in board-rooms of management consultancy firms and investment analysts. We have to influence the decisions of technical experts and diplomats in the World Trade Organization, the IMF, the World Bank and innumerable other remote, specialist agencies which are insulated from traditional democratic pressure. How should we adapt our campaigning to face this challenge?

With the intensive specialization of human rights into separate topics from health issues to social security, from education rights to nationality issues, this field of interest risks becoming very “professionalized.” The whole base of activism on labor rights and human rights issues is at issue. In order to retain people acting unpaid, out of conviction, our movements need to learn how to enable members to take up the particular causes which they identify with, feel passionately about and want to pursue very specifically. We also need to hold on to traditional principles of solidarity for when mass support is needed. But trends in trade unions and in voluntary organizations are tending to reflect noticeable changes in active participation; smaller, more flexible, specialized self-organized groups are playing a much more activist role than the traditional cohorts of uniform monolithic branches. Another set of issues we must study and adapt to.

The last decade has seen a big increase in the number of non-governmental organizations working on labor rights, human rights, international affairs, single issues, on themes or for specific sectors, or particular campaigns, but nothing on a scale to match the changes we have to face. We need to learn to work much more closely with each other in the different branches of human rights,

recognizing where we share, and where we differ over objectives, understanding differing specialist interests and strengths, differing structures and accountability.

As economic production, finance and control becomes more and more concentrated, it seems that when policies go wrong, they can lead to catastrophes on an ever increasing scale — massive economic crises, famines, environmental disasters, military conflicts, communal violence, mass killings and genocide erupt more suddenly and more disastrously than ever before. We need to adapt our movements to respond more quickly and more effectively to the massive scale of human rights violations and the sudden emergencies which arise today.

Historically there never was a period of halcyon days with equal rights in a society ruled by mutual respect: every age has been turbulent, beset with new risks and threats to people's rights. Those who care about rights face considerable challenges, we must adapt to reality or we'll be irrelevant.

11.4 Amartya Sen: *Development as Freedom* (1999)¹³

Let me start off with a distinction between two general attitudes to the process of development that can be found both in professional economic analysis and in public discussions and debates. One view sees development as a “fierce” process, with much “blood, sweat and tears” — a world in which wisdom demands toughness. In particular, it demands calculated neglect of various concerns that are seen as “soft-headed” (even if the critics are often too polite to call them that). Depending on what the author's favorite poison is, the temptations to be *resisted* can include having social safety nets that protect the very poor, providing social services for the population at large, departing from rugged institutional guidelines in response to identified hardship, and favoring — “much too early” — political and civil rights and the “luxury” of democracy.

These things, it is argued in this austere attitudinal mode, could be supported later on, when the development process has borne enough fruit: what is needed here and now is “toughness and discipline.” The different theories that share this general outlook diverge from one another in pointing to distinct areas of softness that are particularly to be avoided, varying from financial softness to political relaxation, from plentiful social expenditures to complaisant poverty relief.

This hard-knocks attitude contrasts with an alternative outlook that sees development as essentially a “friendly” process. Depending on the particular version of this attitude, the congeniality of the process is seen as exemplified by such things as mutually beneficial exchanges (of which Adam Smith spoke eloquently), or by the working of social safety nets, or of political liberties, or of social development — or some combination or other of these supportive activities.

Constitutive and Instrumental Roles of Freedom

The approach of this book is much more compatible with the latter approach than with the former. It is mainly an attempt to see development as a process of expanding the real freedoms that people enjoy. In this approach, expansion of freedom is viewed as both (1) the *primary end* and (2) the *principal means* of development. They can be called respectively the “constitutive role” and the “instrumental role” of freedom in development. The constitutive role of freedom relates to the importance of substantive freedom in enriching human life. The substantive freedoms include elementary capabilities like being able to avoid such deprivations as starvation, under-nourishment, escapable morbidity and premature mortality, as well as the freedoms that are associated with being literate and numerate, enjoying political participation and uncensored speech and so on. In this constitutive perspective, development involves expansion of these and other

13 Amartya Sen, *Development as Freedom* (New York: Knopf, 1999). Editor: For space considerations, some explanatory notes have been omitted.

basic freedoms. Development, in this view, is the process of expanding human freedoms, and the assessment of development has to be informed by this consideration.

Let me refer here to an example that was briefly discussed in the introduction (and which involves an often raised question in the development literature) in order to illustrate how the recognition of the “constitutive” role of freedom can alter developmental analysis. Within the narrower views of development (in terms of, say, GNP growth or industrialization) it is often asked whether the freedom of political participation and dissent is or is not “conducive to development.” In the light of the foundational view of development as freedom, this question would seem to be defectively formulated, since it misses the crucial understanding that political participation and dissent are *constitutive* parts of development itself. Even a very rich person, who is prevented from speaking freely, or from participating in public debates and decisions, is *deprived* of something that she has reason to value. The process of development, when judged by the enhancement of human freedom, has to include the removal of this person’s deprivation. Even if she had no immediate interest in exercising the freedom to speak or to participate, it would still be a deprivation of her freedoms if she were to be left with no choice on these matters. Development seen as enhancement of freedom cannot but address such deprivations. The relevance of the deprivation of basic political freedoms or civil rights, for an adequate understanding of development, does not have to be established through their indirect contribution to *other* features of development (such as the growth of GNP or the promotion of industrialization). These freedoms are part and parcel of enriching the process of development.

This fundamental point is distinct from the “instrumental” argument that these freedoms and rights may *also* be very effective in contributing to economic progress. That instrumental connection is important as well . . . but the significance of the instrumental role of political freedom as *means* to development does not in any way reduce the evaluative importance of freedom as an *end* of development.

The *intrinsic* importance of human freedom as the preeminent objective of development has to be distinguished from the *instrumental* effectiveness of freedom of different kinds to promote human freedom. Since the focus of the last chapter was mainly on the intrinsic importance of freedom, I shall now concentrate more on the effectiveness of freedom as *means* — not just as end. The instrumental role of freedom concerns the way different kinds of rights, opportunities, and entitlements contribute to the expansion of human freedom in general, and thus to promoting development. This relates not merely to the obvious connection that expansion of freedom of each kind must contribute to development since development itself can be seen as a process of enlargement of human freedom in general. There is much more in the instrumental connection than this constitutive linkage. The effectiveness of freedom as an instrument lies in the fact that different kinds of freedom interrelate with one another, and freedom of one type may greatly help in advancing freedom of other types. The two roles are thus linked by empirical connections, relating freedom of one kind to freedom of other kinds.

Instrumental Freedoms

In presenting empirical studies in this work, I shall have the occasion to discuss a number of instrumental freedoms that contribute, directly or indirectly, to the overall freedom people have to live the way they would like to live. The diversities of the instruments involved are quite extensive. However, it may be convenient to identify five distinct types of freedom that may be particularly worth emphasizing in this instrumental perspective. This is by no means an exhaustive list, but it may help to focus on some particular policy issues that demand special attention at this time.

In particular, I shall consider the following types of instrumental freedoms: (1) *political freedoms*, (2) *economic facilities*, (3) *social opportunities*, (4) *transparency guarantees* and (5) *protective security*. These instrumental freedoms tend to contribute to the general capability of a person

to live more freely, but they also serve to complement one another. While development analysis must, on the one hand, be concerned with the objectives and aims that make these instrumental freedoms consequentially important, it must also take note of the empirical linkages that tie the distinct types of freedom *together*, strengthening their joint importance. Indeed, these connections are central to a fuller understanding of the instrumental role of freedom. The claim that freedom is not only the primary object of development but also its principal means relates particularly to these linkages.

Let me comment a little on each of these instrumental freedoms. *Political freedoms*, broadly conceived (including what are called civil rights), refer to the opportunities that people have to determine who should govern and on what principles, and also include the possibility to scrutinize and criticize authorities, to have freedom of political expression and an uncensored press, to enjoy the freedom to choose between different political parties, and so on. They include the political entitlements associated with democracies in the broadest sense (encompassing opportunities of political dialogue, dissent and critique as well as voting rights and participatory selection of legislators and executives).

Economic facilities refer to the opportunities that individuals respectively enjoy to utilize economic resources for the purpose of consumption, or production, or exchange. The economic entitlements that a person has will depend on the resources owned or available for use as well as on conditions of exchange, such as relative prices and the working of the markets. Insofar as the process of economic development increases the income and wealth of a country, they are reflected in corresponding enhancement of economic entitlements of the population. It should be obvious that in the relation between national income and wealth, on the one hand, and the economic entitlements of individuals (or families), on the other, distributional considerations are important, in addition to aggregative ones. How the additional incomes generated are distributed will clearly make a difference.

The availability and access to finance can be a crucial influence on the economic entitlements that economic agents are practically able to secure. This applies all the way from large enterprises (in which hundreds of thousands of people may work) to tiny establishments that are run on micro credit. A credit crunch, for example, can severely affect the economic entitlements that rely on such credit.

Social opportunities refer to the arrangements that society makes for education, health care and so on, which influence the individual's substantive freedom to live better. These facilities are important not only for the conduct of private lives (such as living a healthy life and avoiding preventable morbidity and premature mortality), but also for more effective participation in economic and political activities. For example, illiteracy can be a major barrier to participation in economic activities that require production according to specification or demand strict quality control (as globalized trade increasingly does). Similarly, political participation may be hindered by the inability to read newspapers or to communicate in writing with others involved in political activities.

I turn now to the fourth category. In social interactions, individuals deal with one another on the basis of some presumption of what they are being offered and what they can expect to get. In this sense, the society operates on some basic presumption of trust. *Transparency guarantees* deal with the need for openness that people can expect: the freedom to deal with one another under guarantees of disclosure and lucidity. When that trust is seriously violated, the lives of many people — both direct parties and third parties — may be adversely affected by the lack of openness. Transparency guarantees (including the right to disclosure) can thus be an important category of instrumental freedom. These guarantees have a clear instrumental role in preventing corruption, financial irresponsibility and underhand dealings.

Finally, no matter how well an economic system operates, some people can be typically on the verge of vulnerability and can actually succumb to great deprivation as a result of material changes that adversely affect their lives. *Protective security* is needed to provide a social safety net for preventing

the affected population from being reduced to abject misery, and in some cases even starvation and death. The domain of protective security includes *fixed* institutional arrangements such as unemployment benefits and statutory income supplements to the indigent as well as ad hoc arrangements such as famine relief or emergency public employment to generate income for destitutes.

Interconnections and Complementarity

These instrumental freedoms directly enhance the capabilities of people, but they also supplement one another, and can furthermore reinforce one another. These interlinkages are particularly important to seize in considering development policies.

The fact that the entitlement to economic transactions tends to be typically a great engine of economic growth has been widely accepted. But many other connections remain under-recognized, and they have to be seized more fully in policy analysis. Economic growth can help not only in raising private incomes but also in making it possible for the state to finance social insurance and active public intervention. Thus the contribution of economic growth has to be judged not merely by the increase in private incomes, but also by the expansion of social services (including, in many cases, social safety nets) that economic growth may make possible.

Similarly, the creation of social opportunities, through such services as public education, health care, and the development of a free and energetic press, can contribute both to economic development and to significant reductions in mortality rates. Reduction of mortality rates, in turn, can help to reduce birth rates, reinforcing the influence of basic education — especially female literacy and schooling — on fertility behavior.

The pioneering example of enhancing economic growth through social opportunity, especially in basic education, is of course Japan. It is sometimes forgotten that Japan had a higher rate

of literacy than Europe had even at the time of the Meiji restoration in the mid-nineteenth century, when industrialization had not yet occurred there but had gone on for many decades in Europe. Japan's economic development was clearly much helped by the human resource development related toll the social opportunities that were generated. The so-called East Asian miracle involving other countries in East Asia was, to a great extent, based on similar causal connections.

This approach goes against — and to a great extent undermines — the belief that has been so dominant in many policy circles that “human development” (as the process of expanding education, healthcare and other conditions of human life is often called) is really a kind of luxury that only richer countries can afford. Perhaps the most important impact of the type of success that the East Asian economies, beginning with Japan, have had is the total undermining of that implicit prejudice. These economies went comparatively early for massive expansion of education, and later also of health care, and this they did, in many cases, *before* they broke the restraints of general poverty. And they have reaped as they have sown. Indeed, as Hiromitsu Ishi has pointed out, the priority to human resource development applies particularly to the early history of Japanese economic development, beginning with the Meiji era (1868–1911), and that focus has not intensified with economic affluence as Japan has grown richer and much more opulent...

11.5 John G. Ruggie: On Business and Human Rights (2020)¹⁴

The United Nations Human Rights Council (HRC) unanimously endorsed the Guiding Principles on Business and Human Rights (Guiding Principles) in June 2011. To date, they constitute the only official guidance the HRC and its predecessor, the Commission on Human Rights, have issued for

14 John Ruggie, “The Social Construction of the UN Guiding Principles on Business and Human Rights,” in *Research Handbook on Human Rights and Business*, edited by Surya Deva and David Birchall (Northampton, MA: Edward Elger, 2020). DOI: <https://doi.org/10.4337/9781786436405>. Editor: For space considerations, some explanatory notes have been omitted.

states and business enterprises on their respective obligations in relation to business and human rights. And this was the first time that either body had “endorsed” a normative text on any subject that governments did not negotiate themselves. UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein describes the Guiding Principles as “the global authoritative standard, providing a blueprint for the steps all states and businesses should take to uphold human rights.”¹⁵ According to Arvind Ganesan, who directs business and human rights at Human Rights Watch, as recently as the late 1990s “there was no recognition that companies had human rights responsibilities.”¹⁶ Needless to say, many factors contributed to this shift, particularly escalating pressure from civil society and adversely affected populations. But in terms of putting a global standard in place, *The Economist* Intelligence Unit has judged HRC endorsement of the Guiding Principles to be the “watershed event.”¹⁷

The Guiding Principles are built on a three-pillar “Protect, Respect and Remedy” framework: (1) states have a *duty to protect* against human rights abuses by third parties, including business, through policies, regulation, legislation and effective enforcement; (2) business enterprises have an independent *responsibility to respect* human rights: that is, to avoid people’s human rights being harmed through their activities or business relationships, and to address harms that do occur; (3) where human rights are harmed, affected individuals and communities should have *access to effective remedy*, and both states and enterprises have a role to play in enabling this to occur. There are 31 Principles in all, each with commentary elaborating its meaning and implications for law, policy, and practice.

They encompass all internationally recognized rights, and apply to all states and all business enterprises. They do not by themselves create new legally binding obligations but derive their normative force through their endorsement by states and support from other key stakeholders, including business itself. Yet elements of them have already been incorporated into binding regulation and law....

The case of climate change illustrates one type of scale mismatch: the effects are global, but the authority to deal with them remains largely in the hands of national governments. We see a different kind of scale mismatch in the case of business and human rights. Even as the realm of global public rulemaking has trended to fragmentation, multinational enterprises are a major global economic integrative force.... However, while in the every-day world multinationals such as Nike, Google, Coca-Cola, Toyota, Novartis and Sinopec are known to be *one* enterprise, with unity of command, operating under a single global vision and strategy, optimizing worldwide operations for efficiencies, market share and profits, they are not generally recognized as such in public law. National law, with some exceptions, governs whatever separate legal entity may be incorporated within a particular national jurisdiction, not the multinational enterprise as a whole. Thus, a parent company enjoys separate legal personality and limited liability for harm caused by its subsidiaries even if it is their sole owner. International law may “contemplate” multinational enterprises, as Knox has put it, and in some instances even “specify” appropriate conduct, as ILO labor conventions for example clearly do. But it generally imposes correlative duties on states, not on companies directly.¹⁸ Thus, Larry Catá Backer concludes, in a masterful understatement: “from a

15 Z. Ra’ad Al Hussein, “Ethical pursuit of prosperity” (*The Law Society Gazette*, 23 March 2015), <http://www.lawgazette.co.uk/analysis/comment-and-opinion/ethical-pursuit-of-prosperity/5047796.fullarticle>, accessed 8 June 2017.

16 Quoted in The Economist Intelligence Unit, *The Road from Principles to Practices: Today’s Challenges for Business in Respecting Human Rights* (October 13, 2015), available at <https://www.eiuperspectives.economist.com/strategy-leadership/road-principles-practice>, accessed 8 June 2017.

17 *Ibid.*

18 John H. Knox, ‘Horizontal Human Rights Law’ (2008) *American Journal of International Law* 1.

public law perspective, the framework for the regulation of multinational enterprises can be viewed most charitably as in flux.”¹⁹

These factors—gloeconomic/geopolitical shifts, the fragmentation of international law and global governance arrangements, and scale mismatches—continue to shape and reshape both the context and outputs of global rulemaking. They have made advancing the business and human rights agenda both more pressing and yet also more difficult to achieve through the formal intergovernmental governance system....

The Guiding Principles rest on the empirical observation that corporate conduct at the global level is shaped by three distinct governance systems. The first is the traditional system of public law and governance, domestic and international. Important as this is, by itself it has been unable to do all the heavy lifting on many global policy challenges, from poverty eradication to combating climate change. The second is a system of civil governance involving stakeholders concerned about adverse effects of business conduct and employing various social compliance mechanisms, such as advocacy campaigns, lawsuits and other forms of pressure, but also partnering with companies to induce positive change. The third is corporate governance, which internalizes elements of the other two (unevenly to be sure), and shapes enterprise-wide strategy and policies, including risk management. The challenge was to try and formulate a normative platform on which the three governance systems could be better aligned in relation to business and human rights, compensate for their respective shortcomings, and begin to play mutually reinforcing roles out of which significant cumulative change can evolve over time.

To foster that alignment, the Guiding Principles draw on the different discourses and rationales that reflect the different social roles each governance system plays in regulating corporate conduct. Thus, for states the emphasis

is on the legal obligations they have under the international human rights regime to protect against human rights abuses by third parties within their jurisdiction, including business, as well as policy rationales that are consistent with, and supportive of, meeting those obligations—such as when they do business with business. For businesses, beyond compliance with legal obligations, the Guiding Principles focus on the need to manage the risk of involvement in human rights abuses, which requires that companies employ due diligence to avoid infringing on the rights of others and address harm where it does occur. For adversely affected individuals and communities, the Guiding Principles stipulate ways for their further empowerment through meaningful dialogue and engagement throughout the due diligence cycle and other means to realize their rights to remedy, both judicial and non-judicial. These perspectives are combined within the common but differentiated “Protect, Respect and Remedy” framing, and spelled out in the Guiding Principles.

For the traditional human rights community perhaps the most controversial aspect of the UNGPs has been the foundation of the second pillar—the corporate responsibility to respect human rights....

Advocacy oriented international human rights lawyers and others informed by them tend to differentiate between two types of norms: moral and legal. From moral norms many then try to derive and drive *lex feranda*: law as it should be. Social scientists and sociologically-minded legal scholars also place great weight on the role of social norms. Of course, there are dynamic relationships among the three. To take one simple linear example, campaigns against smoking in restaurants were initially justified on the essentially moral grounds that others have a right not to be subjected to the health risks of secondary smoke inhalation. This soon turned into an accepted social norm, enforced by pressure from other patrons as well as many

19 Larry Catá Backer, ‘Multinational Corporations as Objects and Sources of Transnational Relations’ (2007-08) *ILSA Journal of Comparative and International Law* 499, 507.

restaurants themselves, before becoming a legal norm in many countries.

The Guiding Principles reaffirm that business enterprises must comply with all applicable legal requirements. Over and above legal compliance, they also stipulate that enterprises have the responsibility to respect human rights, irrespective of states' willingness or ability to enforce the law. Where does this responsibility to respect human rights come from? In the Guiding Principles it is anchored in a transnational social norm. But how does that work at the global level, where social norms vary across different countries and cultures?

Social norms are shared expectations of how particular actors are to conduct themselves in given circumstances. They hold within spheres of structured social interaction. The corporate responsibility to respect human rights enjoys widespread recognition as a social norm in what I have elsewhere termed "the global public domain"—which functions much like a domestic civic or public sphere.²⁰ To illustrate this concept, when Oxfam America funds community activists in Cajamarca, Peru, who organize protests against the local operations of an American mining company, and when it also brings community leaders to the company's annual shareholder meetings or to a UN business and human rights forum in Geneva to make their case to the assembled audience, and to the world beyond through the press and social media, those actions unfold in transnational space, not simply in separate locales. Similarly, when Zambian or Andean communities lodge complaints against Chinese companies based on social norms that the communities had previously established with Western companies in the same or nearby locales, and the Chinese managers request guidance from Beijing, and Beijing's guidance in turn draws on the Global Compact, the Guiding Principles, or the OECD Guidelines for Multinational Enterprises, those acts unfold in transnational space. Similar examples can be drawn from virtually any sector of transnational business activity. The totality of such

transnational spaces constitutes the global public domain.

The global public domain has become an increasingly densely interconnected arena of discourse, contestation and action involving both private and public actors, focused around the creation or defense of social norms and policy preferences regarding global public goods. In human rights discourse, respecting rights means to not infringe on the rights of others. We know that the corporate responsibility to respect human rights is a transnational social norm because the relevant actors acknowledge it as such, including governments, civil society, and businesses themselves in their corporate responsibility commitments. This does not imply that a transnational social norm is necessarily more (or less) effective than, or unrelated to, moral and legal norms; it is simply different in how it functions socially. Enterprises of course are free to undertake additional commitments, and governments to encourage or require them to do so. But *respect* is the baseline expectation.

Including the category of social norm with moral and legal norms enables the Guiding Principles to take the important additional step of not only specifying that business enterprises should respect human rights, but also providing them with a workable approach to how. The logic is straightforward: in order for an enterprise to demonstrate to itself, let alone to anyone else, that it respects human rights it must have systems in place whereby it can know and show that it does. Accordingly, beyond having a policy commitment, the Guiding Principles outline a four-step human rights due diligence process: assessing actual and potential human rights impacts, integrating and acting on the findings, tracking responses, and communicating how impacts are addressed. Moreover, where enterprises have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation; where they have neither caused nor contributed to harm but are directly linked to it through a business relationship they should exercise

20 John Gerard Ruggie, 'Reconstituting the Global Public Domain: Issues, Actors and Practices' (2004) *European Journal of International Relations* 499.

leverage to prevent or mitigate the harm, and where harm has already occurred to use leverage in incentivizing those partners who have caused/contributed to it.

As for which human rights the corporate responsibility to respect encompasses, the answer the Guiding Principles provide is all internationally recognized rights that an enterprise impacts. The long-standing doctrinal debate about whether business enterprises can be duty bearers under international human rights law is avoided because the Guiding Principles state that businesses should look to current internationally recognized human rights for an authoritative enumeration, not of human rights laws that might apply to them, but of human rights they should respect. That formulation also made it possible for countries that have not ratified key international human rights conventions, including China and the United States, to endorse the Guiding Principles, which reference such conventions, and to recognize the Guiding Principles in their own national policies and guidance to companies.

Finally, the way enterprises know which rights they might adversely impact is through effective human rights due diligence. Wherever possible, this should include engagement with potentially affected stakeholders or their representatives.

Social norms do not inevitably lead to changes in *lex lata*: law as it is. But where new hard law is not immediately in the offing, creating, consolidating, disseminating and embedding social norms is an indispensable tool for inducing changes in conduct. Besides, in Amartya Sen's felicitous words, viewing human rights solely as "parents" or "progeny" of law would "unduly constrict"—Sen even uses the term incarcerate—the social logics and processes other than law that drive enduring public recognition of human rights.²¹ Human rights are better seen more broadly: as mediators of social relations, especially relations that involve significant power

asymmetries, in which hard law is but one part of a larger ecosystem of instruments....

The Guiding Principles are a text, to be sure. But as César Rodríguez-Garavito affirms, they should be evaluated not only as a static text "but also in their dynamic dimension (such as their capacity to push the development of new norms and practices that go beyond the initial content)."²² Indeed, my hope was that they would trigger an iterative process of interaction among the three global governance systems, producing cumulative change over time. No top-down command-and-control regulation could possibly create such a process at the international level, even if one were to exist. But neither would entirely unrelated actions by the three governance systems. A different path needed to be identified. Elements of so-called reflexive regulation and reflexive law were suggestive....

Put in more simple terms, reflexive law prescribes a framework of institutionalized procedures and organizational norms. Within that framework, it seeks to have the entities that are targeted for regulation to acquire the capacity needed to more effectively address their social and environmental externalities. And the framework itself is subject to adjustment based on experiential feedback. From this line of thinking emerged the idea of "regulating self-regulation," which has had particular uptake in U.S. national environmental law and policy, among other areas.²³

Of course, at the national level a central authority can step in more readily to make adjustments or create new mechanisms. That is far more difficult at the international level, which lacks a central authority. Nevertheless, the underlying ideas were useful in thinking about building iterative interactions among the three pillars into the Guiding Principles. Consider these examples. With regard to companies, the prescribed risk management includes assessing risk to people, not simply to the company; human rights due diligence should

21 Amartya Sen, 'Elements of a Theory of Human Rights' (2004) *Philosophy and Public Affairs* 319.

22 César Rodríguez-Garavito (ed.), *Business and Human Rights: Beyond the End of the Beginning* (Cambridge UP 2017), 11.

23 Eric W. Orts, 'A Reflexive Model of Environmental Regulation' (1995) *Business Ethics Quarterly* 779.

be ongoing and requires meaningful consultation with potentially affected groups and other relevant stakeholders, such as civil society and workers' organizations; and operational-level grievance mechanisms must be based on engagement and dialogue with the people they are intended to serve, as well as being rights-compatible. As for states, their core legal obligations include protecting human rights from abuse by business within their jurisdiction. Under the Guiding Principles, where states provide financial and other support to business enterprises, they should require the enterprises to conduct human rights due diligence if the nature of the business or operating context poses significant human rights risks. They should promote respect for human rights by enterprises with which they conduct commercial transactions. States should also ensure that they retain adequate domestic policy space to meet their human rights obligations when pursuing other policy objectives, for example, in the areas of trade and foreign investment agreements. Through the Guiding Principles, rights holders who are harmed by business activities, and those who represent or speak for them, gain a new authoritative advocacy tool and basis for participation that can be invoked in relation to business enterprises and states.

In short, the three pillars of the Protect, Respect and Remedy framework are interrelated. They reflect three critical *functions* that need to be performed better, and they seek to engage the three global governance systems—public, civil and corporate—individually and interactively to advance those aims. Within this framework, further international legalization has a role to play through carefully crafted precision tools intended to reinforce this dynamic, not by means of some single overarching treaty that tries to encompass the entirety of the complex, diverse and contested issues that make up business and human rights as a subject of concern and action....

It is widely understood that the balance of power among states is shifting. But so too is the

organizational ecology of global governance—the way in which global rulemaking is structured. The two are related, but only in part. As noted earlier, power shifts make it more difficult to reach strong agreements in large consensus-based forums because the number and diversity of interests has increased significantly. At the same time, informal mechanisms are flourishing, be they private, public or a combination of the two. Factors in addition to power balances play a role in producing this pattern. Among them are the proliferation of so-called wicked problems and scale mismatches; the creation at the international level of limited membership club-like arrangements among domestic regulatory agencies and professional bodies as a byproduct of globalization; greater ease in establishing various types of informal mechanisms as well as flexibility in changing them; and lower costs of entry as well as exit.

The Guiding Principles straddled these two worlds: a formal mandate established by an inter-governmental body; an informal and polycentric process of development; a formal endorsement; and an ongoing combination of formal and informal implementation. It may not be possible to replicate this process in any other complex and contested global regulatory domains. But the underlying dynamics need to be better understood because they are not unique to business and human rights....

The idea of human rights is both simple and powerful. The operation and effectiveness of the global human rights regime is neither. The simplicity and power of human rights reside in the idea that every person is endowed with inherent dignity and equal rights. But the fundamental challenge remains, as Kratochwil has put it so well, “how a political project framed by the discourse of rights can be made to ‘stick’ as our interests widen ... while familiar communities lose their unquestioned standing and their integrating force.”²⁴ The term political, in this context, does not mean tactical maneuvering or scoring partisan victories. Politics

24 Friedrich Kratochwil, *The Status of Law in World Society: Meditations on the Role and Rule of Law* (Cambridge UP 2014), 229.

in its deeper sense “lies at the intersection of instrumental and ethical deliberation and action.”²⁵ It is here that ideas and norms have the opportunity to inform and shape social constructs of the common good. There is a long way to go before we can speak of business enterprises being “embedded” in transnational social norms and institutional practices. Bearing witness to human rights abuse and enduring commitments to realizing rights are

critical elements toward that end. But so too are evidence-based insights into such matters as how to induce cognitive and normative change, build and expand communities of good practice, and address the complexities of institutional design as well as sequencing in policy processes. Both are essential elements in making the business and human rights project stick.

On Environmental Rights

The inability of ordinary people in poor countries to control their environment and the use of their national resources is well exemplified by the dramatic events that led to the trial and execution of Nigerian journalist and environmental activist Ken Saro-Wiwa (1941–1995). In 1990, Ken Saro-Wiwa founded the MOSOP, a movement to promote the rights of the Ogoni, demanding that they receive a share of the proceeds from the oil extracted from their lands by Shell, as well as compensation for environmental damage. After organizing a peaceful march of approximately 300,000 Ogoni, he was arrested and detained by the Nigerian government. Later accused of incitement to murder, Saro-Wiwa was imprisoned and sentenced in a specially convened trial that was widely criticized by human rights organizations. His eloquent trial speech, “On Environmental Rights of the Ogoni People of Nigeria” (1995), dramatized the struggle for economic development and environmental rights against the power of a global corporation to manipulate the policies of states (see Section 11.6).

In “Radicalism, Environmentalism and Wilderness Preservation: A Third World Critique” (1989–1999), Indian scholar Ramachandra Guha reveals the tensions within the ecological movement in the developing world between supporters of “deep ecology” – who regard human life as but one equal component within the global ecosystem – and those who link environmentalism to the pursuit of egalitarian justice. He illustrated his point by showing how a project called Tiger, a network of parks celebrated by the international conservation community, was considered a success by wilderness protection advocates. Yet the protection of tigers and other mammals, Guha explained, was only made possible thanks to the physical displacement of peasants and livestock. The resulting dislocation of peasants from their sources of livelihood, argued Guha, unveiled the distorting priorities of the global ecological movement (see Section 11.7). Guha’s criticism found a voice in the Rio Declaration on Environment and Human Rights (1992) – which put “human beings at the centers of concerns for sustainable development” while affirming a human entitlement “to a healthy and productive life in harmony with nature” (see Chapter 16).

Modern civilization’s disharmony with nature has produced increasingly catastrophic change to the earth’s climate, directly threatening a wide array of human rights. “Understanding Human Rights and Climate Change,” submitted by the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework on Climate Change (Paris, 2015), argues that states must take effective measures to prevent and redress the climate impacts on human rights, particularly for those groups most severely affected. It should come as no surprise that those most vulnerable include women, children, the elderly, indigenous peoples, minorities, migrants, rural workers, persons with disabilities, and the poor (see Section 11.8).

25 Christian Reus-Smit, ‘The Strange Death of Liberal International Theory’ (2001 *European Journal of International Law* 573).

11.6 Ken Saro-Wiwa: On Environmental Rights of the Ogoni People in Nigeria (1995)²⁶

My name is Kenule Beeson Saro-Wiwa. I live at Simaseng Place 9 Rumuibekwe road, Port Harcourt. I am a writer, publisher, environmentalist and human rights activist.

I am the president of the Ethnic Minority Rights Organization of Africa (EMIROAF). I am also the current president of the Movement for the Survival of the Ogoni People (MOSOP) which was founded in 1990 to struggle non-violently for the political, economic and environmental rights of the Ogoni people. The motto of the movement is "Freedom, Peace and Justice." ...

The birthright of freedom and equality imprinted itself on my mind as I studied history in my first year at the University. Nigeria was a federation of ethnic groups. All ethnic groups are equal irrespective of size. I had followed, even as a schoolboy at Umuahia, the proceedings of the Willink Commission of Inquiry which investigated the fears of Nigeria's ethnic minorities and was expected to put forward proposals as to how to allay them as Nigeria marched to independence. I had noted the cries of the Ogoni people before the Commission. One of the men who spoke for the Ogoni before the commission, Kemte Giadom, has been before this Tribunal in a slightly diminished role. There was no doubt in the minds of the Ogoni leaders that the Ogoni required room, breathing space, in Nigeria and that their rights had to be specially protected. The colonial government was not very forthcoming and was probably less than honest. Oil had already been found in Ogoni and Olibiri at that time, yet the British used the fact of poverty to deny the ethnic groups in the Niger delta the right to self-determination which they keenly demanded and were entitled to. It was thought that this birthright would have to be secured after independence.

Now here we were, independent or said to be independent and the struggle for the national cake

had become a living matter of life and death for the three major ethnic groups. But did they care who baked the cake? For the cake was a minority cake, baked in the belly of the Niger delta, in its plains and creeks where the heat from the ovens was roasting the inhabitants. Greed for the cake was to lead to internecine war, a war in which an estimated one million people died.

In that war which raged between July 1967 and January 1970, at least 30,000 Ogoni people or ten percent of the Ogoni population died. It was a very heavy price to pay for having oil on their land, for baking the cake for the greedy consumers....

[A]s soon as the war ended, I made absolutely sure that they were all rehabilitated, that their positions in Rivers State were promptly secured and that they could begin to make an Ogoni contribution to the development of the newly-created Rivers State. Their individual and collective achievement whatever its quality was a pride to me. I did not expect to be thanked for this service by any individuals. I was not. My reward was knowing that I had done my duty by my country and by my kith and kin.

Even in Rivers State, I remained conscious of the need for peace and justice among all the nine or so ethnic groups which comprise the state. I argued for fair treatment of all within the State and for Rivers State at the Federal level.

Every argument for rights in Nigeria lands in the deaf ear of rulers. Before long, my regular and consistent argument for equality and equity in Rivers State began to sound like a challenge to the authority of those who wielded power in the State. I was sacked from the Rivers State Government on March 21, 1973. In the four odd years I served as Commissioner, I became very conversant with the problems of the Ogoni people, I did what I could in that time to alleviate some of these problems. Education, I realized, is basic for progress in the modern world; I did whatever was possible to encourage the Ogoni to acquire it. I cannot say that

26 Ken Saro-Wiwa, Statement to Ogoni Civil Disturbances Tribunal, Nigeria (September 21, 1995).

I was satisfied with my achievement. However, a beginning that could be built on had been made....

I did not fail, in the time I was in Government and thereafter to bring to the notice of all those who were in power or close to it, the angst of the Ogoni people. As a result of my role in the civil war, I developed close relationships with top army officers, including Generals Obasanjo and Danjuma who were to rise to power in 1975, two years after my service with the Rivers State Government ended. Both of them and the Nigerian public in general were fully briefed of the need to treat the Ogoni people fairly.

In something close to desperation, I initiated, with other associates, the demand for a split of Rivers State in 1974. We were among the first to see that the twelve-state structure decided by the military in 1967 was not satisfactory, and that it could not satisfy the yearnings of various ethnic groups for development and dignity. I was encouraged in this view by the writings of Obafemi Awolwo and my brief meetings with the eminent philosopher.

I was to be greatly disappointed by those who used the argument which we proffered to take Nigeria down the row to disaster. Instead of state creation being used as an instrument for enhancing the status of the oppressed minority groups, it was used to bolster the power and authority of the majority ethnic groups who were split into a multiplicity of states in order to give them greater access to the oil wealth of the Ogoni and other minority groups in the Niger delta. By this action, the Ogoni and other such groups were being driven not just beyond the periphery of the Nigerian nation but to extinction. I decried this with all the energy at my disposal.

However, the more I cried, the worse the situation became. Were I given to violence, I would have considered using it to bring the argument home. Slavery, denigration, dehumanization are achieved by violence. Those who resort to the same methods to end these evils are only responding to the agenda set by the slave master. However, as a man of peace, I did not for once consider this alternative. I have always believed in the power of the intellect, the superior graces of dialogue as a

means of conflict resolution.... In 1987, I found direction in the Directorate for Mass Mobilization, Social Justice, and Economic Recovery otherwise known as Mamser set up by the military dictator, Babangida and to which I was appointed as Executive Director in October 1987....

Here was a call to revolutionary change in Nigeria. Bearing in mind that these may merely be good intentions and realizing that the way to hell is paved with good intentions, I decided to give the Directorate a year of my time, in the first instance. It turned out to be an important year in my life, in the life of Ogoni people and, I dare say, in the life of ethnic minorities in Nigeria and the African continent. I found out, as Director in charge of Research, that the oppressed ethnic minorities of our land required just such mobilization, such ideas of social justice, just such economic recovery. This was the route to their salvation....

My lord, we all stand before history. I am a man of peace, of ideas. Appalled by the denigrating poverty of my people who live on a richly-endowed land, distressed by their political marginalization and economic strangulation, angered by the devastation of their land, their ultimate heritage, anxious to preserve their right to life and to a decent living, and determined to usher to this country as a whole a fair and just democratic system which protects everyone and every ethnic group and gives us all a valid claim to human civilization, I have devoted all my intellectual and material resources, my very life, to a cause in which I have total belief and from which I cannot be blackmailed or intimidated. I have no doubt at all about the ultimate success of my cause, no matter the trials and tribulations which I and those who believe with me may encounter on our journey. Nor imprisonment nor death can stop our ultimate victory.

I repeat that we all stand before history. I and my colleagues are not the only ones on trial. Shell is here on trial and it is well that it is represented by counsel said to be holding a watching brief. The company has, indeed, ducked this particular trial, but its day will surely come and the lessons learnt here may prove useful to it for there is no doubt in my mind that the ecological war the

company has waged in the delta will be called to question sooner than later and the crimes of that war duly punished. The crime of the company's dirty wars against the Ogoni people will also be punished.

On trial also is the Nigerian nation, its present rulers and all those who assist them. Any nation which can do to the weak and disadvantaged what the Nigerian nation has done to the Ogoni, loses a claim to independence and to freedom from outside influence. I am not one of those who shy away from protesting injustice and oppression, arguing that they are expected from a military regime. The military do not act alone. They are supported by a gaggle of politicians, lawyers, judges, academics and businessmen, all of them hiding under the claim that they are only doing their duty, men and women too afraid to wash their pants of their urine. We all stand on trial, my lord, for by our actions we have denigrated our country and jeopardized the future of our children. As we subscribe to the sub-normal and accept double standards, as we lie and cheat openly, as we protect injustice and oppression, we empty our classrooms, degrade our hospitals, fill our stomachs with hunger and elect to make ourselves the slaves of those who subscribe to higher standards, pursue the truth, and honor justice, freedom and hard work.

I predict that the scene here will be played and replayed by generations yet unborn. Some have already cast themselves in the role of villains, some are tragic victims, some still have a chance to redeem themselves. The choice is for each individual.

I predict that a denouement of the riddle of the Niger delta will soon come. The agenda is being set at this trial. Whether the peaceful ways I have favored will prevail depends on what the oppressor decides, what signals it sends out to the waiting public.

In my innocence of the false charges I face here, in my utter conviction, I call upon the Ogoni people, the people of the Niger delta, and the oppressed ethnic minorities of Nigeria to stand up now and fight fearlessly and peacefully, for their rights. History is on their side, God is on their side. For the Holy Quran says in Sura 42, verse 41: "All those who fight, when oppressed incur no guilt, but Allah shall punish the oppressor." Come the day.

11.7 Ramachandra Guha: "Radical American Environmentalism and Wilderness Preservation: A Third World Critique" (1989)²⁷

Even God dare not appear to the poor man except in the form of bread.

Mahatma Gandhi

In this article I develop a critique of deep ecology...

My treatment of deep ecology is primarily historical and sociological, rather than philosophical, in nature. Specifically, I examine the cultural rootedness of a philosophy that likes to present itself in universalistic terms. I make two main arguments: first, that deep ecology is uniquely American, and despite superficial similarities in rhetorical style, the social and political goals of radical environmentalism in other cultural contexts (e.g., West Germany and India) are quite different; second, that the social consequences of putting deep ecology into practice on a worldwide basis (what its practitioners are aiming for) are very grave indeed.

The Tenets of Deep Ecology

While I am aware that the term deep ecology was coined by the Norwegian philosopher Arne Næss, this article refers specifically to the American variant.²⁸ Adherents of the deep ecological perspective in this country, while arguing intensely

27 Ramachandra Guha, "Radical Environmentalism and Wilderness Preservation: A Third World Critique," *Environment Ethics*, Vol. 11, No. 1 (Spring 1989):71-83. DOI: <https://doi.org/10.5840/enviroethics198911123> Editor: For space considerations, some explanatory notes have been omitted.

28 Kirkpatrick Sale, "The Forest for the Trees: Can Today's Environmentalists Tell the Difference?" *Mother Jones* 11, no. 5 (November 1986): 26.

among themselves over its political and philosophical implications, share some fundamental premises about human-nature interactions. As I see it, the defining characteristics of deep ecology are fourfold:

First, deep ecology argues that the environmental movement must shift from an “anthropocentric” to a “biocentric” perspective. In many respects, an acceptance of the primacy of this distinction constitutes the litmus test of deep ecology. A considerable effort is expended by deep ecologists in showing that the dominant motif in Western philosophy has been anthropocentric — i.e., the belief that man and his works are the center of the universe — and conversely, in identifying those lonely thinkers (Leopold, Thoreau, Muir, Aldous Huxley, Santayana, etc.) who, in assigning man a more humble place in the natural order, anticipated deep ecological thinking. In the political realm, meanwhile, establishment environmentalism (shallow ecology) is chided for casting its arguments in human-centered terms. Preserving nature, the deep ecologists say, has an intrinsic worth quite apart from any benefits preservation may convey to future human generations. The anthropocentric-biocentric distinction is accepted as axiomatic by deep ecologists, it structures their discourse, and much of the present discussion remains mired within it.

The second characteristic of deep ecology is its focus on the preservation of unspoiled wilderness — and the restoration of degraded areas to a more pristine condition — to the relative (and sometimes absolute) neglect of other issues on the environmental agenda. I later identify the cultural roots and portentous consequences of this obsession with wilderness. For the moment, let me indicate three distinct sources from which it springs. Historically, it represents a playing out of the preservationist (read radical) and utilitarian

(read reformist) dichotomy that has plagued American environmentalism since the turn of the century. Morally, it is an imperative that follows from the biocentric perspective; other species of plants and animals, and nature itself, have an intrinsic right to exist. And finally, the preservation of wilderness also turns on a scientific argument — viz., the value of biological diversity in stabilizing ecological regimes and in retaining a gene pool for future generations. Truly radical policy proposals have been put forward by deep ecologists on the basis of these arguments. The influential poet Gary Snyder, for example, would like to see a 90 percent reduction in human populations to allow a restoration of pristine environments, while others have argued forcefully that a large portion of the globe must be immediately cordoned off from human beings.²⁹

Third, there is a widespread invocation of Eastern spiritual traditions as forerunners of deep ecology. Deep ecology, it is suggested, was practiced both by major religious traditions and at a more popular level by “primal” peoples in non-Western settings. This complements the search for an authentic lineage in Western thought. At one level, the task is to recover those dissenting voices within the Judeo-Christian tradition; at another, to suggest that religious traditions in other cultures are, in contrast, dominantly if not exclusively “biocentric” in their orientation. This coupling of (ancient) Eastern and (modern) ecological wisdom seemingly helps consolidate the claim that deep ecology is a philosophy of universal significance.

Fourth, deep ecologists, whatever their internal differences, share the belief that they are the “leading edge” of the environmental movement. As the polarity of the shallow/deep and anthropocentric/biocentric distinctions makes clear, they see themselves as the spiritual, philosophical, and political vanguard of American and world environmentalism.

Toward a Critique

Although I analyze each of these tenets independently, it is important to recognize, as deep ecologists are fond of remarking in reference to nature, the inter-connectedness and unity of these individual themes.

Insofar as it has begun to act as a check on man's arrogance and ecological hubris, the transition from an anthropocentric (human-centered) to a biocentric (humans as only one element in the ecosystem) view in both religious and scientific traditions is only to be welcomed. What is unacceptable are the radical conclusions drawn by deep ecology, in particular, that intervention in nature should be guided primarily by the need to preserve biotic integrity rather than by the needs of humans. The latter for deep ecologists is anthropocentric, the former biocentric. This dichotomy is, however, of very little use in understanding the dynamics of environmental degradation. The two fundamental ecological problems facing the globe are (1) overconsumption by the industrialized world and by urban elites in the Third World and (2) growing militarization, both in a short-term sense (i.e., ongoing regional wars) and in a long-term sense (i.e., the arms race and the prospect of nuclear annihilation). Neither of these problems has any tangible connection to the anthropocentric-biocentric distinction. Indeed, the agents of these processes would barely comprehend this philosophical dichotomy. The proximate causes of the ecologically wasteful characteristics of industrial society and of militarization are far more mundane: at an aggregate level, the dialectic of economic and political structures, and at a micro-level, the lifestyle choices of individuals. These causes cannot be reduced, whatever the level of analysis, to a deeper anthropocentric attitude toward nature; on the contrary, by constituting a grave threat to human survival, the ecological degradation they cause does not even serve the best interests of human beings! If my identification of the major dangers to the integrity of the natural world is correct, invoking the bogey of anthropocentrism is at best irrelevant, and at worst a dangerous obfuscation.

If the above dichotomy is irrelevant, the emphasis on wilderness is positively harmful when applied to the Third World. If in the United States the preservationist/utilitarian division is seen as mirroring the conflict between "people" and "interests," in countries such as India the situation is very nearly the reverse. Because India is a long settled and densely populated country in which agrarian populations have a finely balanced relationship with nature, the setting aside of wilderness areas has resulted in a direct transfer of resources from the poor to the rich. Thus, Project Tiger, a network of parks hailed by the international conservation community as an outstanding success, sharply posits the interests of the tiger against those of poor peasants living in and around the reserve. The designation of tiger reserves was made possible only by the physical displacement of existing villages and their inhabitants; their management requires the continuing exclusion of peasants and livestock. The initial impetus for setting up parks for the tiger and other large mammals such as the rhinoceros and elephant came from two social groups, first, a class of ex-hunters turned conservationists belonging mostly to the declining Indian feudal elite, and second, representatives of international agencies, such as the World Wildlife Fund (WWF) and the International Union for the Conservation of Nature and Natural Resources (IUCN), seeking to transplant the American system of national parks onto Indian soil. In no case have the needs of the local population been taken into account, and as in many parts of Africa, the designated wild lands are managed primarily for the benefit of rich tourists. Until very recently, wild lands preservation has been identified with environmentalism by the state and the conservation elite; in consequence environmental problems that impinge far more directly on the lives of the poor — e.g., fuel, fodder, water shortages, soil erosion, and air and water pollution — have not been adequately addressed.

Deep ecology provides, perhaps unwittingly, a justification for the continuation of such narrow and inequitable conservation practices under a newly acquired radical guise. Increasingly, the international conservation elite is using the philosophical, moral,

and scientific arguments used by deep ecologists in advancing their wilderness crusade. A striking but by no means atypical example is the recent plea by a prominent American biologist for the take-over of large portions of the globe by the author and his scientific colleagues. Writing in a prestigious scientific forum, *The Annual Review of Ecology and Systematics*, Daniel Janzen argues that only biologists have the competence to decide how the tropical landscape should be used. As “the representatives of the natural world,” biologists are “in charge of the future of tropical ecology, and only they have the expertise and mandate to determine whether the tropical agroscape is to be populated only by humans, their mutualists, commensals, and parasites, or whether it will also contain some islands of the greater nature — the nature that spawned humans yet has been vanquished by them.” Janzen exhorts his colleagues to advance their territorial claims on the tropical world more forcefully, warning that the very existence of these areas is at stake: “if biologists want a tropics in which to biologize, they are going to have to buy it with care, energy, effort, strategy, tactics, time, and cash.”³⁰

This frankly imperialist manifesto highlights the multiple dangers of the preoccupation with wilderness preservation that is characteristic of deep ecology. As I have suggested, it seriously compounds the neglect by the American movement of far more pressing environmental problems within the Third World. But perhaps more importantly, and in a more insidious fashion, it also provides an impetus to the imperialist yearning of Western biologists and their financial sponsors, organizations such as the WWF and IUCN. The wholesale transfer of a movement culturally rooted in American conservation history can only result in the social uprooting of human populations in other parts of the globe.

I come now to the persistent invocation of Eastern philosophies as antecedent in point of

time but convergent in their structure with deep ecology. Complex and internally differentiated religious traditions — Hinduism, Buddhism, and Taoism — are lumped together as holding a view of nature believed to be quintessentially biocentric. Individual philosophers such as the Taoist Lao Tzu are identified as being forerunners of deep ecology. Even an intensely political, pragmatic, and Christian influenced thinker such as Gandhi has been accorded a wholly undeserved place in the deep ecological pantheon. Thus the Zen teacher Robert Aitken Roshi makes the strange claim that Gandhi’s thought was not human-centered and that he practiced an embryonic form of deep ecology which is “traditionally Eastern and is found with differing emphasis in Hinduism, Taoism and in Theravada and Mahayana Buddhism.”³¹

Moving away from the realm of high philosophy and scriptural religion, deep ecologists make the further claim that at the level of material and spiritual practice “primal” peoples subordinated themselves to the integrity of the biotic universe they inhabited.

I have indicated that this appropriation of Eastern traditions is in part dictated by the need to construct an authentic lineage and in part a desire to present deep ecology as a universalistic philosophy. Indeed, in his substantial and quixotic biography of John Muir, Michael Cohen goes so far as to suggest that Muir was the “Taoist of the [American] West.”³² This reading of Eastern traditions is selective and does not bother to differentiate between alternate (and changing) religious and cultural traditions; as it stands, it does considerable violence to the historical record. Throughout most recorded history the characteristic form of human activity in the “East” has been a finely tuned but nonetheless conscious and dynamic manipulation of nature. Although mystics such as Lao Tzu did reflect on the spiritual essence of human relations with nature, it must be

30 Daniel Janzen, “The Future of Tropical Ecology,” *Annual Review of Ecology and Systematics* 17 (1986): 305–6 (emphasis added).

31 Robert Aitken Roshi, “Gandhi, Dogen, and Deep Ecology,” reprinted as Appendix C in Bill Devall and George Sessions, *Deep Ecology: Living as if Nature Mattered* (Salt Lake City: Peregrine Smith Books, 1985).

32 Michael Cohen, *The Pathless Way* (Madison: University of Wisconsin Press, 1984), 120.

recognized that such ascetics and their reflections were supported by a society of cultivators whose relationship with nature was a far more active one. Many agricultural communities do have a sophisticated knowledge of the natural environment that may equal (and sometimes surpass) codified “scientific” knowledge. Yet the elaboration of such traditional ecological knowledge (in both material and spiritual contexts) can hardly be said to rest on a mystical affinity with nature of a deep ecological kind. Nor is such knowledge infallible; as the archaeological record powerfully suggests, modern Western man has no monopoly on ecological disasters.

In a brilliant article, the Chicago historian Ronald Inden points out that this romantic and essentially positive view of the East is a mirror image of the scientific and essentially pejorative view normally upheld by Western scholars of the Orient. In either case, the East constitutes the Other, a body wholly separate and alien from the West; it is defined by a uniquely spiritual and nonrational “essence,” even if this essence is valorized quite differently by the two schools. Eastern man exhibits a spiritual dependence with respect to nature — on the one hand, this is symptomatic of his pre-scientific and backward self, on the other, of his ecological wisdom and deep ecological consciousness. Both views are monolithic, simplistic, and have the characteristic effect — intended in one case, perhaps unintended in the other — of denying agency and reason to the East and making it the privileged orbit of Western thinkers....

How radical, finally, are the deep ecologists? Notwithstanding their self image and strident rhetoric (in which the label “shallow ecology” has an opprobrium similar to that reserved for “social-democratic” by Marxist-Leninists), even within the American context their radicalism is limited and it manifests itself quite differently elsewhere....

Deep ecology runs parallel to the consumer society without seriously questioning its ecological and socio-political basis. In its celebration of American wilderness, it also displays an

uncomfortable convergence with the prevailing climate of nationalism in the American frontier movement. For spokesmen such as the historian Roderick Nash, the national park system is America’s distinctive cultural contribution to the world, reflective not merely of its economic but of its philosophical and ecological maturity as well. In what Walter Lippmann called the American century, the “American invention of national parks” must be exported worldwide. Betraying an economic determinism that would make even a Marxist shudder, Nash believes that environmental preservation is a “full stomach” phenomenon that is confined to the rich, urban, and sophisticated. Nonetheless, he hopes that “the less developed nations may eventually evolve economically and intellectually to the point where nature preservation is more than a business.”³³

The error which Nash makes (and which deep ecology in some respects encourages) is to equate environmental protection with the protection of wilderness. This is a distinctively American notion, born out of a unique social and environmental history. The archetypal concerns of radical environmentalists in other cultural contexts are in fact quite different. The German Greens, for example, have elaborated a devastating critique of industrial society which turns on the acceptance of environmental limits to growth. Pointing to the intimate links between industrialization, militarization, and conquest, the Greens argue that economic growth in the West has historically rested on the economic and ecological exploitation of the Third World. Rudolf Bahro is characteristically blunt:

The working class here [in the West] is the richest lower class in the world. And if I look at the problem from the point of view of the whole of humanity, not just from that of Europe, then I must say that the metropolitan working class is the worst exploiting class in history.... What made poverty bearable in eighteenth or nineteenth-century Europe was the prospect of escaping it through exploitation of

the periphery. But this is no longer a possibility, and continued industrialism in the Third World will mean poverty for whole generations and hunger for millions.³⁴

Here the roots of global ecological problems lie in the disproportionate share of resources consumed by the industrialized countries as a whole and the urban elite within the Third World. Since it is impossible to reproduce an industrial monoculture worldwide, the ecological movement in the West must begin by cleaning up its own act. The Greens advocate the creation of a “no growth” economy, to be achieved by scaling down current (and clearly unsustainable) consumption levels. This radical shift in consumption and production patterns requires the creation of alternate economic and political structures — smaller in scale and more amenable to social participation — but it rests equally on a shift in cultural values. The expansionist character of modern Western man will have to give way to an ethic of renunciation and self-limitation, in which spiritual and communal values play an increasing role in sustaining social life. This revolution in cultural values, however, has as its point of departure an understanding of environmental processes quite different from deep ecology.

Many elements of the Green program find a strong resonance in countries such as India, where a history of Western colonialism and industrial development has benefited only a tiny elite while exacting tremendous social and environmental costs. The ecological battles presently being fought in India have as their epicenter the conflict over nature between the subsistence and largely rural sector and the vastly more powerful commercial-industrial sector. Perhaps the most celebrated of these battles concerns the Chipko (Hug the Tree) movement, a peasant movement against deforestation in the Himalayan foothills. Chipko is only one of several movements that have sharply questioned the non-sustainable demand being placed on the land and vegetative base by urban centers and industry. These include opposition to large dams

by displaced peasants, the conflict between small artisan fishing and large-scale trawler fishing for export, the countrywide movements against commercial forest operations, and opposition to industrial pollution among downstream agricultural and fishing communities.

Two features distinguish these environmental movements from their Western counterparts. First, for the sections of society most critically affected by environmental degradation — poor and landless peasants, women, and tribals — it is a question of sheer survival, not of enhancing the quality of life. Second, and as a consequence, the environmental solutions they articulate deeply involve questions of equity as well as economic and political redistribution. Highlighting these differences, a leading Indian environmentalist stresses that “environmental protection per se is of least concern to most of these groups. Their main concern is about the use of the environment and who should benefit from it.” They seek to wrest control of nature away from the state and the industrial sector and place it in the hands of rural communities who live within that environment but are increasingly denied access to it. These communities have far more basic needs, their demands on the environment are far less intense, and they can draw upon a reservoir of cooperative social institutions and local ecological knowledge in managing the “commons” — forests, grasslands, and the waters — on a sustainable basis. If colonial and capitalist expansion has both accentuated social inequalities and signaled a precipitous fall in ecological wisdom, an alternate ecology must rest on an alternate society and polity as well.

This brief overview of German and Indian environmentalism has some major implications for deep ecology. Both German and Indian environmental traditions allow for a greater integration of ecological concerns with livelihood and work. They also place a greater emphasis on equity and social justice (both within individual countries and on a global scale) on the grounds that in the absence of social regeneration environmental regeneration has very little chance of success. Finally, and perhaps

34 Rudolf Bahro, *From Red to Green* (London: Verso Books, 1984).

most significantly, they have escaped the preoccupation with wilderness preservation so characteristic of American cultural and environmental history.

A Homily

In 1958, the economist J. K. Galbraith referred to overconsumption as the unasked question of the American conservation movement. There is a marked selectivity, he wrote, “in the conservationist’s approach to materials consumption. If we are concerned about our great appetite for materials, it is plausible to seek to increase the supply, to decrease waste, to make better use of the stocks available, and to develop substitutes. But what of the appetite itself? Surely this is the ultimate source of the problem. If it continues its geometric course, will it not one day have to be restrained? Yet in the literature of the resource problem this is the forbidden question. Over it hangs a nearly total silence.”³⁵

The consumer economy and society have expanded tremendously in the three decades since Galbraith penned these words, yet his criticisms are nearly as valid today. I have said “nearly,” for there are some hopeful signs. Within the environmental movement several dispersed groups are working to develop ecologically benign technologies and to encourage less wasteful lifestyles. Moreover, outside the self-defined boundaries of American environmentalism, opposition to the permanent war economy is being carried on by a peace movement that has a distinguished history and impeccable moral and political credentials.

It is precisely these (to my mind, most hopeful) components of the American social scene that are missing from deep ecology. In their widely noticed book, Bill Devall and George Sessions make no mention of militarization or the movements for peace, while activists whose practical focus is

on developing ecologically responsible lifestyles (e.g., Wendell Berry) are derided as “falling short of deep ecological awareness.”³⁶ Truly radical ecology in the American context ought to work toward a synthesis of the appropriate technology, alternate lifestyle, and peace movements. By making the (largely spurious) anthropocentric-biocentric distinction central to the debate, deep ecologists may have appropriated the moral high ground, but they are at the same time doing a serious disservice to American and global environmentalism.

11.8 Office of the U.N. High Commissioner for Human Rights: “Understanding Human Rights and Climate Change” (2015)³⁷

Key Messages on Human Rights and Climate Change

In order to foster policy coherence and help ensure that climate change mitigation and adaptation efforts are adequate, sufficiently ambitious, non-discriminatory and otherwise compliant with human rights obligations, the following considerations should be reflected in all climate action ...

1. To mitigate climate change and to prevent its negative human rights impacts: States have an obligation to respect, protect, fulfil and promote all human rights for all persons without discrimination. Failure to take affirmative measures to prevent human rights harms caused by climate change, including foreseeable long-term harms, breaches this obligation. The Fifth Report of the Intergovernmental Panel on Climate Change confirms that climate change is caused by anthropogenic emissions of greenhouse gases. Among other impacts, climate change negatively affects people’s rights to health, housing, water and food.

35 John Kenneth Galbraith, “How Much Should a Country Consume?” in *Perspectives Conservation*, ed. Henry Janett (Baltimore: Johns Hopkins Press, 1958), 91–92.

36 Devall and Sessions, *Deep Ecology*, 122.

37 Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC, COP21), 27 November 2015.

- These negative impacts will increase exponentially according to the degree of climate change that ultimately takes place and will disproportionately affect individuals, groups and peoples in vulnerable situations including, women, children, older persons, indigenous peoples, minorities, migrants, rural workers, persons with disabilities and the poor. Therefore, States must act to limit anthropogenic emissions of greenhouse gases (e.g. mitigate climate change), including through regulatory measures, in order to prevent to the greatest extent possible the current and future negative human rights impacts of climate change.
2. To ensure that all persons have the necessary capacity to adapt to climate change: States must ensure that appropriate adaptation measures are taken to protect and fulfil the rights of all persons, particularly those most endangered by the negative impacts of climate change such as those living in vulnerable areas....
 3. To ensure accountability and effective remedy for human rights harms caused by climate change: The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other human rights instruments require States to guarantee effective remedies for human rights violations. Climate change and its impacts, including sea-level rise, extreme weather events, and droughts have already inflicted human rights harms on millions of people.... The obligations of States in the context of climate change and other environmental harms extend to all rights-holders and to harm that occurs both inside and beyond boundaries. States should be accountable to rights-holders for their contributions to climate change including for failure to adequately regulate the emissions of businesses under their jurisdiction regardless of where such emissions or their harms actually occur....
 4. To mobilize maximum available resources for sustainable, human rights-based development: Under core human rights treaties, States acting individually and collectively are obligated to mobilize and allocate the maximum available resources for the progressive realization of economic, social and cultural rights, as well as for the advancement of civil and political rights and the right to development....
 5. International cooperation: The UN Charter, the International Covenant on Economic, Social and Cultural Rights, and other human rights instruments impose upon States the duty to cooperate to ensure the realization of all human rights. Climate change is a human rights threat with causes and consequences that cross borders; thus, it requires a global response, underpinned by international solidarity....
 6. To ensure equity in climate action: ... While climate change affects people everywhere, those who have contributed the least to greenhouse gas emissions (i.e. the poor, children, and future generations) are those most affected. Equity in climate action requires that efforts to mitigate and adapt to the impacts of climate change should benefit people in developing countries, indigenous peoples, people in vulnerable situations, and future generations.
 7. To guarantee that everyone enjoys the benefits of science and its applications: The International Covenant on Economic, Social and Cultural Rights states that everyone has the right to enjoy the benefits of science and its applications. All States should actively support the development and dissemination of new climate mitigation and adaptation technologies including technologies for sustainable production and consumption. Environmentally clean and sound technologies should be accessibly priced, the cost of their development should be equitably shared, and their benefits should be fairly distributed between and within countries....

8. To protect human rights from business harms: The United Nations Guiding Principles on Business and Human Rights affirm that States have an obligation to protect human rights from harm by businesses, while businesses have a responsibility to respect human rights and to do no harm....

Why integrate human rights in climate change-related actions?

Human rights are universal legal guarantees that protect individuals, groups and peoples against actions and omissions that interfere with their fundamental freedoms and entitlements. Human rights law obliges governments (principally) and other duty-bearers to respect, promote, protect and fulfil all human rights. Human rights are universal and are based on the inherent dignity and equal worth of all human beings. They are equal, indivisible, interrelated and interdependent, and cannot be waived or taken away. Furthermore, human rights are legally protected, and impose obligations in relation to actions and omissions, particularly of States and State actors.

It is now beyond dispute that climate change caused by human activity has negative impacts on the full enjoyment of human rights. Climate change has profound impacts on a wide variety of human rights, including the rights to life, self-determination, development, food, health, water and sanitation and housing. The human rights framework also requires that global efforts to mitigate and adapt to climate change should be guided by relevant human rights norms and principles including the rights to participation and information, transparency, accountability, equity, and non-discrimination. Simply put, climate change is a human rights problem and the human rights framework must be part of the solution....

How can human rights be integrated in climate-change related actions?

Human rights can be integrated in climate-change related actions by applying a rights-based

approach to policy and development as called for by the Declaration on the Right to Development and agreed to in the UN Common Understanding of a Human Rights-Based approach to Development Cooperation.¹¹ The UN Common Understanding emphasizes key human rights principles like universality and inalienability, indivisibility, interdependence and interrelatedness, non-discrimination and equality, participation and inclusion, accountability and the rule of law. It outlines a conceptual framework for development based on international human rights standards in order to promote and protect human rights in all development activities. A rights-based approach analyses obligations, inequalities and vulnerabilities, and seeks to redress discriminatory practices and unjust distributions of power. It anchors plans, policies and programmes in a system of rights, and corresponding obligations established by international law.

The essential attributes of a human rights-based approach are the following:

- As policies and programmes are formulated, the main objective should be to fulfil human rights.
- The rights-holders and their entitlements must be identified as well as the corresponding duty-bearers and their obligations in order to find ways for strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.
- Principles and standards derived from international human rights law – especially the Universal Declaration of Human Rights and the core universal human rights treaties, should guide all policies and programming in all phases of the process....

Which human rights are most affected by climate change?

THE RIGHT TO LIFE

... Climate change clearly poses a threat to human life.... In the context of climate change, extreme weather events may be the most visible and most

dramatic threat to the enjoyment of the right to life but they are by no means the only one. Climate change kills through drought, increased heat, expanding disease vectors and a myriad of other ways....

THE RIGHT TO SELF-DETERMINATION

... States must respect the right to self-determination of all peoples and ensure that they have the necessary resources to provide for themselves. Climate change not only poses a threat to the lives of individuals; but also to their ways of life and livelihoods, and to the survival of entire peoples....

THE RIGHT TO DEVELOPMENT

... The Declaration on the Right to Development ... articulates that all States and all persons have responsibilities for development and States should work individually and collectively to create an internationally enabling environment for development in which the benefits of development are equitably shared by all.... Climate change poses an existential threat to people's enjoyment of their right to development....

THE RIGHT TO FOOD

The right to food is enshrined in the Universal Declaration of Human Rights and the ICESCR. Article 11 of the ICESCR upholds the "fundamental right of everyone to be free from hunger" and calls upon States acting individually and through international cooperation, "to ensure an equitable distribution of world food supplies in relation to need." ... [C]limate change undermines food security; therefore it threatens realization of the right to food....

THE RIGHT TO WATER AND SANITATION

Although the right to water is not explicitly recognized in the ICESCR, General Comment No. 15 of the Committee on Economic, Social and

Cultural Rights articulates this right stating: "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." ... The IPCC further found that climate change will likely increase the risk of water scarcity in urban areas and "rural areas are expected to experience major impacts on water availability and supply."³⁸ ...

THE RIGHT TO HEALTH

The human right to health is articulated in the Universal Declaration of Human Rights and in Article 12 of the ICESCR which provides that all persons have the right "to the enjoyment of the highest attainable standard of physical and mental health." ... According to World Bank reports, climate change will cause "health impacts [that] are likely to increase and be exacerbated by high rates of malnutrition,"³⁹ including potential increases in vector-borne diseases and "heat-amplified levels of smog [that] could exacerbate respiratory disorders."⁴⁰ ...

THE RIGHT TO HOUSING

... Climate change threatens the right to housing in a number of ways. Extreme weather events can destroy homes displacing multitudes of people. Drought, erosion and flooding can gradually render territories inhabitable resulting in displacement and migration. Sea level rise threatens the very land upon which houses in low-lying areas are situated

THE RIGHT TO EDUCATION

... In his 2011 report to the General Assembly, the United Nations Special Rapporteur on the right to food stated that the impacts of successive droughts had caused some children to be "removed from schools because education became unaffordable and because their work was needed by the family

38 Intergovernmental Panel on Climate Change, Fifth Assessment Report: Climate Change 2014 Synthesis Report Summary for Policymakers (Bonn: United Nations Framework Convention on Climate Change), pp. 15–16 (hereinafter IPCC, AR 5).

39 The World Bank, *Turn down the heat 2013*, p. 24.

40 *Ibid.*, p. 15.

as a source of revenue.”⁴¹ According to the World Bank, climate impacts can “exacerbate the existing development challenge of ensuring that the educational needs of all children are met.”⁴² ...

THE RIGHTS OF THOSE MOST AFFECTED BY CLIMATE CHANGE

... As previously discussed, climate change has disproportionate impacts on the rights of persons, groups and peoples in vulnerable situations. According to the IPCC, “people who are socially, economically, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses.”⁴³ ...

Realizing human rights in a warming world

In order for States to realise their commitments to safeguard and uphold all human rights for all in the face of challenges posed by climate change and its impacts, they must act collectively and immediately. Principle 15 of the Rio Declaration on Environment and Development calls for States to adopt a precautionary approach to environmental harms and act “when there are threats of serious or irreversible damage” even in the absence of full scientific certainty. In the case of climate change there is no uncertainty. Climate change has already done serious damage. The only uncertainty remaining is how much more damage it will cause. Under these circumstances, urgent preventative action is needed. Discussants agreed that immediate, coordinated climate action that effectively mobilizes resources to mitigate and adapt to climate change while protecting the rights of people affected by it

is the only viable solution. The need for such action is supported by sound science, including the most recent report of the IPCC, which overwhelmingly confirms that humanity is headed down a dangerous path towards a warmer, more climate volatile, and less secure world.

The panel discussions, the IPCC, and the growing political consensus in favour of urgent climate action, all demonstrate that the time for concrete, effective climate action is now. Since climate change directly contributes to the violation of human rights, States have an affirmative obligation to take measures to mitigate climate change, to prevent negative human rights impacts, and to ensure that all persons, particularly those in vulnerable situations, have adequate capacity to adapt to the growing climate crisis. Integrating human rights obligations in climate actions will improve outcomes by providing concrete measures to protect people from the harms of climate change. There is a growing body of evidence that a human rights-based approach will lead to more sustainable and effective results in climate action. A human rights perspective offers guidance for addressing climate through a broader lens that encompasses the economic, social, cultural and political dimensions of climate change. It can also reduce arbitrariness in climate change programs and objectives, and ensure that climate action benefits those who are most in need. The integration of human rights in climate action will promote significant involvement from UN bodies and mechanisms mandated to promote and protect human rights, and from civil society actors bringing additional resources to confront the challenge of climate change....

41 United Nations General Assembly, A/HRC/16/49/Add.2: Report of the Special Rapporteur on the right to food, Olivier De Schutter (2011), para. 13.

42 The World Bank, *Turn down the heat 2013*, p. xix.

43 IPCC, AR5, p. 54.

12.

HOW TO PROTECT AND PROMOTE HUMAN RIGHTS

For many in the West, the Soviet collapse seemed to represent the global ascendancy of a liberal vision of universal human rights. That development heightened Western interest in using military force to save populations endangered by despotic leaders as a result of spreading civil and ethnic wars. Such cases also spurred interest in new juridical mechanisms for implementing human rights, highlighted by the creation of the International Criminal Court in 1998. The 2003 U.S. invasion of Iraq, justified as a humanitarian intervention, soon challenged hopes of using force to protect rights, as it was revealed that U.S. personnel were torturing Iraqi prisoners, and that the U.S. leadership had – following the September 11 attack – sanctioned the use of torture against accused alleged terrorists. All of these post-Cold War debates reflected the weakening and growing impotence of the liberal international order, even raising questions about its continued existence. This chapter first addresses the issue of security rights versus torture, then turns to the debate over humanitarian intervention, next to the effort to implement human rights from above and below, including reflections on new global compacts.

Questions for Chapter 12

1. Under what circumstances, if any, can torture be justified?
2. What are the short- and long-term effects of torture driven by emergency laws?
3. Why would some say that humanitarian intervention is merely a tool for pursuing hegemonic interests? How could it be conducted for human rights?
4. What is *jus ad bellum*, *in bello*, and *post-bellum*? Should the morality of intervention be understood in three different phases?
5. What are the essential pillars of the Responsibility to Protect (R2P)? How are they interdependent?
6. Why do human rights and International Criminal Justice thrive during periods of liberal international order?
7. What are the greatest challenges facing today's international order? How can they be best addressed?

On Security Rights versus Torture

The terrorist attacks of September 11, 2001, unleashed an effort to establish an international security regime – under the tutelage of American power – an effort that produced a widening divide within the human rights community. This section considers two aspects of the schism between security and other human rights, focusing on torture, and then on the debate over humanitarian intervention. The

same human rights concerns prevail two decades later, now exacerbated by the unsettling erosion of the international liberal order and its human rights mechanisms. After September 11, “extraordinary rendition” and “enhanced interrogation” techniques were deemed acceptable by the U.S. Department of Justice, which concluded in the “Memorandum for Alberto Gonzales” (2002) that “acts [of interrogation] may be cruel, inhuman or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340 A’s proscription against torture.” Section 2340 refers to extreme forms of torture, whereby inflicted pain is difficult to endure and may result in organ failure, impairment of bodily function, or death. Following the scandal over the abuse of Iraqi prisoners by U.S. guards at Abu Ghraib prison in Iraq, the U.S. Department of Justice amended its 2002 memorandum and pronounced the illegality of such interrogation techniques (see Sections 12.1 and 12.2).

In “The Truth About Torture” (2005), columnist Charles Krauthammer defends the position of the Bush administration. He supports different standards of treatment for different kinds of detainees, distinguishing between lawful and unlawful combatants. Lawful war prisoners deserve humane treatment, as they were captured only so they could be kept off the battlefield until after the conflict. Terrorists, he holds, are unlawful combatants, since they do not wear uniforms, hide among civilians, and target innocents. Therefore, Krauthammer concludes, they do not deserve to be treated according to the laws of war. Further, he maintains, torture is sometimes permissible, particularly if it elicits information that will stop a ticking bomb (see Section 12.3).

In “Is Defiance of Law a Proof of Success? Magical Thinking in the War on Terror,” (2006) Stephen Holmes challenges such arguments. That a state could “inflict what amounts to punishment on suspects before establishing their guilt through some sort of minimally fair judicial process seems contrary to the basic principles of the rule of law,” Holmes argues. Drawing from the centuries-old tradition of legal scholarship by thinkers such as Cesare Beccaria (see Section 4.9), Holmes maintains that innocent people will confess to crimes they did not commit simply to escape pain, and that even if the practice of inquisitorial torture occasionally bears fruit, its side effects are prohibitive:

By designing counter-terrorism in the image of terrorism, by answering terrorism with torture, the American government and electorate may experience a temporary feeling of adequacy to an obscure and unparalleled threat. But the ultimate effect on American political culture may resemble defeat more than victory.

(See Section 12.4)

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 5.

12.1 U.S. Department of Justice Memorandum: On Torture (2002)¹

Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340–2340A

You have asked for our Office’s views regarding the standards of conduct under the Convention

Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment as implemented by Sections 2340–2340A of title 18 of the United States Code. As we understand it, this question has arisen in the context of the conduct of interrogations outside of the United States. We conclude below that Section 2340A proscribes

¹ “Memorandum for Alberto R. Gonzales, Counsel to the President,” prepared by Jay Bybee, Asst. Attorney General, Office of Legal Counsel, U.S. Department of Justice, Washington, D.C., 1 August 2002.

acts inflicting, and that are specifically intended to inflict, severe pain or suffering, whether mental or physical. Those acts must be of an extreme nature to rise to the level of torture within the meaning of Section 2340A and the Convention. We further conclude that certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture. We conclude by examining possible defenses that would negate any claim that certain interrogation methods violate the statute.

In Part I, we examine the criminal statute's text and history. We conclude that for an act to constitute torture as defined in Section 2340, it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years. We conclude that the mental harm also must result from one of the predicate acts listed in the statute, namely: threats of imminent death; threats of infliction of the kind of pain that would amount to physical torture; infliction of such physical pain as a means of psychological torture; use of drugs or other procedures designed to deeply disrupt the senses, or fundamentally alter an individual's personality; or threatening to do any of these things to a third party. The legislative history simply reveals that Congress intended for the statute's definition to track the Convention's definition of torture and the reservations, understandings, and declarations that the United States submitted with its ratification. We conclude that the statute, taken as a whole, makes plain that it prohibits only extreme acts.

In Part II, we examine the text, ratification history, and negotiating history of the Torture Convention. We conclude that the treaty's text prohibits only the most extreme acts by reserving criminal penalties solely for torture and declining

to require such penalties for "cruel, inhuman, or degrading treatment or punishment." This confirms our view that the criminal statute penalizes only the most egregious conduct. Executive branch interpretations and representations to the Senate at the time of ratification further confirm that the treaty was intended to reach only the most extreme conduct.

In Part III, we analyze the jurisprudence of the Torture Victims Protection Act, 28 U.S.C. § 1350 note (2000), which provides civil remedies for torture victims, to predict the standards that courts might follow in determining what actions reach the threshold of torture in the criminal context. We conclude from these cases that courts are likely to take a totality-of-the-circumstances approach, and will look to an entire course of conduct, to determine whether certain acts will violate Section 2340A. Moreover, these cases demonstrate that most often torture involves cruel and extreme physical pain. In Part IV, we examine international decisions regarding the use of sensory deprivation techniques. These cases make clear that while many of these techniques may amount to cruel, inhuman or degrading treatment, they do not produce pain or suffering of the necessary intensity to meet the definition of torture. From these decisions, we conclude that there is a wide range of such techniques that will not rise to the level of torture.

In Part V, we discuss whether Section 2340A may be unconstitutional if applied to interrogations undertaken of enemy combatants pursuant to the President's Commander-in-Chief powers. We find that in the circumstances of the current war against al Qaeda and its allies, prosecution under Section 2340A may be barred because enforcement of the statute would represent an unconstitutional infringement of the President's authority to conduct war. In Part VI, we discuss defenses to an allegation that an interrogation method might violate the statute. We conclude that, under the current circumstances, necessity or self-defense may justify interrogation methods that might violate Section 2340A.

12.2 U.S. Department of Justice Memorandum: On Torture (2004)²

Torture is abhorrent both to American law and values and to international norms. This universal repudiation of torture is reflected in our criminal law, for example, 18 U.S.C. §§ 2340–2340A; intentional agreements, exemplified by the United Nations Convention Against Torture (the “CAT”)³; customary international law⁴; centuries of Anglo-American law⁵; and the longstanding policy of the United States, repeatedly and recently reaffirmed by the President.⁶

This Office interpreted the federal criminal prohibition against torture — codified at 18 U.S.C. §§ 2340–2340A — in *Standards of Conduct for Interrogation under 18 U.S.C. 2340–2340A* (Aug. 1, 2002) (“August 2002 Memorandum”). The August 2002 Memorandum also addressed a number of issues beyond interpretation of those statutory provisions, including the President’s Commander-in-Chief power, and various defenses that might be

asserted to avoid potential liability under sections 2340–2340A. See *id.* at 31–46.

Questions have since been raised, both by this Office and by others, about the appropriateness and relevance of the non-statutory discussion in the August 2002 Memorandum, and also about various aspects of the statutory analysis, in particular the statement that “severe” pain under the statute was limited to pain “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” *id.* at 1.⁷ We decided to withdraw the August 2002 Memorandum, a decision you announced in June 2004. At that time, you directed this Office to prepare a replacement memorandum. Because of the importance of — and public interest in — these issues, you asked that this memorandum be prepared in a form that could be released to the public so that interested parties could understand our analysis of the statute.

This memorandum supersedes the August 2002 Memorandum in its entirety.⁸ Because the

- 2 “Memorandum for James B. Comey, Deputy Attorney General,” prepared by Daniel Levin, Acting Asst. Attorney General, Office of Legal Counsel, U.S. Department of Justice, Washington, D.C., 30 December 2004.
- 3 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85. See also, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
- 4 It has been suggested that the prohibition against torture has achieved the status of *jus cogens* (i.e., a peremptory norm) under international law. See, e.g., *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714 (9th Cir. 1992); *Regina v. Bow Street Metro. Stipendiary Magistrate Ex Parte Pinochet Ugarte* (No. 3), [2000] 1 AC 147, 198; see also Restatement (Third) of Foreign Relations Law of the United States § 702 reporters’ note 5.
- 5 See generally John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancient Regime* (1977).
- 6 See, e.g., Statement on United Nations International Day in Support of Victims of Torture, 40 Weekly Comp. Pres. Doc. 1167 (July 5, 2004) (“Freedom from torture is an inalienable human right. . . .”); Statement on United Nations International Day in Support of Victims of Torture, 39 Weekly Comp. Pres. Doc. 824 (June 30, 2003) (“Torture anywhere is an affront to human dignity everywhere.”); see also Letter of Transmittal from President Ronald Reagan to the Senate (May 20, 1988), in Message from the President of the United States Transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, S. Treaty Doc. No. 100-20, at iii (1988) (“Ratification of the Convention by the United States will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today”).
- 7 See, e.g., Anthony Lewis, Making Torture Legal, *N.Y. Rev. of Books*, July 15, 2004; R. Jeffrey Smith, “Slim Legal Grounds for Torture Memos,” *Wash. Post*, July 4, 2004, at A12; Kathleen Clark & Julie Mertus, “Torturing the Law; the Justice Department’s Legal Contortions on Interrogation,” *Wash. Post*, June 20, 2004, at B3; Derek Jinks & David Sloss, “Is the President Bound by the Geneva Conventions?” 90 *Cornell L. Rev.* 97 (2004).
- 8 This memorandum necessarily discusses the prohibition against torture in sections 2340–2340A in somewhat abstract and general terms. In applying this criminal prohibition to particular circumstances, great care must be taken to avoid approving as lawful any conduct that might constitute torture. In addition, this memorandum does not address the many other sources of law that may apply, depending on the circumstances, to the detention or

discussion in that memorandum concerning the President's Commander-in-Chief power and the potential defenses to liability was — and remains — unnecessary, it has been eliminated from the analysis that follows. Consideration of the bounds of any such authority would be inconsistent with the President's unequivocal directive that United States personnel not engage in torture.⁹

We have also modified in some important respects our analysis of the legal standards applicable under 18 U.S.C. §§ 2340–2340A. For example, we disagree with statements in the August 2002 Memorandum limiting “severe” pain under the statute to “excruciating and agonizing” pain, *id.* at 19, or to pain “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death,” *id.* at 1. There are additional areas where we disagree with or modify the analysis in the August 2002 Memorandum, as identified in the discussion below.¹⁰

Section 2340A provides that “[w]hoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.”¹¹ Section 2340(1) defines “torture” as “an act committed by a person acting under the color of law specifically intended

to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.”

Counterpoints

12.3 Charles Krauthammer: “The Truth about Torture” (2005)¹²

During the last few weeks in Washington the pieties about torture have lain so thick in the air that it has been impossible to have a reasoned discussion. The McCain amendment that would ban “cruel, inhuman, or degrading” treatment of any prisoner by any agent of the United States sailed through the Senate by a vote of 90–9. The Washington establishment remains stunned that nine such retrograde, morally inert persons—let alone senators—could be found in this noble capital. . . .

Let's begin with a few analytic distinctions. For the purpose of torture and prisoner maltreatment, there are three kinds of war prisoners:

First, there is the ordinary soldier caught on the field of battle. There is no question that he is entitled to humane treatment. Indeed, we have no right to disturb a hair on his head. His detention has but a single purpose: to keep him *hors de combat*. The proof of that proposition is that if there were a better way to keep him off the

interrogation of detainees (for example, the Geneva Conventions; the Uniform Code of Military Justice, 10 U.S.C. § 801 et seq.; the Military Extraterritorial Jurisdiction Act, 18 U.S.C. §§ 3261–3267; and the War Crimes Act, 18 U.S.C. § 2441, among others). Any analysis of particular facts must, of course, ensure that the United States complies with all applicable legal obligations.

- 9 See, e.g., Statement on United Nations International Day in Support of Victims of Torture, 40 Weekly Comp. Pres. Doc. 1167–68 (July 5, 2004). (“America stands against and will not tolerate torture. We will investigate and prosecute all acts of torture . . . in all territory under our jurisdiction. Torture is wrong no matter where it occurs, and the United States will continue to lead the fight to eliminate it everywhere.”)
- 10 While we have identified various disagreements with the August 2002 Memorandum, we have reviewed this Office's prior opinions addressing issues involving treatment of detainees and do not believe that any of their conclusions would be different under the standards set forth in this memorandum.
- 11 Section 2340A provides in full:
 - (a) Offense. — Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life. . . .
- 12 Charles Krauthammer, “The Truth About Torture,” *Washington Examiner* (December 5, 2005).

battlefield that did not require his detention, we would let him go. Indeed, during one year of the Civil War, the two sides did try an alternative. They mutually “paroled” captured enemy soldiers, i.e., released them to return home on the pledge that they would not take up arms again. (The experiment failed for a foreseeable reason: cheating. Grant found that some paroled Confederates had reenlisted.)

Because the only purpose of detention in these circumstances is to prevent the prisoner from becoming a combatant again, he is entitled to all the protections and dignity of an ordinary domestic prisoner—indeed, more privileges, because, unlike the domestic prisoner, he has committed no crime. He merely had the misfortune to enlist on the other side of a legitimate war. He is therefore entitled to many of the privileges enjoyed by an ordinary citizen—the right to send correspondence, to engage in athletic activity and intellectual pursuits, to receive allowances from relatives—except, of course, for the freedom to leave the prison.

Second, there is the captured terrorist. A terrorist is by profession, indeed by definition, an unlawful combatant: He lives outside the laws of war because he does not wear a uniform, he hides among civilians, and he deliberately targets innocents. He is entitled to no protections whatsoever. People seem to think that the postwar Geneva Conventions were written only to protect detainees. In fact, their deeper purpose was to provide a deterrent to the kind of barbaric treatment of civilians that had become so horribly apparent during the first half of the 20th century, and in particular, during the Second World War. The idea was to deter the abuse of civilians by promising combatants who treated noncombatants well that they themselves would be treated according to a code of dignity if captured—and, crucially, that they would be denied the protections of that code if they broke the laws of war and abused civilians themselves.

Breaking the laws of war and abusing civilians are what, to understate the matter vastly, terrorists do for a living. They are entitled, therefore, to nothing. Anyone who blows up a car bomb

in a market deserves to spend the rest of his life roasting on a spit over an open fire. But we don’t do that because we do not descend to the level of our enemy. We don’t do that because, unlike him, we are civilized. Even though terrorists are entitled to no humane treatment, we give it to them because it is in our nature as a moral and humane people. And when on rare occasions we fail to do that, as has occurred in several of the fronts of the war on terror, we are duly disgraced....

Third, there is the terrorist with information. Here the issue of torture gets complicated and the easy pieties don’t so easily apply. Let’s take the textbook case. Ethics 101: A terrorist has planted a nuclear bomb in New York City. It will go off in one hour. A million people will die. You capture the terrorist. He knows where it is. He’s not talking.

Question: If you have the slightest belief that hanging this man by his thumbs will get you the information to save a million people, are you permitted to do it?

Now, on most issues regarding torture, I confess tentativeness and uncertainty. But on this issue, there can be no uncertainty: Not only is it permissible to hang this miscreant by his thumbs. It is a moral duty.

Yes, you say, but that’s an extreme and very hypothetical case. Well, not as hypothetical as you think. Sure, the (nuclear) scale is hypothetical, but in the age of the car-and suicide-bomber, terrorists are often captured who have just set a car bomb to go off or sent a suicide bomber out to a coffee shop, and you only have minutes to find out where the attack is to take place. This “hypothetical” is common enough that the Israelis have a term for precisely that situation: the ticking time bomb problem.

And even if the example I gave were entirely hypothetical, the conclusion—yes, in this case even torture is permissible—is telling because it establishes the principle: Torture is not always impermissible. However rare the cases, there are circumstances in which, by any rational moral calculus, torture not only would be permissible but would be required (to acquire life-saving information). And once you’ve established the principle, to

paraphrase George Bernard Shaw, all that's left to haggle about is the price. In the case of torture, that means that the argument is not whether torture is ever permissible, but when—i.e., under what obviously stringent circumstances: how big, how imminent, how preventable the ticking time bomb.

That is why the McCain amendment, which by mandating “torture never” refuses even to recognize the legitimacy of any moral calculus, cannot be right. There must be exceptions. The real argument should be over what constitutes a legitimate exception.

Let's take an example that is far from hypothetical. You capture Khalid Sheikh Mohammed in Pakistan. He not only has already killed innocents, he is deeply involved in the planning for the present and future killing of innocents. He not only was the architect of the 9/11 attack that killed nearly three thousand people in one day, most of them dying a terrible, agonizing, indeed tortured death. But as the top al Qaeda planner and logistical expert he also knows a lot about terror attacks to come. He knows plans, identities, contacts, materials, cell locations, safe houses, cased targets, etc. What do you do with him?

We have recently learned that since 9/11 the United States has maintained a series of “black sites” around the world, secret detention centers where presumably high-level terrorists like Khalid Sheikh Mohammed have been imprisoned. The world is scandalized. Black sites? Secret detention? Jimmy Carter calls this “a profound and radical change in the ... moral values of our country.” The Council of Europe demands an investigation, calling the claims “extremely worrying.” Its human rights commissioner declares “such practices” to constitute “a serious human rights violation, and further proof of the crisis of values” that has engulfed the war on terror. The gnashing of teeth and rending of garments has been considerable.

I myself have not gnashed a single tooth. My garments remain entirely unrent. Indeed, I feel reassured. It would be a gross dereliction of duty for any government not to keep Khalid Sheikh Mohammed isolated, disoriented, alone, despairing, cold and sleepless, in some godforsaken hidden

location in order to find out what he knew about plans for future mass murder. What are we supposed to do? Give him a nice cell in a warm Manhattan prison, complete with Miranda rights, a mellifluous lawyer, and his own website? Are not those the kinds of courtesies we extended to the 1993 World Trade Center bombers, then congratulated ourselves on how we “brought to justice” those responsible for an attack that barely failed to kill tens of thousands of Americans, only to discover a decade later that we had accomplished nothing—indeed, that some of the disclosures at the trial had helped Osama bin Laden avoid U.S. surveillance?

Have we learned nothing from 9/11? Are we prepared to go back with complete amnesia to the domestic-crime model of dealing with terrorists, which allowed us to sleepwalk through the nineties while al Qaeda incubated and grew and metastasized unmolested until on 9/11 it finished what the first World Trade Center bombers had begun? ...

Let's posit that during the interrogation of Khalid Sheikh Mohammed, perhaps early on, we got intelligence about an imminent al Qaeda attack. And we had a very good reason to believe he knew about it. And if we knew what he knew, we could stop it. If we thought we could glean a critical piece of information by use of sodium pentathol, would we be permitted to do so?

Less hypothetically, there is waterboarding, a terrifying and deeply shocking torture technique in which the prisoner has his face exposed to water in a way that gives the feeling of drowning. According to CIA sources cited by ABC News, Khalid Sheikh Mohammed “was able to last between two and 2 1/2 minutes before begging to confess.” Should we regret having done that? Should we abolish by law that practice, so that it could never be used on the next Khalid Sheikh Mohammed having thus gotten his confession?

And what if he possessed information with less imminent implications? Say we had information about a cell that he had helped found or direct, and that cell was planning some major attack and we needed information about the identity and location of its members. A rational moral calculus

might not permit measures as extreme as the nuke-in-Manhattan scenario, but would surely permit measures beyond mere psychological pressure.

Such a determination would not be made with an untroubled conscience. It would be troubled because there is no denying the monstrous evil that is any form of torture. And there is no denying how corrupting it can be to the individuals and society that practice it. But elected leaders, responsible above all for the protection of their citizens, have the obligation to tolerate their own sleepless nights by doing what is necessary—and only what is necessary, nothing more—to get information that could prevent mass murder.

Given the gravity of the decision, if we indeed cross the Rubicon—as we must—we need rules. . . . We do not want a private somewhere making these fine distinctions about ticking and slow-fuse time bombs. We don't even want colonels or generals making them. It would be best for the morale, discipline, and honor of the Armed Forces for the United States to maintain an absolute prohibition, both to simplify their task in making decisions and to offer them whatever reciprocal treatment they might receive from those who capture them—although I have no illusion that any anti-torture provision will soften the heart of a single jihadist holding a knife to the throat of a captured American soldier. We would impose this restriction on ourselves for our own reasons of military discipline and military honor.

Outside the military, however, I would propose . . . a ban against all forms of torture, coercive interrogation, and inhuman treatment, except in two contingencies: (1) the ticking time bomb and (2) the slower-fuse high-level terrorist (such as KSM). Each contingency would have its own set of rules. In the case of the ticking time bomb, the rules would be relatively simple: Nothing rationally related to getting accurate information would be ruled out. The case of the high-value suspect with slow-fuse information is more complicated. The principle would be that the level of inhumanity of the measures used (moral honesty is essential here—we would be using measures that are by definition inhumane) would be proportional to the need and

value of the information. Interrogators would be constrained to use the least inhumane treatment necessary relative to the magnitude and imminence of the evil being prevented and the importance of the knowledge being obtained.

These exceptions to the no-torture rule would not be granted to just any nonmilitary interrogators, or anyone with CIA credentials. They would be reserved for highly specialized agents who are experts and experienced in interrogation, and who are known not to abuse it for the satisfaction of a kind of sick sadomasochism. Lynndie England and her cohorts indulged in at Abu Ghraib. Nor would they be acting on their own. They would be required to obtain written permission for such interrogations from the highest political authorities in the country (cabinet level) or from a quasi-judicial body modeled on the Foreign Intelligence Surveillance Court (which permits what would ordinarily be illegal searches and seizures in the war on terror). Or, if the bomb was truly ticking and there was no time, the interrogators would be allowed to act on their own, but would require post facto authorization within, say, 24 hours of their interrogation, so that they knew that whatever they did would be subject to review by others and be justified only under the most stringent terms.

One of the purposes of these justifications would be to establish that whatever extreme measures are used are for reasons of nothing but information. Historically, the torture of prisoners has been done for a variety of reasons apart from information, most prominently reasons of justice or revenge. We do not do that. We should not do that. Ever. Khalid Sheikh Mohammed, murderer of 2,973 innocents, is surely deserving of the most extreme suffering day and night for the rest of his life. But it is neither our role nor our right to be the agents of that suffering. Vengeance is mine, sayeth the Lord. His, not ours. Torture is a terrible and monstrous thing, as degrading and morally corrupting to those who practice it as any conceivable human activity including its moral twin, capital punishment.

If Khalid Sheikh Mohammed knew nothing, or if we had reached the point where his knowledge

had been exhausted, I'd be perfectly prepared to throw him into a nice, comfortable Manhattan cell and give him a trial to determine what would be fit and just punishment. But as long as he had useful information, things would be different.

Very different. And it simply will not do to take refuge in the claim that all of the above discussion is superfluous because torture never works anyway. Would that this were true. Unfortunately, on its face, this is nonsense. Is one to believe that in the entire history of human warfare, no combatant has ever received useful information by the use of pressure, torture, or any other kind of inhuman treatment? It may indeed be true that torture is not a reliable tool. But that is very different from saying that it is *never* useful.

The monstrous thing about torture is that sometimes it does work. In 1994, 19-year-old Israeli corporal Nachshon Waxman was kidnapped by Palestinian terrorists. The Israelis captured the driver of the car used in the kidnapping and tortured him in order to find where Waxman was being held. Yitzhak Rabin, prime minister and peacemaker, admitted that they tortured him in a way that went even beyond the '87 guidelines for "coercive interrogation" later struck down by the Israeli Supreme Court as too harsh. The driver talked. His information was accurate. The Israelis found Waxman. "If we'd been so careful to follow the ['87] Landau Commission [which allowed coercive interrogation]," explained Rabin, "we would never have found out where Waxman was being held."

In the Waxman case, I would have done precisely what Rabin did. (The fact that Waxman's Palestinian captors killed him during the Israeli rescue raid makes the case doubly tragic, but changes nothing of the moral calculus.) Faced with a similar choice, an American president would have a similar obligation. To do otherwise – to give up the chance to find your soldier lest you sully yourself by authorizing torture of the person who possesses potentially lifesaving information – is a deeply

immoral betrayal of a soldier and countryman. Not as cosmically immoral as permitting a city of one's countrymen to perish, as in the Ethics 101 case. But it remains, nonetheless, a case of moral abdication – of a kind rather parallel to that of the principled pacifist. There is much to admire in those who refuse on principle ever to take up arms under any conditions. But that does not make pure pacifism, like no-torture absolutism, any less a form of moral foolishness, tinged with moral vanity. Not reprehensible, only deeply reproachable and supremely impracticable. People who hold such beliefs are deserving of a certain respect. But they are not to be put in positions of authority. One should be grateful for the saintly among us. And one should be vigilant that they not get to make the decisions upon which the lives of others depend.

12.4 Stephen Holmes: On Torture and the Defiance of Law in the War on Terror (2006)¹³

The War on Terror has displaced the Cold War as the defining framework of U.S. foreign and domestic policy. An ironic consequence is that the most infamous penal colony in a Communist country is now located at Guantanamo Bay Naval Base. We have come a long way since Solzhenitsyn. To Cuba, it turns out, the United States has spread not the blessings of liberty but the rule of manacles, stress positions, cages, and hoods. And Guantanamo Bay is merely one internment facility in a worldwide archipelago of U.S.-administered detention centers where terrorists, real and alleged, are incarcerated with little or no access to the outside world. Legal responsibility for what happens in these camps remains uncertain. But inside them detainees have been, and apparently continue to be, interrogated in a cruel, inhumane and degrading manner. We know that at least twenty or thirty prisoners have died in captivity, apparently from wounds inflicted by their American jailers. The sordid details have been

13 Stephen Holmes, "Is Defiance of Law a Proof of Success? Magical Thinking in the War on Terror," in *The Torture Debate in America*, edited by Karen J. Greenberg (Cambridge: Cambridge University Press, 2006), 118–135. DOI: <https://doi.org/10.1017/CBO9780511511110.007>

widely publicized. Less evident are the reasons why the U.S. government has created such a system. The most paradoxical justification for what would otherwise be an odious violation of America's system of values is that such behavior alone makes it possible to protect America's system of values.

Lawyers for Torture

To inflict what amounts to punishment on suspects before establishing their guilt through some sort of minimally fair judicial process seems contrary to the basic principles of the rule of law. But it is perfectly in tune with the general counter-terrorism policy of the current administration. Cruel interrogation techniques are certainly no more incompatible with ordinary principles of legality than the policy of extrajudicial executions. Today, U.S. officers, operating clandestinely around the world, are apparently licensed to kill suspected al Qaeda members (and others in the vicinity) on the basis of fragmentary evidence and uncorroborated hearsay. If U.S. agents, without criminal liability, can kill possibly innocent suspects, then it is not surprising that U.S. agents can also, shielded from judicial scrutiny, subject possibly innocent suspects to "extreme interrogation," verging on torture.

True, neither policy seems particularly compatible with "liberty and justice for all." To explain why such deviations from liberal practice are permitted, or even required, lawyers have been put to work. Their job has been to lend such policies a patina of respectability. Since ancient times, in fact, legal minds have proved willing to provide technically-refined justifications for the carefully dosed infliction of pain as a method for extracting information.¹⁴ Whether or not lawyers have played a decisive role in introducing torture, they have historically helped deflect human compassion from victims of the practice. In late medieval and early

modern Europe, doctors of law seem universally to have endorsed excruciating inquisitorial procedures as but one more versatile tool inherited from Roman Law.¹⁵ Legal experts and scholars praised interlocutory torture, not only as an efficacious technique for compelling confession but also as a hard-to-resist way of coaxing suspects into betraying the identity of their accomplices. Evidence elicited by water torture, simulating the feeling of drowning up to the moment when the subject loses consciousness, was long said to be especially suitable for use in court to demonstrate guilt. But lawyers have not always been satisfied with their role as unprincipled servants of power, concocting ingenious justifications to lend an aroma of decorum to the schemes of the powerful. They have therefore occasionally added, with a flash of conscience, that torture, while legitimate in principle, should be applied only "as the due measure of well-regulated reason requires."¹⁶ What exactly does "reason" require in this domain of moans and screams?

Attempting to establish when torture should and should not be used, legal thinkers have devoted themselves through the centuries to manufacturing subtle distinctions. According to Edward Gibbon, the selective embrace of the practice, in Rome, reflected an implicit disquiet:

The deceitful and dangerous experiment of the criminal quæstion, as it is emphatically styled, was admitted rather than approved, in the jurisprudence of the Romans. They applied this sanguinary mode of examination only to servile bodies, whose sufferings were seldom weighed by those haughty republicans in the scale of justice or humanity; but they would never consent to violate the sacred person of a citizen till they possessed the clearest evidence of his guilt.¹⁷

14 Danielle S. Allen, *The World of Prometheus: The Politics of Punishing in Democratic Athens* (Princeton University Press, 2000), p. 104.

15 Walter Ullmann, "Reflections on Medieval Torture," *Juridical Review* (vol. 56, 1944), p. 123.

16 *The Digest of Justinian*, trans. Alan Watson (Philadelphia: University of Pennsylvania Press, 1985), vol. IV, pp. 843; this extract comes from Aurelius Arcadius Charisius, a jurist from the age of Constantine.

17 Edward Gibbon, *Decline and Fall of the Roman Empire*, vol. I, p. 549.

The main point to take away from this passage is that, when it comes to rationalizing torture, lawyering has traditionally involved muffling unease by drawing distinctions to prevent terrifying policies from hitting too close to home. This tradition is very much alive.

Already in antiquity, the laws in force laid down boundaries between people who could be tortured, without any qualms, and others, the privileged, who were ordinarily exempt from judicially inflicted torments. Above all, aliens were treated more brutally than citizens. The worst cruelties were ordinarily reserved for “the other.” In ancient Athens, for instance, inquiry by torture (*basanos*) was used under specified conditions, to extort evidence from slaves, but applied to citizens, if at all, only in cases of high treason. The Roman practice discussed by Gibbon was similar. From the outset, therefore, interlocutory torture was applied in a “republican” manner, with proper respect for the sensibilities and solidarities of citizens. It was also a rule-governed activity. The rules in question were many and evolved over time. A common maxim was that torturers should not to pose leading questions to those being tortured. Such guidelines were presumably set forth because spontaneous abuses, such as suggestive questioning, endangered the reliability of coerced confessions. But did apologists for torture really believe that truth could be extracted, like a rotten tooth, with a pair of pliers?

Reliability on Trial

Artfully crafted justifications or rationalizations of torture were met, from the very beginning, by tentative objections and counter-arguments. Although no rebel against Greek legal practice, Aristotle set forth very clearly what were to become the standard criticisms of a practice that was commonly condoned: “those under compulsion are as likely to give false evidence as true, some being

ready to endure everything rather than tell the truth, while others are equally ready to make false charges against others, in the hope of being sooner released from torture.”¹⁸ The unreliability of testimony extracted under duress, even today, remains one of the most commonly invoked arguments against torture. Multiple allegations of false confession at Guantanamo, some of them now definitively confirmed, make it interesting to consider how Aristotle spelled out his hesitations: “It may also be said that evidence given under torture is not true; for many thick-witted and thick-skinned persons, and those who are stout-hearted heroically hold out under sufferings, while the cowardly and cautious, before they see the sufferings before them, are bold enough.” Once they are actually facing torture, some subset of prisoners would lose their audacity and choose to confess to crimes they did not actually commit. “Wherefore,” Aristotle concludes, “evidence from torture may be considered utterly untrustworthy.”¹⁹

Torture’s willing advocates, needless to say, took a much more “optimistic” line. They argued that extreme physical pain, artfully applied, will take away the examinee’s freedom to keep secrets and withhold the truth. This “de-liberation” (or removal of free will) no doubt bore fruit some of the time. But the implicit theory that truth could be hauled out of an individual by physical violence was never without serious critics. One of them was Cicero, whose doubts about torture seem to build directly upon Aristotle’s: “the course of examination under torture is steered by pain, is controlled by individual qualities of mind and body, is directed by the president of the court, is diverted by caprice, tainted by hope, invalidated by fear, and the result is that in all these straits there is no room left for the truth.”²⁰ The turbulence and numbness injected into the interrogated individual’s consciousness by intense bodily agony, combined with the inevitable partisan agendas of the all-too-human administrators of

18 Aristotle, *Rhetoric* 1376b26-1377a26, trans. John Henry Freese (Cambridge, Mass.: Loeb Library, 1926), p. 163.

19 Ibid.

20 Cicero, *Pro Sulla*, 78, in *In Catilinam I-IV, Pro Murena, Pro Sulla, Pro Flacco*, trans. C. MacDonald (Cambridge, Mass.: Loeb Library, 1977), p. 391.

pain, may easily obscure rather than illuminate the facts of the case under examination.

As a servant of the law, he too accepted the admission at trial of evidence extracted by torture. But the Roman jurist Ulpian (d. 228) could not entirely ignore such compelling doubts: "It is stated in constitutions that reliance should not always be placed on torture ... for it is a chancy and risky business and one which may be deceptive. For there are a number of people who, by their endurance and their toughness under torture, are so contemptuous of it that the truth can in no way be squeezed out of them. Others have so little endurance that they would rather tell any kind of lie than suffer torture; so it happens that they confess in various ways, incriminating not only themselves but others also."²¹ So here again torture is presented as a trustworthy technique for probing endurance, but an unreliable method for establishing veracity.

Two centuries later, this time with a religious twist, Augustine recited these same doubts. He acknowledged that "the accused are often overcome by the pain of torture and so make false confessions and are punished, though innocent." In a vein that is distressingly pertinent to U.S. interrogation practice today, he went on to say: "although not condemned to death, they often die under torture or as a consequence of torture." True justice would be possible only if judges could peer directly into the minds of both accusers and accused to see who was lying and who was telling the truth. But judges are no more clairvoyant than other men. The truth of any criminal accusation, therefore, remains ultimately inscrutable even to the most discerning judge. Because human justice will always involve a fumbling in the dark, the city of man will never resemble the city of God.

Human law, nevertheless, instructs judges to try to ferret out the hidden truth by inflicting painful torments on witnesses as well as on the accused.

But, Augustine laments, the rude means provided are wholly inadequate to the ideal end being pursued. Torture does not give the judge a privileged access to the innermost thoughts of those being tortured, for all of the reasons cited above, but especially because people will generally tell any untruth to make the torture stop. As a result, "the ignorance of the judge generally results in the calamity of the innocent." Christian judges must therefore pray to God to deliver them from the unbearable burdens of this miserable life, which obliges them to engage in torture, a calamitous practice that inevitably confounds the innocent with the guilty. Judicial torture is not technically a "sin," he concludes. But it is sickening enough to make any honorable judge feel morally unworthy and even to pray to escape from this vale of tears.²²

By the sixteenth century these classical doubts about the reliability of testimony extracted via torture began to mature into a straightforward rejection of the practice. A fine example is Montaigne who repeated the ancient themes but this time from the point of view of someone expecting the practice to be abolished: "Torture is a dangerous innovation; it would appear that it is an assay not of truth but of a man's endurance. The man who can endure it hides the truth, so does he who cannot. For why should pain make me confess what is true rather than force me to say what is not true?"²³ In the seventeenth century, with even bitterer irony, La Bruyère reiterated that torture tests stamina not truthfulness: "The rack is a marvelous invention, and an unailing method of ruining an innocent weakly man and saving one who is robust and guilty."²⁴ And, finally, in the eighteenth century, Blackstone expressed a growing scorn for interlocutory torture, accusing its advocates of "rating a man's virtue by the hardness of his constitution, and his guilt by the sensibility of his nerves!"²⁵

21 *The Digest of Justinian*, trans. by Alan Watson (Philadelphia: University of Pennsylvania Press, 1985), vol. IV, pp. 841.

22 Augustine, *City of God*, XIX, 6, trans. by William Chase Greene (Cambridge, Mass.: Loeb Library, 1960), pp. 145–17.

23 Michel de Montaigne, *The Complete Essays*, trans. by M. A. Screech (London: Penguin, 1991), p. 414.

24 La Bruyère, *The Morals and Manners of the Seventeenth Century, being the Characters of La Bruyère* (Chicago: McClurg, 1890), p. 272.

25 William Blackstone, *Commentaries on the Laws of England* (Chicago: University of Chicago Press, 1979), vol. IV, p. 321.

Most of the perennial dissatisfactions with interlocutory torture were transformed into a morally self-assured assault on the practice by Cesare Beccaria in his immensely influential treatise *On Crimes and Punishments* (1764). Beccaria's principal moral concern, which had been Augustine's and which remains alive today, is "the risk of torturing an innocent person."²⁶ Torture is randomly applied punishment, Beccaria argued. Such inflicting of penalties on mere suspects, before they are convicted of any crime, can be justified only by the corrosively antilegal principle that might is right.

It is absurd to make physical pain into "the crucible of truth," Beccaria explained.²⁷ The reason is simple: "the impression of pain may become so great that, filling the entire sensory capacity of the tortured person, it leaves him free only to choose what for the moment is the shortest way to escape from pain."²⁸ This is why, in all countries and in all ages, innocent people have confessed to crimes they did not commit. Beccaria's argument continues in a familiar vein. Far from being a reliable method for distinguishing the guilty from the innocent, he says, torture is better suited for helping the strong and hurting the weak. In practice, torture undermines the interrogator's capacity to distinguish between guilt and innocence, one proof being the plentiful (false) confessions to witchcraft extracted, in early modern Europe, by ingenious torments. The very same dynamic makes Beccaria doubt the veracity of testimony about accomplices extracted under torture: "As if a man who accuses himself would not more readily accuse others."²⁹

Beccaria also mentions, more originally, the way in which interlocutory torture made tell-tale body language unintentionally illegible. Intelligent interrogators who are prohibited from inflicting physical agony during interrogation can sometimes

read the body language of suspects to determine if they are lying or telling the truth. This is why physical torments ordinarily result in a loss of information. Subtle signals disappear when torture is employed to unearth truth: "if this truth is difficult to discover in the air, gesture, and countenance of a man at ease, much more difficult will its discovery be when the convulsions of pain have distorted all the signs by which truth reveals itself in spite of themselves in the countenances of the majority of men."³⁰

Legal acceptance of torture, finally, creates a perverse incentive for interrogators. This is why a policy of torture tends to weaken the system of criminal justice in the long run, even if a single act of torture can turn up a useful piece of evidence. If they are not allowed to torture witnesses and suspects, interrogators have an incentive to search for evidence elsewhere or to develop alternative information-extracting skills. (In the case of U.S. interrogators at Guantanamo Bay and elsewhere, such useful skills might include, for example, mastery of relevant foreign languages.) If torture is allowed, by contrast, interrogators will have less motivation to develop more refined and conceivably more effective methods of seeking and establishing the truth.

Legalization effectively creates a self-justifying and self-perpetuating system of interlocutory torture. It discourages interrogators from seeking better evidence and honing their skills. It discourages supervisors from increasing the size and talent of their staff. Interrogators who have failed to acquire nonviolent skills can then "justify" their resort to torture by alleging, with superficial plausibility, that torture is the only method available to them for wringing information out of non-cooperating detainees. Although logically worthless, this justification is apparently both rhetorically effective and psychologically comforting.

26 Cesare Beccaria, *On Crimes and Punishments* (Indianapolis: Bobbs-Merrill, 1975), p. 31.

27 *Ibid.*

28 *Ibid.*, p. 32.

29 *Ibid.*, p. 35.

30 *Ibid.*, p. 33.

Alternatives and Side-Effects

To know if torture is justified or not we must know more than whether or not “it works.” Even if it were a totally reliable method for extracting information, contrary to classical case against the practice detailed by numerous writers including those cited above, torture might still be morally unjustifiable. In facing down Chechen terrorists, for instance, Moscow has sometimes adopted the posture that the best way to kill a few cockroaches is to burn down the apartment complex in which they were last seen scurrying about. This technique “works” in the sense that any terrorists trapped in collapsed and incinerated buildings are likely to be dead. But the achievement of such a desirable goal does not put a quietus to the question: Was the operation, conducted in this devastating way, with this massive amount of collateral damage, justified or not? Was the game worth the candle? What were the opportunity costs, and were they worth paying?

In the case of “successful” torture, in particular, we have to ask two further questions. First, could we have obtained the information we needed by other means, not involving physical torture of a defenseless detainee? Could we have learned virtually everything that the tortured prisoner confessed, simply by asking a U.S. official from a different agency who was sitting in an office elsewhere in the same facility? Could we have acquired the same information by less cruel methods, for example, by developing a rapport with the prisoner or offering him modest inducements? If it turns out that alternative techniques are just as effective as torture and just as easily available, then we cannot confidently say that the torture was justifiable even if, viewed in isolation, it “worked.”

Montesquieu pressed this point in a famous passage in the *Spirit of the Laws* (1748). Proof that torture is not a necessary institution, he wrote, was provided by England, where criminal justice functioned perfectly well even though torture there was virtually unknown: “We have before us the example of a nation blessed with an excellent civil

government, where without any inconvenience the practice of racking criminals is rejected. It is not, therefore, in its own nature necessary.”³¹ If judicial inquiry without torture works just as well as judicial inquiry with torture, then the observed utility of torture, to which its advocates point with pride, does not suffice to prove that it is legitimate or desirable.

Even if the practice of inquisitorial torture occasionally bears fruit, we must also examine its predictable side effects. Today, for example, we can ask: What will be the long-term effects on American political sensibilities, of normalizing torture as a means for increasing national security? What does it mean for America’s attempt to “spread liberty” throughout the world if the United States is curtailing “liberty,” at home and abroad, to increase security and defeat the enemy? Is the United States spreading liberty or curtailing it? How are the two projects related to each other? This mixed message is certainly confusing. Those concerned with American public diplomacy might want to know which part of it has been more forcefully conveyed.

Torture’s effect on individuals is more concrete and less controversial. The searing psychic wounds and physical disabilities of individuals who have survived torture are difficult to heal. The scars of humiliation left by torture tend to endure for years, since it may be impossible to remember the experience of being tortured without vividly reliving the degradation. The moral-emotional effect on the individuals who do the torturing, of course, must also be taken into account. These breakers of men have triumphed over defenseless captives by inflicting intolerable pain. Their latent sadism was no doubt awakened by their freedom to abuse the helpless. They no doubt learn to compartmentalize. Their capacity for human sympathy and compassion for the weak must also have shriveled. Unlike soldiers on the battlefield, they did not expose themselves to any physical danger in order to confront their purported enemy. What is the likely result? Perhaps their sense of personal power became pathologically inflated. Perhaps they will return home depraved and disturbed? All this is

31 Montesquieu, *Spirit of the Laws*, trans. Thomas Nugent (New York: Hafner, 1949), vi.17, p. 91.

uncertain, but it is interesting to note that America's interrogators in the war on terror were assured by their superiors that torture (that is, treating captives as less than human) was not only permissible but was noble and patriotic.

Finally, we need to consider the effect of the United States' embrace of cruel and inhuman interrogation techniques on the country's reputation abroad. We might recall, in this context, that one of the principal charges leveled against the Nazi war criminals at Nuremberg was the following: "Civilians were systematically subjected to tortures of all kinds, with the object of obtaining information" (my emphasis).³² And the indictment continues: "Civilians of occupied countries were subjected systematically to 'protective arrests' whereby they were arrested and imprisoned without any trial and any of the ordinary protections of law."³³ One does not have to accept a wildly implausible comparison of Bush administration policy to the policy of the Nazis to realize that a public embrace of imprisonment without due process and coercive interrogation will further erode America's dying good name in the world. What are the concrete and practical consequences of this blemished reputation? How will it affect the number and quality of detainees that come into U.S. custody? How will it affect the inquisitorial practice of other nations? How will it affect the treatment of captured U.S. troops (including special forces who travel in combat zones without distinguishing military insignia)? It may well be that if we add up all of the negative side-effects of a policy of interlocutory torture, we will discover that, yes, torture occasionally "works," but that any short-term gain is nevertheless far outweighed by long-term losses....

The Secret of the Ticking Bomb

Academic commentaries on this controversy operate on a higher level of abstraction. They stress the way in which ordinary moral and legal prohibitions must sometimes be cast aside in order

to meet a looming threat. The question of how to treat a prisoner who knows the whereabouts of a ticking time-bomb is commonly debated in this context. The stakes in the case are easily escalated by making the bomb into a nuclear device. Although neither realistic nor representative, the hypothetical is nevertheless revealing. For one thing, the idea that the authorities might get a dangerous terrorist into their custody, after he has planned an attack but before he has executed it, is a utopian fantasy. The elusiveness of these criminal conspirators is intensely frustrating and naturally gives rise, among counter-terrorism officials, to daydreams of superman-style rescues. To set policies on the basis of such far-fetched scenarios would be folly.

The ticking bomb parable is also interesting for another reason. It makes the legitimacy of torture depend wholly on its future consequences, namely, on the prevention of grave harm. In this way, it tracks perfectly the thinking of administration lawyers and apologists. With its focus on the future, the hypothetical reveals the limited relevance of most historical debates about torture, which assumed that torture was justified or not depending on how useful it proved in uncovering reliable evidence of guilt for past crimes. The ground has now thoroughly shifted. Torture is morally justifiable, or will at least be publicly accepted, if it helps save a major urban center from Armageddon.

The ticking time-bomb fable also suggests the quiet heroism of those who, defying moral norms and legal conventions, choose torture. They sacrifice their scruples for the greater good. They follow the ethics of responsibility instead of the ethics of conscience. Those who torture (or approve the torture of) prisoners, according to the implicit storyline, are protecting their fellow Americans from mass death by nuclear incineration. No causal chain need be demonstrated in any particular case. Instead, the ticking time-bomb parable creates a presumption. What seemed illegitimate, because it yielded dubious confessions, now seems legitimate because

32 Indictment before the International Military Tribunal (October 6, 1945) in Michael Marrus (ed.), *The Nuremberg War Crimes Trial 1945–46* (Boston: St. Martin's, 1997), p. 65.

33 Ibid.

it provides a ray of hope in a dark and dangerous world. And the once-scorned torturer now appears as a potential savior. This torturer/savior fusion does not seem all that remote from the self-image of those who support the current U.S. policies of harsh interrogation. This heroic self-image seems pervasive even though none of the prisoner abuse in Abu Ghraib, for example, could have contributed in any way to the safety of Americans back home.

So what is the most important implication of the ticking time-bomb parable? It is, quite simply, the insinuation, without evidence or argument, of an intimate connection between torture and terrorism. In the imaginary scenario, in fact, torture is the only possible response to terrorism. The suggestion is subliminal, to some extent. No reasons are given to explain why, faced with terrorism, the United States should resort to torture. But the correlation comes through loud and clear. So what should we make of such associational thinking?

To understand why torture might be thought to be an appropriate response to terrorism, it helps to look briefly at how the U.S. administration understands terrorism. The main points to stress are these: First, terrorism is an attack upon symbolic targets, aimed at displaying the attackers' power and the victims' impotence. Second, terrorism kills innocent civilians for the purpose of intimidation and to send a political message. And, third, terrorism is completely inexcusable.

Let us begin with this last point. Colin Powell is speaking for everyone when he says: "There can be no political justification [for terrorism]. There is no religious justification." And "the kind of evil and terror that we saw perpetrated against us three years ago on 9/11 ... must be fought. It must be resisted. There can be no compromise in this battle."³⁴ What is most interesting about the absolutist claim that terrorism admits of no justification

is the way it is echoed, in international law, by the absolutist claim that torture admits of no justification. For instance: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal instability or any other public emergency, may be invoked as a justification of torture."³⁵

Mirror-Imaging

According to the consensus view of international law, neither terrorism nor torture can be justified, no matter how extreme the circumstances or how desperate the cause. The prohibition on both terrorism and torture is equally absolute, unambiguous, and final. The parallelism here may provide a clue to the unexplained choice of inhumane interrogation techniques by the American government and its approval after the fact by American voters. One of the greatest shocks to American liberals was that "The system of torture has, after all, survived its disclosure."³⁶ But why has the American public not been mortified or disillusioned by the revelations from Abu Ghraib? Historically, torture has sometimes turned a public violently against the policies of their government. For instance, "it was the very use of torture that in the end convinced most French people that the cause of Algérie-Française was not worth the enormous strain that it was placing on the societal fabric."³⁷ But this has not (or not yet) occurred in the United States. Why not? One possible answer is that the American public is prepared to accept any conceivable treatment of Arabs, including the torture of innocents unto death, so long such behavior is presented to them as a response to 9/11. We are facing a "new enemy" and must throw the old rules overboard.

Abuse of prisoners has proven politically acceptable in the United States, on this theory, not because, although shameful, it is especially useful in the war on terror. The absence of any metrics

34 Interview with Secretary of State Colin Powell by Barry Schweid and George Gedda, September 10, 2004.

35 The United Nations Convention Against Torture and Other Inhuman and Degrading Acts, Article 2.2.

36 Mark Danner, "We are All Torturers Now," *New York Times* (January 7, 2005).

37 George J. Andreopoulos, "The Age of National Liberation Movements," Michael Howard, George J. Andreopoulos, Mark R. Shulman (eds.), *The Laws of War: Constraints on Warfare in the Western World* (New Haven: Yale University Press, 1994), p. 205.

of success or failure in the war on terror is by now a commonplace. So the utility of torture cannot, whatever administration lawyers want us to believe, be invoked in its defense. Instead, harsh and humiliating interrogation may have been embraced by the public because it is widely perceived as an “appropriate” response. The 9/11 hijackers violated an absolute prohibition. What possible reaction could be adequate to what they did? A response that trespasses on equally sacred ground.

The absolute prohibition against torture, according to this line of argument, was not a legalistic obstacle to be swept aside to achieve important strategic aims (such as the extraction of timely information about future threats). On the contrary, the absolute prohibition provides an independent reason for resorting to torture. Because it violates an absolute prohibition, torture sends a message that there is nothing the United States is not willing to do. This is fairly close to the message sent by the 9/11 attack itself. To respond in kind the United States had to engage in behavior that was as universally condemned as terrorism against civilians. Overthrowing the Taliban was widely approved and therefore could not serve to convey America’s audacity, ferocity, and readiness to throw away the rule book. Invading Iraq, a country that had nothing to do with 9/11, was a good start. But the inhumane and degrading treatment of randomly assembled prisoners was also very well suited to send this message.

Rules for the humane treatment of prisoners during wartime are based on expectations of reciprocity. One side treats its enemy captives humanely in the expectation that the enemy will treat its captive soldiers in the same way. This sort of reciprocity cannot be expected in the war on terror. Not only is al Qaeda not a “state party” to any of the international conventions concerning POWs. But al Qaeda is more of a network than an organization and is unlikely to have sufficient command-and-control powers to enforce any rules upon its far-flung and unruly operatives.

But if we cannot have this sort of civilized reciprocity with our new global enemy, what sort of reciprocity can we have? The answer is uncivilized reciprocity, and that means: a return to the original form of reciprocity, namely revenge. We can respond to their lawlessness with our own lawlessness. If they have renounced the laws of civilization, so will we. If they organized a sneak attack, then we will respond with a dirty war. If they terrorized us, we will terrorize them. If they symbolically humiliated us, we will symbolically humiliate them. If they desecrated our skyline, we will desecrate theirs. If they gloated about our dead, we will smile over their cadavers packed in ice. If they killed randomly assembled civilians, we will do the same in response. If they showed the world that their young warriors were willing to die for their cause, we will show the world that our young warriors are willing to do the same.

This attempt to explain America’s anomalous torture policy is obviously speculative. The suggestion that torture has proved publicly acceptable because it is widely seen as a form of primitive reciprocity or “equivalent” response is no doubt difficult to prove. But it nevertheless seems a profitable line of research. A similar hypothesis about the motives behind administration policy is advanced by William Pfaff. He claims that “the Bush administration is not torturing prisoners because it is useful but because of symbolism,”³⁸ not because of the information that torture reveals, but because of the message that torture sends. Twenty years ago, Elaine Scarry provided slightly different, but perfectly compatible, view of the subject, arguing that “torture is a grotesque piece of compensatory drama,”³⁹ meaning that the brutal treatment of defenseless prisoners is common not because it provides vital clues but rather because it allows the torturing individuals or groups to see their own power mirrored in the torment of those they torture. It is the kind of behavior to be expected when people need to reassure themselves about their dominance after it has been called into question: “It

38 William Pfaff, “The Truth about Torture,” *The American Conservative* (Feb. 14, 2005).

39 Elaine Scarry, *The Body in Pain* (Oxford University Press, 1985), p. 28.

is, of course, precisely because the reality of that power is so highly contestable, the regime is so unstable, that torture is being used.”⁴⁰

The claim that torture is meant to intimidate the victims’ community and reassure the community of the perpetrators cannot be easily verified or falsified. But it certainly makes more sense of the observable facts than the principal alternative, namely that torture was employed and has proved acceptable because of its utility in extracting information necessary to prevent future calamities.... As the violation of an absolute prohibition, torture sends a message about American determination, ruthlessness, and willingness to act without asking permission or making excuses. By defying civilized conventions, the torturing authority shows its public, in an eye-catching way, that it is leaving no stone unturned. How else could it get this message across? But the underlying logic may even be less rational than this makes it seem. It is at least conceivable that the defenders of torture embrace the practice because they themselves have no other way to measure success in the war on terror. They may not know what works, but they know that torture shocks the conscience of mankind and may therefore infer that it is a fitting response to 9/11.

If this interpretation has any validity, then torture is not undertaken and accepted because it prevents specific harms. It is undertaken and accepted, rather, because it seems “adequate” to the harm that was done to us. An extreme injury requires an extreme remedy. George W. Bush may even have been re-elected, in part, because he was widely perceived as having fewer scruples than his opponent and therefore as being more willing to give the terrorists a taste of their own medicine. With their brows furrowed over Vietnam, Democrats risk making Americans feel guilty about defending themselves ferociously in an increasingly dangerous world. Not so the Republicans. They are uninhibited and single-minded. They know how a sheriff must behave in the lawless frontier. They

will not be hamstrung by legalisms or the opinion of other nations.... They want to respond with appropriate ferocity to 9/11, interpret illegality as evidence of ferocity, and are seemingly untroubled by the thought that the vast majority of those being mistreated by the United States had nothing to do with the attack....

In explaining the greatest danger of anti-Communism, George Kennan wrote, in an often cited passage, that:

something may occur in our own minds and souls which will make us no longer like the persons by whose efforts this republic was founded and held together, but rather like representatives of that very power we are trying to combat: intolerant, secretive, suspicious, cruel, and terrified of internal dissension because we have lost our own belief in ourselves and in the power of our ideals. The worst thing that our Communists could do to us, and the thing we have most to fear from their activities, is that we should become like them.⁴¹

Many commentators have stressed the continued relevance of this warning to the war on terror. We must beware of modeling ourselves on our mortal foes. What makes this danger loom so large today is well explained by the Israeli military historian and theorist, Martin van Creveld: “War being among the most imitative of all human activities, the very process of combating low-intensity conflict will cause both sides to become alike, unless it can be brought to a quick end.”⁴² Wartime’s logic of imitation should perhaps make the United States rethink its hasty description of 9/11 as an act of war rather than a particularly atrocious crime in a serial crime spree.

By designing counter-terrorism in the image of terrorism, by answering terrorism with torture, the American government and electorate may experience a temporary feeling of adequacy to an

40 Ibid., p. 27.

41 George F. Kennan, “Where Do You Stand on Communism?” *New York Times Magazine* (May 27, 1951).

42 Martin van Creveld, *The Transformation of War* (New York: Free Press, 1991), p. 225.

obscure and unparalleled threat. But the ultimate effect on American political culture may resemble defeat more than victory. This is true even if the United States, by some miracle, prevails in a military sense. The story of the 9/11 hijackers reveals how a powerful psychological bond can be created among people who act together to commit an appalling crime. It would not be surprising if

U.S. interrogators in Abu Ghraib and Guantanamo Bay felt linked by a similar emotional bond. The United States will certainly lose the moral dimension of its war on terror if it continues to build its sense of national solidarity around pride and pleasure at flouting the civilized norms that limit the way jailers treat defenseless prisoners of unknown guilt, who fall by chance into their hands.

On Humanitarian Interventions

The post-Cold War era also included the continuation of a debate that arose in the aftermath of the Cold War, regarding the necessity and legitimacy of humanitarian intervention as a means to promote human rights and prevent atrocities. The Bush administration offered a human rights rationale alongside security arguments when defending the 2003 invasion of Iraq. Former journalist and Harvard scholar Samantha Power strongly endorsed intervention in "Raising the Cost of Genocide" (2002). Having analyzed Western inaction in the face of genocide since the Turkish massacre of the Armenians in 1915, she questioned why, more than half a century after the passing of the Genocide Convention, the U.S. administration stood aside as mass atrocities were committed in Bosnia and Rwanda. "Although U.S. officials have sometimes expressed remorse after genocide, none fear professional accountability for their sins of omission," Power pointed out. While acknowledging growing concerns over the costs of U.S. interventionism since September 11 and despite appeals for more isolationism, Power maintains that American leadership is essential for mobilizing international responses to genocide, and that such intervention ultimately contributes to peace and security. "Citizens victimized by genocide or abandoned by the international community," she observed, "do not make good neighbors" (see Section 12.5).

Canadian scholar Michael Ignatieff shared Power's concerns. In his *New York Times* article, "The Burden" (2003), Ignatieff acknowledged the imperial dimension of the United States' willingness to contemplate "regime change" in various countries. Yet to those who reject all such interventions in moral terms, he asked rhetorically: "What moral authority rests with a sovereign who murders and ethnically cleanses his own people?" Overthrowing a tyrannical regime may well be the politics of the lesser evil if the outcome of intervention means the freedom of Kosovars, Afghans, and Iraqis, Ignatieff maintained against the arguments for inaction of both liberals and right-wing isolationists. Regardless of the inevitably mixed motives of the intervening states in these cases, he contends, they were right to act against murderous regimes (see Section 12.6).

British historian Eric Hobsbawm rejected such a human rights rationale for what he characterized as a quixotic and dangerous U.S. foreign policy. It is dangerous, Hobsbawm claimed, because it presupposes that "the rhetoric surrounding this crusade implies that the system is applicable in a standardized (Western) form." Moreover, even if the tactics of great powers may have morally or politically desirable consequences, their methods produce barbarism, thereby threatening the integrity of universal rights. Finally, it is dangerous because such actions convey to those who do not enjoy freedom that electoral democracy necessarily ensures effective freedom of the press, citizen rights, and an independent judiciary (see Section 12.7).

Micheline Ishay looks to move beyond these debates in "Debating Globalization and Intervention: Spartacists versus Caesarists" (2006). She distinguishes between "Spartacists," who share an anti-authoritarian, anti-imperialist, and often isolationist view, and "Caesarists," who believe the world order can only be maintained through the active intervention of a hegemonic United States. Most

Spartacists are highly critical of unfettered economic globalization, itself sanctioned by U.S. hegemonic influence in cultural, political, and military realms. The Caesarist worldview, by contrast, maintains that in a world of terrorism, rampant nationalism, civil wars, and proliferating mass destruction weapons, the U.S. must actively counter international dangers driven by fundamentalist groups or authoritarian regimes. The only alternative for weaker states, Caesarists believe, is to remain within the orbit of U.S. influence, where they will ultimately enjoy economic and human rights benefits. Ishay seeks to reconcile the best arguments from each camp, paving the way toward a more integrated and effective human rights approach to globalization, humanitarian intervention, and nation building (see Section 12.8).

In 2005, the United Nations recognized the Responsibility to Protect (R2P) as an obligation shared by all member states. Each nation must protect its own residents, but at the same time: “the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means ... to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.” These protective responsibilities must be carried out in a timely and decisive way in order to prevent atrocities (see Section 12.9). While the intent of the resolution is laudable, there are reasons to question its effectiveness in practice. In the continuous civil wars in Libya, Syria, and Yemen, or the genocidal catastrophes in Sri Lanka and Myanmar, all three pillars of R2P (domestic protection, international protection, and timely response) collapsed.

As Michael Walzer maintains, however, even decisive action in the name of humanitarianism is not always vindicated by history. In “The Aftermath of War,” the distinguished American political theorist introduces the concept of *jus post bellum*, a postwar assessment not typically included in Just War Theory. “*Post bellum* justice is independent of *ad bellum* and *in bello* justice,” Walzer explains, “in the same way as these latter two are independent of each other. An unjust war can lead to a just outcome, and a just war can lead to an unjust outcome.” The most just outcome – the basic criterion of *jus post bellum* – is the preservation of life and a minimal standard of social justice: “the creation of a safe and decent society” (see Section 12.10).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 5.

12.5 Samantha Power: “Raising the Cost of Genocide” (2002)⁴³

Raphael Lemkin, a Polish jurist who lost forty-nine members of his family in the Holocaust, invented the word “genocide” in 1944 because he believed that, in the aftermath of the Turkish “race murder” of the Armenians and of Hitler’s extermination campaign against the Jews, the world’s “civilized” powers needed to band together to outlaw crimes that were said to “shock the conscience.” Prior to Lemkin’s coinage, the systematic targeting of national, ethnic, or religious groups was known as “barbarity,” a word that Lemkin believed failed to convey the unique horror of the crime. “Genocide,” he hoped, would send shudders down the spines

of those who heard it and oblige them to prevent, punish, and even suppress the carnage.

An amateur historian of mass slaughter from medieval times to the twentieth century, Lemkin knew that genocide would continue to occur with “biological regularity.” Moreover, he knew from reviewing the recent past that if it were left to political leaders to decide how to respond, they would inevitably privilege their short-term interests over both the moral imperative of stopping genocide and the long-term consequences of ignoring it.

In 1948, largely on Lemkin’s prodding, the UN General Assembly unanimously passed the United Nations’ first-ever human rights treaty, the Genocide Convention, which required signatories “to undertake to prevent and punish”

43 Samantha Power, “Raising the Cost of Genocide,” *Dissent* (Spring 2002), 85–95.

genocide. The Convention's language was vague on precisely how the UN member states would meet their obligations, making no mention of military intervention and trusting that domestic prosecution of future "genocidists" would deter massacres. Still, the lively debates over ratification that occurred in national legislatures testified to the seriousness with which delegates believed they were committing their country's resources and prestige to banning targeted slaughter.

More than a half century has passed since the Genocide Convention came into effect, and genocide has proceeded virtually unabated. Press coverage of the atrocities has generated outrage, but it has generally been insufficient to prompt Western action. As the 1990s showed, particularly in the reactions of the United States and Europe to carnage in Yugoslavia and Rwanda (the scene, in 1994, of the fastest and most efficient genocidal campaign of the twentieth century), Western countries replicated the pattern established in their earlier responses to the rise and domination of Hitler — long after they had supposedly internalized the "lessons of the Holocaust." ...

With the end of the cold war and the apparent rebirth of the UN (aided by the obsolescence of the superpower veto), one might have expected a greater readiness to prevent genocide. But the pattern of nonintervention established in 1915 proved durable...

Nearly a century after the "race murder" of the Armenians and more than a half century after the liberation of the Nazi death camps, the crucial question is, why do decent men and women who firmly believe genocide should "never again" be permitted allow it to happen? The most typical response throughout the twentieth century was, "We didn't know." But this is simply untrue. To be sure, the information emanating from countries victimized by genocide was imperfect. Embassy personnel were withdrawn, intelligence assets on the ground were scarce, editors were typically reluctant to assign their reporters to places where neither Western interests nor Western readers were engaged, and journalists who attempted to report the atrocities were limited in their mobility. As a result, refugee claims were difficult to confirm and

body counts notoriously hard to establish. Because genocide is usually veiled beneath the cover of war, when the killing began, some Western officials had genuine difficulty initially distinguishing genocide from conventional conflict.

But although Western governments did not know all there was to know about the nature and scale of the violence, they knew plenty. Well-connected ambassadors and junior intelligence analysts pumped a steady stream of information up the chain to senior decision makers — both early warnings ahead of genocide and vivid documentation during it. Much of the best intelligence appeared in the morning papers. Back in 1915, when communications were far more primitive, the *New York Times* managed 145 stories about the Turkish massacre of Armenians. During the Holocaust, though stories on the extermination of the Jews were not given anywhere near the prominence they warranted, they did regularly appear. In 1994, the *Times* reported just four days after the beginning of the Rwanda genocide that "tens of thousands" of Rwandans had already been murdered. It devoted more column inches to the horrors of Bosnia between 1992 and 1995 than it did to any other single foreign story...

The second consoling response usually offered to the question of why the major powers did so little to stop genocide is that any intervention would have been futile. Each time states began slaughtering and deporting their citizens, Western officials claimed that the proposed measures would do little to stem the horrors, or that they would do more harm than good. Usually they cited this lack of capacity to ameliorate suffering as a central reason for staying uninvolved. If the hatreds were "age-old" and "two-sided," as was usually claimed, and if the "parties" had in fact been killing one another "for centuries," the implication was that they would kill one another for centuries more. Thus, there was little a well-meaning band of foreign do-gooders could achieve by meddling.

It is difficult, in retrospect, to ascertain what a determined diplomatic, economic, legal, or military intervention could have achieved or what it would have cost. All we do know is that the perpetrators of genocide were quick studies who were remarkably

attuned both to the tactics of their predecessors and to the world's response. From their brutal forerunners, they picked up lessons in everything from dehumanizing their victims and deploying euphemisms to constructing concentration camps and covering their tracks. And from the outside world, they learned the lesson of impunity. The Turkish minister of the interior, Talaat Pasha, was aware that Sultan Abdul Hamid II had gotten away with murdering Armenians in 1895. In 1939 Hitler was emboldened by the fact that absolutely nobody "remembered the Armenians." Saddam Hussein noted the international community's relaxed response to his chemical weapons attacks against Iran and his bulldozing of Kurdish villages.... But because the killers told themselves they were doing the world a favor by "cleansing" the "undesirables," some surely interpreted silence as consent or even support....

The real reason the United States and the European states did not do what they could and should have done to stop genocide was not a lack of knowledge or a lack of capacity, but a lack of will. Simply put, Western leaders did not act because they did not want to....

To understand why the United States did not do more to stem genocide, of course, it is not enough to focus on the actions of American presidents or their foreign-policy teams. In a democracy, even an administration disinclined to act can be pressured into doing so. This pressure can come from inside and outside. Bureaucrats within the system who grasp the stakes can patiently lobby or brazenly agitate in the hope of forcing their bosses to entertain a full range of options. Unfortunately, while every genocide generated some activism within the U.S. foreign-policy establishment, U.S. civil and foreign servants typically heeded what they took to be presidential indifference and public apathy. They assumed U.S. policy was immutable, that their concerns were already understood by their bosses, and that speaking (or walking) out would only reduce their capacity to improve the policy.

But the main reason American leaders can persist in turning away is that genocide in distant lands has not captivated American Senators, congressional caucuses, Washington lobbyists, elite

opinion shapers, grassroots groups, and individual constituents. The battle to stop genocide has thus been repeatedly lost in the realm of domestic politics. Although isolated voices have protested the atrocities, Americans outside the executive branch were largely mute when it mattered. As a result of this society-wide silence, officials at all levels of government calculated that the political costs of getting involved in genocide prevention far exceeded the costs of remaining uninvolved.

Here, the exception that proved the rule was the NATO air campaign in Bosnia. Bosnia was the only genocide of the twentieth century that generated a wave of resignations from the U.S. government. It is probably not coincidental that this was the one case where the protests of American officials in the foreign service were legitimated daily by sustained public and press activism outside Foggy Bottom. NATO intervened with a heavy barrage of bombing in August 1995, when its assessment of the costs of intervening was lowered by the Croatian Army's rout of Serb forces, and when its assessment of the costs of *not* intervening was raised by the U.S. Congress's vote to unilaterally lift the arms embargo against the Bosnian Muslims. The lifting of the embargo embarrassed Clinton at home because foreign policy was being made on Capitol Hill by a future presidential challenger, Senate Majority Leader Bob Dole. It also made it likely that European governments were going to pull their peacekeepers out of the Balkans, which would have required U.S. troop participation in a potentially bloody and certainly humiliating rescue mission. This scenario was one that President Clinton wanted to avoid on the eve of his bid for reelection.

With foreign policy crises all over the world implicating more traditional U.S. interests, the slaughter of civilians will rarely secure top-level attention on its own merits....

Although U.S. officials have sometimes expressed remorse after genocide, none fear professional accountability for their sins of omission....

Other countries and institutions whose personnel were actually present when genocide was committed have been forced to be more introspective. The Netherlands, France, and the UN

have each staged inquiries into their responsibility for the fall of Srebrenica and the massacres that followed. The inquiries did not lead to any notable political reforms, but they at least “named names,” which might affect the behavior of bureaucrats the next time around. The United States has not looked back. When the UN’s Srebrenica investigators approached the U.S. mission in New York for assistance, their phone calls were not returned. In the end, the UN team was forbidden from making any independent contact with U.S. government employees. The investigators were granted access to a group of hand-picked junior and mid-level officials who knew or revealed next to nothing about what the United States knew during the Srebrenica slaughter.

The French, the Belgians, the UN, and the Organization for African Unity have undertaken investigations on the Rwanda genocide. But in the United States, when Cynthia McKinney and Donald Payne, two disgruntled members of the Congressional Black Caucus (which was itself quiet during the 1994 massacres), attempted to stage hearings on the U.S. role, they were rebuffed. Two officials in the Clinton administration, one at the National Security Council, the other at the State Department, conducted internal studies on the administration’s response to the Rwanda genocide. But they examined only the paper trail and did not publicly disclose their findings. What is needed are congressional inquiries with the power to subpoena documents and U.S. officials of all ranks and roles in the executive and legislative branches. Without meaningful disclosure, public awareness, and official shame, it is hard to imagine the U.S. response improving the next time around.

The September 11, 2001, attacks on the United States may have permanently altered U.S. foreign policy. The hope is that the attacks will make Americans inside and outside government more capable of imagining evil committed against innocent civilians. The fanatics targeting America resemble the perpetrators of genocide in their espousal of collective responsibility of the most savage kind. They attack civilians not because of anything the unwitting targets do personally, but because of who they are. To earn a death sentence,

it was enough in the last century to be an Armenian, a Jew, or a Tutsi. On September 11, it was enough to be an American. Instead of causing Americans to retreat from global humanitarian engagement, the terrorist attacks could cause us to empathize with peoples victimized by genocide. In 1994, Rwanda, a country of eight million, experienced the equivalent of more than two World Trade Center attacks every single day for a hundred days. This was the proportional equivalent of two hundred and thirty thousand Americans killed each day, or twenty-three million Americans murdered in three months. When, on September 12, 2001, the United States turned for help to America’s allies around the world, Americans were gratified by the overwhelming response. When the Tutsi cried out, by contrast, every country in the world turned away.

The fear, after September 11, is that the United States will view genocide prevention as a luxury it cannot afford as it sets out to better protect Americans. Some are now arguing, understandably, that fighting terrorism requires husbanding America’s resources and avoiding “social work” such as humanitarian intervention, which is said to harm U.S. “readiness.” Many believe that NATO’s 1999 intervention in Kosovo and the current trial of Serbian president Slobodan Milosevic, which were once thought to mark important precedents, will in fact represent high-water marks for genocide prevention and punishment.

Without U.S. leadership, the last century showed, others will be unwilling to step forward to act, and genocide will continue. If the United States treats the war on terrorism as a war that can be prosecuted in a vacuum, with no regard for *genocidal* terror, it will be making a colossal mistake. There are two main reasons that the United States and its European allies should stop genocide. The first and most convincing reason is moral. When innocent life is being taken on such a scale and the United States and its allies have the power to stop the killing at reasonable risk, they have a duty to act. It is this belief that motivates most of those who seek intervention. But foreign policy is not driven by morality; it is driven by interests, narrowly defined. And history has shown that the suffering of

victims has rarely been sufficient to spark a Western intervention.

The second reason for acting is the threat genocide in fact does pose to Western interests. Allowing genocide undermines regional and international stability, creates militarized refugees, and signals dictators that hate and murder are permissible tools of statecraft. Because these dangers to national interests are long-term dangers and not immediately apparent, however, they have rarely convinced top Western policy makers. Genocide has undermined regional stability, but the regions the conflicts destabilized tended also to lie outside the U.S. and European spheres of concern. Refugees have been militarized, but they tended not to wash up on America's shores. A key reason European leaders were more engaged in the Balkans in the 1990s than their American counterparts was that Bosnian refugees did land in Britain, France, and Germany. But generally dictators recognized that, provided the spillover costs were contained locally, their treatment of their own citizens would have little impact on Western leaders' perception of their country's military or economic security. Thus intervention only came about on the rare occasions when the shorter-term political interests of Western policy makers were triggered.

American leadership remains essential for mobilizing local, regional, and international responses to genocide. But if it was difficult before September 11 to get U.S. decision makers to see the long-term costs of allowing genocide, it will be even harder today when U.S. security needs are so acute....

Citizens victimized by genocide or abandoned by the international community do not make good neighbors, as their thirst for vengeance, their irredentism, and their acceptance of violence as a means of generating change can turn them into future threats. In Bosnia, where the United States and Europe maintained an arms embargo against the Muslims, extremist Islamic fighters and proselytizers eventually turned up to offer succor. Some secular Muslim citizens became radicalized by the partnership, and the failed state of Bosnia became a haven for Islamic terrorists shunned

elsewhere in the world. It appears that one of the organizations that infiltrated Bosnia in its hour of need and used it as a training base was Osama bin Laden's al-Qaeda. And however high the number of Islamic radicals that were imported during or created by the Serb slaughter of Bosnia's Muslims, the figure would have been exponentially higher if the United States and its allies had allowed the killing to continue past 1995. The current Bosnian government, one legacy of the U.S.-brokered Dayton Peace Agreement, is far from perfect, but it is at least a strategic partner in the war against terrorism. Without NATO bombing and U.S. diplomatic leadership, that same Bosnian government might today be an American foe....

Instead of regarding intervention as an all-or-nothing proposition, the United States and its allies should respond to genocide by publicly identifying and threatening its perpetrators with prosecution, demanding the expulsion of representatives of genocidal regimes from international institutions such as the United Nations, closing the perpetrators' embassies in Western capitals, and calling upon countries aligned with the perpetrators to ask them to use their influence. Depending on the circumstances, Western powers might establish economic sanctions or freeze foreign assets, impose an arms embargo, or, if warranted, lift an arms embargo. They might use their technical resources to jam inflammatory radio or television broadcasts that are essential to propaganda, panic, and hate. They might set up safe areas to house refugees and civilians, and enforce them with well-armed and robustly mandated peacekeepers, air power, or both.

Genocide prevention is an immense burden and one that must be shared. But even if U.S. troops stay home, American leadership will be indispensable in assembling "coalitions of the willing" to deploy ground troops, in encouraging U.S. allies to step up their capacities, and in strengthening regional and international institutions that might eventually carry more of the weight.

For most of the second half of the twentieth century, the existence of the Genocide Convention appeared to achieve little. The United States did not

ratify the Convention for forty years. Those countries that did ratify it never invoked it to stop or punish genocide. And instead of making Western policy makers more inclined to stop genocide, ratification seemed only to make them more reluctant to use the “g-word.” Still, Lemkin’s coinage has done more good than harm. It is unlikely that the international tribunals for the former Yugoslavia and Rwanda or the future International Criminal Court would have come into existence without the Convention’s passage. The punishment that takes place at these courts will help deter genocide in the long term. But more fundamentally, without the existence of the Convention, or Lemkin’s proselytizing around it, the word genocide would not carry the moral stigma it has acquired. Hope for enforcement of the Genocide Convention lies in the stigma associated with committing *and allowing* the crime of genocide — and paradoxically in the lengths to which Western policy makers have gone to vow never again to allow genocide and the comparable lengths to which they have gone, while allowing it, to deny its occurrence.

Because it is unlikely that Western leaders will have the vision to recognize that they endanger their countries’ long-term vital national interests by allowing genocide, the most realistic hope for combating it lies in the rest of us creating short-term political costs for those who do nothing.

12.6 Michael Ignatieff: “The Burden” (2003)⁴⁴

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Even at this late date, it is still possible to ask: Why should a republic take on the risks of empire? Won’t it run a chance of endangering its identity as a free people? The problem is that this implies innocent options that in the case of Iraq may no longer exist. Iraq is not just about whether the United States can retain its republican virtue in a wicked world. Virtuous disengagement is no longer

a possibility. Since Sept. 11, it has been about whether the republic can survive in safety at home without imperial policing abroad. Face to face with “evil empires” of the past, the republic reluctantly accepted a division of the world based on mutually assured destruction. But now it faces much less stable and reliable opponents — rogue states like Iraq and North Korea with the potential to supply weapons of mass destruction to a terrorist internationale. Iraq represents the first in a series of struggles to contain the proliferation of weapons of mass destruction, the first attempt to shut off the potential supply of lethal technologies to a global terrorist network.

Containment rather than war would be the better course, but the Bush administration seems to have concluded that containment has reached its limits — and the conclusion is not unreasonable. Containment is not designed to stop production of sarin, VX nerve gas, anthrax and nuclear weapons. Threatened retaliation might deter Saddam from using these weapons, but his continued development of them increases his capacity to intimidate and deter others, including the United States. Already his weapons have sharply raised the cost of any invasion, and as time goes by this could become prohibitive. The possibility that North Korea might quickly develop weapons of mass destruction makes regime change on the Korean peninsula all but unthinkable. Weapons of mass destruction would render Saddam the master of a region that, because it has so much of the world’s proven oil reserves, makes it what a military strategist would call the empire’s center of gravity.

Iraq may claim to have ceased manufacturing these weapons after 1991, but these claims remain unconvincing, because inspectors found evidence of activity after that date. So what to do? Efforts to embargo and sanction the regime have hurt only the Iraqi people. What is left? An inspections program, even a permanent one, might slow the dictator’s weapons programs down, but inspections are easily

44 Michael Ignatieff, “The Burden,” *New York Times Magazine* (January 5, 2003).

evaded. That leaves us, but only as a reluctant last resort, with regime change.

Regime change is an imperial task par excellence, since it assumes that the empire's interest has a right to trump the sovereignty of a state. The Bush administration would ask, What moral authority rests with a sovereign who murders and ethnically cleanses his own people, has twice invaded neighboring countries and usurps his people's wealth in order to build palaces and lethal weapons? And the administration is not alone. Not even Kofi Annan, the secretary general, charged with defending the United Nations Charter, says that sovereignty confers impunity for such crimes, though he has made it clear he would prefer to leave a disarmed Saddam in power rather than risk the conflagration of war to unseat him.

Regime change also raises the difficult question for Americans of whether their own freedom entails a duty to defend the freedom of others beyond their borders. The precedents here are inconclusive. Just because Wilson and Roosevelt sent Americans to fight and die for freedom in Europe and Asia doesn't mean their successors are committed to this duty everywhere and forever. The war in Vietnam was sold to a skeptical American public as another battle for freedom, and it led the republic into defeat and disgrace.

Yet it remains a fact — as disagreeable to those left wingers who regard American imperialism as the root of all evil as it is to the right-wing isolationists, who believe that the world beyond our shores is none of our business — that there are many peoples who owe their freedom to an exercise of American military power. It's not just the Japanese and the Germans, who became democrats under the watchful eye of Generals MacArthur and Clay. There are the Bosnians, whose nation survived because American air power and diplomacy forced an end to a war the Europeans couldn't stop. There are the Kosovars, who would still be imprisoned in Serbia if not for Gen. Wesley Clark and the Air Force. The list of people whose freedom depends on American air and ground power also includes the Afghans and, most inconveniently of all, the Iraqis.

The moral evaluation of empire gets complicated when one of its benefits might

be freedom for the oppressed. Iraqi exiles are adamant: even if the Iraqi people might be the immediate victims of an American attack, they would also be its ultimate beneficiaries. It would make the case for military intervention easier, of course, if the Iraqi exiles cut a more impressive figure. They feud and squabble and hate one another nearly as much as they hate Saddam. But what else is to be expected from a political culture pulverized by 40 years of state terror?

If only invasion, and not containment, can build democracy in Iraq, then the question becomes whether the Bush administration actually has any real intention of doing so. The exiles fear that a mere change of regime, a coup in which one Baathist thug replaces another, would suit American interests just as well, provided the thug complied with the interests of the Pentagon and American oil companies. Whenever it has exerted power overseas, America has never been sure whether it values stability — which means not only political stability but also the steady, profitable flow of goods and raw materials — more than it values its own rhetoric about democracy. Where the two values have collided, American power has come down heavily on the side of stability, for example, toppling democratically elected leaders from Mossadegh in Iran to Allende in Chile. Iraq is yet another test of this choice. Next door in Iran, from the 1950's to the 1970's, America backed stability over democracy, propping up the autocratic rule of the shah, only to reap the whirlwind of an Islamic fundamentalist revolution in 1979 that delivered neither stability nor real democracy. Does the same fate await an American operation in Iraq?

International human rights groups, like Amnesty International, are dismayed at the way both the British government of Tony Blair and the Bush administration are citing the human rights abuses of Saddam to defend the idea of regime change. Certainly the British and the American governments maintained a complicit and dishonorable silence when Saddam gassed the Kurds in 1988. Yet now that the two governments are taking decisive action, human rights groups seem

more outraged by the prospect of action than they are by the abuses they once denounced. The fact that states are both late and hypocritical in their adoption of human rights does not deprive them of the right to use force to defend them.

The disagreeable reality for those who believe in human rights is that there are some occasions — and Iraq may be one of them — when war is the only real remedy for regimes that live by terror. This does not mean the choice is morally unproblematic. The choice is one between two evils, between containing and leaving a tyrant in place and the targeted use of force, which will kill people but free a nation from the tyrant's grip.

VI

... For 50 years, Europe rebuilt itself economically while passing on the costs of its defense to the United States. This was a matter of more than just reducing its armed forces and the proportion of national income spent on the military. All Western European countries reduced the martial elements in their national identities. In the process, European identity (with the possible exception of Britain) became postmilitary and postnational. This opened a widening gap with the United States. It remained a nation in which flag, sacrifice and martial honor are central to national identity. Europeans who had once invented the idea of the martial nation-state now looked at American patriotism, the last example of the form, and no longer recognized it as anything but flag-waving extremism. The world's only empire was isolated, not just because it was the biggest power but also because it was the West's last military nation-state.

Sept. 11 rubbed in the lesson that global power is still measured by military capability. The Europeans discovered that they lacked the military instruments to be taken seriously and that their erstwhile defenders, the Americans, regarded them, in a moment of crisis, with suspicious contempt.

Yet the Americans cannot afford to create a global order all on their own. European participation in peacekeeping, nation-building and humanitarian reconstruction is so important that the Americans are required, even when they are unwilling to do so, to include Europeans in the governance of their evolving imperial project. The Americans essentially dictate Europe's place in this new grand design. The United States is multilateral when it wants to be, unilateral when it must be; and it enforces a new division of labor in which America does the fighting, the French, British and Germans do the police patrols in the border zones and the Dutch, Swiss and Scandinavians provide the humanitarian aid.

This is a very different picture of the world than the one entertained by liberal international lawyers and human rights activists who had hoped to see American power integrated into a transnational legal and economic order organized around the United Nations, the World Trade Organization, the International Criminal Court and other international human rights and environmental institutions and mechanisms. Successive American administrations have signed on to those pieces of the transnational legal order that suit their purposes (the World Trade Organization, for example) while ignoring or even sabotaging those parts (the International Criminal Court or the Kyoto Protocol) that do not. A new international order is emerging, but it is designed to suit American imperial objectives. America's allies want a multilateral order that will essentially constrain American power. But the empire will not be tied down like Gulliver with a thousand legal strings.

12.7 Eric Hobsbawm: "Spreading Democracy" (2004)⁴⁵

We are at present engaged in what purports to be a planned reordering of the world by the powerful states. The wars in Iraq and Afghanistan are but one part of a supposedly universal effort to create world order by "spreading democracy." This idea is not merely quixotic — it is dangerous. The rhetoric

45 Eric Hobsbawm, "Spreading Democracy," *Foreign Policy*, 144 (Sept/Oct 2004), 40–41.

surrounding this crusade implies that the system is applicable in a standardized (Western) form, that it can succeed everywhere, that it can remedy today's transnational dilemmas, and that it can bring peace, rather than sow disorder. It cannot.

Democracy is rightly popular. In 1647, the English Levellers broadcast the powerful idea that "all government is in the free consent of the people." They meant votes for all. Of course, universal suffrage does not guarantee any particular political result, and elections cannot even ensure their own perpetuation — witness the Weimar Republic. Electoral democracy is also unlikely to produce outcomes convenient to hegemonic or imperial powers. (If the Iraq war had depended on the freely expressed consent of "the world community," it would not have happened.) But these uncertainties do not diminish the appeal of electoral democracy.

Several other factors besides democracy's popularity explain the dangerous and illusory belief that its propagation by foreign armies might actually be feasible. Globalization suggests that human affairs are evolving toward a universal pattern. If gas stations, iPods, and computer geeks are the same worldwide, why not political institutions? This view underrates the world's complexity. The relapse into bloodshed and anarchy that has occurred so visibly in much of the world has also made the idea of spreading a new order more attractive. The Balkans seemed to show that areas of turmoil and humanitarian catastrophe required the intervention, military if need be, of strong and stable states. In the absence of effective international governance, some humanitarians are still ready to support a world order imposed by U.S. power. But one should always be suspicious when military powers claim to be doing favors for their victims and the world by defeating and occupying weaker states.

Yet another factor may be the most important: The United States has been ready with the necessary combination of megalomania and messianism, derived from its revolutionary origins. Today's United States is unchallengeable in its techno-military supremacy, convinced of the

superiority of its social system, and, since 1989, no longer reminded — as even the greatest conquering empires always had been — that its material power has limits. Like President Woodrow Wilson (a spectacular international failure in his day), today's ideologues see a model society already at work in the United States: a combination of law, liberal freedoms, competitive private enterprise, and regular, contested elections with universal suffrage. All that remains is to remake the world in the image of this "free society."

This idea is dangerous whistling in the dark. Although great power action may have morally or politically desirable consequences, identifying with it is perilous because the logic and methods of state action are not those of universal rights. All established states put their own interests first. If they have the power, and the end is considered sufficiently vital, states justify the means of achieving it (though rarely in public) — particularly when they think God is on their side. Both good and evil empires have produced the barbarization of our era, to which the "war against terror" has now contributed.

While threatening the integrity of universal values, the campaign to spread democracy will not succeed. The 20th century demonstrated that states could not simply remake the world or abbreviate historical transformations. Nor can they easily effect social change by transferring institutions across borders. Even within the ranks of territorial nation-states, the conditions for effective democratic government are rare: an existing state enjoying legitimacy, consent, and the ability to mediate conflicts between domestic groups. Without such consensus, there is no single sovereign people and therefore no legitimacy for arithmetical majorities. When this consensus — be it religious, ethnic, or both — is absent, democracy has been suspended (as is the case with democratic institutions in Northern Ireland), the state has split (as in Czechoslovakia), or society has descended into permanent civil war (as in Sri Lanka). "Spreading democracy" aggravated ethnic conflict and produced the disintegration of states in multinational and multicomunal regions after both 1918 and 1989, a bleak prospect.

Beyond its scant chance of success, the effort to spread standardized Western democracy also suffers from a fundamental paradox. In no small part, it is conceived of as a solution to the dangerous transnational problems of our day. A growing part of human life now occurs beyond the influence of voters — in transnational public and private entities that have no electorates, or at least no democratic ones. And electoral democracy cannot function effectively outside political units such as nation-states. The powerful states are therefore trying to spread a system that even they find inadequate to meet today's challenges.

Europe proves the point. A body like the European Union (EU) could develop into a powerful and effective structure precisely because it has no electorate other than a small number (albeit growing) of member governments. The EU would be nowhere without its “democratic deficit,” and there can be no future for its parliament, for there is no “European people,” only a collection of “member peoples,” less than half of whom bothered to vote in the 2004 EU parliamentary elections. “Europe” is now a functioning entity, but unlike the member states it enjoys no popular legitimacy or electoral authority. Unsurprisingly, problems arose as soon as the EU moved beyond negotiations between governments and became the subject of democratic campaigning in the member states.

The effort to spread democracy is also dangerous in a more indirect way: It conveys to those who do not enjoy this form of government the illusion that it actually governs those who do. But does it? We now know something about how the actual decisions to go to war in Iraq were taken in at least two states of unquestionable democratic bonafides: the United States and the United Kingdom. Other than creating complex problems of deceit and concealment, electoral democracy and representative assemblies had little to do with that process. Decisions were taken among small groups of people in private, not very different

from the way they would have been taken in non-democratic countries. Fortunately, media independence could not be so easily circumvented in the United Kingdom. But it is not electoral democracy that necessarily ensures effective freedom of the press, citizen rights, and an independent judiciary.

12.8 Micheline Ishay: “Debating Globalization and Intervention: Spartacists versus Caesarists” (2005)⁴⁶

There was a time, not so long ago, when international politics witnessed a more unified universal human rights worldview. From the Dumbarton Oaks meeting to the San Francisco conference near the end of World War II, political leaders and activists across the globe conceived of a new international order, guided by the principles of the Universal Declaration of Human Rights, dedicated to global economic reconstruction and development, and enforced by a new international organization (the United Nations) under the leadership of the major victorious powers. Unfortunately, that vision has been challenged ever since, first by the events of the cold war, then by globalization, and now by the war on terror.

While the human rights community has hardly abandoned its myriad concerns, its pre-September 11 preoccupations have now been overshadowed by a searing divide over a central question: the human rights implications of America's global military campaign. For many on both sides of this debate, America is viewed in Manichean terms — either as a crucial entity for the worldwide advance of human rights or as an empire disposed to quash human rights in the pursuit of unlimited power.

Great power has always engendered resistance, and it may thus be appropriate to draw on the era of imperial Rome to shed light on the current schism. In that spirit, one side in the current debate might be labeled “Caesarists,” after the emperor who not only spread Greco-Roman civilization with ruthless force, but who also implemented new constitutions

46 Micheline Ishay, “Debating Globalization and Intervention: Spartacists Versus Caesarists,” Keynote Address, Conference on “Pathways to Reconciliation and Human Rights,” Sarajevo, Bosnia (August 19, 2005).

in conquered territories while extending the Roman vision of republican citizenship. I will call the other side in the debate “Spartacists,” after the Thracian gladiator Spartacus, leader of the famous rebellion of slaves against the rule of Caesar’s Rome.

Today’s Spartacists share an anti-authoritarian, anti-imperialist and often isolationist view. Most Spartacists are highly critical of unfettered economic globalization, sanctioned by US hegemonic influence in the cultural, political and military realms. When this influence is imperiled in places of critical geopolitical or economic importance, according to Spartacists, force is used to repress the “empire’s” perceived “outlaws.” In these circumstances, Spartacists argue, the message and institutional mechanisms of human rights are invoked as mere subterfuges to hide imperial self-interests, which often require replacing rogue regimes with more docile governments.

The Caesarist worldview, on the other hand, maintains that in a world of terrorism, rampant nationalism, civil wars and proliferating mass destruction weapons, the US is the only power able to counter international dangers driven by fundamentalist groups or authoritarian regimes. For weaker states, Caesarists argue, there is no alternative but to gravitate within the orbit of US influence, an outcome that will ultimately deliver economic and human rights benefits. As the US wages war against anti-democratic forces, it is accepted that trampling on civil rights and international conventions may be necessary means to achieve victory.

These two human rights worldviews crystallized as the Bush administration shed longstanding US commitments — at least in principle — to act within the constraints of international laws, norms and institutions. In that context, it is not surprising that debate increasingly centered on an assessment of the means and ends of American power rather than on impersonal forces like “globalization,” or on bypassed international organizations like the UN or NATO. As the Bush administration increasingly made human rights promotion the central rationale for its global agenda, the connection between rhetoric and reality became the focus of intense debate.

It is worth noting at the outset that the dispute over the human rights implications of American power transcends the ideological cleavage between “left” and “right” — as both groups experience bitter internal divisions over the means and ends of US foreign and “homeland security” policies. The following discussion treats “Caesarism” and “Spartacism” as Weberian “ideal types,” representing starkly opposed positions on the merits of globalization, humanitarian intervention and nation-building. Viewing consequential policy issues through these two different prisms can pave the way for a critical assessment of both, a necessary step toward a more integrated position on human rights.

Dueling over Globalization

Spartacists and Caesarists voice the position of two camps increasingly at odds with each other, each believing themselves to be the representative of the more authentic human rights position. On the issue of globalization, the Caesarists (exemplified by journalist and author Thomas Friedman) maintain that it is the absence — rather than the deepening — of free trade that accounts for pervasive poverty, and arguing that the benefits of trade require societies committed to accountable and transparent institutions. This position has been advanced by mainstream US politicians of both major political parties, who have supported free trade agreements (i.e., NAFTA and the WTO, etc.) without insisting on serious labor standards, professing along with other leaders like British Prime Minister Tony Blair and former advisor on German Economic Affairs, Hans Gerhard Petersmann, that expanded trade will ineluctably help universalize liberal notions of human rights.

By contrast, for the Spartacist grassroots activists of the world social forums, globalization has shaped a new imperial economic regime, one in which the IMF, WTO, and G-8 and other international institutions continue to reflect the self-interest of the wealthiest states. If anything, for Spartacists, globalization has produced a sinister reality: one in which labor rights have been

undercut and welfare policies scrapped; one in which bait and switch immigration policies shaped by elites in the privileged world have intensified the hardships suffered by refugees and immigrants fleeing from poverty, repression or war; one in which the poorest countries are getting poorer both in relative and absolute terms; and one in which environmental degradations driven by pollution and deforestation have endangered the livelihood of indigenous peoples. After September 11, these conflicting human rights positions over globalization intensified, turning into a broader debate over the legitimacy of American economic and military power.

Dueling over Humanitarian Interventions: The Sharpening of the Spartacist and Caesarist Positions

With the September 11 attack against America, humanitarian agencies, NGOs, academics and grassroots activists found themselves more intensely split than ever over the role of military intervention. Needless to say, international legal documents have hardly provided clear guidelines to human rights sympathizers. For instance, while the UN Charter had decreed the inviolability of sovereign states, the Convention Against Genocide permitted the indictment of individuals charged with crimes against humanity, thereby circumventing state authority. Further, over the years, the members of the UN Security Council failed to show the level of commitment to human rights envisioned by the founders of the UN and the international body consequently attracted the criticisms of human right supporters.

In the absence of consistent legal criteria and wavering UN policy regarding human rights, activists oscillated between Spartacist and Caesarist

impulses. As Spartacists, they criticized the unchallenged economic and military hegemony of the US, even as local acts of barbarism provoked thoughts of Caesarist solutions, including condemnations of the inaction of states in the face of human rights violations. Over time, however, these mixed sentiments over humanitarian interventions gradually gave way to a more dichotomized worldview, as early concerns over US inaction engendered the post-September 11 reality of global interventionism. These conflicted views were heightened by the invasions of Afghanistan and Iraq, and confrontational rhetoric aimed primarily at Iran and North Korea. To illuminate the role of humanitarian intervention in intensifying the Caesarist/Spartacist divide, it is worth briefly reviewing the background of post-Cold War intervention.

At first, it may well have been the specter of the Vietnam War that initially prevented the US and NATO from sending troops to prevent mass killings and genocide in Bosnia (1992–1995). In a sense, the Somali fiasco of 1993 had reignited the paralyzing “Vietnam syndrome,” seemingly laid to rest in Desert Storm, as attacks on UN troops inspired visions of new quagmires. American and European indifference toward mass suffering in Rwanda (1994) and Bosnia reignited interventionist sentiments among human rights sympathizers. With graphic coverage of rape camps and evidence of mass graves, the US, NATO and UN were now condemned for their insufficient political will. Amnesty International and Human Rights Watch, among other NGOs, Nobel Peace Prize laureate Elie Wiesel and the writer Susan Sontag, among many other public personalities, demanded action.⁴⁷ For many representatives of the human rights community, NATO intervention in Bosnia in 1995, which quickly halted the ongoing massacre, came far too late.

47 “The Fall of Srebrenica and the Failure of UN Peacekeeping,” *Human Rights Watch* 7, no. 13 (October 1995), <http://www.hrw.org/summaries/s.bosnia9510.html> (consulted November 8, 2006); Amnesty International, Carl Bildt, Opening Remarks by Mr. Carl Bildt, the High Representative, at the first meeting of the Human Rights Task Force, Brussels, January 29, 1996, <http://web.amnesty.org/library/Index/ENGEUR630141996?open&of=ENG-332> (consulted March 31, 2004); Susan Sontag, “Why Are We in Kosovo?” *New York Times Magazine*, May 2, 1999; Elie Wiesel, in “Interview with Elie Wiesel,” *Tikkun*, July/August 1999, p. 33.

By the time of the Rambouillet Conference, held in France in February 1999, to resolve the crisis in the Serb-controlled province of Kosovo, the human rights community was clearly divided over the prospect of another US-led NATO air campaign against the actions of Serb leader Slobodan Milosovic. Intervening on behalf of the Kosovars was a US and NATO “liberal imperialist adventure,” proclaimed British scholar Tariq Ali in *The Guardian*, giving voice to the Spartacist standpoint. Others reacted similarly, condemning the intervention as an aggressive action overriding international law and the sacrosanctity of sovereignty stipulated by the UN Charter.⁴⁸ For many human rights critics, air strikes in civilian areas were seen as barbarous acts, comparable to similar tactics used in Vietnam and World War II.⁴⁹ Whether the Kosovars would have faced genocide had Milosovic not been stopped, was a question that only a handful of prominent voices in the human rights community were prepared to ask.⁵⁰

The Caesarist camp won the day when force was used to prevent genocide. Their view was forcefully articulated by leaders like Clinton, who drew on the appeasement of Adolf Hitler in the 1930s to illustrate the need to intervene in Kosovo: “Just imagine if leaders back then had acted wisely and early enough, how many lives could have been saved, how many Americans would not have had to die?”⁵¹ 11,334 Albanians, murdered by Serbian forces, were later found buried in 529 sites in Kosovo alone, and despite the bombing of civilian sites, the campaign, one could well argue, had stopped the ethnic

cleansing and prevented thousands, if not hundreds of thousands, of civilian deaths.⁵² Strangely, it was American and European leaders — and not the Spartacist-dominated human rights community — who now appeared united behind an interventionist human rights stance. As US Secretary of State Madeleine Albright explained during the Kosovo intervention, the US was determined “never [to] fall back to complacency, or [to] presume that totalitarianism is forever dead, or retreat in the face of aggression.”⁵³

Such views were merely a means to camouflage the consolidation of US hegemony in military and economic affairs, claimed Spartacist protesters during repeated demonstrations throughout Europe against the military intervention in Kosovo, and in other mass protests at G-8 and IMF meetings. Yet the burgeoning anti-globalization and anti-intervention movement was soon silenced by the September 11, 2001, attacks on America. For a short time, given the horrendous acts committed by Al Qaeda, President Bush’s declaration that one must simply choose the American side in a global war had resonated broadly within the human rights community.

With the Afghan war well on its way, and building on the legacy of the Clinton administration, Bush struck a Caesarist human rights tone in a speech to West Point cadets: “In our development aid, in our diplomatic efforts, in our international broadcasting, and in our educational assistance, the United States will promote moderation and tolerance and human rights. And we

48 Editorial Comments, “NATO’s Kosovo Intervention,” *American Journal of International Law* 93, no. 4 (October 1999); Eqbal Ahmed, “The Controversy over Kosovo,” *Al-Ahram Weekly*, April 15–21, 1999; N. F. Bradshaw, “The Legality of NATO’s Attack on Serbia,” *Conflict Studies Research Centre* (Royal Military Academy, Sandhurst), 174 (1999), http://www.mpr.co.uk/scripts/sweb.dll/li_archive_item?method=GET&object=CSRC_174 (consulted November 8, 2006).

49 J. Bryan Hehir, “Kosovo: A War of Values and the Values of War,” *America* 180 (May 15, 1999): 7–12.

50 Samantha Power, *A Problem from Hell* (New York: Basic Books, 2002).

51 Quoted in *ibid.* p. 449.

52 *Ibid.*, 450.

53 Madeleine K. Albright, “Speech on the Occasion of the Accession of the Czech Republic, Hungary and Poland to the North Atlantic Treaty Organization at the Truman Presidential Library,” March 12, 1999, <http://www.mbk.org/php/index.php?name=News&file=article&sid=235> (consulted November 8, 2006).

will defend the peace that makes all progress possible.”⁵⁴ Unsurprisingly, Bush’s invocation of the right to self-defense as stipulated by international law to justify the US intervention in Afghanistan did not get the unqualified support of the human rights community. Indeed this view was rebuffed by some Spartacists who, like Dietmar Henning, claimed that “the continuous bombardment of an impoverished and defenseless country by the world’s most powerful military nation has clearly demonstrated that what is at stake is not a police action against a few terrorists. It has, rather, the makings of a classical colonial war, which has as its aim the military suppression of an entire region and the establishment of regimes that are willing to place themselves at the beck and call of the USA.”⁵⁵

When weapons of mass destruction were not found in occupied Iraq, casting doubt on the main original rationale for the US-led invasion, Bush, along with Blair and other leaders of the US-led coalition against Iraq, reiterated even more forcefully the human rights dimension of their Caesarist mission. “A democratic government in Iraq that truly cares for the welfare of its people would benefit not only Iraqis but the region and the whole world,” asserted US Deputy Secretary of Defense Paul Wolfowitz.⁵⁶ While the human rights justification for the intervention in Iraq became the lynchpin of the neo-conservative foreign policy platform, it was also supported by many liberal and leftist human rights activists, journalists and scholars (associated in the past with the Spartacist position), like Christopher Hitchens, Thomas Friedman, Niall Ferguson, and Michael Ignatieff, who regarded the

approaching war in Iraq as an opportunity — whatever the role of American geopolitical interests — to eradicate an oppressive and genocidal regime, which had, among other large-scale atrocities, executed approximately 100,000 Kurds, according to Human Rights Watch, in the months of February to September 1988 alone.⁵⁷

Yet most on the liberal to the left side of the Spartacist political spectrum did not agree with the conclusions of Hitchens and Ignatieff. The escalating confrontation between the Caesarists and Spartacists, reaching a zenith as the US prepared to attack Iraq, dramatized the extent to which the division over the US global role had supplanted old ideological differences over human rights. From US Governor Howard Dean, to many leftist European politicians, to scholars such as Chalmers Johnson and Noam Chomsky, the Spartacists were enraged by US policy toward Iraq. In the words of British historian Eric Hobsbawm, the question was “How is the world to confront — contain — the US? Some people, believing that they have not the power to confront the US, prefer to join it. More dangerous are those who hate the ideology behind the Pentagon, but support the US project on the grounds that it will eliminate some local and regional injustices. This may be called an imperialism of human rights.”⁵⁸ Just as the conservative Caesarists have attracted odd leftist bedfellows, Spartacist anti-war demonstrations were ironically joined by the nationalist right, including US politician and commentator Pat Buchanan, French leader of Le Front National Jean-Marie Le Pen, and Austrian political leader Georg Haider, who viewed the war in Iraq as “America’s war against civilization.”

54 President Bush delivers graduate speech at West Point, June 2002, The White House Papers, <http://www.whitehouse.gov/news/releases/2002/06/20020601-3.html> (consulted November 8, 2006); see also Paul Wolfowitz, “U.S. Dedicated to Liberation of Afghanistan,” speech delivered June 26, 2002, American Embassy, <http://www.globalsecurity.org/military/library/news/2002/06/mil-020626-usia04.htm> (consulted November 8, 2006)

55 Dietmar Henning, “German Green Party Supports War against Afghanistan,” October 19, 2001, World Socialist Web Site, <http://www.wsws.org/articles/2001/oct2001/gree-o19.shtml> (consulted November 8, 2006).

56 “Wolfowitz Says Democracy in Iraq Would Benefit Whole World,” July 17, 2002, http://www.usembassy.it/file2002_07/alia/a2071801.htm (consulted November 8, 2006).

57 Samantha Power, *op.cit.*, 244.

58 Eric Hobsbawm, “America’s Imperial Delusion,” *The Guardian*, June 15, 2003.

Dueling over Nation-Building

If war is an expected source of division, the issue of how to build a democratic culture in conflict-ridden civil societies also continues to confuse the human rights community. To what extent (if any) should the United States (and its Western allies) take the lead in directing nation-building?

For Caesarists, like best-selling author Niall Ferguson, the United States has been too long in denial of its imperial role, and must learn to take seriously its formidable responsibilities in the world. It is the only power, Ferguson maintains (with other like-minded Caesarists), that has the capacity to bring prosperity, peace and human rights to divided societies in an increasingly hostile world environment. The real problem is that the US, unlike its British predecessor, has lacked the will to make a long-term commitment to nation-building.⁵⁹

To leave only several thousand American troops centered around Kabul, as the US did after toppling the Taliban regime in Afghanistan, or to fail to halt gross human rights violations in Liberia, Sudan and other trouble spots of limited geopolitical importance to the US, argue Caesarists, will only plant the seeds of demise of the new American empire. The British Empire sent legions of career civil servants abroad to permanent posts, and the American empire will be short-lived if it fails to emulate that model. In that regard, it is a dangerous sign that the US has failed to send thousands of Arabic-speaking envoys to the Middle East, well equipped to help in the process of democratization. While institutional efforts, such as truth commissions, are steps in the right direction, it is time, Caesarists argue, for the US to reclaim its moral authority by fully committing itself to the full spectrum of nation-building activities.

That US track record of alleged detachment has, however, been intensely challenged by Spartacists. For Chalmers Johnson, the fact that

the US has spread hundreds of its military bases in geopolitically and economically strategic areas of the world is sufficient evidence of its long-standing imperialist nature.⁶⁰ That the United States denies rights under the Geneva Convention to Guantanamo prisoners, and conducts torture of alleged insurgents in Abu Ghraib prison and elsewhere, demonstrates the emptiness of its claim to represent an “empire of liberty.” Spartacists add that the United States has used the war on terror to create an elaborate system of surveillance, which has enabled authorities to violate privacy rights, to harass domestic dissidents and to deport peaceful immigrants as criminals — thereby denying fundamental rights of hospitality to foreigners.

These abuses cumulatively reveal the Janus face of the American empire’s purported “good intentions.” The Spartacists predict that the US will suffer other cases of blowback like the one experienced on September 11, arguing that such attacks are due not to US neglect of global problems — but to the excessive and repressive nature of US global commitments, as the US supports authoritarian regimes in places like Saudi Arabia or Pakistan whenever it appears to serve its economic or geopolitical interests. That long history of support of “friendly” dictators throughout the cold war, from its current refusal to submit to international institutions such as the International Criminal Court, preferring to withhold evidence that could implicate its own officials during truth commission investigations (in Haiti, El Salvador, Guatemala, Chile, and Chad among other post-authoritarian countries which the US supported),⁶¹ shows all too well that the United States remains above justice while promoting democracy and human rights for the rest of the world. Even for those more inclined to acknowledge some measure of good intentions on the part of the US, it is daunting to recognize

59 Niall Ferguson, *Colossus: The Price of America’s Empire* (New York: Penguin Press, 2004).

60 Chalmers Johnson, *The Sorrows of Empire, Militarism, Secrecy and the End of the Republic* (New York: Metropolitan Books, Henry Holt and Company, 2004).

61 Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 242–243.

that out of sixteen cases of US military occupation going back to 1945, only four countries (Japan, Germany, Panama and Grenada) emerged as democracies.⁶²

While the Caesarist and Spartacist discourses have been sharply opposed on questions of US foreign policy, both perspectives have supported reconciliatory efforts consistent with human rights. From South Africa and Chad, to Ecuador and Chile, to East Timor and Nepal, to Palestine and Iraq, human rights activists are struggling to forge new paths toward reconciliation shaped by one or the other worldview. The spread of truth commissions, among other efforts, has rekindled a new sense of justice and human rights across the globe, helping to heal deeply aggrieved societies. While truth commissions inevitably involve hard trade-offs between collective healing and justice for victims, these commissions provide an important institutional mechanism to correct wrongdoing and build the judicial apparatus in weak or failed states. Without the help of the international community in synergy with grassroots and local organizations, most agree that reconciliation and nation-building efforts will not succeed.

What really separates Spartacists from Caesarists with respect to nation-building is neither the merits of truth commissions, nor the broader goal of reconstructing civil society as an anchor for progress in democratization — most adherents from all sides are in principle supportive of these means and ends in conflict-ridden regions. The disagreement, which divides the two camps, is over the prospect of US leadership in the process of promoting reconciliation, human rights and nation-building. While Caesarists prefer to seize the unique opportunities offered by US military might, Spartacists, fearing that unilateral US intervention will create backlashes and power abuses, insist on multilateral involvement supported by international organizations' efforts as essential to the advancement of human rights in war-torn societies.

Transcending Spartacism and Caesarism

Can the Spartacist and Caesarist worldviews be reconciled? A vital first step in that process will be for human rights adherents to recall and reclaim the integrative and universal vision of human rights, encapsulated in the UN Universal Declaration of Human Rights, after World War II. Before making reflexive generalizations regarding United States policies or purposes, advocates of human rights should reacquaint themselves with the indivisible and inalienable legacy of human rights founded on civil, political, social, economic, cultural and security rights. Knowledge of that tradition is critical to avoiding the pitting of one set of fundamental human rights against another (e.g., civil rights versus the right to security). It is a tradition that provides tools for critical assessments and constructive proposals, rather than automatic rejection or embracing of humanitarian intervention.

In applying that tradition to current challenges, how can the human rights community carve a strategic position between charges of indifference to human rights abuses, to which Spartacists are vulnerable, and accusations of imperialism associated with Caesarist support for wars against tyrannical regimes? Can one be both a Spartacist and a Caesarist? The following addresses this question and offers guidelines toward a realist approach to human rights, drawing from both camps, while briefly reviewing the salient issues of globalization, humanitarian intervention and nation-building.

The claim by Spartacists that globalization, with the United States in the driver's seat, is antithetical to the advancement of human rights is simply excessive. One should recognize that there are aspects of capitalism that represent dramatic improvement when compared to the feudal arrangements that prevail in much of the global South: its progressive capacity, its formidable power to develop the forces of production, to overcome scarcity, and to kindle humankind's unlimited potential. That hardly entails an unqualified endorsement of neo-liberal ideology, which is accountable for unfair rules imposed on

62 Mixin Pei, "Lessons from the Past: The American Record of Nation-Building," Carnegie Endowment Policy Paper 24, April 2003.

developing countries by the institutions controlling globalization (e.g., the IMF).

While a new human rights realism should always condemn the harsh conditions of workers in sweatshops, it should also acknowledge that the often-romanticized alternative of self-sufficient agrarian feudalism might be even worse. The Spartacists should confront what it means, for example, when millions of young women are left beyond the reach of globalization, with no choice but to be subjugated under patriarchal domination, or under the arbitrary tyranny of local mullahs in one or another remote corner of the world like Sudan and Nigeria. Such conditions are not only unacceptable from a universal human rights standpoint; they are hardly conducive to domestic or international peace. For women and other destitute people within the most impoverished and conflict-prone regions of the world, opportunities for change offered by market-driven economic growth should be welcomed when synchronized with redistributive policies to ensure sustained economic welfare and democratization. While market development should be included in reconstruction efforts, it should also be carefully monitored as not to create new forms of inequity. Caesarists who place all their faith in markets, and who ignore the needs of workers and the poor in areas like Iraq, will likely see their dreams of liberty come to ruin. The indivisibility of political and economic human rights objectives should always be kept in sight.

With respect to intervention, it is important to distinguish a human rights position *ad bellum* (before the war), *in bello* (during the war), and *post bellum* (post-war reconciliation and reconstruction efforts).

Spartacists are correct to insist to draw attention to grave human rights abuses that are on no one's active political agenda, such as in Rwanda and Sudan. Yet human rights advocates should not shrink, as Spartacists often do, from actively opposing oppressive regimes, like that of Saddam Hussein, simply because they have become the *bête noire* of British and US leaders.

One can add, perhaps with a Caesarist impulse, that human rights activists should condemn

repressive regimes with equal fervor regardless of whether they are seen as friends or foes by the US or other powers. With this in mind, one cannot disparage the impact of power politics or the CNN effect, which draws human rights interest in one area of the world while overlooking others. Because great powers are less likely to intervene in countries which possess nuclear arsenals and because great powers are not likely to work beneath their geopolitical or economic radars, human rights sympathizers should not shy away from working within the ambit of *realpolitik*, making the political rhetoricians of human rights accountable for their deeds and promised missions. In this respect, one could argue that the war against the Taliban, while hardly undertaken to liberate women from feudal slavery, had considerable (though not sufficient) positive consequence for women's rights, just as NATO's intervention in Kosovo may well have averted a repetition of Serbia's genocidal war against Muslims in Bosnia. In these circumstances, one can support the plausibility of the Caesarist case for humanitarian intervention.

Even if a convincing human rights case for intervention is made, Spartacists are right to insist on maintaining the balance between means and ends during a war. Multilateral actions, guided by international laws, are more legitimate in the eyes of the intervened. Further failing to respect accepted civil and international human rights (such as at Guantanamo or Abu Ghraib) may preclude the ultimate achievement of human rights goals, sending a message of hypocrisy to the rest of the world. Spartacists are also correct to consider the possible negative consequences of military action, such as the prospects that the invasion of Iraq, undertaken in the name of democracy and human rights, may result in widening violence within the Arab world, destabilizing the Middle East and spawning more terrorism against the United States and its allies.

At the same time, Caesarists are correct to point out that international legal documents have hardly provided clear guidelines to human rights sympathizers. Indeed, over the years, the members of the UN Security Council failed to show the level

of commitment to human rights envisioned by the founders of the UN, and as such the international body has attracted the criticisms of human right supporters, strengthening thereby rationale for intervention outside the aegis of the UN or NATO.

To overcome the limitations of either approach, one can deplore the long record of human rights abuses in the foreign or domestic policies of all five permanent members of the Security Council or within NATO; support with Caesarists those instances when military action, even if unilateral, advances the cause of human rights, while accepting the general Spartacist principle that the UN, multilateral efforts and local human rights-motivated NGOs are preferable mechanisms for resolving humanitarian crises.

Post bellum, the problem for some Caesarists leaning toward support for Bush's human rights efforts is that from Egypt to the Palestinian territories to Iraq, and now Lebanon, the neo-conservatives have privileged political rights over social and economic rights, hence strengthening fundamentalist groups, which have gained grassroots support thanks to their social welfare organizations. A successful nation-building effort, based on human rights, still requires commitment to the encompassing principles, adopted by the Universal Declaration adopted in 1948. In other words, privileging selected clusters of rights as the Bush administration did (namely security or political rights) over other families of rights (such as economic rights) created narrow right-specific policy, which has paved the road to resentment and reaction, as evidenced by the inability to counter the popularity of Hezbollah in Lebanon.

At the same time, rejecting the hawkish quick-fix predisposition of some Caesarists, as Spartacists have correctly done, does not absolve the human rights community from providing viable alternatives. Rage and ridicule directed at the Bush administration and the impulse to simply withdraw from unstable countries and regions do not amount to an alternative approach to the linked problems of terrorism, human rights violations and poverty. That alternative needs to draw lessons from the "global New Deal" approach to foreign policy envisioned

at the end of World War II, and within that tradition, I will offer guidelines for future foreign policy, some broad and long term in scope, others more immediate.

Franklin Roosevelt's approach succeeded in overcoming the domestic crisis caused by the Great Depression, crushed the global threat of fascism and set in motion the integration of the European continent, long plagued by wars. Prior to Franklin Roosevelt, assistance to the poor and the unemployed had hitherto depended upon the discretion of whichever leadership happened to be in power. Under Roosevelt, welfare programs would be systematically grounded on legal, social, and economic rights, institutionalized with the development of the welfare state, and strengthened by the need to sustain societal cohesion during World War II and the cold war, while spreading throughout the Western world. A key problem was that Bretton Woods and the Marshall Plan (the latter, implemented two years after the death of Roosevelt, was certainly consistent with his vision) was limited to Europe and did not extend to the colonies and the developing world. September 11, 2001, should have awakened us to the need to extend that vision globally.

While the US and other powerful states may lack the will and resources to address human rights violations in territories that become the hotbed of terrorist activities, a sustained investment of political and economic resources in selected places may well create new outposts of democracy that could in turn stimulate further regional economic growth, democratization and human rights. How would this start? It could take the form of New Deal-style public works projects aimed at relieving unemployment by putting money in the hands of ordinary workers. These projects would be designed to build infrastructure for future economic development, such as ports, power plants and desalination plants, that would then simulate public and private investment. Such outposts (in Palestine or even the Sudan, for example) could represent magnets that would then stimulate further regional economic growth, democratization and human rights. (There is unlikely to be a better way of delegitimizing

or deradicalizing extremism than to outbid their popular and grassroots support where it counts, namely by investing more heavily and effectively in the same domains Islamists have sought to dominate: public health, education and economic welfare.)

Empowering women in destabilized and deeply ingrained authoritarian societies can also be part of long-term non-violent policies designed to democratize the Middle East as well as other regions of less geopolitical interest to the US and its friends. For instance, empowering women (with microlending, literacy efforts, vocational training, etc.) even within the world's poorest and most repressive states can galvanize democratic forces, just as suffragette efforts stimulated democratic impulses in Western civil societies during the late nineteenth century. One needs to free women, and men will be freer to join them in challenging political oppression.

Envisioning non-violent long-term strategies will also require tackling pressing problems. How do we reduce violent conflicts in a region of the world where Sunnis and Shiites, Israelis and Palestinians, Americans and Iranians are at each other's throats? Agreeing with the Caesarists on the laudable democratic goals articulated by the Bush administration, and deploring with the Spartacists the means employed by US foreign policy, one can easily conclude that bringing democracy and human rights to the Middle East should have taken place first in Palestine. Why Palestine? Palestine is relatively tiny: it has only a small fraction of the population of Iraq. Unlike Iraq, Palestinians are animated by a shared national identity. Addressing Palestinian aspirations would have responded to the Arab world's most resonant source of grievance against the US — rather than feeding the darkest Arab fears about American designs. After the “shock and awe” of the Iraq invasion and its aftermath, never has the hatred against Americans in the Arab world (and elsewhere) been so visceral, never was the

idea of a US double standard for Jews and Arabs so entrenched. Creating a viable Palestine would be a far more difficult undertaking today than it would have been just a few years ago. Given the massive US resource commitment to Iraq, few will be eager to fund a new nation-building project in the Middle East, a prospect made even more daunting by the post-Iraq invasion radicalization of the region, including the ascension of Hamas and Hezbollah. Yet it would be tragic if a disastrous misallocation of resources in Iraq provides yet another excuse for ignoring the problem that most needs attention. In short, enduring peace in the Middle East and elsewhere cannot be achieved without recognizing the indivisibility of universal human rights: security, political, economic welfare and cultural rights.

Conflict prevention strategies such as these could well prove far less costly than President Bush's campaign to “hunt terrorism wherever it is harbored,” a campaign that could well spawn more terrorism than it stops. A serious search for alternatives to the current US drift toward endless and expanding war are missing both from Spartacist and Caesarist worldviews. Devising non-violent strategies for reconciliation, democratization and human rights should be the place where human rights advocates — whatever the lean toward Spartacist or the Caesarist approach toward US intervention — can unite in building a viable future for universal human rights.

12.9 United Nations Secretary-General: “Implementing the Responsibility to Protect” (2009)⁶³

I. Mandate and Context

1. The mandate for the present report derives from the following three paragraphs of the 2005 World Summit Outcome:

“138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic

63 Report of the Secretary-General to the United Nations General Assembly: Implementing the Responsibility to Protect, A/63/677, 12 January 2009. www.un.org/ruleoflaw/files/SG_reportA_63_677_en.pdf

cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

“139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

“140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.” ...

3. It should be underscored that the provisions of paragraphs 138 and 139 of the Summit Outcome are firmly anchored in well-established principles of international law. Under conventional and customary international law, States have obligations to prevent and punish genocide, war crimes and crimes against humanity. Ethnic cleansing is not a crime in its own right under international law, but acts of ethnic cleansing may constitute one of the other three crimes. The Summit's enunciation of the responsibility to protect was not intended to detract in any way from the much broader range of obligations existing under international humanitarian law, international human rights law, refugee law and international criminal law. It should also be emphasized that actions under paragraphs 138 and 139 of the Summit Outcome are to be undertaken only in conformity with the provisions, purposes and principles of the Charter of the United Nations. In that regard, the responsibility to protect does not alter, indeed it reinforces, the legal obligations of Member States to refrain from the use of force except in conformity with the Charter.
5. The twentieth century was marred by the Holocaust, the killing fields of Cambodia, the genocide in Rwanda and the mass killings in Srebrenica, the latter two under the watch of the Security Council and United Nations peacekeepers. Genocide, war crimes, ethnic cleansing and crimes against humanity: the brutal legacy of the twentieth century speaks bitterly and graphically of the profound failure of individual States to live up to their most

basic and compelling responsibilities, as well as the collective inadequacies of international institutions. Those tragic events led my distinguished predecessor, Kofi Annan, and other world leaders to ask whether the United Nations and other international institutions should be exclusively focused on the security of States without regard to the safety of the people within them. Could sovereignty, the essential building block of the nation-State era and of the United Nations itself, they queried, be misused as a shield behind which mass violence could be inflicted on populations with impunity? How deeply and irreparably had the legitimacy and credibility of the United Nations and its partners been damaged by such revelations? Could we not find the will and the capacity in the new century to do better?

6. Before responding, we should note that the worst human tragedies of the past century were not confined to any particular part of the world. They occurred in the North and in the South, in poor, medium-income and relatively affluent countries. Sometimes they were linked to ongoing conflicts but quite often — including in some of the worst cases — they were not. In retrospect, three factors stand out. First, in each case there were warning signs. Violence of this magnitude takes planning and preparation, as well as a contributing political, social and economic context. Second, the signals of trouble ahead were, time and again, ignored, set aside or minimized by high-level national and international decision makers with competing political agendas. Third, at times the United Nations — its intergovernmental organs and its Secretariat — failed to do its part. Citing a “lack of resources and political commitment” (see S/1999/1257,

enclosure, sect. I), the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda, commissioned by then Secretary-General Annan, concluded in its report that “the United Nations failed the people of Rwanda during the genocide in 1994” (see S/1999/1257, enclosure, sect. III.18). The report of the Secretary-General on the fall of Srebrenica, while also underscoring “the gulf between mandate and means”, went on to question “the pervasive ambivalence within the United Nations regarding the role of force in the pursuit of peace” and “an institutional ideology of impartiality even when confronted with attempted genocide” (see A/54/549, para. 505). A prime lesson of Srebrenica, the Secretary-General noted, was that “the United Nations global commitment to ending conflict does not preclude moral judgments, but makes them necessary” (see A/54/549, para. 506). Nine years after those sobering reports, many of their institutional recommendations, including on early warning, analysis and training, have not been fully implemented, despite efforts to improve the prevention capacities of the Organization. The United Nations and its Member States remain underprepared to meet their most fundamental prevention and protection responsibilities. We can, and must, do better. Humanity expects it and history demands it.

7. Part of the problem has been conceptual and doctrinal: how we understand the issue and the policy alternatives. Two distinct approaches emerged during the final years of the twentieth century. Humanitarian intervention posed a false choice between two extremes: either standing by in the face of mounting

civilian deaths or deploying coercive military force to protect the vulnerable and threatened populations. Member States have been understandably reluctant to choose between those unpalatable alternatives....

11. The provisions of paragraphs 138 and 139 of the Summit Outcome suggest that the responsibility to protect rests on the following three pillars:

PILLAR ONE: THE PROTECTION RESPONSIBILITIES OF THE STATE

- (a) Pillar one is the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement. The latter, I would underscore, is critical to effective and timely prevention strategies. The declaration by the Heads of State and Government in paragraph 138 of the Summit Outcome that “we accept that responsibility and will act in accordance with it” is the bedrock of the responsibility to protect. That responsibility, they affirmed, lies first and foremost with the State. The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect;

PILLAR TWO: INTERNATIONAL ASSISTANCE AND CAPACITY-BUILDING

- (b) Pillar two is the commitment of the international community to assist States in meeting those obligations. It seeks to draw on the cooperation

of Member States, regional and subregional arrangements, civil society and the private sector, as well as on the institutional strengths and comparative advantages of the United Nations system. Too often ignored by pundits and policymakers alike, pillar two is critical to forging a policy, procedure and practice that can be consistently applied and widely supported. Prevention, building on pillars one and two, is a key ingredient for a successful strategy for the responsibility to protect;

PILLAR THREE: TIMELY AND DECISIVE RESPONSE

- (c) Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection. Though widely discussed, pillar three is generally understood too narrowly. As demonstrated by the successful bilateral, regional and global efforts to avoid further bloodshed in early 2008 following the disputed election in Kenya, if the international community acts early enough, the choice need not be a stark one between doing nothing or using force. A reasoned, calibrated and timely response could involve any of the broad range of tools available to the United Nations and its partners....

12. If the three supporting pillars were of unequal length, the edifice of the responsibility to protect could become unstable, leaning precariously in one direction or another. Similarly, unless all three pillars are strong the edifice could

implode and collapse. All three must be ready to be utilized at any point, as there is no set sequence for moving from one to another, especially in a strategy of early and flexible response....

12.10 Michael Walzer: “The Aftermath of War: Reflections on *Jus Post Bellum*” (2012)⁶⁴

New Thinking in Just War Theory

As a distinct category, *jus post bellum* is not part of classic just war theory. But it isn't entirely missing from the theory either. The original idea was probably that *post bellum* justice was included in the criteria for *ad bellum* justice. The inclusion would have been twofold: first, a war can only be considered just if there is a strong possibility of success, and in order to judge that possibility, political leaders must have some idea of what success would look like. And, second, the requirement of a just intention means that whatever is taken to constitute success has to be not merely possible but also morally defensible; it has to be, if only in prospect, a just outcome. So arguments about what would come after the war were a crucial part of the arguments about whether the war should or should not be fought in the first place. *Ad bellum* anticipated *post bellum*.

But there is another sense in which the just outcome of the war is supposed to be anticipated in its beginnings. The standard understanding of aggression holds that it is a violation of the status quo ante. The world was at peace, in such and such an arrangement of states and borders—which was presumed to be just insofar as it was established, conventional, widely accepted, and also insofar as its stability made for regional (or global) peace. The aggressor violently disrupts this arrangement, moving an army across the existing border, and then a just war restores the arrangement and the border. Justice after the war is the same as justice before the war. The idea of

reparations gains its force from this understanding. The breaking of the old order has to be repaired. Though the violence of the aggression and the human damage that it produced cannot be undone, we can compensate the surviving victims and rebuild the ruined cities. We insist that the aggressor state make things, as much as it can, just like they were before. And that, on this view, which I take to be the classic view, is the definition of a just outcome.

It is worth noting that the early modern idea of a political revolution derived from this conception of a just war. The tyrant started the revolutionary process by breaking the established constitutional order, attacking his subjects, and violating their rights. Tyranny was understood as a kind of aggression. The people, organized perhaps by the lesser magistrates of the realm, justly defended themselves and restored the constitution. The movement was circular, ending where it began. A revolution that didn't end in a restoration would not have revolved completely.

Just war and revolution are deeply conservative ideas, though what they aim to conserve is the peacefulness of the status quo ante—not its particular political arrangements, which may indeed need to be changed, but only through normal politics, not through war. There are always state leaders who believe that their country's borders aren't where they should be or that the division of colonial possessions and spheres of influence or the access to natural resources is fundamentally unjust. That may or may not be so (the status quo is usually unjust, though not in the way state leaders believe it to be); in any case, just war theory holds that war is not a permissible remedy. When Francisco de Vitoria said that the only justification for war is “an injury received,” he meant a recent injury that violated the existing conventions and arrangements, not an injury received a hundred years before that had long ago been incorporated into the existing conventions

64 Michael Walzer, “The Aftermath of War: Reflections on *Jus Post Bellum*,” in *Ethics: Beyond War's End*, edited by Eric Patterson (Washington, DC: Georgetown University Press, 2012), 35–46.

and arrangements.⁶⁵ Territorial irredentism was no more an excuse for war than imperial ambition. Violent disruptions of the status quo were, almost by definition, unjust.

The 1991 Gulf War provides a nice example of the classic understanding of *post bellum* justice: restoration for both sides; reparations for one side. The first Bush administration thought that its war was justly concluded when Kuwait was liberated from the Iraqi occupation—and Saddam Hussein, his aggression defeated, was still in power back in Baghdad and able to pay reparations to Kuwait. Justice did not extend to regime change. It did extend to the imposition of restraints on the Iraqi regime, but the purpose of those, or at least their initial purpose, was to make the old border safe. This was a contested view at the time, especially because President Bush had called for rebellions against the Baghdad regime, and when these occurred and were savagely suppressed he did nothing to help the rebels. Still, stopping the war after the liberation of Kuwait was in accord with the classic view of a just ending and a just peace.

There is much to be said for this view: Think of how many lives would have been saved if the Korean War had ended as soon as American and South Korean forces had repelled the North Korean invasion and restored the old boundary—however unsatisfactory that boundary was. Or imagine what the Middle East would look like today had Israel, after winning the Six Day War in 1967, immediately restored the Gaza Strip to Egypt and the West Bank to Jordan. In both these cases, the ambition for a better peace than the status quo ante produced outcomes that were (and remain) arguably worse.

One might say, as Avishai Margalit has recently suggested, that the actual goal of just war theory is not a just peace but “just a peace”—that peace

itself, as it existed before the war began and as it might exist after the war ends, is the actual goal, without regard to its substantive justice.⁶⁶ Given the awfulness of war, peace is what just warriors should seek. But is this, in fact, just any peace? Suppose that the aggressor state wins the war and establishes a peace that is not like the status quo ante but is still peace in the literal sense: the absence of war. Do we have to accept this kind of peace, or oppose it only politically, or is it morally permissible or even necessary to renew the just war at the first opportunity? How long does it take before the new peace constitutes a status quo that it would be unjust to disrupt? We need some understanding of how peace and justice connect in order to answer these questions. I would suggest that the connection must be strong but minimalist—so as to sustain the recognition that peace itself is a value at which we can justly aim and sometimes live with, even if it is unjust. But in this chapter I am going to assume the victory of the just warriors and ask what their responsibilities are after victory. Sometimes, I want to argue—but not all the time—they must aim at an outcome that is different from the status quo ante and that is more than just a peace.

Restoration and reparation may be right for the victims of aggression but may not be the right way to deal with the aggressor regime, which they leave intact and in power. What if the act of aggression is inherent in the nature of the regime—as in the case of Nazi Germany? No one on the Allied side imagined that the war could end justly with Hitler still in power, even if his government then paid reparations to all its victims. The 1939 status quo was nobody’s goal; the Allied commitment to a just peace in Europe took precedence over the old European conventions and arrangements, and this meant military occupation and regime change for Germany. Though these weren’t entirely new ideas,

65 Francisco Vitoria, *Political Writings*, edited by Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991), 324.

66 Avishai Margalit, *On Compromise and Rotten Compromises* (Princeton, NJ: Princeton University Press, 2011), chapter 1.

World War II made them into defensible versions of *jus post bellum*.

The experience of Nazism also provided another argument for regime change. It seems astonishing today, but there were lawyers in Britain and the United States who argued in 1945 that the Nazi leaders could be put on trial for crimes against Poles and Russians but not for crimes against German citizens. “The killing and persecution of German Jews,” Gary Bass reports in his historical study of war crimes trials, “seemed protected by German sovereignty.”⁶⁷ Not justified by sovereignty, but protected from international scrutiny and indictment. That argument was rejected in the run-up to Nuremberg and again at the actual trials. State officials are not answerable only to their own courts when they massacre their own citizens. Other states can—and I would argue that they should—intervene to stop the killing, and the officials responsible for the killing can then be brought to justice before international courts. The movement of military forces across an international frontier to stop a massacre is not aggression; it is more like law enforcement. We refer to it as humanitarian intervention, and it should be obvious that its goal can’t be to stop the killing and leave the killers, or the killer regime, in power. Had African or European states acted to stop mass murder in Rwanda in 1994, for example, they would have had to overthrow the party of Hutu Power, which ruled the country—and then they would have had to find other rulers. An intervention in Darfur in 2007 or 2008 would have had to replace the Khartoum government, at least in Darfur. In the case of humanitarian intervention, *jus post bellum* involves the creation of a new regime, which is, minimally, nonmurderous. And it is more than likely that the creation of a new regime will require some period, perhaps an extended period, of military occupation. These possibilities raise the question of *jus post bellum* in a new way.

Was Saddam Hussein’s savage suppression of Shi’ite and Kurdish rebels protected by Iraqi sovereignty? Or did post bellum justice in 1991 require

a march on Baghdad and the overthrow of the Baathist regime? I didn’t think so at the time, though it does seem in retrospect that regime change and occupation could more easily have been justified in the circumstances of 1991 than in those of 2003. But that is not the argument that I want to pursue here. I only want to insist that the classic view of *post bellum* justice is now subject to revision whenever we encounter inherently aggressive and murderous regimes. The identification of these encounters will be contested, but these are contests that we cannot avoid.

Similar questions arise in antiterrorist wars like that of the United States in Afghanistan. The invasion of Afghanistan has led to a longterm American military presence in the country—after what looked like, but wasn’t, a quick military victory. In Afghanistan (and in Iraq too), the creation of a new regime did not come, as planned, after the war was over but in its midst. What does *post bellum* justice mean when wars don’t end? What are the obligations that come with staying on and fighting on in these circumstances? And what are the obligations that determine the timing and character of getting out? These are new questions to which I have no clear answers.

Jus Post Bellum and Obligation

Jus post bellum is an aspect of justice generally, and like justice generally, it imposes obligations on its subjects. Before I discuss what these obligations are, I want to address the issue of subjection itself: On whom do the *post bellum* obligations fall? Consider a historical case: In Cambodia in 1974, a maniacal left-wing regime was systematically murdering its own people. The government of Vietnam sent its army across the border to overthrow the regime and stop the killing. No doubt it had geopolitical reasons for doing this, in addition to the obvious moral reasons, but whatever the mix of its motives, stopping the killing was a good thing to do. China, by contrast, along with many

67 Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2000).

other states (indeed, along with all other states) did nothing to stop the killing. China sat and watched. And yet, after the invasion, the Vietnamese had further *post bellum* obligations in Cambodia, and the Chinese did not.

This is an odd, though familiar, feature of moral life. People who do good in the world have more obligations than people who don't do anything. Volunteer for some worthy task, and you are quickly entangled in a web of obligations; you hardly have a minute to yourself, while the men and women who never volunteer for anything can do what they like with their evenings. The case is the same with states as it is with individuals. Once the Vietnamese had sent an army into Cambodia for the best of reasons, to save human lives (whatever their other reasons), they were bound to keep on saving lives in Cambodia. They had to secure and maintain some kind of law and order and establish a nonmurderous government to replace the one they had overthrown. And when they didn't act selflessly to do that, but served their own interests by setting up a puppet government, they were rightly subject to strong criticism.

Among just war theorists there is some uneasiness about states that remain neutral in wars between an aggressor and a victim (think of Sweden in World War II)—and perhaps also about states, like China in my example, that remain passive in the face of mass murder in a neighboring country. Still, in international law, neutrality and passivity are rights that come along with sovereignty. And if sovereignty by itself doesn't seem a sufficient cover for inaction, many political theorists and moral philosophers would recognize the same right-not-to-act on the ground that states cannot be obligated to put the lives of their citizens at risk, just as individuals are not bound to put their own lives at risk to save the lives of strangers. Therefore, it is only the state that makes the positive *ad bellum* decision that acquires the positive *post bellum* obligations. If we assume that the positive decision is just, then, once again, doing the right thing brings with it the obligation to do many more right things. There is no escaping the dire consequences of good behavior—though I should add that bad behavior, in contrast to doing

nothing at all, also brings obligations in its wake, as the idea of reparations suggests.

Of course, if all *ad bellum* decisions were made multilaterally, the dire consequences would be shared; *post bellum* justice would be a collective responsibility. But this is not possible in practice, since the forms of multilateral decision making available in contemporary international society are notoriously unreliable. Neither the Security Council nor the General Assembly of the UN, for example, would have backed the Vietnamese decision to invade Cambodia. And, similarly, the Indian decision to invade East Pakistan (now Bangladesh) would never have been authorized by the UN; nor would the Tanzanian decision to invade Uganda and rescue its people from the murderous regime of Idi Amin. And yet these were just—and, it seems to me, morally necessary—invasions. When a massacre is in progress, unilateral military action may not be the best response, but it is often the only possible response. And then the state responsible for the invasion and the rescue will also be responsible for the political and social reconstruction of the invaded country.

We can imagine an arrangement by which the second of these responsibilities could be taken on by states that had been unwilling to take on the first. They weren't prepared to fight and put their soldiers at risk, but they might be prepared to participate in the work of peacekeeping and reconstruction. Even if the *ad bellum* decision was unilateral, *post bellum* decision making could be multilateral. Of course, the state that had risked its own soldiers' lives might think that it was entitled to make all the decisions in the occupied country, starting with the security decisions. On the other hand, occupation and reconstruction are costly undertakings, and the intervening state might be eager to share those costs and therefore willing to share some of its decision making power. It might look for help, however, and find that other countries feel no obligation to help—after all, they didn't invade someone else's country. How might we go about freeing the rescuers from the ongoing burdens of the rescue? If we believe that multilateralism leads to a better

version of *post bellum* justice, we will have to make it a political project.

Does it lead to a better version? Are obligations formally accepted by many states more likely to be fulfilled than unilateral obligations? There are well-known collective action problems here: Each state thinks that the others should do more, or it thinks that it can shirk its obligations because the others are already doing enough, or one state's withdrawal or failure to perform brings the whole effort down, as each of the others refuses to pick up its share. The work of a single state might go better, especially if, in exchange for material support, it accepted some form of international regulation—as in a trusteeship system, if there were such a system. That too would be a project, and a difficult one, given the history of trusteeship under the League of Nations. And it might seem especially hard not only to insist that intervening states have acquired obligations, but also that performance of those obligations should be monitored by an international organization. Nonetheless, it isn't a bad idea.

Justice after War's End

What are the obligations of *post bellum* justice? I have described reparations as the obvious obligation of the aggressor state. Reparations can be extracted forcibly by the victors; they can also be the subject of negotiations not so much between winners and losers as between the victims and their heirs, on the one side, and the aggressors and their heirs, on the other (consider the negotiations between Israel and Germany after World War II). The heirs come into it because of the post-ness of the justice: *Jus post bellum* is, in part at least, justice for children. It is important to recognize that reparations are a form of collective punishment, since the burden is distributed through the tax system to all the members of the aggressor state including those who opposed the aggression and those who were too young, as the Bible says, "to know their right hand from their left." The collectivism is simply the consequence of citizenship, and I think that it can be justified—though the enslavement of those same people, forced to work for the victims of their

state, would not be justified. We penalize innocent people, including children, in the aggressor state in a constrained way, in order to benefit innocent people in the state that was unjustly attacked. And that is *jus post bellum*: not perfect, but as good as it can be.

But I am more interested here in the newer obligations that go along with occupation and reconstruction. These can be extensive and demanding, but they also have limits, and it may be useful to start with those. The limits are of two sorts, practical and moral. States are not bound to do (or to try to do) what they are not able to do. The probability of success, which plays a critical role in *jus ad bellum*, plays the same role in *jus post bellum*. The United States is not obligated to create a Swedish-style social democracy in Afghanistan (I am not claiming that that was ever our intention) for the simple reason that we can't do that. Obligations are closely connected to capabilities. Often states try to do more than they can do because what they can do isn't exciting enough to win the support necessary for doing it. Or, they pretend to be aiming at great but impossible achievements in order to cover their real, interest-driven goals. In any case, impossibility is a critical limit, and if we recognize it we will be more capable of making realistic choices and of criticizing partisan and aggrandizing projects.

The moral limits of *post bellum* obligations have their primary source in the people to whom the obligations are owed—the people who have been rescued, for example, by the military intervention or the people whose brutal and aggressive regime has been overthrown. The intervening state can't then impose its version of a just politics without regard to their version. It isn't bound to do what its own citizens think is best. The local understanding of political legitimacy is a critical constraint on what just warriors can attempt. But it isn't an absolute constraint. During the occupation of Japan after World War II, the Americans pretty much wrote a constitution for the Japanese; this was certainly achieved with consultation, but without much readiness to bow to Japanese political or social norms. One of the clearest examples of not bowing was the inclusion of an article that mandated gender

equality—which had no place in Japanese political culture as it then was. But since the constitution created a democratic regime and since it allowed for its own amendment, this seems to me a legitimate imposition. We might even say that the existing local norms and some minimal conception of human rights are competing constraints on what the intervening state can do.

The local norms are critically important because the goal of regime change is a regime that can govern without the massive use of coercive power. It must be politically strong enough to survive the withdrawal of the state and army that set it up; its legitimacy must be recognized by its citizens; it must be able to collect taxes and provide the services that its citizens expect. These are constraining requirements. They rule out puppet governments that will be forever dependent on the firepower of a foreign army—like those created in Eastern Europe after World War II. But they also rule out certain kinds of idealistic politics, when the ideals are ours but not theirs.

The positive obligations of just warriors after they overthrow an aggressive or murderous regime and stop the killing begin with what we can think of as provision. They have to provide law and order, food and shelter, schools and jobs. Of course, they will do this, insofar as they can, through local agents—members of the old civil service and the old army who weren't involved in the crimes of the genocidal regime and also internal opponents of the regime and returning exiles. But ultimate responsibility belongs to the occupying forces. The American army in Iraq in 2003 was radically unready to take on this responsibility after the overthrow of the Baathist regime. We can take this unreadiness as a useful example: It was a clear violation of the norms of *jus post bellum*. This is true whatever the justice of the invasion and however the war was fought. *Post bellum* justice is independent of *ad bellum* and *in bello* justice—in the same way as these latter two are independent of each other. An unjust war can lead to a just outcome, and a just war can lead to an unjust outcome.

Once immediate necessities are provided, the critical obligation of the invading and occupying

forces is political reconstruction. The obligation is the same whether a single state has supplied the forces, or a coalition of states, or an international agency. It is a difficult obligation because what is required is the creation of a regime that can dispense with its creators—that can, literally, order them to leave. The goal of reconstruction is a sovereign state, legitimate in the eyes of its own citizens, and an equal member of the international society of states. As soon as that goal is reached, the occupying forces will probably be asked to leave, and they should leave. It will be a test of their virtue, and of the justice of the occupation, that they have not created a puppet government and that they make no claim to permanent military bases or to economic privileges and contracts unavailable to other states. Though they can aim at a friendly government (it is hard to imagine them doing anything else), this must be a friendly government fully capable of acting in its own interests.

Should they aim at a democratically elected government? I want to say yes to this question, not because democracy is the best regime (though I think it is), but because it has historically been the regime least likely to turn on its own people. I can imagine ways less formal than elections to produce a responsible government—in a tribal society, for example, customary forms of consultation may still be robust and effective. But democracy is generally to be preferred for the sake of its inclusiveness. Modern democracy includes everyone, men and women, rich and poor, majorities and minorities, and so it offers greater protection than a regime of oligarchs, patriarchal chiefs, or clerics of the dominant religion. Protecting women—or, better, empowering them so that they can protect themselves—is especially important, since they are often the first civilian victims of war and the last beneficiaries of reconstruction. Giving them the vote is only a first step, but it is an important step toward guaranteeing their security.

Jus post bellum is most importantly about social justice in its minimal sense: the creation of a safe and decent society. But it is also about justice in its other sense—about doing justice to the perpetrators of tyranny, aggression, mass murder,

and ethnic cleansing. I have already alluded to the Nuremberg precedent for the establishment of international tribunals—followed with mixed results in cases like the former Yugoslavia, Rwanda, and Sierra Leone. “Do justice even if the heavens fall” is not a good idea in the aftermath of war; *jus post bellum*’s first aim, as I have been arguing, is to stop the heavens from falling. Sometimes a clear judicial repudiation of mass murder and the punishment of the murderers is the best way to forge a secure peace. Sometimes security might require amnesties and public forgetfulness. Sometimes, the simple exposure and acknowledgment of crimes may point the way to reconciliation. In these life and death cases, the idea of just a peace takes precedence over a just peace—though we should certainly try to bring the two together.

Finally, there are certain lingering obligations that may affect the timing and character of getting out. The invading and occupying forces must make sure that the new regime is in fact nonmurderous, committed to defend and capable of defending the most vulnerable of its citizens. And they must make sure that the men and women who cooperated with the occupation in any capacity will be safe in its aftermath—and if any of them are not safe, they must be given the opportunity to leave with the occupying forces and be taken in by the occupying

state. This obligation holds whether the intervention and the occupation were just or unjust. The French after the Algerian war were bound to take in the Harkis (Arab soldiers who fought in the French army), and the Americans after Vietnam were bound to take in the so-called boat people—indeed, the people who took to the boats should have been helped to leave before they had to resort to that. John Rawls’s argument about privileging the worst-off in domestic society has an analogy here: We must attend to those most at risk when ending the occupation of a foreign country.

War is a time of killing and being killed. The crucial requirement of *jus post bellum* is the preservation of life. That is the minimalist reason that I have given for trying to set up a democratic regime, and it is the reason for everything else that invading and occupying armies must do—for the provision of necessities, for special attention to vulnerable minorities, for movement toward gender equality, for something as close as possible to justice for war criminals and murderers. There is work here that foreign forces can do, but ultimately the work has to be taken over and sustained by the locals. The post in *jus post bellum* is not of indefinite duration. Moral and political requirements must be met over whatever time it takes. But the shorter the time, the better.

On the International Criminal Court and Human Rights Governance

A new human rights mechanism was instituted in 1998, the International Criminal Court (ICC). The Rome Statute that established it affirmed that the international community must not allow the most serious crimes to go unpunished, ensuring instead their effective prosecution through both national and international measures. Such crimes include: genocide, crimes against humanity, war crimes, and international aggression (see Section 12.11). The ICC comprises one element in a broader system of International Criminal Justice (ICJ), an important product of twentieth-century liberal internationalism. The court, along with other human rights instruments, soon came under attack with the weakening of the liberal international order.

In “Liberal Internationalisms, Human Rights and International Criminal Justice: Looking Back to Reclaim the Future” (2015), Micheline Ishay reviews four historical periods of liberal internationalism from the late nineteenth century to the present. She argues that in the past two decades, U.S. retrenchment from its hegemonic aspirations has left world politics increasingly fragmented in the face of rising multipolar competition, growing disarray, and the loss of coherent vision. This new international climate, many fear, will undermine human rights, including the viability of the ICJ. Ishay contrasts a post-Westphalian worldview, which calls into question the capacity of states and international organizations to improve human rights with a Westphalian approach that favors the strength of states, international organizations,

and the power of transnational norms to secure human rights and international criminal justice. Borrowing from both positions, she argues for the preservation of human rights and ICJ through a comprehensive vision and strategy that would employ stronger economic foundations for the international human rights project – an essential element too often missing from these two prevailing discourses (see Section 12.12).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 5.

12.11 Rome Statute of the International Criminal Court (1998)⁶⁸

Preamble

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all

States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner

inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows:

Part 1. Establishment of the Court

Article 1: The Court

An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

68 UN General Assembly, Rome Statute of the International Criminal Court, adopted 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. ISBN No. 92-9227-227-6 (last amended 2010). https://legal.un.org/icc/statute/99_corr/cstatute.htm

Article 2: Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3: Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands (“the host State”).
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4: Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

Part 2. Jurisdiction, Admissibility and Applicable Law

Article 5: Crimes within the jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;

- (c) War crimes;
- (d) The crime of aggression.

Article 6: Genocide

For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7: Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under

- international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
- (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) “Extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

Article 8: War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as

part of a large-scale commission of such crimes.

2. For the purpose of this Statute, “war crimes” means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations,

material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military

- forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
 - (xiii) Employing poison or poisoned weapons;
 - (xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 8 bis3: Crime of aggression

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of

the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or

mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

12.12 Micheline Ishay: “Liberal Internationalisms, Human Rights and International Criminal Justice: Looking Back to Reclaim the Future” (2015)⁶⁹

Civilization, upon the complaint of the human race, orders the trial, and draws up the great criminal indictment of conquerors and captains. This witness, History, is summoned. The reality appears. The factitious brilliancy is dissipated. In many cases the hero is a species of assassin. The peoples begin to comprehend that increasing the magnitude of a crime cannot be its diminution; that, if to kill is a crime, to kill many cannot be an extenuating circumstance; that, if to steal is a shame, to invade cannot be a glory; ... that homicide is homicide; that bloodshed is bloodshed; that it serves nothing to call one's self Caesar or Napoleon; and that ... the figure of a murderer is not changed because, instead of a gallows cap, there is placed upon his head an emperor's crown.⁷⁰

1. Introduction

“Human Rights law has failed to accomplish its utopian aspirations, and it ought to be abandoned,” wrote Eric Posner in a recent article of Harper's Magazine.⁷¹ In this spirit, Stephen Hopgood maintained in *The Endtimes of Human Rights*: “We are living through the end times of the civilizing mission. The ineffectual International Criminal Court ... along with the failure in Syria of the Responsibility to Protect are the latest pieces of evidence ... of fatal structural defects in international humanism.”⁷² The times are grim for the advance of international criminal justice (ICJ) and

69 Micheline Ishay, “Human Rights and International Criminal Justice: Looking Back to Reclaim the Future,” in *Global Issues and their Impact on the Future of International Criminal Justice and Human Rights*, edited by Cherif Bassiouni (Cambridge: Intersentia, 2015).

70 Victor Hugo, From Oration on Voltaire Delivered on the Hundredth Anniversary of his Death, 1878.

71 Eric Posner, “Against Human Rights,” *Harper's*, October 31, 2014, 13–16.

72 Stephen Hopgood, *The Endtimes of Human Rights*, Cornell University Press, 2013, 1.

human rights, and the challenges of globalization and wars are disconcerting enough to create such dark prophecies. Will the values and ideas of human rights and the ICJ survive in the new era of globalization as universal, or become recognized as culturally and contextually relative?

Current pessimism is reactive to recent events, failing to take a long-term perspective about what the long trajectory of human rights history portends for the future. This chapter makes three related arguments: first, that despite setbacks, history provides strong grounds for optimism that universal human rights and ICJ will survive; second, that the current conditions of globalization require a hegemonic order—an order that develops rather than hinders human rights strategies, policies and related institutions; and third, that trials for war criminals, while valuable, should be emphasized only insofar as they are better integrated within the comprehensive human rights agenda which flourished in the aftermath of World War II.

The first argument claims that while there have been critical historical setbacks, associated with wars and economic crises, which challenge the universality of human rights and the development of international criminal justice, these setbacks unleashed waves of progress that repeatedly outstrip the losses suffered during periods of crisis. One can identify four evolving liberal internationalist moments since the mid-nineteenth century. The first, marked by ratification of the Geneva Convention of 1864, was developed on the heels of the First Socialist International of 1864. While still in its early stage, the Convention would become a significant liberal internationalist signpost, which would be further expanded in the decades to come. The second moment unfolded during the Treaty of Versailles in 1919 with the inauguration of the League of Nations, the International Labor Organization and the International Permanent Court of Justice. The hope of President Woodrow Wilson and like-minded participants in the post-World War I settlement was to avert another war by diminishing socio-economic inequity and developing accountable institutions—ideas that had their origins in

the platform of the Second Socialist International. The third moment, developed in reaction to World War II, culminated in the establishment of the U.N. and the International Court of Justice, and the creation of a human rights architecture shaped by the Universal Declaration of Human Rights and the Genocide Convention. The fourth moment was the sweeping revolutionary contagion in Eastern Europe in 1989, which dismantled the Berlin Wall and ended the Cold War. A new age of liberal triumphalism, unleashed by the collapse of communism and the promotion of unfettered globalization, created the confidence to establish the juridical systems needed to maintain the new world order.

The second argument, that globalization requires a hegemonic order to support human rights progress, considers the erosion of the state by market forces, growing social and economic inequities, rising nationalism, in some countries, resource pressures, environmental degradation.

These and other factors suggest that globalization may well have undermined the viability of international criminal justice and the overall enforcement of universal human rights. Yet, the logic of capitalist globalization—with its intensifying flows of finance and people—requires a regulatory environment based on reliable international institutions. For these institutions to achieve a level of legitimacy necessary to operate effectively, they need to be supported by the consistent implementation of a full spectrum of human rights norms, backed by the engagement of a hegemonic power.

The legitimacy of such an international human rights architecture depends on more than a well-disposed hegemon; the hegemon must be responsive to social movements that organize to challenge prevailing conceptions of justice and rights, challenges that shape new international institutions for enforcing human rights standards. It is worth pointing out in this regard that revolutionary contagions in 1848, 1917, 1968, and 1989 coincided with periods of international mobilization to advance the human rights agenda. The Arab uprisings of 2011 will require a similar international response.

There are different forms of hegemonic order: on one end of the spectrum is hegemonic dominance, in which high levels of coercion coincide with low levels of internal and/or global legitimacy (such as Stalin's Russia or today's China). Such powers ultimately confront insuperable obstacles to assuming a global leadership role. On the other side of the spectrum, there are hegemonic orders substantially based on both domestic and global legitimacy (i.e., the UK in the 19th century and the United States today). Sustaining the legitimacy of those orders, which are based on expanding the world capitalist economy, requires the hegemonic promotion of liberal internationalist values founded on universal human rights. Powerful hegemonic states gain legitimacy when they succeed in building both a domestic and global consensus, guiding other states toward adopting universal norms and standards, and enforcing compliance to international norms and legal standards on major violators. If Britain aspired to the role of legitimate hegemony in the nineteenth century, the U.S., backed by even greater power and global reach since 1945, has claimed that role ever since, and has embraced a more comprehensive vision of values and institutions.

Recent years have witnessed U.S. retrenchment from its hegemonic aspirations, leaving world politics increasingly fragmented, with the apparent rise of multipolar competition, growing disarray, and the loss of coherent vision. Unsurprisingly, some rightly fear that this new international climate will undermine the advance of human rights and the viability of international criminal justice. The third argument considers the role of the ICJ within that broader context. While efforts to strengthen International Criminal Justice received an initial boost when the Cold War ended, what is missing today is a more comprehensive agenda targeting socio-economic inequities that contribute to civil wars, and the roots of warfare that lead to crimes against humanity. To the extent that U.S. hegemonic power has declined, there is a greater need to revive an all-encompassing internationalist vision of human rights, reminiscent

of the effort that emerged at the end of the Second World War.

Arguments over the future of human rights and international criminal justice are shaped by two opposing worldviews. On the one hand, what I would characterize as a post-Westphalian worldview calls into question the capacity of states and international organizations to improve human rights in a fragmented world. On the other hand, a Westphalian approach favors the strength of states, international organizations, and the power of transnational norms to secure human rights and international criminal justice. While the proponents of the first approach are cogent and insightful, they do not offer a tangible alternative. As for the second approach, it is unclear how the norms and institutions favoring international criminal justice and human rights can advance without conceptualizing and implementing what amounts to a New Deal aimed at areas of human underdevelopment, especially in Africa and in the Middle East. The UN's Millennium Goals suggest some of the content of that agenda⁷³; yet a more comprehensive vision and strategy for establishing stronger economic foundations for the international human rights project is still missing from the prevailing discourse.

The next section begins with a closer look at the historical dynamic between human rights setbacks and progress, and then turns to the question of whether and how the United States can reassert a hegemonic order that advances human rights. Then, a final section situates the ICJ within the broader debate over the role of human rights in the globalization era.

2. Four Moments of Liberal Internationalism

2.1. INTERNATIONALISM AFTER 1864 AND THE FRANCO-PRUSSIAN WAR (1870–1871)

The history of the establishment of the International Criminal Court (ICC) spans more than a century. The "road to Rome" was a long and controversial journey. The story of ICJ began when the Swiss

73 "New Millennium Goals beyond 2015," in *Development Policy*, <http://www.dw.de/new-millennium-goals-beyond-2015/a-16147250>. [Accessed on July 9, 2014].

Federal Council invited European governments and several American states to Geneva for the purpose of adopting a Convention for the improvement of the condition of those wounded during war. Less than a decade later, in 1871, the Swiss jurist, Gustav Moynier recognized that the terms of the Convention were still inadequate to impose criminal responsibility. Moynier was one of the founders of the International Committee of the Red Cross and had been influenced by Henry Dunant's *A Memory of Solferino*—a book depicting wartime atrocities. In response to the Franco-Prussian war (1870–1871), he wanted to establish an institution to try perpetrators, and proposed the creation of a permanent court with jurisdiction over violations of humanitarian law. While numerous politicians, legal scholars and other writers, including Jean-Jacques Rousseau, had mentioned the idea of a permanent international court to resolve inter-state disputes, the detailed argument and timing of Moynier's treatise on that question gave it unique influence on the development of the international system of justice.

Moynier wrote at a time when liberal nationalism was on the rise, and when the only serious effort to promote human rights internationally was undertaken by champions of socialism. With five million members, the First International Workingmen's Association (1864–1876) aimed at uniting a variety of left wing groups—socialists, communists and anarchists. As Europe continued to be plagued by war, a new humanitarian spirit was gaining momentum. Before Moynier's proposal of an International Criminal Court, Marx defined the foreign policy aims of the First International in these words: "vindicate the simple laws of morals and justice, which ought to govern the relations of private individuals, as the laws paramount of the intercourse of nations." Like the humanitarian Calvinist-based International Committee of the Red Cross, the First Socialist International denounced the belligerence of European nations and with a Marxist spirit stated: "War for a question of preponderance or a dynasty can, in the eyes of

workmen, be nothing but a criminal absurdity. In answer to the warlike proclamations of those who exempt themselves from the blood tax, and find in public misfortunes a source of fresh speculations, we protest, we who want peace, labor, and liberty!"⁷⁴

The widespread internationalist ideals of the 1848 revolutions, harshly repressed by the Concert of Europe the same year, found a new life only twenty years later with the establishment of the First and Second International. There, the burgeoning labor movements fought to spread political and socio-economic rights. Members of the organization saw themselves as heirs of the French Revolution, redressing the trajectory of human rights struggles, which had excluded propertyless men and women from the political process. One should be reminded that in its fight for universal suffrage and education, labor and economic rights, women's rights and the abolition of slavery, the First International moved the history of human rights forward, amidst wars and economic crises.

Internationalist ideals during Gustave Moynier's time were also reflections of counterhegemonic aspirations as the world was experiencing the slow erosion of British power. If the Geneva Convention and Moynier's proposal for an international court grew out of outrage over atrocities at the Battle of Solferino (1859) during the Franco-Prussian War (1870–1871), the principles were soon suspended with the decline of British hegemony during World War I. Until the late nineteenth century, Britain could check aspirations by any state to overturn the European balance of power, preventing any challenge to its hegemony from a land-based power. Britain ruled supreme at sea and had the capacity to enforce obedience by peripheral countries to the rules of the market. Internationalist and humanitarian aspirations tend to thrive when a hegemon can develop and enforce an international consensus about the parameters of free trade, just and unjust war, human rights, and law. As Britain's power waned and the great powers descended into conflict, the 1864 Geneva Convention and the idea of

74 Karl Marx, First Address of the Workingmen Association, July 23, 1870, <https://www.marxists.org/archive/marx/works/1871/civil-war-france/ch01.htm> [Accessed June 30, 2014].

an international criminal court would be buried in the trenches of the battle of the Marne, only to be resurrected after World War I.

2.2. LIBERAL INTERNATIONALISM AFTER WORLD WAR I

The next serious call for an internationalized system of justice came from the drafters of the 1919 Treaty of Versailles, who envisaged an ad hoc international court to try the Kaiser and German war criminals of World War. What would become known as the Leipzig war crimes trials, held in 1921, was a series of trials orchestrated as part of the penalties imposed on Germany. In the end, prosecuting the ex-Kaiser was seen as excessive and charges were dropped.

The Permanent Court of International Justice (PCIJ) was established under article XIV of the League of Nations, which called the League of Nations Council to formulate plans for an international court. The role of the PCIJ was to offer advisory opinions on any dispute or question referred to the Court by the League of Nations. While the PCIJ was not an organ of the League of Nations, the existence of the Court was closely related to the League. Despite the great need for an international court, states had to ratify the Statute of the PCIJ before they became party to a court decision. The advisory nature of the court left it with insufficient authority, falling far short of the ideal Gustave Moynier had hoped to realize in 1871, or even from the vision of an International Court developed by the British Fabian socialist Leonard Wolf in 1915.

Just as the early visions of an international criminal arbitration grew out of the Franco-Prussian war, the PCIJ was the product of a new liberal internationalism reawakening following the atrocities of the Great War. Like socialists before him, the liberal president Woodrow Wilson developed an alternative to the power politics associated with World War I; an alternative based on a liberal and free market understanding of human rights. He rejected the balance of power “determined by the sword.”

Instead, in the same liberal perspective of Giuseppe Mazzini, he argued that the inherent inequality of power among states should be countered by the “common strength” of nations to enforce peace based on an “equality of rights.”⁷⁵ While Wilson hoped that peace would be reinforced by the spread of liberal democracy based on the United States model, his specific proposal was for a redivision of European boundaries based on the principle of national self-determination. In 1919, at the Treaty of Versailles, the League of Nations was created in the spirit of Wilson’s vision. At the same conference, the International Labor Organization (ILO) was formed, as an affiliated agency of the League of Nations.

Internationalism seemed poised to challenge the virulent nationalism that had led to World War I. The ILO, shaped by the nineteenth century socialist perspective on human rights, now moved to establish improved worker health and safety standards (for example by prohibiting the addition of lead to paint), and by convincing several countries to adopt an eight-hour workday and a forty-eight hour workweek. It campaigned to end child labor, to increase the rights of women in the workplace, and to make ship owners liable for accidents involving seamen. Another category of rights that was brought to the agenda of the League of Nations was that of self-determination. Struggles based on claims for a right to self-determination had already precipitated the breakup of the Ottoman and Austro-Hungarian empires. With Woodrow Wilson’s Fourteen Points speech, the language of self-determination entered the agenda of the League of Nations. Only the Balkan countries, Poland, and Greece were granted the right to self-determination, with little provision for protecting minorities within those states, and the question of a right to sovereignty for colonized people was set aside. The League of Nations and the ICC would prove to be impotent. Still, however ineffective these organizations were during the interwar period, future visionaries learned from their flaws, and set the stage for a more robust human rights

75 Woodrow Wilson, Address to Senate, January 22, 1917, in Arthur Link’s *The Papers of Woodrow Wilson* (Princeton, Princeton University Press, 1966) Vol. 40, 536.

regime after World War II. There was progress for human rights and ICJ at Versailles, even if the international order was too unstable to sustain the vision of the League of Nations.

While the Treaty of Versailles attempted to create a new hegemonic order imposed by the winners of World War I, these efforts were soon reversed by grievances against provisions of the Treaty, the absence of the U.S. from the League, and ultimately by the ascendancy of Nazi Germany. With rising powers challenging its supremacy, Britain's hegemony was in steep decline. Free trade was replaced by protectionism; the gold standard was abandoned, and the world economy was fragmented into economic blocs. The various manifestations of liberal internationalism were contested and ultimately abandoned in the non-hegemonic period preceding World War II. The various means Wilson offered for enforcing peace and social justice were foreclosed. The United States failed to join the League of Nations, as the Senate opposed yielding to an international organization its constitutional mandate to decide on U.S. involvement in war. By the mid-1930's, the League's inaction in the face of open aggression by Italy, Germany and Japan revealed the difficulty of enforcing "collective security" by means of an international organization based on sovereign states. The onset of World War II destroyed the League, brought international labor legislation to a standstill, and marked the end of the PCIJ.

2.3. LIBERAL INTERNATIONALISM AFTER WORLD WAR II

The third moment in the history of international criminal justice was the aftermath of World War II, initiated by the Nuremberg Trials (1945–1946) of former Nazi and Japanese leaders who were indicted and tried as war criminals by an International Military Tribunal. This moment set a new precedent in international law, namely that no one was immune from punishment for war crimes, whether rulers, public officials or private individuals. These crimes included: (1) crimes against peace—namely

the planning, initiating, and waging of wars of aggression in violation of international treaties and agreements; (2) crimes against humanity—i.e., exterminations, deportations, and genocide; (3) war crimes—i.e., violations of the laws of war; and (4) "a common plan or conspiracy to commit" the criminal acts listed in the first three counts.⁷⁶ These principles—later ratified as the U.N. Convention on the Prevention and Punishment of the Crime of Genocide (1951)—were adopted as the first human rights treaty by the General Assembly, on December 9, 1948, one day before the ratification of the Universal Declaration of Human Rights.⁷⁷

An International Court of Justice, successor to the Permanent Court of International Justice, would function outside of U.N. auspices as a semi-independent entity headquartered at The Hague. With fifteen judges elected by the Security Council and the General Assembly, only states consenting that the Court adjudicate their controversies would be parties to international arbitration. When states failed to comply with a decision of the ICJ, the injured party would have recourse to the Security Council. In short, whatever the Court's interpretation of treaties and international customs, its decisions remained advisory (Articles 92–97).

This progress of ICJ did not occur in a vacuum but corresponded to the ascendance of a fourth liberal internationalist moment. The effort to create a global economic system after World War II, premised on the unimpeded flow of capital, had been prompted in large measure by lessons drawn from the interwar period, when protectionist trade policies had contributed to intensifying nationalism and global economic depression. Those conditions in turn had helped ignite the mass appeal of fascism, whose resurgence, argued liberals, would now be prevented by policies fostering economic recovery and interdependence. The Bretton Woods system and the Marshall Plan for Europe (originally envisioned to include the Soviet occupied territories and the Soviet Union itself) exemplified this approach, as did the 1950 Schuman plan for

76 Michael R. Marcus, *The Nuremberg War Crimes Trial, 1945-46* (NY, Boston: Bedford Books, 1997).

77 See also Cherif Bassiouni, *Crimes against Humanity* (UK, Cambridge University Press, 2011), 660.

common Franco-German production of coal and steel as “the first step in the federation of Europe.”⁷⁸ The new world order, it seemed, would be a world of peaceful national societies enjoying liberal and even certain socialist rights, to be determined within each state by democratic institutions and pluralistic debate. It would be a world founded on “four freedoms,” declared Roosevelt in his 1941 message to Congress, a world predicated on freedom of expression and belief, of freedom from want and fear.⁷⁹ In this universalist vision, the state would maintain a basic commitment to property rights, economic growth and a degree of social justice—i.e., the goals of the modern welfare state—building a new world order based on free trade and deepening interdependence.

The 1948 passage by the U.N. of the Convention against Genocide and the Universal Declaration of Human Rights represented a landmark in the historical progress for human rights. The Universal Declaration epitomized the culmination of several generations of struggle since the Enlightenment; encapsulating five pillars of human rights (security, civil-political, socio-economic, and cultural rights). While the right to self-determination had been invoked in the late nineteenth century and again at Versailles, it would find new life in the U.N. Convention of Civil and Political Rights and the U.N. Convention of Economic Social and Cultural Rights, both enacted in the mid-1960s in the context of the breakdown of colonial empires.

Human rights and International criminal justice emerged in the context of a new hegemonic order. Between 1945 and around 1970, the U.S. strove to fully assert its power, establishing a capitalist world order similar in basic structure to the one dominated by Britain in mid-nineteenth century, but with institutions and doctrines more broadly applied, better adjusted to the growing complexity

of the world economy, and more mindful of the political repercussions of economic crises. The reach of that hegemonic order was of course contested by another superpower, the Soviet Union. By the late 1960s it became increasingly evident that this U.S.-led world order faced mounting challenges. Structural transformation now pointed toward the need for a reconstructed hegemony, with a broadening of political management and dialogue to include an economically resurgent Western Europe and Japan. In addition to this new trilateralism, the aim was to address demands from the global South for a New International Economic Order that would reduce North-South economic inequality while better integrating developing states into the capitalist world economy. During this period, however, despite various efforts to implement a human rights regime, including the U.N. International Law Commission’s exploration of ways to strengthen ICJ (see the U.N. General Assembly definition of *aggression*),⁸⁰ the political will to strengthen human rights institutions was not in place.

2.4. LIBERAL INTERNATIONALISM AFTER THE POST-COLD WAR

The collapse of the Soviet empire in 1989 presented an enormous new opportunity to extend liberal internationalism. In the context of the defeat of the major ideological challenge to a liberal international world order, this period initially witnessed renewed prospects for building international regimes to enforce human rights. One beneficiary of this moment was a drive to improve enforcement of international criminal law. To bring perpetrators of serious international crimes to justice, the international community created a number of courts: the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR, respectively), the ICC, and hybrid or internationalized

78 Robert Schuman, quoted in Louis J. Halle, *The Cold War as History* (New York: Harper Perennial, 1991), 249. Schuman was French Foreign Minister when he made this proposal, which led to creation of the European Coal and Steel Community.

79 Franklin Delano Roosevelt, “The Four Freedoms” (1941) in Micheline Ishay, *The Human Rights Reader* (New York: Routledge, 1997), 403–412.

80 [http://daccess-dds-nyun.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?](http://daccess-dds-nyun.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement) OpenElement [accessed November 3, 2014].

courts—created in and/or for East Timor, Sierra Leone, Cambodia, Bosnia-Herzegovina, Kosovo and Lebanon. Acting on behalf of a putative international community, this array of international and internationalized judicial bodies was not only expected to curb serious international crimes, it also aspired to convey a general message of universal condemnation of atrocities and a collective determination to end the sense of impunity of murderous rulers.⁸¹ Another approach emerged, offering a modification of the model of the Nuremberg trials. Truth and reconciliation commissions (TRCs), built on the South African model, offered a more reconciliatory approach to dealing with human rights violations by governments. The value of these reconciliatory mechanisms versus more prosecutorial venues remains open for debate. One can argue that punitive ICJ provides greater deterrence, even as a fallback mechanism that enables TRCs to be more effective.

As in previous historical moments, these various institutions of criminal justice were developed in the context of broader struggles over human rights. The Cold War had dimmed hopes for new visions of human rights, as the superpower rivalry fanned longstanding ideological controversies, and the end of that conflict seemed to offer good reasons for human rights optimism. With the development of global information technology, Human Rights Peacenet, Amnesty International, and a multitude of other websites now offered human rights advocates unprecedented possibilities of fighting with their fingertips.⁸² One cannot overlook the success of the human rights community's infopressure, for example on the Mexican government during the

Chiapas' rebellion, in drawing global attention to the turbulent events in Tiananmen Square, or against Indonesia's repression in East Timor. The proliferation of human rights oriented NGOs and the post-cold war mushrooming of human rights activities—such as the International Women's conference in Beijing, the Rio Declaration of Development and Environment, the Declaration on the Rights of Indigenous People, and the launching of humanitarian interventions—all kindled new hopes for the advance of human rights.

The world was changing, as an ever-expanding market economy, new forms of production, and dramatic innovations in information technology fed a process of globalization that contributed to the West's hegemonic victory of the cold war. Two linked strands of "triumphalism" followed the fall of the Berlin Wall. Some proclaimed the arrival of "the unipolar moment" in which United States power reigned supreme over the globe.⁸³ For others, it was, as Francis Fukuyama notoriously put it, "the end of history," as liberalism and globalized free markets achieved final victory in the historical world struggle over contending conceptions of rights.⁸⁴ Overall, a new international hegemony based on U.S. power and free trade emerged after the Cold War, strengthening the system of ICJ and an international human rights regime.

3. Globalization and the Future of International Criminal Justice and Human Rights

In this new age of globalization, even the architects of the Treaty of Rome wonder about the viability of the ICC. Some argue that globalization is hindering

81 See Yuval Shani, "How can International Criminal Courts have a greater impact on National Criminal Proceedings? Lessons from the first two Decades of International Criminal Justice in Operation," *Israel Law Review*, Volume 46, Issue 03, November 2013, 431.

82 The following section was drawn from Micheline Ishay, *The History of Human Rights* (Berkeley, University of California Press, second edition, 2008), p.246.

83 Charles Krauthammer, "The Unipolar Moment," *Foreign Affairs: America and the World*, Vol. 70, No. 1 (1990-91). See also Samuel Huntington, "Why International Primacy Matters," *International Security* (Spring 1993), 68-83; Joseph S. Nye, Jr. *Bound to Lead: The Changing Nature of American Power* (New York: Basic Books, 1990); Joseph Joffe, "Entangled Forever," *The National Interest*, Fall 1990, Joshua Muravchick, "At Last, Pax Americana," *New York Times*, January 24, 1991, A19.

84 Francis Fukuyama, "The End of History?" *The National Interest* (Summer 1989), 3-18.

such institutions, while others contend the opposite. Two worldviews confront each other with respect to this question. One camp might be called “the Westphalianists:” i.e., those who believe in the power of the state and international organizations, and the possible benefits of globalization. The other camp comprises the post-Westphalianists, or those who are critical of such institutional power and the alleged advantages associated with globalization. These two perspectives should be understood as Weberian ideal types.

The Westphalianists build their views of human rights and ICJ on a Kantian worldview. From that perspective, republicans, liberal governance, economic interdependence among states, and international organizations or supranational confederacies are combining to transcend inequities by embedding states, domestically and internationally, within a regime based on a broad subscription to cosmopolitan rights. In that sense, international institutions are essential safeguards of human rights. Westphalianists believe, moreover, that international institutions have evolved progressively and historically, learned from their mistakes, and continue to generate agreed-upon international norms across territorial and regional boundaries that should be enforced worldwide.

Westphalianists also tend to believe that it is the absence, rather than the deepening, of the economic integration of states in our era of globalization, that accounts for pervasive human poverty. The benefits of trade require that societies are committed to accountable and transparent institutions. Since the end of World War II, that view has been endorsed by mainstream U.S. politicians of both major political parties who have supported free trade agreements (i.e., most notably, the General Agreement on Tariff and Trade (GATT), the North American Free Trade Agreement (NAFTA), and the World Trade Organization (WTO). Westphalianists are generally confident that economic liberalization, once it takes roots in otherwise protectionist or barren economies, will eventually overcome economy and cultural inequality and lead to a political order and

democratic institutions strengthened by welfare rights.

The advance of ICJ and human rights throughout history attests to progress, and despite stumbling blocks, the adjustment of these organizations to new developments associated with the era of globalization continue to provide confidence in the future of these organizations. Although the ICC may not yet be trying many cases, Westphalianists expect the numbers to rise as states enact national legislation against the crimes specified in the Rome Statute and develop their own expertise to try the cases. After all, as Westphalianists will argue, the ICC and other instruments of ICJ are young institutions. Because of ICC adherence to the principle of complementarity, which gives states the first option to prosecute, states have a strong motivation to develop their national capacities, to try cases involving war crimes, crimes against humanity and genocide. In this respect, Westphalianists regard instruments of international human rights and ICJ as complements to enforcement at the national level. Overall, their attitude toward ICJ is not defeatist but reformist. To those who see the ICC as less than fully capable of rendering enforceable, impartial decisions, Westphalianists point out to such critics that the ICC can and should be improved along other more successful tribunals.⁸⁵

On the other side of the spectrum are the post-Westphalianists, who tend to view the international structure of the world order through post-modernist or Foucauldian lenses. From this perspective, international mechanisms to enforce human rights are seen as mere hegemonic cultural subterfuges, designed to hide the geopolitical and economic agendas of the most powerful states. In the same vein, the juridical apparatus of state institutions are not spared from criticism, as the institutions of power lead inexorably to the corruption of the original impulse to protect human rights. In that sense, post-Westphalianists view history as a non-reified process, as an ephemeral and recurrent rise and decline of the national and international

institutions of power. It is important to note that unlike Westphalianists, post-Westphalianists no longer view the territorial sovereignty of states as a foundational principle of the international system. Instead, the most privileged custodians of the global system utilize “humanitarian intervention” to serve their interests and to warn belligerent defiers of the core centers of globalization of the terrible price of rebellion and disruption. In this sense, Antonio Negri and Michael Hardt remind us that globalization appears “in the form of a very high tech machine: it is virtual, built to control the marginal event, and organized to dominate and when necessary intervene [with the assistance of states], in the event of the breakdown of the system.”⁸⁶

Globalization, in the post-Westphalian world, created new loci of power within and beyond state boundaries, blurring the old colonial North and South divides. The porosity of the state to the dictates of capital contributed to the digital age and the creation of spatial and temporal sites of contestation which tend to be better served locally. Many defenders of cultural and local rights have cautioned against Westphalianist preachers of universalism; viewing them as Eurocentric, and arguing that human rights is a facet of Western domination at the expense of the needs and values of subjugated peoples. A local and cultural relativistic approach, many have long professed, offers at the very least a more generous attitude toward otherwise misrepresented or muffled cultural influences.

From this perspective, ICJ and human rights is viewed as the prolongation of Christian missionary pursuits (from the International Committee of the Red Cross to the present), or the continuation of “enlightened” imperialism under new guise. While Westphalianists have viewed the principle of complementarity of the ICRC as a way to build national jurisdiction, post-Westphalianists deplore these cases as impermeable to cultural understanding or primarily targeting people from Africa or the

developing world.⁸⁷ Most cases have in fact been from African countries, such as the Democratic Republic of Congo, Uganda, Sudan, Kenya, Libya, Côte d’Ivoire, and Mali. Imperialism in that sense has evolved; it now uses selective international juridical structures to discipline leaders of the developing world and showcase trials to deter leaders from following paths hostile to Western interests. ICJ continues to exempt leaders from the wealthiest states from international trial. In contrast to Westphalianists, post-Westphalianists show great skepticism regarding the value and viability of international human rights based institutions orchestrated by Western powers, preferring instead to rely on local contestation, grassroots politics or popular action.

Conclusion

I concur with the Westphalianists’ embrace of universal human rights progress. The history of human rights shows a clear dimension of progress: slavery has been abolished, even if significant new forms persist, women in most of the world have been granted the right to vote, and most of the world’s societies have experienced increased life spans, better health, and reductions in infant and maternal mortality. Expecting future progressive purposes to the history of human rights does not imply the absence of setbacks. While history shows that major strides in human rights have always been followed by significant defeats, steps forward have not been endlessly neutralized, as in the myth of Sisyphus. Despite long histories of barbarism and ruthless power, human rights struggles survived the tests and contradictions of history, learning from setbacks, and providing an evolving corpus of shared conceptions of universal human rights that transcend class, ethnic, and gender distinctions. As capitalism conquered most of the earth, it has, at least in the more advanced states, incorporated important elements of political liberty from the

86 Antonio Negri and Michael Hardt, *Empire* (Cambridge, Boston: Harvard University Press, 2001), 39.

87 Allison Dundes Renteln, “Cultural Defenses in International Court Tribunals: A Preliminary Consideration of the Issues,” 2011, [Accessed on July 9, 2014 http://heinonline.org/HOL/LandingPage?handle=hein.journals/sjlt_a18&div=26&id=&page=].

liberal tradition, and of economic equity from the socialist challenge.

With Westphalianists, then, I wish to reaffirm the importance of international institutions for the future of human rights. Just as the rationale for the eighteenth century nation-state was grounded on universal and cosmopolitan rights, today international organizations (even if they tend to reflect the interests of major powers) can still be employed to strengthen national capacity—which has often been eroded by globalization. In *The Justice Cascade*, Kathryn Sikkink argues against skeptics who see such prosecutions and trials as a spectacular sham leading neither to real justice nor to peace. She persuasively depicts how the spreading of human rights prosecutions in Latin America, Europe and Africa have become powerful tools for facilitating democratic transitions and preventing leaders elsewhere—though not everywhere—from undertaking brutal human rights violations. From this perspective, early decisions to launch trials in Argentina, Guatemala and Peru, following democratic transitions, dramatized the arrival of a new order and may have deterred potential spoilers.

At the same time, post-Westphalianists are rightly concerned that these indictments represent less than a complete repudiation of old policies. In fact, one could add, consistent with that criticism, that focusing on the prosecution of human rights violators as a centerpiece of human rights undermines the global legitimacy sought by hegemonies. If the U.S. wishes to reassert its hegemonic global rule, one important step would be to join the ICC. The U.S. has lived with a contradiction for more than fifty years. On the one hand, it has prided itself on being a champion of human rights around the world; on the other, it has regularly flinched when asked to surrender even an insubstantial aspect of its sovereignty to the authority of the international institutions that protect human rights.

The U.S. has acted unilaterally in a variety of ways that test its aspirations to legitimate world leadership. The widespread use of torture during the G. W. Bush administration dramatically undermined that leadership; and the Obama administration's policy of limitless surveillance and the use of drones raises troubling questions regarding its human rights credentials as a hegemon. No nation, however powerful and successful, can advance its global interest independent of the normative standards of the international community. The limits of U.S. power can be illustrated by the image of the U.S. acting unilaterally to impose sanctions on a country to protest human rights abuses. Sanctions obviously require widespread participation to have meaningful prospects of success.

With respect to the ICC, many people in the developing world feel that an enormous amount of money was channeled in the wrong direction in order to conduct these "show trials." They are right, in the sense that headline-grabbing prosecutions of criminal former leaders coexist with a failure to address societal, economic, political and social problems that underlie descents into mass violence and criminality. The 1990s tended to focus on ICJ without addressing deep human rights and human development problems that remain pervasive in Africa and elsewhere.⁸⁸ The ICJ system will remain weak so long as other components of the international human rights regime are not strengthened. By contrast, in the post-World War II vision of human rights, the international system of criminal justice, however embryonic, was regarded as part of a far broader approach, in which the Marshall Plan would rebuild impoverished and war-destroyed economies in Europe; Bretton Woods would establish a framework for global trade, finance, and assistance; the U.N. would provide a global diplomatic forum; and the U.N. Charter, the Convention against Genocide and the Universal Declaration of Human Rights would codify international norms. In short, what is needed today is a concerted

88 Victor Ochen, "An Open Letter to the African Union from War Crimes Victim," Civicus.Org, October 11, 2013, <http://www.civicus.org/index.php/en/link-to-related-newsresources2/1905-an-open-letter-to-the-african-union-from-war-crimes-victims>, [Accessed on July 9, 2014].

international effort to devise a far more comprehensive vision and strategy designed to reintegrate what has become a badly divided set of human rights efforts.

We are experiencing a period in which the U.S., the only world contender to a hegemonic role, and its European and other allies have a mixed record when it comes to honoring and advancing their declared commitments to universal human rights. There are multiple other challenges confronting

human rights supporters, including rising nationalism in some places and religious extremism in others. Yet those who attempt forcefully to stifle voices representing universal human rights have an accumulating historical record of failure. When one takes a longer historical view, it is clear that the struggle for universal rights is ineradicable, strongly voiced no matter where repressed, and in the long run more loudly heard, in every country on earth.

13. HUMAN RIGHTS FOR WHOM?

With the jubilation at the end of the Cold War, the world seemed more connected and unified. For a moment, it seemed possible to associate the triumph of capitalist ideology with the global advance of human rights. But soon a familiar question returned to the fore: *human rights for whom?* Globalization revealed its Janus face. The backward face pointed to environmental degradation, the spoliation of indigenous lands, the weakening of trade unions, harsh immigration policies, human trafficking, the rise of right-wing populism, and a global plague intensifying misogyny, xenophobia, and racism, the daunting search for a unified universal human rights agenda faced new setbacks, including the marginalization of subaltern groups.

At the same time, the forward-looking face points toward new opportunities for a number of disenfranchised groups. For instance, changes in economic production provided new opportunities for women in the West, long trapped in subordinate roles, as well as for women in the developing world, ensnared in even more entrenched patriarchies. As women entered the public space en masse, gay men, lesbians, and transgender persons felt more free to define both their sexual and gender preferences. As new technologies transformed the workplace, people with disabilities gained more autonomy and sought a more meaningful achievement of their human rights. In short, globalization has produced winners and losers, with many groups still left behind or remaining invisible.

Globalization has led to deepening tensions, between the rights of citizens and those of immigrants (or stateless people), and between champions of universalism and proponents of cultural (or group) rights. Predictably, a panoply of international human rights documents reveal these divided interests. Marginalized groups continue to step out from the shadows of oppression and call our attention to their rights. In so doing, they remind us that the universal human rights project is not anathema to their concerns but is simply unfinished.

Questions for Chapter 13

1. Can the rights of refugees be reconciled with those of citizens?
2. Can open border policies benefit citizens' rights?
3. To what extent has globalization accelerated human trafficking?
4. In what ways can universal and group rights conflict?
5. Should universal rights prevail over cultural rights?
6. Can minority rights coexist with majority rights? If so, how?
7. Of Lukes' five fables, which approach to human rights is more appealing? Why?

8. Should a non-Western country be able to subjugate women and queer people in the name of cultural rights?
9. Because human rights historically implies individual autonomy and free choice, is it impossible for the disabled to achieve human rights?

On The Rights of Citizens Versus the Rights of Refugees and Immigrants

No one has compared the human rights status of refugees to those of citizens more eloquently than the German political theorist Hannah Arendt (1906–1975). In her book, *The Origins of Totalitarianism* (1951), she aptly observed that recognition of human rights as inalienable, during the eighteenth century, represented a turning point in human history. But the rights of citizens were protected by sovereign states. People who were stateless, lacking that protection, were deprived of life, liberty, and the pursuit of happiness, of equality before the law and freedom of opinion. “The danger,” Arendt pointed out, “is that a global, universally interrelated civilization may produce barbarians from its own midst by forcing millions of people into conditions which, despite all appearances, are the conditions of savages” (see Section 13.1).

The Origins of Totalitarianism was written during the postwar refugee crisis in 1951, the same year as the signing of the U.N. Convention Relating to the Status of Refugees (see Section 13.5, I). Today a new refugee crisis has prompted renewed debate about migration, citizenship, and economic security. One possible approach would be to open borders to refugees and migrant workers alike, offering safety and opportunity to those who flee war or economic poverty. Such an open door policy has been defended and criticized by both libertarian and progressive thinkers. Bryan Caplan (*On the Libertarian Case for Open Borders*, 2012) argues for a non-restrictive migration policy. He maintains that from an economic and moral standpoint, restricting immigration is unwarranted. “If cheaper, more humane alternatives exist,” he suggests, “then immigration restrictions remain unjustified.” To support his controversial position, he draws one empirical research to argue that immigration does not undermine American workers, taxpayers, property rights, political liberty, or culture (see Section 13.2).

In “The Left Case against Open Borders” (2018), Angela Nagle takes the opposite view. Immigration has been welcomed by the business community and within mainstream free market discourse, she argues, at the expense of American workers’ rights. The North Atlantic Free Trade Agreement harmed not only low-skilled American workers, she argues, but also Mexican farmers, who were forced to compete with U.S. agriculture. Liberal border policies contributed to a brain drain from poor countries, as 45% of migrants who arrived in the U.S. since 2010 were college educated. Nagle draws from Marx, who argued in the nineteenth century that low paid Irish workers immigrating to England would be forced into hostile competition with English workers. She argues that the Left should instead understand the root cause of immigration and support a federal employment verification system, which would prevent employers from exploiting illegal labor (see Section 13.3).

In “Why the Left Should Unite Behind Open Borders” (2019), Lea Yipi takes yet another approach. Marx, she explains, saw “political conflicts as existing not between states and groups with different cultural profiles, but between different social classes, with distinct and historically specific alignments to global capitalism.” One cannot treat immigration as a threat to domestic workers, as capitalism ranges beyond domestic scope. Wealthy elites have perpetuated the rivalry between poor immigrants and poor natives, to their own advantage (see Section 13.4). From this perspective, one could argue against Caplan that xenophobia is a predictable outcome of unfettered immigration, given the division of social classes exacerbated by a free market economy. Debates about the rights of refugees and migrant workers have found expression in international legal frameworks, which include numerous treaties and declarations (see Section 13.5). Recognizing the particular economic vulnerability of

women and children, further conventions and protocols have sought to address the scourge of human trafficking (see Section 13.5, V and Chapter 16).

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 5.

13.1 Hannah Arendt: On the Rights of the Stateless (*The Origins of Totalitarianism*, 1951)¹

[T]he nation-state cannot exist once its principle of equality before the law has broken down. Without this legal equality, which originally was destined to replace the older laws and orders of the feudal society, the nation dissolves into an anarchic mass of over- and underprivileged individuals. Laws that are not equal for all revert to rights and privileges, something contradictory to the very nature of nation-states. The clearer the proof of their inability to treat stateless people as legal persons and the greater the extension of arbitrary rule by police decree, the more difficult it is for states to resist the temptation to deprive all citizens of legal status and rule them with an omnipotent police.

The Perplexities of the Rights of Man

THE DECLARATION of the Rights of Man at the end of the eighteenth century was a turning point in history. It meant nothing more nor less than that from then on Man, and not God's command or the customs of history, should be the source of Law. Independent of the privileges which history had bestowed upon certain strata of society or certain nations, the declaration indicated man's emancipation from all tutelage and announced that he had now come of age.

Beyond this, there was another implication of which the framers of the declaration were only half aware. The proclamation of human rights was also meant to be a much-needed protection in the new era where individuals were no longer secure in the estates to which they were born or sure of their equality before God as Christians. In other words, in the new secularized and emancipated society,

men were no longer sure of these social and human rights which until then had been outside the political order and guaranteed not by government and constitution, but by social, spiritual, and religious forces. Therefore throughout the nineteenth century, the consensus of opinion was that human rights had to be invoked whenever individuals needed protection against the new sovereignty of the state and the new arbitrariness of society.

Since the Rights of Man were proclaimed to be "inalienable," irreducible to and undeducible from other rights or laws, no authority was invoked for their establishment; Man himself was their source as well as their ultimate goal. No special law, moreover, was deemed necessary to protect them because all laws were supposed to rest upon them. Man appeared as the only sovereign in matters of law as the people was proclaimed the only sovereign in matters of government. The people's sovereignty (different from that of the prince) was not proclaimed by the grace of God but in the name of Man, so that it seemed only natural that the "inalienable" rights of man would find their guarantee and become an inalienable part of the right of the people to sovereign self-government.

In other words, man had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference to some larger encompassing order, when he disappeared again into a member of a people. From the beginning the paradox involved in the declaration of inalienable human rights was that it reckoned with an "abstract" human being who seemed to exist nowhere, for even savages lived in some kind of a social order. If a tribal or other "backward" community did not enjoy human rights, it was obviously because as a whole it had not yet reached that stage of civilization, the stage of

1 Hannah Arendt, *The Origins of Totalitarianism* (Berlin: Schocken Books, 1951). Editor: For space considerations, some explanatory footnotes have been omitted.

popular and national sovereignty, but was oppressed by foreign or native despots. The whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to insure them....

The full implication of this identification of the rights of man with the rights of peoples in the European nation-state system came to light only when a growing number of people and peoples suddenly appeared whose elementary rights were as little safeguarded by the ordinary functioning of nation-states in the middle of Europe as they would have been in the heart of Africa. The Rights of Man, after all, had been defined as "inalienable" because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them....

The failure of all responsible persons to meet the calamity of an ever-growing body of people forced to live outside the scope of all tangible law with the proclamation of a new bill of rights was certainly not due to ill will. Never before had the Rights of Man, solemnly proclaimed by the French and the American revolutions as the new fundament for civilized societies, been a practical political issue. During the nineteenth century, these rights had been invoked in a rather perfunctory way, to defend individuals against the increasing power of the state and to mitigate the new social insecurity caused by the industrial revolution. Then the meaning of human rights acquired a new connotation: they became the standard slogan of the protectors of the underprivileged, a kind of additional law, a right of exception necessary for those who had nothing better to fall back upon... The Rights of Man, supposedly inalienable, proved to be unenforceable—even in countries whose constitutions were based upon them—whenever people appeared who were no longer citizens of any sovereign state....

The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of

opinion — formulas which were designed to solve problems *within* given communities — but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed, but that nobody wants even to oppress them. Only in the last stage of a rather lengthy process is their right to live threatened; only if they remain perfectly "superfluous," if nobody can be found to "claim" them, may their lives be in danger. Even the Nazis started their extermination of Jews by first depriving them of all legal status (the status of second-class citizenship) and cutting them off from the world of the living by herding them into ghettos and concentration camps; and before they set the gas chambers into motion they had carefully tested the ground and found out to their satisfaction that no country would claim these people. The point is that a condition of complete rightlessness was created before the right to live was challenged.

The same is true even to an ironical extent with regard to the right of freedom which is sometimes considered to be the very essence of human rights. There is no question that those outside the pale of the law may have more freedom of movement than a lawfully imprisoned criminal or that they enjoy more freedom of opinion in the internment camps of democratic countries than they would in any ordinary despotism, not to mention in a totalitarian country. But neither physical safety — being fed by some state or private welfare agency — nor freedom of opinion changes in the least their fundamental situation of rightlessness. The prolongation of their lives is due to charity and not to right, for no law exists which could force the nations to feed them; their freedom of movement if they have it at all gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow.

These last points are crucial. The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective. Something much more fundamental than freedom and justice, which are rights of citizens, is at stake when belonging to the community into

which one is born is no longer a matter of course and not belonging no longer a matter of choice, or when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion. Privileges in some cases, injustices in most, blessings and doom are meted out to them according to accident and without any relation whatsoever to what they do, did, or may do.

We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation. The trouble is that this calamity arose not from any lack of civilization, backwardness, or mere tyranny, but, on the contrary, that it could not be repaired, because there was no longer any "uncivilized" spot on earth, because whether we like it or not we have really started to live in One World. Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether...

Not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people. Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity.

These facts offer what seems an ironical, bitter, and belated confirmation of the famous arguments with which Edmund Burke opposed the French Revolution's Declaration of the Rights of Man. They appear to buttress his assertion that human rights were an "abstraction," that it was

much wiser to rely on an "entailed inheritance" of rights which one transmits to one's children like life itself, and to claim one's rights to be the "rights of an Englishman" rather than the inalienable rights of man.² According to Burke, the rights which we enjoy spring "from within the nation," so that neither natural law, nor divine command, nor any concept of mankind such as Robespierre's "human race," "the sovereign of the earth," are needed as a source of law.³

The pragmatic soundness of Burke's concept seems to be beyond doubt in the light of our manifold experiences. Not only did loss of national rights in all instances entail the loss of human rights; the restoration of human rights, as the recent example of the State of Israel proves, has been achieved so far only through the restoration or the establishment of national rights. The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships — except that they were still human. The world found nothing sacred in the abstract nakedness of being human. And in view of objective political conditions, it is hard to say how the concepts of man upon which human rights are based — that he is created in the image of God (in the American formula), or that he is the representative of mankind, or that he harbors within himself the sacred demands of natural law (in the French formula) — could have helped to find a solution to the problem...

The great danger arising from the existence of people forced to live outside the common world is that they are thrown back, in the midst of civilization, on their natural givenness, on their mere differentiation. They lack that tremendous equalizing of differences which comes from being citizens of some commonwealth and yet, since they are no longer allowed to partake in the human artifice, they begin to belong to the human race in much the same way as animals belong to a specific

2 Edmund Burke, "Reflections on the Revolution in France, 1790," edited by E. J. Payne, Everyman's Library.

3 Robespierre, speeches, 1927 speech of April 24, 1793.

animal species. The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general — without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself — and different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance.

The danger in the existence of such people is twofold: first and more obviously, their ever-increasing numbers threaten our political life, our human artifice, the world which is the result of our common and coordinated effort in much the same, perhaps even more terrifying, way as the wild elements of nature once threatened the existence of man-made cities and countrysides. Deadly danger to any civilization is no longer likely to come from without. Nature has been mastered and no barbarians threaten to destroy what they cannot understand, as the Mongolians threatened Europe for centuries. Even the emergence of totalitarian governments is a phenomenon within, not outside, our civilization. The danger is that a global, universally interrelated civilization may produce barbarians from its own midst by forcing millions of people into conditions which, despite all appearances, are the conditions of savages.

13.2 Bryan Caplan: On the Libertarian Case for Open Borders (“Why Should We Restrict Immigration?,” 2012)⁴

Consider the following thought experiment: Moved by the plight of desperate earthquake victims, you volunteer to work as a relief worker in Haiti. After two weeks, you’re ready to go home. Unfortunately, when you arrive at the airport, customs officials tell you that you’re forbidden to enter the United States. You go to the American consulate to demand an explanation. But the official response is simply,

“The United States does not have to explain itself to you.”

You don’t have to be a libertarian to admit that this seems like a monstrous injustice. If the American government denies you permission to return, you’ll live in dire poverty, die sooner, live under a brutal, corrupt regime, and be cut off from most of the people you want to associate with. Hunger, danger, oppression, isolation: condemning you to even one seems wrong. Which raises a serious question: if you had been born in Haiti, would denying you permission to enter the United States be any less wrong?

This thought experiment hardly proves that people have an absolute right of free migration. After all, many things that seem wrong on the surface turn out to be morally justified. Suppose you knock me unconscious, then slice me open with a knife. This is normally wrong. But if you’re performing surgery required to save my life, and I gave my informed consent, then your action is not just morally permissible, but praiseworthy. Nevertheless, my thought experiment does establish one weak conclusion: immigration restrictions seem wrong on the surface. To justifiably restrict migration, you need to overcome the moral presumption in favor of open borders.

How would one go about overcoming this presumption? For starters, you must show that the evils of free immigration are fairly severe. Immigration restrictions trap many millions in Third World misery. Economists’ consensus estimate is that open borders would roughly double world GDP, enough to virtually eliminate global poverty. The injustice and harm that immigration restrictions prevent has to be at least comparable to the injustice and harm that immigration restrictions impose.

But hard evidence that immigration has major drawbacks is not enough. The proponent of immigration restrictions also has to show that there is no cheaper or more humane way to mitigate the evils of immigration. Surgery wouldn’t be morally justified

4 Bryan Caplan, “Why Should We Restrict Immigration?,” *Cato Journal*, Vol. 32, No. 1 (Winter 2012), 5–24. Editor: For space considerations, some explanatory footnotes have been omitted. Notes that have been retained have been converted from APA style to footnotes.

if a \$1 pill were an equally effective treatment. Why not? Because even if surgery will save the patient's life, there is a cheaper, more humane way to do so.... If cheaper, more humane alternatives exist, then immigration restrictions remain unjustified even if my summary of the social science is hopelessly biased.

Protecting American Workers?

The most popular argument for immigration restrictions is that we need them to protect American workers from poverty. The mechanism is simple: Without these laws, the supply of labor would drastically increase—and American wages would plummet to Third World levels.

Many of the assumptions behind this argument are true. After the highest-growth decade in the history of the world, billions remain desperately poor. About a billion people live on the equivalent of a dollar a day or less. About a quarter of the world's population would like to permanently move to another country. Contrary to populist complaints, current immigration restrictions clearly achieve their intended purpose: excluding almost all of the people who want to move here. Without immigration restrictions, the supply of labor in the United States would rapidly increase.

Yet these assumptions do not imply that American workers owe their standard of living to immigration restrictions. Under open borders, low-skilled wages are indeed likely to fall, but most Americans are not low-skilled. Over 87 percent of Americans over the age of 25 are high-school graduates. Most of the world's would-be immigrants are, at best, substitutes for American high-school drop-outs.

Mainstream estimates confirm this point: immigration has little or no effect on overall wages. Educated Americans are primarily customers, not competitors, of new arrivals. George Borjas, the most academically reputable critic of immigration, lands comfortably inside this consensus. Together with Lawrence Katz, Borjas finds that between 1980

and 2000, Mexican immigration reduced overall native wages by 3.4 percent in the short run, and 0 percent in the long run.⁵ These are not annual effects; they are the total effect of two decades of immigration....

When immigration increases, physical skills become more plentiful relative to demand, but language skills become more scarce. Since most jobs are a mix of physical and language skills, and people can change jobs, immigration might actually increase native wages.

This distinction between physical and language skills turns out to be empirically important. When immigration increases, native workers really do respond by switching to more language-based occupations—escaping lower pay for their physical skills, and capturing higher pay for their language skills.... Immigration can benefit American workers even if it reduces their wages. How? By increasing the value of workers' non-labor assets, like pensions and real estate. The admittedly small literature finds surprisingly large effects. In the United States, housing prices and rents rise by roughly 1 percent when immigration raises a city's population by 1 percent. Since Americans own almost all American residential real estate, immigration is a quiet but massive transfer from immigrants to native homeowners....

Contrary to popular opinion, then, "protecting American workers" is a weak rationale for immigration restrictions. Immigration makes low-skilled natives worse off, especially if they rent. But most Americans gain. Even if you reject these conclusions, though, immigration restrictions remain unjustified. You do not have to restrict migration to protect native workers from the consequences of immigration. There is a cheaper and more humane alternative: Charge immigrants surtaxes and/or admission fees, then use the extra revenue to compensate low-skilled Americans. For example, you could issue green cards to Haitians who agree to perpetually pay a 50 per cent surtax on top of their ordinary U.S. tax liability. Haitians used to earning

5 G. Borjas and L. Katz, "The Evolution of the Mexican-Born Workforce in the United States." In G. Borjas (ed.) *Mexican Immigration to the United States* (Chicago: University of Chicago Press, 2005), 49.

a dollar a day would jump at the opportunity, and the extra revenue could fund, say, tax cuts for low-income natives. Critics can tailor the details to fit the magnitude of the harm they believe immigrants inflict on native workers. Whatever the magnitude of this harm might be, extracting compensation is cheaper and more humane than forcing foreigners to languish in the Third World.

Protecting American Taxpayers?

The American welfare state pays more for idleness than many countries pay for work. Should we not fear that, under open borders, many would immigrate merely to take advantage of the system? Milton Friedman himself famously remarked, “You cannot simultaneously have free immigration and a welfare state.” Immigration restrictions seem like the natural way for American taxpayers to protect themselves from billions of potential parasites.

Despite Friedman’s endorsement, this argument is much weaker than it looks....

First, contrary to popular stereotypes, welfare states focus on the old, not the poor. Social Security and Medicare dwarf means-tested programs. Since immigrants tend to be young, they often end up supporting elderly natives rather than “milking the system.” Illegal immigrants who pay taxes on fake Social Security numbers are pure profit for the Treasury....

Second, a high share of government spending is “nonrival”—government can serve a larger population for little or no extra cost. National defense is the most obvious example. If the population of the U.S. doubled, the current military could still ably defend it. You certainly wouldn’t need to double the total defense budget. An even clearer case: if the population of the U.S. doubled overnight, the national debt (not deficit) would remain the same, and the per capita debt would halve. The lesson: Immigrants can pull their own fiscal weight even if their tax bills are well below average.

Suppose, however, that you remain convinced that immigrants impose a large fiscal burden on

native taxpayers. Before you embrace immigration restrictions, you should still look for cheaper, more humane solutions. They’re not hard to find. The simplest is to freely admit immigrants, but make them permanently ineligible for benefits. “Net fiscal burden” is not a physical constant. It is a function of policy. If immigrants paid normal taxes and received zero benefits, their “net fiscal effect” would almost automatically be positive. If permanent ineligibility seems unfair, surely it is less unfair than refusing to admit immigrants in the first place. And there are many intermediate approaches. You could impose a waiting period: No benefits for 10 years. You could reduce or limit benefits: Half benefits for life, or double Medicare co-payments. You could set thresholds: Immigrants become eligible for benefits after their cumulative taxes exceed \$100,000. Whether you love or loathe these proposals, they are certainly cheaper and more humane responses to the fiscal effects of immigration than the status quo.

Protecting American Culture?

Another common complaint about immigrants is that they harm our culture. Many fail to learn English, and cling to the backward ways of their homelands. Do we really want America to become Mexico? If not, immigration restrictions seem like a commonsense response.

Claims about English fluency are easy to evaluate. The Pew Hispanic Center ran six high-quality surveys between 2002 and 2006.⁶ If you consider only first-generation Hispanic immigrants, popular complaints check out: a mere 23 percent speak English very well. But lack of English fluency is not hereditary: 88 percent of second-generation and 94 percent of third-generation Hispanics speak fluent English....

Vaguer cultural complaints are harder to evaluate. However, if we equate “culture” with “high culture” or “popular culture,” we see a curious pattern. America’s top two cultural centers, California and New York, have the largest

6 S. Hakimzadeh and D. Cohn, “English Usage among Hispanics in the United States” (Washington: Pew Hispanic Center, 2007).

foreign-born populations in the country—26 percent and 20 percent, respectively....

Regardless of your cultural views, there are certainly cheaper and more humane ways to address them than immigration restrictions. If you're worried about the decline of English, we could admit any immigrant who passes a test of English fluency. If you're worried about culture in some vaguer sense, we could admit any immigrant who passes a test of cultural literacy. In the interest of fairness, though, you should make sure that the typical native can pass your test. If most Americans cannot name the decade of the American Civil War, why should we expect more from immigrants?

Protecting American Liberty?

Most immigrants come from countries that are less free than the United States. Since even dictatorships are somewhat responsive to public opinion, we should expect immigrants to lean statist. Immigrants fleeing domestic repression might hold atypically libertarian views. But economic migrants presumably share the policy outlook of the typical voter from their country of origin. If enough statist come, won't our democracy switch to the kinds of policies that immigrants struggle to escape? Economists—or at least economists with strong free-market sympathies—would call this a “political externality.” The only way to protect American liberty, you might conclude, is to strictly limit the liberty of foreigners to enter the country. This is probably libertarians' favorite argument against open borders.... Nevertheless, there are good reasons to think that the political externality of immigration is less negative than it appears....

Immigrants from Bismarckian Germany and Czarist Russia came from extremely authoritarian societies, but when they arrived in the United States, they made little effort to recreate their homelands. Instead, they accepted their new society as it was. Migration may not change people's fundamental philosophy, but it doesn't have to. If human beings accept the status quo and the status quo happens to be liberty, liberty wins by default.... Immigration also has political benefits that libertarians neglect.

The empirical literature on the political economy of the welfare state reaches two seemingly contradictory conclusions. First, as believers in the political externality story would expect, non-whites are more supportive of the welfare state than whites. Second, as racial diversity increases, the welfare state shrinks. The standard resolution of the paradox: diversity undermines solidarity. People happily support welfare for members of “their” group, but resent paying taxes to help “the other.” Racially homogeneous societies have large welfare states because almost everyone, rich and poor alike, agrees that the recipients are deserving. Racially mixed societies like the United States have less consensus and smaller welfare states....

[I]mmigration could actually make the welfare state shrink. As individuals, immigrants probably do favor a larger welfare state than natives. But collectively, immigrants' very presence undermines the welfare state by reducing native support. Social democrats may find this tension between diversity and solidarity disturbing. But libertarians should rejoice: increasing foreigners' freedom of movement may indirectly increase natives' freedom to decide who deserves their charity....

Suppose ... you remain convinced that immigration has serious political externalities. You have to ask yourself: are immigration restrictions really the cheapest, most humane way to address the problem? The answer, again, is No. Consider a simple alternative: admit immigrants to live and work, but not to vote. If necessary, we could make their non-voting status hereditary. Or suppose you worry about immigrants' political ignorance. If so, we could restrict the vote to immigrants who successfully pass a civics test. Are you afraid of class warfare? We could give immigrants the right to vote once their lifetime tax payments surpass \$100,000. Whatever your complaint, there exists a remedy far less objectionable than exclusion and deportation.

Protecting Property Rights?

... Millions of Haitians want to move here. Millions of American landlords, employers, and stores would be happy to house, hire, and feed them. For the U.S. government to criminalize these transactions

for no good reason is not merely uncharitable. It is unjust.

Critics of immigrants also often compare them to trespassers. If an individual has a spare bedroom, we don't expect him to justify his refusal to allow a total stranger to live there. Why should we hold countries to a higher standard?

The problem with this argument is that standard property law already protects owners against trespassers, both foreign and domestic. The point of immigration restrictions is not to protect property rights, but to restrict them. Some landlords want to rent to immigrants. Some employers want to hire them. Some stores want to sell to them. Under open borders, landlords, employers, and stores can do so if they see fit. Immigration restrictions force them to deal solely with people pre-approved by the state.

Conclusion: The Presumption in Favor of Immigration

Between 2000 and 2010, the United States government officially deported almost three million people and intimidated another 11 million into “voluntarily” leaving the country. At least 10 million residents of the United States endure the humiliation and fear of “being illegal.” In the broad scheme of things, these immigrants are the lucky ones. Mexicans and Central Americans can cross the U.S. border if they are in good health and willing to pay smugglers a few years' wages. For most would-be immigrants from South America, Asia, and Africa, however, the cost of illegal entry is prohibitive. With legal permission, even the poorest could eventually scrape together money for a boat ticket. But for low-skilled workers from the Third World, legal permission to enter the United States is almost impossible to obtain.

Many libertarians would condemn these facts as “inexcusable.” I rest my argument on a weaker premise: whether or not the facts are “inexcusable,” they do require an excuse. On the surface, it seems wrong to prohibit voluntary exchange between

natives and foreigners. Proponents of immigration restrictions have to show why, moral appearances notwithstanding, immigration restrictions are morally justified.

They fail to do so. Immigration restrictions are not necessary to protect American workers. Most Americans benefit from immigration, and the losers don't lose much. Immigration restrictions are not necessary to protect American taxpayers. Researchers disagree about whether the fiscal effects of immigration are positive or negative, but they agree that the fiscal effects are small. Immigration restrictions are not necessary to protect American culture. Immigrants make our culture better—and their children learn fluent English. Immigration restrictions are not necessary to protect American liberty. Immigrants have low voter turnout and accept our political status quo by default. By increasing diversity, they undermine native support for the welfare state. And on one important issue—immigration itself—immigrants are much more pro-liberty than natives.

Even if all these empirical claims are wrong, though, immigration restrictions would remain morally impermissible. Why? Because there are cheaper and more humane solutions for each and every complaint. If immigrants hurt American workers, we can charge immigrants higher taxes or admission fees, and use the revenue to compensate the losers. If immigrants burden American taxpayers, we can make immigrants ineligible for benefits. If immigrants hurt American culture, we can impose tests of English fluency and cultural literacy. If immigrants hurt American liberty, we can refuse to give them the right to vote. Whatever your complaint happens to be, immigration restrictions are a needlessly draconian remedy.

13.3 Angela Nagle: “The Left Case Against Open Borders” (2018)⁷

Popular movements against different elements of this post-Cold War vision came initially from the Left in the form of the anti-globalization movements

7 Angela Nagle, “The Left Case Against Open Borders,” *American Affairs*, Vol. II, No. 4 (Winter 2018), 17–30. Editor: For space considerations, some explanatory notes have been omitted.

and later Occupy Wall Street. But, lacking the bargaining power to challenge international capital, protest movements went nowhere. The globalized and financialized economic system held firm despite all the devastation it wreaked, even through the 2008 financial crisis.

Today, by far the most visible anti-globalization movement takes the form of the anti-migrant backlash led by Donald Trump and other “populists.” The Left, meanwhile, seems to have no option but to recoil in horror at Trump’s “Muslim ban” and news stories about ICE hunting down migrant families; it can only react against whatever Trump is doing. If Trump is for immigration controls, then the Left will demand the opposite. And so today talk of “open borders” has entered mainstream liberal discourse, where once it was confined to radical free market think tanks and libertarian anarchist circles.

While no serious political party of the Left is offering concrete proposals for a truly borderless society, by embracing the moral arguments of the open-borders Left and the economic arguments of free market think tanks, the Left has painted itself into a corner. If “no human is illegal,” as the protest chant goes, the Left is implicitly accepting the moral case for no borders or sovereign nations at all. But what implications will unlimited migration have for projects like universal public health care and education, or a federal jobs guarantee? And how will progressives convincingly explain these goals to the public? . . .

The transformation of open borders into a “Left” position is a very new phenomenon and runs counter to the history of the organized Left in fundamental ways. Open borders has long been a rallying cry of the business and free market Right. Drawing from neoclassical economists, these groups have advocated for liberalizing migration on the grounds of market rationality and economic freedom. They oppose limits on migration for the same reasons that they oppose restrictions on the movement of capital. The Koch-funded Cato Institute, which also

advocates lifting legal restrictions on child labor, has churned out radical open borders advocacy for decades, arguing that support for open borders is a fundamental tenet of libertarianism, and “Forget the wall already, it’s time for the U.S. to have open borders.”⁸ The Adam Smith Institute has done much the same, arguing that “Immigration restrictions make us poorer.”⁹

Following Reagan and figures like Milton Friedman, George W. Bush championed liberalizing migration before, during, and after his presidency. Grover Norquist, a zealous advocate of Trump’s (and Bush’s and Reagan’s) tax cuts, has for years railed against the illiberalism of the trade unions, reminding us, “Hostility to immigration has traditionally been a union cause.”¹⁰ He’s not wrong. From the first law restricting immigration in 1882 to Cesar Chavez and the famously multiethnic United Farm Workers protesting against employers’ use and encouragement of illegal migration in 1969, trade unions have often opposed mass migration. They saw the deliberate importation of illegal, low-wage workers as weakening labor’s bargaining power and as a form of exploitation. There is no getting around the fact that the power of unions relies by definition on their ability to restrict and withdraw the supply of labor, which becomes impossible if an entire workforce can be easily and cheaply replaced. Open borders and mass immigration are a victory for the bosses. . . .

During the Reagan neoliberal revolution, union power was dealt a blow from which it has never recovered, and wages have stagnated for decades. Under this pressure, the Left itself has undergone a transformation. In the absence of a powerful workers’ movement, it has remained radical in the sphere of culture and individual freedom, but can offer little more than toothless protests and appeals to noblesse oblige in the sphere of economics.

With obscene images of low-wage migrants being chased down as criminals by ICE, others drowning in the Mediterranean, and the worrying

8 Jeffrey Miron, “Forget the Wall Already, It’s Time for the U.S. to Have Open Borders,” *USA Today* (July 31, 2018).

9 Sam Bowman, “Immigration Restrictions Make Us Poorer,” Adam Smith Institute, April 13, 2011.

10 Grover G. Norquist, “Samuel Gompers versus Reagan,” *American Spectator* (September 25, 2013).

growth of anti-immigrant sentiment across the world, it is easy to see why the Left wants to defend illegal migrants against being targeted and victimized. And it should. But acting on the correct moral impulse to defend the human dignity of migrants, the Left has ended up pulling the front line too far back, effectively defending the exploitative system of migration itself.

Today's well-intentioned activists have become the useful idiots of big business. With their adoption of "open borders" advocacy—and a fierce moral absolutism that regards any limit to migration as an unspeakable evil—any criticism of the exploitative system of mass migration is effectively dismissed as blasphemy. Even solidly leftist politicians, like Bernie Sanders in the United States and Jeremy Corbyn in the United Kingdom, are accused of "nativism" by critics if they recognize the legitimacy of borders or migration restriction at any point. This open borders radicalism ultimately benefits the elites within the most powerful countries in the world, further disempowers organized labor, robs the developing world of desperately needed professionals, and turns workers against workers.

But the Left need not take my word for it. Just ask Karl Marx, whose position on immigration would get him banished from the modern Left. Although migration at today's speed and scale would have been unthinkable in Marx's time, he expressed a highly critical view of the effects of the migration that occurred in the nineteenth century. In a letter to two of his American fellow-travelers, Marx argued that the importation of low-paid Irish immigrants to England forced them into hostile competition with English workers. He saw it as part of a system of exploitation, which divided the working class and which represented an extension of the colonial system. He wrote:

Owing to the constantly increasing concentration of leaseholds, Ireland constantly sends her own surplus to the English labour market, and thus forces down wages and lowers the material and moral position of the English

working class. And most important of all! Every industrial and commercial centre in England now possesses a working class divided into two *hostile* camps, English proletarians and Irish proletarians. The ordinary English worker hates the Irish worker as a competitor who lowers his standard of life. In relation to the Irish worker he regards himself as a member of the *ruling* nation and consequently he becomes a tool of the English aristocrats and capitalists against Ireland, thus strengthening their domination *over himself*. He cherishes religious, social, and national prejudices against the Irish worker. His attitude towards him is much the same as that of the "poor whites" to the Negroes in the former slave states of the U.S.A. The Irishman pays him back with interest in his own money. He sees in the English worker both the accomplice and the stupid tool of the *English rulers in Ireland*. This antagonism is artificially kept alive and intensified by the press, the pulpit, the comic papers, in short, by all the means at the disposal of the ruling classes. *This antagonism* is the secret of the *impotence of the English working class*, despite its organisation. It is the secret by which the capitalist class maintains its power. And the latter is quite aware of this.¹¹

Marx went on to say that the priority for labor organizing in England was "to make the English workers realize that for them the national emancipation of Ireland is not a question of abstract justice or humanitarian sentiment but the first condition of their own social emancipation." Here Marx pointed the way to an approach that is scarcely found today. The importation of low-paid labor is a tool of oppression that divides workers and benefits those in power. The proper response, therefore, is not abstract moralism about welcoming all migrants as an imagined act of charity, but rather addressing the root causes of migration in the relationship between large and powerful economies and the smaller or developing economies from which people migrate.

11 David L. Wilson, "Marx on Immigration," *Monthly Review* (February 1, 2017).

The Human Cost of Globalization

Advocates of open borders often overlook the costs of mass migration for developing countries. Indeed, globalization often creates a vicious cycle: liberalized trade policies destroy a region's economy, which in turn leads to mass emigration from that area, further eroding the potential of the origin country while depressing wages for the lowest paid workers in the destination country. One of the major causes of labor migration from Mexico to the United States has been the economic and social devastation caused by the North American Free Trade Agreement (NAFTA). NAFTA forced Mexican farmers to compete with U.S. agriculture, with disastrous consequences for Mexico. Mexican imports doubled, and Mexico lost thousands of pig farms and corn growers to U.S. competition....

And what about the significant skilled and white-collar migrant workforce? Despite the rhetoric about "shithole countries" or nations "not sending their best," the toll of the migration brain drain on developing economies has been enormous. According to the Census Bureau's figures for 2017, about 45 percent of migrants who have arrived in the United States since 2010 are college educated. Developing countries are struggling to retain their skilled and professional citizens, often trained at great public cost, because the largest and wealthiest economies that dominate the global market have the wealth to snap them up. Today, Mexico also ranks as one of the world's biggest exporters of educated professionals, and its economy consequently suffers from a persistent "qualified employment deficit." This developmental injustice is certainly not limited to Mexico. According to *Foreign Policy* magazine, "There are more Ethiopian physicians practicing in Chicago today than in all of Ethiopia, a country of 80 million."¹² It is not difficult to see why the political and economic elites of the world's richest countries would want the world to "send their best," regardless of the consequences for the rest of the world. But why is the moralizing, pro-open borders

Left providing a humanitarian face for this naked self-interest?

According to the best analysis of capital flows and global wealth today, globalization is enriching the wealthiest people in the wealthiest countries at the expense of the poorest, not the other way around. Some have called it "aid in reverse." Billions in debt interest payments move from Africa to the large banks in London and New York. Vast private wealth is generated in extractive commodity industries and through labor arbitrage every year, and repatriated back to the wealthy nations where the multinational corporations are based. Trillions of dollars in capital flight occurs because international corporations take advantage of tax havens and secrecy jurisdictions, made possible by the World Trade Organization's liberalization of "trade inefficient" invoicing regulations and other policies.¹³ Global wealth inequality is the primary push factor driving mass migration, and the globalization of capital cannot be separated from this matter. There is also the pull factor of exploitative employers in the United States who seek to profit from nonunionized, low-wage workers in sectors like agriculture as well as through the importation of a large white-collar workforce already trained in other countries. The net result is an estimated population of eleven million people living in the United States illegally.

Corporate Interests and Moral Blackmail

Open borders has no public mandate, but immigration policies that place the burden of enforcement on employers instead of migrants do attract overwhelming support. According to a survey by the *Washington Post* and ABC News, support for mandating use of the federal employment verification system (E-Verify), which would prevent employers from exploiting illegal labor, is at nearly 80 percent—more than double the support for building a wall along the Mexican border. So why do presidential campaigns revolve around building a vast border wall? Why do current migration debates revolve

12 Kate Tulenko, "Countries without Doctors?," *Foreign Policy* (June 11, 2010).

13 Jason Hickel, "Aid in Reverse: How Poor Countries Develop Rich Countries," *Guardian* (January 14, 2017).

around controversial ICE tactics to target migrants—especially when the more humane and popular method of placing the burden on employers to hire legal labor in the first place is also the most effective? The answer, in short, is that business lobbies have been blocking and sabotaging efforts like E-Verify for decades, while the open-borders Left has abandoned any serious discussion of these issues.

Recently, the Western Growers Association and California Farm Bureau Federation, among others, blocked a bill that would have made E-Verify mandatory, despite several pro-business concessions. Democrats seemed totally absent from this debate. As a result, workers from economies devastated by U.S. agriculture will continue to be invited in with the promise of work in order to be cheaply and illegally exploited. Lacking full legal rights, these noncitizens will be impossible to unionize and will be kept in constant fear of being arrested and criminalized.

It has now become a common slogan among advocates of open borders—and many mainstream commentators—that “there is no migrant crisis.” But whether they like it or not, radically transformative levels of mass migration are unpopular across every section of society and throughout the world. And the people among whom it is unpopular, the citizenry, have the right to vote. Thus migration increasingly presents a crisis that is fundamental to democracy. Any political party wishing to govern will either have to accept the will of the people, or it will have to repress dissent in order to impose the open borders agenda. Many on the libertarian Left are among the most aggressive advocates of the latter. And for what? To provide moral cover for exploitation? To ensure that left-wing parties that could actually address any of these issues at a deeper international level remain out of power? The immigration expansionists have two key weapons. One is the big business and financial interests all working on their side, but an equally powerful weapon—wielded more expertly by the left-leaning immigration expansionists—is moral blackmail and public shame. People are right to see the mistreatment of migrants as morally wrong. Many people are concerned about the growth of racism and callousness toward minorities that often

accompanies anti-immigration sentiment. But the open borders position does not even live up to its own professed moral code.

There are many economic pros and cons to high immigration, but it is more likely to negatively impact low-skilled and low-paid native workers while benefiting wealthier native workers and the corporate sector. As George J. Borjas has argued, it functions as a kind of upward wealth redistribution.¹⁴ A 2017 study by the National Academy of Sciences called “The Economic and Fiscal Consequences of Immigration” found that current immigration policies have resulted in disproportionately negative effects on poor and minority Americans . . .

Defending Immigrants, Opposing Systemic Exploitation

If open borders is “a Koch brothers proposal,” then what would an authentic Left position on immigration look like? In this case, instead of channeling Milton Friedman, the Left should take its bearings from its own long traditions. Progressives should focus on addressing the systemic exploitation at the root of mass migration rather than retreating to a shallow moralism that legitimates these exploitative forces. This does not mean that leftists should ignore injustices against immigrants. They should vigorously defend migrants against inhumane treatment. At the same time, any sincere Left must take a hard line against the corporate, financial, and other actors who create the desperate circumstances underlying mass migration (which, in turn, produces the populist reaction against it). Only a strong national Left in the small and developing nations—acting in concert with a Left committed to ending financialization and global labor exploitation in the larger economies—could have any hope of addressing these problems.

To begin with, the Left must stop citing the latest Cato Institute propaganda in order to ignore the effects of immigration on domestic labor, especially the working poor who are likely to suffer disproportionately from expanding the labor pool. Immigration policies should be designed to ensure

14 George Borjas, “Yes, Immigration Hurts American Workers,” *Politico* (September/October 2016).

that the bargaining power of workers is not significantly imperiled. This is especially true in times of wage stagnation, weak unions, and massive inequality. With respect to illegal immigration, the Left should support efforts to make E-Verify mandatory and push for stiff penalties on employers who fail to comply. Employers, not immigrants, should be the primary focus of enforcement efforts. These employers take advantage of immigrants who lack ordinary legal protections in order to perpetuate a race to the bottom in wages while also evading payroll taxes and the provision of other benefits. Such incentives must be eliminated if any workers are to be treated fairly.

Trump infamously complained about people coming from third-world “shithole countries” and suggested Norwegians as an example of ideal immigrants. But Norwegians did once come to America in large numbers—when they were desperate and poor. Now that they have a prosperous and relatively egalitarian social democracy, built on public ownership of natural resources, they no longer want to. Ultimately, the motivation for mass migration will persist as long as the structural problems underlying it remain in place.

Reducing the tensions of mass migration thus requires improving the prospects of the world’s poor. Mass migration itself will not accomplish this: it creates a race to the bottom for workers in wealthy countries and a brain drain in poor ones. The only real solution is to correct the imbalances in the global economy, and radically restructure a system of globalization that was designed to benefit the wealthy at the expense of the poor. This involves, to start with, structural changes to trade policies that prevent necessary, state-led development in emerging economies. Anti-labor trade deals like NAFTA must also be opposed. It is equally necessary to take on a financial system that funnels capital away from the developing world and into inequality-heightening asset bubbles in rich countries. Finally, although the reckless foreign policies of the George W. Bush administration have been discredited, the temptation to engage in military crusades seems to live on. This should be opposed. U.S.-led foreign invasions have killed millions

in the Middle East, created millions of refugees and migrants, and devastated fundamental infrastructure.

Marx’s argument that the English working class should see Irish nationhood as a potential complement to their struggle, rather than as a threat to their identity, should resonate today, as we witness the rise of various identity movements around the world. The comforting delusion that immigrants come here because they love America is incredibly naïve—as naïve as suggesting that the nineteenth-century Irish immigrants Marx described loved England. Most migrants emigrate out of economic necessity, and the vast majority would prefer to have better opportunities at home, among their own family and friends. But such opportunities are impossible within the current shape of globalization....

Meanwhile, members of the open-borders Left may try to convince themselves that they are adopting a radical position. But in practice they are just replacing the pursuit of economic equality with the politics of big business, masquerading as a virtuous identitarianism. America, still one of the richest countries in the world, should be able to provide not just full employment but a living wage for all of its people, including in jobs which open borders advocates claim “Americans won’t do.” Employers who exploit migrants for cheap labor illegally—at great risk to the migrants themselves—should be blamed, not the migrants who are simply doing what people have always done when facing economic adversity. By providing inadvertent cover for the ruling elite’s business interests, the Left risks a significant existential crisis, as more and more ordinary people defect to far-right parties. At this moment of crisis, the stakes are too high to keep getting it wrong.

13.4 Lea Ypi: “Why the Left Should Unite Behind Open Borders” (2019)¹⁵

Left-wing scepticism about open borders and migration may not be rooted in racism and xenophobia, but it takes the same troubling form as its right-wing counterpart.

The left-wing case against immigration hinges on both a pragmatic and a principled argument. The

15 Lea Ypi, “Why the Left Should Unite behind Open Borders,” *The New Statesman* (March 28, 2019).

former appeals to the constraints of electoral politics in representative democracies. Across Europe, in working-class strongholds that have become increasingly susceptible to anti-immigrant rhetoric, the left is losing votes to the far right, who point to the failures of globalisation and blame liberal elites' relaxed stance to open borders. In response, the left becomes complicit or confused.

Nothing exemplifies this better than Labour's wavering stance on immigration. The party has tried many approaches to tack the subject, from aborted attempts to increasing vote share by emulating populist rhetoric (as seen with Ed Miliband's "Controls on Immigration" mugs during the 2015 electoral campaign) to Jeremy Corbyn's reluctance in January to whip MPs into rejecting the Tory Immigration bill.

If pragmatism were the only justification at play, the party's vacillations might be tolerable. But as is often the case with left-wing parties, the pragmatic case gains a following because it rests upon principles. Recently, radical leftist movements like *Aufstehen* in Germany or *La France Insoumise* have articulated the principled argument against open borders. In the words of *Aufstehen*'s founders, they want "a materialist left, not a moral left." As the leader of *La France Insoumise*, Jean-Luc Mélenchon, puts it, the left must not be afraid of talking about migration, as open borders threaten working-class jobs and national welfare.

The left-wing case against open borders is typically committed to class politics and is hostile to the depoliticising attitudes of humanitarian liberals. Leftist critics of immigration argue that this attitude fails to acknowledge the impact that globalisation has on working people. The wealthy cosmopolitan elites who advocate free trade and benefit from free movement are not those whose salaries, jobs and welfare benefits are undermined by uncontrolled flows of migrants, so the argument goes.

But there is also a different left-wing case for immigration: one that takes class politics seriously but doesn't end up pitting domestic and migrant workers against one another. Karl Marx made this case in an important but little-known letter to internationalist activists Siegfried Meyer and August Vogt in 1870. He was commenting on Irish

immigration to England, but his words still resonate today. Marx wrote:

Every industrial and commercial centre in England now possesses a working class divided into two hostile camps, English proletarians and Irish proletarians. The ordinary English worker hates the Irish worker as a competitor who lowers his standard of life. [...] He cherishes religious, social, and national prejudices against the Irish worker. His attitude towards him is much the same as that of the 'poor whites' to the 'niggers' in the former slave states of the U.S.A.

In turn, the Irish "pay him back with interest in his own money. He sees in the English worker both the accomplice and the stupid tool of the English ruler in Ireland." Marx's letter offers an important insight that we can build upon when thinking about left-wing parties' approach to immigration.

The left-wing criticism of open borders, that condemns liberal hypocrisy by emphasising how cheap labour benefits wealthy elites and harms poor workers, presents a distorted understanding of how social class functions in relation to the state. Marx was one of the first political philosophers to draw attention to the devastating effects this argument had on workers' struggles.

To understand capitalism, Marx argued, we must understand political conflicts as existing not between states and groups with different cultural profiles, but between different social classes, with distinct and historically specific alignments to global capitalism. This is one of the main ways in which Marxist thought departs from previous Enlightenment thinking, which saw nation states as the relevant agents in world history.

Class conflict cuts across state boundaries. An analysis of politics based on class rather than borders acknowledges the role that a political and economic elite play in upholding a system of global capitalist exploitation. States make and enforce laws that control particular territories. But the distinction between migrant workers and domestic workers identifies workers only with the borders that contain them, rather than a broader transnational class struggle against global capitalism.

Put simply, to argue that migrant workers pose a problem for domestic workers ignores the global structural conditions that turn immigration into a problem. Treating immigration as a threat to domestic workers reduces social conflict to state conflict. It artificially creates a “we” that must be protected, pitted against a “them” that must be controlled. This division undermines the joint struggle of working classes across the world.

Marx termed this false opposition “the secret of the impotence of the working class.” The more we emphasise national boundaries and borders, the more we undermine class-based solidarity and diminish the prospects of joint action. It’s a division that plays into the hands of the ruling elites.

As Marx put it, “it is artificially kept alive and intensified by the press, the pulpit, the comic papers, in short, by all the means at the disposal of the ruling classes.”

The real threat to the labour movement is not foreign migrant workers or open borders. It’s the capitalist state that protects the interests of a ruling elite through practices of border management and policies of integration that render migrant workers dependent on the whims of employers. Their vulnerability flows from the same mechanism that keeps domestic workers in check and weakens collective bargaining.

To agree with Jean-Luc Mélenchon’s argument that we must acknowledge the pressure on borders is to align with the capitalist state and against the working class. The last thing a left-wing party that cares about the fate of workers should be doing is supporting a project that consolidates the capitalist state.

The division that anti-immigration rhetoric introduces between domestic and foreign workers is “the secret by which the capitalist class maintains its power,” Marx argued. This class was “fully aware of it.” It is time that champions of the working class became aware of it, too.

13.5 Documents: Refugee and Migrant Rights and Human Trafficking

*I. United Nations: Convention Relating to the Status of Refugees (Adopted 1951, Entry into Force 1954)*¹⁶

CHAPTER I: GENERAL PROVISIONS

Article 1: *Definition of the Term “Refugee”*

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

Article 18: *Self-Employment*

The Contracting States shall accord to a refugee lawfully in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

16 Resolution adopted by the United Nations General Assembly: Convention relating to the Status of Refugees, 189 U.N.T.S. 150, adopted 28 July 1951, entry into force 22 April 1954. https://treaties.un.org/doc/Treaties/1954/04/19540422%2000-23%20AM/Ch_V_2p.pdf

Article 23: Public Relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24: Labor Legislation and Social Security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

- (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
- (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 33: Prohibition of Expulsion or Return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

CHAPTER V

Article 31: Refugees Unlawfully in the Country of Refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or

II. United Nations: Protocol Relating to the Status of Refugees (1967)¹⁷

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on

17 Resolution adopted by the United Nations General Assembly: Protocol relating to the Status of Refugees, 2198 (XXI)2, adopted 31 January 1967, entry into force 4 October 1967. https://treaties.un.org/doc/source/docs/A_RES_21_2198-E.pdf

28 July 1951 (hereinafter referred to as the Convention), covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention, irrespective of the dateline of 1 January 1951,

Have agreed as follows:

Article 1: General Provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words “As a result of events occurring before 1 January 1951 and...” and the words “...as a result of such events,” in article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.

III. United Nations: Convention on the Rights of the Child (Adopted 1989, Entry into Force 1990)¹⁸

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

18 Resolution adopted by the UN General Assembly: Convention on the Rights of the Child, Resolution 44/25, adopted 20 November 1989, entry into force 2 September 1990. <https://undocs.org/A/RES/44/25>

IV. United Nations: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Adopted 1990, Entry into Force 2003)¹⁹

Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.
2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputation of others;
 - (b) For the protection of the national security of the States concerned or of public order (*ordre public*) or of public health or morals;
 - (c) For the purpose of preventing any propaganda for war;
 - (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and

with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.
4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.
5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.
6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.
7. Migrant workers and members of their families who are subjected to any form of

19 Resolution adopted by the United Nations General Assembly: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, A_RES_45/158, adopted 18 December 1990, entry into force 1 July 2003. <https://undocs.org/A/RES/45/158>

detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

Article 25

1. Migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration and:
 - (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
 - (b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.
2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.
3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity

in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

V. Office of the United Nations High Commissioner for Human Rights: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Adopted 2000, Entry into Force 2003)²⁰

Article 3: Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered

²⁰ Resolution adopted by the United Nations General Assembly: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, A_RES_/55/383, adopted 15 November 2000, entry into force 25 December 2003. https://treaties.un.org/doc/source/docs/A_55_383-E.pdf

“trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

- (d) “Child” shall mean any person under eighteen years of age.

Article 5: Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

Article 6: Assistance to and protection of victims of trafficking in persons

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 8: Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

On Cultural and Group Rights versus Universalism

Deepening globalization has both homogenized and sharpened national and cultural identities, creating controversies between proponents of universal versus cultural rights. On one side of the debate, universalists – from either a liberal or a socialist perspective – have criticized the cultural rights backlash against Western values as another inappropriate rationale for the continuing repression of women and domestic minorities. On the other side, cultural rights advocates have argued that universalism continues to impose Western (imperial) values on the rest of the world, ignoring indigenous cultures and their beliefs (patriarchal or otherwise). The debate should feel familiar to those who have read Part IV of this book. At its center remains the question: Whose group rights should be secured in an era of globalization? And why?

Contending views in this debate can be traced to different theoretical approaches, which sociologist Steven Lukes has described as Weberian ideal types (“Five Fables about Human Rights,” 1993). The first approach, the utilitarian, originally defined human rights as the “greatest happiness for the

greatest number,” but more recently has measured these principles in terms of technological efficiency. The second, the communitarian, treats beliefs and practices of all subcommunities as equally justified, in effect maintaining that there are no universally valid principles of human rights. The third, the proletarian, views human rights from a social class perspective. Here, conflicts over rights reflect the division of labor as well as the unequal distribution of wealth among both individuals and nations. The fourth, the libertarian, appraises universal human rights in terms of their market value and a cost-benefit analysis, and maintains a fundamental distrust toward the state. Rejecting all these perspectives, Lukes advocated a fifth approach, egalitarian, which defends basic liberties, the rule of law, toleration, and equality of opportunity. All of these should be constitutionally guaranteed, maintains Lukes, regardless of religion, class, ethnicity, or gender (see Section 13.9).

Closer to what Lukes termed the proletarian and egalitarian perspectives, British historian Eric Hobsbawm (“The Universalism of the Left,” 1996) condemned socialist support for rights based on particular identities or cultural allegiances. Promoters of “identity politics,” he explained, “are about themselves, for themselves, and nobody else.” Universal human rights can never be realized by adding the sum total of minorities’ interests. In fact, particularist positions may fragment the broader human rights agenda by failing to emphasize the common ground holding various identity groups together. Hobsbawm calls for a universalism from the Left, quoting the American sociologist Todd Gitlin: “What is a Left if it is not ... the voice of the whole people? If there is no people, but *only* peoples, there *is no Left*” (see Section 13.10).

Similar to the universalism of Hobsbawm, but from a welfare liberal perspective of universalism, human rights scholars Rhoda E. Howard-Hassman and Jack Donnelly describe an “almost circular” relationship between internationally recognized human rights standards and the respect given to autonomous individuals in society (“Liberalism and Human Rights: A Necessary Connection,” 1996). Universal rights “demand a liberal society and the ideal person envisioned by it, and if implemented these rights would play a crucial role in creating that society.” Defending a liberal view of individual rights against both libertarianism and conservative communitarian perspectives, they argue, for example, that the right to property is constrained by the right to social justice in a community that takes individuals’ economic and social rights seriously. “When the full range of internationally recognized human rights is protected,” they wrote, “when individuals are treated with equal concern, communities can and do thrive” (see Section 13.11).

Representing a particularist/relativist side, but from a pragmatist perspective, is philosopher Richard Rorty. In “Human Rights, Rationality, and Sentimentality” (1993), Rorty characterized Western rationalist and foundationalist positions of universal rights (as defended by Plato, Kant, and others) as outmoded. Those views, in Rorty’s opinion, are, despite their theoretical and universalist claims, *de facto* exclusive; for only rational individuals are regarded as fully human. According to this perspective, Rorty claimed, some may use the presumption of irrationality to deny rights to certain groups of people, a practice not lacking in historical precedent. He thus encouraged those who oppose such oppression to concentrate their energies on promoting sentimental education, rather than following the so-called command of reason. This attitude would favor the possibility of “powerful people gradually ceasing to oppress others, or ceasing to countenance the oppression of others, out of mere niceness, rather than out of obedience to the moral law” (see Section 13.12).

Calls for universalism have also been voiced beyond the West. Two decades after the 1989 massacre of pro-democracy student protesters in Tiananmen Square, the Chinese dissident Liu Xiaobo drafted a human rights manifesto for China, “Charter 08” (2008). Liu noted that in 1998 the Chinese government signed a number of international human rights conventions, and even amended in 2004 its constitution to include the phrase “respect and protect human rights.” But such respect did not extend beyond those words. Liu deplored that Chinese citizens were in fact stripped of their fundamental rights, and he called for the adoption of such principles as freedom of speech and the press, freedom

of religion, freedom of association and assembly, the separation of powers, an independent judiciary, free elections, protection of the environment, and truth and reconciliation. Liu's views were expressed at the peril of his life. Arrested in 2009 for inciting subversion of state power, he received the Nobel Peace Prize in absentia in 2010 and was granted medical parole before dying of cancer in 2017 (see Section 13.13)

On the cultural relativist (or particularist) side stands the Malaysian political scientist and activist Chandra Muzaffar, a critic of the Western emphasis on civil and political rights (*On Western Imperialism and Human Rights*, 1994). He condemns neo-imperialist Western domination and its human rights double standards as cause for great skepticism about Western values in the developing world: "It is because many people in the non-Western world now know that dominance and control is the real motive of the West, that they become skeptical and critical of the West's posturing on human rights." In lieu of Western secular individualism, he calls for a more holistic vision of human dignity drawn from religious and spiritual philosophies (see Section 13.14).

Somewhere in the middle of the universalist/particularist spectrum is Canadian political philosopher Will Kymlicka, a leading advocate of multiculturalism (*On Indigenous Rights*, 1996). Kymlicka argues for group-specific rights consistent with liberalism. Distinguishing between external protection and internal restrictions, he suggests that there are two types of group rights: one involves the claim of an indigenous group against its own members (internal restrictions); the other refers to the claim of an indigenous group against the larger society (external protection). While both are group rights claims, he observes, each has different implications. He maintains that internal restrictions are almost always unjust (particularly when a group uses state power to restrict the liberty of its members), whereas external protections are more consistent with liberal democracy, generally protecting the vulnerable group against the larger society. With this concern in mind, Kymlicka suggested that "reserving land for the exclusive use of indigenous peoples ensures that they are not outbid for this resource by the greater wealth of outsiders" (see Section 13.15).

Controversy between universalism and cultural relativism is often centered around the rights of women and marginalized groups. The American political philosopher Martha Nussbaum argues against unqualified cultural rights, which she regards as a rationale for repressing women's rights. Drawing her position from a liberal universalist and Aristotelian approach, she maintains in "Women and Cultural Universals" (*Sex and Social Justice*, 1999) that it is absurd to regard a nation as having a single culture. Conversely, it is absurd to speak of women's rights, or any individual rights, without taking into consideration a given individual's capabilities to realize these rights (a concept she draws from Amartya Sen). "The capabilities approach," Nussbaum claimed, "insists that a woman's affiliation with a certain group or culture should not be taken as normative for her unless, on due consideration, with all the capabilities at her disposal, she makes that norm her own" (see Section 13.16).

The conflict between universalism and cultural rights has been also evoked in the struggle for gay rights. In "Same-Sex Sexualities and the Globalization of Human Rights Discourse" (2004), legal and social theory scholar Carl F. Stychin observes that despite significant legal achievements by the international gay movement, non-Western gay activists "travel between the universalizing and essentializing discourse of sexual identity ... to a local, historically and culturally-specific reading of sexuality." Because homosexuality is often seen in the developing world as an "abhorrent Western import," some gay activists have reclaimed their own culture's homoerotic history to challenge heteronormativity from an indigenous frame. Yet because non-Western activists have also benefited from the achievements of the international gay movement, Stychin concludes by calling for the establishment of a bridge between cosmopolitan gay rights and culturally oriented same-sex activism (see Section 13.17).

Despite difficulties, the fight for transgender rights is finding greater traction in the Western world. In "Transgender Rights as Human Rights" (2016), Tia Powell, Sophia Shapiro, and Ed Stein challenge

the nature versus nurture debate about gender, arguing instead that gender identity is shaped by an intricate combination of genes, hormones, and environmental factors. They caution supporters of transgender rights to avoid arguments that are either logically flawed or disrespectful of scientific evidence about gender identity, and to embrace the concept of “inalienable human rights, including the right to live safely, freely and without fear of discrimination” (see Section 13.18).

Notwithstanding its self-image as the icon of universal human rights in the world, the U.S. remains stained by centuries of abuse toward African Americans. “Where have the black men gone?” asks Michelle Alexander in *The New Jim Crow* (2010). Despite a collective state of denial, she writes, “deep down, we already know.” The abolition of slavery and the victory of civil rights over Jim Crow segregation did not prevent the perpetuation of oppression in different forms against black men. Through mass incarceration, legalized discrimination, political disenfranchisement, exclusion from juries, residential segregation, and racial indifference, a racial caste system has become entrenched in American society. Alexander calls for prison reform and greater socio-economic opportunities for African Americans (see Section 13.19).

Individuals with disabilities have also suffered from the able population’s collective denial, and their rights have been largely ignored. In “The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights” (2008) Frédéric Mégret applauds the 2006 U.N. Convention as “the most unmistakable international recognition of persons with disabilities’ full humanity.” While recognizing and removing some of the obstacles that have prevented them from enjoying their rights, the Convention details the way rights such as education, health, work, and an adequate standard of living must be specifically tailored for persons with disabilities. In the process, it reframes human rights in a way that comes close to articulating new rights. Autonomy, for example, simply assumed in previous human rights instruments, is spelled out with greater precision here (see Section 13.20).

The division between group rights and universal rights, which has deeply divided the human rights community, might in fact reflect opposed, mutually exclusive strands of human rights. A more promising approach would be to regard the articulation of group rights as informing the continuing development of the universal human rights project.

For additional historical and theoretical context, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 5.

13.6 United Nations: Universal Declaration of Human Rights (1948), Articles 1–2 and 29²¹

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among

the peoples of Member States themselves and among the peoples of territories under jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

21 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 A (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, non-self-governing or under any other limitation of sovereignty.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

13.7 United Nations: International Covenant on Economic, Social, and Cultural Rights (Adopted 1966, Entry into Force 1976), Article 15²²

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - a. To take part in cultural life;
 - b. To enjoy the benefits of scientific progress and its applications;
 - c. To benefit from the protection of the moral and material interests resulting

from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contracts and cooperation in the scientific and cultural fields.

13.8 United Nations: International Covenant on Civil and Political Rights (Adopted 1966, Entry into Force 1976), Article 27²³

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

13.9 Steven Lukes: “Five Fables about Human Rights” (1993)²⁴

I propose here to discuss the topic of human rights as seen from the standpoint of five doctrines or outlooks that are dominant in our time. I don't

22 Resolution adopted by the UN General Assembly: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, A/RES/2200A (XXI), adopted 16 December 1966, entry into force 23 March 1976. [https://undocs.org/pdf?symbol=en/A/RES/2200\(XXI\)](https://undocs.org/pdf?symbol=en/A/RES/2200(XXI))

23 Resolution adopted by the UN General Assembly: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, A/RES/2200A (XXI), adopted 16 December 1966, entry into force 23 March 1976. [https://undocs.org/pdf?symbol=en/A/RES/2200\(XXI\)](https://undocs.org/pdf?symbol=en/A/RES/2200(XXI))

24 Steven Lukes, “Five Fables about Human Rights,” in *On Human Rights: Oxford Amnesty Lectures*, edited by Stephen Shute (New York: Basic Books, 1993). Editor: For space considerations, some explanatory footnotes have been omitted.

propose to be fair to these outlooks. Rather, I shall treat them in the form of Weberian “ideal types” or caricatures — a caricature being an exaggerated and simplified representation which, when it succeeds, captures the essentials of what is represented.

The principle that human rights must be defended has become one of the commonplaces of our age. Sometimes the universality of human rights has been challenged: those historically proclaimed are said to be Eurocentric and to be inappropriate, or only partly appropriate, to other cultures and circumstances. So alternative, or partly alternative, lists are proposed. Sometimes the historic lists are said to be too short, and so further human rights are proposed, from the second unto the third and fourth generation. Sometimes the appeal to human rights, or the language in which it is couched, is said to be unhelpful or even counterproductive in particular campaigns or struggles — in advancing the condition and position of women, say, or in promoting third-world development, but virtually no one actually *rejects* the principle of defending human rights.

So, in some sense, it is accepted virtually everywhere. It is also violated virtually everywhere, though much more in some places than in others. Hence the pressing need for organizations such as Amnesty International and Helsinki Watch. But its virtually universal acceptance, even when hypocritical, is very important, for this is what gives such organizations such political leverage as they have in otherwise unpromising situations. In this essay I want to focus on the significance of that acceptance by asking: what way of thinking does accepting the principle of defending human rights deny and what way of thinking does it entail? I want to proceed in two stages: first by asking: what would it be like *not* to accept the principle? And second: what would it be like to take it seriously?

First, then, let us ask: what would a world without the principle of human rights look like? I would like to invite you to join me in a series of thought experiments. Let us imagine a series of places in which the principle in question is unknown — places that are neither utopian nor dystopian but rather places that are in other respects

as attractive as you like, yet which simply lack this particular feature, whose distinctiveness we may thereby hope to understand better.

First, let us imagine a society called *Utilitaria*. Utilitarians are public-spirited people who display a strong sense of collective purpose: their single and exclusive goal, overriding all others, is to maximize the overall utility of all of them. Traditionally this has meant “the Greatest Happiness of the Greatest Number” (which is the national motto) but in more recent times there have been disputes about what “utility” is. Some say that it is the same as “welfare,” as measured by objective indicators such as income, access to medical facilities, housing, and so on. Others, of a more mystical cast of mind, see it as a kind of inner glow, an indefinable subjective state that everyone aims at. Others say that it is just the satisfaction of whatever desires anyone happens to have. Others say that it is the satisfaction of the desires people ought to have or of those they would have if they were fully informed and sensible. Yet others, gloomier in disposition, say that it is just the avoidance of suffering: for them the “greatest happiness” just means the “least unhappiness.” Utilitarians are distinctly philistine people, who are disinclined to see utility in High Culture and never tire of citing the proverb that “pushpin is as good as poetry,” though there is a minority tradition of trying to enrich the idea of “utility” to include the more imaginative sides of life. But despite all these differences, all Utilitarians seem to be agreed on one principle: that what counts is what can be counted. The prized possession of every Utilitarian is a pocket calculator. When faced with the question “What is to be done?” he or she invariably translates it into the question “Which option will produce the greatest sum of utility?” Calculating is the national obsession.

Technocrats, bureaucrats, and judges are the most powerful people in Utilitaria and are much admired. They are particularly adept at calculating, using state-of-the-art computers of ever-increasing power. There are two political parties that vie for power — the Act party and the Rule party. What divides them is that the Act party (the “Actors”) encourages everyone to use their

calculators on all possible occasions, while the Rule party (the “Rulers”) discourages ordinary people from using them in everyday life. According to the Rule Utilitarians, people should live by conventions or rules of thumb that are devised and interpreted by the technocrats, bureaucrats, and judges according to their superior methods of calculation.

Life in Utilitaria has its hazards. Another national proverb is “*Utilitas populi suprema lex est.*” The problem is that no one can ever know for sure what sacrifices he or she may be called on to make for the greater benefit of all. The Rule party’s rules of thumb are some protection, since they tend to restrain people from doing one another in, but they can, of course, always be overridden if a technocrat or a bureaucrat or a judge makes a calculation that overrides them. Everyone remembers the famous case at the turn of the last century of an army captain from a despised minority group who was tried on a charge of treason and found guilty of passing documents to an Enemy Power. The captain was innocent of the charge but the judges and the generals all agreed that the doctrine of “*Utilitas populi*” must prevail. Some intellectuals tried to make a fuss, but they got nowhere. And recently, six people were found guilty of exploding a bomb at a time of troubles for Utilitaria caused by fanatical terrorists from a neighboring island. It turned out that the six were innocent, but “*Utilitas populi*” prevailed and the six stayed in jail.

These hazards might seem troubling to an outsider, but Utilitarians put up with them. For their public spiritedness is so highly developed that they are ready to sacrifice themselves, and indeed one another, whenever calculations show this to be necessary.

Let us now visit a very different kind of country called *Communitaria*. Communitarians are much more friendly people, at least to one another, than are the Utilitarians, but they are like them in their very high degree of public spiritedness and collective purpose. Actually, “friendliness” is too superficial a word to describe the way they relate to one another. Their mutual bonds constitute their very being. They cannot imagine themselves

“unencumbered” and apart from them; they call such a nightmarish vision “atomism” and recoil with horror from it. Their selves are, as they say, “embedded” or “situated.” They identify with one another and identify themselves as so identifying. Indeed, you could say that the Communitarians’ national obsession is identity.

Communitaria used to be a very *gemütlich* place, much given to agricultural metaphors. Communitarians were attached to the *soil*, they cultivated their *roots* and they felt a truly *organic* connection with one another. They particularly despised the Utilitarians’ calculative way of life, relying instead on “shared understandings” and living according to slowly evolving traditions and customs with which they would identify and by which they would be identified.

Since then Communitaria has undergone great changes. Waves of immigration and movements of people and modern communications have unsettled the old *gemütlich* ways and created a far more heterogeneous and “pluralistic” society. New Communitaria is a true “Community of Communities” — a patchwork quilt of subcommunities, each claiming recognition for the peculiar value of its own specific way of life. New Communitarians believe in “multiculturalism” and practice what they call the “politics of recognition,” recognizing each subcommunity’s identity with scrupulous fairness in the country’s institutions. Positive discrimination is used to encourage those that are disadvantaged or in danger of extinction; quotas ensure that all are fairly represented in representative institutions and in the professions. The schools and colleges teach curricula that exactly reflect the exactly equal value of those communities’ cultures and none (and certainly not the old *gemütlich* one) is allowed to predominate.

The new Communitarians feel “at home” in their subcommunities but further take pride in being Communitarians who recognize one another’s subcommunitarian identities. But there are problems. One is the “inclusion-exclusion problem”: how to decide which subcommunities are included in the overall framework and which are not. Some groups get very angry at being included

in subcommunities that recognize them but that they don't recognize; others get angry because they recognize themselves as a subcommunity but are not recognized by others. Recently, for example, a province of Communitaria in which one subcommunity forms a majority passed a law prohibiting *both* members of their subcommunity *and* all immigrants from attending schools that teach in the language that prevails in the rest of Communitaria and in which most of its business and trade are conducted. The immigrants in particular are none too pleased. A related problem is the "vested interests problem": once on the official list, subcommunities want to stay there for ever and keep others out. Moreover, to get on the list, you have to be, or claim to be, an indigenous people or the victims of colonialism, and preferably both.

Then there is the "relativism problem." It is obligatory in Communitaria to treat the beliefs and practices of all recognized subcommunities as equally valid, or rather, none is to be treated as more or less valid than any other. But different subcommunities have incompatible beliefs and some engage in very nasty practices, mistreating, degrading, and persecuting groups and individuals, including their own members. Typically, the definers of subcommunitarian identities are men; and their women are sometimes oppressed, marginalized, and badly abused. Some require their womenfolk to conceal *their* identities in hooded black shrouds. Some practice female circumcision. Unfortunately, Communitaria's official relativism must allow such practices to continue unmolested. Recently, a famous writer from one subcommunity wrote a satirical novel that was partly about the life of another subcommunity's holy religious Prophet and Founder. Hotheads from the latter subcommunity became wildly incensed at what they took to be an insult to their faith and publicly burned the book in question, while their fanatical and fiery leader, in the home community from which they came, ordered the famous writer to be killed. Other writers from other subcommunities all over the world signed petitions and manifestoes in the famous writer's defense. Communitaria's government dealt with this tricky situation in a suitably relativistic way,

declaring that the practice of writing satirical novels was no more but also no less valid than the practice of protecting one's faith against insults.

And finally there is the "deviant problem." Not all Communitarians fit well into the subcommunitarian categories. Recalcitrant individuals have been known to reject the category by which they are identified or to pretend that they don't belong to it. Some cross or refuse to acknowledge the identifying boundaries, and some even reject the very idea of such boundaries. Non-, ex-, trans-, and anti-identifiers are not the happiest people in Communitaria. They feel uneasy because they tend to be seen as "not true Communitarians," as disloyal, even as "rootless cosmopolitans." Fortunately, however, they are few and unorganized. Least of all are they likely to form another subcommunity.

Now I propose to take you to another place which is called *Proletaria*, so called, nostalgically, after the social class that brought it into being but that has long since withered away, along with all other social classes. Proletaria has no state: that too has withered away. Indeed, it is not a particular country, but embraces the entire world. Human and other rights existed in prehistoric times, but these too have withered away. The Proletariat in its struggle sometimes used to appeal to them for tactical reasons, but they are no longer needed in Proletaria's "truly human" communist society.

Proletarians lead extremely varied and fulfilling lives. They hunt in the morning, fish in the afternoon and criticize after dinner; they develop an enormous range of skills; and no one has to endure a one-sided, crippled development, to fit into a given job-description or role or an exclusive sphere of activity from which one cannot escape. The division of labor has also withered away: people are no longer identified with the work they do or the functions they fulfill. No one is a "such-and-such": as the prophet Gramsci put it, no one is even "an intellectual," because everyone is (among all the other things he or she is). They organize their factories like orchestras and watch over automated machinery, they organize production as associated producers, rationally regulating their interchange with Nature, bringing it under their

common control, under conditions most favorable to, and worthy of, human nature, and they elect representatives to Communes on an annual basis. As the prophet Engels foretold, the government of persons has been replaced by the administration of things and by the conduct of processes of production. The distinction between work and leisure has withered away; so also has that between the private and the public spheres of life. Money, according to the prophet Marx, “abases all the gods of mankind and changes them into commodities” and has “deprived the whole world, both the human world and nature, of their own proper value,”²⁵ but now the whole “cash nexus” too has withered away. Now at last, as foretold, “love can only be exchanged for love, trust for trust, etc.”; influence can only be through stimulation and encouragement; and all relations to man and to nature express one’s “real individual life.”²⁶ An arcadian abundance exists in which all produce what they are able to and get what they need. People identify with one another not, as among the Communitarians, because they belong to this or that community or subcommunity, but rather because they are equally and fully human. Relations between the sexes are fully reciprocal, and prostitution is unknown. In Proletaria there is no single dominating obsession or way of living; everyone develops their rich individuality, which is as all-sided in its production as in its consumption, free of external impediments. There is no longer any contradiction between the interest of the separate individual or the individual family and the interest of all individuals who have intercourse with one another.

The only problem with Proletarian life is that there are no problems. For with communism, as Marx prophesied, we see the *definitive* resolution of the antagonism between man and nature and between man and man. It is the true solution of the

conflict between existence and essence, between objectification and self-affirmation, between freedom and necessity, between individual and species. It is the solution of the riddle of history and knows itself to be this solution.²⁷

Yet visitors to Proletaria (from other planets) are sometimes disbelieving of what they behold, for they find it hard to credit that such perfection could be attained and, moreover, maintained without friction. How, they wonder, can the planning of production run so smoothly without markets to provide information through prices about demand? Why are there no conflicts over allocating resources? Don’t differing styles of living get in each other’s way? Aren’t there personal conflicts, between fathers and sons, say, or lovers? Do Proletarians suffer inner turmoil? No sign of any such problems is visible: Proletarians seem able to combine their rich individuality, developing their gifts in all directions, with fully communal social relations. Only sometimes does it occur to such extraterrestrial visitors that they may have lost their way and landed somewhere else than Earth and that these are not human beings after all.

Human rights are unknown in all the three places we have visited, but for different reasons. Utilitarians have no use for them because those who believe in them are, by definition, disposed to question that Utilitarian calculations should be used in all circumstances. As the Utilitarian State’s founder Jeremy Bentham famously remarked, the very idea of such rights is not only nonsense but “nonsense on stilts,” for “there is no right which, when the abolition of it is advantageous to society, should not be abolished.”²⁸ The Communitarians, by contrast, have always rejected such rights because of their *abstractness* from real, living, concrete, local ways of life. As that eloquent Old Communitarian speechifier Edmund Burke put it, their “abstract

25 Karl Marx, “Bruno Bauer, Die Fähigkeit der Heutigen Juden und Christen, frei zu werden,” translated in T.B. Bottomore, ed., *Karl Marx: Early Writings* (London: Watts, 1963), p. 37.

26 Karl Marx, “Money,” translated in Bottomore, op. cit., pp. 193–194.

27 Karl Marx, “Private Property and Communism,” translated in Bottomore, op. cit., p. 155.

28 Jeremy Bentham, *Anarchical Fallacies*, reproduced in Jeremy Waldron, ed., *Nonsense on Stilts: Bentham, Burke and Marx on the Rights of Man* (London: Methuen, 1987), p. 53.

perfection” is their “practical defect,” for “the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, that cannot be settled upon any abstract rule.”²⁹ A no less eloquent New Communitarian, Alasdair MacIntyre broadens the attack: “natural or human rights,” he says, “are fictions — just as is utility.” They are like “witches and unicorns” for “every attempt to give good reasons for believing that there are such rights has failed.” According to MacIntyre, forms of behavior that presuppose such rights “always have a highly specific and socially local character, and ... the existence of particular types of social institution or practice is a necessary condition for the notion of a claim to the possession of a right being an intelligible type of human performance.”³⁰ As for Proletarians, their rejection of human rights goes back to the Prophet of their Revolution, Karl Marx, who described talk of them as “ideological nonsense” and “obsolete verbal rubbish,”³¹ for two reasons. First, they tended to soften hearts in the heat of the class struggle; the point was to win, not feel sympathy for class enemies. It was, as Trotsky used to say, a matter of “our morals” versus “theirs,”³² and Lenin observed that “our morality is entirely subordinated to the interests of the proletariat’s class struggle.... To a communist all morality lies in this united discipline and conscious mass struggle against the exploiters. We do not believe in an eternal morality, and we expose the falseness of all the fables about morality.”³³ And second, Marx regarded human rights as anachronistic because they had been necessary only in that prehistoric era when individuals needed protection from injuries and dangers generated out of an imperfect, conflictual, class-ridden world.

Once that world was transformed and a new world born, emancipated human beings would flourish free from the need for rights, in abundance, communal relations, and real freedom to develop their manifold human powers.

What, then, does our draft experiment so far suggest we are accepting when we accept the principle of defending human rights? First, that they are *restraints* upon the pursuit of what is held to be “advantageous to society,” however enlightened or benevolent that pursuit may be. Second, that they invoke a certain kind of *abstraction* from “specific and socially local” practices: they involve seeing persons behind their identifying (even their self-identifying) labels and securing them a protected space within which to live their lives from the inside, whether this be in conformity with or in deviation from the life their community requires of or seeks to impose on them. And third, that they *presuppose a set* of permanent existential facts about the human condition: that human beings will always face the malevolence and cruelty of others, that there will always be scarcity of resources, that human beings will always give priority to the interests of themselves and those close to them, that there will always be imperfect rationality in the pursuit of individual and collective aims, and that there will never be an unforced convergence in ways of life and conceptions of what makes it valuable. In the face of these facts, if all individuals are to be equally respected, they will need public protection from injury and degradation, and from unfairness and arbitrariness in the allocation of basic resources and in the operation of the laws and rules of social life. You will not be able to rely on others’ altruism or benevolence or paternalism. Even if the values

29 Edmund Burke, *Reflections on the Revolution in France*, reproduced in Waldron, op. cit., pp. 105–106.

30 Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981), pp. 65–67.

31 Karl Marx, *Critique of the Gotha Programme*, in Karl Marx and Friedrich Engels, *Selected Works*, 2 vols. (Moscow: Foreign Languages Publishing House, 1962), vol. 2, p. 25.

32 Leon Trotsky, “Their Morals and Ours,” *The New Internationalist*, June 1938, reproduced in *Their Morals and Ours: Marxist versus Liberal Views on Morality* (four essays by Leon Trotsky, John Dewey, and George Novack), 4th ed. (New York, Pathfinder Press, 1969).

33 V. I. Lenin, “Speech at Third Komsomol Congress, 2 October 1920,” in V. I. Lenin, *Collected Works*, 45 vols. (Moscow: Foreign Languages Publishing House), vol. 31, pp. 291, 294.

of those others are your own, they can do you in countless ways, by sheer miscalculation or mistake or misjudgment. Limited rationality puts you in danger from the well-meaning no less than from the malevolent and the selfish.

But often the values of others will not be your own: you will need protection to live your own life from the inside, pursuing your own conception of what is valuable, rather than a life imposed upon you. To do so, social and cultural preconditions must exist; thus Kurds in Turkey must not be treated as “Mountain Turks” but have their own institutions, education, and language. Now we can see the sense in which human rights are *individualistic* and the sense in which they are not. To defend them is to protect individuals from utilitarian sacrifices, communitarian impositions, and from injury, degradation and arbitrariness, but doing so cannot be viewed independently of economic, legal, political, and cultural conditions, and may well involve the protection and even fostering of collective goods, such as the Kurdish language and culture. For to defend human rights is not merely to protect individuals. It is also to protect the activities and relations that make their lives more valuable, activities and relations that cannot be conceived reductively as merely individual goods. Thus, the right to free expression and communication protects artistic expression and the communication of information; the right to a fair trial protects a well-functioning legal system; the right to free association protects democratic trade unions, social movements and political demonstrations, and so on.

I turn now to the second stage of my inquiry. What would it be like to take human rights, thus understood, seriously? To approach this question, let me propose a further thought experiment. Let us now imagine worlds *with* human rights, where they are widely recognized and systematically put into practice.

One place where some people think rights flourish is *Libertaria*. Libertarian life runs exclusively and entirely on market principles. It is located somewhere in Eastern Europe or maybe in China in the near future. Everything there can be bought and sold; everything of value has a price and is subject

to Libertarians’ national obsession: cost-benefit analysis. The most basic and prized of all their rights is the right to property, beginning with each Libertarian’s ownership of himself or herself and extending (as Libertarians like to say) to whatever they “mix their labor with.” They own their talents and abilities and, in developing and deploying these, Libertarians claim the right to whatever rewards the market will bring. They love to tell the story of Wilt Chamberlain, the famous basketball player whom thousands are willing to pay to watch. Would it be just, they ask, to deprive him of these freely given rewards in order to benefit others?

They also attach great importance to the right of engaging in voluntary transfers of what they rightly own — transactions of giving, receiving, and exchanging, which they use to the advantage of their families, through private education and the inheritance of wealth. There is a very low level of regressive taxation, which is used only to maintain Libertaria’s system of free exchange — the infrastructure of the economy, the army and the police, and the justice system to enforce free contracts. Compulsory redistribution is prohibited, since it would violate people’s unlimited rights to whatever they can earn. Inequalities are great and growing, based on social class, as well as on differential talents and efforts. There is no public education, no public health system, no public support for the arts or recreation, no public libraries, no public transport, roads, parks or beaches. Water, gas, electricity, nuclear power, garbage disposal, postal and telecommunications are all in private hands, as are the prisons. The poor, the ill, the handicapped, the unlucky, and the untalented are given some sympathy and a measure of charity, but Libertarians do not regard their worsening plight as any kind of injustice, since they do not result from anyone’s rights being infringed.

No one is tortured in Libertaria. All have the right to vote, the rule of law prevails, there is freedom of expression (in media controlled by the rich) and of association (though trade unions cannot have closed shops or call strikes, since that would violate others’ rights). There is equal opportunity in the sense that active discrimination against individuals

and groups is prohibited, but there is an unequal start to the race for jobs and rewards; the socially privileged have a considerable advantage stemming from their social backgrounds. All can enter the race, but losers fall by the wayside: the successful are fond of quoting the national motto: “The Devil take the hindmost.”³⁴ The homeless sleeping under bridges and the unemployed are, however, consoled by the thought that they have the same rights as every other Libertarian.

Are human rights taken seriously enough in Libertaria? I believe the answer is no, for two reasons. First, as I said, the basic civil rights are respected there — there is no torture, there is universal franchise, the rule of law, freedom of expression and association and formal equality of opportunity. Yet the possessors of these rights are not equally respected; not all Libertarians are treated as equally human. To adapt a phrase of Anatole France, those who sleep under the bridges have the same rights as those who don’t. Though all Libertarians have the right to vote, the worst off, the marginalized and the excluded, do not have equal power to organize and influence political decisions, or equal access to legal processes, or an equal chance to articulate and communicate their points of view, or an equal representation in Libertarian public and institutional life, or an equal chance in the race for qualifications, positions, and rewards.

The second reason for thinking that Libertaria fails to take human rights seriously enough relates to the distinctively Libertarian rights. Libertarians believe that they have an unlimited right to whatever rewards their abilities and efforts can bring in the marketplace and the unlimited right to make voluntary choices that benefit themselves and their families. No Libertarians ever take a step outside the narrowly self-interested point of view of advancing their own, or at most their family’s, interests. They are impervious to the thought that others might have more urgent claims on resources, or that some of their and their family’s advantages are gained at the expense of others’ disadvantage, or

that the structure of Libertarian life is a structure of injustice.

Are human rights in better shape elsewhere? Where is the principle of defending them more securely defended? Where, in other words, are all human beings more securely treated as equally human? Where are they protected against Utilitarian sacrifices for the advantage of society and against Communitarian imposition of a particular way of life, against the Communist illusion that a world beyond rights can be attained and against the Libertarian illusion that a world run entirely on market principles is a world that recognizes them fully?

Is *Egalitaria* such a place? Egalitaria is a one-status society in the sense that all Egalitarians are treated as being of equal *worth*: one person’s well-being and freedom are regarded as just as valuable as any other’s. The basic liberties, the rule of law, toleration, equality of opportunity are all constitutionally guaranteed. But they are also made real by Egalitarians’ commitment to rendering everyone’s conditions of life such that these equal rights are of equal worth to their possessors. They differ about how to do this but one currently influential view is that a basic economic and political structure can be created that can make everyone better off while giving priority to bettering the condition of the worst off: on this view no inequality is justified unless it results in making the worst off better off than they would otherwise, be. All agree that progressive taxation and extensive welfare provision should ensure a decent minimum standard of life for all. But there is also within Egalitarian culture a momentum toward raising that minimum through policies that gradually eliminate involuntary disadvantage. That momentum is fueled by a sense of injustice that perpetually tracks further instances of illegitimate inequality or involuntary disadvantage — whether these result from religion or class or ethnicity or gender, and so on, and seeks policies that will render Egalitarians more equal in their conditions of life.

34 See Samuel Bowles, “What Markets Can — and Cannot — Do,” *Challenge: The Magazine of Economic Affairs*, July–August 1991, pp. 11–16.

Could there be such a place as Egalitaria? More precisely, is Egalitaria *feasible*? Could it be *attained* from anywhere in the present world? And is it *viable*? Could it be *maintained* stably over time? Some doubt that it is feasible. Some say that, even if feasible, it is not viable. Some say that it might be viable, if it were feasible, but it is not. Others say that it is neither feasible nor viable. I fear that there are good reasons for all these doubts. I shall suggest two major reasons for doubting the attainability and the maintainability of Egalitaria and conclude by suggesting what they imply about how we should view the principle of defending human rights.

The first reason for thinking that Egalitaria may, after all, be a mirage is what we may call the *libertarian constraint*. This is found, above all, in the economic sphere. Egalitarians are (or should be) extremely concerned to achieve maximal economic growth. For them “equality” is not to be traded off against “efficiency.” Rather, they seek most efficiently to achieve an economy that will attain the highest level of equality of condition at the highest feasible economic level. The worst off (and everyone else) under a more equal system should, they hope, be at least as well off as the worst off (and everyone else) under a less equal system. If the cost of more equality is lesser prospects of prosperity for everyone or most people, their hopes of attaining, let alone maintaining, Egalitaria, at least under conditions of freedom, are correspondingly dimmed.

Egalitarians these days are (or should be) keen students of Libertarian economics. For one thing, they know what markets can and cannot do. On the one hand, they know when and how markets can fail. Markets reproduce existing inequalities of endowments, resources, and power; they can generate external diseconomies, such as pollution, which they cannot deal with; they can, when unchecked, lead to oligopolies and monopolies; they can ravage the environment, through deforestation and in other ways; they can produce destabilizing crises of confidence with ramifying effects; they can encourage greed, consumerism, commercialism, opportunism, political passivity, indifference and anonymity, a world of alienated strangers.

They cannot fairly allocate public goods, or foster social accountability in the use of resources or democracy at the workplace, or meet social and individual needs that cannot be expressed in the form of purchasing power, or balance the needs of present and future generations. On the other hand, they are indispensable and cannot be simulated. There is no alternative to them, as a signaling device for transmitting in a decentralized process information about tastes, productive techniques, resources and so on; as a discovery procedure through which restless individuals, in pursuit of entrepreneurial profit, seek new ways of satisfying needs; and even, as the Prophet Marx himself acknowledged, as an arena of freedom and choice. Egalitarians know that command economies can only fail in comparison with market economies, and they know that, even if the market can in various ways be socialized, “market socialism” is, at best, an as yet ill-defined hope.

They also know that no economy can function on altruism and moral incentives alone, and that material incentives, and notably the profit motive, are indispensable to a well-functioning economy. Most work that needs to be done, and, in particular, entrepreneurial functions, must draw on motives that derive from individuals’ pursuit of material advantage for themselves and for their families. They know, in short, that *any* feasible and viable economy must be based on market processes and material incentives, however controlled and supplemented in order to render them socially accountable, thereby creating and reinforcing the very inequalities they earnestly seek to reduce.

The second major reason for skepticism that Egalitaria can be attained and, if so, maintained we may call the *communitarian constraint*. This is to be found, primarily, in the cultural sphere. Egalitarians hope that people can, at least when considering public and political issues, achieve a certain kind of abstraction from their own point of view and circumstances. Egalitarians hope that they can view anyone, including themselves, impartially, seeing everyone’s life as of equal worth and everyone’s well-being and freedom as equally valuable. John Rawls has modeled such a standpoint in his image

of an “Original Position” where individuals reason behind a “veil of ignorance”; others have tried to capture it in other ways.

Yet Egalitarians must admit that this is not a natural attitude in the world in which we live and that it seems in increasingly many places to be becoming less and less so. Former Yugoslavs turn almost overnight into Serbs and Croats. It matters urgently to some Czechoslovaks that they are Slovaks and to some Canadians that they are Quebecois. Even African Americans or Hispanic or Asian Americans are insisting on seeing themselves in politically correct ways. It seems that belonging to certain kinds of “encompassing groups” with cultures of self-recognition, and identifying and being identified as so belonging, is increasingly essential to many people’s well-being, but, to the extent that this is so, the “politics of equal dignity” that would treat individuals equally, irrespective of their group affiliations, is put in jeopardy.

Consider the idea of “fraternity.” Unlike “liberty” and “equality,” which are conditions to be *achieved*, who your brothers are is determined by the past. You and they form a collectivity in contradistinction to the rest of humankind, and in particular to that portion of it that you and they see as sources of danger or objects of envy or resentment. The history of “fraternity” during the course of the French Revolution is instructive. It began with a promise of universal brotherhood; soon it came to mean patriotism; and eventually the idea was used to justify militancy against external enemies and purges of enemies within. The revolutionary slogan *la fraternité ou la mort* thus acquired a new and ominous meaning, promising violence first against non-brothers and then against false brothers. For collective or communal identity always requires, as they say, an “other,” every affirmation of belonging includes an explicit or implicit exclusion clause. The Egalitarians’ problem is to render such exclusions harmless.

The problem is to attain a general acceptance of multiple identities that do not conflict. But how many situations in the present world are favorable to such an outcome? The least promising, and most explosive, seems to be that of formerly

communist federal states containing peoples with historical enmities at different levels of economic development. The least unpromising, perhaps, are polyethnic societies composed mainly of various immigrant groups who demand the right freely to express their particularity within the economic and political institutions of the dominant culture. But there too, wherever that right is interpreted as a *collective* right to equal recognition, a threat to egalitarian outcomes is raised: that of treating individuals only or mainly as the bearers of their collective identities and thus of building not Egalitaria but Communitaria.

Here, then, are two major reasons for doubting that Egalitaria can be realized anywhere in this world (let alone across it as a whole). They very naturally lead those impressed by them to take up anti-egalitarian political positions. Indeed, they constitute the two main sources of right-wing thinking today — libertarian and communitarian. Both point to severe limitations on the capacity of human beings to achieve that abstraction or impartial regard that could lead them to view all lives as equally valuable. Both are sufficiently powerful and persuasive to convince reasonable people to reject egalitarian politics.

How, in the light of this last fact, should we view human rights? I think it follows that the *list* of human rights should be kept both reasonably short and reasonably abstract. It should include the basic civil and political rights, the rule of law, freedom of expression and association, equality of opportunity, and the right to some basic level of material well-being, but probably no more. For only these have a prospect of securing agreement across the broad spectrum of contemporary political life, even though disagreement breaks out again once you ask how these abstract rights are to be made concrete: how the formal is to become real.

Who are the possessors of civil and political rights? Nationals? Citizens? Guest workers? Refugees? All who are residents within a given territory? Exactly what does the rule of law require? Does it involve equalizing access to legal advice and representation? Public defenders? The jury system? Equal representation of minorities on juries? The

right to challenge jurors without cause? When are freedom of expression and association truly free? Does the former have implications for the distribution and forms of ownership of mass media and the modes and principles of their public regulation? Does the latter entail some form of industrial democracy that goes beyond what currently obtains? What must be equal for opportunities to be equal? Is the issue one of non-discrimination against an existing background of economic, social and cultural inequalities or is that background itself the field within which opportunities can be made more equal? What is the basic minimum? Should it be set low to avoid negative incentive effects? If so, how low? Or should there be a basic income for all, and, if so, should that include those who could but don't work, or don't accept work that is on offer? And how is a basic minimum level of material well-being to be conceived and measured — in terms of welfare, or income, or resources, or "level of living," or "basic capabilities," or in *some* other way?

To defend these human rights is to defend a kind of "egalitarian plateau" upon which such political conflicts and arguments can take place. On the plateau, human rights are taken seriously on all sides, though there are wide and deep disagreements about what defending and protecting them involves. There are powerful reasons against abandoning it for any of the first four countries we have visited.

Yet the plateau is under siege from their armies. One of those armies flies a communitarian flag and practices "ethnic cleansing." It has already destroyed Mostar and many other places, and is currently threatening Kosovo and Macedonia. Right now it is laying siege to Sarajevo, slaughtering and starving men, women, and children, and raping women, only because they have the wrong collective identity. We are complicitly allowing this to go on, within the very walls of modern, civilized Europe. The barbarians are within the gates.

I believe that the principle of defending human rights requires an end to our complicity and appeasement: that we raise the siege of Sarajevo

and defeat them by force. Only then can we resume the journey to Egalitaria, which, if it can indeed be reached at all, can only be reached from the plateau of human rights.

13.10 Eric Hobsbawm: "The Universalism of the Left" (1996)³⁵

Universalism of the Left

What has all this to do with the Left? Identity groups were certainly not central to the Left. Basically, the mass social and political movements of the Left, that is, those inspired by the American and French revolutions and socialism, were indeed coalitions or group alliances, but held together not by aims that were specific to the group, but by great, universal causes through which each group believed its particular aims could be realized: democracy, the Republic, socialism, communism or whatever. Our own Labor Party in its great days was both the party of a class and, among other things, of the minority nations and immigrant communities of mainland Britain. It was all this, because it was a party of equality and social justice.

Let us not misunderstand its claim to be essentially class-based. The political labor and socialist movements were not, ever, anywhere, movements essentially confined to the proletariat in the strict Marxist sense. Except perhaps in Britain, they could not have become such vast movements as they did, because in the 1880s and 1890s, when mass labor and socialist parties suddenly appeared on the scene, like fields of bluebells in spring, the industrial working class in most countries was a fairly small minority, and in any case a lot of it remained outside socialist labor organization. Remember that by the time of World War I the social-democrats polled between 30 and 47 per cent of the electorate in countries like Denmark, Sweden and Finland, which were hardly industrialized, as well as in Germany. (The highest percentage of votes ever achieved by the Labor Party in this country, in 1951, was 48 per cent....

35 Eric Hobsbawm, "The Universalism of the Left," *The New Left Review*, 21 (May/June 1996).

So what does identity politics have to do with the Left? Let me state firmly what should not need restating. The political project of the Left is universalist: it is for *all* human beings. However we interpret the words, it isn't liberty for shareholders or blacks, but for everybody. It isn't equality for all members of the Garrick Club or the handicapped, but for everybody. It is not fraternity only for old Etonians or gays, but for everybody. And identity politics is essentially not for everybody but for the members of a specific group only. This is perfectly evident in the case of ethnic or nationalist movements. Zionist Jewish nationalism, whether we sympathize with it or not, is exclusively about Jews, and hang — or rather bomb — the rest. All nationalisms are. The nationalist claim that they are for *everyone's* right to self-determination is bogus.

That is why the Left cannot *base* itself on identity politics. It has a wider agenda. For the Left, Ireland was, historically, one, but only one, out of the many exploited, oppressed and victimized sets of human beings for which it fought. For the IRA kind of nationalism, the Left was, and is, only one possible ally in the fight for its objectives in certain situations. In others it was ready to bid for the support of Hitler as some of its leaders did during World War II. And this applies to every group which makes identity politics its foundation, ethnic or otherwise.

Now the wider agenda of the Left does, of course, mean it supports many identity groups, at least some of the time, and they in turn look to the Left. Indeed, some of these alliances are so old and so close that the Left is surprised they come to an end, as people are surprised when marriages break up after a lifetime. In the USA it almost seems against nature that the "ethnics" — that is, the groups of poor mass immigrants and their descendants — no longer vote almost automatically for the Democratic Party. It seems almost incredible that a black American could even consider standing for the Presidency of the USA as a Republican (I am thinking of Colin Powell). And

yet, the common interest of Irish, Italian, Jewish and black Americans in the Democratic Party did not derive from respects to these. What united them was the hunger for equality and social justice, and a program believed capable of advancing both.

The Common Interest

But this is just what so many on the Left have forgotten, as they dive head first into the deep waters of identity politics. Since the 1970s there has been a tendency — an increasing tendency — to see the Left essentially as a coalition of minority groups and interests: of race, gender, sexual or other cultural preferences and lifestyles, even of economic minorities such as the old getting-your-hands-dirty, industrial working class have now become. This is understandable enough, but it is dangerous, not least because winning majorities is not the same as adding up minorities.

First, let me repeat: identity groups are about themselves, for themselves, and nobody else. A coalition of such groups that is not held together by a single common set of aims or values, has only an ad hoc unity, rather like states temporarily allied in war against a common enemy. They break up when they are no longer so held together. In any case, as identity groups, they are not committed to the Left as such, but only to get support for their aims wherever they can. We think of women's emancipation as a cause closely associated with the Left, as it has certainly been since the beginnings of socialism, even before Marx and Engels. And yet, historically, the British suffragist movement before 1914 was a movement of all three parties, and the first woman MP, as we know, was actually a Tory.³⁶

Secondly, whatever their rhetoric, the actual *movements* and *organizations* of identity politics mobilize only minorities, at any rate before they acquire the power of coercion and law. National feeling may be universal, but, to the best of my

36 Libang Park, "The British Suffrage Activists of 1913," *Past & Present*, no. 120 (1988), 156–157.

knowledge, no secessionist nationalist party in democratic states has so far ever got the votes of the majority of its constituency (though the Québécois last autumn came close — but then their nationalists were careful not actually to demand complete secession in so many words). I do not say it cannot or will not happen — only that the safest way to get national independence by secession so far has been not to ask populations to vote for it until you already have it first by other means.

That, by the way, makes two pragmatic reasons to be against identity politics. Without such outside compulsion or pressure, under normal circumstances it hardly ever mobilizes more than a minority — even of the target group. Hence, attempts to form separate political women's parties have not been very effective ways of mobilizing the women's vote. The other reason is that forcing people to take on one, and only one, identity divides them from each other. It therefore isolates these minorities.

Consequently to commit a general movement to the specific demands of minority pressure groups, which are not necessarily even those of their constituencies, is to ask for trouble. This is much more obvious in the USA, where the backlash against positive discrimination in favor of particular minorities, and the excesses of multiculturalism, is now very powerful; but the problem exists here also.

Today both the Right and the Left are saddled with identity politics. Unfortunately, the danger of disintegrating into a pure alliance of minorities is unusually great on the Left because the decline of the great universalist slogans of the Enlightenment, which were essentially slogans of the Left, leaves it without any obvious way of formulating a common interest across sectional boundaries. The only one of the so-called "new social movements" which crosses all such boundaries is that of the ecologists.

But, alas, its political appeal is limited and likely to remain so.

However, there is one form of identity politics which is actually comprehensive, inasmuch as it is based on a common appeal, at least within the confines of a single state: citizen nationalism. Seen in the global perspective this may be the opposite of a universal appeal, but seen in the perspective of the national state, which is where most of us still live, and are likely to go on living, it provides a common identity, or in Benedict Anderson's phrase, "an imagined community" not the less real for being imagined. The Right, especially the Right in government, has always claimed to monopolize this and can usually still manipulate it.

Even Thatcherism, the grave-digger of "one-nation Toryism," did it. Even its ghostly and dying successor, Major's government, hopes to avoid electoral defeat by damning its opponents as unpatriotic.

Why then has it been so difficult for the Left, certainly for the Left in English-speaking countries, *to see itself* as the representative of *the entire nation*? (I am, of course, speaking of the nation as the community of all people in a country, not as an ethnic entity.) Why have they found it so difficult even to try? After all, the European Left began when a class, or a class alliance, the Third Estate in the French Estates General of 1789, decided to declare itself the nation as against the minority of the ruling class, thus creating the very concept of the political "nation." After all, even Marx envisaged such a transformation in *The Communist Manifesto*.³⁷ Indeed, one might go further. Todd Gitlin, one of the best observers of the American Left, has put it dramatically in his new book. *The Twilight of Common Dreams*. "What is a Left if it is not, plausibly at least, the voice of the whole people? ... If there is no people, but *only* peoples, there *is no Left*."³⁸

37 "Since the proletariat must first of all acquire political supremacy, must raise itself to be the national class, must constitute itself the nation, it is so far, itself national, though not in the bourgeois sense." Karl Marx and Friedrich Engels, *The Communist Manifesto*, 1848, part II. The original (German) edition has "the national class"; the English translation of 1888 gives this as "the leading class of the nation."

38 Gitlin, *The Twilight of Common Dreams* (New York: Henry Holt & Co., 1995), 165.

13.11 Rhoda E. Howard-Hassman and Jack Donnelly: “Liberalism and Human Rights: A Necessary Connection” (1996)³⁹

If human rights are the rights one has simply as a human being, as they usually are thought to be, then they are held “universally” by all human beings. Furthermore, as paramount moral rights they (ought to) govern the basic structures and practices of political life, and in ordinary circumstances (ought to) take priority over competing moral, legal, and political claims. These dimensions reflect what we can call the *moral* universality of human rights.

In the contemporary world, human rights are also almost universally endorsed by governments and peoples, at least in word, as normative standards. As the 1993 Vienna World Conference on Human Rights indicated, whatever the disputes over details and over the politics of implementation, virtually all states accept as authoritative the international human rights standards laid out in the Universal Declaration of Human Rights and the International Human Rights Covenants. We can call this the *international normative* universality of human rights.

Human rights, however, are not universal, even as ideals, in a broad, cross-cultural and historical perspective. As we have argued elsewhere, pre-modern societies *in both the western and non-western worlds* lacked the very idea of equal and inalienable rights held by all individuals simply because they are human. All societies embody conceptions of personal dignity, worth, wellbeing, and flourishing. There may even be considerable cross-cultural consensus on social values such as equity and fairness. But human rights represent a distinctive approach to realizing a particular conception of human dignity or flourishing. The practice of seeking social justice and human dignity through the mechanism of rights held equally by every citizen, and

which can be exercised even against society, first originated in the modern west.

This historical fact, however, should not lead us to commit the genetic fallacy of judging an argument or practice by its origins. Quite the contrary, we argue that the historical particularity of human rights is fully compatible with their moral and international normative universality. In fact, we contend that internationally recognized human rights, which are based on a liberal conception of justice and human dignity, represent the only standard of political legitimacy that has both wide popular appeal (in the North, South, East, and West alike) and a concrete record of delivering a life of dignity in modern social and political conditions...

We argue that the current international normative hegemony of human rights rests on the fact that it represents the only plausible vision of human dignity that has been able to establish itself widely in practice in the conditions of life that have been created in most corners of the globe by modern markets and states.

A. Liberalism, Equality, and Personal Autonomy

Following Ronald Dworkin, we contend that the heart of liberalism is expressed in the basic political right to equal concern and respect:

Government must treat those whom it governs with concern, that is, as human beings who are capable of suffering and frustration, and with respect, that is, as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived. Government must not only treat people with concern and respect, but with equal concern and respect. It must not distribute goods or opportunities unequally on the ground that

39 The heart of this selection is taken from Rhoda E. Howard-Hassman and Jack Donnelly, “Human Rights, Human Dignity, and Political Regimes,” *American Political Science Review*, Vol. 80 (September 1986), 801–817. Additional material has been drawn, with considerable revision, from Rhoda E. Howard-Hassman, “Cultural Absolutism and the Nostalgia for Community,” *Human Rights Quarterly*, Vol. 15 (May 1993), 332–337, and Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), 1, 106, 149–152. Editor: For space considerations, some explanatory footnotes have been omitted.

some citizens are entitled to more because they are worthy of more concern. It must not constrain liberty on the ground that one citizen's conception of the good life ... is nobler or superior to another's.⁴⁰

The state must treat each person as a moral and political equal; it need not assure each person an equal share of social resources, but it must treat all with equal concern and respect. Inequalities in goods or opportunities that arise directly or indirectly from political decisions (and many such inequalities are easily justified within a liberal regime) must be compatible with the right to equal concern and respect.

Personal liberty, especially the liberty to choose and pursue one's own life, clearly is entailed in the principle of equal respect. If the state were to interfere in matters of personal morality, it would be treating the life plans and values of some as superior to others. A certain amount of economic liberty is also required, at least to the extent that decisions concerning consumption, investment, and risk reflect free decisions based on personal values that arise from autonomously chosen conceptions of the good life. But liberty alone cannot serve as the overriding value of social life, nor can it be the sole end of political association. Unless checked by a fairly expansive, positive conception of the persons in relation to whom it is exercised, individual liberty readily degenerates into license and social atomization. If liberty is to foster dignity, it must be exercised within the constraints of the principle of equal concern and respect.

In fact, autonomy and equality are less a pair of guiding principles than different manifestations of the central liberal commitment to the equal worth and dignity of each and every person. Each human being has an equal, irreducible moral worth, whatever his or her social utility. Regardless of who they are or where they stand, individuals have an inherent dignity and worth for which the state must demonstrate an active concern. Furthermore, everyone is *entitled* to this equal concern and

respect. Minimum standards of political treatment are embodied in human rights; they are not merely desirable goals of social policy.

This implies a particular conception of the relation of the individual to the community and the state. Man is a social animal. Human potential, and even personal individuality, can be developed and expressed only in a social context. Society requires the discharge of certain political functions, and large-scale political organization requires the state. The state, however, also can present serious threats to human dignity and equal concern and respect if it seeks to enforce a particular vision of the good life or to entrench privileged inequality. Therefore, human rights have a special reference to the state in order to keep it an instrument to realize rather than undermine equal concern and respect.

In the inevitable conflicts between the individual and the state, the liberal gives *prima facie* priority, in the areas protected by human rights, to the individual. For the liberal, the individual is not merely separable from the community and social roles, but especially valued precisely as a distinctive, discrete individual — which is why each person must be treated with equal concern and respect. The state and society are conceived, in more or less contractarian terms, as associations for the fuller unfolding of human potential, through the exercise and enjoyments of human rights. Human dignity, for the liberal, is largely encompassed in the vision of a life in which each person is an equal and autonomous member of society enjoying the full range of human rights.

This view of man is rooted in structural changes that began to emerge in late medieval and early modern Europe, gained force in the eighteenth and nineteenth centuries, and today are increasingly the norm throughout the world. The "creation" of the private individual separate from society is closely linked to the rise of a new and more complex division of labor, the resulting changes in class structure (particularly the rise and then dominance of the bourgeoisie), and a new vision of the individual's relationship to God, society, and the state.

40 Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), 272–273.

These developments are well known and need not be recounted here. The social changes of modernization — especially migration, urbanization, and technological development, in the context of capitalist market economies — replaced the all-encompassing moral role of traditional or feudal society with a much more segmented social order. Politics was separated from religion, the economy, and law (which were likewise separated from one another). Individuals too were separated from society as a whole; no longer could they be reduced to their roles, to parts of the community. With the recognition of separate individuals possessing special worth and dignity precisely as individuals, the basis for human rights was established.

Occurring parallel to these changes in society was the equally well known development of the modern state. The newly rising bourgeois class was initially a principal backer of the newly ascendant princes and kings, who also wanted to free themselves from the constraints of the old feudal order. As the state's power grew, however, it increasingly threatened the individual citizen. Bourgeois "freemen" thus began to demand that they indeed be free.

Such demands eventually took the form of arguments for the Universal natural rights and equality of all people. In this new and socially mobile society in which entrance to and exit from the bourgeois class was relatively unpredictable, a new set of privileges could not readily be reserved for a new elite defined by birth or some similar characteristic. Therefore, in order for some (the bourgeoisie) to be able to enjoy these new rights, they had to be demanded and at least formally guaranteed for all. Thus human rights came to be articulated primarily as claims of any individual against the state. Human rights lay down the basic form of the relationship between the (new, modern) individual and the (new, modern) state, a relationship based on the *prima facie* priority of the individual over the state in those areas protected by human rights.

Human rights are morally prior to and superior to society and the state, and under the control of individuals, who hold them and may exercise them against the state in extreme cases. This reflects not only the equality of all individuals but also their

autonomy, their right to have and pursue interests and goals different from those of the state or its rulers. In the areas and endeavors protected by human rights, the individual is "king" — or rather an equal and autonomous person entitled to equal concern and respect.

In practice, these values and structural changes remain incompletely realized even today, and for most of the modern era they have been restricted to a small segment of the population. Nevertheless, the ideal was established and its implementation begun. And even if the demand for human rights began as a tactic of the bourgeoisie to protect its own class interests, the logic of universal and inalienable personal rights has long since broken free of these origins.

Furthermore, although these processes of sociopolitical individuation and state-building were first played out in Europe, they are increasingly the rule throughout the world. The structural basis for a society of equal and autonomous individuals is thus being universalized despite its historically particular and contingent origin. Social structure today increasingly parallels the near universal diffusion of the idea of human rights and the philosophical claim that human rights are universal. Individual human rights therefore increasingly appear not merely as moral ideals but as both objectively and subjectively necessary to protect and realize human dignity.

B. Liberalism and International Human Rights

The standard list of human rights in the Universal Declaration of Human Rights can be easily derived from the liberal conception of the individual and the state. Other lists have been and may be derived from these principles, but we contend that the near-perfect fit between liberalism and the Universal Declaration reflects a deep and essential theoretical connection.

In order to treat an individual with concern and respect, the individual must first be recognized as a moral and legal person. This in turn requires certain basic personal rights. Rights to recognition before the law and to nationality (Universal Declaration, Articles

6, 15) are prerequisites to political treatment as a person. In a different vein, the right to life, as well as rights to protection against slavery, torture, and other inhuman or degrading treatment (Articles 3, 4, 5), are essential to recognition and respect as a person.

Such rights as freedom of speech, conscience, religion, and association (Articles 18, 19) protect a sphere of personal autonomy. The right to privacy (Article 12) even more explicitly aims to guarantee the capacity to realize personal visions of a life worthy of a human being. Personal autonomy also requires economic and social rights, such as the right to education (Article 26), which makes available the intellectual resources for informed autonomous choices and the skills needed to act on them, and the right to participate in the cultural life of the community (Article 27), which recognizes the social and cultural dimensions of personal development. In its political dimension, equal respect also implies democratic control of the state and therefore rights to political participation and to freedoms of (political) speech, press, assembly, and association (Articles 19, 20, 21).

The principle of equal concern and respect also requires that the government intervene to reduce social and economic inequalities that deny equal personal worth. The state must protect those who, as a result of natural or voluntary membership in an unpopular group, are subject to social, political, or economic discrimination that limits their access to a fair share of social resources or opportunities. Such rights as equal protection of the laws and protection against discrimination on such bases as race, color, sex, language, religion, opinion, origin, property, birth, or status (Articles 2, 7) are essential to assure that all people are treated as fully and equally human.

In the economic sphere, the traditional liberal attachment to the market is not accidental. Quite aside from its economic efficiency, the market places minimal restraints on economic liberty and thus maximizes personal autonomy. Market distribution, however, tends to be grossly unequal. Inequality per se is not objectionable to the liberal, but the principle of equal concern and respect does imply a floor of basic economic welfare; degrading

inequalities cannot be permitted. The state also has an appropriate interest in redressing market-generated inequalities, because a "free market" system of distributing resources is a creature of social and political action, actively backed by the state, which protects and enforces property rights. Differential market rewards are not neutral; they reward morally equal individuals unequally. Market distributions may be substantially affected by such morally irrelevant factors as race, sex, class, or religion. Furthermore, many of the "talents" which are rewarded by the market are of dubious moral significance. Even "achieved" inequalities, should they threaten the (moral) equality or autonomy of other citizens, present at least a prima facie case for state intervention. The principle of equal concern and respect requires the state to act positively to cancel unjustifiable market inequalities, at least to the point that all are assured a minimum share of resources through the implementation of social and economic rights. In human rights terms this implies, for example, rights to food, health care, and social insurance (Articles 22, 25).

Efforts to alleviate degrading or disrespectful misery and deprivation do not exhaust the scope of the economic demands of the principle of equal concern and respect. The right to work (Article 23), which is essentially a right to economic participation, is of special importance. It has considerable intrinsic value (work is typically held to be essential to a life of dignity) as well as great instrumental value, both for the satisfaction of basic material needs and for providing a secure and dignified economic foundation from which to pursue personal values and objectives. A (limited) right to property (Article 17) can be justified in similar terms. Finally, the special threat to personal autonomy and equality presented by the modern state requires a set of legal rights, such as the presumption of innocence and rights to due process, fair and public hearings before an independent tribunal, and protection from arbitrary arrest, detention, or exile (Articles 8–11). More broadly, the special threat to dignity posed by the state is reflected in the fact that all human rights are held particularly against the state. Moreover, they hold against all types of states, democratic as

much as any other: if one's government treats one as less than fully human, it matters little how that government came to power. The individual does have social duties (Article 29), but the discharge of social obligations is not a precondition for having or exercising human rights.

We have thus moved from the liberal principle of equal concern and respect to the full list of human rights in the Universal Declaration. These rights, in turn, demand a liberal society and the ideal person envisioned by it, and if implemented these rights would play a crucial role in creating that society. This intimate, almost circular, relationship between internationally recognized human rights and the liberal ideal of equal concern and respect given by the state to equal and autonomous individuals is, we contend, essential, not coincidental.

We are well aware that the conception of liberalism we have adopted here is controversial. Many critics and defenders alike use the term to refer instead to a "minimal" or "night-watchman" state that protects only "negative" civil and political rights and restricts economic, social, and cultural rights to the right to private property. This "libertarian" strand does have a strong liberal pedigree. But no less strong is the pedigree of the more radical or "social democratic" liberalism we have relied on, which runs from Locke, through Paine, to contemporary liberals such as Rawls and Dworkin.

Furthermore, and for our purposes even more importantly, this strand of liberalism is not merely a theoretical ideal. It is embodied in the practice of twentieth century liberal democratic welfare states, most notably in Northern Europe over the past four decades. Whether we are concerned with civil and political rights or economic, social, and cultural rights — and above all if we are genuinely concerned with the often repeated interdependence and indivisibility of all human rights — it is in the liberal democratic regimes of Western Europe that internationally recognized human rights have been most fully realized in practice. In (the social democratic strand of) liberalism we thus have a long tradition of theory *and practice* that suggests it is not only the source of contemporary human rights ideas but also the type of political system that is best able to realize those rights.

We do not want to become tangled in disputes over labels. Call a regime that rests on a vision of equal and autonomous individuals and draws its legitimacy from its contribution to the realization of the equal and inalienable rights of its citizens "x." Only "x" reflects a plausible, realizable political model for a world dominated by modern markets and modern states. And only such a regime is compatible with authoritative international human rights standards. Not in spite of, but rather precisely because of, its historical particularity, the liberal democratic welfare state demanded by internationally recognized human rights represents a universal political project for the end of the twentieth century.

Critiques of both the left and the communitarian (or religious) right have attacked the excessive, even corrosive, individualism of the liberal model of human rights. We would contend, however, that such criticisms apply largely to the libertarian theory we have rejected. The practice of rights-protective liberal democratic regimes in the past half century provides little support for such claims. The isolated, atomized, possessive individual is a far cry from the reality of even the United States, probably the world's most individualistic and rights-obsessed country. And to the extent that this picture is accurate, it is largely a result of disregard of, rather than excessive respect for, individual human rights.

Autonomy does not necessarily mean alienation from the community. Autonomous individuals in liberal western societies usually are embedded in their communities through multiple associations based on, for example, families, churches, work, schools, citizenship, ethnicity, gender, charities, NGOs, political parties, the arts, sports, hobbies, personal interests, and friendships. To the (considerable) extent that individuals define themselves and live their lives as part of such groups, they will exercise their human rights less as separate individuals than as group members. The liberal vision embodied in international human rights standards is one of autonomous individuals treated with equal concern and respect by the state, participating in a strong and active civil society, and enmeshed in multiple and diverse social groups and communities.

Far from being hostile to the rights of groups, many internationally recognized human rights, especially family rights and rights to nondiscrimination, protect individuals as group members. Many human rights even have as a principal use the protection of groups. Consider, for example, the ways in which freedoms of speech, association, and religion have protected religious sects and institutions, political parties, trade unions, farmers' organizations, and a raft of other formal and informal groups based on countless affiliations. In fact, a vibrant civil society, the heart of political community in urban industrial societies, is inextricably tied to human rights that allow individuals to participate in social, economic, and political life not only separately but collectively.

Conflicts between individuals and communities rarely arise because of an excess of individual human rights. Take the familiar complaint of violent crime in American cities. Which human rights are hoodlums exercising to excess? And wouldn't greater respect for individual rights to personal security be the solution? In any case, lawless violence in the United States is deeply rooted in the American failure to take economic and social rights seriously and the persistence of pervasive social discrimination based on race, ethnicity, and wealth.

The principal destroyer of community in modern societies is the elevation of the individual pursuit of wealth to a paramount social value, systematically disregarding the poor and disadvantaged. The unbridled individualism typical of some sectors of the North American population is less a sign of individual rights running out of control than of human rights not being protected. Ideological celebrations of material achievement, which allow societal disregard for those who haven't "made it," are attacks on, rather than embodiments of, liberal human rights values. Far from demanding equal concern and respect from the state, the social vision popularized by the Reagan and Thatcher "revolutions" of the 1980s base dignity and respect on acquired wealth. They are indeed destructive of community — because they flagrantly disregard international human rights standards and their

underlying (liberal) values. Unbridled materialistic individualism is an argument not for less emphasis on human rights but rather for taking seriously the full range of internationally recognized human rights, especially economic rights and rights that guarantee full and equal participation in society. Social disorder and decay are usually the result of systematic violations of individual human rights by the state or some other organized segment of society. When the full range of internationally recognized human rights is protected, when individuals are treated with equal concern and respect, communities can and do thrive.

For all the talk of excessive individualism, the problem in the world today is not too many individual rights, but that individual human rights are not sufficiently respected. States and societies have multiple claims on individuals. Modern states have awesome powers to bring individuals to their knees; if necessary, to break their bodies and minds. Capitalist markets treat persons as commodities and undermine family ties. Changes in the international division of labor destroy local communities. And we should never forget the hostility of many communities to difference, and the repressive social roles associated with "traditional family values."

Human rights are among the few resources available to individuals faced with these powerful threats to their dignity and autonomy. The balance is already (always?) tilted against individuals — and, we might add, families and most other groups that give meaning and value to their lives. If anything, what we need today is not fewer individual human rights but more. The result would be not only more secure individuals with greater opportunities to flourish, but stronger communities with a powerful claim to our respect, even admiration.

13.12 Richard Rorty: "Human Rights, Rationality, and Sentimentality" (1993)⁴¹

... To overcome this idea of a *sui generis* sense of moral obligation, it would help to stop answering the question "What makes us different from the other

41 Richard Rorty, "Human Rights, Rationality and Sentimentality," in *On Human Rights: Oxford Amnesty Lectures*, edited by Stephen Shute (New York: Basic Books, 1993).

animals?” by saying “We can know, and they can merely feel.” We should substitute “We can feel for *each other* to a much greater extent than they can.” This substitution would let us disentangle Christ’s suggestion that love matters more than knowledge from the neo-Platonic suggestion that knowledge of the truth will make us free. For as long as we think that there is an ahistorical power which makes for righteousness — a power called truth, or rationality — we shall not be able to put foundationalism behind us.

The best, and probably the only, argument for putting foundationalism behind us is the one I have already suggested: It would be more efficient to do so, because it would let us concentrate our energies on manipulating sentiments, on sentimental education. That sort of education sufficiently acquaints people of different kinds with one another so that they are less tempted to think of those different from themselves as only quasi-human. The goal of this manipulation of sentiment is to expand the reference of the terms “our kind of people” and “people like us.” . . .

Plato thought that the way to get people to be nicer to each other was to point out what they all had in common — rationality. But it does little good to point out, to the people I have just described, that many Muslims and women are good at mathematics or engineering or jurisprudence. Resentful young Nazi toughs were quite aware that many Jews were clever and learned, but this only added to the pleasure they took in beating them up. Nor does it do much good to get such people to read Kant, and agree that one should not treat rational agents simply as means. For everything turns on who counts as a fellow human being, as a rational agent in the only relevant sense — the sense in which rational agency is synonymous with membership in our moral community.

For most white people, until very recently, most Black people did not so count. For most Christians, up until the seventeenth century or so, most heathen did not so count. For the Nazis, Jews did not so count. For most males in countries in which the average annual income is under four thousand dollars, most females still do not so count. Whenever tribal and national rivalries become

important, members of rival tribes and nations will not so count. Kant’s account of the respect due to rational agents tells you that you should extend the respect you feel for people like yourself to all featherless bipeds. This is an excellent suggestion, a good formula for secularizing the Christian doctrine of the brotherhood of man. But it has never been backed up by an argument based on neutral premises, and it never will be outside the circle of post-Enlightenment European culture, the circle of relatively safe and secure people who have been manipulating each others’ sentiments for two hundred years, most people are simply unable to understand why membership in a biological species is supposed to suffice for membership in a moral community. This is not because they are insufficiently rational. It is, typically, because they live in a world in which it would be just too risky — indeed, would often be insanely dangerous — to let one’s sense of moral community stretch beyond one’s family, clan, or tribe.

To get whites to be nicer to Blacks, males to females, Serbs to Muslims, or straights to gays, to help our species link up into what Rabossi calls a “planetary community” dominated by a culture of human rights, it is of no use whatever to say, with Kant: Notice that what you have in common, your humanity, is more important than these trivial differences. For the people we are trying to convince will rejoin that they notice nothing of the sort. Such people are *morally* offended by the suggestion that they should treat someone who *is not* kin as if he were a brother, or a nigger as if he were white, or a queer as if he were normal, or an infidel as if she were a believer. They are offended by the suggestion that they treat people whom they do not think of as human as if they were human. When utilitarians tell them that all pleasures and pains felt by members of our biological species are equally relevant to moral deliberation, or when Kantians tell them that the ability to engage in such deliberation is sufficient for membership in the moral community, they are incredulous. They rejoin that these philosophers seem oblivious to blatantly obvious moral distinctions, distinctions any decent person will draw.

This rejoinder is not just a rhetorical device, nor is it in any way irrational. It is heartfelt. The

identity of these people, the people whom we should like to convince to join our Eurocentric human rights culture, is bound up with their sense of who they are not. Most people — especially people relatively untouched by the European Enlightenment — simply do not think of themselves as, first and foremost, a human being. Instead, they think of themselves as being a certain *good* sort of human being — a sort defined by explicit opposition to a particularly bad sort. It is crucial for their sense of who they are that they are not an infidel, not a queer, not a woman, not an untouchable. Just insofar as they are impoverished, and as their lives are perpetually at risk, they have little else than pride in not being what they are not to sustain their self-respect. Starting with the days when the term “human being” was synonymous with “member of our tribe,” we have always thought of human beings in terms of paradigm members of the species. We have contrasted us, the *real* humans, with rudimentary, or perverted, or deformed examples of humanity.

We Eurocentric intellectuals like to suggest that we, the paradigm humans, have overcome this primitive parochialism by using that paradigmatic human faculty, reason. So we say that failure to concur with us is due to “prejudice.” Our use of these terms in this way may make us nod in agreement when Colin McGinn tells us, in the introduction to his recent book,⁴² that learning to tell right from wrong is not as hard as learning French. The only obstacles to agreeing with his moral views, McGinn explains, are “prejudice, vested interest and laziness.”

One can see what McGinn means: If, like many of us, you teach students who have been brought up in the shadow of the Holocaust, brought up believing that prejudice against racial or religious groups is a terrible thing, it is not very hard to convert them to standard liberal views about abortion, gay rights, and the like. You may even get them to stop eating animals. All you have to do is convince them that all the arguments on the other side appeal to “morally irrelevant” considerations. You do this by manipulating their sentiments in such a way that they imagine themselves in the shoes of the

despised and oppressed. Such students are already so nice that they are eager to define their identity in non-exclusionary terms. The only people they have trouble being nice to are the ones they consider irrational — the religious fundamentalist, the smirking rapist, or the swaggering skinhead.

Producing generations of nice, tolerant, well-off, secure, other-respecting students of this sort in all parts of the world is just what is needed — indeed *all* that is needed — to achieve an Enlightenment utopia. The more youngsters like this we can raise, the stronger and more global our human rights culture will become. But it is not a good idea to encourage these students to label “irrational” the intolerant people they have trouble tolerating. For that Platonic-Kantian epithet suggests that, with only a little more effort, the good and rational part of these other people’s souls could have triumphed over the bad and irrational part. It suggests that we good people know something these bad people do not know, and that it is probably their own silly fault that they do not know it. All they have to do, after all, is to think a little harder, be a little more self-conscious, a little more rational.

But the bad people’s beliefs are not more or less “irrational” than the belief that race, religion, gender, and sexual preference are all morally irrelevant — that these are all trumped by membership in the biological species. As used by moral philosophers like McGinn, the term “irrational behavior” means no more than “behavior of which we disapprove so strongly that our spade is turned when asked *why* we disapprove of it.” It would be better to teach our students that these bad people are no less rational, no less clearheaded, no more prejudiced, than we good people who respect otherness. The bad people’s problem is that they were not so lucky in the circumstances of their upbringing as we were. Instead of treating as irrational all those people out there who are trying to find and kill Salman Rushdie, we should treat them as deprived.

Foundationalists think of these people as deprived of truth, of moral knowledge. But it would be better — more specific, more suggestive of possible remedies — to think of them

42 Colin McGinn, *Moral Literacy; or, How to Do the Right Thing* (London: Duckworth, 1992), 16.

as deprived of two more concrete things: security and sympathy. By “security” I mean conditions of life sufficiently risk-free as to make one’s difference from others inessential to one’s self-respect, one’s sense of worth. These conditions have been enjoyed by Americans and Europeans — the people who dreamed up the human rights culture — much more than they have been enjoyed by anyone else. By “sympathy” I mean the sort of reaction that the Athenian had more of after seeing Aeschylus’ *The Persians* than before, the sort that white Americans had more of after reading *Uncle Tom’s Cabin* than before, the sort that we have more of after watching TV programs about the genocide in Bosnia. Security and sympathy go together, for the same reasons that peace and economic productivity go together. The tougher things are, the more you have to be afraid of, the more dangerous your situation, the less you can afford the time or effort to think about what things might be like for people with whom you do not immediately identify. Sentimental education only works on people who can relax long enough to listen.

If Rabossi and I are right in thinking human rights foundationalism outmoded, then Hume is a better advisor than Kant about how we intellectuals can hasten the coming of the Enlightenment Utopia for which both men yearned. Among contemporary philosophers, the best advisor seems to me to be Annette Baier. Baier describes Hume as “the woman’s moral philosopher” because Hume held that “corrected (sometimes rule-corrected) sympathy, not law-discerning reason, is the fundamental moral capacity.”⁴³ Baier would like us to get rid of both the Platonic idea that we have a true self, and the Kantian idea that it is rational to be moral. In aid of this project, she suggests that we think of “trust” rather than “obligation” as the fundamental

moral notion. This substitution would mean thinking of the spread of the human rights culture not as a matter of our becoming more aware of the requirements of the moral law, but rather as what Baier calls “a progress of sentiments.”⁴⁴ This progress consists in an increasing ability to see the similarities between ourselves and people very unlike us as outweighing the differences. It is the result of what I have been calling “sentimental education.” The relevant similarities are not a matter of sharing a deep true self which instantiates true humanity, but are such little, superficial, similarities as cherishing our parents and our children — similarities that do not interestingly distinguish us from many nonhuman animals.

To accept Baier’s suggestions, however, we should have to overcome our sense that sentiment is too weak a force, and that something stronger is required. This idea that reason is “stronger” than sentiment, that only an insistence on the unconditionality of moral obligation has the power to change human beings for the better, is very persistent. I think that this persistence is due mainly to a semiconscious realization that, if we hand our hopes for moral progress over to sentiment, we are in effect handing them over to *condescension*. For we shall be relying on those who have the power to change things — people like the rich New England abolitionists, or rich bleeding hearts like Robert Owen and Friedrich Engels — rather than on something that has power over them. We shall have to accept the fact that the fate of the women of Bosnia depends on whether TV journalists manage to do for them what Harriet Beecher Stowe did for black slaves, whether these journalists can make us, the audience back in the safe countries, feel that these women are more like us, more like “real human beings, than we had realized.

43 Baier, “Hume, the Women’s Moral Theorist?” in Eva Kittay and Diana Meyers, eds., *Women and Moral Theory* (Totowa, N.J.: Rowman and Littlefield, 1987), 40.

44 Baier’s book on Hume is entitled *A Progress of Sentiments: Reflections on Hume’s Treatise* (Cambridge, Mass.: Harvard University Press, 1991). Baier’s view of the inadequacy of most attempts by contemporary moral philosophers to break with Kant comes out most clearly when she characterizes Allan Gibbard (in his book *Wise Choices, Apt Feelings*) as focusing “on the feelings that a patriarchal religion has bequeathed to us,” and says that “Hume would judge Gibbard to be, as a moral philosopher, basically a divine disguised as a fellow expressivist” (p. 312).

To rely on the suggestions of sentiment rather than on the commands of reason is to think of powerful people gradually ceasing to oppress others, or ceasing to countenance the oppression of others, out of mere niceness, rather than out of obedience to the moral law. But it is revolting to think that our only hope for a decent society consists in softening the self-satisfied hearts of a leisure class. We want moral progress to burst up from below, rather than waiting patiently upon condescension from the top. The residual popularity of Kantian ideas of “unconditional moral obligation” — obligation imposed by deep ahistorical noncontingent forces — seems to me almost entirely due to our abhorrence for the idea that the people on top hold the future in their hands, that everything depends on them, that there is nothing more powerful to which we can appeal against them.

Like everyone else, I too should prefer a bottom-up way of achieving utopia, a quick reversal of fortune which will make the last first. But I do not think this is how utopia will in fact come into being. Nor do I think that our preference for this way lends any support to the idea that the Enlightenment project lies in the depths of every human soul. So why does this preference make us resist the thought that sentimentality may be the best weapon we have? I think Nietzsche gave the right answer to this question: We resist out of resentment. We *resent* the idea that we shall have to wait for the strong to turn their piggy little *eyes* to the suffering of the weak. We desperately hope that there is something stronger and more powerful that will *hurt* the strong if they do *not* — if not a vengeful God, then a vengeful aroused proletariat, or, at least, a vengeful superego, or, at the very least, the offended majesty of Kant’s tribunal of pure practical reason. The desperate hope for a noncontingent and powerful ally is, according to Nietzsche, the common core of Platonism, of religious insistence on divine omnipotence, and of Kantian moral philosophy.⁴⁵ ...

13.13 Liu Xiaobo: Charter 08 (2008)⁴⁶

I. Foreword

A hundred years have passed since the writing of China’s first constitution. 2008 also marks the sixtieth anniversary of the promulgation of the Universal Declaration of Human Rights, the thirtieth anniversary of the appearance of Democracy Wall in Beijing, and the tenth of China’s signing of the International Covenant on Civil and Political Rights. We are approaching the twentieth anniversary of the 1989 Tiananmen massacre of pro-democracy student protesters. The Chinese people, who have endured human rights disasters and uncountable struggles across these same years, now include many who see clearly that freedom, equality, and human rights are universal values of humankind and that democracy and constitutional government are the fundamental framework for protecting these values.

By departing from these values, the Chinese government’s approach to “modernization” has proven disastrous. It has stripped people of their rights, destroyed their dignity, and corrupted normal human intercourse. So we ask: Where is China headed in the twenty-first century? Will it continue with “modernization” under authoritarian rule, or will it embrace universal human values, join the mainstream of civilized nations, and build a democratic system? There can be no avoiding these questions.

The shock of the Western impact upon China in the nineteenth century laid bare a decadent authoritarian system and marked the beginning of what is often called “the greatest changes in thousands of years” for China. A “self-strengthening movement” followed, but this aimed simply at appropriating the technology to build gunboats and other Western material objects. China’s humiliating naval defeat at the hands of Japan in 1895 only confirmed the obsolescence of China’s system of government. The first attempts at modern political change came

45 Nietzsche’s diagnosis is reinforced by Elizabeth Anscombe’s famous argument that atheists are not entitled to the term “moral obligation.”

46 “China’s Charter 08,” translated from the Chinese by Perry Link, *The New York Review* (January 15, 2009).

with the ill-fated summer of reforms in 1898, but these were cruelly crushed by ultraconservatives at China's imperial court. With the revolution of 1911, which inaugurated Asia's first republic, the authoritarian imperial system that had lasted for centuries was finally supposed to have been laid to rest. But social conflict inside our country and external pressures were to prevent it; China fell into a patchwork of warlord fiefdoms and the new republic became a fleeting dream.

The failure of both "self-strengthening" and political renovation caused many of our forebears to reflect deeply on whether a "cultural illness" was afflicting our country. This mood gave rise, during the May Fourth Movement of the late 1910s, to the championing of "science and democracy." Yet that effort, too, foundered as warlord chaos persisted and the Japanese invasion [beginning in Manchuria in 1931] brought national crisis.

Victory over Japan in 1945 offered one more chance for China to move toward modern government, but the Communist defeat of the Nationalists in the civil war thrust the nation into the abyss of totalitarianism. The "new China" that emerged in 1949 proclaimed that "the people are sovereign" but in fact set up a system in which "the Party is all-powerful." The Communist Party of China seized control of all organs of the state and all political, economic, and social resources, and, using these, has produced a long trail of human rights disasters, including, among many others, the Anti-Rightist Campaign (1957), the Great Leap Forward (1958-1960), the Cultural Revolution (1966-1969), the June Fourth (Tiananmen Square) Massacre (1989), and the current repression of all unauthorized religions and the suppression of the weiquan rights movement [a movement that aims to defend citizens' rights promulgated in the Chinese Constitution and to fight for human rights recognized by international conventions that the Chinese government has signed]. During all this, the Chinese people have paid a gargantuan price.

Tens of millions have lost their lives, and several generations have seen their freedom, their happiness, and their human dignity cruelly trampled. During the last two decades of the

twentieth century the government policy of "Reform and Opening" gave the Chinese people relief from the pervasive poverty and totalitarianism of the Mao Zedong era and brought substantial increases in the wealth and living standards of many Chinese as well as a partial restoration of economic freedom and economic rights. Civil society began to grow, and popular calls for more rights and more political freedom have grown apace. As the ruling elite itself moved toward private ownership and the market economy, it began to shift from an outright rejection of "rights" to a partial acknowledgment of them.

In 1998 the Chinese government signed two important international human rights conventions; in 2004 it amended its constitution to include the phrase "respect and protect human rights"; and this year, 2008, it has promised to promote a "national human rights action plan." Unfortunately most of this political progress has extended no further than the paper on which it is written. The political reality, which is plain for anyone to see, is that China has many laws but no rule of law; it has a constitution but no constitutional government. The ruling elite continues to cling to its authoritarian power and fights off any move toward political change.

The stultifying results are endemic official corruption, an undermining of the rule of law, weak human rights, decay in public ethics, crony capitalism, growing inequality between the wealthy and the poor, pillage of the natural environment as well as of the human and historical environments, and the exacerbation of a long list of social conflicts, especially, in recent times, a sharpening animosity between officials and ordinary people.

As these conflicts and crises grow ever more intense, and as the ruling elite continues with impunity to crush and to strip away the rights of citizens to freedom, to property, and to the pursuit of happiness, we see the powerless in our society, the vulnerable groups, the people who have been suppressed and monitored, who have suffered cruelty and even torture, and who have had no adequate avenues for their protests, no courts to hear their pleas, becoming more militant and

raising the possibility of a violent conflict of disastrous proportions. The decline of the current system has reached the point where change is no longer optional.

II. Our Fundamental Principles

This is a historic moment for China, and our future hangs in the balance. In reviewing the political modernization process of the past hundred years or more, we reiterate and endorse basic universal values as follows:

Freedom. Freedom is at the core of universal human values. Freedom of speech, freedom of the press, freedom of assembly, freedom of association, freedom in where to live, and the freedoms to strike, to demonstrate, and to protest, among others, are the forms that freedom takes. Without freedom, China will always remain far from civilized ideals.

Human rights. Human rights are not bestowed by a state. Every person is born with inherent rights to dignity and freedom. The government exists for the protection of the human rights of its citizens. The exercise of state power must be authorized by the people. The succession of political disasters in China's recent history is a direct consequence of the ruling regime's disregard for human rights.

Equality. The integrity, dignity, and freedom of every person, regardless of social station, occupation, sex, economic condition, ethnicity, skin color, religion, or political belief, are the same as those of any other. Principles of equality before the law and equality of social, economic, cultural, civil, and political rights must be upheld.

Republicanism. Republicanism, which holds that power should be balanced among different branches of government and competing interests should be served, resembles the traditional Chinese political ideal of "fairness in all under heaven." It allows different interest groups and social

assemblies, and people with a variety of cultures and beliefs, to exercise democratic self-government and to deliberate in order to reach peaceful resolution of public questions on a basis of equal access to government and free and fair competition.

Democracy. The most fundamental principles of democracy are that the people are sovereign and the people select their government. Democracy has these characteristics: (1) Political power begins with the people and the legitimacy of a regime derives from the people. (2) Political power is exercised through choices that the people make. (3) The holders of major official posts in government at all levels are determined through periodic competitive elections. (4) While honoring the will of the majority, the fundamental dignity, freedom, and human rights of minorities are protected. In short, democracy is a modern means for achieving government truly "of the people, by the people, and for the people."

Constitutional rule. Constitutional rule is rule through a legal system and legal regulations to implement principles that are spelled out in a constitution. It means protecting the freedom and the rights of citizens, limiting and defining the scope of legitimate government power, and providing the administrative apparatus necessary to serve these ends.

III. What We Advocate

Authoritarianism is in general decline throughout the world; in China, too, the era of emperors and overlords is on the way out. The time is arriving everywhere for citizens to be masters of states. For China the path that leads out of our current predicament is to divest ourselves of the authoritarian notion of reliance on an "enlightened overlord" or an "honest official" and to turn instead toward a system of liberties, democracy, and the rule of law, and toward fostering the consciousness of modern citizens who see rights as fundamental

and participation as a duty. Accordingly, and in a spirit of this duty as responsible and constructive citizens, we offer the following recommendations on national governance, citizens' rights, and social development:

1. A New Constitution. We should recast our present constitution, rescinding its provisions that contradict the principle that sovereignty resides with the people and turning it into a document that genuinely guarantees human rights ...
2. Separation of powers. We should construct a modern government in which the separation of legislative, judicial, and executive power is guaranteed....
3. Legislative democracy. Members of legislative bodies at all levels should be chosen by direct election, and legislative democracy should observe just and impartial principles.
4. An Independent Judiciary. The rule of law must be above the interests of any particular political party and judges must be independent....
5. Public Control of Public Servants. The military should be made answerable to the national government, not to a political party....
6. Guarantee of Human Rights. There shall be strict guarantees of human rights and respect for human dignity. There should be a Human Rights Committee, responsible to the highest legislative body, that will prevent the government from abusing public power in violation of human rights....
7. Election of Public Officials... The rights to hold periodic free elections and to participate in them as a citizen are inalienable.
8. Rural & Urban Equality. The two-tier household registry system must be abolished. This system favors urban residents and harms rural residents. We should establish instead a system that gives every citizen the same constitutional rights and the same freedom to choose where to live.
9. Freedom to Form Groups. The right of citizens to form groups must be guaranteed. The current system for registering nongovernment groups, which requires a group to be "approved," should be replaced by a system in which a group simply registers itself....
10. Freedom to Assemble. The constitution provides that peaceful assembly, demonstration, protest, and freedom of expression are fundamental rights of a citizen. The ruling party and the government must not be permitted to subject these to illegal interference or unconstitutional obstruction.
11. Freedom of Expression. We should make freedom of speech, freedom of the press, and academic freedom universal ... We should end the practice of viewing words as crimes.
12. Freedom of Religion. We must guarantee freedom of religion and belief and institute a separation of religion and state. There must be no governmental interference in peaceful religious activities. We should abolish any laws, regulations, or local rules that limit or suppress the religious freedom of citizens. We should abolish the current system that requires religious groups (and their places of worship) to get official approval in advance and substitute for it a system in which registry is optional and, for those who choose to register, automatic.
13. Civic Education. In our schools we should abolish political curriculums and examinations that are designed to indoctrinate students in state ideology and to instill support for the rule of one party. We should replace them with civic education that advances universal values and citizens' rights, fosters civic consciousness, and promotes civic virtues that serve society.
14. Protection of Private Property. We should establish and protect the right to private property and promote an economic system of free and fair markets. We should do away with government monopolies in

- commerce and industry and guarantee the freedom to start new enterprises.... We should institute a land reform that promotes private ownership of land, guarantees the right to buy and sell land, and allows the true value of private property to be adequately reflected in the market.
16. Social Security. We should establish a fair and adequate social security system that covers all citizens and ensures basic access to education, health care, retirement security, and employment.
 17. Protection of the Environment. We need to protect the natural environment and to promote development in a way that is sustainable and responsible to our descendents and to the rest of humanity....
 18. A Federated Republic. A democratic China should seek to act as a responsible major power contributing toward peace and development in the Asian Pacific region by approaching others in a spirit of equality and fairness. In Hong Kong and Macao, we should support the freedoms that already exist. With respect to Taiwan, we should declare our commitment to the principles of freedom and democracy and then, negotiating as equals, and ready to compromise, seek a formula for peaceful unification. We should approach disputes in the national-minority areas of China with an open mind, seeking ways to find a workable framework within which all ethnic and religious groups can flourish. We should aim ultimately at a federation of democratic communities of China.
 19. Truth in Reconciliation. We should restore the reputations of all people, including their family members, who suffered political stigma in the political campaigns of the past or who have been labeled as criminals because of their thought, speech, or faith. The state should pay reparations

to these people. All political prisoners and prisoners of conscience must be released. There should be a Truth Investigation Commission charged with finding the facts about past injustices and atrocities, determining responsibility for them, upholding justice, and, on these bases, seeking social reconciliation.

China, as a major nation of the world, as one of five permanent members of the United Nations Security Council, and as a member of the UN Council on Human Rights, should be contributing to peace for humankind and progress toward human rights. Unfortunately, we stand today as the only country among the major nations that remains mired in authoritarian politics. Our political system continues to produce human rights disasters and social crises, thereby not only constricting China's own development but also limiting the progress of all of human civilization. This must change, truly it must. The democratization of Chinese politics can be put off no longer.

Accordingly, we dare to put civic spirit into practice by announcing Charter 08. We hope that our fellow citizens who feel a similar sense of crisis, responsibility, and mission, whether they are inside the government or not, and regardless of their social status, will set aside small differences to embrace the broad goals of this citizens' movement. Together we can work for major changes in Chinese society and for the rapid establishment of a free, democratic, and constitutional country. We can bring to reality the goals and ideals that our people have incessantly been seeking for more than a hundred years, and can bring a brilliant new chapter to Chinese civilization.

13.14 Chandra Muzaffar: On Western Imperialism and Human Rights (1994)⁴⁷

It is important, at the very outset, to explain what has come to be accepted as the conventional meaning of human rights. Though the human rights

47 Chandra Muzaffar, "From Human Rights to Human Dignity," in *Debating Human Rights: Critical Essays from the United States and Asia*, edited by Peter Van Ness (London: Routledge, 1999).

contained in the multitude of UN human rights declarations, covenants, and conventions cover a whole range of rights, including an economic right such as the right to food, and a collective right such as the people's right to self-determination, the term "human rights" as used by most human rights activists today carries a more restricted meaning. Human rights are often equated with individual rights — specifically individual civil and political rights. This equation has a genealogy, a history behind it.

The equation of human rights with individual civil and political rights is a product of the European Enlightenment and the secularization of thought and society of the last 150 years. Whatever the weaknesses of this conception of human rights, there is no doubt at all that it has contributed significantly to human civilization.

First, it has helped to empower the individual. By endowing the individual with rights, such as the right of expression, the right of association, the right of assembly, the right to vote, the right to a fair trial, and so on, it has strengthened the position of the individual as never before in history. These are rights that inhere in the individual as a human being. They are his/her rights: he/she does not owe these rights to a benevolent government or a magnanimous monarch.

Second, by empowering the individual, this particular human rights tradition has contributed towards the transformation of what were once authoritarian political systems into democratic political structures. For the empowerment of the individual — as demonstrated by the history of European democracies — helped to create the political space which resulted in the entrenchment of civil society. It was the growth of civil society in the West which strengthened the sinews of democratic political culture.

Third, the empowerment of the individual and the evolution of civil society played a big part in checking the arbitrary exercise of power of those in authority. In Europe, as in other parts of the world, right through human history, the arbitrariness of the wielders of power and authority has been one of the greatest banes upon the well-being of both

individual and community. Human rights ideas born out of the Enlightenment and the secularization of society — more than perhaps any other set of ideas from any other epoch — challenged this blight upon humanity.

Fourth, by curbing their arbitrariness, by regulating their activities, the wielders of power in Europe were compelled to become more accountable to the people. Public accountability developed into a norm of democratic governance. The empowerment and the enhancement of the individual have, in other words, brought governments within the control of the governed through institutions established to ensure public accountability.

But what is sad is that while Europe built the edifice of the individual within its own borders, it destroyed the human person on other shores. As human rights expanded among white people, European empires inflicted horrendous human wrongs upon the colored inhabitants of the planet. The elimination of the native populations of the Americas and Australasia and the enslavement of millions of Africans during the European slave trade were two of the greatest human rights tragedies of the colonial epoch. Of course, the suppression of millions of Asians in almost every part of the continent during the long centuries of colonial domination was also another colossal human rights calamity. Western colonialism in Asia, Australasia, Africa, and Latin America represents the most massive, systematic violation of human rights ever known in history.

Though formal colonial rule has ended, Western domination and control continues to impact upon the human rights of the vast majority of the people of the non-Western world in ways which are more subtle and sophisticated but no less destructive and devastating. The dominant West, for instance, controls global politics through the United Nations Security Council (UNSC). If certain Western powers so desire, they can get the UNSC to impose sanctions, however unjust they may be, upon any state which, in their view, needs to be coerced to submit to their will. This ability to force others to submit to their will is backed by the West's — particularly the United States' — global

military dominance. It is a dominance which bestows upon the West effective control over high-grade weapons technology and most weapons of mass destruction. The dominant West also controls global economics through the IMF, the World Bank, the World Trade Organization (WTO), and the G7. The self-serving economic policies of powerful states have cost the poor in the non-Western world billions of dollars in terms of revenue — money which, translated into basic needs, could have saved some 15 million lives in the non-Western world every year. The dominant West controls global news and information through Reuters, AP, UPI, AFP, and most of all CNN. Likewise, Western music, Western films, Western fashions, and Western foods are creating a global culture which is not only Western in character and content but also incapable of accommodating non-Western cultures on a just and equitable basis. Underlying this Western-dominated global culture and information system is an array of ideas, values, and even worldviews pertaining to the position of the individual, inter-gender relations, inter-generational ties, the family, the community, the environment, and the cosmos which have evolved from a particular tradition — namely the Western secular tradition. These ideas, values, and worldviews are marginalizing other ideas about the human being, about human relations and about societal ties embodied in older and richer civilizations. It is a process of marginalization which could, in the long run, result in the moral degradation and spiritual impoverishment of the human being.

Though the consequences of domination are enormous for the dominated, the major centers of power in the West — the US, Britain, and France, the Western military establishment, Western multinational corporations (MNCs), the mainstream Western media, a segment of Western academia, some Western NGOs — are determined to perpetuate their global power. They are determined to do this even if it leads to the violation of the very principles of democracy and human rights which they espouse. This is why a superpower like the US has, since 1945, in spite of its professed commitment to human rights and democracy, aided

and abetted many more dictatorships than democracies in the non-Western world.

Even today, after the end of the Cold War, the US and its allies continue to suppress genuine human rights and pro-democracy movements in various parts of the world. The US's continued support for Israel against the Palestinian struggle for nationhood is one such example. The US and its Western allies, notably France, have also failed to support the Algerian movement for human rights and social justice expressed through Islam. There are similar movements for freedom and justice in Egypt and Saudi Arabia which Western governments see as a threat to their interests in the region. Long-standing movements for self-determination in East Timor, Tibet, and Kashmir also have little support from major Western governments. Perhaps, more than anything else, it is the West's lack of commitment to the human rights of the people of Bosnia and Herzegovina in initial phases which reveals that in the ultimate analysis it is not human rights which count but the preservation of self-interest and the perpetuation of dominant power.

It is because many people in the non-Western world now know that dominance and control is the real motive and goal of the West that they have become skeptical and critical of the West's posturing on human rights. This skepticism has increased as a result of the deterioration and degeneration in human rights standards within Western society itself, which is occurring in at least five areas:

1. White racism in Europe and North America is making a mockery of the Western claim that it is a champion of human rights. The rights and dignity of non-White minorities are challenged almost every day in the West by the arrogance of racist sentiments among segments of the white population.
2. The economic malaise in the West is eroding fundamental economic rights such as the right to work. Can the West protect the economic rights of its people in the midst of rising unemployment and continuing economic stagnation?

3. As violence, and the fear it generates, increases in Western societies, one wonders whether Western societies are capable any longer of protecting the basic right of the people to live without fear. After all, isn't freedom from fear a fundamental human right?
4. Since the right to found a family is a fundamental human right in the Universal Declaration of Human Rights, isn't the disintegration of the family as the basic unit of society in many Western countries today a negation of a fundamental human right?
5. Confronted by the reality of family disintegration, violence, economic stagnation, and racism, one senses that the Western political system — emphasis upon human rights and democracy notwithstanding — no longer possesses the will and the wherewithal to bring about fundamental changes to society. What is the meaning of individual rights and liberties if they are utterly incapable of affecting meaningful transformations in values, attitudes, and structures which are imperative if the West is to lift itself out of its spiritual and psychological morass?

The dominant West's violations of human rights in the non-Western world, coupled with its inability to uphold some of the fundamental rights of its own citizens, has raised some important questions about the very nature and character of Western human rights:

1. Has the creative individuality of an earlier phase in Western history given way to gross, vulgar individualism which today threatens the very fabric of Western society? Isn't individualism of this sort a negation of the community?
2. Has the glorification and adulation of individual freedom as an end in itself reached a point where individual freedom has become the be-all and end-all of human existence? Isn't freedom in the ultimate analysis a means towards a greater good rather than an end in itself?
3. Isn't this notion of freedom in the West linked to an idea of rights which is often divorced from responsibilities? Can rights be separated from responsibilities in real life?
4. Isn't the dominant Western concept of rights itself particularistic and sectional since it emphasizes only civil and political rights and downplays economic, social, and cultural rights?
5. How can a concept of rights confined to the nation-state respond to the challenges posed by an increasingly global economic, political, and cultural system? Isn't it true that the dominant Western approach to human rights fails to recognize the role of global actors — like the UNSC, IMF and MNCs — in the violation of human rights?
6. Whether one articulates rights or upholds responsibilities, shouldn't they be guided by universal moral and spiritual values which would determine the sort of rights we pursue and the type of responsibilities we fulfill? Without a larger spiritual and moral framework, which endows human endeavor with meaning and purpose, with coherence and unity, wouldn't the emphasis on rights *per se* lead to moral chaos and confusion?
7. What are human rights if they are not related to more fundamental questions about the human being? Who is the human being? Why is the human being here? Where does the human being go from here? How can one talk of the rights of the human being without a more profound understanding of the human being him- or herself?

It is because of these and other flaws in the very character of the Western approach to human rights that there is an urgent need to try to evolve a vision of human dignity which is more just, more

holistic, and more universal. In Islam, Hinduism, Sikhism, Taoism, Christianity, Judaism and even in the theistic strains within Confucianism and Buddhism there are elements of such a vision of the human being, of human rights and of human dignity. The idea that human being is vice-regent or trustee of God whose primary role is to fulfill God's trust is lucidly articulated in various religions. As God's trustee, the human being lives life according to clearly established spiritual and moral values and principles. The rights one possesses, like the responsibilities one undertakes, must be guided by these values and principles. What this means is that human rights and human freedoms are part of a larger spiritual and moral worldview. This also means that individual freedom is not the be-all and end-all of human existence. Neither is the individual the ultimate arbiter of right and wrong, of good and evil. The individual and community must both submit to spiritual and moral values which transcend both individual and community. It is the supremacy of these values and, in the end, of the Divine which distinguishes our God-guided concept of human dignity from the present individual-centered notion of human rights.

The great challenge before us is to develop this vision of human dignity culled from our religious and spiritual philosophies into a comprehensive charter of values and principles, responsibilities and rights, roles and relationships acceptable to human beings everywhere. To do this we should first distinguish what is universal and eternal within our respective traditions from what is particularistic and contextual. On that basis we should conduct a dialogue with people of all religions on the question of human dignity. Even those of secular persuasion should be invited to dialogue with people of faith. Indeed, as we have indicated, there is a great deal in the secular human rights tradition that we should absorb and imbibe in the process of developing our vision of human dignity.

To develop our vision into a vision which has relevance to the realities which human beings have to grapple with, our dialogue should focus upon concrete contemporary issues that challenge human dignity everywhere — issues of global domination

and global control of poverty and disease, of political oppression and cultural chauvinism, of moneyism and materialism, of corruption and greed, of the disintegration of the community and the alienation of the individual. It would, in other words, be a dialogue on life and living. This is perhaps the best time to initiate such a dialogue since Asian societies are now beginning to ask some searching questions about the nexus between moral values and human rights.

Of course, not all sections of Asian societies are asking the same questions about the link between morality and rights. Some Asian governments, for instance, have chosen to focus solely upon the adverse consequences of crass individualism upon the moral fabric of Western societies. As an antidote, they emphasize the importance of strengthening existing family and community ties in Asian cultures. For us who seek inspiration and guidance from our spiritual and moral philosophies in a non-selective manner, it is not just family and community that are important. We know that the individual expressing himself or herself through the community also has a crucial place in most of our philosophies. After all, in all religions, the Divine message is, in the ultimate analysis, addressed to the individual. For it is the individual, and the individual alone, who is capable of moral and spiritual transformation. Similarly, it is not just the moral crisis of Western society that we lament; we are no less sensitive to the moral decadence within our own societies — especially within our elite strata. If we adhere to a universal spiritual and moral ethic that applies to all human beings, we should not hesitate to condemn the suppression of human rights and the oppression of dissident groups that occur from time to time in a number of our countries. Our commitment to spiritual and moral values, drawn from our religions, should never serve as a camouflage for authoritarian elites who seek to shield their sins from scrutiny. Indeed, any attempt to do so would be tantamount to a travesty of the eternal truth embodied in all our religions. And what is that truth? That religion's primary concern is the dignity of all human beings.

This, then, is the road that we must travel; the journey we must undertake. From Western human rights, which has been so selective and sectarian, to a genuinely universal human dignity — which remains the human being's yet unfulfilled promise to God.

13.15 Will Kymlicka: On Indigenous Rights (“The Good, the Bad, and the Intolerable: Minority Group Rights,” 1996)⁴⁸

Ethnocultural minorities around the world are demanding various forms of recognition and protection, often in the language of “group rights.” Many commentators see this as a new and dangerous trend that threatens the fragile international consensus on the importance of individual rights. Traditional human rights doctrines are based on the idea of the inherent dignity and equality of all individuals. The emphasis on group rights, by contrast, seems to treat individuals as the mere carriers of group identities and objectives, rather than as autonomous personalities capable of defining their own identity and goals in life. Hence it tends to subordinate the individual's freedom to the group's claim to protect its historical traditions or cultural purity.

I believe that this view is overstated. In many cases, group rights supplement and strengthen human rights, by responding to potential injustices that traditional rights doctrine cannot address. These are the “good” group rights. There are cases, to be sure, where illiberal groups seek the right to restrict the basic liberties of their members. These are the “bad” group rights. In some cases, these illiberal practices are not only bad, but intolerable, and the larger society has a right to intervene to stop them. But in other cases, liberal states must tolerate unjust practices within a minority group. Drawing the line between the bad and the intolerable is one of the thorniest issues liberal democracies face.

I want to look at the relationship between group and individual rights in the context of the claims

of indigenous peoples in North America. In both the United States and Canada, these peoples have various group rights. For example, they have rights of self-government, under which they exercise control over health, education, family law, policing, criminal justice, and resource development. They also have legally recognized land claims, which reserve certain lands for their exclusive use and provide guaranteed representation on certain regulatory bodies. And in some cases, they have rights relating to the use of their own language.

The situation of indigenous peoples is a useful example, I think, for several reasons. For one thing, they have been at the forefront of the movement toward recognizing group rights at the international level — reflected in the Draft Universal Declaration on Indigenous Rights at the United Nations. The case of indigenous peoples also shows that group rights are not a new issue. From the very beginning of European colonization, the “natives” fought for rights relating to their land, languages, and self-government. What has changed in recent years is not that indigenous peoples have altered their demands, but rather that these demands have become more visible, and that the larger society has started to listen to them.

Reflecting on this long history should warn us against the facile assumption that the demand for group rights is somehow a byproduct of current intellectual fashions, such as postmodernism, or of ethnic entrepreneurs pushing affirmative action programs beyond their original intention. On the contrary, the consistent historical demands of indigenous peoples suggests that the issue of group rights is an enduring and endemic one for liberal democracies.

Group rights, as I will use the term, refer to claims to something more than, or other than, the common rights of citizenship. The category is obviously very large and can be subdivided into any number of more refined categories, reflecting the different sorts of rights sought by different sorts of groups.

48 Will Kymlicka, “The Good, the Bad, and the Intolerable: Minority Group Rights,” *Dissent*, Vol. 43, No. 3 (Summer 1996), 22–30.

Two Kinds of Group Rights

For my purposes, however, the most important distinction is between two kinds of group rights: one involves the claim of an indigenous group against its own members; the other involves the claim of an indigenous group against the larger society. Both of these can be seen as protecting the stability of indigenous communities, but they respond to different sources of instability. The first is intended to protect a group from the destabilizing impact of internal dissent (that is, the decision of individual members not to follow traditional practices or customs), whereas the second is intended to protect the group from the impact of external decisions (that is, the economic or political policies of the larger society). I will call the first “internal restrictions” and the second “external protections.”

Both are “group rights,” but they raise very different issues. Internal restrictions involve intra-group relations. An indigenous group may seek the use of state power to restrict the liberty of its own members in the name of group solidarity. For example, a tribal government might discriminate against those members who do not share the traditional religion. This sort of internal restriction raises the danger of individual oppression. Group rights in this sense can be invoked by patriarchal and theocratic cultures to justify the oppression of women and the legal enforcement of religious orthodoxy.

Of course, all forms of government involve restricting the liberty of those subject to their authority. In all countries, no matter how liberal and democratic, people are required to pay taxes to support public goods. Most democracies also require people to undertake jury duty or to perform some amount of military or community service, and a few countries require people to vote. All governments expect and sometimes require a minimal level of civic responsibility and participation from their citizens.

But some groups seek to impose much greater restrictions on the liberty of their members. It is one thing to require people to do jury duty or to vote, and quite another to compel people to attend a particular church or to follow traditional gender

roles. The former are intended to uphold liberal rights and democratic institutions, the latter restrict these rights in the name of orthodoxy or cultural tradition. It is these latter cases that I have in mind when talking about internal restrictions.

Obviously, groups are free to require respect for traditional norms and authorities as terms of membership in private, voluntary associations. A Catholic organization can insist that its members be Catholics in good standing, and the same applies to voluntary religious organizations within indigenous communities. The problem arises when a group seeks to use *governmental* power, or the distribution of public benefits, to restrict the liberty of members.

On my view, such legally imposed internal restrictions are almost always unjust. It is a basic tenet of liberal democracy that whoever exercises political power within a community must respect the civil and political rights of its members, and any attempt to impose internal restrictions that violate this condition is unjust.

External protections, by contrast, involve *inter-group* relations. In these cases, the indigenous group seeks to protect its distinct existence and identity by limiting its vulnerability to the decisions of the larger society. For example, reserving land for the exclusive use of indigenous peoples ensures that they are not outbid for this resource by the greater wealth of outsiders. Similarly, guaranteeing representation for indigenous peoples on various public regulatory bodies reduces the chance that they will be outvoted on decisions that affect their community. And allowing indigenous peoples to control their own health care system ensures that critical decisions are not made by people who are ignorant of their distinctive health needs or their traditional medicines.

On my view, these sorts of external protections are often consistent with liberal democracy, and may indeed be necessary for democratic justice. They can be seen as putting indigenous peoples and the larger society on a more equal footing, by reducing the extent to which the former is vulnerable to the latter.

Of course, one can imagine circumstances where the sorts of external protections demanded by a minority group are unfair. Under the apartheid system in South Africa, for example, whites, who constituted less than 20 percent of the population, demanded 87 percent of the land mass of the country, monopolized all the political power, and imposed Afrikaans and English throughout the entire school system. They defended this in the name of reducing their vulnerability to the decisions of other larger groups, although the real aim was to dominate and exploit these groups.

However, the sorts of external protections sought by indigenous peoples hardly put them in a position to dominate others. The land claims, representation rights, and self-government powers sought by indigenous peoples do not deprive other groups of their fair share of economic resources or political power, nor of their language rights. Rather, indigenous peoples simply seek to ensure that the majority cannot use its superior numbers or wealth to deprive them of the resources and institutions vital to the reproduction of their communities. And that, I believe, is fully justified. So, whereas internal restrictions are almost inherently in conflict with liberal democratic norms, external protections are not — so long as they promote equality between groups rather than allowing one group to oppress another...

The Limits of Toleration

How should liberal states respond in such cases? It is right and proper, I think, for liberals to criticize oppressive practices within indigenous communities, just as we should criticize foreign countries that oppress their citizens. These oppressive practices may be traditional (although many aren't), but tradition is not self-validating. Indeed, that an oppressive practice is traditional may just show how deep the injustice goes.

But should we intervene and impose a liberal regime on the Pueblo, forcing them to respect the religious liberty of Protestants and the sexual equality of women? Should we insist that indigenous governments be subject to the Bill of Rights, and that their decisions be reviewable by federal courts?

It's important here to distinguish two questions: (1) Are internal restrictions consistent with liberal principles? and (2) Should liberals impose their views on minorities that do not accept some or all of these principles? The first is the question of *identifying* a defensible liberal theory of group rights; the second is the question of *imposing* that theory.

The first question is easy: internal restrictions are illiberal and unjust. But the answer to the second question is less clear. That liberals cannot automatically impose their principles on groups that do not share them is obvious enough, I think, if the illiberal group is another country. The Saudi Arabian government unjustly denies political rights to women or non-Muslims. But it doesn't follow that liberals outside Saudi Arabia should forcibly intervene to compel the Saudis to give everyone the vote. Similarly, the German government unjustly denies political rights to the children and grandchildren of Turkish "guest-workers," born and raised on German soil. But it doesn't follow that liberals outside Germany should use force to compel Germany to change its citizenship.

What isn't clear is the proper remedy for rights violations. What third party (if any) has the authority to intervene in order to force the government to respect those rights? The same question arises when the illiberal group is a self-governing indigenous community within a single country. The Pueblo tribal council violates the rights of its members by limiting freedom of conscience and by employing sexually discriminatory membership rules. But what third party (if any) has the authority to compel the Pueblo council to respect those rights?

Liberal principles tell us that individuals have certain claims that their government must respect, such as individual freedom of conscience. But having identified those claims, we now face the very different question of imposing liberalism. If a particular government fails to respect those claims, who can legitimately step in and force compliance?

In short, contemporary liberals have become more reluctant to impose liberalism on foreign countries, but more willing to impose liberalism on indigenous minorities. This, I think, is inconsistent.

Both foreign states and indigenous minorities form distinct political communities, with their own claims to self-government. Attempts to impose liberal principles by force are often perceived, in both cases, as a form of aggression or paternalistic colonialism. And, as a result, these attempts often backfire. The plight of many former colonies in Africa shows that liberal institutions are likely to be unstable when they are the products of external imposition rather than internal reform. In the end, liberal institutions can work only if liberal beliefs have been internalized by the members of the self-governing society, be it an independent country or an indigenous minority.

There are, of course, important differences between foreign states and indigenous minorities. Yet, in both cases, there is relatively little scope for legitimate coercive interference. Relations between the majority society and indigenous peoples should be determined by peaceful negotiation, not force. This means searching for some basis of agreement. The most secure basis would be agreement on fundamental principles. But if the two groups do not share basic principles, and cannot be persuaded to adopt the other's principles, they will have to rely on some more minimalist *modus vivendi*.

The resulting agreement may well exempt the indigenous minority from the Bill of Rights and judicial review. Indeed, such exemptions are often implicit in the historical treaties by which the minority entered the larger state. This means that the majority will sometimes be unable to prevent the violation of individual rights within the minority community. Liberals have to learn to live with this, just as they must live with illiberal laws in other countries.

13.16 Martha Nussbaum: "Women and Cultural Universals" (*Sex and Social Justice*, 1999)⁴⁹

... Unlike the type of liberal approach that focuses only on the distribution of resources, the capability approach maintains that resources have no value

in themselves, apart from their role in promoting human functioning. It therefore directs the planner to inquire into the varying needs individuals have for resources and their varying abilities to convert resources into functioning. In this way, it strongly invites a scrutiny of tradition as one of the primary sources of such unequal abilities.

But the capabilities approach raises the question of cultural universalism, or, as it is often pejoratively called, "essentialism." Once we begin asking how people are actually functioning, we cannot avoid focusing on some components of lives and not others, some abilities to act and not others, seeing some capabilities and functions as more central, more at the core of human life, than others. We cannot avoid having an account, even if a partial and highly general account, of what functions of the human being are most worth the care and attention of public planning the world over. Such an account is bound to be controversial.

II. Anti-Universalist Conversations

The primary opponents of such an account of capability and functioning will be "anti-essentialists" of various types, thinkers who urge us to begin not with sameness but with difference — both between women and men and across groups of women — and to seek norms defined relatively to a local context and locally held beliefs. This opposition takes many forms, and I shall be responding to several distinct objections. But I can begin to motivate the enterprise by telling several true stories of conversations that have taken place at the World Institute for Development Economics Research (WIDER), in which the anti-universalist position seemed to have alarming implications for women's lives.

At a conference on "Value and Technology," an American economist who has long been a leftwing critic of neoclassical economics delivers a paper urging the preservation of traditional ways of life in a rural area of Orissa, India, now under threat of contamination from Western development

49 Martha Nussbaum, *Sex and Social Justice* (Oxford: Oxford University Press: 1999). Editor: For space considerations, some explanatory footnotes have been omitted.

projects. As evidence of the excellence of this rural way of life, he points to the fact that whereas we Westerners experience a sharp split between the values that prevail in the workplace and the values that prevail in the home, here, by contrast, exists what the economist calls “the embedded way of life,” the same values obtaining in both places. His example: Just as in the home a menstruating woman is thought to pollute the kitchen and therefore may not enter it, so too in the workplace a menstruating woman is taken to pollute the loom and may not enter the room where looms are kept. Some feminists object that this example is repellent rather than admirable; for surely such practices both degrade the women in question and inhibit their freedom. The first economist’s collaborator, an elegant French anthropologist (who would, I suspect, object violently to a purity check at the seminar room door), replies: Don’t we realize that there is, in these matters, no privileged place to stand? This, after all, has been shown by both Derrida and Foucault. Doesn’t he know that he is neglecting the otherness of Indian ideas by bringing his Western essentialist values into the picture?

The same French anthropologist now delivers her paper. She expresses regret that the introduction of smallpox vaccination to India by the British eradicated the cult of Sittala Devi, the goddess to whom one used to pray to avert smallpox. Here, she says, is another example of Western neglect of difference. Someone (it might have been me) objects that it is surely better to be healthy rather than ill, to live rather than to die. The answer comes back; Western essentialist medicine conceives of things in terms of binary oppositions: life is opposed to death, health to disease. But if we cast away this binary way of thinking, we will begin to comprehend the otherness of Indian traditions.

At this point Eric Hobsbawm, who has been listening to the proceedings in increasingly uneasy silence, rises to deliver a blistering indictment of the traditionalism and relativism that prevail in this group. He lists historical examples of ways in which appeals to tradition have been politically engineered to support oppression and violence.⁵⁰ His final example is that of National Socialism in Germany. In the confusion that ensues, most of the relativist social scientists — above all those from far away, who do not know who Hobsbawm is — demand that Hobsbawm be asked to leave the room. The radical American economist, disconcerted by this apparent tension between his relativism and his affiliation with the left, convinces them, with difficulty, to let Hobsbawm remain.

We shift now to another conference two years later, a philosophical conference on the quality of life. Members of the quality-of-life project are speaking of choice as a basic good, and of the importance of expanding women’s sphere of choices. We are challenged by the radical economist of my first story, who insists that contemporary anthropology has shown that non-Western people are not especially attached to freedom of choice. His example: A book on Japan has shown that Japanese males, when they get home from work, do not wish to choose what to eat for dinner, what to wear, and so on. They wish all these choices to be taken out of their hands by their wives. A heated exchange follows about what this example really shows. I leave it to your imaginations to reconstruct it. In the end, the confidence of the radical economist is unshaken: We are victims of bad universalist thinking, who fail to respect “difference.”⁵¹

The phenomenon is an odd one. For we see here highly intelligent people, people deeply committed to the good of women and men in

50 See Eric Hobsbawm and Terence Ranger, eds., *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983). In his *New Republic* piece, Sen makes a similar argument about contemporary India: The Western construction of India as mystical and “other” serves the purposes of the fundamentalist Bharatiya Janata Party (BJP), who are busy refashioning history to serve the ends of their own political power. An eloquent critique of the whole notion of the “other” and of the associated “nativism,” where Africa is concerned, can be found in Kwame Anthony Appiah, *In My Father’s House: Africa in the Philosophy of Cultures* (New York: Oxford University Press, 1991).

51 Marglin has since published this point in “Toward the Decolonization.” His reference is to Takeo Doi, *The Anatomy of Dependence* (Tokyo: Kodansha, 1971).

developing countries, people who think of themselves as progressive and feminist and antiracist, people who correctly argue that the concept of development is an evaluative concept requiring normative argument — effectively eschewing normative argument and taking up positions that converge, as Hobsbawm correctly saw, with the positions of reaction, oppression, and sexism. Under the banner of their fashionable opposition to universalism march ancient religious taboos, the luxury of the pampered husband, educational deprivation, unequal health care, and premature death.

Nor do these anti-universalists appear to have a very sophisticated conception of their own core notions, such as “culture,” “custom,” and “tradition.” It verges on the absurd to treat India as a single culture, and a single visit to a single Orissan village as sufficient to reveal its traditions. India, like all extant societies, is a complex mixture of elements. Hindu, Muslim, Parsi, Christian, Jewish, atheist; urban, suburban, rural; rich, poor, and middle class; high caste, low caste, and aspiring middle caste; female and male; rationalist and mystical. It is renowned for mystical religion but also for achievements in mathematics and for the invention of chess. It contains intense, often violent sectarianism, but it also contains Rabindranath Tagore’s cosmopolitan humanism and Mahatma Gandhi’s interpretation of Hinduism as a religion of universal nonviolence. Its traditions contain views of female whorishness and childishness that derive from the Laws of Manu. But it also contains the sexual agency of Draupadi in the *Mahabharata*, who solved the problem of choice among Pandava husbands by taking all five, and the enlightened sensualism and female agency of the *Kama Sutra*, a sacred text that foreign readers wrongly interpret as pornographic. It contains women like Metha Bai, who are confined to the home; it also contains women like Amita Sen (mother of Amartya Sen), who fifty years ago was among the first middle-class Bengali women to dance in public, in Rabindranath Tagore’s musical extravaganzas in Santiniketan. It

contains artists who disdain the foreign, preferring, with the Marglins, the “embedded” way of life, and it also contains Satyajit Ray, that great Bengali artist and lover of local traditions, who could also write, “I never ceased to regret that while I had stood in the scorching summer sun in the wilds of Santiniketan sketching *simul* and *palash* in full bloom, *Citizen Kane* had come and gone, playing for just three days in the newest and biggest cinema in Calcutta.”⁵²

What, then, is “the culture” of a woman like Metha Bai? Is it bound to be that determined by the most prevalent customs in Rajasthan, the region of her marital home? Or, might she be permitted to consider with what traditions or groups she wishes to align herself, perhaps forming a community of solidarity with other widows and women, in pursuit of a better quality of life? What is “the culture” of Chinese working women who have recently been victims of the government’s “women go home” policy, which appeals to Confucian traditions about woman’s “nature”? Must it be the one advocated by Confucius, or may they be permitted to form new alliances — with one another, and with other defenders of women’s human rights? What is “the culture” of General Motors employee Mary Carr? Must it be the one that says women should be demure and polite, even in the face of gross insults, and that an “unladylike” woman deserves the harassment she gets? Or might she be allowed to consider what norms are appropriate to the situation of a woman working in a heavy metal shop, and to act accordingly? Real cultures contain plurality and conflict, tradition, and subversion. They borrow good things from wherever they find them, none too worried about purity. We would never tolerate a claim that women in our own society must embrace traditions that arose thousands of years ago — indeed, we are proud that we have no such traditions. Isn’t it condescending, then, to treat Indian and Chinese women as bound by the past in ways that we are not?

Indeed, as Hobsbawm suggested, the vision of “culture” propounded by the Marglins, by stressing

52 Satyajit Ray, “Introduction,” in *Our Films, Their Films* (Bombay: Orient Longman, 1976; reprinted, New York: Hyperion, 1994), 5.

uniformity and homogeneity, may lie closer to artificial constructions by reactionary political forces than to any organic historical entity. Even to the extent to which it is historical, one might ask, exactly how does that contribute to make it worth preserving? Cultures are not museum pieces, to be preserved intact at all costs. There would appear, indeed, to be something condescending in preserving for contemplation a way of life that causes real pain to real people.

Let me now, nonetheless, describe the most cogent objections that might be raised by a relativist against a normative universalist project.

III. *The Attack on Universalism*

Many attacks on universalism suppose that any universalist project must rely on truths eternally fixed in the nature of things, outside human action and human history. Because some people believe in such truths and some do not, the objector holds that a normative view so grounded is bound to be biased in favor of some religious/metaphysical conceptions and against others. *But* universalism does not require such metaphysical support. For universal ideas of the human do arise within history and from human experience, and they can ground themselves in experience. Indeed, those who take all human norms to be the result of human interpretation can hardly deny that universal conceptions of the human are prominent and pervasive among such interpretations, hardly to be relegated to the dustbin of metaphysical history along with recedite theoretical entities such as phlogiston. As Aristotle so simply puts it, "One may observe in one's travels to distant countries the feelings of recognition and affiliation that link every human being to every other human being."⁵³ ...

NEGLECT OF HISTORICAL AND CULTURAL DIFFERENCES

The opponent charges that any attempt to pick out some elements of human life as more fundamental

than others, even without appeal to a transhistorical reality, is bound to be insufficiently respectful of actual historical and cultural differences. People, it is claimed, understand human life and humanness in widely different ways, and any attempt to produce a list of the most fundamental properties and functions of human beings is bound to enshrine certain understandings of the human and to demote others. Usually, the objector continues, this takes the form of enshrining the understanding of a dominant group at the expense of minority understandings. This type of objection, frequently made by feminists, can claim support from many historical examples in which the human has indeed been defined by focusing on actual characteristics of males.

It is far from clear what this objection shows. In particular it is far from clear that it supports the idea that we ought to base our ethical norms, instead, on the current preferences and the self-conceptions of people who are living what the objector herself claims to be lives of deprivation and oppression. But it does show at least that the project of choosing one picture of the human over another is fraught with difficulty, political as well as philosophical.

NEGLECT OF AUTONOMY

A different objection is presented by liberal opponents of universalism. The objection is that by determining in advance what elements of human life have most importance, the universalist project fails to respect the right of people to choose a plan of life according to their own lights, determining what is central and what is not. This way of proceeding is "imperialistic." Such evaluative choices must be left to each citizen. For this reason, politics must refuse itself a determinate theory of the human being and the human good....

53 Aristotle, *Nicomachean Ethics* VIII. I discuss this passage in M. Nussbaum, "Aristotle on Human Nature and the Foundation of Ethics, in *World, Mind, and Ethics, Essays on the Ethical Philosophy of Bernard Williams* (Cambridge & New York: Cambridge University Press, 1995), pp. 86–131, and *Non-relative Virtues: An Aristotelian Approach*, (Helsinki, World Institute for Development Economics Research, 1987).

IV. A Conception of the Human Being: The Central Human Capabilities

The list of basic capabilities is generated by asking a question that from the start is evaluative: What activities characteristically performed by human beings are so central that they seem definitive of a life that is truly human? In other words, what are the functions without which (meaning, without the availability of which) we would regard a life as not, or not fully, human?

The other question is a question about kind inclusion. We recognize other humans as human across many differences of time and place, of custom and appearance. We often tell ourselves stories, on the other hand, about anthropomorphic creatures who do not get classified as human, on account of some feature of their form of life and functioning. On what do we base these inclusions and exclusions? In short, what do we believe must be there, if we are going to acknowledge that a given life is human? The answer to these questions points us to a subset of common or characteristic human functions, informing us that these are likely to have a special importance for everything else we choose and do...

I introduce this as a list of capabilities rather than of actual functionings, because I shall argue that capability, not actual functioning, should be the goal of public policy.

CENTRAL HUMAN FUNCTIONAL CAPABILITIES

1. *Life*. Being able to live to the end of a human life of normal length, not dying prematurely or before one's life is so reduced as to be not worth living.
2. *Bodily health and integrity*. Being able to have good health, including reproductive health; being adequately nourished; being able to have adequate shelter.
3. *Bodily integrity*. Being able to move freely from place to place; being able to be secure against violent assault, including sexual assault, marital rape, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. *Senses, imagination, thought*. Being able to use the senses; being able to imagine, to think, and to reason — and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training; being able to use imagination and thought in connection with experiencing and producing expressive works and events of one's own choice (religious, literary, musical, etc.); being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise; being able to have pleasurable experiences and to avoid no beneficial pain.
5. *Emotions*. Being able to have attachments to things and persons outside ourselves; being able to love those who love and care for us; being able to grieve at their absence; in general, being able to love, to grieve, to experience longing, gratitude, and justified anger; not having one's emotional developing blighted by fear or anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)
6. *Practical reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life. (This entails protection for the liberty of conscience.)
7. *Affiliation*. (a) Being able to live for and in relation to others, to recognize and show concern for other human beings, to engage in various forms of social interaction; being able to imagine the situation of another and to have compassion for that situation; having the capability for both justice and friendship. (Protecting this capability means, once again, protecting institutions that constitute such forms of affiliation, and also protecting the freedoms of assembly and political speech.) (b) Having

- the social bases of self-respect and no humiliation; being able to be treated as a dignified being whose worth is equal to that of others. (This entails provisions of nondiscrimination.)
8. *Other species.* Being able to live with concern for and in relation to animals, plants, and the world of nature.
 9. *Play.* Being able to laugh, to play, to enjoy recreational activities.
 10. *Control over one's environment.*
 - (a) *Political:* being able to participate effectively in political choices that govern one's life; having the rights of political participation, free speech, and freedom of association.
 - (b) *Material:* being able to hold property (both land and movable goods); having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

The “capabilities approach,” as I conceive it, claims that a life that lacks any one of these capabilities, no matter what else it has, will fall short of being a good human life. Thus it would be reasonable to take these things as a focus for concern, in assessing the quality of life in a country and asking about the role of public policy in meeting human needs. The list is certainly general — and this is deliberate, to leave room for plural specification and also for further negotiation. But like (and as a reasonable basis for) a set of constitutional guarantees, it offers real guidance to policymakers, and far more accurate guidance than that offered by the focus on utility, or even on resources.⁵⁴

The list is, emphatically, a list of separate components. We cannot satisfy the need for one of them by giving a larger amount of another one. All are of central importance and all are distinct

in quality. This limits the trade-offs that it will be reasonable to make and thus limits the applicability of quantitative cost-benefit analysis. At the same time, the items on the list are related to one another in many complex ways. Employment rights, for example, support health, and also freedom from domestic violence, by giving women a better bargaining position in the family. The liberties of speech and association turn up at several distinct points on the list, showing their fundamental role with respect to several distinct areas of human functioning ... strenuous fasting. Whether for religious or for other reasons, a person may prefer a celibate life to one containing sexual expression. A person may prefer to work with an intense dedication that precludes recreation and play. Am I saying that these are not fully human or flourishing lives? Does the approach instruct governments to nudge or push people into functioning of the requisite sort, no matter what they prefer?

Here we must answer: No, capability, not functioning, is the political goal. This is so because of the very great importance the approach attaches to practical reason, as a good that both suffuses all the other functions, making them human rather than animal, and figures, itself, as a central function on the list. It is perfectly true that functionings, not simply capabilities, are what render a life fully human: If there were no functioning of any kind in a life, we could hardly applaud it, no matter what opportunities it contained. Nonetheless, for political purposes it is appropriate for us to shoot for capabilities, and those alone. Citizens must be left free to determine their course after that. The person with plenty of food may always choose to fast, but there is a great difference between fasting and starving, and it is this difference we wish to capture. Again, the person who has normal opportunities for sexual satisfaction can always choose a life of celibacy, and we say nothing against this. What we do speak against, for example, is the practice of female genital mutilation, which deprives individuals of the opportunity to choose sexual functioning (and indeed, the

54 See Sen, “Gender Inequality and Theories of Justice,” in WCD, 259–273; Becker, “The Economic Way of Looking at Behavior.”

opportunity to choose celibacy as well). A person who has opportunities for play can always choose a workaholic life; again, there is a great difference between that chosen life and a life constrained by insufficient maximum-hour protections and/or the “double day” that makes women in many parts of the world unable to play...

The aim of public policy is production of *combined capabilities*. This means promoting the state of the person by providing the necessary education and care; it also means preparing the environment so that it is favorable for the exercise of practical reason and the other major functions.

This clarifies the position. The approach does not say that public policy should rest content with *internal capabilities* but remain indifferent to the struggles of individuals who have to try to exercise these in a hostile environment. In that sense, it is highly attentive to the goal of functioning, and instructs governments to keep it always in view. On the other hand, we are not pushing individuals into the function: Once the stage is fully set, the choice is up to them...

A preference-based approach that gives priority to the preferences of dominant males in a traditional culture is likely to be especially subversive of the quality of life of women, who have been on the whole badly treated by prevailing traditional norms. And one can see this clearly in the Marglins' own examples. For menstruation taboos, even if endorsed by habit and custom, impose severe restrictions on women's power to form a plan of life and to execute the plan they have chosen. They are members of the same family of traditional attitudes that make it difficult for women like Metha Bai to sustain the basic functions of life. Vulnerability to smallpox, even if someone other than an anthropologist should actually defend it as a good thing, is even more evidently a threat to human functioning. And the Japanese husband who allegedly renounces freedom of choice actually shows considerable attachment to it, in the ways that matter, by asking the woman to look after the boring details of life. What should concern us is whether the woman has a similar degree of freedom to plan her life and to execute her plan.

As for Metha Bai, the absence of freedom to choose employment outside the home is linked to other capability failures, in the areas of health, nutrition, mobility, education, and political voice. Unlike the type of liberal view that focuses on resources alone, my view enables us to focus directly on the obstacles to self-realization imposed by traditional norms and values and thus to justify special political action to remedy the unequal situation. No male of Metha Bai's caste would have to overcome threats of physical violence in order to go out of the house to work for life-sustaining food.

The capabilities approach insists that a woman's affiliation with a certain group or culture should not be taken as normative for her unless, on due consideration, with all the capabilities at her disposal, she makes that norm her own. We should take care to extend to each individual full capabilities to pursue the items on the list — and then see whether they want to avail themselves of those opportunities.

Women belong to cultures. But they do not choose to be born into any particular culture, and they do not really choose to endorse its norms as good for themselves, unless they do so in possession of further options and opportunities — including the opportunity to form communities of affiliation and empowerment with other women. The contingencies of where one is born, whose power one is afraid of, and what habits shape one's daily thought are chance events that should not be permitted to play the role they now play in pervasively shaping women's life chances. Beneath all these chance events are human powers, powers of choice and intelligent self-formation. Women in much of the world lack support for the most central human functions, and this denial of support is frequently caused by their being women. But women, unlike rocks and plants and even horses, have the potential to become capable of these human functions, given sufficient nutrition, education, and other support. That is why their unequal failure in capability is a problem of justice. It is up to all human beings to solve this problem. I claim that a conception of human functioning gives us valuable assistance as we undertake this task.

13.17 Carl F. Stychin: “Same-Sex Sexualities and the Globalization of Human Rights Discourse” (2004)⁵⁵

Introduction

Only a few years ago, it was sometimes queried whether “sexual orientation” raised any human rights issues. Today, those questions have largely ceased to be asked, as sexuality has permeated human rights consciousness. For that, an enormous collective debt is owed to those many courageous activists around the world who have struggled in difficult and dangerous circumstances to articulate their claims openly in a discourse of human rights in order to better people’s lives. That is, they have used “human rights” as a way to connect with others in and out of struggle and to make a collective difference.

These human rights claims have also connected to the academic and judicial interpretations of human rights. In the past decade, we have witnessed a far more receptive attitude from courts and legislatures in a range of different ways. Same-sex sexuality cases have come to receive a more positive response from many national courts through the interpretation of domestic constitutional rights documents;⁵⁶ through the development of the common law;⁵⁷ through transnational legal regimes, such as the European Union⁵⁸ and through the discourse of international law and international

human rights.⁵⁹ Moreover, these different levels and frames through which the language of rights can be mobilized often intersect and interact. As a consequence, rights proponents can claim that the strategy of deploying human rights in the sexuality arena has met with considerable success (but setbacks as well), and believers in liberal legal progress will argue that there is nowhere to go but forward in the making of human rights arguments.

1. A Double Movement of Globalization

This story of success and progress can be explained, I argue, through a double movement of globalization. First, we have witnessed a globalization of human rights, whereby human rights become, as Peter Fitzpatrick has argued, the “pervasive criteria” by which nations approach a universal standard of civilization, progress, and modernity.⁶⁰ Rights transcend the particular (despite the fact that human rights discourse presumably must come from a particular place) and become the marker and measure of a global civil society embracing all “humans” (itself a historically contested concept).

But there is another globalization move that has occurred: the universalizing of same-sex sexualities as identities.⁶¹ There are many examples that demonstrate the export of an Anglo-American, “Stonewall” model of sexuality, identity, and liberation.⁶² In the Stonewall model, same-sex sexuality

55 Carl F. Stychin, “Same-Sex Sexualities and the Globalization of Human Rights Discourse,” *McGill Law Journal*, Vol. 49, No. 4 (2004), 951–968. Editor: For space considerations, some explanatory footnotes have been omitted.

56 See, e.g., *Egan v. Canada*, [1995] 2 S.C.R. 513, 124 D.L.R. (4th) 609; *M. v. H.*, [1999] 2 S.C.R. 3, 171 D.L.R. (4th) 577; *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120, 193 D.L.R. (4th) 193.

57 See, e.g., *Fitzpatrick v. Sterling Housing Association*, [2001] 1 A.C. 27, [1999] 4 All E.R. 705.

58 For example, the adoption by the Council of the European Union of a general framework directive on equal treatment in employment that includes “sexual orientation” among the prohibited grounds of discrimination, which all Member States of the EU have been required to implement: EU, *Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation*, [2000] O.J.L. 303/16.

59 See, e.g., *Toonen v. Australia*, 1994, CCPR/C/50/D/488/1992, online: Office of the High Commissioner for Human Rights, [http://www.unhchr.ch.tbs.doc.nsf/\(Symbol\)/d22a00bcd1320c9c80256724005e60d5?Opendocument](http://www.unhchr.ch.tbs.doc.nsf/(Symbol)/d22a00bcd1320c9c80256724005e60d5?Opendocument), holding that anti-gay sex laws violate a right to privacy.

60 Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge: Cambridge University Press, 2001), 120.

61 Pennis Altman, *Global Sex* (Chicago: University of Chicago Press, 2002); Martin F. Manalansan IV, “(Re) Locating the Gay Filipino: Resistance, Post-colonialism, and Identity,” *Journal of Homosexuality* 26 (1993): 53.

62 In using the term “Stonewall,” I am referring to the birth of contemporary American lesbian and gay identity politics at the Stonewall riots in New York City in 1969.

marks an identity category that comes to be labeled as gay, lesbian, or both (and the two are often problematically conflated). Put crudely, who (in terms of gender) one has sexual relations with is the key to who you are, and the “coming out” is the central moment of identity formation. The sexual relations model has increasingly transcended its own cultural and historical roots to become universalized as the paradigm of sexual identity. This paradigm, however, is a dramatic oversimplification of the dynamics of sexual identity outside of a Western (or, more specifically, Anglo-American) frame.

Despite this globalization movement, activists in many non-Western countries travel between the universalizing and essentializing discourse of sexual identity (“we are everywhere”), to a local, historically and culturally-specific reading of sexuality that resists the bluntness of the Stonewall model. Nevertheless, as gays come to appropriate a sexual identity, the universalizing language of human rights neatly fits the globalizing movement of sexual identity that seems to be occurring (most obviously in urban spaces around the globe). Furthermore, this fusion of the two movements of globalization has been advanced by human rights law and international human rights experts, who have assisted activists in many parts of the world and have brought to the attention of the world the abuses of human dignity that have been experienced. Claims to privacy, equality, and dignity for those who have been constructed as less than human because of their same-sex sexual practices and desires, clearly lend themselves to these universalizing and globalizing currents. In this way, they become cosmopolitan claims to justice, which transcend the particularities of time and place through the powerful argument that flows from the desire to be “who we are.”

Although the ways in which these human rights claims are made are important, what is no less interesting are the ways in which they have been *resisted* in a number of different cultural

locations: we consistently find opposition to *cosmopolitan* claims to human justice firmly grounded in a *communitarian* language that speaks to the preservation of a particular community’s “way of life,” tradition, and often, national or local culture. Of course, “nation” (like sexuality and human rights) is a socially constructed, historically specific identity, which has come to be universalized. To use Benedict Anderson’s famous phrase, nations are “imagined communities,”⁶³ and it is this imagining that provocatively has been deployed to resist claims for universal human rights through a reverse discourse that employs the language of difference, specificity, history, community, and ultimately, the language of rights itself.

None of this should be surprising. It is well documented how the construction of the imagined community of “nation” has frequently been realized through the deployment of gender, race, and sexuality. Women have been constructed as “mothers to the nation,” a discursive device by which procreation becomes central to national survival. Race has also been part of the constitutive formation of the nation, summed up memorably by Paul Gilroy’s phrase “there ain’t no black in the Union Jack.”⁶⁴ Less widely known are cases that demonstrate how, when the nation state perceives a threat to its existence, that danger is frequently translated into homosexualized terms. Male same-sex sexuality, for example, has been deployed as the alien “other,” linked to conspiracy, recruitment, the “third column,” and ultimately, constructed as a threat to Western civilization itself.

Interesting inversions of this discourse of civilization can be documented within a post-colonial context. The southern African region provides perhaps the best known example, particularly as demonstrated by the discourses employed by Robert Mugabe in Zimbabwe, most famously around the Zimbabwean International Book Fair in 1995 — for which the theme was “human rights” and which was to feature a presence by the organization Gays and

63 Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, rev. ed. (London: Verso, 1991).

64 Paul Gilroy, *There Ain’t No Black in the Union Jack: The Cultural Politics of Race and Nation* (London: Routledge, 1992).

Lesbians of Zimbabwe (“GALZ”). On the eve of the opening, a letter from the state director of information advised the book fair trustees that the government strongly objected to the presence of GALZ. The trustees, claiming that they had been placed in an impossible position, cancelled GALZ’s registration. A storm of protest ensued, much of it emanating from South Africa. In this example, Mugabe skillfully used a discourse of colonial contamination to shore up the post-colonial state, wherein homosexuality is attributed to the white colonizer, and homosexual relations were the means he used to exploit and contaminate the colonized sexually. Homosexuality becomes an abhorrent Western import.

This discourse is also an important means to strengthen the identity of the beleaguered nation state and the masculine subject, under threat in the current conditions of post-colonial globalization. The expulsion of homosexuals from the imagery of the nation state becomes metaphorically equated with the erasure of the white colonizer and, with him, his degenerate influence on a mythologized, pre-colonial, “pure” African (hetero) sexuality. Condemnations of sexual perversion thus are made in the name of an Afrocentric and specifically Zimbabwean national tradition. In this trope, the defense of heterosexuality becomes essential to securing the group right of self-determination of a people protecting its cultural heritage, pre-colonial way of life, and very survival. This is a communitarian claim in defense of a people against threats from globalization and (neo) colonial powers, and it also lends itself to the language of international human rights (i.e., the right of a community to preserve its way of life).

One can find parallel movements in the West, for example, in the campaign in the mid-1990s over the decriminalization of same-sex sexual acts in the state of Tasmania, Australia. The goal of this struggle was explicitly achieved through the deployment of a discourse of international human rights (cosmopolitan claim), which, it was successfully argued, had been incorporated into a set of Australian cultural values (a communitarian argument) that trumped the particular claim

to a uniquely Tasmanian, heterosexual way of life. Australia has long entered into a range of treaty obligations and has sought to abide by their terms domestically, such as the *International Covenant of Civil and Political Rights*, which proved relevant in the case of same-sex sexuality in Tasmania through its protection of the right to privacy. The explanation for the Tasmanian laws — an anomalous legal situation in Australia — was, as Australians will readily explain, the cultural “peculiarity” of Tasmania, an island state removed from an island continent. Gays, like other “outsiders” such as environmentalists, have been consistently constructed as those who had arrived in Tasmania to undermine the traditional values of “the people.”

The implicit, and sometimes explicit, argument of opponents of decriminalization thus was that to be an authentic Tasmanian was to be heterosexual. This was a somewhat more complex and nuanced battle over communitarian and cosmopolitan claims, but the language of rights — states’ rights — was often deployed in defense of the antigay laws. In this resistance to gay rights claims, the community itself is constructed as under siege from powerful, metropolitan interests seeking to undermine the rights of a disadvantaged and disenfranchised, “politically incorrect” community. Moreover, it was argued that the federal system of Australia was intended to protect states from these majoritarian impulses.

Thus, theoretically, we can often find ourselves in a cul-de-sac of rights claims spawned by the globalization of human rights and sexual identities. Resistance to gay rights is grounded in communitarian claims to difference, specificity, cultural authenticity, and history, which are also, in turn, grounded in the language of rights of self-determination of a people. The question is then about which self, which group, and which right to protect. What “trumps” what?

Although this may seem to be a theoretical dead end, a closer examination of social movement struggles reveals that activists have had relatively little difficulty rhetorically maneuvering through the cul-de-sac. Gay rights activists, in an array of cultural contexts, have become highly skilled in

answering claims to cultural difference and cultural authenticity. Specifically, I refer here to local activists engaged in social struggle resisting nationalist, heterosexist discourses, rather than international lobby groups, which may themselves fall into the trap of a highly cosmopolitan discourse that gives away too much of the communitarian ground to their opponents. Moreover, international gay rights activism, particularly in some forms that emanate from the United States, is sometimes itself in danger of forms of neo-colonialism in relation to local contexts through its adoption of a discourse “in which a premodern, pre-political non-Euro-American queerness must consciously assume the burdens of representing itself to itself and others as ‘gay’ in order to attain political consciousness, subjectivity, and global modernity.”⁶⁵

By contrast, local activists have adopted a number of effective strategies in making claims to human rights, chief among which is a redeployment of the very communitarian arguments that have been used against them. Rather than speaking solely in cosmopolitan terms, we find gay activists first turning to local history and the cultural past to question the idea of an authentic, opposite-sex sexuality and tradition. In other words, they retell the story of nation, but with some new characters introduced (or they redefine well-known characters in terms of sexual desire). It is a reclaiming of a same-sex sexual history that challenges the idea that homosexuality has polluted a sexually pure culture. This, of course, is closely tied to discourses of colonialism.... [This strategy] rewrites the history of community, allowing for its reimagination in more inclusive terms.

A second strategy that again tackles communitarian claims on their own terrain has also proven powerful. Gay activists have skillfully devised a rhetoric that adopts the theoretical idea of multiple and intersecting identities, which often provides an effective response to the idea of a homogeneous, one-dimensional identity. For example, placards at

demonstrations in Tasmania that read “GAY and TASMANIAN” provided an important counter to claims that these identities are mutually exclusive. This is often an important dimension of strategy. It forces opponents to concede that, in their construction of the imagined community, indigenous gays *do* exist, and that they have been expelled from the bounds of community, rather than saying they never existed within it....

[The third strategy] may involve the attempt to universalize and essentialize the concept of human rights, as activists claim a history of human rights in a non-Western context. In other words, human rights, like homosexuals, existed prior to the imperialist mission that devastated both — as part of a history of a community — and, therefore, are culturally *authentic* today. Once again, this is undoubtedly anthropologically problematic, for both “human rights” and “homosexuality” are historically and culturally contingent. They are a product of a time and place. Nevertheless, it may be a rhetorically and politically useful strategy.

In sum, we find activists operate at different registers simultaneously: from local, communitarian discourses through to cosmopolitan global claims. They argue from the local level on behalf of grassroots social movements to the transnational level, through organizations such as the International Lesbian and Gay Association. It is this seamless movement between the local and the global that best describes human rights activism around same-sex sexualities today....

IV. *From Rights to Politics*

It is tempting to end the story there, to conclude that rights are politically indeterminate, socially constructed (as are sexuality and nationhood), and open to both cosmopolitan and communitarian claims. But if that is the conclusion, then we are left — perhaps particularly *because of* the language of rights — with a tendency toward polarization and irreconcilable political demands. Ultimately,

65 Arnaldo Cruz-Malavé and Martin F. Manalansan IV, “Introduction: Dissident Sexualities/Alternative Globalisms,” in Cruz-Malavé and Manalansan IV, eds., *supra* note 11, 1 at 5–6.

though, I expect gay rights arguments will win the day because of their easy articulation as part of globalization discourse. They represent the triumph of the global and of modernity itself. The language of rights cannot, however, apolitically provide resolutions to these moments. Legal claims *have* led to results, but a turn to law does not mask the political character of the dispute and its outcome. If anything, it exacerbates both...

From the struggles of human rights organizations mobilized on the ground around sexuality, we can find operating within activism a response to the theoretical difficulties in the use of the globalizing cosmopolitanism of rights discourse when it meets rights claims made by communities of difference. The key may be to see the deployment of human rights as a “calling card” to enter into political and civil society; indeed, a calling card to enter what was constructed as a community of difference (or, to put it differently, to heterogenize a community). Activist strategies in practice move between cosmopolitan and communitarian discourses, and this is an important moment in bridging this divide. It allows for claims, not to abstract cosmopolitan rights, but to participation as full members of a wider community, and to have specific grievances emanating from same-sex sexualities recognized and heard as legitimate citizenship claims made by full members of that community.

Concluding Thoughts

In conclusion, the implications of this analysis are multi-faceted. While we will, I predict, increasingly see lesbians and gay men achieving human rights victories and successfully making claims to full citizenship, with these rights to participate within wider society come responsibilities to engage in struggles for political transformation. In my view, it is easy for gay politics to become politically conservative in an era of gay marriage and same-sex partnership benefits. These arguably assimilationist political moves also lead to the construction of some “queers” as rights undeserving — the dangerous

and the uncivilizable. It becomes far too tempting for “citizen gay” to consume human rights and then withdraw from any kind of progressive politics, especially when those who have bestowed the rights are also pursuing policies that are eviscerating the human rights of others on issues from migration to counterterrorism....

The critique of rights is that lesbian and gay human rights struggles have become disconnected from politics and, moreover, that we have become depoliticized consumers through the fetishization of rights. But, to the extent that rights may provide a key that opens the political realm on the basis of full citizenship, the language of human rights does remain a valuable discourse in today’s political tool box.

13.18 Tia Powell, Sophia Shapiro, and Ed Stein: “Transgender Rights as Human Rights” (2016)⁶⁶

Introduction

In March 2016, North Carolina enacted legislation requiring public school students to use the school bathroom consistent with their birth gender. The state law aimed to supersede a Charlotte, North Carolina, ordinance permitting students to use gender-segregated facilities aligned with their expressed gender, irrespective of the gender assigned them at birth. These dueling laws garnered considerable controversy, yet they form only one small chapter in the story of rights for transgender people today.

Proponents of the North Carolina “bathroom bill” claim that such laws prevent violence against women, arguing that “predatory” men, under the auspices of trans-friendly bathroom policies, will enter women’s bathrooms and harm girls and women.

However, transpeople and supporters deny there is increased harm to other women from transwomen and note that there is instead a high level of violence against transmen and transwomen,

66 Tia Powell, Sophia Shapiro, and Ed Stein, “Transgender Rights as Human Rights,” *AMA Journal of Ethics*, Vol. 18, No. 11 (November 2016), 1126–1131. Editor: For space considerations, some notes have been omitted.

even compared to the high level of violence against other members of the lesbian, gay, bisexual, and transgender (LGBT) community. While rates of homicide generally have dropped across the US over the last decade, the same is not true of homicide rates for transwomen, and in particular for transwomen of color, who account for a percentage of homicides far out of proportion to their numbers in the transgender population.

The need to uphold transgender rights has never been more pressing or more important than today. Although laws regarding choice in bathroom facilities are symbolically important in establishing that transpeople deserve respect, transpeople suffer active discrimination in arguably more important domains, including employment, housing, and access to general and specialized health care. Compelling arguments and concerted action to support transgender rights are crucial. But which arguments offer the strongest and most broadly applicable support for transgender people in the current political climate?

Arguments for Recognition and Expanded Protection of Transpersons' Rights

Many in the LGBT community rely on arguments that we refer to collectively as “born that way” arguments, namely, arguments for LGBT rights based on the idea that sexual orientation and gender identity are innate, immutable, or unassociated with choice. Two of the authors (TP and ES) have previously addressed the difficulties of using “born that way” arguments in relation to sexual orientation. We now extend that critique to arguments for transgender rights. We argue that “born that way” arguments rely on both shaky science and imperfect logic, and thus fail to provide a solid basis for transgender rights. We find more solid ground in arguments based on human rights.

Interpretations and Critiques of “Born that Way” Arguments

In *The Mismeasure of Desire*, one of us (ES) has addressed three interpretations of the “born that way” argument, and we briefly summarize those arguments in the context of gender identity.

Innate. We find several problems with the claim that gender identity is innate. First, the claim is essentially unprovable. Gender identity, as with any aspect of human identity, develops over time. An infant cannot be said to experience a fully formed identity of any kind—that sort of self-awareness requires advanced cognitive development, including a nuanced concept of gender that develops over years. Similarly, we are skeptical of the claim that gender identity—one’s perceived sense of belonging to a particular gender, independent of gender assigned at birth—is genetically determined. There is limited biological research supporting such a claim and no semblance of a scientific consensus on it. Gender identity and expression are complex, incorporating ideas of the self along with a vast array of behaviors, thoughts, and feelings. Contemporary biological evidence does not support the notion that gender identity results solely from a single gene or even from the presence of a specific number of X and Y chromosomes. Rather, gender identity emerges from multiple interactions among genes, the environment, and other factors, including personal feelings of authentic gender expression.

Immutable. Another interpretation of “born that way” connotes immutability. This concept is problematic because possibilities for change are not necessarily related to whether a factor is present at birth. Even factors that are primarily determined by genes can change over the life course: hair color and texture are genetically determined, but hair can be present or absent at birth, change color over time, revert from curly to straight or vice versa, and develop different patterns of baldness as a person ages. In contrast, immunity to a disease like measles is not inherited, but vaccination or disease exposure can result in a permanent change in one’s immunological profile. These arguments undermine the link between a trait’s being present at birth and its inalterability.

However, there are additional compelling reasons to avoid relying on immutability as a foundation for transgender rights. Although the scientific study of gender identity has yet to answer many important questions, it does suggest that gender identity is not immutable in everyone. Specifically, gender identity can change in prepubescent

children. Indeed, the majority of younger children who experience gender dysphoria do not go on to become transgender adults. Given the evidence of the fluidity of gender identity over time in many children with gender uncertainty, arguments that assume immutability seem particularly unconvincing. True, transgender adults generally do persist in their gender identity. Nonetheless, gender as a concept is understood as more fluid and less rigid today than in the past. Research indicates that various aspects of sexuality, including both gender identity and sexual orientation, are more fluid than previously understood, especially in youth.

Rather than adhering to a rigid male/female binary, many scholars and activists describe gender as existing on a spectrum. Ideas about which attributes are socially appropriate for either male or female gender—or both or neither—have rapidly evolved over the last century. One hundred years ago, in some places, a woman could be arrested for wearing pants in public. Thirty years ago, women encountered more extreme barriers and fewer legal protections than they do today in many occupations, including soldier, pilot, or orthopedic surgeon, to name a few. Even today, men who stay home as full-time parents face questions about their “manliness.” Preserving transgender rights supports the ability of all people to align their gender expressions with a comfortable location for them on the gender spectrum. Insistence on the immutability of gender identity ignores its fluidity during development and the need to adapt to continually evolving standards of gendered behavior.

Not chosen. A third interpretation of “born that way” indicates lack of choice, and this aspect of LGBT identity is often referenced both regarding sexual orientation and gender identity. Transgender people do not typically describe their gender identity as a matter of choice. As one blogger wrote, “nobody really wants to be a trans woman, i.e. nobody wakes up and goes whoa, maybe my life would be better if I transitioned, alienating most of my friends and my family, I wonder what’ll happen at work, I’d love to spend all my money on hormones and surgeries.” More typically, transpersons describe a growing

realization of their gender identity over time. They might experience distress from social or other pressures to conform to a binary birth-assigned gender that does not match their authentic experience of gender identity. While gender identity is not subject to conscious choice, the overt expression of gender identity includes many choices, including dress, hair, naming, and all the other options that indicate one gender or another—including which public bathroom to use. Those opposed to transgender rights wish to deny transgender people (and everyone else) these choices. Opponents do not express concern about transpersons’ inner sense of identity but about outwardly expressed choices. To defend transgender rights is to defend the right to choose how one expresses gender and gender identity. Choice, far from being unimportant, is a critical aspect of transgender rights. In sum, “born that way” arguments on behalf of transgender rights are easily undermined on the basis of reasoning and scientific evidence.

Transgender Rights as Human Rights

We argue, in contrast, that transgender rights stem from human rights, i.e., those fundamental rights belonging to every person. Persons with either cisgender (in which assigned and experienced gender are the same) or transgender identities deserve to live and flourish in their communities—with freedom to learn, work, love, and play—and build lives connected with others at home, in the work place, and in public settings without fear for their safety and survival. These deeply personal decisions are and should be the prerogative of the individual and deserve the law’s protection. The United States protects religious freedom in the First Amendment, and religion is quintessentially a choice. We owe the same respect to all members of our communities. We don’t yet know if gender identity emerges from genes, hormones, environmental factors or, most likely, an intricate combination of all these factors and more. It is unlikely that people with a transgender identity simply choose their gender identity, any more than cisgender people do. However, it is crucial that associated choices about the expression of gender—affecting vital

aspects of identity in school, the workplace, and the community—are supported by our laws and policies. Supporters of transgender rights should avoid arguments that are logically flawed and that fail to acknowledge current scientific evidence about gender identity. Our best arguments must rely on the concept of inalienable human rights, including the rights to live safely, freely, and without fear of discrimination.

13.19 Michelle Alexander: *The New Jim Crow* (2010)⁶⁷

The sense that black men have disappeared is rooted in reality. The U.S. Census Bureau reported in 2002 that there are nearly 3 million more black adult women than men in black communities across the United States, a gender gap of 26 percent. In many urban areas, the gap is far worse, rising to more than 37 percent in places like New York City. The comparable disparity for whites in the United States is 8 percent.⁶⁸ Although a million black men can be found in prisons and jails, public acknowledgment of the role of the criminal justice system in “disappearing” black men is surprisingly rare. Even in the black media—which is generally more willing to raise and tackle issues related to criminal justice—an eerie silence can often be found....

The fact that Barack Obama can give a speech on Father’s Day dedicated to the subject of fathers who are “AWOL”⁶⁹ without ever acknowledging that the majority of young black men in many large urban areas are currently under the control of the criminal justice system is disturbing, to say the least. What

is more problematic, though, is that hardly anyone in the mainstream media noticed the oversight.... Hundreds of thousands of black men are unable to be good fathers for their children, not because of a lack of commitment or desire but because they are warehoused in prisons, locked in cages. They did not walk out on their families voluntarily; they were taken away in handcuffs, often due to a massive federal program known as the War on Drugs.

More African American adults are under correctional control today—in prison or jail, on probation or parole—than were enslaved in 1850, a decade before the Civil War began.⁷⁰ The mass incarceration of people of color is a big part of the reason that a black child born today is less likely to be raised by both parents than a black child born during slavery.⁷¹ The absence of black fathers from families across America is not simply a function of laziness, immaturity, or too much time watching Sports Center. Thousands of black men have disappeared into prisons and jails, locked away for drug crimes that are largely ignored when committed by whites....

More black men are imprisoned today than at any other moment in our nation’s history. More are disenfranchised today than in 1870, the year the Fifteenth Amendment was ratified prohibiting laws that explicitly deny the right to vote on the basis of race.⁷² ...

We may wonder aloud “where have the black men gone?” but deep down we already know. It is simply taken for granted that, in cities like Baltimore and Chicago, the vast majority of young black men

67 Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012). Editor: For space considerations, some explanatory footnotes have been omitted.

68 See Jonathan Tilove, “Where Have All the Men Gone? Black Gender Gap is Widening,” *Seattle Times*, May 5, 2005, and Jonathan Tilove, “Where Have All the Black Men Gone?” *Star-Ledger* (Newark), May 8, 2005.

69 Editor’s note: Absent Without Official Leave.

70 One in eleven black adults was under correctional supervision at year end 2007, or approximately 3.5 million people. See Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: Pew Charitable Trusts, mar. 2009). According to the 1850 Census, approximately 3.2 million black people were slaves.

71 See Andrew J. Cherlin, *Marriage, Divorce, Remarriage*, rev. Ed., (Cambridge, MA: Harvard University Press, 1992), 110.

72 See Glenn C. Laury, *Race, Incarceration, and American Values* (Cambridge, MA: MIT Press, 2008), commentary by Pam Karlan.

are currently under the control of the criminal justice system or branded criminals for life. This extraordinary circumstance—unheard of in the rest of the world—is treated here in America as a basic fact of life, as normal as separate water fountains were just a half century ago.

States of Denial

The claim that we really know where all the black men have gone may inspire considerable doubt. If we know, why do we feign ignorance? Could it be that most people really don't know? Is it possible that the roundup, lockdown, and exclusion of black men en masse from the body politic has occurred largely unnoticed? The answer is yes and no.

Much has been written about the ways in which people manage to deny, even to themselves, that extraordinary atrocities, racial oppression, and other forms of human suffering have occurred or are occurring. Criminologist Stanley Cohen wrote perhaps the most important book on the subject, *States of Denial*. The book examines how individuals and institutions—victims, perpetrators, and bystanders—know about yet deny the occurrence of oppressive acts. They see only what they want to see and wear blinders to avoid seeing the rest. This has been true about slavery, genocide, torture, and every form of systemic oppression.

Cohen emphasizes that denial, though deplorable, is complicated. It is not simply a matter of refusing to acknowledge an obvious, though uncomfortable, truth. Many people “know” and “not-know” the truth about human suffering at the same time. In his words, “Denial may be neither a matter of telling the truth nor intentionally telling a lie. There seem to be states of mind, or even whole cultures, in which we know and don't know at the same time.”⁷³ ...

Upon reflection, it is relatively easy to understand how Americans come to deny the evils of mass incarceration. Denial is facilitated by persistent racial segregation in housing and schools, by political demagoguery, by racialized media imagery, and

by the ease of changing one's perception of reality simply by changing television channels. There is little reason to doubt the prevailing “common sense” that black and brown men have been locked up en masse merely in response to crime rates when one's sources of information are mainstream media outlets. In many respects, the reality of mass incarceration is easier to avoid knowing than the injustices and sufferings associated with slavery or Jim Crow. Those confined to prisons are out of sight and out of mind; once released, they are typically confined in ghettos. Most Americans only come to “know” about the people cycling in and out of prisons through fictional police dramas, music videos, gangsta rap, and “true” accounts of ghetto experience on the evening news. These racialized narratives tend to confirm and reinforce the prevailing public consensus that we need not care about “those people”; they deserve what they get....

Because mass incarceration is officially color-blind, it seems inconceivable that the system could function much like a racial caste system. The widespread and mistaken belief that racial animus is necessary for the creation and maintenance of racialized systems of social control is the most important reason that we, as a nation, have remained in deep denial.

The misunderstanding is not surprising. As a society, our collective understanding of racism has been powerfully influenced by the shocking images of the Jim Crow era and the struggle for civil rights. When we think of racism we think of Governor Wallace of Alabama blocking the schoolhouse door; we think of water hoses, lynchings, racial epithets, and “whites only” signs. These images make it easy to forget that many wonderful, good-hearted white people who were generous to others, respectful of their neighbors, and even kind to their black maids, gardeners, or shoe shiners—and wished them well—nevertheless went to the polls and voted for racial segregation. Many whites who supported Jim Crow justified it on paternalist grounds, actually believing they were doing blacks

73 Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (Cambridge, UK: Polity, 2001), 4–5.

a favor or believing the time was not yet “right” for equality. The disturbing images from the Jim Crow era also make it easy to forget that many African Americans were complicit in the Jim Crow system, profiting from it directly or indirectly or keeping their objections quiet out of fear of the repercussions. Our understanding of racism is therefore shaped by the most extreme expressions of individual bigotry, not by the way in which it functions naturally, almost invisibly (and sometimes with genuinely benign intent), when it is embedded in the structure of a social system.

The unfortunate reality we must face is that racism manifests itself not only in individual attitudes and stereotypes, but also in the basic structure of society. Academics have developed complicated theories and obscure jargon in an effort to describe what is now referred to as *structural racism*, yet the concept is fairly straightforward. One theorist, Iris Marion Young, relying on a famous “birdcage” metaphor, explains it this way: If one thinks about racism by examining only one wire of the cage, or one form of disadvantage, it is difficult to understand how and why the bird is trapped. Only a large number of wires arranged in a specific way, and connected to one another, serve to enclose the bird and to ensure that it cannot escape.⁷⁴

What is particularly important to keep in mind is that any given wire of the cage may or may not be specifically developed for the purpose of trapping the bird, yet it still operates (together with the other wires) to restrict its freedom. By the same token, not every aspect of a racial caste system needs to be developed for the specific purpose of controlling black people in order for it to operate (together with other laws, institutions, and practices) to trap them at the bottom of a racial hierarchy. In the system of mass incarceration, a wide variety of laws, institutions, and practices—ranging from racial profiling to biased sentencing policies, political disenfranchisement, and legalized employment discrimination—trap African Americans in a virtual (and literal) cage....

One way of understanding our current system of mass incarceration is to think of it as a birdcage with a locked door. It is a set of structural arrangements that locks a racially distinct group into a subordinate political, social, and economic position, effectively creating a second-class citizenship. Those trapped within the system are not merely disadvantaged, in the sense that they are competing on an unequal playing field or face additional hurdles to political or economic success; rather, the system itself is structured to lock them into a subordinate position....

How It Works

... This, in brief, is how the system works: The War on Drugs is the vehicle through which extraordinary numbers of black men are forced into the cage.... The first stage is the roundup. Vast numbers of people are swept into the criminal justice system by the police, who conduct drug operations primarily in poor communities of color. They are rewarded in cash—through drug forfeiture laws and federal grant programs—for rounding up as many people as possible, and they operate unconstrained by constitutional rules of procedure that once were considered inviolate....

The conviction marks the beginning of the second phase: the period of formal control. Once arrested, defendants are generally denied meaningful legal representation and pressured to plead guilty whether they are or not. Prosecutors are free to “load up” defendants with extra charges, and their decisions cannot be challenged for racial bias. Once convicted, due to the drug war’s harsh sentencing laws, drug offenders in the United States spend more time under the criminal justice system’s formal control—in jail or prison, on probation or parole—than drug offenders anywhere else in the world....

The final stage has been dubbed by some advocates as the period of invisible punishment. This term, first coined by Jeremy Travis, is meant to describe the unique set of criminal sanctions that are imposed on individuals after they step outside

74 Iris Marilyn Young, *Inclusion and Democracy* (New York: Oxford University Press, 200), 92–99.

the prison gates, a form of punishment that operates largely outside of public view and takes effect outside the traditional sentencing framework.... They will be discriminated against, legally, for the rest of their lives—denied employment, housing, education, and public benefits. Unable to surmount these obstacles, most will eventually return to prison and then be released again, caught in a closed circuit of perpetual marginality....

People who have been convicted of felonies almost never truly re-enter the society they inhabited prior to their conviction. Instead, they enter a separate society, a world hidden from public view, governed by a set of oppressive and discriminatory rules and laws that do not apply to everyone else. They become members of an undercaste—an enormous population of predominately black and brown people who, because of the drug war, are denied basic rights and privileges of American citizenship and are permanently relegated to an inferior status. This is the final phase, and there is no going back.

Nothing New?

... In Chicago, like the rest of the country, the War on Drugs is the engine of mass incarceration, as well as the primary cause of gross racial disparities in the criminal justice system and in the ex-offender population. About 90 per cent of those sentenced to prison for a drug offense in Illinois are African American.⁷⁵ White drug offenders are rarely arrested, and when they are, they are treated more favorably at every stage of the criminal justice process, including plea bargaining and sentencing.⁷⁶ Whites are consistently more likely to avoid prison and felony charges, even when they are repeat offenders. Black offenders, by contrast, are routinely labeled felons and released into a permanent racial undercaste.

The total population of black males in Chicago with a felony record (including both current and

ex-felons) is equivalent to 55 percent of the black adult male population and an astonishing 80 percent of the adult black male workforce in the Chicago area.⁷⁷ ...

Mapping the Parallels

... There are important differences between mass incarceration and Jim Crow, to be sure—but when we step back and view the system as a whole, there is a profound sense of déjà vu. There is a familiar stigma and shame. There is an elaborate system of control, complete with political disenfranchisement and legalized discrimination in every major realm of economic and social life. And there is the production of racial meaning and racial boundaries....

Listed below are several of the most obvious similarities between Jim Crow and mass incarceration, followed by a discussion of a few parallels that have not been discussed so far. Let's begin with the historical parallels.

HISTORICAL PARALLELS. Jim Crow and mass incarceration have similar political origins. As described in chapter 1, both caste systems were born, in part, due to a desire among white elites to exploit the resentments, vulnerabilities, and racial biases of poor and working-class whites for political or economic gain. Segregation laws were proposed as part of a deliberate and strategic effort to deflect anger and hostility that had been brewing against the white elite away from them and toward African Americans. The birth of mass incarceration can be traced to a similar political dynamic. Conservatives in the 1970s and 1980s sought to appeal to the racial biases and economic vulnerabilities of poor and working-class whites through racially coded rhetoric on crime and welfare. In both cases, the racial opportunists offered few, if any, economic reforms to address the legitimate economic anxieties of poor and working-class whites, proposing instead a

75 Paul Street, *The Vicious Circle: Race, Prison, Jobs, and Community in Chicago, Illinois, and the Nation* (Chicago Urban League, Department of Research and Planning, 2002).

76 Alden Lory, "Black Offenders Face Stiffest Drug Sentences," *Chicago Reporter*, September 12, 2007.

77 Street, *The Vicious Circle*, 15.

crackdown on the racially defined “others.” In the early years of Jim Crow, conservative white elites competed with each other by passing ever more stringent and oppressive Jim Crow legislation. A century later, politicians in the early years of the drug war competed with each other to prove who could be tougher on crime by passing ever harsher drug laws—a thinly veiled effort to appeal to poor and working-class whites who, once again, proved they were willing to forego economic and structural reform in exchange for an apparent effort to put blacks back “in their place.”

LEGALIZED DISCRIMINATION. The most obvious parallel between Jim Crow and mass incarceration is legalized discrimination. During Black History Month, Americans congratulate themselves for having put an end to discrimination against African Americans in employment, housing, public benefits, and public accommodations. Schoolchildren wonder out loud how discrimination could ever have been legal in this great land of ours. Rarely are they told that it is *still* legal. Many of the forms of discrimination that relegated African Americans to an inferior caste during Jim Crow continue to apply to huge segments of the black population today—provided they are first labeled felons. If they are branded felons by the time they reach the age of twenty-one (as many of them are), they are subject to legalized discrimination for their entire adult lives. The forms of discrimination that apply to ex-drug offenders ... mean that, once prisoners are released, they enter a parallel social universe—much like Jim Crow—in which discrimination in nearly every aspect of social, political, and economic life is perfectly legal. Large majorities of black men in cities across the United States are once again subject to legalized discrimination effectively barring them from full integration into mainstream, white society. Mass incarceration has nullified many of the gains of the Civil Rights Movement, putting millions of black men back in a position reminiscent of Jim Crow.

POLITICAL DISENFRANCHISEMENT. During the Jim Crow era, African Americans were denied the right to vote through poll taxes, literacy tests, grandfather clauses, and felon disenfranchisement laws, even though the Fifteenth Amendment to the U.S. Constitution specifically provides that “the right of citizens of the United States to vote shall not be denied ... on account of race, color, or previous condition of servitude.” Formally race-neutral devices were adopted to achieve the goal of an all-white electorate without violating the terms of the Fifteenth Amendment. The devices worked quite well. Because African Americans were poor, they frequently could not pay poll taxes. And because they had been denied access to education, they could not pass literacy tests. Grandfather clauses allowed whites to vote even if they couldn’t meet the requirements, as long as their ancestors had been able to vote. Finally, because blacks were disproportionately charged with felonies—in fact, some crimes were specifically defined as felonies with the goal of eliminating blacks from the electorate—felony disenfranchisement laws effectively suppressed the black vote as well. ...

Felon disenfranchisement laws have been more effective in eliminating black voters in the age of mass incarceration than they were during Jim Crow. Less than two decades after the War on Drugs began, one in seven black men nationally had lost the right to vote, and as many as one in four in those states with the highest African American disenfranchisement rate.⁷⁸ ...

It is worthy of note, however, that the exclusion of black voters from polling booths is not the only way in which black political power has been suppressed. Another dimension of disenfranchisement echoes not so much Jim Crow as slavery. Under the usual-residence rule, the Census Bureau counts imprisoned individuals as residents of the jurisdiction in which they are incarcerated. Because most new prison construction occurs in predominately white, rural areas, white communities benefit from inflation population totals at the expense of the urban, overwhelmingly minority communities

78 Lounsbury, *Race, Incarceration, and American Values*, 48.

from which the prisoners come. This has enormous consequences for the redistricting process. White rural communities that house prisons wind up with more people in state legislatures representing them, while poor communities of color lose representatives because it appears their population has declined. This policy is disturbingly reminiscent of the three-fifths clause in the original Constitution, which enhanced the political clout of slaveholding states by including 60 percent of slaves in the population base for calculating Congressional seats and electoral votes, even though they could not vote.

EXCLUSION FROM JURIES. Another clear parallel between mass incarceration and Jim Crow is the systematic exclusion of blacks from juries. One hallmark of the Jim Crow era was all-white juries trying black defendants in the South. Although the exclusion of jurors on the basis of race has been illegal since 1880, as a practical matter, the removal of prospective black jurors through race-based peremptory strikes was sanctioned by the Supreme Court until 1985, when the Court ruled in *Batson v. Kentucky* that racially biased strikes violate the equal protection clause of the Fourteenth Amendment. Today defendants face a situation highly similar to the one they faced a century ago. . . . [A] formal prohibition against race-based peremptory strikes does exist; as a practical matter, however, the Court has tolerated the systematic exclusion of blacks from juries by allowing lower courts to accept “silly” and even “superstitious” reasons for striking black jurors.⁷⁹ To make matters worse, a large percentage of black men (about 30 percent) are automatically excluded from jury service because they have been labeled felons. . . .

RACIAL SEGREGATION. Although the parallels listed above should be enough to give anyone pause, there are a number of other, less obvious, similarities between mass incarceration and Jim Crow. . . . The creation and maintenance of racial segregation is one example. As we know, Jim Crow laws mandated residential segregation, and blacks were relegated to the worst parts of town. Roads literally stopped

at the border of many black neighborhoods, shifting from pavement to dirt. Water, sewer systems, and other public services that supported the white areas of town frequently did not extend to the black areas. The extreme poverty that plagued blacks due to their legally sanctioned inferior status was largely invisible to whites—so long as whites remained in their own neighborhoods, which they were inclined to do. Racial segregation rendered black experience largely invisible to whites, making it easier for whites to maintain racial stereotypes about black values and culture. It also made it easier to deny or ignore their suffering. . . .

Prisoners are thus hidden from public view—out of sight, out of mind. In a sense, incarceration is a far more extreme form of physical and residential segregation than Jim Crow segregation. Rather than merely shunting black people to the other side of town or corralling them in ghettos, mass incarceration locks them in cages. Bars and walls keep hundreds of thousands of black and brown people away from mainstream society—a form of apartheid unlike any the world has ever seen. . . .

The racially segregated, poverty-stricken ghettos that exist in inner-city communities across America would not exist today but for racially biased government policies for which there has never been meaningful redress.⁵¹ Yet every year, hundreds of thousands of poor people of color who have been targeted by the War on Drugs are forced to return to these racially segregated communities—neighborhoods still crippled by the legacy of an earlier system of control. As a practical matter, they have no other choice. In this way, mass incarceration, like its predecessor Jim Crow, creates and maintains racial segregation.

SYMBOLIC PRODUCTION OF RACE. Arguably the most important parallel between mass incarceration and Jim Crow is that both have served to define the meaning and significance of race in America. Indeed, a primary function of any racial caste system is to define the meaning of race in its time. Slavery defined what it meant to be black (a slave), and Jim Crow defined what it meant to be black (a second-class citizen). Today mass incarceration defines the meaning

79 Brian Kalt, “The Exclusion of Felons from Jury Service,” *American University Law Review* 53 (2003): 65.

of blackness in America: black people, especially black men, are criminals. That is what it means to be black.

The temptation is to insist that black men “choose” to be criminals; the system does not make them criminals, at least not in the way that slavery made blacks slaves or Jim Crow made them second-class citizens. The myth of choice here is seductive, but it should be resisted. African Americans are not significantly more likely to use or sell prohibited drugs than whites, but they are *made* criminals at drastically higher rates for precisely the same conduct....

The critical point here is that, for black men, the stigma of being a “criminal” in the era of mass incarceration is fundamentally a *racial* stigma. This is not to say stigma is absent for white criminals; it is present and powerful. Rather, the point is that the stigma of criminality for white offenders is different—it is a nonracial stigma....

The Limits of the Analogy

Saying that mass incarceration is the New Jim Crow can leave a misimpression. The parallels between the two systems of control are striking, to say the least—in both, we find racial opportunism by politicians, legalized discrimination, political disenfranchisement, exclusion of blacks from juries, stigmatization, the closing of courthouse doors, racial segregation, and the symbolic production of race—yet there are important differences. Just as Jim Crow, as a system of racial control, was dramatically different from slavery, mass incarceration is different from its predecessor. In fact, if one were to draft a list of the differences between slavery and Jim Crow, the list might well be longer than the list of similarities. The same goes for Jim Crow and mass incarceration. Each system of control has been unique—well adapted to the circumstances of its time. If we fail to appreciate the differences, we will be hindered in our ability to meet the challenges created by the current moment. At the same time, though, we must be careful not to assume that differences exist when

they do not, or to exaggerate the ones that do. Some differences may appear on the surface to be major, but on close analysis they prove less significant....

Those who claim that mass incarceration is “just like” Jim Crow make a serious mistake. Things have changed. The fact that a clear majority of Americans were telling pollsters in the early 1980s—when the drug war was kicking off—that they opposed race discrimination in nearly all its forms should not be dismissed lightly.⁸⁰ Arguably some respondents may have been telling pollsters what they thought was appropriate rather than what they actually believed, but there is no reason to believe that most of them were lying. It is more likely that most Americans by the early 1980s had come to reject segregationist thinking and values, and not only did not want to be thought of as racist but did not want to *be* racist.

This difference in public attitudes has important implications for reform efforts. Claims that mass incarceration is analogous to Jim Crow will fall on deaf ears and alienate potential allies if advocates fail to make clear that the claim is *not* meant to suggest or imply that supporters of the current system are racist in the way Americans have come to understand that term. Race plays a major role—indeed, a defining role—in the current system, but not because of what is commonly understood as old-fashioned, hostile bigotry. This system of control depends far more on *racial indifference* (defined as a lack of compassion and caring about race and racial groups) than racial hostility—a feature it actually shares with its predecessors....

13.20 Frédéric Mégret: “The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?” (2008)⁸¹

Introduction

On 13 December 2006, the much expected United Nations Convention on the Rights of Persons with Disabilities was adopted. The Convention has

80 Glenn C. Loury, *The Anatomy of Racial Inequality* (Cambridge, MA: Harvard University Press, 2003), 82.

81 Frédéric Mégret, “The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?” *Human Rights Quarterly*, Vol. 30, No. 2 (May 2008), 494–516. Editor: For space considerations, some explanatory footnotes have been omitted or compressed.

rightly generated tremendous expectations that it can bring succor to persons with disabilities the world over whose rights have often been persistently and systematically violated. In this article, however, I want to take a step back from what the Convention will do for persons with disabilities, and inquire instead about some of the changes it portends for the idea of human rights itself....

In this article, I want to explore ... the possibility that the adoption of specific instruments is linked to the irreducibility of the experience of certain group members in terms of their human rights. Specific instruments are needed not only to adapt the existing language of rights, but because there is a dimension of the experience of specific groups that is inherent to them and which almost requires the creation of new rights....

I see human rights as fundamentally making a point about the sameness and unity of human beings. From these ideas are derived those of equality and universality. It is this sameness, this belonging to a unique species, which forms the hard core of human rights normative ambition. Group-specific treaties conversely, if my hypothesis is correct, can be seen as at least partly making a point about difference and pluralism. Difference and pluralism are obviously in tension with the ideas of equality and universality.

From thereon, the most theoretically interesting question arising out of this "pluralization" is, in my view, the way it at least potentially and implicitly challenges the idea that human rights are about promoting equal rights for all, by suggesting that human rights may also be about delving deeply into issues of identity, survival, and dignity of particular groups....

The problem pluralization poses implicitly in terms of the tenor of rights can be seen as the following: If the rights of human beings are the rights of all human beings, then it follows that these rights should also be the same for all human beings. While there may, therefore, be a need for function ally specialized conventions (civil and political rights versus economic and social; torture; disappearances), fundamentally, there should be no need for group-specific conventions.

The only rationale for having group-specific conventions is as a purely corrective, stop-gap measure if these groups, despite the undeniable applicability of human rights to them, have for some reason been left aside. If this conception is correct, then in a sense all that is needed is an anti-discrimination treaty to make the point as clear as possible. Indeed, the prevailing model behind a treaty like the Convention on the Elimination of Racial Discrimination is, as its title indicates, that of "anti-discrimination." It does not aim to grant members of racial groups or members of certain racial groups (e.g. oppressed ones) rights that they would not already have. Rather, such treaties have the ambition of making good on the promise of human rights, by making it clear that discrimination on the grounds of race is particularly abhorrent. However politically important they may be, there is no major conceptual or ontological need for such treaties, merely a contingent, historical and practical need.

An alternative, much more complex and contentious account of what is at stake with the pluralization of human rights, is that the vision of human rights as being the same for all is both helpful and insufficient. Even though the unity of rights captures a fundamental intuition, certain groups do need separate restatements of how rights apply to them, either because they have specific needs to enjoy their rights, different versions of the same rights, or possibly even slightly different rights. Indeed, one might claim that the mere existence of group-specific international rights instruments suggests that there is something specific about these groups, which is not, but perhaps most importantly, cannot be taken adequately into account by human rights instruments that have the ambition of covering the whole human genre....

II. Affirmation: Disability Rights "As Human Rights"

In part, the Convention is a way of stating in one instrument a number of things that are scattered in half a dozen other human rights treaties. In that respect, it can be most usefully compared

to CERD,⁸² a classic anti-discrimination convention, which specifies at length all the rights that are supposed to be guaranteed to all, regardless of race, and which incorporates a broad range of internationally protected human rights, both civil and political, and economic, social, and cultural.

The goal of the Disabilities Convention is stated as “promot[ing], protect[ing] and ensur[ing] the full and equal enjoyment of *all human rights and fundamental freedoms by all persons with disabilities.*”⁸³ Elsewhere in the Convention the foremost “general obligation” of states parties is listed as “undertak[ing] to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities.”⁸⁴ ...

Why should this affirmation of previous rights be necessary in the case of persons with disabilities? The simple answer is that it has not always been, and certainly still is not, in many instances, obvious. For a long time, some persons with disabilities were hardly considered human and were, as a result, denied basic rights. Persons with disabilities may have always been theoretically entitled to human rights, but in both law and practice they have often been denied them. Persons with disabilities have been victims of genocide, eugenism, and have suffered from massive discrimination resulting from a denial of their basic rights.

In this respect, the Convention’s contribution is more than conveniently bringing the human rights of persons with disabilities under the same roof. Rather, there is a more fundamental and principled push to make it clear that existing rights are applicable to persons with disabilities. The Convention

stands in affirmation of the “right to have rights:” an official, unambiguous and long overdue solemn recognition of the absolute equality of persons with disabilities with all other persons....

The Disabilities Convention is the most unmistakable international recognition of persons with disabilities’ full humanity....

III. Reformulation: Disability Rights As Human Rights “With A Difference”

... [T]he Convention brings substantial extra semantic texture to certain rights, by clarifying the way they are to apply to persons with disabilities. Simply restating rights would, in certain cases, have been insufficient because it is the very abstract blandness of these rights’ previous formulations that has often left people with disabilities without the requisite protection....

Freedom of expression and opinion is specified as including the “freedom to seek, receive and impart information and ideas ... through all forms of communication of their choice.”⁸⁵ Respect for privacy is to be protected “regardless of place of residence or living arrangements”⁸⁶ and specifically includes “the privacy of personal, health and rehabilitation information of persons with disabilities.”⁸⁷ The right to respect for home and the family emphasizes that persons with disabilities shall have the right to “decide freely and responsibly on the number and spacing of their children” and “retain their fertility on an equal basis with others.”⁸⁸ The content of the rights to education, health, work, and adequate standard of living, are all spelled out in detail in a way that caters to the needs of persons with disabilities.⁸⁹

82 Editor’s note: The author is using “CERD” for the Convention on the Elimination of All Forms of Racial Discrimination (adopted December 21, 1965; entered into force January 4, 1969). The same abbreviation is typically used for the committee created to monitor that convention, the Committee on the Elimination of Racial Discrimination.

83 Convention on the Rights of Persons with Disabilities (CRPD), art. 1 (emphasis added by author).

84 CRPD, art. 4.1.

85 CRPD, art. 18.1 (cf. UDHR, art. 13; ICCPR, art. 12).

86 CRPD, art. 22.1 (cf. UDHR, art. 12, ICCPR, art. 17).

87 CRPD, art. 22.2.

88 CRPD, art. 23.1 (cf. UDHR, art. 16; ICCPR, art. 23).

89 CRPD, arts. 24, 25, 27, 28 (cf. ICESCR, art. 13).

In all of these cases, a number of problematic features in what one might term persons with disabilities “access” to rights are implicitly highlighted. Rather than being left to the interpretation of states, these concerns are woven into the definition of those rights, so as to leave no doubt regarding their exact scope. None of these elements had previously been mentioned in existing human rights treaties, so they are, in a sense, specific to persons with disabilities. The point is not to depart from human rights standards, but rather make clear how these standards are to be understood if persons with disabilities’ rights are not to remain an abstraction. . . .

IV. Extension: Disability Rights As Human Rights “Plus”

A number of provisions in the Convention go further than simple reformulation by emphasizing rights that have typically not been highlighted as such in the main international human rights instruments, even though they may draw on existing rights. These rights are not entirely new, and indeed, are probably rights of all human beings, but the particular circumstances of disability have made it necessary to incorporate them in the Convention almost as novel and separate categories, rather than simple variations on existing themes (as above).

What these rights have in common, I would argue, is that they focus on the societal dimension of the rights experience, thereby departing from human rights’ traditional emphasis on the relationship of the individual to the state. They thus display more sensitivity to issues of structural power and oppression than the mainstream human rights framework has typically done. This fully takes into account the fact that persons with disabilities have often been as much at risk of having their freedoms curtailed in the private sphere or by society than by acts of the state as such.

Two examples come to mind of this phenomenon. The first is Article 16’s right to “freedom from exploitation, violence and abuse.” Although this sounds intuitively like it could fit in any classical list

of liberties, there is, of course, no such expressly mentioned right in either the Universal Declaration, the ICCPR [the International Convention on Civil and Political Rights], or any other international human rights instrument. . . .

There is a sense, moreover, in which, in this specific context, the Convention switches the focus from rights as such to certain phenomena which are perceived as the root cause of rights violations, at least for persons with disability. One explanation is that “exploitation, violence and abuse,” as phenomena rather than particular manifestations of rights abuse (torture, attacks on the integrity, or on liberty), manage to capture structures of oppression that lie behind rights violations. “Exploitation, violence and abuse” also appear as phenomena that are unusually amorphous, even all-pervasive, and which naturally locate themselves beyond the limited realm of the state’s relationship to individuals within its jurisdiction. Article 16’s specific reference to protection “both within and outside the home” points very directly in this direction, by suggesting “the home” as one of the key variables in assessing “exploitation, violence and abuse”—a very unusual step in international human rights law.

A second example of how the Disabilities Convention creates, through some of its reordering, rights which are quite specific to persons with disabilities, is the at least implicitly promoted “right to participation,” as embodied in the Convention’s reference to “full and effective participation and inclusion in society.” This idea is promoted as one of the Convention’s “General Principles”⁹⁰ rather than a right as such. Overall, however, it comes very close to emerging as a right as such.

Like “freedom from exploitation, violence and abuse,” “participation” is not a right that is protected as such in the main international human rights instruments. Nonetheless, like “freedom from exploitation,” it appears as both a combination of existing rights, and an extrapolation on those. In terms of existing rights, “participation” incorporates the right to participate “in political and public life”⁹¹

90 CRPD, art. 3.

91 CRPD, art. 29.

(which is not mentioned as such in existing human rights instruments, but is another way of describing political rights) and the right to participate in cultural life, recreation, leisure and sport (which is protected as such in the UDHR).⁹² These rights are amplified in the context of disability so that, for example, “participation in political and public life” includes such an obligation for states as that of promoting actively “an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs.”⁹³ “Participation in cultural life, recreation, leisure and sport” is similarly supplemented by a number of provisions regarding its scope when it comes to persons with disabilities.

The vision of a “right to participation,” however, goes further than these two rights taken together. Lack of participation in society and in the community are seen both as an inherent part of the very definition of disability, a cause of persons with disabilities’ dismal rights experience, and what the Convention seeks to combat primarily.⁹⁴ The whole Convention is infused by this notion of “participation” being something akin to a right more generally. That right goes beyond participation as the ability to stand and vote for public office, for example, or participate specifically in “cultural life, recreation, leisure and sport.”⁹⁵ Rather, it is a broader demand, made not only to the state but also to society, to allow persons with disabilities to fully become members of society and the various communities of which they are part....

Very closely related to this notion of participation (and in itself an undeniably new right) is the right to “live in the community.”⁹⁶ Again, this is a right that is not protected in any existing international human rights instruments, largely because it is assumed to be unproblematic in the case of persons without disabilities and to be subsumable

under larger rights (e.g. freedom from the state interfering with it). In the case of persons with disabilities, the right needs to be not so much protected from its potential denial by the state, as rescued from its potential virtuality....

V. Innovation: Disability Rights As (Human) Rights Inherent to Persons With Disabilities

A further manifestation of the Disabilities Convention’s willingness to endorse the idea that certain rights are specific to members of certain groups is that, in a limited way, the Convention is actually going further than merely extending existing rights, and that it comes very close to either creating new rights or formulating rights in the context of disability that have never been framed as such.

The most significant and perhaps only example of this type of right in the Convention is what I would describe as a significant push towards promoting a concept of persons with disabilities’ “autonomy.” Although not defined in the Convention, autonomy refers to the ability of persons with disabilities to do things on their own without the assistance of others and is linked to the right to be “free to make one’s own choices,” which is highlighted in the Preamble as being of “importance” to persons with disabilities.⁹⁷ The Convention may fall short of proclaiming a right to autonomy, but respect for the autonomy of persons with disabilities is certainly presented as one of the Convention’s “General Principles.”⁹⁸ This “general principle,” furthermore, receives substantial echo in the rest of the Convention, with state parties being pressured to take a broad range of measures to facilitate the exercise of that autonomy....

Article 12 is, perhaps, the high point of this drive to “proclaim” persons with disabilities’

92 UDHR, art. 27; ICESCR, art. 15.

93 CRPD, art. 29(b).

94 CRPD, Preamble.

95 CRPD, art. 30.

96 CRPD, art. 19.

97 CRPD, Preamble.

98 CRPD, art. 3(a).

autonomy, which recognizes the principle of persons with disabilities' legal capacity, in what must surely be one of the Convention's greatest advances. This comes close to the right to be recognized as a "legal person" as expressed in the ICCPR, but the insistence on capacity (rather than merely personhood), in a context where it has often been denied to persons with disability, is particularly enlightening. It comes as a sort of legal culmination of the recognition of autonomy: it is because of their fundamental autonomy that persons with disability should be granted the legal capacity that is its natural extension....

Autonomy, however familiar it may be to the conceptual apparatus of human rights, is not included as a right in any of the existing international human rights instruments. No mention is made of it in either the Universal Declaration, the ICCPR, or any of the leading international human rights instruments.

The reason for this omission is not hard to fathom: in accordance with an old liberal, particularly Kantian idea of rights, autonomy is presumed in these instruments as what gives rise to rights, so that it need not be specified. Autonomy is, in a sense, antecedent to the logic of rights. Indeed, autonomy is probably one of the things that renders the individual capable of enjoying these rights (as opposed to merely being their more—or less—passive recipient) and, therefore, of fully participating in the realm of rights. The point is that it would not make sense to proclaim a right to autonomy in the case of persons without disabilities because such individuals have historically captured the human rights middle-ground by imposing the norm of the autonomous, self-determining agent. Autonomy is therefore not something granted or encouraged in any particular way. Rather, it is effectively what human rights seek to protect.

Conversely, it is because autonomy is often precisely what persons with disabilities lack, at least in part, that the Convention must bring to light that which is otherwise implicit, as it attempts to ground the "human rights" of persons with disabilities into, if not a right to be autonomous, at least an attempt to augment their effective autonomy to

a point where their rights can be made effective. The Convention's efforts, in that respect, might be seen as helping to "constitute" people with disabilities more fundamentally as full rights-holders. The Disabilities Convention, therefore, almost has a pre-rights logic in that it strives to equalize the ability of disabled persons to make the most of their rights with that of the rest of the population. In that, arguably, the Convention creates a new layer of deeper rights or brings to the fore a layer of rights that is normally sedimented in rights discourse....

VI. Conclusion

... The Convention is testimony to the significant need for specific human rights instruments when it comes to certain categories of humanity whose condition has made them uniquely vulnerable to human rights violations and who are insufficiently protected by the existing, mainstream vocabulary of rights.

In this light, the phenomenon of human rights "pluralization" can be assessed more generally. If specific treaties are needed for particular groups of human beings, or types of individuals within humanity, it is not simply because they have more or less accidentally been left on the wayside of human rights. It seems, on the contrary, that there has been something insufficiently sensitive to humanity's pluralism about the principal human rights instruments. The Disabilities Convention is one of the most significant attempts to correct that excessive "unitary-ness" of human rights, in one particular context.

What these international human rights treaties have "missed" when it comes to persons with disabilities is a variety of things. First, they have been insufficiently alert to the fact that persons with disabilities might be flatly denied their rights, and missed the obvious fact that it would help, for example, to specify that disability can be a ground for discrimination. Second, they have been inattentive to the extent to which different rights may mean different things for different persons, so that certain rights can only be fully realized if their content and the road to their implementation are quite narrowly defined in the treaties themselves, bearing in mind

the particular circumstances of those they seek to protect. Third, the existing international human rights regime has poorly understood the fact that the state is not always the main threat to the realization of human rights of some, and the risk that social structures, prejudices, the community, or the family pose in processes of exclusion, oppression, discrimination, or violence. Fourth, and at a deeper level, a concept of human rights that presupposes that all individuals are equal because they are all fundamentally alike can become oblivious to the fact that persons with disabilities, for example, are not autonomous in the same way as persons without disabilities....

They are rights of persons with a disability by virtue of being human and, therefore, being entitled to whatever it takes for these human rights to be realized. I would describe them as “disability human rights:” rights that are specific to persons with disabilities, yet rooted in the universality of rights. The Disabilities Convention confirms an idea for the international human rights movement that is capital and increasingly accepted, yet complex and rich with implications: that there are rights that can and should be guaranteed universally, yet whose formulation and scope needs to be tailored to the specific experience of a particular category of humanity.

14.

DEBATING THE FUTURE OF HUMAN RIGHTS

Since the end of the Cold War, we have witnessed a cascade of crises, each worsening the other in an avalanche of despair. As reviewed in Chapters 11–13, these include environmental degradation, rampant conflicts, growing economic inequity and precarity, vast numbers of refugees, populism and nationalism, weakened democracies, and the erosion of the liberal order, all contributing to a climate of xenophobia, racism, and sexism. These downward trends were further exacerbated by a major global crisis: the Covid-19 pandemic. The unfolding distress of this historical moment, however, could also offer new opportunities to strengthen global cooperation based on human rights. Accelerating advances in digital technologies may provide a platform for change, but these capabilities also bring new risks. Our times require new mindsets, and a stronger internationalist compact that can address worsening human rights violations. The following chapter debates the future of human rights in light of new technologies; it addresses in particular the impact of digital technology, artificial intelligence, the pandemic, and bioengineering.

Questions for Chapter 14

1. How does digital technology both advance and threaten human rights?
2. How does surveillance capitalism undermine collective action and human rights?
3. What are the positive and negative impacts of Artificial Intelligence on human rights?
4. What guiding principles might curtail the adverse human rights effects of digital surveillance and AI?
5. In what ways did the pandemic create a more authoritarian world?
6. What opportunities present themselves in the midst of current global calamities?
7. Should germline editing be banned by the international community? Why or why not?
8. What existing human rights laws and agreements have relevance for the questions debated in this chapter?

Digital Surveillance, Discrimination, and Human Rights

United Nations High Commissioner for Human Rights Michelle Bachelet addressed the perils of human rights in the digital age in a 2019 keynote speech in New York. She recognized the enormous benefit of international digital communications in the defense and promotion of human rights. At the same time, she warned her audience that one cannot disregard the “dark side” of the technological revolution, as online threats and cyberbullying “lead to real world targeting, harassment, violence and murder, even to alleged genocide and ethnic cleansing.” As data is accumulating on a global scale, it threatens free and

fair elections, freedom of speech, and facilitates fake news. It is more important than ever, she said, to empower people to control their own data, and to obtain remedies for its misuse. She calls for governmental protections that will safeguard individual rights while avoiding overreach – a delicate balance that will be assessed differently by the selections in this chapter (see Section 14.1).

The American sociologist Shoshana Zuboff focuses on the dark monetized side of data extraction for profit. In “Surveillance Capitalism and the Challenge of Collective Action” (2019), Zuboff explains how social media companies secretly hoard private data and use it to generate behavior that would lead to greater consumption and profit. The conditioning of behavior is institutionalized in “commercial practices in which individuals are called on to fund their own domination.” This new “instrumentation” of power has the surreptitious capacity to undermine personal self-determination and moral autonomy unless it is challenged by new forms of collective action in a democratic context. In a second selection (also from 2019), Zuboff draws from Hannah Arendt’s notion of the right to have rights – an elemental manifestation of human determination as the a priori foundation for new legislation that will curtail unregulated capitalism (see Sections 14.2 and 14.3).

As Michelle Bachelet points out, digital technology has both helped and hampered those striving for human rights. American philosopher Andrew Feenberg (2019) notes that the Internet has accelerated the spread of protest, providing a medium where “explosive short-term movements emerge and coordinate.” But the Internet can also become an apparatus of unchecked political propaganda, or devolve into a digital mall, unless governments find ways to regulate its excesses (see Section 14.4).

14.1 Michelle Bachelet: “Human Rights in the Digital Age” (2019)¹

Focusing on human rights in the digital age is key. Data collection is already happening on an industrial scale. States, political parties, various organizations and, in particular, businesses hold remarkably detailed and powerful information about us. More and more aspects of our lives are being digitally tracked, stored, used – and misused. Just think, all of us here today with a smartphone will have created a digital trail leading right to this room.

Digital technology already delivers many benefits. Its value for human rights and development is enormous. We can connect and communicate around the globe as never before. We can empower, inform and investigate. We can use encrypted communications, satellite imagery and data streams to directly defend and promote human rights. We can even use artificial intelligence to predict and head off human rights violations.

But we cannot ignore the dark side. I cannot express it more strongly than this: The digital revolution is a major global human rights issue.

Its unquestionable benefits do not cancel out its unmistakable risks.

Neither can we afford to see cyberspace and artificial intelligence as an ungoverned or ungovernable space – a human rights black hole. The same rights exist online and offline. The UN General Assembly and the Human Rights Council have affirmed this.

We should not feel overwhelmed by the scale or pace of digital development, but we do need to understand the specific risks.

A lot of our attention is rightly focused on challenges to freedom of expression online and incitement to hatred and violence. Online harassment, trolling campaigns and intimidation have polluted parts of the internet and pose very real off-line threats, with a disproportionate impact on women. In the most deadly case, social media posts targeted the Rohingya community in Myanmar in the run-up to the mass killings and rapes in 2017. Human rights investigators found that Facebook – and its algorithmically driven news feed – had helped spread hate speech and incitement to violence.

1 Michelle Bachelet, “Human Rights in the Digital Age – Can They Make a Difference?” Keynote speech to Japan Society, New York, October 17, 2019.

These grave violations of human rights leave no room for doubt. Threats, intimidation, and cyberbullying on the internet lead to real world targeting, harassment, violence and murder, even to alleged genocide and ethnic cleansing. Failure to take action will result in further shrinking of civic space, decreased participation, enhanced discrimination, and a continuing risk of lethal consequences – in particular for women, minorities and migrants, for anyone seen as “other”.

But over-reaction by regulators to rein in speech and use of the online space is also a critical human rights issue. Dozens of countries are limiting what people can access, curbing free speech and political activity, often under the pretense of fighting hate or extremism. Internet shutdowns seem to have become a common tool to stifle legitimate debate, dissent and protests. The NGO Access Now counted 196 shutdowns in 25 states in 2018, almost three times the number (75) recorded in 2016.

Some States are deliberately tarnishing the reputations of human rights defenders and civil society groups by posting false information about them or orchestrating harassment campaigns. Others are using digital surveillance tools to track down and target rights defenders and other people perceived as critics.

Alongside these very real dangers – under-regulation, over-regulation and deliberate misuse – we are also seeing unprecedented risks to the right to privacy. Safeguards around privacy are failing in far too many cases. Many might be completely unaware of who holds their data or how it is being used.

And because data is held on a vast scale, the risks and impacts of its misuse are also vast. The dark end of the digital spectrum threatens not just privacy and safety, but undermines free and fair elections, jeopardises freedom of expression, information, thought and belief, and buries the truth under fake news. The stakes could not be higher – the direction of countries and entire continents.

This is significant not just as a privacy issue, but in relation to the large-scale harvesting and misuse of data, and the manipulation of voters. We have

seen this reported in the US presidential election, the UK's Brexit referendum, and polls in Brazil and Kenya. Newspapers including the Guardian, along with dedicated public officials, have been instrumental in bringing some of these abuses into the public domain.

As the digital revolution continues to unfold, the use of technology for both legitimate and illegitimate purposes will increase. States and businesses are already using data-driven tools that can identify individuals as potential security threats, including at borders and in criminal justice systems. Artificial intelligence systems assess and categorize people; draw conclusions about their physical and mental characteristics; and predict their future medical conditions, their suitability for jobs, even their likelihood of offending. People's profiles, “scoring” and “ranking” can be used to assess their eligibility for health care, insurance and financial services.

So alongside the human rights abuses I've described, we find a whole new category – this time not necessarily deliberate, not the result of a desire to control or manipulate, but by-products of a legitimate drive for efficiency and progress.

Real world inequalities are reproduced within algorithms and flow back into the real world. Artificial intelligence systems cannot capture the complexity of human experience and need. Digital systems and artificial intelligence create centers of power, and unregulated centers of power always pose risks – including to human rights.

We already know what some of these risks look like in practice. Recruitment programs that systematically downgrade women. Systems that classify black suspects as more likely to reoffend. Predictive policing programs that lead to over-policing in poor or minority-populated areas. The people most heavily impacted are likely to be at the margins of society. Only a human rights approach that views people as individual holders of rights, empowers them and creates a legal and institutional environment to enforce their rights and to seek redress for any violations and abuses of rights, can adequately address these challenges.

Digital technology is being used not just to monitor and categorize, but to influence. Our data

is not just digitized, but monetized and politicized. Digital processes are now shaping us as well as serving us. We are right to feel profoundly concerned about how Big Data, artificial intelligence and other digital technologies are impacting our lives and society.

We are also right to highlight the situation of people who work in the digital industry, often in precarious employment or the gig economy, who lose all the benefits that come with secure jobs. It's essential that they can enjoy their full human rights, including the right to join unions and to strike. In some cases, this may help curb business excesses.

These challenges drive us back to the timeless principles of the Universal Declaration of Human Rights. Each person is equal, an individual with inalienable rights and inherent dignity. Each person has the right to live his or her life free from discrimination, to political participation, privacy, health, liberty, a fair trial. Each person has the right to life.

To respect these rights in our rapidly evolving world, we must ensure that the digital revolution is serving the people, and not the other way round. We must ensure that every machine-driven process or artificial intelligence system complies with cornerstone principles such as transparency, fairness, accountability, oversight and redress.

But whose responsibility is it to tackle these multiple, complex risks that cross cultures, national boundaries and legal jurisdictions? States that hold the primary duty to protect human rights and ensure remedies? Businesses that can change the way they work? International organizations that can seek cross-border solutions? Academics? Journalists? Parliamentarians? Human rights defenders? NGOs and civil society groups?

I believe the answer is all of the above, in partnership, with a sense of shared responsibility and ownership. We need a universal human response in defense of universal human rights.

And do we address these challenges using ethics or human rights? It is very encouraging that some States, regional blocs, businesses, academics and other passionate, far-sighted people have shown great leadership in developing ethical guidelines to

overcome injustice and discrimination. But I also believe that guidelines, codes of conduct and voluntary compliance are not, by themselves, a robust enough response to the scale of the challenges we face.

Data is power, Big Data is big power – and all power is capable of being misused. This is true in any context, and the digital world is no different. The international human rights framework takes us further than ethics alone in placing the necessary checks and balances on this power. It provides a concrete, legal foundation on which States and firms can build their responses in the digital age. It provides very clear guidance on acceptable behavior – and equally importantly, it has already been established and agreed to by States. Alongside the Universal Declaration, we have numerous conventions, treaties, courts, commissions and other institutions that can hold States and companies to account.

Human rights and ethical approaches do not run counter to each other. As a recent World Economic Forum publication on the responsible use of technology makes clear, they can work alongside each other, resulting in a powerful combination where human rights reinforce ethics, and ethics reinforce human rights.

In fact, if we are to get the very best from the digital revolution, we need this kind of non-binary thinking in all our responses with the human rights framework as a guiding compass. A human rights framework and ethical standards. Obligations and responsibilities. States and businesses. Artificial intelligence and human dignity. Guarantees of free speech and clear protection from hate speech.

This means robust responses from governments, with policies that incorporate a duty to protect the full range of rights – with due consideration to social, cultural, and economic rights – when laws, guidelines and regulations are drawn up. It means tech giants showing leadership in their business practices. It means empowering people to control decisions on use of their personal data. It means ensuring the marginalized and poorest sections of our societies have access to remedies when their data is misused, or when they are

subject to discriminatory decisions from automated decision-making processes. It means conducting human rights impact assessments at every stage of the development and deployment of artificial intelligence systems – this is a very important area where companies and researchers can show responsibility and leadership.

But governments and companies do not need to start from scratch. Alongside the UN Guiding Principles on Business and Human Rights, we have excellent examples of guidance in specific sectors, such as the European Union's ICT Sector Guidance on implementing the Guiding Principles, the Telecommunications Industry Dialogue and the GNI Principles and Guidelines.

There is no part of the digital revolution that cannot and should not be viewed from a human rights perspective. We need to constantly seek out and assess gaps in protection. This doesn't just mean passing new laws that keep pace with digital developments, but also adapting the way we use institutions and processes. We need institutions that keep the power of data-driven companies and States in check. We can protect rights effectively only if we constantly fine-tune our processes to find the right mix of interventions.

Government-led regulation of online space can of course raise its own issues, in particular if the fundamental guarantees of rule of law are not respected: in particular equality under the law, fairness, and accountability.

Let's not forget: whenever we regulate social media, we determine what people are able to say and what they can see and hear in a world that's become a dominant place for public debate and public life. So our interventions must be well-designed and avoid overreach at all cost. If regulation is needed, we should explore focusing on conduct of platforms rather than view-point-based regulation. The best solutions will be found by working in partnership, sharing best practices, and studying the detailed outcomes of national regulatory systems, including any unintended consequences.

There is already an urgent need for governments, social media platforms and other businesses to protect the fundamental pillars of democratic society, rule of law, and the full range of our rights on line: a need for oversight, accountability and responsibility. As the digital frontiers expand, one of our greatest challenges as a human rights community will be to help companies and societies to implement the international human rights framework in the land we have not yet reached. This includes clear guidance on responsibilities of business as well as the obligations of States.

At its best, the digital revolution will empower, connect, inform and save lives. At its worst, it will disempower, disconnect, misinform and cost lives.

Human rights will make all the difference to that equation.

14.2 Shoshana Zuboff: "Surveillance Capitalism and the Challenge of Collective Action" (2019)²

What is Surveillance Capitalism?

In our time, surveillance capitalism repeats capitalism's "original sin" of primitive accumulation. It revives Karl Marx's old image of capitalism as a vampire that feeds on labor, but with an unexpected turn. Instead of claiming work (or land, or wealth) for the market dynamic as industrial capitalism once did, surveillance capitalism audaciously lays claim to private experience for translation into fungible commodities that are rapidly swept up into the exhilarating life of the market. Invented at Google and elaborated at Facebook in the online milieu of targeted advertising, surveillance capitalism embodies a new logic of accumulation. Like an invasive species with no natural predators, its financial prowess quickly overwhelmed the networked sphere, grossly disfiguring the earlier dream of digital technology as an empowering and emancipatory force. Surveillance capitalism can no longer be identified with individual companies

2 Shoshana Zuboff, "Surveillance Capitalism and the Challenge of Collective Action," *New Labor Forum*, Vol. 28, No. 1 (January 2019), 10–29. Editor: For space considerations, some explanatory notes have been omitted.

or even with the behemoth information sector. This mutation quickly spread from Silicon Valley to every economic sector, as its success birthed a burgeoning surveillance-based economic order that now extends across a vast and varied range of products and services.

While the titanic power struggles of the twentieth century were between industrial capital and labor, the twenty-first century finds surveillance capital pitted against the entirety of our societies, right down to each individual member. The competition for surveillance revenues bears down on our bodies, our automobiles, our homes, and our cities, challenging human autonomy and democratic sovereignty in a battle for power and profit as violent as any the world has seen. Surveillance capitalism cannot be imagined as something “out there” in factories and offices. Its aims and effects are here ... are us.

Just as surveillance capitalism can no longer be conflated with an individual corporation, neither should it be conflated with “technology.” Digital technologies can take many forms and have many effects, depending on the social and economic logics that bring them to life. The economic orientation is the puppet master; technology is the puppet. Thus, surveillance capitalism is not the same as algorithms or sensors, machine intelligence or platforms, though it depends on all of these to express its will. If technology is bone and muscle, surveillance capitalism is the soft tissue that binds the elements and directs them into action. Surveillance capitalism is an economic creation, and it is therefore subject to democratic contest, debate, revision, constraint, oversight, and may even be outlawed.

The primacy of economics over technology is not new, but capitalism has long found it useful to confound society by concealing itself within the Trojan horse of technology, in order that its excesses might be perceived as the inexorable expression of the machines it employs. Surveillance capitalists are no exception. For example, in 2009 the public first became aware that Google maintains search

histories indefinitely. When questioned about these practices, the corporation’s former CEO Eric Schmidt explained, “... the reality is that search engines including Google do retain this information for some time.”³ In truth, search engines do not retain, but surveillance capitalism does. Schmidt’s statement is a classic of misdirection that bewilders the public by conflating commercial imperatives and technological necessity.

Surveillance capitalism is not inevitable but it is unprecedented. It operates through the instrumentation of the digital milieu, as it relies on the increasingly ubiquitous institutionalization of digital instruments to feed on, and even shape, every aspect of every human’s experience. Although it is easy to imagine the digital without surveillance capitalism, it is impossible to imagine surveillance capitalism without the digital. In pursuing these operations, surveillance capitalism is compelled by economic imperatives and “laws of motion,” which produce extreme asymmetries of knowledge and power. Together the new capitalism and its unique production of power are as untamed by law as were the capitalism and economic power of the Gilded Age, and its consequences, though wholly distinct, are just as dangerous.

A century ago, Americans learned to master new forms of collective action that leveraged their roles as workers and customers to challenge, interrupt, and outlaw the worst injustices of raw industrial capitalism. The full resources of our democracy were eventually brought to bear in new legislative and regulatory institutions that subordinated the laws of supply and demand to higher order laws aimed at fostering and defending the conditions of a more equal, fair, and humane society. Will existing forms of collective action be sufficient to tame, interrupt, or outlaw the unprecedented operations of surveillance capitalism? How might a deeper grasp of its mechanisms, imperatives, and production of power illuminate both its unique threats to people and democratic society as well as the novel challenges it presents to collective action in our age?

3 Jared Newman, “Google’s Schmidt Roasted for Privacy Comments,” PCWorld, December 11, 2009.

Surveillance Capitalism's Origins and "Laws of Motion"

... Most people credit Google's success to its advertising model, but the discoveries that led to Google's rapid rise in revenue and market capitalization are only incidentally related to advertising. Google's success derives from its ability to predict the future—specifically the future of human behavior. From the start, Google had collected data on users' search-related behavior as a by-product of query activity. Back then, these data logs were treated as waste, not even safely or methodically stored. Eventually, the young company came to understand that these logs could be used to teach and continuously improve its search engine. The problem was this: Serving users with effective search results "used up" all the value that users created when they inadvertently provided behavioral data. It was a complete and self-contained process in which users were ends-in-themselves. All the value that users created was reinvested in their experience in the form of improved search, a progression that I have called the behavioral value reinvestment cycle. In this interaction, there was nothing "left over," no surplus for Google to turn into capital. In 2001 Google was remarkable, but it wasn't yet capitalism—just one of many internet startups that boasted "eyeballs" but no revenue.

The year 2001 brought the dot.com bust and mounting investor pressures at Google. Back then advertisers selected the search term pages for their displays. Google decided to try and boost ad revenue by applying its already substantial analytical capabilities to the challenge of increasing an ad's relevance to users—and thus its value to advertisers. Operationally this meant that Google would finally repurpose its growing cache of "useless" behavioral data. Now the data would be used to match ads with keywords, exploiting subtleties that only its access to behavioral data, combined with its analytical capabilities, could reveal.

It's now clear that this shift in the use of behavioral data was an historic turning point. Behavioral data that were once discarded or

ignored were rediscovered as what I call *behavioral surplus*: data reserves that are more than what is required for product and service improvements. Google's dramatic success in "matching" ads to pages revealed the transformational value of this behavioral surplus as a means of generating revenue and ultimately turning investment into revenue.

Key to this formula was the fact that this new market exchange was not an exchange with users but rather with companies that understood how to make money from bets on users' future behavior. In this new context, users were no longer ends-in-themselves. Instead they became a means to profits in new *behavioral futures markets* in which users are neither buyers nor sellers nor products. Instead, users are the *human natural source* of free raw material that feeds a new kind of manufacturing process designed to fabricate *prediction products*. These products are calculations that predict what individuals and groups will do now, soon, and later....

Google had discovered a way to translate its non-market interactions with users into surplus raw material for the fabrication of products aimed at genuine market transactions with its real customers: advertisers....

That behavioral surplus that became the defining element of Google's success was well understood by its leaders. Google's former CEO Eric Schmidt credits Hal Varian's early development of the firm's ad auctions with providing the eureka moment that clarified the true nature of Google's business, "All of a sudden, we realized we were in the auction business," referring to the automated behavioral futures markets deployed in ad targeting. But Larry Page is credited with a different and far more insightful answer to the question, "What is Google?" Former Google executive Douglas Edwards recounts a 2001 session with the founders that probed their answers to that precise query. It was Page who ruminated, "If we did have a category, it would be personal information.... The places you've seen. Communications.... Sensors are really cheap.... Storage is cheap. Cameras are

cheap. People will generate enormous amounts of data.... Everything you've ever heard or seen or experienced will become searchable. Your whole life will be searchable."⁴ ...

Surveillance capitalism originates in this act of *digital dispossession*, operationalized in the rendition of human experience as behavioral data. This is the lever that moved Google's world and shifted it toward profit, changing the trajectory of information capitalism as it claimed undefended human experience for a market dynamic that would encounter no impediment in the lawless spaces of the internet....

In the case of surveillance capitalism, camouflage, euphemism, and other methodologies of secrecy aim to prevent interruption of critical supply chain operations that begin with the rendition of human experience and end with the delivery of behavioral data to machine intelligence-based production systems. These operations of secrecy-by-design turn us into exiles from our own behavior, denied access to or control over knowledge derived from our experience. Knowledge and power rest with surveillance capital for which we are merely "human natural" resources. We are the native peoples now whose tacit claims to self-determination have vanished from the maps of our own lives....

The typical complaint is that privacy is eroded, but that is misleading. In the larger societal pattern, privacy is not eroded but redistributed, as decision rights over privacy are claimed for surveillance capital. Instead of many people having the right to decide how and what they will disclose, these rights are concentrated within the domain of surveillance capitalism. Google discovered this necessary element of the new logic of accumulation: it must declare its rights to take the information on which its success depends. These operational necessities paved the way for what would eventually become the unprecedented asymmetries of knowledge over which surveillance capitalists now preside....

Economic Imperatives

... While behavioral surplus must be vast and varied, surveillance capitalists gradually came to understand that the surest way to predict behavior is to intervene at its source and shape it. The processes invented to achieve this goal are what I call *economies of action*.

Of course, advertisers and their clients have always tried to shape customer behavior through priming, suggestion, and social comparison. What distinguishes today's efforts is that not only do they extend beyond advertising, but they employ a ubiquitous digital architecture—Page's "cheap sensors"—that is finally able to automate the continuous comprehensive monitoring and shaping of human behavior with unprecedented accuracy, intimacy, and effectiveness. Economies of scale and scope are well-known industrial logics, but automated economies of action are distinct to surveillance capitalism and its digital milieu.

In order to achieve these economies of action, machine processes are configured to intervene in the state of play in the real world among real people and things. These interventions are designed to augment prediction products in order that they approximate certainty by "tuning," "herding," and conditioning the behavior of individuals, groups, and populations. These economies of action apply techniques that are as varied as inserting a specific phrase into your Facebook news feed, timing the appearance of a BUY button on your phone with the rise of your endorphins at the end of a run, shutting down your car engine when an insurance payment is late, or employing population-scale behavioral microtargeting drawn from Facebook profiles. Indeed, the notorious manipulations of the data firm Cambridge Analytica, which scandalized the world in 2018, simply appropriated the means and methods that are now both standard and necessary operations in the surveillance capitalism arsenal....

4 Douglas Edwards, *I'm Feeling Lucky* (Boston: Houghton Mifflin Harcourt, 2011), 291.

What began as an *extraction architecture* now doubles as an *execution architecture* through which hidden economic objectives are imposed on the vast and varied field of behavior. As surveillance capitalism's imperatives and the material infrastructures that perform extraction and execution operations begin to function as a coherent whole, they produce a twenty-first-century *means of behavioral modification* to which the means of production is subordinated as merely one part of this larger cycle.

The means of behavioral modification does not aim to compel conformity to or compliance with social norms, as has been the case with earlier applications of the behaviorist paradigm. Rather, this new complex aims to produce behavior that reliably, definitively, and certainly leads to predicted commercial results for surveillance customers....

Ultimately behavioral modification capabilities are institutionalized in "innovative" commercial practices in which individuals are called on to fund their own domination....

This phase of surveillance capitalism's evolution finally strips away the illusion that the networked form has some kind of indigenous moral content—that being "connected" is somehow intrinsically pro-social, innately inclusive, or naturally tending toward the democratization of knowledge. Instead, digital connection is now a brazen means to others' commercial ends. Such a self-authorizing power has no grounding in democratic legitimacy, usurping decision rights, and eroding the processes of individual autonomy that are essential to the function of a democratic society. The coda here is simple: *Once I was mine. Now I am theirs.*

The Rise of Instrumentarian Power

... As to the new species of power, I have suggested that it is best understood as instrumentarianism, defined as the *instrumentation and instrumentalization of human behavior for the purposes of modification, prediction, monetization, and control*. In this formulation, "instrumentation" refers to the ubiquitous, sensate, computational, actuating global architecture

that renders, monitors, computes, and modifies, replacing the engineering of souls with the engineering of behavior. There is no brother here of any kind, big or little, evil or good—no family ties, however grim. Instead this new global apparatus is better understood as a *Big Other* that encodes the "otherized" viewpoint of radical behaviorism as a pervasive presence....

The Challenge to Collective Action

How do they get away with it? Dozens of surveys conducted since 2008 attest to substantial majorities in the United States, the European Union, and around the world that reject the premises and practices of surveillance capitalism, yet it persists, succeeds, grows, and dominates, remaining largely uncontested by either existing or new forms of collective action. In other work I have detailed sixteen conditions that enabled this new logic of accumulation to root and flourish. Here I want to underscore two of these conditions: The first is the absence of organic reciprocities between surveillance capitalist firms and their populations. This absence produces the second condition, in which *dependency* replaces reciprocity as the fulcrum of this commercial project.

A first answer to the question "How do they get away with it?" concerns a novel structural feature of this market form that diverges sharply from the history of market democracy. For all the failings, injustice, and violence of earlier forms of modern capitalism, the necessity of organic reciprocities with its populations has been a mark of endurance and adaptability. Symbolized in the twentieth century by Ford's five-dollar day, these reciprocities reach back to Adam Smith's original insights into the productive social relations of capitalism, in which firms rely on people as employees and customers. Smith argued that price increases had to be balanced with wage increases "so that the laborer may still be able to purchase that quantity of those necessary articles which the state of the demand for labor ... requires that he should have."⁵ By the 1980s, globalization and neoliberal ideology, operationalized in the shareholder-value movement,

5 Smith, *The Wealth of Nations*, 939–940.

went a long way toward destroying these centuries-old reciprocities between capitalism and its communities. Surveillance capitalism completes the job.

First, surveillance capitalists no longer rely on people as consumers. Instead, the axis of supply and demand orients the surveillance capitalist firm to businesses intent on anticipating the behavior of populations, groups, and individuals. The result is that populations are conceptualized as undifferentiated “users,” who are merely the sources of raw material for a digital-age production process aimed at a new business customer....

The absence of consumer reciprocities is complemented by the absence of employment reciprocities. By historical standards the large surveillance capitalists employ relatively few people compared to their unprecedented computational resources. This pattern, in which a small, highly educated workforce leverages the power of a massive capital-intensive knowledge-production infrastructure, is called “hyperscale.” The historical discontinuity of the hyperscale business operation becomes apparent by comparing seven decades of General Motors (GM) employment levels and market capitalization to recent post-IPO (initial public offering) data from Google and Facebook. (I have confined the comparison here to Google and Facebook because both were pure surveillance capitalist firms even before their public offerings.)

... Economists Daron Acemoglu and James A. Robinson show that the rise of democracy in nineteenth-century Britain was inextricably bound to industrial capitalism’s dependency on the “the masses” and their contribution to the prosperity made possible by the new organization of production. Acemoglu and Robinson conclude that the “dynamic positive feedback” between “inclusive economic institutions” (i.e., institutions defined by reciprocities) and political institutions was critical to Britain’s substantial and non-violent democratic reforms. Inclusive economic institutions, they argue, “level the playing field,” especially when it comes to the fight for power, making it more difficult for elites

to “crush the masses” rather than accede to their demands. Reciprocities in economics produced and sustained reciprocities in politics. “Clamping down on popular demands,” they write, “and undertaking a coup against inclusive political institutions would ... destroy ... [economic] gains, and the elites opposing greater democratization and greater inclusiveness might find themselves among those losing their fortunes from this destruction.”⁶

The spread of democracy also depended on the reciprocities of consumption, and the American Revolution is the outstanding example of this dynamic. Historian T.H. Breen argues in his path-breaking book, *The Marketplace of Revolution*, that it was the violation of these reciprocities that set the American Revolution into motion, uniting disparate provincial strangers into a radical new patriotic force. Breen explains that American colonists had come to depend on the “empire of goods” imported from England, and that this dependency instilled the sense of a reciprocal social contract: “For ordinary people, the palpable experience of participating in an expanding Anglo-American consumer market” intensified their sense of a “genuine partnership” with England. Eventually, the British Parliament famously misjudged the rights and obligation of this partnership, imposing a series of taxes that turned imported goods such as cloth and tea into “symbols of imperial oppression.” ...

Industrial civilization flourished at the expense of nature and threatens to cost us the earth. An information civilization shaped by surveillance capitalism and its new instrumentarian power will thrive at the expense of human nature, especially the hard-won capacities associated with self-determination and moral autonomy that are essential to the very possibility of a democratic society. The industrial legacy of climate chaos fills us with dismay, remorse, and fear. If surveillance capitalism remains unchallenged as the dominant form of information capitalism in our time, what fresh legacy of damage and regret will be mourned by future generations? By the time you read these

6 Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (New York: Crown Business, 2012).

words, the reach of this new form will have grown, as more sectors, firms, start-ups, app developers, and investors mobilize around this one plausible version of information capitalism. This mobilization and the resistance it engenders will define a key battleground on which the next generation of collective action will be contested at the new frontier of power.

14.3 Shoshana Zuboff: On Digital Behavioral Control and the Right to Have Rights (2019)⁷

In earlier work I detail the historical conditions and forms of corporate action that enabled surveillance capitalism's successful pursuit and sustenance of lawless space. While a reprise of those arguments exceeds the space of this chapter, two conditions float above them all, and they merit emphasis. The first reverts to the sociology of the unprecedented, as the original action of instrumentarian power works its will before it can be adequately understood, thus enjoying a substantial lag in social evolution and the eventual production of law....

A second condition that has enabled the pursuit and protection of lawless operational spaces derives from surveillance capitalism's historical and material origins as both American born and "born digital." On both counts, surveillance capital has benefitted from the antiregulatory zeitgeist of US neoliberal economic policy and political ideology. In this respect surveillance capitalists have enjoyed a political windfall, not unlike the Gilded Age titans who exploited the absence of industry regulation in their time to claim undefended territory for their own interests, declare the righteousness of their self-authorizing prerogatives, and defend their brand of raw capitalism from democracy. Imbued with the conviction that "the state had neither right nor reason to interfere in the workings of the economy," Gilded Age millionaires joined forces to defend the "rights of capital" and limit the role of elected

representatives in setting policy or developing legislation....

Surveillance capitalists are impelled to pursue lawlessness by the logic of their own creation. Google and Facebook vigorously lobby to kill online privacy protection, limit regulations, weaken or block privacy-enhancing legislation, and thwart every attempt to circumscribe their practices because such laws threaten the flow of behavioral surplus.... Their efforts have been marked by a few consistent themes: that technology companies such as Google move faster than the state's ability to understand or follow; that any attempts to intervene or constrain are therefore fated to be ill-conceived and inept; that regulation is always a negative force that impedes innovation and progress; and that lawlessness is the necessary context for innovation.

Many hopes today are pinned on the new body of EU regulation known as the General Data Protection Regulation (GDPR), which became enforceable in May 2018. In time the world will learn if the GDPR can move out in front of Big Other, successfully challenging the legitimacy of surveillance capitalism, its means of behavioral modification, and its production of instrumentarian power. Scholars and specialists debate the implications of the sweeping new regulations, some arguing the inevitability of decisive change, and others arguing the likelihood of continuity over dramatic reversals of practice. The only possible answer is that everything will depend upon how European societies interpret the new regulatory regime in legislation and in the courts. It will not be the wording of the regulations but rather popular movements on the ground that shape these interpretations. Just as a century ago workers joined in collective action to tip the scales of power, today's "users" will have to mobilize in new ways that assert society's rejection of an economic order based on the dispossession of human experience as a means to the prediction and control of human behavior for others' profit....

7 Shoshana Zuboff, "‘We Make Them Dance’: Surveillance Capitalism, the Rise of Instrumentarian Power, and the Threat to Human Rights," *Human Rights in the Age of Platforms*, edited by Rikke Frank Jørgensen (Cambridge, MA: MIT Press, 2019), 3–41. Editor: For space considerations, some explanatory notes have been omitted. Those that have been retained have been converted from APA style to footnotes.

These and other contests over the extension of juridical rights to surveillance capitalism's market domain point us toward an even deeper crisis of human rights, delivering us head-on to Hannah Arendt's meta-formulation of the "right to have rights." Arendt's assertion peels away juridical achievements—she refers to these as the "Rights of Man"—revealing the a priori grounds upon which the very possibility of juridical rights rests. It is here on the ground of what I shall refer to as "elemental human rights" that I propose to consider the implications of surveillance capitalism and its instrumentarian power for the prospects of human freedom.

Instrumentarian Power as a Coup from Above

For Arendt, the "right to have rights" stands in contrast to juridical rights as indelible, "Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity."⁸ This is because the "right to have rights" equates to the "right of every individual to belong to humanity," and it "should be guaranteed by humanity itself."⁹ What does this belonging signify? For Arendt it means, above all, the possibility of effective life through voice and action, possibilities that are given in the elemental condition of inclusion in the human community. To belong to humanity is to belong to a world in which one can choose one's actions and exercise one's voice in ways that effectively further the aims of one's own life and the life of one's group.

How does the elemental condition of belonging to humanity translate into a "right to have rights"? Arendt argues that this conversion from elemental condition to explicit right arises only in the confrontation with a threat to the condition of inclusion:

We became aware of the existence of a "right to have rights" (and that means to live in a framework where one is judged by one's actions

and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation.... Not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people. Only the loss of a polity itself expels him from humanity.

Only exclusion from humanity itself, and thus exclusion from the elemental freedoms of voice and action, can abrogate the "right to have rights." "The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective."¹⁰

In this Arendt foreshadows the linguistic philosopher John Searle's "pragmatic considerations of the formulation of rights." Searle argues that elemental conditions of existence are crystallized as formal human rights only at that moment in history when they come under systematic threat. So, for example, the ability to speak is an elemental condition. The concept of "freedom of speech" as a formal juridical right emerged only when society evolved to a degree of political complexity that the freedom to speak came under threat. Searle observes that speech is not more central to human life than breathing or being able to move one's body. No one has declared a "right to breathe" or a "right to bodily movement" because these elemental conditions have not come under attack and therefore do not require formal protection. What counts as a basic right, Searle argues, is both "historically contingent" and "pragmatic."¹¹

It is not surprising then, that Arendt wrestled with the elemental human conditions of inclusion, voice, and action at a time when totalitarianism forced many philosophers and social theorists to

8 Hannah Arendt, *The Origins of Totalitarianism* (New York: Schocken, 2004), 377.

9 *Ibid.*, 379.

10 *Ibid.*, 376.

11 John R. Searle, *Making the Social World: The Structure of Human Civilization* (Oxford: Oxford University Press, 2010), 194–195.

question the structure of human freedom. Were there elemental constituents of human freedom that remain ineradicable, even in the teeth of “no escape” from a totalizing power? For the Arendt of *Origins* “action” was an indelible manifestation of freedom. Of those deprived of human rights under totalitarianism she wrote, “They are deprived, not of the right to freedom, but of the right to action.”¹²

It was a theme that she would elaborate throughout her life: action initiates. It asserts beginnings that diverge from established lines of force. Action inserts itself into the already composed human world to make something new. “To act ... means to take an initiative, to begin ... to set something into motion.”¹³ Arendt observes that every beginning, seen from the perspective of the framework that it interrupts, is a miracle. The capacity for performing such miracles is uniquely human. “What usually remains intact in the epochs of petrification and foreordained doom is the faculty of freedom itself, the sheer capacity to begin, which animates and inspires all human activities and is the hidden source ... of all great and beautiful things.”¹⁴

Key to our discussion is Arendt’s insistence that “this insertion is not forced upon us by necessity ... It may be stimulated by the presence of others whose company we may wish to join, but it is never conditioned by them; its impulse springs from the beginning which came into the world when we were born and to which we respond by beginning something new on our own initiative.”¹⁵ She explores this “impulse” in her extensive examination of “will,” which she characterizes as the “organ for the future” in the same way that memory is the mental organ for the past. When we recall the past, we see only objects, but the view to the future brings “projects” that are latent in our will but have not yet come to

be. Will is the organ with which we summon our futures into existence as we project ourselves into the future tense, make promises, and close the gap between present and future by fulfilling those promises as we translate the latent into the real.

These initiatives could have been “left undone” but for the inward freedom to project our commitments into the future and impose our will to see them through. It is not only that we make new beginnings, but also that these beginnings would not come into existence in the absence of our willing to undertake them. In this way, the future remains contingent on our will to create it and must therefore be understood as intrinsically unpredictable. Will is the human counterpoint to the fear of uncertainty that suffocates original action: “A will that is not free is a contradiction in terms.”¹⁶

These elemental manifestations of human self-determination, Arendt argues, derive from the capacity “to dispose of the future as though it were the present.” Will is the means by which we annex the future tense, transforming it into a territory for deliberation, choice, promises, and the initiation of new beginnings in the fulfillment of those promises. This is how we manage the inescapable uncertainty of existence and achieve, as individuals and as communities, some “limited independence from the incalculability of the future.” Arendt thus describes promises as “islands of predictability” and “guideposts of reliability” in an “ocean of uncertainty.” They are, she argues, the only alternative to a different kind of “mastery” that relies on “domination of one’s self and rule over others” when the lust for certainty produces the impulse “to cover the whole ground of the future and to map out a path secured in all directions.”¹⁷ In this way human action as an elemental source of freedom expresses a dynamic biography born in the inwardness of will

12 Arendt, *Origins of Totalitarianism*, 376.

13 Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1998), 176–177.

14 Arendt, “What is Freedom?,” in *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 2006), 169.

15 *Ibid.*, 177.

16 Arendt, *The Life of the Mind: Volume Two, Willing* (New York: Harcourt Brace Jovanovich, 1978), 13–14.

17 Arendt, *The Human Condition*, 243–247.

in order to flourish in the embrace of a human community where wills are joined to produce effective life, promising and keeping promises in shared purpose.

We have seen that the “right to have rights” is crystallized only in the historical moment when inclusion in humanity comes under threat. But what of action’s birthplace in the elemental functions of human will and its annexation of the future? Arendt’s metaphor of will asserts the inalienable status of this elemental inward capacity. What happens when the uniquely human capacity to dispose of the future as though it were the present—the right to count the future as one’s field of action—is threatened with suppression or extinction? Following Arendt’s and Searle’s logic, such a threat demands the translation of this elemental condition of human freedom into a right, that it might be recognized as fundamental to effective life and accorded the protection of the political community.

This elemental condition in which we annex the future to the present as the field of autonomous action is what I have called the right to the future tense. It asserts the inalienable capacity to will the future into existence through the force of one’s own choice and commitment, and it recognizes this capacity as a baseline condition of effective human life. In claiming the future as a potential field of self-determined action, the right to the future tense asserts the unbroken biography of will and action that founds Arendt’s “right to have rights.” The right to the future tense and the “right to have rights” are twinborn. Expressed in action and guaranteed by inclusion in the human group, the “right to have rights” already presupposes the future tense as the ground on which the inner organ of the will is made manifest in the shared reality of the human community. Each is essential to the meaning and manifestation of the other, joined in the biographical arc of birth and adulthood. If the right to the future tense is abrogated, the miracle of human action is subordinated to others’ plans that favor others’ certainty. In the absence of the right to the future tense, the “right to have rights” is shorn of its origins in will and drifts into memory, a token of earlier unpredictable times.

I suggest that we now face the moment in history when the elemental condition in which we claim the future for autonomous action is threatened by the laws of motion of a new economic order in which wealth derives from the predictability of human behavior. The competitive dynamics of this new order require economies of action that operate to configure human behavior in ways that facilitate predictability. These operations grow more muscular with the escalation of competitive intensity, driving the evolution of predictability toward certainty. They are made manifest in a ubiquitous digital architecture of behavior modification owned and operated by surveillance capital outside of meaningful legal boundaries, indecipherable, and largely hidden. Motive and means combine to produce a new instrumentarian power that supplants freedom as the crucible of human action for the sake of guaranteed outcomes and the competitive advantages that they confer in markets that trade in the future of human behavior.

Instrumentarian power employs the logic of radical behaviorism to exile persons from their own behavior, reducing action to measurable behavior and severing interior meaning from observable performance. In this process, the human person is reduced to an organism among organisms. This constitutes a bloodless methodology through which not only are persons excluded from humanity but, for the sake of others’ market success, humanity itself is excluded from the calculative knowledge that shapes the future. These new information territories are private and privileged, known only to the machines, their priests, and the market participants who pay to play in these new market spaces. Although it is obviously the case that we are excluded because the knowledge thus accumulated is not for us, the demands of economies of action suggest an even deeper structural basis for exclusion: the ability to evade individual awareness, and therefore individual will, is an essential condition for the efficient exercise of instrumentarian power and its economic objectives. Autonomous human action is costly friction that threatens surveillance revenues. In this way a new form of domination and its maps of a certain future override the right to the future tense.

Instrumentarian power does not simply destroy elemental rights; it usurps them. Such processes of expropriation were first evident in the transfer of decision rights over personal information from individuals to surveillance capitalists. The competitive demand for economies of action and the elaboration of the means of behavioral modification extends the pattern of expropriation to the elemental right to the future tense, which is the right to count the future as one's field of action, to initiate beginnings, and thus, to borrow from Machado, to make the road as you go.¹⁸

For this reason surveillance capitalism and its instrumentarian power are best described as a market-driven coup from above—not a *coup d'état* in the classic sense but rather a *coup de gens*: an overthrow of the people concealed in the technological Trojan horse that is Big Other. Instead of unpredictable human actors, the organism among organisms is manipulated for the sake of others' certainty at the expense of the arc of autonomous action that begins with the inner organ of free will and is completed in the mutual elaboration of a human community that guarantees the right to manifest one's will in action. Instrumentarian power is the hammer that suppresses human freedom in favor of others' market certainty. First to be extinguished in this coup is the pure impulse to initiate action that constructs social life as a miracle of unpredictable beginnings and distinguishes human beings as those who are born to replicate the natal miracle in original action. Arendt anticipated the possibility of this threat to human freedom at the hands of a behaviorist project elevated by global capital to world-historic power. She feared that the "last stage of the laboring society" would reduce its members to "automatic functioning," forced to acquiesce "in a dazed, 'tranquilized,' functional type of behavior":

The trouble with modern theories of behaviorism is not that they are wrong but that they could become true, that they actually are the best possible conceptualization of certain

obvious trends in modern society. It is quite conceivable that the modern age—which began with such an unprecedented and promising outburst of human activity—may end in the deadliest, most sterile passivity history has ever known.¹⁹

Now it is the surveillance capitalists who enjoy the right to the future tense and who claim the "right to have rights" over the fields of action and knowledge. Instrumentarian power accomplishes the dis-possession of human experience as an economic imperative, decisively prosecuting the redistribution of elemental human rights from individuals to capital. Surveillance capitalism's economic imperatives cannot be satisfied without these incursions into social and political territories that extend far beyond the traditional boundaries of private capital. In this way surveillance capitalism and its instrumentarian power are revealed as a profoundly antidemocratic constellation. They do not simply evade democratic oversight, but rather they undermine the foundations of such oversight for the sake of guaranteed outcomes. Surveillance capitalists accumulate not only surveillance assets and capital but also the elemental right to action, which is to say, freedom.

Just as industrial civilization flourished at the expense of nature and now threatens to cost us the earth, surveillance capitalism and its unprecedented instrumentarian power will thrive at the expense of human nature and threaten to cost us our humanity. The industrial legacy of climate chaos fills us with dismay, remorse, and fear. As surveillance capitalism founds a new economic order, what fresh legacy of damage and regret will be mourned by future generations? By the time you read these words, the reach of this new order will have grown, as more sectors, firms, start-ups, app developers, and investors mobilize around this one plausible version of information capitalism. This mobilization and the resistance it engenders will define a key battleground at the new frontier of power where

18 Antonio Machado, *There is No Road: Proverbs by Antonio Machado* (Buffalo, NY: White Pine Press, 2003).

19 Arendt, *The Human Condition*, 322.

elemental human rights will be contested in the name of humanity and the future. Who will write the music? Who will dance?

14.4 Andrew Feenberg: On Claiming Digital Governance (2019)²⁰

Critical Constructivism and the Question of Governance

The social role and significance of the Internet is in suspense today. The technology has not reached closure but is still in rapid development. No one program has been able to marginalize the others. The impression of stabilization produced by the size of the major companies such as Facebook and Google belies their actual fragility. The pathologies that accompany their data harvesting discredit them in the eyes of their users and provoke more or (so far) less effective attempts at regulation. The abuses likely to result from the end of network neutrality will intensify the resistance to a purely economic conception of the Internet. Hegemony without legitimacy is difficult to sustain.

Because the Internet is a medium of communication, it cannot be contained within the bounds of the economy. That it has an economic dimension is obvious, but like radio and television, it impacts public life and that impact is subject to judgment on non-economic grounds. Economic and public purposes are not necessarily irreconcilable, but they are potentially in conflict and that conflict is now bursting forth with unpredictable consequences. What provokes the conflict is the political manipulation of voters on the basis of data produced by users and exploited by Internet firms for commercial ends.

In what follows I will confine my remarks to democratic societies. Two different types of rationality co-exist in these societies, instrumental rationality and democratic rationality, the one oriented toward efficiency and control, the other toward public information and deliberation. Critical

constructivism does not consider these two forms of rationality as abstract features of human nature, but rather as concrete social realities. As such they overlap and need not conflict. But the differentiation of social spheres in modern societies tends to obscure the connections between them. Technical disciplines pretend to be value neutral while democratic debate too often proceeds without consideration for the technical background of social life. Organizing the interactions of these domains is one of the essential tasks of governance in technologically advanced societies.

Modern societies subject human beings to technical control as traditional forms of authority decline. This is theorized in the Marxist tradition through the concepts of management and deskilling in the sphere of production. Today these concepts apply far beyond production to many forms of social activity including medicine, education, leisure, and even the household. The generalization of technology goes along with generalized administrative control. This phenomenon is described by Foucault as “biopower,” the management of populations by modern states.

The political consequences of these developments are dire. The invention of “public relations” and propaganda in the 20th century extends technical control to the human mind. Algorithmic governance belongs to this sequence of developments which culminates in so-called “neuro-marketing,” the attempt to bypass consciousness altogether and control behavior through manipulation of the brain.

Bernard Stiegler points out that the increasing automation of everyday life activities has the effect of generalizing the deskilling observed by Marx in the sphere of production. Automation has led to a relaxation of intellectual effort as activities are routinized and shorn of intrinsic interest. The microwave does for the kitchen what the assembly line does for the factory. Stiegler calls the passage from artisanal skills to deskilled mechanical performance

20 Andrew Feenberg, “The Internet as Network, World, Co-Construction, and Mode of Governance,” *The Information Society Journal*, Vol. 35, No. 4 (2019), 229–243. Editor: For space considerations, some explanatory notes have been omitted. Those that have been retained have been converted from APA style to footnotes.

“proletarianization,” and he proposes to extend the concept to every domain in which skills are lost as technology and management intrude.²¹

The Internet already plays a role in this process of proletarianization and it is expected to do far more in the future. Consider the ubiquitous “Like” button which relieves the approving observer of the need to articulate a personal viewpoint. This is the equivalent at the level of personal recognition of the microwave and the assembly line. The Internet of Things promises to extend proletarianization into the most trivial activities, such as the control of room temperature and lighting. To the automated environment envisaged by this much hyped development corresponds a human being reduced to passivity, clicking its life away in a technical surrogate of the maternal womb.

Proletarianization is a consequence of the technification of the environment. Like the “one-dimensional” man Marcuse denounced in the 1960s, it integrates society. But as technology intrudes into the public sphere, it inspires some of its subjects to new forms of resistance, the opposite of its intended effect. The form and style of this resistance today is largely continuous with the New Left of the 1960s and ‘70s. Resistance focused on the Vietnam War and racial and gender discrimination, but in the background lay a visceral opposition to cultural and political manipulation through the mass media. Popular single issue movements supported by innovative forms of direct action took over as the Old Left declined. Party militancy was replaced for the most part by small committees coordinating punctual protests.

Rejection of technocratic pretensions accompanied the movements of the 1960s and ‘70s and soon bled into opposition to corporate and government environmental practices. Medicine too was affected as AIDS patients and the women’s movement rejected pseudo-scientific alibis for undesirable and discriminatory arrangements. This was a new type of politics that aimed to bring together and empower members of technical networks, subject to routine management in the

normal course of events. The significance of the Internet for democratic politics must be understood against this historical background.

Generalized management casts members of technical networks in potentially oppositional roles, just as industrial workers once assembled in factories gained new possibilities no earlier lower class had enjoyed. The women’s and AIDS movements worked to transform medical networks on the basis of pre-existing political organizations. Various environmental movements around pollution and toxic wastes illustrated a different pattern in which local communities were mobilized by recognition of the harm done them by their unwanted participation in an industrial network. Their politicization followed rather than preceded their movements of resistance. This then became a pattern for resistance to the abuses of large scale technical institutions.

These were not revolutionary movements like the socialist movements of an earlier period. Their object was not transformation of the state but modification of the technical code presiding over the networks. Radical critics of capitalism often question the significance of such movements. They are said to be “reformist,” but the multiplication of reforms in many domains over the last 50 years has significantly altered the trajectory of development of capitalist societies. The complaint that capitalism has survived and prospers should be read as an incitement to further struggle rather than as a dismissal of the slowly growing public influence on the technosystem.

The intersection of this New Left heritage with the Internet gives rise to new methods of dissemination of information and ideas, new forms of public discussion, new techniques of mobilization, and, most significantly, the emergence of new publics. The Internet plays an essential role in the manifestation of democratic rationality in the context of the increasing technification of society. This counter-trend to proletarianization forbids dystopian conclusions even if it does not promise revolution in the foreseeable future.

21 Bernard Stiegler, *La Société automatique. 1. L’avenir du travail* (Paris: Fayard, 2015).

The Internet serves many political purposes today, but it is unique in enabling protests rooted in the tensions and problems of technical networks. It reshapes political participation in two different ways: mediating radical movements, and bringing technical networks to conscious self-awareness.

Mediation. The dissemination of dissenting news and small group discussion provides a medium within which explosive short term movements emerge and coordinate. The Internet has accelerated the dissemination of protest, and has also made it possible for groups dispersed along the lines of technical networks to stay in touch. Their protests focus on the political agenda of their society and force the acknowledgement of inconvenient facts the media and the authorities prefer to ignore. Although deliberation often prepares these movements, their most important contribution to the public sphere consists in reframing the issues. They modify the boundaries of the “space of reasons” admissible in public debate.

Although sometimes quite radical these movements have not so far led to the creation of socialist parties such as challenged capitalism in the 19th and early 20th century. When the enthusiasm declines, the movements disappear without leaving an organizational trace, but their effect on public opinion can be significant. The Occupy movement is a good example of this dynamic. Before Occupy politicians of all stripes dismissed talk about economic inequality as outdated. After Occupy Trump and Sanders made inequality a central issue. The agenda of public debate was transformed but no new radical organization carried on the fight.

Self-consciousness. The highly technological society in which we live generates latent social groups wherever the technical networks create common conditions of life for individuals scattered across the national space. The Internet is the communication medium through which these latent publics can become self-aware and organize.

Here is a mundane example. When it was proposed to install smart meters in millions of British homes, customers of the electrical utility became aware of common concerns. Were the new meters safe? Would they increase costs? Like

the AIDS patients and women protesting medical procedures discussed above, these customers formed a potential social group because of their enrollment in a common network. Their reactions to the proposed change in the network is documented in dozens of forum discussions on the web. Often the discussions are intelligent and informative. The individuals learn together and whatever the outcome, their interactions exemplify a democratic form of rationality different from that of technical control. Every technical network is a potential site of such discussions. The public will inevitably make mistakes in evaluating technical issues, but so far the balance sheet of public participation is largely positive. Without it we would not have the environmental protections to which we have become accustomed nor the communicative applications of the Internet.

This has implications for any technologically advanced society. The fall of the Soviet Union is the definitive refutation of technocratic socialism. Obstacles to the flow of information had dire economic consequences. Economic performance was distorted by the exclusive focus on quotas without adequate means of adjustment to changing conditions. Economies cannot be successfully planned without building in feedback mechanisms but the Soviets suppressed both markets and political protest while giving managers strong incentives to lie to their superiors.

Communication by computer already plays a large role in mobilizing opinion and enabling the public to criticize and ultimately improve the performance of the technical networks that organize modern social life. This has had a significant impact under capitalism in domains such as urban planning and health care which are not adequately represented by either markets or law alone. In such cases communicative exchanges, often organized on the Internet, rather than individual consumption decisions or voting mediate the interaction between lay publics, technical experts and political authorities. This form of communication will prove even more essential in a socialist society that relies less on markets for the circulation of information.

Democratic socialism will require a new mode of governance that employs technical expertise without succumbing to technocracy. Market socialism has been proposed as a solution, but by itself it will not suffice in a society in which so many non-market functions are organized by technical networks. These networks are ultimately defined by technical disciplines which may contain persistent errors or biases that eventually provoke public resistance. The Internet can provide the infrastructure of a new type of public sphere that addresses issues that arise in this context.

Conclusion

In sum, the Internet supports a variety of systems, worlds, co-constructions, and modes of governance. These worlds and functions can co-exist up to a point but there are also conflicts and incompatibilities. Generalized technification and administration lead to generalized deskilling and passivity. Technical problems and abuses provoke new forms of resistance that express themselves on the Internet. The conflicts are coming to a head at present. Will the Internet become an electronic mall, a personalized television, an apparatus of political propaganda or will it continue to be a widely used public space? I have tried in this paper to offer a balanced analysis of its complexity.

On this account it is premature to write off the future of the Internet. Indeed, to do so is not merely an analytic error but disarms resistance to the assault on free communication. It is furthermore provincial. Intellectuals in the wealthy nations of the West seem willing to condemn, if not personally abandon, a technology that is essential to political discussion and resistance in the rest of the world.

I would like to conclude the analysis with corresponding policy recommendations for the management of the Internet today. These recommendations may appear unrealistic, even utopian, but they all have precedents. They respond to the high value we ought to place on democratic discourse, one of several potentials of the Internet, and surely the most important from a normative point of view. The question is, how to privilege that

potential over commercial and populist alternatives. Users must play a role through their choices and actions, but government must also intervene. We take the regulation of many industries for granted and depend on the guarantee of safety it provides. We rely on it every time we buy food in the supermarket or take a medicine. It is time that government protected our minds as well as our bodies.

The Internet requires protection from cyberpolitics most urgently. Government and social networks must impose the requirement that political advertising on the Internet be identified by its source. This works for television and it can be tried on the new medium as well although the extra-territoriality of many actors poses an obstacle. Aggressive retaliation against foreign interference is therefore required. Algorithmic identification of bots and trolls is possible and can enable their exclusion from social networks.

This will be a struggle, but it has hardly been engaged so we do not know how effective it can be.

The uncontrolled collection and sale of personal data must be outlawed, except where necessary to improve services and identify intrusions. Social networks must become subscription services, like Netflix, or receive government support. Participation in advertising campaigns must be based on choice, not surreptitious data collection.

Espionage should not be universal but should be limited to actual threats. This is perhaps the most difficult recommendation to realize given the immense power and independence of the national security apparatus, but it is a desideratum nevertheless and there have been periods when the US Congress limited surveillance significantly.

Internet monopolies should be broken up without interfering with the underlying network resources. This has been done for the energy industry and telephony and would have a salutary effect on the Internet. There is no reason why users of Facebook must all confront the same interface privileging the same behaviors and managed by the same company. If ATT could be broken up without interrupting telephone service, so can Facebook.

The sharing economy needs government support to free it from venture capital. It should be administered democratically by management teams chosen by participants (Scholz 2014). The communicative resources of the Internet are available for the organization of such a democratic system of administration.

Finally, government should support the development of a decentralized system of social networking which alone can provide effective privacy. Some sort of peer-to-peer or other decentralized system could replace the huge

server farms of the Internet giants, the main function of which is to process personal data for sale. Since no venture capitalists are likely to fund this research and development, government must step in, as it has in the case of basic medical research.

These policies would preserve the Internet as we know it and reverse the uncontrolled slide toward a mechanic online world in which human beings become quasimechanical relays between the vast systems of production, consumption and state action.

The Right to Health after the Pandemic

The French philosopher Michel Foucault (1975) reflected on local governments' response to the seventeenth-century plague to warn readers about the likelihood of authoritarian surveillance in matters of health. The regime of surveillance that was then developed was based on a system of permanent registration that restricted mobility, with strict sequestrations and no transgressions allowed. It saw:

the penetration of regulation into even the smallest details of everyday life through the mediation of the complete hierarchy that assured the capillary functioning of power; not masks that were put on and taken off, but the assignment to each individual of his 'true' name, his 'true' place, his 'true' body, his 'true' disease.

(See Section 14.5)

In the twenty-first century, that system of surveillance would be further developed through digital technology, leading to similar abuse of authority in the name of health. Can we rewind the clock?

"What does the right to be cured matter to a sick person whom no one is curing?" asked the nineteenth-century socialist Louis Blanc. This question would resonate through time and make its way to the 1946 constitution of the World Health Organization (WHO) – a constitution that envisages "... the enjoyment of the highest attainable standard of health" as a fundamental right of every human being. In the spirit of Blanc, the WHO would call for a right to enjoy health "without discrimination on the grounds of race, age, ethnicity or any other status." Almost 70 years later, the WHO Fact Sheet on Human Rights and Health (2017) would call on states to fulfill this commitment, taking steps "to redress any discriminatory law, practice or policy." By 2020, these principles were the yardstick by which the global response to the Covid-19 pandemic would be vetted (see Section 14.6).

With Foucault, Israeli historian Yuval Harari acknowledges that to stop the epidemic, entire populations needed to comply with certain surveillance guidelines. Today, for the first time in human history, he argues, technology makes it possible to monitor everyone all the time. But Harari challenges the false choice between privacy and health, arguing that one should be able to enjoy both. In that sense, he maintains that "we can choose to protect our health and stop the coronavirus epidemic not by instituting totalitarian surveillance regimes, but rather by empowering citizens." Given the global scale of the crisis, he calls for global cooperation to resolve the pandemic, particularly through the distribution of medical equipment and staff in disadvantaged countries. Countries that resist such cooperation in the name of nationalist isolation, he warns, will "poison international relations for years to come" (see Section 14.7).

In a similar vein, U.N. Secretary-General António Manuel de Oliveira Guterres (2021) argues that while some form of centralization and control is inevitable, avoidable human rights abuses have been rampant during the pandemic. This is not a time to neglect human rights, he maintains, but a time when, more than ever, human rights standards are needed to navigate an international crisis while striving for inclusive development and sustainable peace (see Section 14.8).

14.5 Michel Foucault: On Surveillance and the Plague (*Discipline and Punish*, 1975)²²

The following, according to an order published at the end of the seventeenth century, were the measures to be taken when the plague appeared in a town.

First, a strict spatial partitioning: the closing of the town and its outlying districts, a prohibition to leave the town on pain of death, the killing of all stray animals; the division of the town into distinct quarters, each governed by an intendant. Each street is placed under the authority of a syndic, who keeps it under surveillance; if he leaves the street, he will be condemned to death. On the appointed day, everyone is ordered to stay indoors: it is forbidden to leave on pain of death. The syndic himself comes to lock the door of each house from the outside; he takes the key with him and hands it over to the intendant of the quarter; the intendant keeps it until the end of the quarantine. Each family will have made its own provisions; but, for bread and wine, small wooden canals are set up between the street and the interior of the houses, thus allowing each person to receive his ration without communicating with the suppliers and other residents; meat, fish and herbs will be hoisted up into the houses with pulleys and baskets. If it is absolutely necessary to leave the house, it will be done in turn, avoiding any meeting. Only the intendants, syndics and guards will move about the streets and also between the infected houses, from one corpse to another; the “crows,” who can be left to die: these are “people of little substance who carry the sick, bury the dead, clean and do many vile and abject offices.” It is a segmented, immobile, frozen space. Each individual is fixed in his place. And, if he moves, he does so at the risk of his life, contagion or punishment.

Inspection functions ceaselessly. The gaze is alert everywhere: “A considerable body of militia, commanded by good officers and men of substance,” guards at the gates, at the town hall and in every quarter to ensure the prompt obedience of the people and the most absolute authority of the magistrates, “as also to observe all disorder, theft and extortion.” At each of the town gates there will be an observation post at the end of each street sentinels. Every day, the intendant visits the quarter in his charge, inquires whether the syndics have carried out their tasks, whether the inhabitants have anything to complain of; they “observe their actions.” Every day, too, the syndic goes into the street for which he is responsible; stops before each house: gets all the inhabitants to appear at the windows (those who live overlooking the courtyard will be allocated a window looking onto the street at which no one but they may show themselves); he calls each of them by name, informs himself as to the state of each and every one of them — “in which respect the inhabitants will be compelled to speak the truth under pain of death;” if someone does not appear at the window, the syndic must ask why: “In this way he will find out easily enough whether dead or sick are being concealed.” Everyone locked up in his cage, everyone at his window, answering to his name and showing himself when asked — it is the great review of the living and the dead.

This surveillance is based on a system of permanent registration: reports from the syndics to the intendants, from the intendants to the magistrates or mayor. At the beginning of the “lock up,” the role of each of the inhabitants present in the town is laid down, one by one; this document bears “the name, age, sex of everyone, notwithstanding his condition”: a copy is sent to the intendant of

22 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan (New York: Random House, 1975).

the quarter, another to the office of the town hall, another to enable the syndic to make his daily roll call. Everything that may be observed during the course of the visits — deaths, illnesses, complaints, irregularities — is noted down and transmitted to the intendants and magistrates. The magistrates have complete control over medical treatment; they have appointed a physician in charge; no other practitioner may treat, no apothecary prepare medicine, no confessor visit a sick person without having received from him a written note “to prevent anyone from concealing and dealing with those sick of the contagion, unknown to the magistrates.” The registration of the pathological must be constantly centralized. The relation of each individual to his disease and to his death passes through the representatives of power, the registration they make of it, the decisions they take on it. Five or six days after the beginning of the quarantine, the process of purifying the houses one by one is begun. All the inhabitants are made to leave; in each room “the furniture and goods” are raised from the ground or suspended from the air; perfume is poured around the room; after carefully sealing the windows, doors and even the keyholes with wax, the perfume is set alight. Finally, the entire house is closed while the perfume is consumed; those who have carried out the work are searched, as they were on entry, “in the presence of the residents of the house, to see that they did not have something on their persons as they left that they did not have on entering.” Four hours later, the residents are allowed to re-enter their homes.

This enclosed, segmented space, observed at every point, in which the individuals are inserted in a fixed place, in which the slightest movements are supervised, in which all events are recorded, in which an uninterrupted work of writing links the centre and periphery, in which power is exercised without division, according to a continuous hierarchical figure, in which each individual is constantly located, examined and distributed among the living beings, the sick and the dead — all this constitutes a compact model of the disciplinary mechanism. The plague is met by order; its function is to sort out every possible confusion: that of the disease, which is transmitted when bodies are mixed together; that of the evil, which is increased when fear and death

overcome prohibitions. It lays down for each individual his place, his body, his disease and his death, his well-being, by means of an omnipresent and omniscient power that subdivides itself in a regular, uninterrupted way even to the ultimate determination of the individual, of what characterizes him, of what belongs to him, of what happens to him. Against the plague, which is a mixture, discipline brings into play its power, which is one of analysis. A whole literary fiction of the festival grew up around the plague: suspended laws, lifted prohibitions, the frenzy of passing time, bodies mingling together without respect, individuals unmasked, abandoning their statutory identity and the figure under which they had been recognized, allowing a quite different truth to appear. But there was also a political dream of the plague, which was exactly its reverse: not the collective festival, but strict divisions; not laws transgressed, but the penetration of regulation into even the smallest details of everyday life through the mediation of the complete hierarchy that assured the capillary functioning of power; not masks that were put on and taken off, but the assignment to each individual of his “true” name, his “true” place, his “true” body, his “true” disease. The plague as a form, at once real and imaginary, of disorder had as its medical and political correlative discipline. Behind the disciplinary mechanisms can be read the haunting memory of “contagions,” of the plague, of rebellions, crimes, vagabondage, desertions, people who appear and disappear, live and die in disorder.

If it is true that the leper gave rise to rituals of exclusion, which to a certain extent provided the model for and general form of the great Confinement, then the plague gave rise to disciplinary projects. Rather than the massive, binary division between one set of people and another, it called for multiple separations, individualizing distributions, an organization in depth of surveillance and control, an intensification and a ramification of power. The leper was caught up in a practice of rejection, of exile-enclosure; he was left to his doom in a mass among which it was useless to differentiate; those sick of the plague were caught up in a meticulous tactical partitioning in which individual differentiations were the constricting effects of a

power that multiplied, articulated and subdivided itself; the great confinement on the one hand; the correct training on the other. The leper and his separation; the plague and its segmentations. The first is marked; the second analysed and distributed. The exile of the leper and the arrest of the plague do not bring with them the same political dream. The first is that of a pure community, the second that of a disciplined society. Two ways of exercising power over men, of controlling their relations, of separating out their dangerous mixtures. The plague-stricken town, traversed throughout with hierarchy, surveillance, observation, writing; the town immobilized by the functioning of an extensive power that bears in a distinct way over all individual bodies — this is the utopia of the perfectly governed city. The plague (envisaged as a possibility at least) is the trial in the course of which one may define ideally the exercise of disciplinary power. In order to make rights and laws function according to pure theory, the jurists place themselves in imagination in the state of nature; in order to see perfect disciplines functioning, rulers dreamt of the state of plague. Underlying disciplinary projects the image of the plague stands for all forms of confusion and disorder; just as the image of the leper, cut off from all human contact, underlies projects of exclusion.

They are different projects, then, but not incompatible ones. We see them coming slowly together, and it is the peculiarity of the nineteenth century that it applied to the space of exclusion of which the leper was the symbolic inhabitant (beggars, vagabonds, madmen and the disorderly formed the real population) the technique of power proper to disciplinary partitioning. Treat “lepers” as “plague victims,” project the subtle segmentations of discipline onto the confused space of internment, combine it with the methods of analytical distribution proper to power, individualize the excluded, but use procedures of individualization to mark exclusion — this is what was operated regularly by disciplinary power from the beginning of the nineteenth century in the psychiatric asylum, the penitentiary,

the reformatory, the approved school and, to some extent, the hospital. Generally speaking, all the authorities exercising individual control function according to a double mode; that of binary division and branding (mad/sane; dangerous/harmless; normal/abnormal); and that of coercive assignment, of differential distribution (who he is; where he must be; how he is to be characterized; how he is to be recognized; how a constant surveillance is to be exercised over him in an individual way, etc.). On the one hand, the lepers are treated as plague victims; the tactics of individualizing disciplines are imposed on the excluded; and, on the other hand, the universality of disciplinary controls makes it possible to brand the “leper” and to bring into play against him the dualistic mechanisms of exclusion. The constant division between the normal and the abnormal, to which every individual is subjected, brings us back to our own time, by applying the binary branding and exile of the leper to quite different objects; the existence of a whole set of techniques and institutions for measuring, supervising and correcting the abnormal brings into play the disciplinary mechanisms to which the fear of the plague gave rise. All the mechanisms of power which, even today, are disposed around the abnormal individual, to brand him and to alter him, are composed of those two forms from which they distantly derive.

14.6 World Health Organization: “Human Rights and Health” (2017)²³

Key Facts

- The WHO Constitution (1946) envisages “... the highest attainable standard of health as a fundamental right of every human being.”
- Understanding health as a human right creates a legal obligation on states to ensure access to timely, acceptable, and affordable health care of appropriate quality as well as to providing for the underlying determinants of health, such as safe and potable water;

23 “Human Rights and Health,” World Health Organization, December 29, 2017, www.who.int/news-room/fact-sheets/detail/human-rights-and-health.

sanitation, food, housing, health-related information and education, and gender equality.

- A States' obligation to support the right to health – including through the allocation of “maximum available resources” to progressively realise this goal - is reviewed through various international human rights mechanisms, such as the Universal Periodic Review, or the Committee on Economic, Social and Cultural Rights. In many cases, the right to health has been adopted into domestic law or Constitutional law.
- A rights-based approach to health requires that health policy and programmes must prioritize the needs of those furthest behind first towards greater equity, a principle that has been echoed in the recently adopted 2030 Agenda for Sustainable Development and Universal Health Coverage.²⁴
- The right to health must be enjoyed without discrimination on the grounds of race, age, ethnicity or any other status. Non-discrimination and equality requires states to take steps to redress any discriminatory law, practice or policy.
- Another feature of rights-based approaches is meaningful participation. Participation means ensuring that national stakeholders – including non-state actors such as non-governmental organizations – are meaningfully involved in all phases of programming: assessment, analysis, planning, implementation, monitoring and evaluation.

“The right to the highest attainable standard of health” implies a clear set of legal obligations on states to ensure appropriate conditions for the enjoyment of health for all people without discrimination.

The right to health is one of a set of internationally agreed human rights standards, and is inseparable or “indivisible” from these other rights.

This means achieving the right to health is both central to, and dependent upon, the realisation of other human rights, to food, housing, work, education, information, and participation.

The right to health, as with other rights, includes both freedoms and entitlements:

- Freedoms include the right to control one's health and body (for example, sexual and reproductive rights) and to be free from interference (for example, free from torture and non-consensual medical treatment and experimentation).
- Entitlements include the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health.

Focus on disadvantaged populations

Disadvantage and marginalization serve to exclude certain populations in societies from enjoying good health. Three of the world's most fatal communicable diseases – malaria, HIV/AIDS and tuberculosis – disproportionately affect the world's poorest populations, and in many cases are compounded and exacerbated by other inequalities and inequities including gender, age, sexual orientation or gender identity and migration status. Conversely the burden of non-communicable diseases – often perceived as affecting high-income countries – is increasing disproportionately among lower-income countries and populations, and is largely associated with lifestyle and behaviour factors as well as environmental determinants, such as safe housing, water and sanitation that are inextricably linked to human rights.

A focus on disadvantage also reveals evidence of those who are exposed to greater rates of ill-health and face significant obstacles to accessing quality and affordable healthcare, including indigenous populations. While data collection systems are often ill-equipped to capture data on these groups, reports show that these populations

24 “Transforming our World: The 2030 Agenda for Sustainable Development” UN General Assembly (October 21, 2015), UN Doc. A/RES/70/1.

have higher mortality and morbidity rates, due to noncommunicable diseases such as cancer, cardiovascular diseases, and chronic respiratory disease. These populations may also be the subject of laws and policies that further compound their marginalization and make it harder for them to access healthcare prevention, treatment, rehabilitation and care services.

Violations of human rights in health

Violations or lack of attention to human rights can have serious health consequences. Overt or implicit discrimination in the delivery of health services – both within the health workforce and between health workers and service users – acts as a powerful barrier to health services, and contributes to poor quality care.

Mental ill-health often leads to a denial of dignity and autonomy, including forced treatment or institutionalization, and disregard of individual legal capacity to make decisions. Paradoxically, mental health is still given inadequate attention in public health, in spite of the high levels of violence, poverty and social exclusion that contribute to worse mental and physical health outcomes for people with mental health disorders.

Violations of human rights not only contribute to and exacerbate poor health, but for many, including people with disabilities, indigenous populations, women living with HIV, sex workers, people who use drugs, transgender and intersex people, the health care setting presents a risk of heightened exposure to human rights abuses – including coercive or forced treatment and procedures.

Human rights-based approaches

A human rights-based approach to health provides a set of clear principles for setting and evaluating health policy and service delivery, targeting discriminatory practices and unjust power relations that are at the heart of inequitable health outcomes.

In pursuing a rights-based approach, health policy, strategies and programmes should be

designed explicitly to improve the enjoyment of all people to the right to health, with a focus on the furthest behind first. The core principles and standards of a rights-based approach are detailed below.

Core principles of human rights

ACCOUNTABILITY

States and other duty-bearers are answerable for the observance of human rights. However, there is also a growing movement recognising the importance of other non-state actors such as businesses in the respect and protection of human rights.

EQUALITY AND NON-DISCRIMINATION

The principle of non-discrimination seeks “...to guarantee that human rights are exercised without discrimination of any kind based on race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status such as disability, age, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation.”

Any discrimination, for example in access to health care, as well as in means and entitlements for achieving this access, is prohibited on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status, which has the intention or effect of impairing the equal enjoyment or exercise of the right to health.

The principle of non-discrimination and equality requires WHO to address discrimination in guidance, policies, and practices, such as relating to the distribution and provision of resources and health services. Non-discrimination and equality are key measures required to address the social determinants affecting the enjoyment of the right to health. Functioning national health information systems and availability of disaggregated data are essential to be able to identify the most vulnerable groups and diverse needs.

PARTICIPATION

Participation requires ensuring that all concerned stakeholders including non-state actors have ownership and control over development processes in all phases of the programming cycle: assessment, analysis, planning, implementation, monitoring, and evaluation. Participation goes well beyond consultation or a technical addition to project design; it should include explicit strategies to empower citizens, especially the most marginalized, so that their expectations are recognised by the State.

Participation is important to accountability as it provides "...checks and balances which do not allow unitary leadership to exercise power in an arbitrary manner."

UNIVERSAL, INDIVISIBLE AND INTERDEPENDENT

Human rights are universal and inalienable. They apply equally, to all people, everywhere, without distinction. Human Rights standards – to food, health, education, to be free from torture, inhuman or degrading treatment – are also interrelated. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

Core elements of a right to health

PROGRESSIVE REALIZATION USING MAXIMUM

AVAILABLE RESOURCES

No matter what level of resources they have at their disposal, progressive realisation requires that governments take immediate steps within their means towards the fulfilment of these rights. Regardless of resource capacity, the elimination of discrimination and improvements in the legal and juridical systems must be acted upon with immediate effect.

NON-RETROGRESSION

States should not allow the existing protection of economic, social, and cultural rights to deteriorate unless there are strong justifications for a retrogressive measure. For example, introducing school fees in secondary education which had formerly been free of charge would constitute a deliberate retrogressive

measure. To justify it, a State would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact and fully using its maximum available resources.

CORE COMPONENTS OF THE RIGHT TO HEALTH

The right to health (Article 12) was defined in General Comment 14 of the Committee on Economic, Social and Cultural Rights – a committee of Independent Experts, responsible for overseeing adherence to the Covenant. The right includes the following core components:

AVAILABILITY

Refers to the need for a sufficient quantity of functioning public health and health care facilities, goods and services, as well as programmes for all. Availability can be measured through the analysis of disaggregated data to different and multiple stratifiers including by age, sex, location and socio-economic status and qualitative surveys to understand coverage gaps and health workforce coverage

ACCESSIBILITY

Requires that health facilities, goods, and services must be accessible to everyone. Accessibility has four overlapping dimensions:

- non-discrimination
- physical accessibility
- economical accessibility (affordability)
- information accessibility.

Assessing accessibility may require analysis of barriers – physical financial or otherwise – that exist, and how they may affect the most vulnerable, and call for the establishment or application of clear norms and standards in both law and policy to address these barriers, as well as robust monitoring systems of health-related information and whether this information is reaching all populations.

ACCEPTABILITY

Relates to respect for medical ethics, culturally appropriate, and sensitivity to gender. Acceptability requires that health facilities, goods, services and

programmes are people-centred and cater for the specific needs of diverse population groups and in accordance with international standards of medical ethics for confidentiality and informed consent.

QUALITY

Facilities, goods, and services must be scientifically and medically approved. Quality is a key component of Universal Health Coverage, and includes the experience as well as the perception of health care. Quality health services should be:

- Safe – avoiding injuries to people for whom the care is intended;
- Effective – providing evidence-based healthcare services to those who need them; People-centred – providing care that responds to individual preferences, needs and values;
- Timely – reducing waiting times and sometimes harmful delays.
- Equitable – providing care that does not vary in quality on account of gender, ethnicity, geographic location, and socio-economic status;
- Integrated – providing care that makes available the full range of health services throughout the life course;
- Efficient – maximizing the benefit of available resources and avoiding waste

WHO Response

WHO has made a commitment to mainstream human rights into healthcare programmes and policies on national and regional levels by looking at underlying determinants of health as part of a comprehensive approach to health and human rights.

In addition, WHO has been actively strengthening its role in providing technical, intellectual, and political leadership on the right to health including:

- strengthening the capacity of WHO and its Member States to integrate a human rights-based approach to health;
- advancing the right to health in international law and international development processes; and
- advocating for health-related human rights, including the right to health.

Addressing the needs and rights of individuals at different stages across the life course requires taking a comprehensive approach within the broader context of promoting human rights, gender equality, and equity.

As such, WHO promotes a concise and unifying framework that builds on existing approaches in gender, equity, and human rights to generate more accurate and robust solutions to health inequities. The integrated nature of the framework is an opportunity to build on foundational strengths and complementarities between these approaches to create a cohesive and efficient approach to promote health and well-being for all.

14.7 Yuval Noah Harari: “The World after Coronavirus” (2020)²⁵

Humankind is now facing a global crisis. Perhaps the biggest crisis of our generation. The decisions people and governments take in the next few weeks will probably shape the world for years to come. They will shape not just our healthcare systems but also our economy, politics and culture. We must act quickly and decisively. We should also take into account the long-term consequences of our actions. When choosing between alternatives, we should ask ourselves not only how to overcome the immediate threat, but also what kind of world we will inhabit once the storm passes. Yes, the storm will pass, humankind will survive, most of us will still be alive — but we will inhabit a different world.

Many short-term emergency measures will become a fixture of life. That is the nature of emergencies. They fast-forward historical processes.

25 Yuval Noah Harari, “The World after Coronavirus,” *Financial Times* (March 20, 2020), www.ft.com/content/19d90308-6858-11ea-a3c9-1fe6fedcca75.

Decisions that in normal times could take years of deliberation are passed in a matter of hours. Immature and even dangerous technologies are pressed into service, because the risks of doing nothing are bigger. Entire countries serve as guinea-pigs in large-scale social experiments.

What happens when everybody works from home and communicates only at a distance? What happens when entire schools and universities go online? In normal times, governments, businesses and educational boards would never agree to conduct such experiments. But these aren't normal times.

In this time of crisis, we face two particularly important choices. The first is between totalitarian surveillance and citizen empowerment. The second is between nationalist isolation and global solidarity.

Under-the-skin surveillance

In order to stop the epidemic, entire populations need to comply with certain guidelines. There are two main ways of achieving this. One method is for the government to monitor people, and punish those who break the rules. Today, for the first time in human history, technology makes it possible to monitor everyone all the time. Fifty years ago, the KGB couldn't follow 240m Soviet citizens 24 hours a day, nor could the KGB hope to effectively process all the information gathered. The KGB relied on human agents and analysts, and it just couldn't place a human agent to follow every citizen. But now governments can rely on ubiquitous sensors and powerful algorithms instead of flesh-and-blood spooks.

In their battle against the coronavirus epidemic several governments have already deployed the new surveillance tools. The most notable case is China. By closely monitoring people's smartphones, making use of hundreds of millions of face-recognising cameras, and obliging people to check and report their body temperature and medical condition, the Chinese authorities can not only quickly identify suspected coronavirus carriers, but also track their movements and identify anyone they came into contact with. A range of mobile

apps warn citizens about their proximity to infected patients.

This kind of technology is not limited to east Asia. Prime Minister Benjamin Netanyahu of Israel recently authorised the Israel Security Agency to deploy surveillance technology normally reserved for battling terrorists to track coronavirus patients. When the relevant parliamentary subcommittee refused to authorise the measure, Netanyahu rammed it through with an "emergency decree".

You might argue that there is nothing new about all this. In recent years both governments and corporations have been using ever more sophisticated technologies to track, monitor and manipulate people. Yet if we are not careful, the epidemic might nevertheless mark an important watershed in the history of surveillance. Not only because it might normalise the deployment of mass surveillance tools in countries that have so far rejected them, but even more so because it signifies a dramatic transition from "over the skin" to "under the skin" surveillance.

Hitherto, when your finger touched the screen of your smartphone and clicked on a link, the government wanted to know what exactly your finger was clicking on. But with coronavirus, the focus of interest shifts. Now the government wants to know the temperature of your finger and the blood-pressure under its skin.

The emergency pudding

One of the problems we face in working out where we stand on surveillance is that none of us know exactly how we are being surveilled, and what the coming years might bring. Surveillance technology is developing at breakneck speed, and what seemed science-fiction 10 years ago is today old news. As a thought experiment, consider a hypothetical government that demands that every citizen wears a biometric bracelet that monitors body temperature and heart-rate 24 hours a day. The resulting data is hoarded and analysed by government algorithms. The algorithms will know that you are sick even before you know it, and they will also know where you have been, and who you have met. The chains of infection could be drastically shortened, and

even cut altogether. Such a system could arguably stop the epidemic in its tracks within days. Sounds wonderful, right?

The downside is, of course, that this would give legitimacy to a terrifying new surveillance system. If you know, for example, that I clicked on a Fox News link rather than a CNN link, that can teach you something about my political views and perhaps even my personality. But if you can monitor what happens to my body temperature, blood pressure and heart-rate as I watch the video clip, you can learn what makes me laugh, what makes me cry, and what makes me really, really angry.

It is crucial to remember that anger, joy, boredom and love are biological phenomena just like fever and a cough. The same technology that identifies coughs could also identify laughs. If corporations and governments start harvesting our biometric data en masse, they can get to know us far better than we know ourselves, and they can then not just predict our feelings but also manipulate our feelings and sell us anything they want — be it a product or a politician. Biometric monitoring would make Cambridge Analytica's data hacking tactics look like something from the Stone Age.

Imagine North Korea in 2030, when every citizen has to wear a biometric bracelet 24 hours a day. If you listen to a speech by the Great Leader and the bracelet picks up the tell-tale signs of anger, you are done for.

You could, of course, make the case for biometric surveillance as a temporary measure taken during a state of emergency. It would go away once the emergency is over. But temporary measures have a nasty habit of outlasting emergencies, especially as there is always a new emergency lurking on the horizon. My home country of Israel, for example, declared a state of emergency during its 1948 War of Independence, which justified a range of temporary measures from press censorship and land confiscation to special regulations for making pudding (I kid you not). The War of Independence has long been won, but Israel never declared the emergency over, and has failed to abolish many of the “temporary” measures of 1948 (the emergency pudding decree was mercifully abolished in 2011).

Even when infections from coronavirus are down to zero, some data-hungry governments could argue they needed to keep the biometric surveillance systems in place because they fear a second wave of coronavirus, or because there is a new Ebola strain evolving in central Africa, or because ... you get the idea. A big battle has been raging in recent years over our privacy. The coronavirus crisis could be the battle's tipping point. For when people are given a choice between privacy and health, they will usually choose health.

The soap police

Asking people to choose between privacy and health is, in fact, the very root of the problem. Because this is a false choice. We can and should enjoy both privacy and health. We can choose to protect our health and stop the coronavirus epidemic not by instituting totalitarian surveillance regimes, but rather by empowering citizens. In recent weeks, some of the most successful efforts to contain the coronavirus epidemic were orchestrated by South Korea, Taiwan and Singapore. While these countries have made some use of tracking applications, they have relied far more on extensive testing, on honest reporting, and on the willing co-operation of a well-informed public.

Centralised monitoring and harsh punishments aren't the only way to make people comply with beneficial guidelines. When people are told the scientific facts, and when people trust public authorities to tell them these facts, citizens can do the right thing even without a Big Brother watching over their shoulders. A self-motivated and well-informed population is usually far more powerful and effective than a policed, ignorant population.

Consider, for example, washing your hands with soap. This has been one of the greatest advances ever in human hygiene. This simple action saves millions of lives every year. While we take it for granted, it was only in the 19th century that scientists discovered the importance of washing hands with soap. Previously, even doctors and nurses proceeded from one surgical operation to the next without washing their hands. Today billions of people daily wash their hands, not because they

are afraid of the soap police, but rather because they understand the facts. I wash my hands with soap because I have heard of viruses and bacteria, I understand that these tiny organisms cause diseases, and I know that soap can remove them.

But to achieve such a level of compliance and co-operation, you need trust. People need to trust science, to trust public authorities, and to trust the media. Over the past few years, irresponsible politicians have deliberately undermined trust in science, in public authorities and in the media. Now these same irresponsible politicians might be tempted to take the high road to authoritarianism, arguing that you just cannot trust the public to do the right thing.

Normally, trust that has been eroded for years cannot be rebuilt overnight. But these are not normal times. In a moment of crisis, minds too can change quickly. You can have bitter arguments with your siblings for years, but when some emergency occurs, you suddenly discover a hidden reservoir of trust and amity, and you rush to help one another. Instead of building a surveillance regime, it is not too late to rebuild people's trust in science, in public authorities and in the media. We should definitely make use of new technologies too, but these technologies should empower citizens. I am all in favour of monitoring my body temperature and blood pressure, but that data should not be used to create an all-powerful government. Rather, that data should enable me to make more informed personal choices, and also to hold government accountable for its decisions.

If I could track my own medical condition 24 hours a day, I would learn not only whether I have become a health hazard to other people, but also which habits contribute to my health. And if I could access and analyse reliable statistics on the spread of coronavirus, I would be able to judge whether the government is telling me the truth and whether it is adopting the right policies to combat the epidemic.

Whenever people talk about surveillance, remember that the same surveillance technology can usually be used not only by governments to monitor individuals — but also by individuals to monitor governments.

The coronavirus epidemic is thus a major test of citizenship. In the days ahead, each one of us should choose to trust scientific data and healthcare experts over unfounded conspiracy theories and self-serving politicians. If we fail to make the right choice, we might find ourselves signing away our most precious freedoms, thinking that this is the only way to safeguard our health.

We need a global plan

The second important choice we confront is between nationalist isolation and global solidarity. Both the epidemic itself and the resulting economic crisis are global problems. They can be solved effectively only by global co-operation.

First and foremost, in order to defeat the virus we need to share information globally. That's the big advantage of humans over viruses. A coronavirus in China and a coronavirus in the US cannot swap tips about how to infect humans. But China can teach the US many valuable lessons about coronavirus and how to deal with it. What an Italian doctor discovers in Milan in the early morning might well save lives in Tehran by evening. When the UK government hesitates between several policies, it can get advice from the Koreans who have already faced a similar dilemma a month ago. But for this to happen, we need a spirit of global co-operation and trust.

Countries should be willing to share information openly and humbly seek advice, and should be able to trust the data and the insights they receive. We also need a global effort to produce and distribute medical equipment, most notably testing kits and respiratory machines. Instead of every country trying to do it locally and hoarding whatever equipment it can get, a coordinated global effort could greatly accelerate production and make sure life-saving equipment is distributed more fairly. Just as countries nationalise key industries during a war, the human war against coronavirus may require us to "humanise" the crucial production lines. A rich country with few coronavirus cases should be willing to send precious equipment to a poorer country with many cases, trusting that if and

when it subsequently needs help, other countries will come to its assistance.

We might consider a similar global effort to pool medical personnel.

Countries currently less affected could send medical staff to the worst-hit regions of the world, both in order to help them in their hour of need, and in order to gain valuable experience. If later on the focus of the epidemic shifts, help could start flowing in the opposite direction.

Global co-operation is vitally needed on the economic front too. Given the global nature of the economy and of supply chains, if each government does its own thing in complete disregard of the others, the result will be chaos and a deepening crisis. We need a global plan of action, and we need it fast.

Another requirement is reaching a global agreement on travel. Suspending all international travel for months will cause tremendous hardships, and hamper the war against coronavirus. Countries need to co-operate in order to allow at least a trickle of essential travellers to continue crossing borders: scientists, doctors, journalists, politicians, businesspeople. This can be done by reaching a global agreement on the pre-screening of travellers by their home country. If you know that only carefully screened travellers were allowed on a plane, you would be more willing to accept them into your country.

Unfortunately, at present countries hardly do any of these things. A collective paralysis has gripped the international community. There seem to be no adults in the room. One would have expected to see already weeks ago an emergency meeting of global leaders to come up with a common plan of action. The G7 leaders managed to organise a videoconference only this week, and it did not result in any such plan.

In previous global crises — such as the 2008 financial crisis and the 2014 Ebola epidemic — the US assumed the role of global leader. But the current US administration has abdicated the job of leader. It has made it very clear that it cares about

the greatness of America far more than about the future of humanity.

This administration has abandoned even its closest allies. When it banned all travel from the EU, it didn't bother to give the EU so much as an advance notice — let alone consult with the EU about that drastic measure. It has scandalised Germany by allegedly offering \$1bn to a German pharmaceutical company to buy monopoly rights to a new Covid-19 vaccine. Even if the current administration eventually changes tack and comes up with a global plan of action, few would follow a leader who never takes responsibility, who never admits mistakes, and who routinely takes all the credit for himself while leaving all the blame to others.

If the void left by the US isn't filled by other countries, not only will it be much harder to stop the current epidemic, but its legacy will continue to poison international relations for years to come. Yet every crisis is also an opportunity. We must hope that the current epidemic will help humankind realise the acute danger posed by global disunity.

Humanity needs to make a choice. Will we travel down the route of disunity, or will we adopt the path of global solidarity? If we choose disunity, this will not only prolong the crisis, but will probably result in even worse catastrophes in the future. If we choose global solidarity, it will be a victory not only against the coronavirus, but against all future epidemics and crises that might assail humankind in the 21st century.

14.8 António Guterres: “The World Faces a Pandemic of Human Rights Abuses in the Wake of Covid-19” (2021)²⁶

From the onset of the Covid-19 pandemic almost one year ago, it was clear that our world faced far more than a public health emergency. The biggest international crisis in generations quickly morphed into an economic and social crisis. One year on,

26 António Guterres, “The World Faces a Pandemic of Human Rights Abuses in the Wake of Covid-19,” *The Guardian* (February 22, 2021), www.theguardian.com/global-development/2021/feb/22/world-faces-pandemic-human-rights-abuses-covid-19-antonio-guterres.

another stark fact is tragically evident: our world is facing a pandemic of human rights abuses.

Covid-19 has deepened preexisting divides, vulnerabilities and inequalities, and opened up new fractures, including faultlines in human rights. The pandemic has revealed the Interconnectedness of our human family – and of the full spectrum of human rights: civil, cultural, economic, political and social. When any one of these rights is under attack, others are at risk.

The virus has thrived because poverty, discrimination, the destruction of our natural environment and other human rights failures have created enormous fragilities in our societies. The lives of hundreds of millions of families have been turned upside down – with lost jobs, crushing debt and steep falls in income.

Frontline workers, people with disabilities, older people, women, girls and minorities have been especially hard hit. In a matter of months, progress on gender equality has been set back decades. Most essential frontline workers are women, and in many countries are often from racially and ethnically marginalised groups

Most of the increased burden of care in the home is taken on by women. Violence against women and girls in all forms has rocketed, from online abuse to domestic violence, trafficking, sexual exploitation and child marriage.

Extreme poverty is rising for the first time in decades. Young people are struggling, out of school and often with limited access to technology.

The latest moral outrage is the failure to ensure equity in vaccination efforts. Just 10 countries have administered more than 75% of all Covid-19 vaccines. Meanwhile, more than 130 countries have not received a single dose.

If the virus is allowed to spread like wildfire in parts of the global south, it will mutate again and again. New variants could become more transmissible, more deadly and potentially threaten the effectiveness of current vaccines and diagnostics. This could prolong the pandemic significantly, enabling the virus to come back to plague the global north – and delay the world's economic recovery.

The virus is also infecting political and civil rights, and further shrinking civic space. Using the pandemic as a pretext, authorities in some countries have deployed heavy handed security responses and emergency measures to crush dissent, criminalise basic freedoms, silence independent reporting and restrict the activities of nongovernmental organisations.

Human rights defenders, journalists, lawyers, political activists – even medical professionals – have been detained, prosecuted and subjected to intimidation and surveillance for criticising government responses to the pandemic. Pandemic-related restrictions have been used to subvert electoral processes and weaken opposition voices.

At times, access to life-saving Covid-19 information has been concealed while deadly misinformation has been amplified – even by those in power.

Extremists – including white supremacists and neo-Nazis – have exploited the pandemic to boost their ranks through social polarisation and political and cultural manipulation.

The pandemic has also made peace efforts more difficult, constraining the ability to conduct negotiations, exacerbating humanitarian needs and undermining progress on other conflict-related human rights challenges.

Covid-19 has reinforced two fundamental truths about human rights. First, human rights violations harm us all. Second, human rights are universal and protect us all.

An effective response to the pandemic must be based on solidarity and cooperation. Divisive approaches, authoritarianism and nationalism make no sense against a global threat. With the pandemic shining a spotlight on human rights, recovery provides an opportunity to generate momentum for transformation. To succeed, our approaches must have a human rights lens.

The sustainable development goals – which are underpinned by human rights – provide the framework for more inclusive and sustainable economies and societies, including the imperative of healthcare for everyone.

The recovery must also respect the rights of future generations, enhancing climate action to

achieve carbon neutrality by 2050 and protecting biodiversity. My Call to Action for Human Rights spells out the central role of human rights in crisis response, gender equality, public participation, climate justice and sustainable development.

This is not a time to neglect human rights; it is a time when, more than ever, human rights are needed to navigate this crisis in a way that will allow

us to zero in on achieving inclusive and sustainable development and lasting peace.

We are all in this together. The virus threatens everyone. Human rights uplift everyone. By respecting human rights in this time of crisis, we will build more effective and equitable solutions for the emergency of today and the recovery for tomorrow.

I am convinced it is possible – if we are determined and work together.

Artificial Intelligence, Bioengineering, and Human Rights

In “Human Rights and Artificial Intelligence: An Urgently Needed Agenda” (2019), philosopher Mathias Risse calls for greater attention to threats of AI to human rights. “If the mind is just a complex algorithm, then there may eventually be little choice but to grant certain machines the same moral status that humans have.” But this would not be enough, as one would hope that AI would be designed to align with human rights values, such as those spelled out in the Universal Declaration of Human Rights. With respect to AI, this would require the application of U.N. Guiding Principles on Business and Human Rights, which would now need to address a host of questions regarding AI: What are the most severe potential impacts? Who are the most vulnerable groups? How can one ensure access to remedies? Answers to these questions are not self-evident, as the same technology that improves human rights also has the capacity to undermine it. To begin to understand and address these challenges the impact of AI must be put higher on the human rights agenda (see Section 14.9).

Scientific advances enabling the manipulation of DNA have given humans the previously unimagined power either to remedy diseases or to alter humans’ physical and mental abilities. Ethical guidelines have struggled to keep pace with the rapid acceleration of genome editing, but established human rights norms may yet provide guidance. The Oviedo Convention (1997), a European legal framework established to offer guiding principles in the fields of biology and medicine, made clear that an “intervention seeking to modify the human genome may only be undertaken for preventive, diagnostic or therapeutic purposes and only if its aim is not to introduce any modification in the genome of any descendants.” The convention deals specifically with genetic editing and transplantation of organs and tissues (see Chapter 16).

As humans develop a greater capacity to change their own genetic makeup, some states have distanced themselves from the Oviedo agreement, searching to articulate standards that will circumvent harm while maximizing opportunity. In “Regulating Genome Editing Under International Human Rights Law” (2020), legal scholar Rumiana Yotova argues that “international law is the most appropriate legal order” for such standards. However, the current framework of international human rights law is vague and ambiguous, relying on phrases like “the welfare of the individual” and failing to define key terms like “therapy,” “prevention,” “enhancement,” and “eugenics.” Future legal instruments will need to clarify these terms while balancing “the interests of the future individual, of their parents and those of society, humanity and future generations” (see Section 14.10).

In a biography reviewing the achievements of 2020 Nobel Prize winner biochemist Jennifer Doudna, (*Code Breaker*), historian Walter Isaacson offers a sympathetic overview of these developments. Yet, Isaacson leaves largely unanswered the more challenging questions about the ethics of germline editing. Is it a “red line” that should not be crossed? Or might some germline modifications be so advantageous that they should not be resisted? How sharp, or blurry, are the lines between curing disease and human enhancement? Reviewing competitive philosophical perspectives, Isaacson challenges us “to figure out what the norms for gene editing should be” (see Section 14.11).

14.9 Mathias Risse: “Human Rights and Artificial Intelligence: An Urgently Needed Agenda” (2019)²⁷

I. Introduction

Artificial intelligence generates challenges for human rights. Inviolability of human life is the central idea behind human rights, an underlying implicit assumption being the hierarchical superiority of humankind to other forms of life meriting less protection. These basic assumptions are questioned through the anticipated arrival of entities that are not alive in familiar ways but may nonetheless be sentient and intellectually and, perhaps eventually, morally superior to humans. To be sure, this scenario may never come to pass and in any event lies in a part of the future beyond one’s current grasp. But it is urgent to get this matter on the agenda. Threats posed by technology to other areas of human rights are already very much present. This article surveys these challenges in a way that distinguishes short-, medium-, and long-term perspectives. The main purpose here is to generate more interest in artificial intelligence within the human rights community.

II. AI and Human Rights

Artificial intelligence (AI) is increasingly present in day-to-day life, reflecting a growing tendency to turn for advice, or turn over decisions altogether, to algorithms. “Intelligence” is the ability to make predictions about the future and solve complex tasks. AI is such an ability demonstrated by machines, in smart phones, tablets, laptops, drones, self-operating vehicles, or robots. Such devices might take on tasks ranging from household support and companionship (including sexual companionship), to policing and warfare.

Algorithms can do anything that can be coded, as long as they have access to data they need, at the required speed, and are put into a design frame that allows for execution of the tasks thus determined. In all these domains progress has been enormous.

The effectiveness of algorithms is increasingly enhanced through “Big Data:” the availability of an enormous amount of data on all human activity and other processes in the world. Such data allows a particular type of AI known as “machine learning” to draw inferences about what happens next by detecting patterns. Algorithms perform better than humans wherever tested, although human biases are perpetuated in them: any system designed by humans reflects human bias, and algorithms rely on data capturing the past, thus automating the status quo unless preventative measures are taken. But algorithms are noise-free: unlike human subjects, they arrive at the same decision on the same problem when presented with it twice.

Philosophical debates have a way of appearing to be disconnected from reality. But in the context of AI, many such debates reemerge with a new kind of urgency. Take the trolley problem, which teases out intuitions about deontological vs. consequentialist morality by confronting individuals with choices involving a runaway trolley that might kill various numbers of people depending on what these individuals do. These decisions not only determine who dies, but also whether some who would otherwise be unaffected are instrumentalized to save others. Many a college teacher deployed these cases only to find students questioning their relevance since in real life choices would never be this stylized. But once self-driving vehicles (which just caused their first roadside fatality) need to be programmed, there is a new public relevance and urgency to these matters.

Also, philosophers have long puzzled about the nature of the mind. One question is if there is more to the mind than the brain. Whatever else it is, the brain is also a complex algorithm. But is the brain fully described thereby, or does that fail to recognize what makes humans distinct, namely, consciousness? Consciousness is the qualitative experience of being somebody or something, it’s “what-it-is-like-to-be-that”-ness, as one might say. If there is nothing more to the mind than the

27 Mathias Risse, “Human Rights and Artificial Intelligence: An Urgently Needed Agenda,” *Human Rights Quarterly*, Vol. 41, No. 1 (February 2019), 1–16. Editor: For space considerations, some explanatory notes have been omitted.

brain, then algorithms in the era of Big Data will soon outdo humans at almost everything: they will make ever more accurate predictions about what book one would enjoy or where to vacation next; drive cars more safely than humans do; make predictions about health before human brains sound alarms; offer solid advice on what jobs to accept, where to live, what kind of pet to adopt, if it is sensible for particular people to be parents and whether it is wise to stay with the person they are currently with—based on a myriad of data from people relevantly like them. Internet advertisement catering towards one's preferences by assessing what one has ordered or clicked on before merely foreshadows what is to come.

If the mind is just a complex algorithm, then there may eventually be little choice but to grant certain machines the same moral status that humans have. Questions about the moral status of animals arise because of the many continuities between humans and other species: the less one can see them as different from humans in terms of morally relevant properties, the more they must be treated as fellow travelers in a shared life, as done for instance in Sue Donaldson and Will Kymlicka's *Zoopolis*. Such reasoning may eventually carry over to machines. One should not be distracted by the fact that, as of now, machines have turn-off switches. To survey some possibilities, future machines might be composed and networked in ways that no longer permit easy switch-off. More importantly, they might display emotions and behavior to express attachment: they might even worry about being turned off, and be anxious to do something about it. Or future machines might be cyborgs, partly composed of organic parts, while humans are modified with non-organic parts for enhancement. Distinctions between humans and non-humans might well erode. Ideas about personhood might alter once it becomes possible to upload and store a digitalized brain on a computer, much as nowadays human embryos can be stored.

Even before that happens, new generations will grow up with machines in new ways. The typical computer user nowadays may have no qualms

about smashing her laptop when it no longer performs well. But people who grow up with a robot nanny whose machine-learning capacities enable it to attend to them in ways far beyond what parents typically do may have different attitudes towards robots. Already in 2007, a US colonel called off a robotic land-mine-sweeping exercise because he considered the operation inhumane after a robot kept crawling along losing legs one at a time. Science fiction shows like *Westworld* or *The Good Place* anticipate what it would be like to be surrounded by machines one can only recognize as such by cutting them open. A humanoid robot named Sophia with capabilities to participate in interviews, developed by Hanson Robotics, became a Saudi citizen in October 2017. Later Sophia was named United Nations Development Programme's (UNDP) first-ever Innovation Champion, the first non-human with a UN title. The future might remember these as historic moments. The pet world is not far behind. Amazon founder and CEO Jeff Bezos recently adopted a dog called SpotMini, a versatile robotic pet capable of opening doors, picking himself up, and even loading the dishwasher. And SpotMini never needs to go outside if Bezos would rather shop on Amazon.

If there indeed is more to the mind than the brain, dealing with AI, including in the form of humanoid robots, would be easier. Consciousness, or perhaps the possession of a brain and a conscience, might then set humans apart. It is a genuinely open question how to make sense of qualitative experiences, and thus of consciousness. But even though considerations about consciousness might contradict the view that AI systems are moral agents, they will not make it impossible for such systems to be legal actors and as such own property, commit crimes, and be accountable in legally enforceable ways. After all, there is a long history of treating corporations, which also lack consciousness, in such ways. Much as there are enormous difficulties separating the responsibility of corporations from that of humans involved with them, chances are similar issues will arise with regard to intelligent machines.

III. The Morality of Pure Intelligence

One other long-standing philosophical problem that obtains fresh relevance here is the connection between rationality and morality. This question emerges when one wonders about the morality of pure intelligence. The term “singularity” is commonly taken to refer to the moment when machines surpass humans in intelligence. Since then humans will have succeeded in creating something smarter than themselves, this new type of brain may well produce something smarter than itself, and on it goes, possibly at great speed. There will be limits to how long this can continue. But since computational powers have increased rapidly over the decades, the limits to what superintelligence can do are beyond what one can fathom now. Singularity and superintelligence are greatly emphasized by some participants in the AI debate whereas others dismiss them as irrelevant compared to more pressing concerns. Indeed, there might never be a singularity, or it might be decades or hundreds of years off. Still, the exponential technological advancement of the last decades puts these topics (singularity and the moral consequences arising from the existence of a superintelligence) on the human rights agenda.

In order to address the potential moral consequences of AI, philosophers may well think of the dispute between David Hume and Immanuel Kant about whether rationality fixes values. Hume famously thought reason did nothing to fix values: a being endowed with reason, rationality or intelligence (supposing these are all relevantly similar) might have any goals, as well as any range of attitudes especially towards human beings. If so, a superintelligence—or any AI for that matter, but the issue is especially troublesome for a superintelligence—could have just about any type of value commitment, including ones that would strike humans as rather absurd (such as maximizing the number of paperclips in the universe, to mention an example sometimes brought up in the literature). And how would one know that such thoughts are misguided, if it is indeed stipulated that such a superintelligence would be massively smarter, and thus may prioritize different value commitments as compared to humans?

As opposed to that, there is the Kantian view that derives morality from rationality. Kant’s “Categorical Imperative” asks of all rational beings never to use their own rational capacities nor those of any other rational being in a purely instrumental way. Excluded in particular are gratuitous violence against and deception of other rational beings (which for Kant would always be too much like pure instrumentalization). A different way of thinking about the Categorical Imperative requires each person to always act in ways that would pass a generalization test. Certain actions would be rendered impermissible because they would not hold up if everybody did them. For instance, stealing and lying would not be generalizable, and therefore not permissible: there would be no property to begin with if everybody stole, and no communication if everybody reserved the right to lie. The point of Kant’s derivation is that any intelligent being would fall into a contradiction with itself by violating other rational beings. Roughly speaking that is because it is only our rational choosing that gives any value to anything in the first place, which also means that by valuing anything at all one is committed to valuing one’s capacity to value. The idea is that things in the world around us are not in some independently given manner valuable, as they could be if we knew that there existed a God who makes them so or if we had reason to think things are valuable by nature much in the same way in which laws of physics apply to them. But these options are not available according to what Kant explores as the limitations of human reason. So that leaves human reason itself as the sole source of any kind of value. But if so, then we must appreciate in ourselves that very capacity to value. Therefore, then, trashing other rational beings in pursuit of one’s own interests in turn trashes their capacities to value, which are relevantly the same capacities whose possession one must value in oneself. For that reason, certain ways of mistreating others lead an actor into a contradiction with herself, in much the same way flaws in mathematical reasoning do. If Kant is right, a superintelligence might be a true role-model for ethical behavior. Since human nature is intensely parochial in its judgements and value commitments, AI

might close the gap that opens when humans with their Stone-Age, small- group-oriented DNA try to operate in a global context.

If something like this argument were to work—and there are doubts— there would be no reason to worry about a superintelligence. Arguably humans would be rational enough for this kind of argument to generate protection for humble humans in an era of much smarter machines. But since a host of philosophers who are smart by contemporary standards have argued against the Kantian standpoint, the matter is far from settled. Human reason is incapable of imagining what these matters would look like from the standpoint of a superintelligence.

Of course, some kind of morality could be in place with superintelligence in charge even if value cannot be derived from rationality alone. There is also the Hobbesian approach of envisaging what would happen to humans aiming for self-preservation and characterized by certain properties in a state of nature without a shared authority. Hobbes argues that these individuals would not act on shared values just by thinking clear-mindedly, as they would on a Kantian picture, and that they would quickly experience the nastiness of life without a shared authority. Far from being vile, as individuals they would feel compelled to strike against each other in anticipation of future wrongs. After all, even if they would know themselves to be cooperative and give the other side the benefit of the doubt as well, they could not be sure that other side would give them that same benefit, and might thus feel compelled to strike first given how much is at stake. Unless there is only one superintelligence, or all superintelligences are closely linked anyway, perhaps such reasoning would apply to such machines as well, and they would be subject to some kind of shared authority. Hobbes's state of nature would then describe the original status of superintelligences vis-à-vis each other. Whether such a shared authority would also create benefits for humans is unclear.

Perhaps T. M. Scanlon's ideas about appropriate responses to values would help.²⁸ The superintelligence might be "moral" in the sense of reacting in appropriate ways towards what it observes all around. Perhaps then humans have some chance at getting protection, or even some level of emancipation in a mixed society composed of humans and machines, given that the abilities of the human brain are truly astounding and generate capacities in human beings that arguably should be worthy of respect. But so are also the capacities of animals, which has not normally led humans to react towards them, or towards the environment, in an appropriately respectful way. Instead of displaying something like an enlightened anthropocentrism, humans have too often instrumentalized nature. Hopefully a superintelligence would simply outperform human reason in such matters, and that will mean the distinctively human life will receive some protection because it is worthy of respect. There is no way to know that for sure, but there is also no reason to be overly pessimistic.

IV. Human Rights and the Problem of Value Alignment

All these matters are in a part of the future that one cannot know when or even if it will ever materialize. But from a human rights standpoint these scenarios matter because humans would need to get used to sharing the social world they have built over thousands of years with new types of beings. Other creatures have so far never stood in humanity's way for long, and the best they have been able to hope for is some symbiotic arrangements as pets, livestock or zoo displays. All this would explain why there is a Universal Declaration of Human Rights (UDHR) based on ideas about a distinctively human life which seems to merit protection, at the individual level, of a sort that humans are unwilling to grant other species. On philosophical grounds it is arguably justifiable to give special protection to humans that takes the form of individual entitlements, without thereby saying that just about

28 T. M. Scanlon, What is Morality?, in *The Harvard Sampler: Liberal Education For The Twenty-First Century* (Jennifer M. Shephard, Stephen Michael Kosslyn, & Evelyn Maxine Hammonds eds., 2011).

anything can be done to other animals or the environment. But it would all be very different with intelligent machines. Humans control animals because humans can create an environment where animals play a subordinate role. But this might not be possible with AI. Rules would then be needed for a world where some intelligent players are machines. These intelligent players would have to be designed so they respect human rights even though they would be smart and powerful enough to violate them. At the same time they would have to be endowed with proper protection themselves. It is not impossible that, eventually, the UDHR would have to apply to some of them.

There is an urgency to making sure these developments get off to a good start. The pertinent challenge is the problem of value alignment, a challenge that arises way before it will ever matter what the morality of pure intelligence is. No matter how precisely AI systems are generated it is important to try to make sure their values are aligned with human values in order to render as unlikely as possible any complications stemming from the fact that a superintelligence might have value commitments very different from ours. That the problem of value alignment needs to be tackled now is also implied by the UN Guiding Principles on Business and Human Rights, which was created to integrate human rights into business decisions. These principles apply to AI. This means addressing questions such as “What are the most severe potential impacts?,” “Who are the most vulnerable groups?,” and “How can one ensure access to remedy?”

The AI community recognized the problem of value alignment as early as 1942 with Isaac Asimov’s short story “Runaround,” where he formulates his famous “Three Laws of Robotics,” which within the story are quoted as coming from a handbook published in 2058:

(1) A robot may not injure a human being or, through inaction, allow a human being to come to harm. (2) A robot must obey the orders given

it by human beings except where such orders would conflict with the First Law. (3) A robot must protect its own existence as long as such protection does not conflict with the First or Second Laws.²⁹

However, these laws have long been regarded as too unspecific, and various efforts have been made to replace them, albeit without any connection to the United Nations Principles on Business and Human Rights or any other part of the human rights movement. For example, in 2017 the Future of Life Institute in Cambridge, MA founded by MIT physicist Max Tegmark and Skype co-founder Jaan Tallinn, held a conference on Beneficial AI at the Asilomar conference center in California in order to come up with principles to guide further development of AI. Of the resulting twenty-three Asilomar Principles, thirteen are listed under the heading of “Ethics and Values.” Among other issues, these principles insist that wherever AI causes harm, it should be ascertainable why it does, and where an AI system is involved in judicial decision making its reasoning should be verifiable by human auditors. Such principles respond to concerns that AI deploying machine learning might reason at such speed and have access to such a range of data that its decisions are increasingly opaque, making it impossible to spot if its analyses go astray. The principles also insist on value alignment, urging that “highly autonomous AI systems should be designed so that their goals and behaviors can be assured to align with human values throughout their operation” (Principle 10). These human values appear explicitly in Principle 11 and include “human dignity, rights, freedoms, and cultural diversity.”³⁰

Insisting on human rights presupposes a certain set of philosophical debates have been settled: there are universal values, in the form of rights, and it is roughly known which rights there are. As the Asilomar Principles make clear, there are those in the AI community who believe human rights have been established in credible ways. But others are eager to avoid what they perceive

29 Isaac Asimov, *I, Robot*, “Three Laws of Robotics” (1970) (1942).

30 Asilomar AI Principles, Future of Life Inst. (2017), <https://futureoflife.org/ai-principles/>.

as ethical imperialism. They think the problem of value alignment should be solved differently, for instance by teaching AI to absorb input from around the world, in a crowd-sourcing manner. So this is yet another case where a philosophical problem assumes new relevance: one's philosophically preferred understanding of meta-ethics must play a role in deciding whether or not one is comfortable putting human rights principles into the design of AI.

Human rights also have the advantage in that there have been numerous forms of human rights vernacularization around the world, and global support for these rights is rather substantial. Again, the UN Guiding Principles on Business and Human Rights are already in place, but chances are China will be among the leading AI producers and have little inclination to solve the value alignment problem in a human rights spirit. However, that does not have to defeat efforts elsewhere to advance with the human rights solution to that problem. Perhaps in due course AI systems can exchange thoughts on how best to align with humans, but it would help if humans went about design of AI in a unified manner, advancing the same solution to the value-alignment problem. However, since even human rights continue to have detractors there is little hope that will happen.

What is needed, in any event, is more interaction among human rights and AI communities so the future is not created without input from the human rights community. (There is clearly no risk it would be created without the AI community.) One important step in this direction is the decision by Amnesty International—the other AI—to make extensive use of artificial intelligence devices in pursuit of human rights causes. At this stage, Amnesty is piloting the use of machine learning in human rights investigations, and is also focusing on the potential for discrimination within the use of machine learning, particularly with regard to policing, criminal justice, and access to essential economic and social services. More generally, Amnesty is concerned about the impact of automation on society, including the right to work and livelihood. There needs to be more of such

engagement, ideally going both ways, between the human rights movement and the engineers behind this development.

V. Artificial Stupidity and the Power of Companies

For now there are more immediate problems than intelligent machines of the future. The exercise of each human right on the UDHR is affected by technologies, one way or another. For example, anti-discrimination provisions are threatened if algorithms used in areas ranging from health care to insurance underwriting to parole decisions are racist or sexist because the learning they do draws on sexism or racism. Freedom of speech and expression, and any liberty individuals have to make up their minds, is undermined by a flood of fake news including fabrication of fake videos that could feature just about anybody doing anything, including acts of terrorism that never occurred or were committed by different people. AI is involved both in the creation and dissemination of such fake-news products.

The more that political participation depends on internet and social media, the more they too are threatened by technological advances, ranging from the possibility of deploying ever more sophisticated internet bots participating in online debates to hacking of devices used to count votes, or hacking of public administrations or utilities to create disorder. Wherever there is AI there also is AS, artificial stupidity: efforts made by adversaries not only to undermine gains made possible by AI, but to turn them into their opposite. Russian manipulation in elections is a wake-up call; much worse is likely to come. Judicial rights could be threatened if AI is used without sufficient transparency and possibility for human scrutiny. An AI system has predicted the outcomes of hundreds of cases at the European Court of Human Rights, forecasting verdicts with accuracy of 79 percent; and as accuracy increases it will be tempting to use AI also to reach decisions. Use of AI in court proceedings might help generate access to legal advice to the poor (one of the projects Amnesty pursues, especially in India);

but it might also lead to Kafkaesque situations if algorithms give impenetrable advice whose bases are beyond ready (or perhaps any) human scrutiny. Algorithmic fairness has for good reason started to attract a fair amount of attention.

Any rights to security and privacy are potentially undermined not only through drones or robot soldiers, but also through increasing legibility and traceability of individuals in a world of electronically recorded human activities and presences. The amount of data available about people will likely increase enormously, especially once biometric sensors can monitor human health. (They might check up on people in the shower and submit their data, and this might well be in one's best interest because some illness becomes diagnosable long before it becomes a problem.) There will be challenges to civil and political rights arising from the sheer existence of such data and from the fact that these data might well be privately owned, not by those whose data they are, but by entities other than the ones who generated the data in the first place. Today's leading companies in the AI sector are more powerful than oil companies ever were, and this is presumably just the beginning of their ascension.

In the past, status in complex societies was determined first by ownership of land and, after the Industrial Revolution, by ownership of factories. The ensuing highly inegalitarian structures have not worked out well for many. Unequal ownership of data will have detrimental consequences for many people in society as well. If the power of companies such as Alphabet (the parent company of Google and its subsidiaries), Apple, Facebook, or Tesla is not harnessed for the public good, humanity might eventually find itself in a world dominated by companies, as depicted for instance in Margaret Atwood's novel *Oryx and Crake* or David Foster Wallace's *Infinite Jest*. The Cambridge-Analytica scandal is a wake-up call here, and Mark Zuckerberg's testimony to US senators on 10 April 2018 revealed the astonishing extent of ignorance among senior lawmakers about the workings of internet companies whose business models depend on marketing data. Such ignorance

paves the path to power for companies. Consider a related point: governments need the private sector to aid in cyber security. The relevant experts are smart, expensive, and many would never work for government. One can only hope that it will be possible to co-opt them in service of government security given that governments are overextended here. If such efforts fail, only companies will provide the highest level of cyber security.

VI. The Great Disconnect: Technology and Inequality

The last topic to be discussed here is AI and inequality, and the connection to human rights. The UDHR turns seventy in 2018. That is also a good time to reflect on how there have been numerous instances where technology created the potential for, or inadvertently succeeded in creating, inequality in society, with ensuing implications for human rights. To begin with, there is Thomas Piketty's warning that capitalism left to its own devices in times of peace generates ever increasing economic inequality. Those who own the economy benefit from it more than those who just work within it. As such, over time opportunities in one's life will depend ever more on social status at birth. It is also becoming increasingly clear how those who either produce technology or know how to use technology to magnify impact can command higher and higher wages. AI will only reinforce these tendencies, making it ever easier for leaders across all segments to magnify their impact. That in turn makes producers of AI ever more highly priced providers of technology. More recently, Walter Scheidel has shown that, historically, substantial decreases in inequality have only occurred in response to calamities such as epidemics, social breakdowns, natural disasters or war. Otherwise it is hard to muster effective political will for change.

The original Luddites smashed looms in nineteenth-century England because they worried about jobs. But so far every wave of technological innovation has ended up creating more jobs than it destroyed. While technological change was not good for everybody, it was good for society as a

whole, and for humanity. It is possible that there will be so many jobs that those who develop, supervise or innovatively use technology, as well as creative professions that cannot be displaced, will eventually outnumber those who lose jobs to AI. But clinging to that hope would be naïve because it presupposes a radical overhaul of the educational system to make people competitive. Alternatively, one might hope for some combination of job creation, shorter working hours so jobs can be shared, and higher wages so people can make a decent living. Either way, one can be more hopeful for European countries than for the US, where so many have fallen behind in the race between technology and education and where solidarity at the national level is so poorly entrenched that even universal health care remains contested. How developing countries with comparative advantage in manufacturing and cheap labor will fare in all this is anybody's guess.

Against this backdrop, there is reason to worry that AI will drive a widening technological wedge into societies, excluding millions and rendering them redundant as market participants, thus potentially undermining their membership in political community. When wealth was determined by land ownership the rich needed the masses because the point of land ownership was to charge rent. When wealth was determined by ownership of factories the owners needed the masses to work the machines and buy stuff. But those on the losing side of the technological divide may no longer be needed at all. In his 1926 short story "The Rich Boy," F. Scott Fitzgerald famously wrote, "Let me tell you about the very rich. They are different from you and me." AI might validate that statement in a striking way.

Eventually there might be new Bantustans, as in Apartheid South Africa, or, perhaps more likely, separate company-owned towns with wonderful social services from which others are excluded. Perhaps just enough will be given to those others so they do not rebel outright. The fabric of society might dissolve if there are many more people than

needed as participants in any sense. Though the world would be rich enough to offer people decent lives, the political will to do so might not be there among the privileged if there are ways of going on that allow them to live without fear of violent disruption. All of that would be seriously bad news from the standpoint of human rights. Scenarios like this are further in the future than the more immediate concerns from the ever-growing presence of algorithms in human life, but probably not as far in the future as the arrival of a superintelligence. Chances are challenges created by increasing inequality arrive within the next seventy years of the UDHR.

While the US is the hub of global technology, including AI, it has much less practice than, say, many European nations in creating an environment of nationwide solidarity which helps with sustained efforts to make AI beneficial to the whole population. The US has appallingly low social mobility. Studies find that up to fifty percent of all jobs are now susceptible to automation, including traditionally safe professions such as law, accountancy, and medicine. Or as Philip Alston, UN Special Rapporteur on Extreme Poverty and Human Rights, noted about a 2017 official visit to the US:

Automation and robotization are already throwing many middle-aged workers out of jobs in which they once believed themselves to be secure. In the economy of the twenty-first century, only a tiny percentage of the population is immune from the possibility that they could fall into poverty as a result of bad breaks beyond their own control.³¹

It is oft said that technological changes should be allowed to progress, only if the resulting benefits can be shared widely. But as just noted, radical measures against inequality only happen at deeply troubled times, times one would not otherwise wish to live in. The increases in inequality in recent decades, as well as the election to the presidency

31 United Nations Office of High Commissioner for Human Rights, *The Rise of Artificial Intelligence and the Threat to our Human Rights* (2017).

of a man who personifies greed, vindictiveness, and utter lack of normal empathy do not bode well for any efforts at spreading the wealth in the US, regardless of how nice that sounds at conferences and political events.

These increases of inequality are also troublesome for their impact on human rights. It is hard to overstate what is at stake. Marx was right when, in *On the Jewish Question*, he pointed out that emancipation conceived fully in terms of rights was unappealing. A society built around rights-based ideals misses out on too much. Over the last seventy years the human rights movement has often failed to emphasize that larger topic of which human rights must be part: distributive justice, both domestic and global. AI might eventually jeopardize the very legacy of the Enlightenment because individuality as such is increasingly under siege in an era of Big Data and machine learning. It might also do so since what is threatened here as well is the kind of concern for society as a whole that is captured in modern thinking about distributive or social justice. Such thinking became possible only with the spirit of the Enlightenment and technological possibilities opened up by industrialization.

VII. Conclusion

This article has surveyed challenges for human rights that arise from the increasing presence of artificial intelligence in a way that distinguishes short-, medium-, and long-term perspectives. Some of these challenges are already quite present, others need to be on our radar now even though they may not be relevant for a long time, if ever. Chances are it is the increasing inequality in combination with the production of artificial intelligence that will be the bane of the next seventy years in the life of the Universal Declaration of Human Rights. The human rights community has good reason to put artificial intelligence high on its agenda.

14.10 Rumiana Yotova: “Regulating Genome Editing under International Human Rights Law” (2020)³²

I. Introduction

A. SCIENTIFIC BACKGROUND AND RECENT DEVELOPMENTS

In November 2018 the Chinese scientist Dr He Jiankui announced the birth of the first genetically engineered babies—Lulu and Nana. This was the result of his editing and implanting of the embryos of seven couples with HIV-positive fathers in an attempt to make them resistant to the virus. The experiment was conducted in a private hospital in violation of China’s non-binding ethical guidelines prohibiting heritable genome editing. The announcement was met with universal condemnation by scientists and international organisations, strongly indicating that clinical research involving genome editing is not considered acceptable at present. The Statement of the Second International Summit on Human Genome Editing where the experiment was first announced said that “the procedure was irresponsible and failed to conform with international norms.”³³ Similar concerns were expressed by the Chinese Academy of Medical Sciences, the French National Academy of Medicine and the Academy of Sciences and the UK Nuffield Council on Bioethics. In October 2019, the Russian scientist Denis Rebrikov reported editing human eggs to prevent deafness with the intention of using them to bring about a pregnancy. These experiments raise pressing questions regarding the permissibility and current regulation of human genome editing under international law, which will be explored in this article.

Since the discovery of the structure of the human genome in 1953 by Francis Crick, James Watson and Rosalind Franklin, scientific developments in genetics have been accelerating

32 Rumiana Yotova, “Regulating Genome Editing Under International Human Rights Law,” *International & Comparative Law Quarterly*, Vol. 69, No. 3 (July 2020). Editor: For space considerations, some explanatory notes have been omitted.

33 Statement by the Organizing Committee of the Second International Summit on Human Genome Editing (November 2018) para 8.

quickly. The 1990s saw the first clinical trials of gene therapies aimed at treating rare genetic disorders caused by a single- gene mutation. This promise of revolutionising healthcare led to a surge of regulatory action on the domestic and international planes. However, optimism soon turned to caution due to inconsistent results and the first death caused by a gene therapy clinical trial in 1999. Shortly afterwards, in 2003, the full sequencing of the human genome was completed and made publicly available....

In 2012 Charpentier and Doudna developed a new, significantly cheaper and more precise method of genetic engineering—genome editing through the CRISPR Cas9 tool, based on the mechanism used by bacteria to defend themselves against viruses. Genome editing is used to alter a selected section of DNA in a living cell by cutting the DNA at a chosen point and either deleting existing elements of the genome or introducing a new sequence. At present, the outcomes of human genome editing are far from certain. On the one hand, the use of the new tool frequently causes extensive unintended off-target mutations which “could lead to important genes being switched on and off.”³⁴ The other major safety challenge to the successful use of genome editing is “mosaicism,” where only some cells carry the desired edit. On the other hand, genome editing holds significant promise. According to the World Health Organisation, there are over 10,000 monogenic diseases caused by an error in a single gene of the DNA, which occur in 1 per cent of births. Some of these diseases are fatal and many significantly reduce the quality of life. Once sufficiently developed, genome editing could help alleviate and even eradicate the suffering caused by these diseases by inactivating a disease-causing gene or correcting a harmful mutation. In future, such new technology could also be used to address more complex disorders caused by mutations in multiple genes, such as cancer, cardiovascular diseases or diabetes.

Genome editing can be performed either on the somatic cells making up the body or on germline cells, such as those making up the early embryo, which contain the genetic information passed on to future generations. The latter type of human genome editing is more effective because it can be performed on a single-cell embryo with the potential to edit all of its genetic make-up in a heritable manner. However, germline editing raises the most difficult regulatory and ethical issues given the uncertainties involved in the use of this new technology, the irreversibility of the edits and the fact that any desired but also unintended negative changes would be passed on to future generations, with the potential of impacting humanity as a whole....

B. LEGAL ISSUES ARISING FROM GENOME EDITING

Given the rapid acceleration of scientific developments regarding genome editing and the ease with which people can cross borders to access new healthcare technologies, there is an urgent need for an international debate and a consensus on the minimum regulatory standards that should apply to editing the human genome. It is essential that this takes place before genome editing routinely becomes clinically available somewhere in the world, at which point effective regulation to ensure the safe and ethical use of the new technology would become very difficult to implement in practice. The pressing need for regulation is reinforced by Dr. He’s recent experiment. Scientists and the WHO have called for a global moratorium on heritable genome editing until its implications have been properly considered, as well as for the establishment of an international framework imposing conditions that ought to be met before any use of genome editing can be approved. The fact that international human rights law already sets out important requirements and limitations on genetic interventions is largely overlooked in the present policy debates.

34 M Kosicki et al., ‘Repair of CRISPR-Cas9 – Induced Double-Stranded Breaks Leads to Large Deletions and Complex Rearrangements,’ *Nature Biotechnology* 36 (July 16, 2018): 765.

The aim of this article is to assess the international human rights framework that currently regulates the research and clinical applications involving genome editing and to analyse its implications for the use of the new technology....

It will be argued that international law is the most appropriate legal order through which to channel a consensus and develop a regulatory framework for genome editing, by helping harmonise domestic laws, setting out common minimum standards, providing centralised oversight and promoting good practices through soft law. This is because international law is the only overarching legal order that has the necessary procedures to help form and implement an international consensus on matters of common interest and concern. International law has a strong humanitarian focus, particularly since the end of the Second World War and has developed the tools necessary to balance the welfare of the individual with the interests of humanity as a whole, through concepts including proportionality, the common heritage of mankind, global public goods and the rights of future generations. Finally, international law has the capacity to regulate both the behaviour of States and of non-State actors across national borders, thus addressing the challenge of health tourism to States with the weakest domestic regulation.

International law already plays an important role in regulating genome editing. Even though there is no international treaty of general application that directly addresses the matter, there are key regional human rights instruments containing specific provisions applicable to genetic interventions, including the Council of Europe's Oviedo Convention on Human Rights and Biomedicine (Oviedo Convention) and the EU Charter of Fundamental Rights (EU Charter). There are also important soft law human rights instruments most notably the 1997 UNESCO Declaration on the Human Genome and Human Rights and the 2005 UNESCO Declaration on Bioethics and Human Rights.

The regional and soft law instruments in the field of biomedicine and human rights indicate

that there is an international consensus with respect to certain aspects of genetic interventions. First and foremost, according to all instruments in the field, interventions on the human genome can only be undertaken for preventive, therapeutic or diagnostic purposes with eugenics being strictly prohibited. Second, any research and clinical application concerning the human genome ought to be conducted with full respect for human dignity and human rights. Third, the risks that may be incurred by a person ought not be disproportionate to the potential benefits and, related to this, there are requirements of rigorous prior risk assessment, adequate risk management and minimising the potential risks for the individuals affected. Fourth, genetic interventions are subject to a strict requirement of informed consent. Finally, due regard ought to be given to the rights of future generations.

II. Regulatory and Policy Challenges Posed by Genome Editing

A. POLICY CHALLENGES AND RESPONSES

... A number of international organisations have issued policy statements on genome editing, highlighting the challenges it presents and proposing different degrees of limitations on the research and clinical application.... The broad condemnation of Dr He's experiment seems to evidence an agreement that germline editing should not be used clinically at present. The broader policy question is whether it should be prohibited as a general rule or by way of a temporary moratorium until such time as its use becomes safe and acceptable, or if not, what standards should apply to it....

B. LEGAL CHALLENGES AND CURRENT LANDSCAPE

... There is no generally accepted or clearly defined threshold of safety or acceptable risk that is required before the clinical application of genome editing is allowed. Nor is there a common understanding or definitions of the key concepts involved, i.e. "the human genome," "gene," "germline," "embryo" or indeed "eugenics." There

is no agreement on how to balance the risks and the benefits for the individual and for society and a disturbing lack of clarity concerning the purposes for which germline editing could be used. Therapeutic and preventive purposes seem to be the generally accepted whilst eugenics are prohibited (although this term remains undefined). Between these poles, what constitutes “enhancement,” “prevention” and “therapy” for diseases is unclear. There are no clear legal distinctions between what constitutes a “disease” as opposed to a naturally occurring mutation, let alone what is a “serious disease” which might change the risk/benefit balance. For example, whether deafness is a disease is medically and legally contested, particularly by the Deaf community. It is also uncertain whether the use of the technology is reserved for peaceful purposes or whether it could have military applications, for example the creation of enhanced soldiers—be they super strong or resistant to chemical and biological weapons. There is also no clarity concerning access to the new technology, which raises issues of equality and solidarity....

Overall, the current legal landscape does not address any of the key concerns raised by genome editing satisfactorily. There is, then, a pressing need to consider the regulation of genome editing on the international plane. Agreeing on minimum regulatory standards would be the strongest guarantee against the unsafe, unethical and inequitable uses of genome editing....

lii. The Regulation of Genome Editing Under Human Rights Law

International regulation of interventions in the human genome is currently approached through the framework of human rights law. But is the human rights framework sufficient and adequate?

Two regional European human rights treaties regulate genetic interventions directly, the 1997 Oviedo Convention and the EU Charter. The rights and principles of general international law that are

most relevant to germline editing are the principle of human dignity, the right to health, the right to benefit from science and the prohibition against discrimination. The concept of the rights of future generations, which are not a human right as such but a legal construct expressing intergenerational equity is also relevant.

The human rights approach to genome editing is valuable as it is built on the legal and ethical concepts of human dignity, autonomy, equality, and non-discrimination. Whilst there is no definition of human dignity, there is broad agreement that it is an ethical concept which underpins all human rights. It is also a normative concept, described by the German Federal Constitutional Court as meaning “that the human being has a right to ‘social value and respect.’”³⁵ As the Court said:

Where there is life, human dignity is due; it is not significant whether or not the bearer of life is conscious of his dignity and how to safeguard it him/herself....³⁶

Transposing the Court’s jurisprudence on dignity in the context of abortion to the context of germline editing, it could likewise be argued that human dignity prohibits that assertion of either State or parental power over the embryo.

Human dignity is an important limitation on both scientific research involving genome editing and its clinical applications. It plays an important role when balancing the rights of the individual against the broader public interests at stake. It is not clear, however, where exactly should this balance lie or what weight should be given to the respective values.

The “welfare of the individual” is, though, another ethical concept which is not legally defined. It is intrinsically linked to the ethical principle of individual autonomy, which signifies self-governance conferring a “right to act on one’s own

35 Decision of 20 October 1992, BVerfGE 87, 209.

36 Judgment of 25 February 1975, BVerfGE 39, 1 and Judgment of 28 May 1993, BVerfGE 88, 203 both concerning abortion.

judgment about matters affecting one's life, without interference by others."³⁷ ...

A better balancing tool would be the precautionary approach from environmental law as it places the burden of proof on the entity proposing to use a new technology in the face of scientific uncertainty, as well as the obligation to take all necessary measures to minimise the risks....

The key challenge in adopting a human rights approach to genome editing is the lack of consensus as to whether an embryo benefits from human rights protection at all. Given the underlying religious, ethical and cultural sensitivities, during the drafting of the Oviedo Convention it was agreed that the term "human being" should be understood in the broadest possible sense and that the purpose of the convention included not only guaranteeing the rights and freedoms of the persons already born but also the protection of the dignity and identity of the unborn. According to the current case law of the ECtHR, "the full protection of the right to life starts only with the birth of the child."³⁸ The ECtHR has acknowledged that:

At European level ... there is no consensus on the nature and status of the embryo and/ or foetus, although they are beginning to receive some protection in the light of scientific progress and the potential consequences of research into genetic engineering, medically assisted procreation or embryo experimentation. At best, it may be regarded as common ground between States that the embryo/ foetus belongs to the human race. The potentiality of that being and its capacity to become a person ... require protection in the name of human dignity, without making it a "person" with the "right to life"....³⁹

Accordingly, genome editing of embryos would not constitute a violation of the ECHR, although eugenics and arguably enhancement would be contrary to human dignity.

A. GERMLINE EDITING UNDER HUMAN RIGHTS LAW: RESTRICTIONS AND ENTITLEMENTS

... The lack of international consensus concerning the prohibition of germline editing under human rights law is further evidenced by the text and preparatory works of the 1997 UNESCO Universal Declaration on the Human Genome and Human Rights (UNESCO Declaration). Arguably, this is currently the most important international instrument in the field of human genetics, in the absence of an international treaty of general application. While not legally binding, the UNESCO Declaration sets out internationally agreed standards and good practices concerning genetic interventions, which were supported by a broad international consensus at the time of its adoption and are still pertinent today....

Even though human rights law does not directly prohibit germline editing, it does impose certain requirements on States. The UNESCO Declaration together with its preparatory works suggest that there might be a positive obligation on States to regulate high-risk genetic interventions, such as genome editing, in order to ensure they are in accordance with human dignity, human rights and the rights of future generations....

There are also human rights that could be used as an argument in favour of using the technology and be relied upon directly by parents should the technology become clinically available, including the right to health, the rights of disabled people and the rights of the child.

37 G. Dunstan, "Should Philosophy and Medical Ethics Be Left to the Experts?" in S. Bewley and R. Humphry Ward (eds), *Ethics in Obstetrics and Gynaecology* (RCOG Press, 1994) 3.

38 Preparatory Works on the Convention on the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, Steering Committee on Bioethics, CDBI/INF (2000), 33, quoting the report of the European Commission of Human Rights in *Brüggemann and Scheuten v Germany* (12 July 1977) DR 10, 100.

39 *Vo v France*, Application No 53924/00, ECHR 2004-VIII, para 84.

The right to health has been interpreted as entailing an obligation to “enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.”⁴⁰ If this broad construction of the right is accepted, it could be relied on by parents with genetic diseases to argue for genetically editing their reproductive cells or embryos to provide them with the best chance of having a healthy child. The rights of the child could also be used by parents to call on the State to “ensure to the maximum extent possible the survival and development”⁴¹ of their future child. Such use of these rights would give expression to the principle of individual autonomy but would need to be carefully balanced with the broader public interests on a case-by-case basis.

The rights of disabled people are an expression of the principles of human dignity, equality and autonomy. They require respect for difference, acceptance of persons with disabilities as part of human diversity and respect for the right of children with disabilities to preserve their identity. Accordingly, disabled parents cannot be required to edit their embryos in order to remove a disability. Furthermore, States ought to carefully consider the preservation of human genetic diversity and the identity of disabled people when deciding on the permissible therapeutic uses of genome editing....

B. THE LAWFUL PURPOSES OF GENOME EDITING UNDER HUMAN RIGHTS LAW

All human rights instruments in the field of genetics specify that genetic interventions should only be allowed for therapeutic purposes. Article 13 of the Oviedo Convention provides that interventions seeking to modify the human genome “may only be undertaken for preventive, diagnostic and therapeutic purposes.” The main objective of the drafters was to limit interventions in the human genome to

those undertaken for the protection of health. There was broad agreement that no intervention “shall be permitted for the purpose of perfecting human existence (rendering human beings more intelligent, musical, athletic, etc).”⁴² According to the Council of Europe’s Explanatory Report “[t]he ultimate fear is of intentional modification of the human genome so as to produce individuals or entire groups endowed with particular characteristics and required qualities.”⁴³ This detailed definition of the permissible aims of genetic interventions is preferable to the more general wording of the UNESCO Declaration, which refers to relief from suffering but also to the improvement of the health of individuals and humankind as a whole. The latter phrase blurs the lines between therapy and enhancement....

It can be concluded that under international human rights law, genetic interventions can be only be undertaken for therapeutic, preventive and diagnostic purposes, with eugenics being strictly prohibited and enhancement being implicitly excluded from the lawful applications. These limitations apply both to the research and to the clinical applications of genome editing. International law, however, does not contain definitions of the key terms, ie “therapy,” “prevention,” “enhancement” or “eugenics.” Any future instrument in the field ought to fill this gap.

C. THE SOCIAL EFFECTS OF GENOME EDITING: EQUALITY AND SOLIDARITY

... The “rights” of future generations are not really rights as such, as there is no legal rights holder, nor do the so-called “rights” have a substantive content. Instead they are a legal construct expressing a general principle of intergenerational equity and imposing procedural obligations on States to act with due diligence with respect to activities likely to affect future generations and prevent harm to them. The rights of

40 Commission on Human Rights, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2004/49, para 18.

41 Convention on the Rights of the Child (1989) 1577 UNTS 3, art 6.

42 Preparatory Works on the Convention on the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, Steering Committee on Bioethics, CDBI/INF (2000), 63.

43 Explanatory Report to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, Council of Europe, (n 120) 14.

future generations are relevant to the regulation of genome editing as the technology will have an inevitable, significant but uncertain impact on them....

In order to address equality challenges, any future instrument regulating the human genome and genetic interventions should expressly prohibit discrimination based on genetic characteristics, specifying that this also entails a ban on requiring individuals to undergo genetic tests as a condition for entering into a contract or being provided with goods and services....

IV. Conclusion

Given that recent scientific and technological developments have brought humanity much closer to being able to genetically engineer future persons and edit out diseases, there is a pressing need for effective regulation of the human genome and genetic interventions on both the international and domestic planes. A future instrument would need to set out a general rule as to whether human germline editing is to be allowed and if so, in what circumstances and under what conditions. As evidenced in the temporary ban of germline editing in the Oviedo Convention and the lack of prohibition in the UNESCO Declaration on the Human Genome, no consensus could be reached in the past that germline genome editing should be prohibited under international law. However, the significant scientific progress that has since taken place in the field of human genetics has created a momentum for exploring regulatory options and for ascertaining whether that lack of consensus still exists. The recent experiment by Dr. He, coupled with the responses by scientists and policy-makers, provide a strong incentive for States to discuss and agree on common international standards for genetic interventions in order to make genome editing safe, respectful of human dignity and human rights, as well as to enable scientists to develop their research. Indeed, the existing instruments in the field of human genetics already indicate the crystallisation of

a positive obligation on States to regulate high-risk genetic interventions. One flexible approach could be the imposition of a temporary moratorium on the clinical trials and the clinical application of genome editing, while expressly preserving the scientific freedom to conduct basic research in order to make the technology safe for future clinical use. An international debate and consensus would be required in order to lift such moratorium. Another approach could be to allow clinical research involving germline editing on a case-by-case basis, through a centralised decision-making process, based on clearly defined criteria, subject to prior impact assessment and subsequent risk management.

Genome editing should, at the minimum, be subject to compliance with human dignity and human rights, as well as to a strict risk/benefit analysis which balances the interests of the future individual, of their parents and those of society, humanity and future generations. Striking the correct balance would help promote the health and welfare of individuals and their descendants while ensuring social equality and the survival of the human species in its genetic diversity.... Striking the balance too much in favour of the individual could lead to using genome editing to enhance the descendants of those who can afford it, creating a superior human race—or, indeed, species. It could also lead to homogenising the human genetic pool, making it vulnerable to extinction by a single disease or genetic defect. Overemphasising the public interest, on the other hand, could result in denying life-saving therapies, the right to procreate and the right to health....

14.11 Walter Isaacson: On Genome Editing and the Future of the Human Race (*The Code Breaker*, 2021)⁴⁴

Red Lines

THE STAKES

When He Jiankui produced the world's first CRISPR babies, with the goal of making them and their

44 Walter Isaacson, *The Code Breaker: Jennifer Doudna, Gene Editing, and the Future of the Human Race* (New York: Simon and Schuster, 2021). Editor: For space considerations, some explanatory notes have been omitted.

descendants immune to an attack by a deadly virus, most responsible scientists expressed outrage. His actions were deemed to be at best premature and at worst abhorrent. But in the wake of the 2020 coronavirus pandemic, the idea of editing our genes to make us immune to virus attacks began to seem a bit less appalling and a bit more appealing. The calls for a moratorium on germline gene editing receded. Just as bacteria have spent millennia evolving ways to develop immunity to viruses, perhaps we humans should use our ingenuity to do the same.

If we could safely edit genes to make our children less susceptible to HIV or coronaviruses, would it be wrong to do so? Or would it be wrong not to do so? And what about gene edits for other fixes and enhancements that might be possible in the next few decades? If they turn out to be safe, should governments prevent us from using them?

The issue is one of the most profound we humans have ever faced. For the first time in the evolution of life on this planet, a species has developed the capacity to edit its own genetic makeup. That offers the potential of wondrous benefits, including the elimination of many deadly diseases and debilitating abnormalities. And it will someday offer both the promise and the peril of allowing us, or some of us, to boost our bodies and enhance our babies to have better muscles, minds, memory, and moods.

In the upcoming decades, as we gain more power to hack our own evolution, we will have to wrestle with deep moral and spiritual questions: Is there an inherent goodness to nature? Is there a virtue that arises from accepting what is gifted to us? Does empathy depend on believing that but for the grace of God, or the randomness of the natural lottery, we could have been born with a different set of endowments? Will an emphasis on personal liberty turn the most fundamental aspects of human nature into consumer choices made at a genetic supermarket? Should the rich be able to buy the best genes? Should we leave such decisions to individual choice, or should society come to some consensus about what it will allow?

Then again, are we getting a bit overdramatic with all of this handwringing? Why in the world

would we not seize the benefits that will come from ridding our species of dangerous diseases and enhancing the capacities of our children?

THE GERMLINE AS A RED LINE

The primary concern is germline editing, those changes that are done in the DNA of human eggs or sperm or early-stage embryos so that every cell in the resulting children—and all of their descendants—will carry the edited trait. There has already been, and rightly so, general acceptance of what is known as somatic editing, the changes that are made in targeted cells of a living patient and do not affect reproductive cells. If something goes wrong in one of these therapies, it can be disastrous for the patient but not for the species.

Somatic editing can be used on certain types of cells, such as those of the blood, muscles, and eyes. But it is expensive, doesn't work on all cells, and may not be permanent. Germline edits could make a fix in all of the cells of the body. Thus it holds a lot more promise. And a lot more perceived peril.

Until the creation of the first CRISPR babies in 2018, there were two main medical methods for selecting the genetic traits of a child. The first was prenatal testing, which involves performing genetic tests on embryos as they are growing in the womb. Nowadays, such tests can detect Down's syndrome, sex, and dozens of congenital conditions. Parents can decide to abort the embryo if they don't like the traits. In the U.S., a prenatal diagnosis of Down's syndrome results in an abortion approximately two-thirds of the time.

The development of *in vitro* fertilization led to another advance in genetic control: preimplantation genetic diagnosis. Couples can, if they are able, produce multiple fertilized eggs and have them tested in a lab dish, before they get implanted, for genetic characteristics. Do they have the mutations for Huntington's or sickle cell or Tay-Sachs? Or someday we can ask, as happens in the movie *Gattaca*, do they have the desired genes for height, memory, and muscle mass? With preimplantation diagnosis, those fertilized eggs with the parents' desired traits can be implanted and the rest discarded.

Both of these techniques raise some of the same moral issues as germline gene editing. For example, James Watson, the outspoken co-discoverer of DNA, once opined that a woman should have the right to abort a fetus based on any preference or prejudice, including not wanting a child that would be short or dyslexic or gay or female.⁴⁵ This caused a lot of people to recoil, understandably. Nevertheless, preimplantation genetic diagnosis is now considered morally acceptable, and parents are generally free to make their own choices about what criteria to use.

The question is whether germline gene editing will someday be considered just another in a long continuum of once controversial biological interventions, such as prenatal or preimplantation screening, that have gradually been accepted. If so, does it make sense to treat germline editing as something distinct, subject to a different set of moral standards?

Call this the continuum conundrum. There are ethicists who are good at making distinctions and those who are good at debunking distinctions. Or to put it another way, there are ethicists who discern lines and others who blur them. The ones who like to blur the lines often go on to pronounce that the lines are so blurry there is no rationale for treating the categories differently.

Take the atom bomb, as an analogy. When Secretary of War Henry Stimson was wrestling with whether to drop it on Japan, some argued that it was an entirely new category of weapon, a line that should not be crossed. Others said it was not fundamentally different, and indeed might be less brutal, than the massive firebombing campaigns that had been waged on Dresden and Tokyo. The latter side prevailed, and the bomb was dropped. Later, however, atomic weaponry came to be seen as being in a distinct category, and it hasn't been used since.

In the case of gene editing, I think the germline is indeed a real line. There may not be a razor-sharp

line differentiating it from other biotechnologies, but as Leonardo da Vinci taught us with his *sfumato*, even slightly blurry lines can be definitive. Crossing the germline takes us to a distinct new realm. It involves engineering a genome rather than nurturing one that was produced naturally, and it introduces a change that will be inherited by all future descendants.

Nevertheless, this doesn't mean the germline should never be crossed. It simply means that we can view the germline as a firebreak that gives us a chance to pause, if we decide we ought to, the advance of genetic engineering techniques. The question becomes: Which cases, if any, should cause us to cross this germline?

TREATMENT VS. ENHANCEMENT

Another line we might consider, in addition to that between somatic and germline editing, involves the distinction between "treatments" designed to fix dangerous genetic abnormalities and "enhancements" designed to improve human capacities or traits. At first glance, treatments seem easier to justify than enhancements.

But the treatment-vs.-enhancement distinction is a blurry one. Genes might predispose or predetermine certain kids to be short or obese or have attention deficits or be depressive. At what point do genetic modifications to fix such traits cross the line from health treatment to enhancement? What about genetic modifications that help prevent a person from getting HIV or coronavirus or cancer or Alzheimer's? Perhaps for these we need a third category called "preventions" in addition to the ill-defined "treatments" and "enhancements." And to those we might even add a fourth category, called "super-enhancements," which would include giving humans new capabilities that the species has not had before, such as the ability to see infrared light or hear super-high frequencies or avoid the bone, muscle, and memory loss that comes with age.

45 Steve Boggan, Glenda Cooper, and Charles Arthur, "Nobel Winner Backs Abortion 'for Any Reason,'" *The Independent*, Feb. 17, 1997.

As you can see, the categories can get complex, and they don't necessarily correlate with what might be desirable and ethical....

Who should Decide?

THE NATIONAL ACADEMY'S VIDEO

The tweet was provocative, a bit more provocative than it was intended to be. It read:

Dream of being stronger? Or smarter? Do you dream of having a top student or star athlete? Or a child free of inheritable #diseases? Can human #GeneEditing eventually make this and more possible?

It was an attempt by the usually staid National Academy of Sciences in October 2019 to spur a "broad public discussion" of gene editing, just like all of those conferences on the topic had recommended. The tweet linked to a quiz and a video explaining germline gene editing.

The video began with five "everyday people" putting sticky notes onto a diagram of a body and fantasizing about what changes they would make in their genes. "I guess I would like to be taller," said one. Other personal desires included: "I would like to change body fat"; "Let's prevent baldness"; "Take away dyslexia."

Doudna was in the video explaining how CRISPR works. Then it showed people discussing the prospect of designing the genes of their future children. "Create the perfect human being?" one man mused. "That's pretty cool!" Said another, "You want the best qualities to be put into your offspring." A woman chimed in, "If I had the chance to choose the best DNA for my child, I would definitely want her to be smart." Others discussed their own health problems, such as attention-deficit disorder and high blood pressure. "I would take that out, for sure," a man said of his heart disease. "I don't want my kids to deal with it."⁴⁶

Bioethicists immediately erupted on Twitter. "What a mistake," tweeted Paul Knoepfler, a cancer researcher and bioethicist at the University of California, Davis. "Who at National Academy of Sciences' media office is behind this bizarre tweet & page it links to that seems troublingly upbeat about human heritable gene editing & to trivialize idea of designer babies?"

Twitter, unsurprisingly, is not the best forum to discuss bioethics. There is a truism about internet comment boards: any discussion descends to shouting "Nazi!" within seven responses. In the case of the gene-editing threads, it was more like by the third response. "Are we still in 1930s Germany?" one person tweeted. Another added, "How did this read in the original German?"⁴⁷

Within a day, the folks at the National Academy of Sciences had sounded retreat. The tweet was deleted and the video pulled off the web. A spokesperson apologized that they had "left the misimpression that the use of genome editing for the 'enhancement' of human traits is permissible or taken lightly."

The brief tempest showed that the bromide of calling for greater societal discussion about the morals of gene editing was easier preached than practiced. It also raised the question of who should get to decide how gene-editing tools should be used. As we saw in the thought experiments in the previous chapter, many of the difficult questions about gene editing involve not just how to decide the issue, but who should decide. As is the case with so many policy issues, the desires of an individual might conflict with the good of the community.

THE INDIVIDUAL OR THE COMMUNITY?

On most great moral issues, there are two competing perspectives. One emphasizes individual rights, personal liberty, and a deference to personal choice. Stemming from John Locke and other Enlightenment thinkers of the seventeenth century,

46 National Academy of Sciences, "How Does Human Gene Editing Work?" 2019, <https://thesciencebehindit.org/how-does-human-gene-editing-work/>, page removed; Marilyn Marchione, "Group Pulls Video That Stirred Talk of Designer Babies," AP, Oct. 2, 2019.

47 Twitter thread, @FrancoiseBaylis, @pknoepfler, @UrnovFyodor, @theNASAcademies, and others, Oct. 1, 2019.

this tradition recognizes that people will have different beliefs about what is good for their lives, and it argues that the state should give them a lot of liberty to make their own choices, as long as they do not harm others.

The contrasting perspectives are those that view justice and morality through the lens of what is best for the society and perhaps even (in the case of bioengineering and climate policy) the species. Examples include requirements that schoolkids be vaccinated and that people wear masks during a pandemic. The emphasis on societal benefits rather than individual rights can take the form of John Stuart Mill's utilitarianism, which seeks the greatest amount of happiness in a society even if that means trampling on the liberty of some individuals. Or it can take the form of more complex social contract theories, in which moral obligations arise from the agreements we would make to form the society we want to live in.

These contrasting perspectives form the most basic political divide of our times. On the one side are those who wish to maximize individual liberty, minimize regulations and taxes, and keep the state out of our lives as much as possible. On the other side are those who wish to promote the common good, create benefits for all of society, minimize the harm that an untrammled free market can do to our work and environment, and restrict selfish behaviors that might harm the community and the planet.

The modern foundations for each of these perspectives was expressed in two influential books written fifty years ago: John Rawls's *A Theory of Justice*, which comes down on the side of favoring the good of the community, and Robert Nozick's *Anarchy, State, and Utopia*, which emphasizes the moral foundation for individual liberty.

Rawls seeks to define the rules that we would agree to if we had gathered to make a compact. In order to make sure things are "fair," he said that we should imagine what rules we would make if

we didn't know what place we would each end up occupying in society and what natural abilities we would have. He argues that, from behind this "veil of ignorance," people would decide that inequalities should be permitted only to the extent that they result in benefits for all of society, and specifically for the least advantaged. In his book, this leads Rawls to justify genetic engineering only if it does not increase inequality.⁴⁸

Nozick, whose book was a response to that of his Harvard colleague Rawls, likewise imagined how we might emerge from the anarchy of a state of nature. Instead of a complex social contract, he argues that social rules should arise through the voluntary choices of individuals. His guiding principle is that individuals should not be used to promote a social or moral goal devised by others. This leads him to favor a minimalist state that is limited to functions of public safety and enforcement of contracts but avoids most regulations or redistribution efforts. He addresses, in a footnote, the question of genetic engineering, and he takes a libertarian, free-market view. Instead of centralized control and rules set by regulators, he says that there should be "a genetic supermarket." Doctors should accommodate "the individual specifications (within certain moral limits) of prospective parents."⁴⁹ Since he wrote his book, the term "genetic supermarket" has become a catchphrase, used by fans and foes, for leaving genetic engineering decisions to individuals and the free market.

Two science fiction books can also help shape our discussion: George Orwell's *1984* and Aldous Huxley's *Brave New World*.⁵⁰

Orwell conjures up an Orwellian world in which information technology is used by "Big Brother," a leader that is always watching you, to centralize power in a super-state and exert control over a cowed populace. Individual freedom and independent thinking are crushed by electronic surveillance and total information control. Orwell was warning about the danger that a Franco or Stalin

48 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard, 1971), 266, 92.

49 Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 315n.

50 George Orwell, *1984* (Harcourt, 1949); Aldous Huxley, *Brave New World* (Harper, 1932).

would someday control information technology and destroy individual freedom.

It didn't happen. When the real 1984 actually rolled around, Apple introduced an easy-to-use personal computer, the Macintosh, and in the words that Steve Jobs wrote for its ad, "you'll see why 1984 won't be like 1984." That phrase contained a deep truth. Instead of computers becoming an instrument for centralized repression, the combination of the personal computer and the decentralized nature of the internet became a way to devolve more power down to each individual, thus unleashing a gusher of free expression and radically democratized media. Perhaps too much so. The dark side of our new information technology is not that it allows government repression of free speech but just the opposite: it permits anyone to spread, with little risk of being held accountable, any idea, conspiracy, lie, hatred, scam, or scheme, with the result that societies become less civil and governable.

The same may be the case for genetic technologies. In his 1932 novel, Huxley warned of a brave new world of centralized government control of reproductive science. Human embryos are created at a "hatchery and conditioning center" and then sorted to be engineered for different social purposes. Those chosen for the "alpha" class are enhanced physically and mentally to become leaders. At the other end of the spectrum, those in the "epsilon" class are bred to become menial laborers and conditioned for a life of induced blissful stupor.

Huxley said that he wrote the book as a reaction to "the current drift toward totalitarian control of everything."⁵¹ But as was the case with information technology, the danger of genetic technology might not be too much government control. Instead, it may be too much individual control. The excess of the early twentieth-century eugenics movement in America and then the evil of the Nazi

program gave a horrid stench to the idea of state-controlled genetic projects. It gave eugenics, which means "good genes," a bad name. Now, however, we may be ushering in a new eugenics—a liberal or libertarian eugenics, one based on free choice and marketed consumerism.

Huxley may have supported this free-market eugenics. He wrote a little-known utopian novel in 1962, *Island*, in which women voluntarily choose to be inseminated by sperm from men with high IQs and artistic talents. "Most married couples feel that it's more moral to take a shot at having a child of superior quality than to run the risk of slavishly reproducing whatever quirks and defects may happen to run in the husband's family," the main character explains.⁵²

FREE-MARKET EUGENICS

In our day and age, decisions about genetic editing are likely to be driven, for better or worse, by consumer choice and the persuasive power of marketing. So what's wrong with that? Why shouldn't we leave decisions about gene editing to individuals and parents, just like we do with other reproductive choices? Why do we have to convene ethics conferences, seek a broad societal consensus, and wring our collective hands? Isn't it best to allow the decisions to be made by me and you and other individuals who want the best prospects for our kids and grandkids?

Let's begin by loosening our minds and avoiding a bias for the status quo by asking the most basic question: What's wrong with genetic improvements? If we can do so safely, why shouldn't we prevent abnormalities, diseases, and disabilities? Why not improve our capabilities and create enhancements? "I don't see why eliminating a disability or giving a kid blue eyes or adding fifteen IQ points is truly a threat to public health or to morality," says Doudna's friend George Church, the Harvard geneticist.⁵³

51 Aldous Huxley, *Brave New World Revisited* (Harper, 1958), 120.

52 Aldous Huxley, *Island* (Harper, 1962), 232.

53 Author's interview with George Church, and similarly quoted in Rachel Cocker, "We Should Not Fear 'Editing' Embryos to Enhance Human Intelligence," *The Telegraph*, Mar. 16, 2019.

In fact, aren't we morally obligated to look after the welfare of our children and of future humans in general? Almost all species share an evolutionary instinct—encoded in the essence of evolution itself—to use whatever wiles they can muster to maximize the chance that their offspring will thrive.

The foremost philosopher advocating this view is Julian Savulescu, a professor of practical ethics at Oxford. He coined the phrase “procreative beneficence” to make the case that it is moral to choose the best genes for your unborn children. Indeed, he argues, it may be immoral not to. “Couples should select embryos or fetuses which are most likely to have the best life,” he asserts. He even dismissed the concern that this could allow rich people to buy better genes for their children and thereby create a new class (or even subspecies) of enhanced elites. “We should allow selection for non-disease genes even if this maintains or increases social inequality,” he writes, specifically citing “genes for intelligence.”⁵⁴

To analyze that point of view, let's do another thought experiment. Imagine a world where genetic engineering is determined mainly by individual free choice, with few government regulations and no pesky bioethics panels telling us what's permissible. You go into a fertility clinic and are given, as if at a genetic supermarket, a list of traits you can buy for your children. Would you eliminate serious genetic diseases, such as Huntington's or sickle cell? Of course you would. I personally would also choose that my kids not have genes leading to blindness. How about avoiding below-average height or above-average weight or a low IQ? We would all probably select those options as well. I might even choose a premium-priced option for extra height and muscles and IQ. Now let's say there were, hypothetically, genes that predisposed a child to more likely be straight rather than gay. You're not prejudiced, so you'd likely resist choosing that option, at least initially. But then, assuming no one was judging you, might you rationalize that you wanted your child to avoid discrimination or be a little bit more likely to produce grandchildren for you? And while you were

at it, might you throw in blond hair and blue eyes as well?

Whoa!!! Something just went wrong. It really did turn out to be a slippery slope! Without any gates or flags, we might all go barreling down at uncontrollable speed, taking society's diversity and the human genome along with us.

Although this sounds like a scene from *Gattaca*, a real-world version of this baby-designing service—using preimplantation diagnosis—was launched in 2019 by a New Jersey startup, Genomic Prediction. In vitro fertilization clinics can send the company genetic samples of prospective babies. The DNA in cells from days-old embryos is sequenced to come up with a statistical estimate of the chances of developing a long list of conditions. Prospective parents can choose which embryo to implant based on the characteristics they want in their child. The embryos can be screened for single-gene disorders such as cystic fibrosis and sickle cell. The tests can also statistically predict multigene conditions, such as diabetes, heart attack risk, hypertension, and, according to the company's promotional material, “intellectual disability” and “height.” Within ten years, the founders say, they are likely to be able to make predictions of IQ so that parents can choose to have very smart children.

So now we can see a problem with simply leaving such decisions to individual choice. A liberal or libertarian genetics of individual choice could eventually lead us—just as surely as government-controlled eugenics—to a society with less diversity and deviation from the norm. That might be pleasing to a parent, but we would end up in a society with a lot less creativity, inspiration, and edge. Diversity is good not only for society but for our species. Like any species, our evolution and resilience are strengthened by a bit of randomness in the gene pool.

The problem is that the value of diversity, as our thought experiments showed, can conflict with the value of individual choice. As a society, we may feel that it is profoundly beneficial to the community to have people who are short and tall, gay and

54 Julian Savulescu, “Procreative Beneficence: Why We Should Select the Best Children,” *Bioethics*, Nov. 2001.

straight, placid and tormented, blind and sighted. But what moral right do we have to require another family to forgo a desired genetic intervention simply for the sake of adding to the diversity of society? Would we want the state to require that of us?

One reason to be open to some kind of limit on individual choice is that gene editing could exacerbate inequality and even permanently encode it into our species. Of course, we already tolerate some inequality based on birth and parental choices. We admire parents who read to their kids, make sure they go to good schools, and coach them in soccer. We even accept, perhaps with a roll of the eyes, those who hire SAT tutors and send their kids to computer camp. Many of these confer the advantages of inherited privilege. But the fact that inequality already exists is not an argument to increase or permanently enshrine it.

Permitting parents to buy the best genes for their kids would represent a true quantum leap in inequality. In other words, it won't be just a big leap, but a leap into a new disconnected orbit. After centuries of reducing aristocratic and caste systems based on birth, most societies have embraced a principle of morality that is also a basic premise of democracy: we believe in equal opportunity. The social bond that arises from this "created equal" creed would be severed if we turn financial inequalities into genetic inequalities.

This does not mean that gene editing is inherently bad. But it does argue against allowing it to be part of a free-market bazaar where the rich can buy the best genes and ingrain them into their families.

Restricting individual choice would be difficult to enforce. Various college admissions scandals show us how far some parents will go and what they will pay to give their kids an advantage. Add to that the natural instinct of scientists to pioneer procedures and make discoveries. If a nation imposes too many restrictions, its scientists will move elsewhere and its wealthy parents will seek clinics in some enterprising Caribbean island or foreign haven.

Despite such objections, it's possible to aim for some social consensus on gene editing rather than simply leaving the issue totally to individual choice. There are practices we cannot fully control, from shoplifting to sex trafficking, that are kept to a minimum by a combination of legal sanctions and social shaming. The Food and Drug Administration, for example, regulates new drugs and procedures. Even though some people score drugs for off-label purposes or travel to places for unconventional treatments, FDA restrictions are pretty effective. Our challenge is to figure out what the norms for gene editing should be. Then we can try to find the regulations and social sanctions that will cause most people to follow them.

PLAYING GOD

Another reason we might feel uncomfortable with directing our evolution and designing our babies is that we would be "playing God." Like Prometheus snatching fire, we would be usurping a power that properly resides above our pay grade. In so doing, we'd lose a sense of humility about our place in Creation.

The reluctance to play God can also be understood in a more secular way. As one Catholic theologian said at a National Academy of Medicine panel, "When I hear someone say that we shouldn't play God, I'd guess that ninety percent of the time they are atheists." The argument can simply mean that we should not have the hubris to believe that we should fiddle with the awesome, mysterious, delicately interwoven, and beautiful forces of nature. "Evolution has been working toward optimizing the human genome for 3.85 billion years," says NIH director Francis Collins, who is not an atheist. "Do we really think that some small group of human genome tinkerers could do better without all sorts of unintended consequences?"⁵⁵

Our respect for nature and nature's God should, indeed, instill some humility about meddling with our genes. But should it absolutely forbid it? After all, we *Homo sapiens* are part of nature, no less so

55 Francis Collins in Patrick Skerrett, "Experts Debate: Are We Playing with Fire When We Edit Human Genes?," *Stat*, Nov. 17, 2016.

than bacteria and sharks and butterflies. Through its infinite wisdom or blind stumbling, nature has endowed our species with an ability to edit our own genes. If it's wrong for us to use CRISPR, the reason cannot merely be that it's unnatural. It's just as natural as all of the tricks that bacteria and viruses use.

For all of history, humans (and every other species) have been battling rather than accepting nature's poisoned offerings. Mother Nature has produced massive suffering and distributed it unequally. Thus we devise ways to combat plagues, cure diseases, fix disabilities, and breed better plants, animals, and children.

Darwin wrote about "the clumsy, wasteful, blundering, low, and horridly cruel works of nature." Evolution, he discovered, bears no fingerprints of an intelligent designer or benevolent God. He made a detailed list of things that evolved in a flawed way, including the path of the urinary tract in male mammals, the poor drainage of the sinuses in primates, and the inability of humans to synthesize vitamin C.

These design flaws are not mere exceptions. They are the natural consequence of the way evolution progresses. It stumbles upon and then cobbles together new features, sort of like what happened during the worst eras of Microsoft Office, rather than proceed with a master plan and end product in mind. Evolution's primary guide is reproductive fitness—what traits might cause an organism to reproduce more—which means it permits, and perhaps even encourages, all sorts of plagues, including coronaviruses and cancers, that afflict an organism once its childbearing use is over. This does not mean that, out of respect for nature, we should quit searching for ways to fight against coronaviruses and cancer.

There is, however, a more profound argument against playing God, best articulated by the Harvard philosopher Michael Sandel. If we humans find ways to rig the natural lottery and engineer the genetic endowments of our children, we will be less likely to view our traits as gifts that we accept. That would undermine the empathy that comes from our sense of "there but for the grace of God go I" toward our fellow humans who are less lucky. "What the drive to mastery misses and may even destroy is an appreciation of the gifted character of human powers and achievements," Sandel writes. "To acknowledge the giftedness of life is to recognize that our talents and powers are not wholly our own doing."⁵⁶

Of course I don't fully believe, nor does Sandel, that we must be reverential about the giftedness of all that nature offers us unbidden. Human history has been a quest—a very natural one—to master challenges that happen to us unbidden, be they pandemics or droughts or storms. Few of us would regard Alzheimer's or Huntington's to be a result of giftedness. When we create chemotherapies to fight cancer or vaccines to fight coronaviruses or gene-editing tools to fight birth defects, we are, quite properly, exercising mastery over nature rather than accepting the unbidden as a gift.

But Sandel's argument should nudge us, I think, toward some humility, especially when it comes to trying to design enhancements and perfections for our children. He makes a profound, beautiful, and even spiritual case for eschewing attempts at complete mastery over the unbidden. We can steer a course that avoids a Promethean quest for controlling our endowments while also avoiding complete submission to the vagaries of a lottery. Wisdom involves finding the right balance.

56 Michael Sandel, *The Case against Perfection: Ethics in the Age of Genetic Engineering* (Cambridge: Harvard University Press, 2007); Leon Kass, "Ageless Bodies, Happy Souls," *The New Atlantis*, Jan. 2003; Michael Hauskeller, "Human Enhancement and the Giftedness of Life," *Philosophical Papers*, Feb. 26, 2011.



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PART VI

HUMAN RIGHTS AND LEGAL DOCUMENTS: A BRIEF HISTORICAL NARRATIVE

Introduction

From a legal perspective, the modern history of human rights was shaped by critical political events, beginning with the Enlightenment's popular and legislative struggle to create representative governments, and continuing through late nineteenth and twentieth-century efforts to establish a global international human rights regime. While the modern edifices of the nation-state were justified in universal human rights terms, the tension continues between allegiance to one's state and a cosmopolitan commitment to human rights. The legal journey of human rights can be divided into five historical phases, following an organizational trajectory similar to that adopted in Parts I to V of this reader.

The first historical phase coincides with the Enlightenment's efforts to curtail the power of the king and strengthen the role of parliament. The second covers the nineteenth century's struggle to broaden the legitimacy of the state, as a growing class of industrial workers began to demand political and economic rights. The third phase encompasses twentieth-century efforts to construct an international legal regime that would prevent interstate wars and acts of genocide. The fourth comprises the development of legal human rights documents shaped by the demands of former colonies as they joined the international community. The fifth phase focuses on the redefinition of rights shaped by globalization, populism, and, most recently, a global pandemic. Environmental, migrant, health, and group rights came to the fore, as did the rights of children, women, indigenous, and persons with disabilities, all represented by specific documents.

Phase I: From the Magna Carta to the Enlightenment

In medieval Europe, efforts to limit the power of the king began well before the Enlightenment, represented most notably by the Magna Carta (1215), the agreement at Runnymede between rebel barons and England's King John. Ironically, the Christian Crusades against Muslims had contributed inadvertently to human rights victories in England. Then, the need for heavy taxation to finance the Third Crusade and for the ransom of Richard I, after his capture by Holy Roman Emperor Henry VI, increased the financial demands on the English kingdom. The resulting tax burden on the landowning aristocracy

provoked demands by feudal barons for more power and rights. The Magna Carta of 1215, also known as the Articles of Barons, was the product of this struggle to limit the authority of the king. It subsequently became a battle cry against oppression, as each succeeding generation invoked it to claim its own liberties (see Sections 15.1 and 16.1).

In England, the Habeas Corpus Act (1679) referred directly to the clause from the Magna Carta requiring a court to examine the lawfulness of a prisoner's detention and thus prevent unlawful or arbitrary imprisonment. It states that "no freeman shall be arrested, or detained in prison or deprived of this freehold except by the lawful judgment of his peers or by the law of his land." In criminal matters other than treason and felonies, the act gives prisoners or third parties acting on their behalf the right to challenge their detention by demanding a judicial review of their imprisonment. In the United States, both the national and state constitutions contain ideas and even phrases directly traceable to the Magna Carta. In that historical sense, it is the Magna Carta that is invoked whenever people oppose government efforts to suspend civil liberties in the name of *raison d'état* (see Section 15.2 or 16.2).

The English Bill of Rights (1689) codified the rights and liberties of subjects and provided rules for succession of the British crown. It also granted the rights foundation on which the British government based its legitimacy after the 1688 Glorious Revolution. The product of a century-long struggle between the kings and Parliament, this bill subordinated the monarchy to Parliament and provided the English people freedom from arbitrary government. It also forbade the monarch to dispense with the law. Among its most important stipulations was the requirement for regular meetings of Parliament, free elections, and freedom of speech in Parliament. It also sets out certain rights of individuals, including the prohibition of cruel and unusual punishment, and forbids taxation without Parliament's agreement (see Sections 15.3 and 16.3).

Building on the English Bill of Rights, the U.S. Declaration of Independence (1776) announced the secession of the thirteen American colonies from England. Largely written by Thomas Jefferson, and influenced by liberal thinkers like John Locke and Thomas Paine, the declaration advanced a conception of the social contract based on a doctrine of fundamental natural rights. The notion that "all men are created equal, that they are endowed by their Creator with inalienable rights, that among these are life, liberty, and the pursuit of happiness," had an electrifying effect far beyond the thirteen colonies. The conception of a people's right to a government of their choice helped inspire Antonio de Nariño and Francisco de Miranda to launch rebellions against the Spanish Empire in South America and French revolutionaries like Maximilien Robespierre to challenge feudal absolutism in France (see Sections 15.4 and 16.4).

In the spirit of the U.S. Declaration of Independence, the French Declaration of the Rights of Man and Citizen (1789) represented another milestone in the Enlightenment's human rights journey. It derived its doctrine of natural rights from Locke and the *Encyclopédie*, its theory of the general will and popular sovereignty from Rousseau, the notion of individual safeguards against arbitrary police or judicial action from Beccaria and Voltaire, and the inviolability of property rights from the physiocrats. It specified rights fundamental to individuals and was therefore, in the view of the French Jacobins, universally applicable. The French Declaration extended the liberties recognized during the American Revolution and became, in the words of nineteenth-century French historian Jules Michelet, "the credo of a new age" (see Sections 15.5 and 16.5).

For more details on the historical context for these documents, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley, California.: University of California Press, 2008), Chapters 1–2.

Phase II: From Social Reforms to the International Geneva Convention

If the Enlightenment introduced into world politics the notion that the state, with its separation of powers, existed only to secure the rights of its inhabitants and ultimately to extend those rights to

humankind, the universality of that liberal vision would be severely challenged during the industrial revolution. Could the envisioned republican state actually secure the rights of all people, or even the rights of its own citizens? One should note that the American Constitution and the French Declaration of the Rights of Man and the Citizen both restricted voting rights and simply omitted social and economic rights.

During the nineteenth century, as the industrial revolution and economic globalization progressed, those limitations on universal rights would contribute to domestic and international conflict. As the prevailing elite understanding of the national interest proved too exclusive, the labor movement of the nineteenth century injected politics with a new democratic impulse. From the nineteenth century, radical and reformist socialists alike called for redefining the Enlightenment vision of the state to include increased economic equity at home and abroad. England, and to some extent the United States, led the way in promoting universal suffrage, as well as educational and welfare reforms that would later be implemented by other industrialized states (see Sections 16.6–16.12).

Beyond domestic legal reforms, two critical international developments deserve our attention. One is the General Act of the Berlin Conference (1885), which, while rightly associated with the European “scramble for Africa,” also stipulated that “trading slaves is forbidden in compatibility with principles of international law” (see Sections 16.13 and 16.14). This represented the success of the antislavery movement in making its cause a global norm. The other significant legal development grew out of the campaign launched by Henry Dunant to ensure the provision of medical treatment for wounded soldiers. Dunant’s efforts culminated in the ratification of the Geneva Convention in 1864, a document later amended to include broader concerns with the wartime protection of human rights (see the “Geneva Convention Relative to the Treatment of Prisoners of War of 1949,” Sections 15.9 and 16.25).

For more details on the historical context for these documents, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 3.

Phase III: The Search for an International Legal Regime

The growing struggle over economic inequity within and between nations, colonial rivalries, and finally the descent into World War I, prompted the search for additional humanitarian and peace efforts buttressed by international institutions. After World War I, and fearing the spread of Bolshevik ideas of human rights (see Sections 16.15 and 16.20), liberal internationalists, led by American President Woodrow Wilson (1856–1924), sought to implement their conviction that human rights, commerce, and security needed to be integrated and safeguarded by international organizations. Building on the nineteenth-century Socialist Internationals, one of the two organizations that emerged at the Treaty of Versailles (1919) was the International Labor Organization (ILO). The ILO grafted internationalist socialist convictions onto liberal thought, insisting that world peace could be preserved only if workers’ rights and basic standards of economic welfare were respected in all countries (see Section 16.17).

The other overarching organization, the League of Nations, placed the concept of collective security against aggression at the center of the effort to preserve international peace, and guaranteed the right to self-determination, though mainly to European nationalities. Along with the formation of new independent nations, the League of Nations also strove to guarantee the protection of minority rights, develop labor standards, and end slavery and the slave trade (see Sections 16.16 and 16.19). However, those efforts would prove ineffective and short-lived, weakened by the refusal of the United States to join the League and ultimately overtaken by the rise of fascism in Europe.

For more details on the historical context for these documents, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 4.

Phase IV: The Road to the U.N. Charter and the U.N. Universal Declaration of Human Rights

It would take another World War, leaving more than sixty million dead, to unleash new efforts to establish an international regime to promote trade, human rights, and peace. In his “Four Freedoms” speech – freedom of speech and worship, freedom from want and fear – Franklin Roosevelt pledged to the beleaguered Europeans “our energies, our resources, and our organizing powers to give you the strength to regain and maintain a free world” (see Section 16.21). After his death in 1945 and the end of World War II, Roosevelt’s wife Eleanor (1884–1962) set out to realize that vision. Leading the American delegation at the San Francisco Conference, Eleanor Roosevelt helped plan the establishment of the United Nations. The United Nations Charter (1945) reaffirmed the principle of nonintervention in the domestic affairs of other states (i.e., national sovereignty), thus initially appearing to preclude international intervention on behalf of human rights. Nevertheless, the Charter contained human rights clauses, including the affirmation of the “dignity and worth of the human person” and the equality of rights of men and women (see Sections 15.6 and 16.22).

The first critical international human rights convention adopted after World War II was the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948), which emerged in response to the attempt by Nazi Germany to exterminate the Jewish population of Europe. At the Nuremberg trials (1945–1946) and the Tokyo trial (1946), former Nazi and Japanese leaders were tried as war criminals by an international military tribunal. These trials established a new principle in international law, namely, that no one, whether a ruler, a public official, or a private individual, was immune from punishment for war crimes. The Convention reflected these principles, and it was unanimously adopted by the General Assembly on December 9, 1948 (see Sections 15.7 and 16.23).

One day later, the General Assembly proceeded to adopt the Universal Declaration of Human Rights (UDHR). The UDHR enshrines the rights of all human beings. A foundational text in the history of human rights, the Declaration consists of thirty articles detailing an individual’s “basic rights and fundamental freedoms,” and affirming their universal character as inherent, inalienable, indivisible, and applicable to all people. The UDHR commits nations to recognize all humans as being “born free and equal in dignity and rights” regardless of “nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status.” It also highlights the five families of rights: security, civil, political, socio-economic, and cultural rights.

When this historic document was put to a vote, the U.N. counted only fifty-eight members. Fifty states ratified the declaration, while Byelorussia, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukraine, the Soviet Union, and Yugoslavia abstained. While nonbinding, the Universal Declaration became a touchstone of human rights law, recognizing the indivisibility and inalienability of security, civil, political, economic, social, and cultural rights, regardless of sex, nationality, and race (see Sections 15.8 and 16.24).

The Third Geneva Convention, addressing the treatment of prisoners of war, is one of the four treaties of the Geneva Convention. First adopted in 1929, it was significantly revised, in response to World War II, at the 1949 conference. It stipulates minimum protections which must be adhered to by all individuals within a signatory’s territory during an armed conflict not of an international character. It specifies that prisoners of war have the right to honor and respect, that women shall be treated with all the regard due to their sex, and that prisoners of a similar category must be treated in the same way (see Sections 15.9 and 16.25).

Protocol I (1977) is an amendment to the Geneva Conventions relating to the protection of victims of international conflicts “in which peoples are fighting against colonial domination, alien occupation or

racist regimes.” It reaffirms the international laws of the original Geneva Conventions of 1949, but adds clarifications and new provisions to accommodate developments in modern international warfare that have taken place since World War II (see Sections 15.10 and 16.34).

The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) is an international convention to protect political freedom in Europe. The Convention established the European Court of Human Rights (ECHR). It was designed to incorporate a civil liberties approach to securing “effective political democracy,” based on the democratic traditions of the UK, France, and other member states (see Sections 15.11 and 16.26).

For more details on the historical context for these documents, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 4s.

Phase V: The Cold War, Anti-colonial Struggle, and the Division of Human Rights

If the two superpowers had briefly seemed united in support of a vision of a U.N. strong enough to enforce international peace, the onset of the Cold War quickly defeated that hope. One manifestation of the ideological conflict dividing the West and the Communist bloc was their disagreement over the domestic and economic systems to be adopted by the new states emerging from colonial rule. Two separate U.N. covenants were shaped by that dispute: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Adopted in 1966 and entering into force ten years later, the ICCPR and ICESCR pitted the values of the leading capitalist states against a socialist conception of rights.

Thus, the ICCPR emphasizes a Western liberal perspective on human rights, while the ICESCR stresses solidarity rights rooted in socialism. The ICCPR commits its parties to respect the civil and political rights of the individual, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, and the right to due process and a fair trial. The ICESCR commits its parties to work toward the granting of economic, social, and cultural rights to the Non-Self-Governing and Trust Territories, along with individual labor rights and rights to health, education, and an adequate standard of living. The ICCPR requires immediate attention to its protection of rights, while the ICESCR encourages states to implement its standards over time (see Sections 15.12 and 15.13 and Sections 16.30 and 16.31).

Additional treaties and conventions also reflect the divide between these families of rights. For instance, the European Social Charter (1961) addressed the protection of economic and social rights (see Section 16.28). The American Convention on Human Rights (1969) was modeled on the ECHR and, like its European counterpart, is concerned mainly with civil and political rights, though a list of economic, social, and cultural rights was later added. It serves as one of two principal instruments within the Organization of American States outlining states’ human rights obligations. It also establishes the Inter-American Court of Human Rights and enhances the work of the Inter-American Commission on Human Rights (see Sections 15.14 and 16.33).

For more details on the historical context for these documents, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 4.

Phase VI: The Rise of Rights for Specific Regions, Themes, and Groups

If the 1948 Universal Declaration on Human Rights had epitomized a vision of a unified human rights movement, the post-Cold War era showed greater volatility and division of interests. With an international

order weakened over three subsequent decades, human rights activists grew more divided. One outcome of that division was a plethora of sometimes conflicting international human rights documents, which tend to be regional, thematic, or group specific.

Modeled along Western conventions, regional human rights documents reflected efforts to focus on specific common issues. Among these documents were the African Charter on Human and Peoples' Rights, 1981 (see Section 16.37), the Constitution of the Republic of South Africa, 1996 (Section 16.46), the Cairo Declaration of Human Rights in Islam (Section 16.41), and the Association of Southeast Asian Nations Human Rights Declaration, 2012 (Section 16.56).

Theme-specific human rights documents tend to address security, development, environmental, and health crises that directly affect human rights. Security related documents included: the Convention Against Torture, 1984/1987 (Section 16.38), the Rome Statute of the International Criminal Court, 1998 (Section 16.48), and the Mine Ban Treaty, 1999 (Section 16.49). With the rise of global neoliberal policies, growing economic inequality, and environmental degradation, new international legal documents appeared, which included: the Rio Declaration on Environment and Development, 1992 (Section 16.43), the UN 2030 Agenda for Sustainable Development, 2015 (Section 16.58), and the Glasgow Climate Pact, 2021 (Section 16.62). The impact of health crises on human rights is reflected in a number of documents, such as the Declaration of Alma Ata, 1978 (Section 16.35), the Convention on Human Rights and Biomedicine (The Oviedo Convention), 1997 (Section 16.47), and the World Medical Association Helsinki Declaration, 2013 (Section 16.57). The pandemic has only increased the relevance of these issues.

As human rights international legal documents flourished, many marginalized peoples demanded specific attention to their group rights. Those who suffered from racial persecution pushed, for example, for adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965/1969 (see Section 16.29). Women fought for a Convention on the Elimination of All Forms of Discrimination against Women, 1979/1981 and against human trafficking (see also Sections 16.36, 16.45, 16.52). Children's rights were recognized in several documents, including the Convention on the Rights of the Child 1989/1990, (see Sections 15.17 and 16.39, 16.52). Indigenous peoples called for their rights (see Sections 16.40, 16.55, 16.59). Migrants and refugees gained further international rights recognition (see also Sections 16.27, 16.32, 16.43, 16.61). People with disabilities demanded the right for either greater assistance or autonomy (Section 16.53). Finally, those discriminated against because of sexual orientation and gender identity found protection against violence in various United Nations actions (see Section 16.60)

For more details on the historical context for these documents, see Micheline Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2008), Chapter 5.

15. SELECTED INTERNATIONAL HUMAN RIGHTS DOCUMENTS

15.1 The Magna Carta (1215)¹

1. First, that we have granted to God, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired.... This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity. To all free men of our kingdom we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs....
17. Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place....
20. For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a villein the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.
21. Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.
22. A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.
23. No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so....
28. No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this....
30. No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.
31. Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.
32. We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned....
38. In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

1 G. R. C. Davis, *Magna Carta* (London: British Museum, 1963).

39. 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 way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.
40. To no one will we sell, to no one deny or delay right or justice.
41. All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.
42. In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision....
44. People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.
45. We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well....
54. No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband....
60. All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men....
63. It is accordingly our wish and command that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever. Both we and the barons have sworn that all this shall be observed in good faith and without deceit....

15.2 The Habeas Corpus Act (1679)²

An act for the better securing the liberty of the subject, and for prevention of imprisonments beyond the seas.

WHEREAS *great delays have been used by sheriffs, gaolers and other officers, to whose custody, any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of habeas corpus to them directed, by standing out an alias and pluries habeas corpus, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the King's subjects have been and hereafter may be long detained in prison, in such cases when by law they are bailable, to their great charges and vexation:*

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any

2 Habeas Corpus Act, 31 Car. 2, c. 2; May 27, 1679; *The Founders' Constitution*, Vol. 3, Art. 1, Sec. 9, Clause 2, Doc. 2 (Chicago: University of Chicago Press), http://press-pubs.uchicago.edu/founders/documents/a1_9_2s2.html

such criminal or supposed criminal matters; (2) be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority thereof. That when so ever any person or persons shall bring any *habeas corpus* directed unto any sheriff or sheriffs, jailer, minister or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the jail or prison with any of the under-officers, underkeepers or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; (3) and bring or cause to be brought the body of the party so committed or restrained, unto or before the lord chancellor, or lord keeper of the great seal of England for the time being, or the judges or barons of the said court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; (4) and shall then likewise certify the true causes of his retainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one

hundred miles, then within the space of twenty days, after such delivery aforesaid, and not longer.

III. And to the intent that no sheriff, jailer or other officer may pretend ignorance of the import of any such writ; (2) be it enacted by the authority aforesaid, that all such writs shall be marked in this manner, *Per statutum tricesimo primo Caroli secundi Regis*, and shall be signed by the person that awards the same; (3) and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation-time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process) or any one on his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the barons of the exchequer of the degree of the coif; (4) and the said lord chancellor, lord keeper, justices or barons or any of them, upon view of the copy or copies of the warrant or warrants of commitment and retainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *habeas corpus* under the seal of such court whereof he shall then be one of the judges, (5) to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said lord chancellor or lord keeper or such justice, baron or any other justice or baron of the degree of the coif of any of the said courts; (6) and upon service thereof as aforesaid, the officer or officers, his or their under-officer

or underofficers, under-keeper or under-keepers, or their deputy in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor or lord keeper, or such justices, barons or one of them, before whom the said writ is made returnable, and in case of his absence before any other of them, with the return of such writ, and the true causes of the commitment and retainer; (7) and thereupon within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offense, for his or their appearance in the court of King's bench the term following, or at the next assizes, sessions or general jail-delivery of and for such county, city or place where the commitment was, or where the offense was committed, or in such other court where the said offense is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances unto the said court where such appearance is to be made; (8) unless it shall appear unto the said lord chancellor or lord keeper or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices

or barons, or some justice or justices of the peace, for such matters or offenses for which by the law the prisoner is not bailable....

15.3 The English Bill of Rights (1689)³

Whereas the late King James the Second, by the assistance of divers evil counselors, judges, and ministers employed by him, did endeavor to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom.

By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament.

By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

By issuing and causing to be executed a commission under the great seal for erecting court called, the court of commissioners for Ecclesiastical Causes.

By levying money for and to the use of the Crown, by pretence of prerogative, for another time, and in other manner, than the same was granted by Parliament.

By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

By causing several good subjects, being Protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

By violating the freedom of election of members to serve in Parliament.

By prosecutions in the Court of King's Bench, for matters and causes cognizable only

3 English Bill of Rights: An Act of Parliament Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown, 1688 CHAPTER 2 1 Will and Mar Sess 2 (www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction). Note: The Bill of Rights is assigned to the year 1688 on [legislation.gov.uk](http://www.legislation.gov.uk) although the Act received Royal Assent on 16 December 1689. Modernized text from The Avalon Project (https://avalon.law.yale.edu/17th_century/england.asp).

in Parliament; and by divers other arbitrary and illegal courses.

And whereas of late years, partial, corrupt, and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

And excessive fines have been imposed; and illegal and cruel punishments inflicted.

And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons, upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm....

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid; do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare:

That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature are illegal and pernicious.

That levying money for or to the use of the Crown, by pretence of prerogative, without grant of parliament, for longer time, or in other

manner than the same is or shall be granted, is illegal.

That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.

That the subjects which are Protestants may have arms for their defense suitable to their conditions, and as allowed by law.

That election of members of Parliament ought to be free.

That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

That jurors ought to be duly impaneled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence, that his said highness the prince of Orange will perfect the

deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties . . .

15.4 The United States Declaration of Independence (1776)⁴

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter

their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and necessary for the public good. He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation for his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses, repeatedly for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the danger of invasion from without and convulsions within.

He has endeavored to prevent the population of these States; for that purpose, obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

4 Thomas Jefferson, et al., "The Declaration of Independence" (1776), retrieved from www.archives.gov/founding-docs/declaration-transcript.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in time of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws, giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these States;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefit of trial by jury;

For transporting us beyond seas to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws and altering, fundamentally, the powers of our governments;

For suspending our own legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states: that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

15.5 The French Declaration of the Rights of Man and Citizen (1789)⁵

The representatives of the French People, formed into a National Assembly, considering ignorance, forgetfulness or contempt of the rights of man to be the only causes of public misfortunes and the corruption of Governments, have resolved to set forth, in a solemn Declaration, the natural, unalienable and sacred rights of man, to the end that this Declaration, constantly present to all members of the body politic, may remind them unceasingly of their rights and their duties; to the end that the acts of the legislative power and those of the executive power, since they may be continually compared with the aim of every political institution, may thereby be the more respected; to the end that the demands of the citizens, founded henceforth on simple and incontestable principles, may always be directed toward the maintenance of the Constitution and the happiness of all.

In consequence whereof, the National Assembly recognizes and declares, in the presence

and under the auspices of the Supreme Being, the following Rights of Man and of the Citizen.

1. Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.
2. The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are Liberty, Property, Safety and Resistance to Oppression.
3. The source of all sovereignty lies essentially in the Nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it.
4. Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law.
5. The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain.
6. The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents.
7. No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed. Those who solicit,

5 *France: Declaration of the Right of Man and the Citizen*, 26 August 1789, official English translation by the United Nations High Commissioner for Refugees available at: www.refworld.org/docid/3ae6b52410.html (accessed October 22, 2021).

- expedite, carry out, or cause to be carried out arbitrary orders must be punished; but any citizen summoned or apprehended by virtue of the Law, must give instant obedience; resistance makes him guilty.
8. The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offense is committed, and legally applied.
 9. As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law.
 10. No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order.
 11. The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law.
 12. To guarantee the Rights of Man and of the Citizen a public force is necessary; this force is therefore established for the benefit of all, and not for the particular use of those to whom it is entrusted.
 13. For the maintenance of the public force, and for administrative expenses, a general tax is indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay.
 14. All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration.
 15. Society has the right to ask a public official for an accounting of his administration.
 16. Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.
 17. Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.

15.6 United Nations: Charter of the United Nations (1945)⁶

We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm 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, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for the ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

6 United Nations, *Charter of the United Nations*, signed 26 June 1945; entry into force 24 October 1945, 1 UNTS XVI, available at: www.un.org/en/about-us/un-charter/full-text.

Chapter I: Purposes and Principles**Article 1**

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

7. 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.

15.7 United Nations: Convention on the Prevention and Punishment of the Crime of Genocide (Adopted 1948, Entry into Force 1951)⁷

The Contracting Parties,

Having considered declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international cooperation is required,

Hereby agree as hereinafter provided:

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.

⁷ Resolution adopted by the United Nations General Assembly: Prevention and Punishment of the Crime of Genocide, A/RES/3/260, adopted 9 December 1948, entry into force 12 January 1951. <http://un-documents.net/a3r260.htm>

Article III

The following acts shall be punishable:

- a. Genocide;
- b. Conspiring to commit genocide;
- c. Direct and public incitement to commit genocide;
- d. Attempt to commit genocide;
- e. Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

15.8 United Nations: Universal Declaration of Human Rights (1948)⁸

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression,

that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, The General Assembly, *Proclaims* this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of

8 Resolution adopted by the United Nations General Assembly: Universal Declaration of Human Rights, A/RES/217 (III), adopted 10 December 1948. [https://undocs.org/en/A/RES/217\(III\)](https://undocs.org/en/A/RES/217(III))

any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and the security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled to full equality to a fair and public hearing by an independent and impartial

tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
2. No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration insuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

15.9 Geneva Convention Relative to the Treatment of Prisoners of War (Adopted 1949, Entry into Force 1950)⁹

General Provisions

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a

⁹ United Nations Treaty Series, Geneva Convention relative to the treatment of prisoners of war, 75 UNTS 135, adopted 12 August 1949, entry into force 21 October 1950, <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/v75.pdf>

High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) Taking of hostages;
 - (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4

- A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:
 1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
 2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:
 - (a) That of being commanded by a person responsible for his subordinates;
 - (b) That of having a fixed distinctive sign recognizable at a distance;
 - (c) That of carrying arms openly;
 - (d) That of conducting their operations in accordance with the laws and customs of war.
 3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
 4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents,

supply contractors, members of labor units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model...

Article 5

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

Article 7

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 15

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

Article 16

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power,

without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

Article 30

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Article 33

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministrations to, prisoners of war.

15.10 Protocol Additional to the Geneva Conventions of 1949 (Adopted 1977, Entry into Force 1979)¹⁰

Article 45: Protection of Persons Who Have Taken Part in Hostilities

1. A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war,

10 United Nations Treaty Series, Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), adopted 8 June 1977, entry into force 7 December 1978. <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/v1125.pdf>

and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.

2. If a person who has fallen into the power of an adverse Party is not held as a prisoner of war and is to be tried by that Party for an offense arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable procedure, this adjudication shall occur before the trial for the offense. The representatives of the Protecting Power shall be entitled to attend the proceedings in which that question is adjudicated, unless, exceptionally, the proceedings are held in camera in the interest of State security. In such a case the detaining Power shall advise the Protecting Power accordingly.
3. Any person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favorable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol. In occupied territory, any such person, unless he is held as a spy, shall also be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention.

15.11 Council of Europe: Convention for the Protection of Human Rights and Fundamental Freedoms (Adopted 1950, Entry into Force 1953)¹¹

The Governments signatory hereto, being Members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which that aim is to be pursued is the maintenance and further realization of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the Governments of European countries which are like minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration,

Have agreed as follows:

Article 1: Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this convention.

11 Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol, ETS 5, adopted 4 November 1950, entry into force 3 September 1953. www.echr.coe.int/Documents/Archives_1950_Convention_ENG.pdf

Section I: Rights and Freedoms**Article 2: Right to Life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defense of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3: Prohibition of Torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4: Prohibition of Slavery and Forced Labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labor....

Article 5: Right to Liberty and Security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person effected for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion

- of having committed an offense or when it is reasonably considered necessary to prevent his committing an offense or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the unlawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6: Right to a Fair Trial

1. In the determination of his civil rights and obligations or of any criminal charge

against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offense has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defense;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7: No Punishment without Law

1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law at the time when it was committed. Nor shall a

heavier penalty be imposed than the one that was applicable at the time the criminal offense was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

Article 8: Right to Respect for Private and Family Life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9: Freedom of Thought, Conscience and Religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10: Freedom of Expression

1. Everyone has the right to freedom of expression. This right shall include

freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity of public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11: Freedom of Assembly and Association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12: Right to Marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13: Right to an Effective Remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14: Prohibition of Discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15: Derogation in Time of Emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law....

Article 16: Restrictions on Political Activity of Aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Section II: European Court of Human Rights

Article 19: Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up:

- (1) A European Commission of Human Rights hereinafter referred to as "the Commission;"
- (2) A European Court of Human Rights, hereinafter referred to as "the Court."

Article 20: Number of Judges

The Commission shall consist of a number of members equal to that of the High Contracting Parties. No two members of the Commission may be nationals of the same State....

Article 25: Plenary Court

1. The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right....

First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 1952)**Article 1: Protection of Property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2: Right to Education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3: Right to Free Elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Fourth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other Than Those Already Included in the Convention and in the Protocol Thereto (Strasbourg, 1963)**Article 1: Prohibition of Imprisonment for Debt**

No one shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation.

Article 2: Freedom of Movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3: Prohibition of Expulsion of Nationals

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

Article 4: Prohibition of Collective Expulsion of Aliens

Collective expulsion of aliens is prohibited.

Sixth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty (Strasbourg, 1983)

Article 1: Abolition of the Death Penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2: Death Penalty in Time of War

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary-General of the Council of Europe the relevant provisions of that law...

15.12 United Nations: International Covenant on Civil and Political Rights (Adopted 1966, Entry into Force 1976)¹²

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and

want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Part I

Article 1

1. All peoples have the right of self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples, may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the United Nations Charter.

12 Resolution adopted by the UN General Assembly: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, A/RES/2200A (XXI), adopted 16 December 1966, entry into force 23 March 1976. [https://undocs.org/pdf?symbol=en/A/RES/2200\(XXI\)](https://undocs.org/pdf?symbol=en/A/RES/2200(XXI))

Part II**Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall inform immediately the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Part III**Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labor;
 - (b) The preceding subparagraph shall not be held to preclude in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court;
 - (c) For the purpose of this paragraph the term "forced or compulsory labor" shall not include:
 - i. Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - ii. Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - iii. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - iv. Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his

arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons;
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*"ordre public"*), health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*"ordre public"*) or national security in a democratic society, or when the

- interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.
 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay.
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself, or to confess guilt.
 4. In the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 6. When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.
 7. No one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequently to the commission of the offense, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom either individually or in community with others and in public or private, to manifest this religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print,

in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order ("*ordre public*"), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order ("*ordre public*"), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order ("*ordre public*"), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labor Convention of 1948 on Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in the Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of a dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as required by his status as a minor, on the part of his family, the society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions

mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

15.13 United Nations: International Covenant on Economic, Social, and Cultural Rights (Adopted 1966, Entry into Force 1976)¹³

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent

¹³ Resolution adopted by the UN General Assembly: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, A/RES/2200A (XXI), adopted 16 December 1966, entry into force 3 January 1976. [https://undocs.org/pdf?symbol=en/A/RES/2200\(XXI\)](https://undocs.org/pdf?symbol=en/A/RES/2200(XXI))

dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Part I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Part II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or

- freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Part III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- a. Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- b. Safe and healthy working conditions;
- c. Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- d. Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment

in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programs, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan,

of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

15.14 Organization of American States: American Convention on Human Rights (Adopted 1969; Entry into Force 1978)¹⁴

Preamble

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

Part I: State Obligations and Rights Protected

Chapter I: General Obligations

Article 1: Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and

¹⁴ Organization of American States, American Convention on Human Rights ("Pact of San José, Costa Rica"), adopted 22 November 1969, entry into force 18 July 1978. <https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>

freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, “person” means every human being.

Article 2: Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

Chapter II: Civil and Political Rights

Article 3: Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4: Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5: Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 6: Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those

countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

3. For the purposes of this article, the following do not constitute forced or compulsory labor:
 - (a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;
 - (b) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;
 - (c) service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
 - (d) work or service that forms part of normal civic obligations.

Article 7: Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person on his behalf is entitled to seek these remedies.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfillment of duties of support.

Article 8: Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
 - (a) the right of the accused to be assisted without charge by a translator or

interpreter, if he does not understand or does not speak the language of the tribunal or court;

- (b) prior notification in detail to the accused of the charges against him;
 - (c) adequate time and means for the preparation of his defense;
 - (d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
 - (e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
 - (f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
 - (g) the right not to be compelled to be a witness against himself or to plead guilty; and
 - (h) the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
 4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.
 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 9: Freedom from *Ex Post Facto* Laws

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense

was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 10: Right to Compensation

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 11: Right to Privacy

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12: Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13: Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - (a) Respect for the rights or reputations of others; or
 - (b) The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Article 14: Right of Reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to

the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and Television Company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15: Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

Article 16: Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 17: Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.
5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18: Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19: Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20: Right to Nationality

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

Article 21: Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may

subordinate such use and enjoyment in the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Article 22: Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated

because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

Article 23: Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:
 - (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - (c) to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 24: Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25: Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - (a) to ensure that any person claiming such remedy shall have his rights determined by the competent

authority provided for by the legal system of the state;

- (b) to develop the possibilities of judicial remedy; and
- (c) to ensure that the competent authorities shall enforce such remedies when granted.

Chapter III: Economic, Social, and Cultural Rights

Article 26: Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Chapter IV: Suspension of Guarantees, Interpretation, and Application

Article 27: Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from *Ex Post Facto* Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article

18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights....

Chapter V: Personal Responsibilities

Article 32: Relationship between Duties and Rights

1. Every person has responsibilities to his family, his community, and mankind.
2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

15.15 United Nations: Convention on the Elimination of All Forms of Discrimination Against Women (Adopted 1979; Entry into Force 1981)¹⁵

The states parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind including distinction based on sex,

Noting that States Parties to the International Covenant on Human Rights have the obligation to secure the equal rights of men and

women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family, and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Concerned that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neocolonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is

15 Resolution adopted by the United Nations General Assembly: Convention on the Elimination of All Forms of Discrimination against Women, A/RES/34/180, adopted 18 December 1979, entry into force 3 September 1981. <https://undocs.org/pdf?symbol=en/A/RES/34/180>

essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual cooperation among all States irrespective of their social and economic systems, general and complete disarmament and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries, and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence as well as respect for national sovereignty and territorial integrity will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole.

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

Part 1

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States parties condemn discrimination against women in all its forms, agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake:

- a. To embody the principle of the equality of men and women in national Constitutions or other appropriate legislation if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realization of this principle;
- b. To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c. To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d. To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e. To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

- f. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g. To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in this Convention, but shall in no way entail, as a consequence, the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity, shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- a. To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

- b. To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Part II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure, on equal terms with men, the right:

- a. To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- b. To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- c. To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women on equal terms with men, and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or

retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

Part III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a. The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b. Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c. The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;
- d. The same opportunities to benefit from scholarships and other study grants;
- e. The same opportunities for access to programs of continuing education, including adult and functional literacy

programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

- f. The reduction of female student dropout rates and the organization of programs for girls and women who have left school prematurely;
- g. The same opportunities to participate actively in sports and physical education;
- h. Access to specific educational information to help to ensure the health and wellbeing of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
 - (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
 - (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
- 3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 above, States Parties shall ensure to women appropriate services

in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a. The right to family benefits;
- b. The right to bank loans, mortgages and other forms of financial credit;
- c. The right to participate in recreational activities, sports and in all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which they play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counseling and services in family planning;
 - (c) To benefit directly from social security programs;

- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well the benefit of all community and extension services, *inter alia*, in order to increase their technical proficiency;
- (e) To organize self-help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self-employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Part IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. They shall in particular give women equal rights to conclude contracts and to administer property and treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children. In all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianships, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. In all cases the interest of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory....

15.16 United Nations: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted 1984, Entry into Force 1987)¹⁶

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

Part I

Article 1

1. For the purposes of this Convention, the term “torture” means any act by which

severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent

¹⁶ Resolution adopted by the UN General Assembly: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Resolution 39/46, adopted 10 December 1984, entry into force 26 June 1987. https://treaties.un.org/doc/source/docs/A_RES_39_46-Eng.pdf

authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included

in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

15.17 United Nations: Convention on the Rights of the Child (Adopted 1989, Entry into Force 1990)¹⁷

Part I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community

as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be

17 Resolution adopted by the UN General Assembly: Convention on the Rights of the Child, Resolution 44/25, adopted 20 November 1989, entry into force 2 September 1990. <https://undocs.org/A/RES/44/25>

necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 15

1. States Parties recognize the rights of the child for freedom of association and to freedom of peaceful assembly.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral wellbeing and physical and mental health....

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities

for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their childrearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be

allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

Article 22

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Article 23

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity...
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination

of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard

to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have at the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her,

- and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their wellbeing and proportionate both to their circumstances and the offense.

15.18 Constitution of the Republic of South Africa: Chapter Two, Bill of Rights (1996)¹⁸

7. Rights

- (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and arms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfill the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

8. Application

- (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state....

9. Equality

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To

18 Constitution of the Republic of South Africa, Chapter 2: Bill of Rights, approved by the Constitutional Court on 4 December 1996, entry into force 4 February 1997. www.gov.za/documents/constitution/chapter-2-bill-rights

promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

10. Human Dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

11. Life

Everyone has the right to life.

12. Freedom and security of the person

- (1) Everyone has the right to freedom and security of the person, which includes the right—
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;
 - (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Everyone has the right to bodily and psychological integrity, which includes the right—

- (a) to make decisions concerning reproduction;
- (b) to security in and control over their body; and
- (c) not to be subjected to medical or scientific experiments without their informed consent.

13. Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour.

14. Privacy

Everyone has the right to privacy, which includes the right not to have—

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or
- (d) the privacy of their communications infringed.

15. Freedom of religion, belief and opinion

- (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that—
 - (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising—
 - (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

16. Freedom of expression

- (1) Everyone has the right to freedom of expression, which includes—
- (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to—
- (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

17. Assembly, demonstration, picket and petition

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

18. Freedom of association

Everyone has the right to freedom of association.

19. Political rights

- (1) Every citizen is free to make political choices, which includes the right—
- (a) to form a political party;
 - (b) to participate in the activities of, or recruit members for, a political party; and
 - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right—
- (a) to vote in elections for any legislative body established in terms of

the Constitution, and to do so in secret; and

- (b) to stand for public office and, if elected, to hold office.

20. Citizenship

No citizen may be deprived of citizenship.

21. Freedom of movement and residence

- (1) Everyone has the right to freedom of movement.
- (2) Everyone has the right to leave the Republic.
- (3) Every citizen has the right to enter, to remain in and to reside anywhere in the Republic.
- (4) Every citizen has the right to a passport.

22. Freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

23. Labour relations

- (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right—
- (a) to form and join a trade union;
 - (b) to participate in the activities and programmes of a trade union; and
 - (c) to strike.
- (3) Every employer has the right—
- (a) to form and join an employers' organisation; and
 - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right—
- (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.

...

24. Environment

Everyone has the right—

- (a) to an environment that is not harmful to their health or wellbeing; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

25. Property

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application—
 - (a) for a public purpose or in the public interest; and
 - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—
 - (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.

- (4) For the purposes of this section—
 - (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1)...

26. Housing

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

27. Health care, food, water and social security

- (1) Everyone has the right to have access to—
 - (a) health care services, including reproductive health care;
 - (b) sufficient food and water; and
 - (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

28. Children

- (1) Every child has the right—
 - (a) to a name and a nationality from birth;
 - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - (c) to basic nutrition, shelter, basic health care services and social services;
 - (d) to be protected from maltreatment, neglect, abuse or degradation;
 - (e) to be protected from exploitative labour practices;
 - (f) not to be required or permitted to perform work or provide services that—
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be—
 - (i) kept separately from detained persons over the age of 18 years; and

- (ii) treated in a manner, and kept in conditions, that take account of the child's age;
 - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section "child" means a person under the age of 18 years.

29. Education

- (1) Everyone has the right—
 - (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account—
 - (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that—
 - (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and

- (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.

30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

31. Cultural, religious and linguistic communities

- (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community—
 - (a) to enjoy their culture, practise their religion and use their language; and
 - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

32. Access to information

- (1) Everyone has the right of access to—
 - (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

35. Arrested, detained and accused persons

- (1) Everyone who is arrested for allegedly committing an offence has the right—
 - (a) to remain silent;
 - (b) to be informed promptly—
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;
 - (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
 - (d) to be brought before a court as soon as reasonably possible, but not later than—
 - (i) 48 hours after the arrest; or
 - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
 - (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
 - (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.
- (2) Everyone who is detained, including every sentenced prisoner, has the right—
 - (a) to be informed promptly of the reason for being detained;
 - (b) to choose, and to consult with, a legal practitioner; and to be informed of this right promptly;
 - (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
 - (e) to conditions of detention that are consistent with human dignity,

- including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with, and be visited by, that person's—
- (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; and
 - (iv) chosen medical practitioner.
- (3) Every accused person has a right to a fair trial, which includes the right—
- (a) to be informed of the charge with sufficient detail to answer it;
 - (b) to have adequate time and facilities to prepare a defence;
 - (c) to a public trial before an ordinary court;
 - (d) to have their trial begin and conclude without unreasonable delay;
 - (e) to be present when being tried;
 - (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - (i) to adduce and challenge evidence;
 - (j) not to be compelled to give self-incriminating evidence;
 - (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (o) of appeal to, or review by, a higher court.
- (4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
- (5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

37. States of emergency

- (1) A state of emergency may be declared only in terms of an Act of Parliament, and only when—
- (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
 - (b) the declaration is necessary to restore peace and order.

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