

## „Human Rights in the Twentieth Century: Concepts and Conflicts“

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Over the course of the 20th century, human rights emerged as a lingua franca of global politics. In the last two decades human rights scholarship has proliferated across the social, political and juridical sciences. Until recently, however, the voice of historians has been largely absent from this burgeoning field. Yet distinctly historical perspectives are needed to grasp the role of human rights in history more precisely. Historicizing the emergence of human rights as a global currency of political claim-making holds the promise of moving beyond the liberal normative literature of the present and its tendency towards Whiggish accounts of the “rise and rise of human rights.”

In this spirit, the organizers of the workshop “Human Rights in the Twentieth Century: Concepts and Conflicts”, *Stefan-Ludwig Hoffmann (CCHP)* and *Dieter Gosewinkel (SSRC)*, looked to place the emergence of human rights regimes in the main currents of 20th century European history.<sup>1</sup> As *Stefan-Ludwig Hoff-*

1| See also the conference report by Alexandra Kemmerer, *Alle Menschen werden Bürger:*

*mann* averred in his introductory comments, central was the point that the history of human rights had not been a seamless evolution towards present assumptions, but rather a story of violent ruptures, interruptions and exclusions. In analyzing how conceptions of human rights changed throughout the nineteenth and twentieth centuries, the view of human rights as ‘natural’ might be replaced with an account that revealed these rights to be both “historically contingent and politically contested.” Through a focus on the actual workings of human rights, this historical approach might transcend the *Moralpolitik* vs. *Realpolitik* dichotomy and work towards a subtler history of human rights that proffered new ways of approaching the “political and legal dilemmas of this history.”



Stefan-Ludwig Hoffmann und Mark Mazower

Charting a backstory to the UN era, *Mark Mazower's* keynote lecture followed the rise and fall of ‘civilization’ as an or-

Lassen sich Freiheitsrechte weltweit durchsetzen? Eine Berliner Tagung erörtert die Dynamik des juristischen Universalismus, in: *Frankfurter Allgemeine Zeitung*, July 16, 2008, p. 37.

ganizing concept in international relations. In his account, 1815–1939 marked the age of the spread of European civilization, alive with the question of just how far civilization could be exported in a colonial world. This “divinity” of civilization divided the world into civilized and uncivilized spheres, with solely those in the civilized “magic circle” party to international law. It was only in the wake of the “mid-twentieth century disjuncture” – spurred by World War I but really compelled by Nazism and the crisis of the 1940s – that this discourse of civilization structuring international relations began to unravel, discredited and no longer seen to correspond to current realities. The moral energy subsequently unleashed and then codified in the Universal Declaration of Human Rights somewhat paradoxically created a system of international law much weaker than its predecessor – bound more closely to state sovereignty and non-interventionism than before – as the minority rights regime was replaced with a far less tangible doctrine of human rights. The fall of old “civilizational certainties” had allowed a more global understanding of the international community, but had also undermined the system’s capacity to enforce norms. A degree of nostalgia for an interventionist world order centered on European ‘values’ might just be discerned in the post-1990 calls for more effective criteria for intervention in the defence of rights.

*Ralf Dahrendorf’s* comments focused on the current and normative dimensions to Mazower’s themes, highlighting the problem of universality and the difficulty of intervention in the name of human rights, particularly in the wake of the

Iraq war. Agreeing with Mazower, *Hans Joas* commented that it was the important task of our age to read the history of human rights in light of the history of interactions between the ‘Western’ and the ‘non-Western’ world. Mazower’s work, he felt, was part of overcoming the pseudo-universalist understanding of human rights. He also raised the importance of sentiments, referring to James Mill and the power of shame, appealing for greater sensitivity to moral, not just legal, dimensions to ‘progress.’ Questions about the relationship between the two world wars, the place of Holocaust memory and genocide, and the instrumentalization of human rights were raised in the general discussion.

Rejecting the notion of human rights as an ideologically stable liberal doctrine rising continuously towards fulfillment, Samuel Moyn’s paper sought to recover the determinative role of Christian personalism and its advocate Jacques Maritain, the French Roman Catholic philosopher, in the post-war formulation of human rights. Connected with the search for a Christian third-way between individualist liberalism and communism, religious personalism was a vocabulary of human dignity that was communitarian without being communist. The “tunnel vision” teleology of many accounts of human rights had failed to see the 1940s on their own terms, argued Moyn, and thus ignored personalism and the particular symbolic and cultural code human rights represented in the period. In this analysis, human rights in the immediate post-war era reflected less the return of republican political ideology than the resonance of Christian communitarian personalism.

Continuing Moyn's biographical approach, *Glenda Sluga* placed René Cassin at the centre of her paper exploring the "entangled history" of human rights and cosmopolitanism. Sluga read Cassin's career against the tension between the liberal universalist claims of human rights and liberalism's concurrent emphasis on pluralism. Cassin's simultaneous commitment to the universalism of human rights and to anti-racism, on the one hand, and to the 'Frenchness' of human rights (as well as his belief in a civilizing French empire), on the other, animated the frictions in post-war human rights discourse. Cassin's perspective, Sluga maintained, allowed a complex history of human rights in the period of anti-colonial and Cold war pressures, as the individual rights of the world citizen became secondary to collective rights.

*Mikael Rask Madsen* then shifted the focus from individuals to institutions. Madsen paid particular attention to the way practices stabilize over time, arguing that the creation of the post-war European human rights regime needed to be understood as a political process even more than as a legal one. Drawing attention to the uncertainty of the notion of international human rights law and the socio-legal culture of the negotiations, Madsen termed this process "legal diplomacy." In this context, the role of "legal entrepreneurs" emerged as a central link between idea and law, and the rise of European human rights played an oft-ignored part in the multi-dimensional process of European integration.

In his comments Hoffmann highlighted the panel's different takes of the question of origins, juxtaposing Maritain's ideology of human dignity – a

response not so much to the Holocaust as to the conflict between totalitarianism and the Church – with the themes of cosmopolitanism raised in Sluga's paper. Did these discourses merge in the 1940s? He also drew attention to the panel's focus on French influence, and the problematic of French universalism, asking after the differences between American and European traditions, and the "distinctiveness" (or not) of a Western tradition. Sluga asked Moyn how significant religion was given that the 'person' was also a legal term, to which he responded that while there were other sources for personhood, most 1940s advocates were not Kantian personalists but Christian personalists.

Thinking with Madsen regarding the gap between ideas and their implementation, *Elizabeth Borgwardt* asked if, given that the 'gap' often extended over decades, was not the focus on the human rights 'moment' misplaced? Moyn responded that we may think of *periods* of implementation. Taking up Hoffmann's question concerning origins, *Eric Weitz* commented that anti-Nazi resistance of the 1940s had been written out of this history and unjustly ignored. *Benjamin Nathans* questioned the notion of personalism given the *impersonal* emphasis of human rights regimes and wondered if Moyn's account had been too neat in ignoring resistance to Maritain's religionist personalist approach.

In an assertive intervention *John Keane* (University of Westminster/Social Science Research Center Berlin) characterized the continuity/discontinuity question as a broad methodological problem and warned against "following the phoneme." An overly-literal methodology

had allowed the misleading contention that human rights “disappeared” in the nineteenth century, he felt. Greater attention needed to be given to the “promiscuity of language,” the discourse of interrelated words (humanitarianism, for example) that acted as carriers of human dignity in the nineteenth century, and the way old languages were mobilized again in the 1940s.

The second panel was devoted to the emergence of human rights regimes, mainly in the post-war period. *G. Daniel Cohen* interpreted the enormous number of displaced persons (DPs) at the end of the war as a factor in the rise of human rights in the 1940s. He argued that the scholarship on the “human rights revolution” in its focus on “human rights in the making” mostly neglected the actual working of “human rights in action”, that, with regard to DPs, could be studied right at the point of its emergence. Cohen moreover highlighted that the Jewish case, where state-building and refugee rights went hand in hand, does not fit the usual juxtaposition of individual and state rights.

*Regula Ludi* worked on the relationship between post-war victim reparations and the human rights regime. Arguing against widespread portrayals of their connected emergence, Ludi expressed skepticism regarding whether reparations actually had been significant for the enforcement of human rights.

*Lora Wildenthal* opened her paper with the remark that historians necessarily have a complicated relationship with human rights. The latter always decontextualize, it is their function to make previously incomparable norm violations comparable, whereas historians

contextualize to make visible differences through time. Wildenthal used the example of the early German Federal Republic law professor Rudolf Laun to analyze how Germans used human rights language in this period. She emphasized that human rights discussions were present immediately after 1945, at least among a limited circle of international law scholars. According to Wildenthal, Laun, as a part of an Austrian expellee lobby, was influential in propagating human and minority rights against the nation-state. Although nationalistic and *völkisch* concepts continued in this rhetoric, his work strengthened the legal position of individuals.

In his account of the history of the International Labour Organization (ILO), *Daniel Maul* stressed that the ILO was, at least after World War II, a human rights actor in its own right, while simultaneously functioning as a forum for other different actors. Defining human rights as a discourse open to everybody’s participation, he pointed out that in the ILO (post-) colonial actors were able to partake in forming human rights regimes.

In his comment on the panel, *Dieter Gosewinkel* emphasized the way these papers demonstrated that, contrary to prevalent interpretations, human rights do not always undermine national categories. Moreover, Wildenthal’s paper in particular blurred the common periodization that depicts the post-war rise of individual rights following the interwar focus on group rights. *Jan Eckel* appealed for a clear differentiation between human rights and humanitarianism, asking Cohen whether the term ‘human rights’ was actually used in contemporary discussions of the refugee problem. Cohen

responded that in the period he covered, human rights emerged as “humanitarianism with a political twist.” Still, Mazower doubted the centrality of human rights in this early period, especially in relation to DPs, as this was understood as a temporary problem, but also among (post-) colonial actors, for whom the language of ‘development’ was much more important than that of human rights.

Opening the third panel, *Jennifer Amos* examined the Soviet engagement with human rights between 1948 and 1958. Despite abstaining from the UN General Assembly vote passing the Declaration, the Soviet Union came to embrace the document especially after Stalin’s death provoked a new search for legitimacy. Both the government and dissidents evoked the Declaration, illustrating an ongoing contest over the different meanings of human rights. Simultaneously, the Soviet Union used the Declaration as a means of attacking the US and the UK for policies of racial discrimination and for fettering the rights of communist parties. In this way, the Declaration became a part of diplomacy as well as internal politics.

Nathans began his paper by asking how a highly developed regime of rights and rights rhetoric developed in an illiberal society. Drawing on the letters of ordinary Soviet citizens, Nathans explored this non-elite grammar of rights as an aspect of popular legal consciousness, arguing for the development of a distinctly Soviet vernacular of rights. In this vernacular, rights were always connected to duties *vis-a-vis* the state, and the hackneyed Cold War contrast between (‘Western’) political and civil rights and (‘East-Bloc’) economic and social rights

was absent. Soviet rights-talk also revealed a large degree of similarity between official and popular understandings of rights.

*Katharina Kunter* examined changing Protestant attitudes towards human rights in the 1970s and 1980s. After initial resistance to an idea deemed too secular and individualistic, German and Czech Protestants engaged with, supported and rejected human rights in a varied history that evinced no common Protestant approach. Kunter argued that secularization and Cold War narratives were significant in these discourses.

*Celia Donert* considered the social history of state policy and human rights activism regarding the ‘Gypsy question’ in communist Czechoslovakia. She placed transnational Romani activism within the tension between individual human rights and minority rights. Donert sought to put pressure on the simple notions of ‘dissent’, ‘totalitarianism’ and ‘civil society’ that figure in post-1989 accounts of Roma under communist rule, thus complicating the teleological narrative that affirms the role of human rights in the fall of communism.

In his comment on the panel Mazower highlighted the emerging importance of the 1970s and 1980s in this story, Soviet communism as interlocutor with the liberal Western tradition, and the importance of the state in this Cold War context. He raised the question of trust in the state, asking after the possible Soviet critique of the West that one only needed rights if one mistrusted the state. Did the fact that the ‘Soviet person’ was a work in (moral) progress lead to a reluctance to defend the unchanging? Similarly, how did the presumption

that one day the state would cease to exist affect rights? He also introduced the Soviet Union as both metropole and colony, a quality it shared perhaps with the US, pondering the possible significance of world power shifting to two such states and away from countries like Britain and France with no metropole/colony dual history.

Mazower asked Amos if, given human rights language was a useful diplomatic tool for the Soviets, were human rights also seen as a weapon in the struggle for the postcolonial world? Amos affirmed Mazower's supposition, detailing how the Soviets drew analogies between the treatment of the black minority within the US and attitudes to the third world. *Fabian Klose* also asked after the role of decolonization in this picture. Amos responded that the Soviets were certainly interested in decolonization, but that 'rights' were usually evoked and not 'human rights.' Nathans also commented that pre-1990 many other rights were discussed below the level of human rights, and that a narrow-minded focus on human rights could easily overlook this.

The fourth panel was dedicated to "Human Rights, Sovereignty and the Global Condition". *Klose* concentrated on the "colonial state of emergency" that the British and the French colonial governments proclaimed in the wars of decolonization in Kenya and Algeria, allowing excessive forms of violence in defence of their colonial possessions. He highlighted the legal efforts of late-colonial powers to prevent the extension of human rights to the colonies. *Klose* argued that in the period after WW II the nascent human rights regime provided an

idiom anti-colonial movements used to express their protest. This became a source of embarrassment to the colonial powers who lost ground in these debates and, eventually, their colonies as well.

*Andreas Eckert*, however, showed that the intellectuals and activists at the forefront of anti-colonial movements in sub-Saharan Africa did not excessively draw on human rights as a language of protest. Eckert emphasized that for most African nationalists human rights were an issue of minor interest compared to matters more pressing for late and post-colonial states, such as nation-building and fighting poverty. The usage of human rights language among African nationalists was largely restricted to the sphere of international diplomacy.

Eckel argued that the 1970s human rights campaign against the Pinochet regime in Chile, which attracted a substantial amount of transnational advocacy, was a decisive moment in the history of human rights campaigning. Although, according to Eckel, the direct effects of the campaign were rather limited, it contributed to the rise of a global 'solidarity' by demonstrating to a plethora of new non-state actors "what can be done."

In her comment on the panel, *Margrit Pernau* pointed to the difficulties that the conference's organizers had in trying to include non-European perspectives, asking after the academic structures that prevent human rights scholarship from becoming truly global. She wondered whether human rights issues were expressed in different idioms in non-European regions. Emphasizing the role of emotions in human rights advocacy, she suggested that a comparative history of emotions was needed to grasp the

global diffusion of human rights rhetoric and its attachment to different emotive forms more precisely. In particular, she asked Eckel whether the emphasis human rights activists put on the Chileans' Western cultural outlook would not contradict the proclaimed globality of these forms of empathy. Pernau also expressed her astonishment at Klose's astonishment regarding French and British Imperialists' failure to live up to human rights rhetoric.

In the discussion, Cohen underlined the significance of new forms of human rights advocacy in the 1970s which, however, according to him, reiterated older political forms of the European left. Gosewinkel asked Eckel to elaborate on the suggestion that 1970s human rights activism was connected to new forms of power relations. Eckel explained that a reconsideration of the vocabulary of historical analysis was indeed needed to describe the role of human rights in international relations more accurately, but preferred 'interest' or 'influence' to 'power.'

Panel Five dealt with "Genocide, Human Rights Norms and the Limits of Law". Borgwardt interpreted the Nuremberg Trial as one of a number of 1940s "New Deal institutions" – such as the UN or Bretton Woods – thus stressing the role of the USA in post World War II human rights trials and juridification. She described Nuremberg as a transitory post-war moment. "Looking back and forward at the same time," the American program of re-education attempted to transform the former German enemy into a future ally.

*Devin O. Pendas* argued that the late 1940s witnessed the emergence of a "le-

galist paradigm of war," which for the first time entangled the responsibility of individuals and states and was characterized by an optimistic vision of a new international order. Pendas traced the atrophy of this paradigm, which did not lead to a codification of international criminal law on a wider scale, at least not before the 1990s. Pendas argued that, ironically, it was the human rights movement itself (among other factors such as Cold War power politics) which complicated further codifications, as its reliance on an expansive rhetoric of rights collided with precise legal definitions.

Analyzing debates and diplomacy about war crimes and genocide in the Bangladesh secession crisis (1971-1974), *A. Dirk Moses* stressed that 'genocide' was not a category that totally vanished from discussions about humanitarian atrocities in the period between the 1948 Genocide Convention and the presumed re-emergence of 'genocide' in the 1990s. The absence, then, of genocide trials in this period begs explanation. In the case of Bangladesh, the plan to mount trials was abandoned amid the political necessities of the humanitarian and diplomatic crisis at hand. Although many issues combine in thwarting genocide trials, the principles of sovereignty and non-interference underlying the UN *per se* play a major role in complicating genocide prosecutions.

In his comment on the panel's papers, *Michael Geyer* warned that the role of human rights in the 1940s should not be overemphasized; human rights rather "slipped in here and there." Moreover, he pointed to the papers' focus on institution-building and suggested that further

consideration be given to the role legal culture played in these processes. Geyer and many other discussants underlined that establishing an international “rule of law” was a preoccupation of all major powers after World War II and not only of the Americans. Weitz complained that Borgwardt turned Nuremberg into “an American show.”

Opening the final panel, Weitz argued that the overlooked shift from the Vienna to the ‘Paris system’ represented a shift from a central focus on territory to one on populations as the source of sovereignty. Weitz maintained that this focus on populations could lead in two different policy directions: protection and minority rights, or, if this was too problematic, forced populations transfers (and thus sometimes genocide). Bringing the Paris system – and its take on populations and group protection – into view allowed a more complex and mottled history of human rights.

Jörg Lange examined the changing relationship between human rights and Buchenwald remembrance. Used as one of several references to interpret the camp experience in the immediate aftermath of the war, human rights were largely absent from the Buchenwald Memorial for the entire period of communist rule (supplanted by a narrative of anti-fascist struggle) before reappearing after 1990.

Why do human rights disappear and what does that entail?, was the question of the heart of Geyer’s paper. Geyer stressed the sheer violence it takes to establish human rights, and equally the sheer violence it takes to put them down and make them disappear. A focus on the destructibility and disappearance of hu-

man rights (disagreeing with Keene’s earlier comment that this formed a capricious argument) was also able to bring the neutralization of rights post-2000 into sharper focus. Geyer averred that the positivization of rights reflected not the descent of philosophy into practice but rather the entanglement of rights with power. He analyzed the dynamics of containment, circumcision and abrogation.

In his comment, Hans Joas wondered if the disappearance of human rights was as complete as Geyer had portrayed it (preferring ‘discarded’ or ‘weakened’). While agreeing with Geyer’s skepticism towards teleology and emphasis on risks and contingencies, and about the absence of historical guarantees for human rights, he asked what Geyer saw as the alternative. An episodic approach? Joas argued for *no* complete discontinuity, and favored an affirmative genealogy that is aware of contingencies but not totally or primarily destructive. Joas felt more attention needed to be paid to the interaction between legal and cultural history, and culture’s role in the sacralization of the individual, arguing that there might be more continuity on a cultural level than a legal one.

The problem of language resurfaced in Geyer’s response. It was indeed a question of approach, he said: of course one could find substitute terms such as humanitarianism in the nineteenth century, but were we to see this as part of the human rights movement? Nathans wondered if ‘disappearance’ was appropriate simply because human rights did not appear in positive form; did they not live on transformed into customary law, for example? Ludi asked if a gender element

should not also be considered under the paradigm of disappearance. Geyer responded that he felt the general progression of rights in the nineteenth century was not part of the same story because some things were lost, for example the claim to equality, with massive consequences for gender rights. He agreed that human rights were present in the nineteenth century but were *thoroughly* marginalized, concluding that “disappearance” was perhaps not worth the “semantic disturbances” it created.

Both provocatively and productively, ‘Human Rights in the Twentieth Century: Concepts and Conflicts’ highlighted the potential as well as the challenge of the historical study of human rights. Several absences became evident throughout the course of the workshop. The role of NGOs, gender analysis and non-European perspectives were all felt to be significant silences. Yet the rich benefits of an historical approach to human rights – especially in overcoming triumphalist teleologies – were more than clear. Moyn’s considerations in the final discussion on the relationship between decolonization and human rights made this particularly apparent. He described two models for understanding this relationship. The first model, reflected for example in Klose’s paper, portrays the Universal Declaration of Human Rights as a moment in which the program of decolonization was already imminent; it only needed to be realized by actors in the colonies. Moyn suggested that an alternative, second model would be to understand human rights in their plurality, as different ideologies, thus omitting teleological depictions that adhere to “one”

correct interpretation of nevertheless universal human rights.

Moreover, in historicizing human rights, the contingency of their emergence becomes evident. In the final discussion, Hoffmann again pointed to the importance of the 1940s, the 1960s/70s and the 1990s as the major periods of transformation of human rights in history. With recourse to Mazower’s keynote, he portrayed the 1940s as a disjuncture whose repercussions were perhaps not felt before the 1960s and 70s, while many of the repercussions of this period surfaced only in the 1990s. Taking account of the different layers of historical time in this manner suggested a promising way of conceiving of the continuity/discontinuity dichotomy, which was one of the major issues raised in the workshop’s discussions.

The problems of periodization and of continuity/discontinuity are, as the workshop evinced, deeply embedded with that of language. Again and again, the discussion returned to the question of whether the phoneme should be followed or whether human rights can appear in different guises, forms and vocabularies. A careful sensitivity to the way human rights discourses become caught up in connected semantic fields, such as humanitarianism and rights talk more broadly, as well as to the way they can signify different things at different historical and geographic junctures, may help to prevent *ex post* constructions of a liberal human rights success story.

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