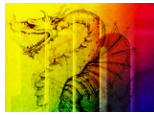


JOURNAL OF INTERDISCIPLINARY HISTORY OF IDEAS



2022

Volume 11 Issue 21
Item 4

– Section 3: Notes –

Towards a History of Human Rights

by

Alessandro Maurini, Franco Motta



JlHI 2022

Volume 11 Issue 21

Section 1: Editorials

1. *A new kind of Notes, a new acknowledgment, a new subject area, a new CFP* (E. Pasini)
2. *CFP: Nature and Property* (R.M. Núñez)

Section 2: Articles

3. *The Moment in Rembrandt's 'Night Watch': The Musket Blast, Narrative Drama, and Moral Excellence* (J. Manca)

Section 3: Notes

4. *English Republicanism and the Concept of Interest* (A. Maurini, F. Motta)
 5. *The 'Natural Rights History' Portal and Its Design* (M. Fumini)
 6. *Sources for a history of women's rights: Olympe de Gouges and the politicization of literature* (V. Altopiedi)
 7. *Human Rights and Decolonization in the Missionary Journal of the Salesians (1945-1978)* (M. Forno)
 8. *Book Reviews* (C. Carnino, P. Pecere, A. Tiran, E. Torarolo)
-

Towards a History of Human Rights

Alessandro Maurini, Franco Motta *

A few months after the fall of the Berlin Wall, Norberto Bobbio warned about human rights risking becoming an ideology. Nowadays, such a risk has fully materialized, as showed by the increasingly central role that 'human rights idealism' is assuming in the recent historical and philosophical debate. Intellectuals should be aware of this trend, in order to prevent human rights from becoming a label, an unassailable banner behind which no well-defined value actually exists. We believe that the whole topic can't be understood without taking into account its historical dimension, and we discuss here the fast-growing research area of the history of human rights, as an introduction to a group of contributions related to the project of the portal 'Natural Rights History'.



Since the 1990s, human rights have reached the core of national and international political agendas. The vast majority of international institutions and NGOs, as well as a huge array of national States, share a common view on international relations based on the aim of defending and boosting human rights: the concept of 'humanitarian war' has become central in the strategic landscape of the twenty-first century.

Now, what do we mean when we talk about all of this? Do we interpret human rights as a moral idea, as an historical object, or both? In the 'age of rights', as Norberto Bobbio labelled our time, the question can't be neglected. A few months after the fall of the Berlin Wall, Bobbio had prophetically warned

* University of Turin (alessandro.maurini@unito.it, franco.motta@unito.it).

about human rights risking becoming an ideology¹. Nowadays, such a risk has fully materialized, as showed by the increasingly central role that ‘human rights idealism’ is assuming in the recent historical and philosophical debate². Intellectuals should be aware of this trend, in order to prevent human rights from becoming a label, an unassailable banner—after all, “who is opposed to human rights today?”³—behind which no well-defined value actually exists, apart from those elected by countries and international organizations to justify their decisions.

We believe that the whole topic can’t be understood without taking into account its historical dimension, especially in the key passage of the Enlightenment, which can be also largely interpreted as an extraordinary project of ‘human rights building’, with the *Declaration of Independence* (1776) and the *Déclaration des droits de l’homme et du citoyen* (1789)—albeit questioned in the real scope, as they have been—at its height. We may well say that the constitutionalisation of natural rights defines the Enlightenment as the turning point of the history of right in Western culture.

Constitutionalisation of individual rights, that properly transformed them into the ‘rights of man’ (to use the French wording), acted as a tool, still valid in the contemporary age, for the emancipation of mankind. Many historians of the Enlightenment describe it as a movement that invented human rights⁴, as the cultural source of modern democracy thanks to its rights talk, soon to be identified as the true foundation of modernity and present-day human rights⁵. Scholars now treat the Enlightenment as a “workshop of modernity”, characterized by the “discovery of the impassioned struggle for the rights of man”⁶.

¹ “Despite the innumerable attempts to provide a defining analysis, the language of rights remains highly ambiguous, not particularly precise and often used rhetorically” (Norberto Bobbio, *L’età dei diritti* [Torino: Einaudi, 1990], 182).

² See Stefan-Ludwig Hoffmann, “Human Rights and History”, *Past and Present*, 232, no. 1 (2016): 279-310; Lynn Hunt, “The Long and the Short of the History of Human Rights”, *Past and Present*, 232, no. 1 (2016): 323-331; Samuel Moyn, “The End of Human Rights History”, *Past and Present*, 232, no. 1 (2016): 307-322.

³ Hoffmann, “Human Rights and History”: 279.

⁴ See Lynn Hunt, *Inventing Human Rights. A History* (New York: W.W. Norton, 2007).

⁵ See Jonathan Israel, *Democratic Enlightenment. Philosophy, Revolution, and Human Rights* (Oxford: Oxford UP, 2011), 33.

⁶ Vincenzo Ferrone, *Storia dei diritti dell’uomo* (Roma-Bari: Laterza, 2014), VII, 34, with reference

Having identified the revolution of the ‘rights of man’ as the true revolution of the 18th century, recent historiography has defined the role, meaning and values of those rights in history. They were properly human rights as they were *of man and for man*, a clear break with all previous juridical theories as they marked a shift from natural law theories to the natural rights of man. Such a passage was the result of the pressing drive exerted by the new sciences of ‘man’ – ethnology, biology, psychology, among the others – that began developing in the 18th century, making the Enlightenment a sort of ‘new Humanism’.

The meaning, role, and values of human rights, referring to Condorcet’s *Esquisse*, are as follows:

1) They must be naturally inherent to human beings as such; 2) they must be equal for all individuals, with no distinction of birth, class, nationality, religion, gender, skin colour; 3) they must be universal, i.e. valid throughout the world; 4) they must be considered unalienable and infeasible before any form of political and religious institution.¹

In addition, they must be *political*: the politicization of rights, a close consequence of their constitutionalisation, transformed them from simple words into, as Diderot put it, actual political weapons against the degeneration of unlimited sovereignty.

History provided for the connection between rights of man, as they were enshrined in the 1789 *Déclaration*, and the post-World War II human rights. Indeed, there is no doubt whatsoever that the founding principles of the *Déclaration* were included in the *Universal Declaration of Human Rights* (1948), the latter quoting the former at certain points, in some ways even literally—beginning with the first article, asserting that freedom and equality in rights come with birth². In the same way, there is no doubt that the 1948 *Declaration* itself was

to Vincenzo Ferrone, *La società giusta ed equa. Republicanesimo e diritti dell’uomo in Gaetano Filangieri* (Roma-Bari: Laterza, 2007).

¹ Vincenzo Ferrone, “I diritti dell’uomo tra utopia e storia. Perché può essere utile riflettere sulla storia dei diritti dell’uomo?”, *Questione Giustizia*, 1, no. 1 (2015): 34.

² *Déclaration*, art. 1: “Les hommes naissent et demeurent libres et égaux en droits”; *Universal Declaration*, art. 1: “All human beings are born free and equal in dignity and rights”. In the same article of the *Universal Declaration*, see the reference to brotherhood (“They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”): it is the same Enlightenment concept the omission of which from constitutions subsequent to the *Déclaration*, particularly Napoleon’s *Code Civil* of 1804, emblematically and factually marks the end of Enlightenment con-

a model to many following legal conquests—first and foremost the *Charter of Fundamental Rights of the European Union* proclaimed in Nice in 2000, thought to become an integral part of the failed 2004 European Constitution, and then included in the 2009 Treaty of Lisbon. In the Charter, the spirit driving the authors was to look to the *Déclaration*, “whatever import one wishes to attribute to these two terms [*man* and *citizen*]”, and therefore, beyond the exclusive nature of rights within the nation-State, as a way of “civilizing or secularization or laicization of rights that are held to be natural thanks to the intervention of that purely artificial instrument that is law”¹.



No doubt the spirit driving the *Charter of Fundamental Rights of the European Union* looked to the post-World War II constitutionalism in a way that certainly went beyond treating it as “a simple reprise of old themes, almost as if one had to close the long and tragic parenthesis of the dictatorships and the War, with a sort of *heri dicebamus* focusing attention once again only to the strong conceptual pair enshrined in the declaration of rights of 1789 and in the declarations of rights of the United States—everyone being born *free and equal*”. Limiting to this perspective would of course prevent scholars from highlighting genuine twentieth century changes, first among them the principle of *dignity*. However, freedom and equality, condensed in the term *égalité* and lying at the basis of

stitutionalism and the start of that shadowy abyss into which constitutionalism descended until the *Universal Declaration*. In this regard, see also and above all the references contained in the *Universal Declaration* to the *Declaration of Independence* (“with certain unalienable Rights, that among these are Life, Liberty...”) and *Déclaration* (“Ces droits sont la liberté, la propriété, la sûreté...”) regarding the right to life, liberty and security (“Art. 3: Everyone has the right to life, liberty and the security of person”)—where, as in the *Declaration of Independence* and unlike in the *Déclaration*, there is no reference to the right to property that made the Code Civil “individualist and patrimonialist” (Stefano Rodotà, *Il diritto di avere diritti* [Roma-Bari: Laterza, 2012], 181).

¹ Rodotà, *Il diritto di avere diritti*, 180.

contemporary constitutionalism, undoubtedly may re-form the “broken bond”¹ with Enlightenment constitutionalism.

From this viewpoint, the history of human rights gains enormous importance. In philosophy, for example, we must deal with Hannah Arendt’s warning about the dangers of the non-politicisation and the non-constitutionalisation of rights—a necessary but not sufficient condition: not making them a political question, and leaving them in an abstract sphere, would condemn them to the status of Cinderella of 20th and 21st-century politics, exiling them in the same position that the rights of man, “solemnly proclaimed by the French and American revolutions”², occupied in the political thought of the 19th and early 20th century.

Again, in the juridical domain, the history of human rights insists on the only possible remedy for the disappearance of Western declarations of rights between the Enlightenment and contemporary era:

The code of this enterprise has a name—and it is politics. Rights are weak when they fall prey to uncontrolled powers, which possess them, empty them and thus, even when they claim to respect them, actually wish to accompany them on their melancholy way to farewell. Rights, then, become weak because politics abandons them. And so, politics loses its way, because in difficult times, as are the times we live in, its salvation lies also in its becoming firmly the politics of rights, of all rights³.

A further fundamental topic in human rights history lies in the distinction between individual rights on the one hand and the rights of collective identities—groups, communities, nations, peoples—on the other hand. At a closer stance, it was the lack of the conscience of such a distinction that led Europe to the “identification of the rights of man with the rights of people”, transforming them into “national rights”⁴—paving the way to the development of nationalism, imperialism, racism and anti-semitism, and so on. Beyond the 1948 *Universal Declaration*, which openly sought to rebuild the broken link with Enlightenment

¹ Rodotà, *Il diritto di avere diritti*, 183, 184. See also Étienne Balibar, *La proposition de l'égaliberté* (Paris: PUF, 2010), and the declination of liberty and equality to which the second and the third chapter of the *Charter of Fundamental Rights of the European Union* are dedicated.

² Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 2009 [1951]), 406.

³ Rodotà, *Il diritto di avere diritti*, 104.

⁴ Arendt, *The Origins of Totalitarianism*, 404, 406.

constitutionalism¹ by conceiving human rights according to that individual nature that characterized the 1789 rights of man², Norberto Bobbio's reflection emphasized that key element: modern juridical theory must assume "an individualistic conception of society, and therefore of the State, in opposition to the much more solid and ancient organicistic conception, according to which society is a whole and the whole is above the parts"³. If liberal democracy can only be founded upon the primacy of the individual, the general acknowledgment of rights refers only to the rights of the individual: the individual as such, and not as a part of a group, be it a community or a nation, must be the bearer of fundamental rights.



After the waning of Marxist ideologies, human rights discourse has remained as the only universalistic project that can be relied on to forge a vision of the development of humankind in shared and progressive terms, so hindering both the reviving of exclusive collective identities (be they religious or secular) and the potential despotism of globalized capitalism. We must not forget that the sphere of individual rights is far from being considered not only fully attained, but also thoroughly defined, since it changes its shape, even if keeping the same role, meaning and value, with the changing of society and of the conception of human being itself. Human rights unceasingly expand and multiply following the expansion of the area of their holders (including non-human subjects) and

¹ Broken during the 18th and 19th century when, until the *Universal Declaration*, the rights of man appeared to have been hidden in a zone of historical and historiographic shadow: it is no coincidence that Enlightenment historiography must analyse this gap—see Dan Edelstein, *Mind the Gap: Between the Early Modern and Modern Histories of Human Rights*, paper for the New History of Human Rights Workshop, Princeton, University Centre for Human Values, April 25, 2015.

² This refers particularly to articles 12-17, in which the rights of the individual are established in relation to those of the community—undoubtedly an attention inscribed in the history of rights from Plato's *Laws* to Hannah Arendt, passing through the Enlightenment.

³ Norberto Bobbio, *Teoria generale della politica* (Torino: Einaudi, 2009), 435.

the multiplication of the figures of the human that have historically appeared since the original, abstract *homme* of 1789.

In other words, since the beginning of this century we are witnessing an epic transformation of the concept of human rights, as well as of the concept of human nature itself. This phenomenon must be understood according to a wide, interdisciplinary perspective, crossing juridical theory, social research and philosophical analysis, but keeping history at its core as the point of convergence of those perspectives. History of human rights can be indeed at the same time history of the evolution of juridical doctrines and practices, history of the metamorphoses of the concept of humankind, history of political platforms based on rights claiming and history of the conscience of those rights.

It is a fast-growing research area. After the pioneering series of the Amnesty International Lectures on «Historical Change and Human Rights» held in Oxford in 1994, and the annual convention of the American Historical Association devoted to this topic in 1997, studies have multiplied, at the point that the «American Historical Review» hosted the first essay review on the matter in 2004. At present at least four scientific journals published in the English-speaking area are specifically devoted to human rights in juridical, historical and philosophical perspective, to whom must be added the Cambridge University Press series «Human Rights in History» as well as a five-volume Cambridge History of Rights now under press.

Several international study centres related to departments of history are now organizing specific undergraduate and graduate courses in this matter, awarding research grants, creating summer schools and visiting professorships. We just mention the Urban Morgan Institute for Human Rights of the University of Cincinnati, publishing «Human Rights Quarterly», the Department of History of the University of Chicago, which has a special program of Human Rights History, and the Duke Human Rights Center at the Franklin Humanities Institute of Duke University, North Carolina, focusing on the history of slavery and the abolition movement in the United States. Further institutions dealing with the history of Enlightenment culture keep a meaningful interest toward the history of human rights, such as the Centre for Enlightenment Studies of London King's College, the Interdisziplinäres Zentrum für die Erforschung der Aufklärung of the Universität Halle-Wittenberg, the Besterman Centre for the Enlightenment of the Voltaire Foundation, both located in Oxford.

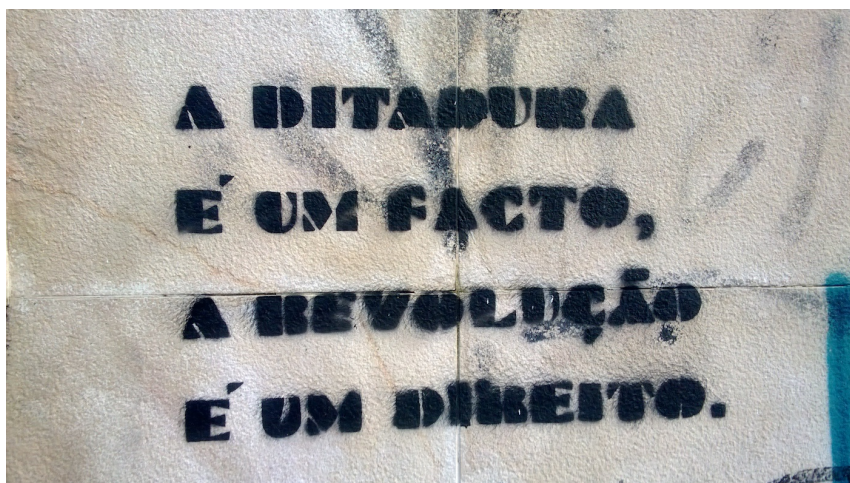
Perspectives for further developments are significant: the European Research Council has currently awarded about 45 grants to research projects dealing with topics related to human rights, even if only two of them belonging to the historical panel. In Italy further realities must be added, like the Centro di Ateneo per i diritti umani of the University of Padua, probably the most prominent one (with a PhD program in ‘Human rights, society, and multi-level governance’), the Centro studi sui diritti umani of Ca’ Foscari University in Venice and the Centro studi sui diritti della persona e dei popoli of the University of Nuoro, both active in the organization of workshops and conferences.

Finally, we would like to mention the digital library ‘Natural Rights History’ of the Dipartimento di Studi storici of the University of Turin (<https://naturalrightshistory.unito.it/>), that is collecting and publishing sources—texts and images—on the history of human rights, especially in the Early Modern period. The following contributions are an offspring of the project that brought about this initiative.

References

- Arendt, Hannah. *The Origins of Totalitarianism*. New York: Harcourt, 2009 [1951].
- Balibar, Étienne. *La proposition de l'égaliberté*. Paris: PUF, 2010.
- Bobbio, Norberto *L'età dei diritti*. Torino: Einaudi, 1990.
- . *Teoria generale della politica*. Torino: Einaudi, 2009.
- Charter of Fundamental Rights of the European Union*. 2000. https://www.europarl.europa.eu/charter/pdf/text_en.pdf
- Edelstein, Dan. *Mind the Gap: Between the Early Modern and Modern Histories of Human Rights*, paper for the New History of Human Rights Workshop, Princeton, University Centre for Human Values, April 25, 2015.
- Ferrone, Vincenzo. *La società giusta ed equa. Republicanesimo e diritti dell'uomo in Gaetano Filangieri*. Roma-Bari: Laterza, 2007.
- . *Storia dei diritti dell'uomo*. Roma-Bari: Laterza, 2014.
- . “I diritti dell'uomo tra utopia e storia. Perché può essere utile riflettere sulla storia dei diritti dell'uomo?”, *Questione giustizia*, 1, no. 1 (2015): 32-36.
- Hoffmann, Stefan-Ludwig. “Human Rights and History”, *Past and Present*, 232, no. 1 (2016): 279-310.
- Hunt, Lynn. *Inventing Human Rights. A History*. New York: W.W. Norton, 2007.

- . *Revolutionary Rights*, in *Revisiting the Origins of Human Rights*, ed. by Pamela Slotte and Miia Halme-Tuomisaari, 105-118. Cambridge: Cambridge UP, 2015.
- . “The Long and the Short of the History of Human Rights”, *Past and Present*, 232, no. 1 (2016): 323-331.
- Israel, Jonathan. *Democratic Enlightenment. Philosophy, Revolution, and Human Rights*. Oxford: Oxford UP, 2011.
- Moyn, Samuel. “The End of Human Rights History”, *Past and Present*, 232, no. 1 (2016): 307-322.
- Rodotà, Stefano. *Il diritto di avere diritti*. Roma-Bari: Laterza, 2012.



*Ittmust, Lisbon 2013 “A ditadura è un facto, a revolução è um direito”,
(<https://flic.kr/p/eqFjFw>).*