

To: Yale Private Law Workshop

From: Samuel Moyn

Daniel and Sadie asked us to consider human rights as part of the search for “dispute resolution” beyond established authority structures and more specifically to confront “how it happened (if it happened) that human rights have gained such authority and legitimacy that they can interfere with the sovereignty of states.”

In response, I have attached a recent writing that is, predictably, historical in nature, though mostly directed by invitation at contemporary political scientists. (I have attempted to cut out all of the material specifically directed at contemporary political science, but some things may remain.)

The theme of the paper is liberalism, which I take it is connected to some of the dispute resolution processes *within* established authority structures that you are considering in the rest of the seminar. But my basic argument is that liberals once were generally committed to extra-state politics in the form of political empire, and have lost powerful tools for internationalizing their values since that project went wrong. Global intervention is nothing new, it is just that spaces formerly ruled through default empire recently acquired postcolonial sovereignty. If so, interfering with the sovereignty of states presupposed the globalization of sovereignty not that long ago. See what you think.

## Human Rights and the Crisis of Liberalism

Samuel Moyn

People often think of human rights as liberal. If they are correct, it must follow that criticisms of human rights have to be premised on a rejection of liberalism itself. Yet while human rights do incorporate historically liberal norms, they make up only one liberal project in history, indeed a latecome one. In this essay, I give some reasons why it is inadequate to respond to criticisms of extant human rights agendas by claiming that those agendas simply incarnate liberalism — and that their opponents are therefore opponents of liberalism who must not accept its long settled normative horizons.<sup>1</sup> In fact, the reverse is closer to the truth. One does not need to be a “radical” to be sorry about the low aspirations and minimal achievements of human rights regimes and movements today. It is enough to be a liberal.

In theory and in practice, the contemporary human rights movement exists because of an abrupt truncation of, and recent break with, the majority of liberal traditions of thought and practice in modern history. If human rights regimes and movements today preserve some central liberal norms (such as those civil and political liberties listed in the first half of the Universal Declaration of Human Rights), they are a pale imitation of liberalism as a world-historical political project. If this is true, then “liberalism” is much more a sword for criticizing contemporary human rights as a tragic failure of ambition — notably in the socioeconomic domain — than it is a shield for the movement against mounting criticism.

The main gain that contemporary human rights provide compared to past liberalism is not, as many contend, that the former are aspirationally global where the latter was generally statist. It is, rather, that liberals have recently left behind the commitments to empire that long provided their most usual foreign policy: their central program until recently for exporting liberty abroad in the face of despotism and indigence. Functionally, human rights are post-imperial. But they lack cognate programs and institutions to substitute for the imperialism they have replaced. The trouble, in other words, is that proponents of human rights have no scheme of comparable ambition, opting instead for a minimalist approach to political and civil entitlements.

No liberal would have consented to this constriction and retreat before the middle of the twentieth century, when the twin specters of totalitarianism and decolonization prompted the invention of a stripped-down and minimalist “liberalism of fear” that sticks to policing the most horrendous symptoms of misrule, organizing international politics around a *summum malum* and especially around the specter of atrocity. The drastic curtailment of liberalism’s ambition through the rise of its foreign policy of human rights promotion took it back to the values its belatedly canonized founders, Thomas Hobbes and John Locke, had once consecrated for domestic politics alone. They did so out of the belief that the sole plausible goal of politics in the world is the defense of order, perhaps supplemented by protection of personal freedoms (and property), rather than the construction of social freedom. In setting their sights so low, today’s liberals have unlearned crucial lessons they once prized about the need to augment and improve liberalism over modern history. They have broken with their own tradition as they pared it down to size. It follows that if human rights advocates were to be true to the entirety of

the liberal tradition, and adopt the risky attempt to envision global freedom through new and post-imperial means, they would have to abandon their exclusionary commitment to a minimal baseline of protection that they generally pursue so singlemindedly. They might even have to sideline individual rights, as liberals historically did in domestic politics.

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### Why Liberalism Marginalized Human Rights

Like all traditions, liberalism is an invented one. Duncan Bell has recently shown that there is no historically stable core to “liberalism,” in spite of the attempts of a series of philosophers to locate it; and if so it is far better to write genealogically of an evolving and always contested concept that changes its own past even as it alters its present commitments.<sup>2</sup> With this understanding, the historian of human rights can observe that the place of her concept within the larger shifting constellation of liberal values has never been fixed. Nor is it adequate to assume that once a foundational role for rights has been laid, perhaps by John Locke, the die is cast for our own future. That approach not only mistakenly supposes that Locke stood up for liberalism in the first place, when the latter was in fact a nineteenth-century category then revised substantially in the twentieth. It also understates how much radical innovation would be required to secure the central place of rights in international affairs today.

It is true, of course, that Locke revised Hobbes by making more than the right to life precede political order, and by insisting on the defeasibility of the choice of

sovereign. But as Bell shows, Locke was never considered a liberal until the twentieth century reinvention of liberalism, when it became crucial to establish a series of rights against the state as central in the face of a totalitarian enemy. Even then, however, domestic liberalism's foreign policy did not yet include international human rights, and no one claimed that it was imaginable or desirable to export Locke's theory of rights to international affairs. In this assumption, they were completely faithful to Locke's own texts. After all, Locke reserved "natural rights" for bounded territories in which sovereign princes were to rule. He assigned to executives a wide-ranging entitlement or "prerogative" to act as prudence required in the dangerous world of international affairs — in twentieth century parlance, Locke was personally a realist.<sup>3</sup>

If so, it follows that making the inference from rights at home to rights as central principles of the international order was a chasm to be bridged rather than a bridge to be crossed. But even framing the problem so modestly skirts how uncertain and unstable a place liberals — once they existed in the nineteenth century — assigned human rights even as a matter of domestic politics, which in turn has major implications for what sort of international policies could answer to the description "liberal" in the first place.

Of course, there is no doubt, as many historians have shown, that late eighteenth century natural law doctrines popular across the North Atlantic featured appeals to basic human rights. (There is persisting dispute about the sources and meanings of these appeals, though no one thinks that they had institutionally global scope for a wide range of Enlightenment thinkers.)<sup>4</sup> But in spite of trying hard, historians have not located widespread inferences from abstract moral principles to the sort of institutional programs that political scientists now associate human rights. Still writing in view of eighteenth-

century natural law doctrine, Immanuel Kant insisted that “the rights of man” were “God’s most sacred institution on earth.” But by this he meant ordering principles of domestic politics. He forbade crossborder intervention, and even tolerated East Asian state autarky, mainly because his increasingly rare hatred of colonialism overrode any leap he might otherwise have made to contemporary human rights politics.<sup>5</sup> Like Locke, Kant defined international ethics in terms of the relationship of states to one another in a fashion that would now be regarded as deeply traditional — if not realist. And he restricted his now much discussed category of “cosmopolitan right” to the entitlement of foreigners to present themselves at borders for the sake of commercial exchange, with no right to entry if they were unwanted. It is possible that Kant believed in a subsidiary right of entry for those who legitimately feared violence if they were rebuffed — effectively the *non-refoulement* provision of twentieth-century refugee law — but that is about it. Otherwise, Kant refused on principle to elevate “God’s most sacred institution on earth” to the literal global order.<sup>6</sup>

It is not as if the domestic premises of liberals were static as their foreign policy changed, however. But if anything, their transformations stacked the deck against human rights more and more. The best candidate for a liberal who insisted on human rights as a limitation for sovereign activity in the domestic realm was the early nineteenth-century French liberal Benjamin Constant, but even he was increasingly committed to a historicist way of thinking about the evolution of political society which made it implausible to appeal to the prepolitical norms of natural rights. Of classic nineteenth-century liberals, neither John Stuart Mill, nor Alexis de Tocqueville, nor anyone else made natural or human rights foundational or central. Indeed one reason for John Locke’s

absence from the self-constructed canon of liberals for a long time was that his unfashionable appeal to the unbelievable state of nature made his thought an unusable past as visions were defined — even though when it came to international affairs Locke was just as much of an imperialist as the major thinkers of nineteenth-century liberalism mostly were.

The series of jostling commitments liberals made for a long time amounted to a program of what one might call “good government,” with the common goal of transcending arbitrary despotic rule. Because of this core if general aim that united liberals for all their diversity, an agenda first adopted by aristocrats in their resistance to absolutism, liberalism would have a perpetually uneasy relationship to democracy. (Recall that the latter had always been viewed in the history of political thought, from Plato’s *Republic* and Aristotle’s *Politics* on, as likely to slide into a mob-rule little better than dictatorship.) Locke was a monarchist, and even when nineteenth-century liberals ruefully gave up on monarchy, they felt it most essential to seek technologies of good governance designed to achieve enlightened rule (figures like Mill and Tocqueville differed profoundly about what these technologies were). Crucially, this emphasis on governmental limits hardly meant liberals were libertarian, whether because of commitments to natural rights or anything else. Rather, liberals always viewed the state as a crucial tool to stave off the worse alternative of the unleashed freedoms of civil society, and so resolved to seek the proper balance between the capacitation and constraint of government.<sup>7</sup> As for the deepest liberals, they regarded society as a historically evolving construction whose achievements were won at the level of social

norms rather than through superficial governmental policy alone, so that history and culture were far more central fora of politics than administrative or legal fiat.

It is not merely that liberalism was always statist (and typically imperialist) to the exclusion of anything really resembling international human rights. Its main historical project with respect to fellow white and Christians suffering under the wrong empire was modular nationalism. Especially in relation to the Ottoman empire, but also other faltering empires, Western European states — followed eventually by the American people — were often willing to support nineteenth-century national movements even when this meant interference with the integrity of borders. A nineteenth-century liberal nationalist like Italian Giuseppe Mazzini was an exemplary hero. Striving in a first step for liberation of each people, the unification of humanity remained a distant goal. As a matter of fact, the combination of the proximate nation with an eventual global polity indeed ruled out anything like international human rights for a new reason — since liberals like Kant and Mazzini long assumed that emancipated nations could not need external supervision, and if cosmopolitan unification of humanity ever took place, it would be in the form of a superstate or strong federation. It would not resemble our own “anarchical society” in international affairs, and so would not feature the same debates about sovereignty and its abrogation that our day has seen.<sup>8</sup>

But the most striking fact about any fair survey about the place of rights within liberal thought in modern times is their etiolation within domestic argument. If human rights never made the transit above nation-states to circulate in international affairs — except for rare invocation of religious freedom in stigmatizing Ottoman misrule — they also withered within states as core liberal principles, to the extent they had ever gained a

foothold to begin with. A sociological perspective never absent from the liberal tradition gained increasing ground. The greatest reason for this, perhaps, was the simple experience of citizenship politics. You assert your version and interpretation of the rights that nature dictates, and I assert mine, but if you and I disagree there is no recourse except to bargain (or fight). In real politics, rights are just a fancy name for policies, whose adoption ultimately depends on consent or force. No wonder, as Hannah Arendt observed, that rights were “treated as a sort of stepchild by nineteenth-century political thought.”<sup>9</sup> But liberals had a deeper reason than expediency and strategy — the lesson that assertions of human rights were at best a preliminary to bargaining or force in politics — to abjure appeal to them. As time passed, liberals came to believe, above all, in history and progress, which made any appeal to extra-social and non-temporalized account of applicable norms unbelievable, and not merely unavailing.

Following his master G.W.F. Hegel, Italian liberal Benedetto Croce reflecting on the United Nations Universal Declaration project in the 1940s put it best when he said “the rights of man in history” were what liberals could now make of an otherwise obsolete language: human rights were simply the set of citizenship norms to endorse for now, in a constantly evolving and progressing political society created in and through each state.<sup>10</sup> In their disparate national varieties, so-called “new liberals” across the Atlantic as the twentieth century dawned indeed went as far as to reject human rights altogether. They did not merely, as Hegel and Tocqueville had, situate them within a larger and complex picture of the achievement of individual and collective liberal freedom. They had a good reason: by the late nineteenth century, the success of defenders of free enterprise in the libertarian defense of private property against state encroachment

meant that progress demanded the deconstruction rather than the promotion of rights talk. In domestic politics in the North Atlantic, rights had been derided by reformers as implausible and obstructionist metaphysics as far back as Jeremy Bentham, but now under the Hegelian impress of figures like T.H. Green, and sociologically inspired progressives such as Léon Duguit, new liberals rallied around collective freedom as the goal for progressive societies living through historical modernization.<sup>11</sup> It would incorporate individual freedom, of course, but not treat it as independently available or theoretically prior to the common good of interdependent societies.

It was for all of these interlocking reasons hardly surprising that no one called for human rights in international affairs throughout the nineteenth century. The vanguard of progressive history for liberals was the achievement of white nations ruling the globe for reform's sake, thanks to the liberation of those nations that could govern themselves coupled with the victory of progressive empires for those not ready over merely power-hungry ones that barely improved over native misrule. To the extent so-called "liberal internationalism" existed in the nineteenth-century, it was nationalist insofar as it was not imperialist: it focused on the liberation of white peoples from bad empires (and especially the Ottomans in the era of the Eastern Question). When they are not distorted by hindsight, early calls for "humanitarian intervention," starting with phil-Hellenist horror at Muslims ruling Christians, fit perfectly in this optic.<sup>12</sup> Of course, most places, no liberation was imaginable, which usually meant there were no white people, either indigenous or imported. There the premium fell on the substitution of bad empires with good empires like Great Britain, trailed by the United States as it gingerly embraced its

role as “empire of liberty” in places like Cuba and the Philippines where Spanish domination seemed inadequate or faltered on its own.

In view of this *status quo ante*, the surprising rise of international human rights within liberalism could only take the form of a replacement of earlier and until then more durable nationalist and imperialist frameworks — a substitution that occurred within living memory.<sup>13</sup> In the long era during which no one thought to export “human rights” to international affairs, the same broad sociological assumptions that liberals deployed to understand their own place in domestic history at home were in command when they thought about the social freedom they would bring the globe. The latter was simply far behind the former, which served as a beacon for all, except to the (sadly large) extent liberals bought into increasingly pervasive racist assumptions that made global freedom seem impossible and not merely distant. It was in part for this reason that when liberals thought globally, they bet so heavily on “civilization” as a force that, having brought Europeans out of darkness, might eventually do the same for the world’s “savages” thanks to imperial rule. Indeed, liberals doubled down on sociology when in the long age of empire progress failed to materialize as quickly as Mill and others initially hoped.<sup>14</sup>

Reconsider from this perspective an episode falsely made central to the “history of human rights” — the rise and fall of King Leopold’s Congo (1885-1908). In a well-known bestseller, the journalist Adam Hochschild has famously portrayed the extraordinary terror Leopold brought to his own private colony, and how it was ended thanks to the mobilization of empathy that Hochschild does not hesitate to label “the first great human rights movement of the twentieth century.”<sup>15</sup> But on second glance, it was really a story about liberalism and empire, rather than international human rights. The

negotiations that first apportioned the Congo to Leopold in 1885 did so on essentially liberal grounds: the Berlin Act, as the relevant treaty was called, announced the goal of “instructing the natives and bringing home to them the blessings of civilization.”<sup>16</sup> Figures like E.D. Morel, lionized by Hochschild as the human rights activists of their time (and understandably so thanks to their tireless denunciation of the horrendous abuses that followed), saw no alternative to reallocating the Congo to some other empire, and preferably the British one, as more proper steward. (Hochschild admits this decisive fact rather sheepishly.)<sup>17</sup> In the end, the Congo was transferred to control of the Belgian state, as a more plausible trustee of civilization into an indefinite future, and it responded by replacing Leopold’s atrocious governance with a forced labor regime that would not attract as much fierce international scrutiny, since it was more in step with then-current standards. As the Congolese transferred from Leopold’s personal rule to Belgian sovereignty were black “savages,” no one at any point, whether liberal or not, argued that they be given self-rule. Rather, the obvious remedy was to find the proper white empire that alone could bring them — as it was supposedly bringing the whole world — liberal progress.

The point of this brief example is not to decry liberalism; it was a creature of its time, just like everyone and everything is. The point, rather, is to be clear that even to the extent transnational advocacy in the face of horrendous suffering took place among liberals before our age, it meant the search for good empire, and correcting mistaken allocation of benighted peoples with proper allocation. The comparison with a liberal in political science today like Beth Simmons is in this regard particularly stark: when she thinks about human rights, she longs for global peoples to treat them as a powerful tool to

set the terms of their own self-rule and self-emancipation through the non-imperialist mechanism of an international law they make their own. The contrast suggests that something drastic has occurred in the meantime.<sup>18</sup> And in fact it is on this drastic transformation that emphasis needs to fall: what happened to liberalism, and surprisingly recently, to change it out of all recognition.

### How Liberals Adopted Human Rights: Back to Order and Beyond Empire

That was then. Now liberalism does include rights much more prominently than ever, having undergone a “rights revolution” both in thought and in actuality, and made international human rights a policy to pursue.<sup>19</sup> “The history of liberalism ... is a history of constant reinvention,” Bell observes. “The most sweeping of these occurred in the middle of the twentieth century, when liberalism was increasingly figured as the dominant ideology of the West — its origins retrojected back into the early modern era, it came to denote virtually all non-totalitarian forms of politics as well as a partisan political perspective within societies.”<sup>20</sup> Disguising the novelties of its serial transformations, liberalism suddenly made several major leaps. Now, it is fully democratic, at least in its commitment to formal electoral inclusion, as well as most usually to written constitutions to organize and limit power. Above all, it is post-imperial. And unlike in its glory years, it is chastened in its beliefs about the goals of politics and the possibilities available for progress. Liberalism went through two crucial stages to reach its elevation of international human rights to centrality. One was the anti-totalitarian turn to rights, and the other their post-imperial internationalization.

The first, characteristic of “Cold War liberalism,” occurred in the face of a frightening new enemy. Though the Cold War featured a commitment by liberal states to more state intervention and administrative explosion than any nineteenth-century liberal would ever have countenanced, and to more welfarist redistribution than before (or since), the spirit of Cold War liberalism changed drastically. It did so in response to the totalitarian enemy that claimed for itself to be in the vanguard of moral progress and social evolution — once the greatest pride of nineteenth-century liberals. It stung liberals that Marxists took power arguing that the logic of social progress culminated in not in capitalism but in communism, but aside from the occasional idiosyncratic “non-communist manifesto” liberals had no real reply.<sup>21</sup> Instead, Cold War liberals from Isaiah Berlin to Judith Shklar offered a bleak view of human affairs in which the most government can achieve is to present a space for individual freedom — most of all against the supposedly hypertrophic state itself.<sup>22</sup>

Yet Cold War liberals were not yet ready to criticize empire, except the Soviet one. As a matter of fact, in international affairs, even as its theoretical defenders insisted more on limits at home, the liberal state proved willing to unleash untold violence abroad. It was often the liberals who, having expanded empire in the nineteenth century, defended it to the last gasp. In America, it was the Democratic rather than the Republican party that led the world into the Cold War and the country into the Vietnamese quagmire. No real concern for individual human rights, now more central at home thanks to Cold War liberalism and fears of state depredations towards its own citizens, obtained in international affairs, even or especially when liberals ruled. In the United States massive innovations like the civil rights movement, which rewrote the social contract beyond

formal racial subjugation, were carried out compatibly with massive global violence, visited upon Asians and Africans most cruelly.<sup>23</sup> It is ironic that contemporary liberals — including Ivy League professors many of whose own institutional predecessors were profoundly complicit with America’s Cold War violence — make broad claims about the humanity of “liberalism.” After all, only shortly before our time liberalism, including the very specific variant promoted the American Democratic party, was entirely compatible with the pursuit of global freedom through shock and awe rather than rights and law.

But eventually the antitotalitarian constriction of liberalism converged with the loss of confidence in the tool of imperial globalization of good government — and human rights took its place. Originally anticolonialism had been justified on good liberal grounds, with activists around the world recalling that the first postcolonial state in world history was America’s rights-based republic. In Mazzini’s tracks, anticolonialists knew that there was no way to separate the protection of the individual from the emancipation of the nation, so that many agitators reached the principle of “collective self-determination” as a globalization rather than a qualification of liberalism. Indeed, they wondered how liberals from Mazzini, to his heir Woodrow Wilson, to Cold War thinkers persistently restricted a liberalism of collective freedom to the white race. In response, proponents of decolonization simply resolved not to wait any longer for civilization to improve them. In their opinion, they had already waited long enough.

As the nationalist component of liberalism was allowed to trump the imperialist in the hands of global anticolonialists, international human rights were no part of the landscape. Rather, following the most ambitious version of liberalism in the North Atlantic, the new states attempted to reproduce the now welfarist nation-state around the

world. It is, of course, true that anticolonialism ended up prizing sovereign equality and economic growth, treating individual protection as more of theoretical rather than practical priority. But then, they were simply hewing to the global liberal norm in an era when state-led growth seemed the beacon of the future and no international human rights movement existed.<sup>24</sup> Autocrats and despots who trampled freedom in the third world were a sorry sight that hardly answered to liberal visions, of course, but then liberals often propped them up to the extent they had to be supported as a lesser evil in the face of a communist threat.

Yet the liberal commitment to sociological progress counted even more, until the antitotalitarian constriction of liberalism eviscerated any attempt to retain the ambition of empire in new circumstances. It is easy to forget that it was liberals in history, not only communists, who once prioritized structural (including geopolitical) change and postponed individual protection, until they concluded that they had no working recipes for the former and ultimately risked never securing the latter. In the end, the proximate cause of the birth of international human rights politics was when liberals lost their imperial and post-imperial tools to civilize the globe while also concluding that their former subjects were not up to the challenge of self-rule on their own.<sup>25</sup>

Imperialism still haunts contemporary liberalism in many ways, at a minimum in the functional replacement of formal empire with the promotion of human rights: what rich (and generally white) people do when they feel their consciences pricked by poor (and usually black) suffering faraway.<sup>26</sup> But the departures from the age of liberalism and empire are in the end more compelling. The rare Niall Ferguson aside, no liberals are allowed to consider formal empire as part of the available toolbox. But other tools failed

too: the Cold War versions of “civilization.” To a remarkable extent, depressed by the failures of both state-led growth in the third world and what has been termed “high modernist” development brought by outsiders (including international organizations), liberals rally around human rights as the individualist salvation they feel they can plausibly defend and might work.<sup>27</sup> What is more impressive is not the continuity between imperial rule and human rights but the massive foreclosure of ambition involved in the substitution of the one by the other. In comparison to prior chapters in their own tradition, and not merely in the face of more ambitious rivals like communism, liberals made international human rights their premier ideology and prestigious practice as a “last utopia.” Their more minimalist set of ideals and approaches — essentially the search for social order and personal freedom around the world — could seem an inspiring cause only after and instead of both the Cold War violence and grandiose developmentalism liberals had tried first.<sup>28</sup> Even then, as Stephen Hopgood observes in his chapter, though the foundations were laid in the 1960s and 1970s, it took the end of the Cold War for human rights activism and analysis to truly surge.

To the extent all this is correct, liberalism in its anti-totalitarian and post-imperialist mode is a profound break from its own prior impulses and instruments. It is so above all in two respects. It minimized ambition: prizing a baseline of political and civil liberties as the non-negotiable first principles and main agenda of international affairs, which had never before been the case. And it gave up the visionary character of liberalism at its welfarist (though imperialist) high tide, which defined itself as a philosophy of the *summum bonum* and the creation of the good life. Perhaps most deeply, liberals ditched sociology for formalism, even though generations of liberals had

concluded that ambitious progress depended on the reverse move. Depressed by the betrayal of progress in false communist promises and the failure of empire and its clientelistic successors in the newly decolonized states to achieve freedom and growth around the world, liberals retreated to a rather different and supposedly disabused outlook. Politics seemed most likely to be a tragic recipe for evil, and suddenly the most prestigious agenda to adopt in response became to try to keep despots from killing their civilians or, when they did so anyway, to try to throw them into jail sooner or later.

All things considered, the “liberalism” that the ascendancy of international human rights epitomized, trailed as it has been by the so-called justice cascade of international criminal accountability, was a stark reversal or even betrayal of nineteenth-century optimism, which treated history as a forum of political opportunity rather than a charnel house of slaughter. The most cherished project of liberals — social freedom in the state with a strong welfarist dimension — went forsaken as restraining the state first at home and later abroad took pride of place. As if the high tide of liberalism had never occurred, the very rights earlier generations had found it necessary to marginalize or even abjure became in anti-totalitarian and post-imperialist circumstances the highest ideals of liberals. The reasons they came to make these moves were plain. There was the totalitarian horror of Nazism and Stalinism and the travesty of progress that both represented. Even worse, there was final indignity of concluding that empire and decolonization alike were also hollow in their common promise to bring about a better world. It must have seemed far wiser to adopt the more achievable and less risky goal of protecting individual freedoms, even though these had never been the exclusive concern of liberals in theory or practice.

## Contemporary Political Science and Human Rights

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### Conclusion

It is plausible to say international human rights are a liberal policy, but only with the proviso that singleminded emphasis on them breaks profoundly with historical liberalism and not only so as to correct its imperialist mistakes but also so as to foreclose its higher ambitions. Imperialism, for all its disastrous errors, represented an aspirational confidence liberals — entirely understandably — do not yet know how to replace. ...

They do so thanks to the antitotalitarian constriction of liberal welfarism, which was dropped in theory under Cold War pressure and in practice once the waning of working class movements at home and the Soviet enemy abroad prompted a massive renaissance of once-rejected economic libertarianism. And above all, they do so thanks to the post-imperial failure to reimagine global politics for the sake of the social freedom of which liberals once dreamed. Finally, they do so in search of something that works, even if its contributions are minor, on the ruins of dreams of progress that liberals, too, once entertained. The pursuit of minimal order in a vale of political tears — with securing personal freedoms and criminalizing atrocity as their highest aspirations — seems to liberals today the most they can hope for. ...

If one thinks (as I do) that in real time the Universal Declaration of Human Rights announced not so much an international project of protecting life but a modular national project of renovating citizenship to incorporate welfare, the result is doubly ironic and disappointing. ... That there are rich resources in the history of liberalism for returning to and correcting its recent truncation in and through the rise of human rights does not mean, obviously, that some earlier version of liberalism exists to surgically extract from the past for contemporary purposes. Far from it. But it does mean that earlier liberals were more aware of the range of competing ideals — social peace, national emancipation, economic growth, and collective welfare prominent among them — that in their combination marginalized anything like international human rights politics as they have risen today. It would be best, in sum, if contemporary political scientists would stop talking with such nonchalance and misinformation about “liberalism,” as if the version of it they currently support were uncontested within their own tradition. The mantle of the liberal tradition is too hefty to be so easily shirked for the sake of the current fashion of human rights. This also opens the liberal canon of the past for explorations for the sake of human rights futures. It is even possible that, just as liberals in domestic politics learned to do, advocates of international human rights will be led to put them in their place for the sake of a more sophisticated vision of social freedom.

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<sup>1</sup> For full-blown presentations of human rights as the liberal view in world affairs, see John Charvet and Elisa Kaczynska-Nay, *The Liberal Project and Human Rights: The Theory and Practice of New World Order* (Cambridge, 2008) as well as Christian Reus-Smit, *Individual Rights and the Making of the International System* (Cambridge, 2014).

<sup>2</sup> Duncan Bell, “What Is Liberalism?” *Political Theory* 42, no. 6 (December 2014): 682-715. Edmund Fawcett, *Liberalism: The Life of an Idea* (Princeton, 2014), makes some of the same points in a less theoretically acute but more accessible way, though unfortunately sidelining empire. However, Fawcett plausibly writes that to grasp liberalism, “liberty is the wrong place to begin” (4; see further chapter 11 on rights as “new foundation” for liberalism).

<sup>3</sup> For his theory of war and peace, and textual substantiation for the claims in this paragraph, see my “John Locke on Intervention, Uncertainty, and Insurgency,” in Stefano Recchia and Jennifer Welsh, eds., *Just and Unjust Military Intervention: European Thinkers from Vitoria to Mill* (Cambridge, 2013).

<sup>4</sup> Lynn Hunt, *Inventing Human Rights: A History* (New York, 2007); see also Kate E. Tunstall, ed., *Self-Evident Truths?: Human Rights and the Enlightenment* (New York, 2012).

<sup>5</sup> Like several early liberals, including Edmund Burke (now routinely viewed as a liberal thinker), Kant had a healthy commitment to cultural diversity, though that commitment would increasingly disappear from the tradition, and remains peripheral in our own time. See, e.g., Sankar Muthu, *Enlightenment against Empire* (Princeton, 2003).

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<sup>6</sup> The citation is from Immanuel Kant, *Political Writings*, ed. Hans Reiss (Cambridge, 1991), 101. For the latest commentary, see Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Principles of World Citizenship* (Cambridge, 2012) and, most incisively and historically, the relevant sections of Isaac Nakhimovsky, *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte* (Princeton, 2012).

<sup>7</sup> The commitment of liberals to high capacity states is a special theme of Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago, 1995).

<sup>8</sup> For more, see my “Giuseppe Mazzini in (and against) the History of Human Rights,” in Miia Halme-Tuomisaari and Pamela Slotte, eds., *Revisiting the History of Human Rights* (Cambridge, 2015).

<sup>9</sup> Hannah Arendt, *Origins of Totalitarianism*, new ed. (New York, 1963), 293.

<sup>10</sup> Benedetto Croce, “The Rights of Man in History,” in Jacques Maritain et al., *Human Rights: Comments and Interpretations* (New York, 1948).

<sup>11</sup> See, e.g., the critical discussion of naturalistic rights theory, treated as a superseded mistake, in L.T. Hobhouse, *Liberalism and Other Writings*, ed. James Meadowcroft (Cambridge, 1994), chap. 3. For the crucial intersection of liberalism and sociology in the new liberalism, see Stefan Collini, *Liberalism and Sociology: L.T. Hobhouse and Political Argument in England, 1880-1914* (Cambridge, 1979).

<sup>12</sup> Compare Gary J. Bass, *Freedom’s Battle: The Origins of Humanitarian Intervention* (New York, 2008).

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<sup>13</sup> For a good survey of a major recent literature, which unfortunately has not taken up the transformative era of decolonization, see Jennifer Pitts, “Political Theory of Empire and Imperialism: An Appendix,” in Sankar Muthu, ed., *Empire and Modern Political Thought* (Cambridge, 2012).

<sup>14</sup> This is the lesson of Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Imperialism* (Princeton, 2010).

<sup>15</sup> Adam Hochschild, *King Leopold’s Ghost: A Story of Greed, Terror and Heroism in Colonial Africa* (New York, 1998), 2.

<sup>16</sup> General Act of the Berlin Conference on West Africa, February 26, 1885.

<sup>17</sup> “[H]umanitarians never saw themselves as being in conflict with the imperial project — as long as it was British imperialism,” Hochschild writes. “This was the tradition in which Morel felt at home, and ... [i]f he had believed, as we might conclude today, that Leopold’s rape of the Congo was in part a logical consequence of the very idea of colonialism, of the belief that there was nothing wrong with a country being ruled other than by its own inhabitants, Morel would have been written off as being on the fringe. No one in England would have paid much attention to him” (212).

<sup>18</sup> Human rights law, Simmons insists, is “*directly available to groups and individuals whom I view as active agents as part of a political strategy of mobilizing to formulate and demand their own liberation*” (emphasis in original). No nineteenth-century liberal would ever have worried that his tool might impose values, since such imposition is precisely what liberals believed was needed. Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge, 2011), 7.

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<sup>19</sup> The “rights revolution” in domestic settings has to be rigorously distinguished from the liberal prioritization of human rights in international affairs, not least since the latter did not follow from the former. See, e.g., Charles R. Epps, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago, 1998).

<sup>20</sup> Bell, “What Is Liberalism?,” 705.

<sup>21</sup> Cf. W.W. Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge, 1960).

<sup>22</sup> Jan-Werner Mueller, “Fear and Freedom: On ‘Cold War Liberalism,’” *European Journal of Political Theory* 7, 1 (January 2008): 45-64.

<sup>23</sup> Odd Arne Westad, *The Global Cold War: Third-World Interventions and the Making of Our Times* (Cambridge, 2005).

<sup>24</sup> Illuminatingly, as late as 1971 John Rawls was willing to relax the “lexical priority” of liberty (though not tolerate the most grievous wrongs like slavery) in view of the developmentalist imperatives of third-world states. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 62-63, 247-48.

<sup>25</sup> See Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, United Nations General Assembly Res. 2131 (XX), December 21, 1965, and my “Imperialism, Self-Determination, and the Rise of Human Rights,” in Akira Iriye et al., eds., *The Human Rights Revolution: An International History* (New York, 2011).

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<sup>26</sup> See Jeanne Morefield, *Empires without Imperialism: Anglo-American Decline and the Politics of Deflection* (New York, 2014), esp. the chapter on Michael Ignatieff's thought.

<sup>27</sup> On high modernism, see James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, 1998) and Nils Gilman, *Mandarins of the Future: Modernization Theory in Cold War American* (Baltimore, 2004).

<sup>28</sup> Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, Mass., 2010).