The History of Human Rights

From Ancient Times to the Globalization Era

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Chapter Two

Human Rights and the Enlightenment

THE DEVELOPMENT OF A LIBERAL AND SECULAR PERSPECTIVE ON HUMAN RIGHTS

The Oath of the Tennis Court by Jacques-Louis David, 1791. Courtesy of the Musée National du Château de Versailles at Versailles.
A CIVILIZED NATION "lacks in its eyes and in the eyes of others, a universal and universally valid embodiment in laws," observed the German philosopher Friedrich Hegel (1770–1831), "it fails to secure recognition from others." India, China, Roman Christendom, and the Arab Islamic world met these standards and were recognized as the great civilizations of the fifteenth and sixteenth centuries. In addition to its economic achievements, each showed the capacity for transcending the horizon of local and parochial thinking, and each exhibited a set of encompassing moral criteria that commanded the respect of others. The next three centuries, however, were to witness a revolutionary change in human thought as for the first time a secular and relatively more egalitarian approach to universal morality emerged in Europe and spread throughout the world under the revolutionary banner of the Enlightenment.

The birth of secular universalism took the form of an assault on the intellectual and political edifice of Roman Catholicism. That structure, seemingly impregnable during the Middle Ages, now collapsed under the blows struck by the Renaissance and the Protestant Reformation, opening up room for the emergence of humanist thought. Christian ethics thus shifted from a docile dependence on revealed knowledge toward an embrace of religious freedom and freedom of opinion in general. Simultaneously, feudal authoritarianism grounded on divine inspiration yielded to the modern concept of the nation-state, justified by its protection of natural and individual rights. The monopolistic feudal economy gave way to mercantilism and later to free markets based on the individual's right to private property. Finally, a religious tradition that had often sanctioned merciless and arbitrary killings was now confronted with laws premised on the individual's right to life, and with an insistence that even warfare must conform to universal standards of justice.

With these transformations, a secularized version of Judeo-Christian ethics lent itself to the development of a broad liberal discourse on human rights, a discourse that has shaped contemporary thinking. This chapter will illustrate why current human rights debates can be best un-
derstood as an extension of Enlightenment arguments that date back to the seventeenth and eighteenth centuries. Now as then, we find ourselves wondering whether the state is the best mechanism with which to defend basic rights, or a formidable Leviathan against which one’s rights need to be defended. As in the eighteenth century, we are still questioning whether free markets are the best way to promote democratic institutions and global peace, and under which conditions one may justly wage war. This chapter also alerts the reader to the sufferings of those who remained excluded from initial Enlightenment conceptions of (purportedly) universal rights. As subsequent chapters will show, the victims of one era can become either the avenging aggressors or the human rights crusaders of the next age.

Because our modern conceptions of human rights originated in Europe and America, the story of their inception is embedded in the political, economic, and technological changes associated with the rise of the West and the relative decline of rival civilizations. Thus, before turning to the Western origins of particular rights, this chapter begins with a brief overview of the changes that contributed to the rise of the West over other civilizations. Chief among those changes were the development of modern science, the rise of mercantilism (which led to the consolidation of the nation-state), the great voyages of discovery that would bring the world’s wealth within Europe’s grasp, and the emergence of a middle class as a powerful source of revolutionary change. These developments laid the foundations for four great historical events in the Western world: the Reformation and the English, American, and French Revolutions. Much of this chapter will look at how each of these events animated key dimensions of the emerging liberal vision of human rights. That vision today reigns triumphant, though not uncontested, throughout the West, and has passionate, often embattled adherents throughout the rest of the world.

The liberal worldview first emerged out of the struggle for freedom of religion and opinion that began with the Reformation, laying the groundwork for subsequent claims for a universal right to life (including calls for the abolition of torture and the death penalty) and the right to property—along with counterclaims on behalf of an equitable distribution of wealth. As each of these components of the liberal tradition emerged, adherents began the political struggle—still under way—to develop effective means to promote the rights they championed. The final section of this chapter addresses the inconsistencies and limitations that beset early liberal thought (including the exclusion of women, the prop-
ertless, blacks, colonized peoples, homosexuals, Jews, and other nationalities), inconsistencies that helped provoke the development of the nineteenth-century challenge to the liberal human rights agenda. Let us first consider how the West emerged as the leading power, outpacing other civilizations, notably in India, China, and the Islamic world, and attaining the capacity to dominate the world and, consequently, to shape an increasingly global debate over human rights.

FROM ANCIENT CIVILIZATIONS TO THE RISE OF THE WEST

India, China, and Islamic Civilizations

At the close of the fifteenth century, as Vasco da Gama’s expedition found its way around the Cape of Good Hope to Indian waters, it was far from apparent that the West was on the verge of ascendancy to global predominance. Indeed, three rivals, India, China, and the Islamic world, could not only claim to match or exceed Western accomplishments, but could not then be ruled out as formidable contenders for global power. India, under Muslim Moghul rule, had reached a level of civilization marked by respect for learning and growing religious tolerance whose achievements in architecture and painting surpassed those of medieval Europe. Under the leadership of Akbar (1542–1605), religious minorities were granted legal status. The “Great Moghul” not only condemned Indian practices such as the immolation of widows and enslavement, his tolerance for all religions was exemplary. For half a century, his successors continued his efforts to wed Hindu and Muslim cultures. The mingling of these traditions found sublime expressions in naturalist painting, refined ceramics, textiles, and monumental architecture. An empire built on a regularized tax system supported all these cultural endeavors and also provided the central treasury with funds for rulers to secure the loyalty of military and bureaucratic officers.

Chinese civilization was at least equally impressive, not least in inventiveness, as its production of paper, printing (around 700), gunpowder, the mariner’s compass, the sternpost rudder, and the wheelbarrow all predated their appearance in Europe. China’s silks, ceramics, jades, and bronze castings (accomplished fifteen hundred years before Europeans mastered that metal) found a market in far-flung parts of Asia and Europe. Moreover, the Chinese, under the influence of Confucianism, possessed an advanced ethical and political system presided over by a scholarly bureaucracy, which not only maintained great administrative
continuity but made possible the centralized management of a vast state. If rebellions took place, provinces broke away, or rulers changed, the politico-religious system persisted. It was later emulated in Korea and Vietnam. Experimentation with newly available crops made possible the rapid growth of the Chinese population, which had reached perhaps 160 million by 1600. Despite many famines, the food situation in China was typically better than that in Europe in the previous millennium.

The Arab-Islamic Mediterranean and the Middle East region also enjoyed a brilliant civilization that predated the emergence of Italian commercial cities. As Islam spread, Arabia, Persia, and the Ottoman Empire surfaced as major centers of religious, intellectual, cultural, artistic, and architectural influence whose reach extended to North Africa, China, and northern and Southeast Asia, threatening Europe as a result of its penetration of southern Spain. The Abbasid civilization (750-1258), second of the two great dynasties of the Muslim empire, had already marked its greatness by undertaking the translation of the Greek classics into Arabic, and the works of Plato, Aristotle, Euclid, and Galen were integrated into a flourishing Arab culture. Subsequent translations of Arabic works in the late European Middle Ages testify to the great reputation that Arab thinkers such as Al-Kindi enjoyed in Europe. Persian contributions to medical studies penetrated the Arab world and became the standard texts for Western training. In contrast to China, trade and maritime expeditions were more central to the Islamic world. The prominence of Muslim trade in the early Middle Ages was prompted by flexible commercial instruments and practices adopted as early as the eighth century and picked up only centuries later in Europe. Cultural and commercial traffic with the European world was almost one-way, testifying to the superior quality of Arab civilization.

Given the strength of Indian, Chinese, and Islamic civilizations relative to the West, one may wonder why none of them successfully propagated a universal ethics of rights. Inevitably, the unexpected speed of the West’s ascendance drew the interest and speculation of many historians. Writings on this question have been controversial, as various scholars emphasize different economic, cultural, and institutional variables. Some stress the uniqueness of Western capitalism and scientific development, while others counter that a similar form of capitalism existed in Islam, or that science flourished in China before the modern West. At times, such disagreements have fueled heated academic debates between “Eurocentric” defenders and “anti-Eurocentric” critics. While the fundamental sources of strength and weaknesses of civilizations will re-
main contentious, we can nevertheless point to particular reasons for the relative decline of India, China, and the Islamic cultures, and corresponding factors that help account for the rise of Europe, as well as for the influence of its human rights legacy.

Indian agriculture, based on the caste system, was less productive than that of other areas of Asia, and small manufacturing (mainly handicraft production) in towns was organized around hereditary guilds. Not only did heavy taxation leave the peasantry destitute, but the cost of trading also hindered the prospects for artisans who might have wished to become merchants. These obstacles, coupled with Hindu reliance on the caste system, may have frozen occupational mobility to a larger extent than it did in feudal Europe. Moreover, despite the partial unity achieved during the Moghul Empire, limited communications and inadequate military technology made it difficult for rulers to retain loyalty in various critical areas. This fragmentation of loyalty, reminiscent of that in late medieval Europe, was exacerbated by the religious intolerance and relentless wars of the last Moghul leader, Aurungzebe, whose regime was countered by many popular revolts that ultimately led to the decline of the Moghul Empire. That decline coincided with the emergence of European predominance. European traders had acquired only a few coastal stations in India since the Portuguese appropriation of Goa in 1510, but opportunities for trade increased after the decline of the Moghul Empire. Despite rivalries and unlike earlier conquerors, Europeans would stay in India for centuries and would extract substantial economic gains.

Despite the strength of Chinese civilization, the Ming dynasty gradually shifted its energy inward, focusing on agrarianism and away from technology, industry, and its earlier naval exploration of Asia and the Indian Ocean, leaving Europeans freer to secure their dominance over the seas and expand their colonial control over the globe. China's power, its centralized unity, and its isolationism might have ultimately worked against the expansion of its civilization and possibly against the spread of a Confucian sense of universal justice. It was precisely the European states' fragmentation and competition, Jared Diamond argues, that enabled the Genovese Christopher Columbus to bargain with several monarchs and finally earn the financial support of the Spanish king for his naval expedition. By contrast, in unified China, there was no alternative site with which to challenge the shortsighted decision to forgo maritime exploration. European scientific discoveries, Diamond speculates, might also have benefited from that disunity.

In comparison, Maxime Rodinson has maintained that there seemed
to be nothing inherent in Islamic civilizations that would have precluded further economic development, unless we consider the fact that the lands the Muslim Mediterranean world acquired were not as rich as the regions colonized by the Europeans in the Americas. Islamic overseas trade emphasized luxury goods and did not compensate for the general shortage in important sectors such as agriculture. Another potential source of economic weakness was that the population of the Islamic Near East comprised only 28 million people, which was relatively low compared to that of China, India, and Europe in the 1600s. Behind the Ottoman frontiers, a multiracial policy was organized to integrate different religions into the growing empire. Yet the expansion of the empire engendered heavy military expenses, which created great stresses for the state. Further back in Islamic history, in Cordoba, private property had been protected against the caliph, and in general, medieval Islamic governments were not known for seizing commercial property. Later, “[T]he Ottoman empire as heir to all this came to operate an economic system that rested on confiscation, despoilment, and a total, calculated, insecurity of life and property.” Whereas Europeans took advantage of feudal fragmentation to develop a mercantile society, the Ottoman Empire’s structural fragility gradually weakened its economy, contributing to its diminishing cultural, legal, and ethical influence and its final disintegration.

The Rise of the West and the Legacy of the Enlightenment

In contrast to these sources of weakness within India, China, and the Islamic world, an amalgamation of simultaneously favorable circumstances stimulated the rise of the West and its capacity to develop and diffuse a modern discourse of human rights. They included the Reformation, the inception of science, the rise of mercantilism, the consolidation of the nation-state, maritime expeditions, and the emergence of a revolutionary middle class, developments that served to hone human rights demands throughout such major social upheavals as the English, American, and French Revolutions. A new universal discourse of rights took hold, committed to reason and individual free choice, to scientific planning and the rules of law, to contractual agreement and economic interdependence. The emerging commercial nation-state was then entrusted to diffuse these ideals worldwide in the spirit of peace and cooperation.

With the advance of the Reformation, from 1546 to the Treaty of Westphalia in 1648, the universalist message of the church had been severely compromised. While the separation of the Greek Orthodox churches from
Rome had provoked the first rapture in Christian unity, the Protestant Reformation of the sixteenth and seventeenth centuries contributed decisively to its decline. Erupting in Germany, religious conflict soon spread through Europe to France, Holland, and Spain, and to England. Yet if a series of long-lasting religious wars eroded the initial aspirations of Christendom, the international nature of the wars incited the development of a new vision of world unity based on rational thinking rather than on revealed truth—principles that had shown their divisive nature during the wars of religion. By asserting individual responsibility in matters of salvation and in seeking happiness on earth, the Protestant influence helped advance a new credo relying on individual choice and rights. The belief in the value of individuals and their capacity to reason was further strengthened by a burst of scientific breakthroughs.

Despite the long phase of religious crisis, scientific discoveries abounded. Striving to free themselves from the universities, which remained a stronghold of Catholicism, British, French, Italian, and German scientists joined a growing number of independent societies, such as the Royal Society in London, the Academy of Science in Paris, the Academia della Scienza in Naples, and the Collegium Carolinum in Brunswick, Germany. Their collaboration over distances was facilitated by the invention of the printing press, and common standards of measurement were promoted by the development of such precision instruments as the telescope, the microscope, the barometer, and the pendulum clock. The drive behind the scientific revolution might have been of divine inspiration, but it was Galileo, Descartes, and Newton, rather than God, who were stirring the imaginations of their contemporaries. By painting a picture of the enrichment of human life through new discoveries, each presented an accessible world open to human consciousness and built upon universal and secular laws—laws that would later help shape secular visions of human rights.

As both scientific progress and the wars of the Reformation were undermining the Catholic Church, changes in economic life were also reshaping the social landscape of Europe. While feudalism decayed, mercantilism emerged as an economic system that unified, strengthened, and financially enriched the nation. It did so by means of strict governmental regulation of the entire national economy, usually through policies designed to secure an accumulation of bullion, the expansion of a favorable trade balance, and the development of agriculture and manufacturing. Proponents of mercantilist theories maintained that global wealth was relatively fixed. The best way to acquire new resources and
to preserve as large a share as possible of this limited wealth, they believed, was through a rationally and scientifically planned state, aspiring to sufficient size and strength to sustain national development. By relying upon the mercantilist and later the commercial state as a way to promote economic interdependence and possibly peaceful conditions, mercantilists would also inspire the vision of many human rights champions of the Enlightenment.

Circumstances, of course, would not equally favor all who aspired to apply the mercantilist approach. In the sixteenth and seventeenth centuries, German and Italian cities—notwithstanding the call of Niccolo Machiavelli (1469–1527), in Il principe, for the unification of his country—lacked the necessary political strength to appropriate resources on a large national scale. In eastern Europe, states such as Austria, Poland, and Russia, although large in size, were overwhelmingly dominated by agrarian production and could not achieve the benefits of a mercantile economy. However, the conditions necessary for the progress of mercantilism were present in the Low Countries (especially in the period from the Treaty of Westphalia until the early 1700s), as well as in England and France.

Critical to the rise of the West over other civilizations was the discovery, colonization, and mercantilist exploitation of the new world. The developing global economy, initiated by the Portuguese and Spanish in the sixteenth and seventeenth centuries, moved during the eighteenth century into the hands of the British, the French, and the Dutch. While India and China still commanded admiration, these Western powers were ascending as the new leaders of the international economy. The conquest of America was particularly valuable for the Europeans because of its vast natural resources, whose exploitation required masses of human labor that were supplied by Africa. Many Europeans regarded the indigenous populations of their colonies as barbarians, justifying the enslavement of Africans, the killing or subjugation of American Indians, and similar abuses of other native peoples.

As overseas empires spread, the expansion of money markets dissolved old social bonds, transformed the guild character of the Middle Ages, and strengthened the town economy, leaving the surrounding countryside subservient to the interests of the town. The shift from the village to the town changed the landscape of social relationships that had been prevalent in feudal societies. With the emergence of towns as the heart of human society, autonomous spheres of social activity proliferated amid the ruins of the Catholic commonwealth. In addition, labor was in-
creasingly divided according to specialization. With the subsequent atomization of society, mercantilism reached new levels of speed and efficiency. This fragmentation into various spheres of specialization undermined the self-sufficient character of feudal society, exacerbating the need for a new form of social interdependence surrounding the exchange of commodities and the necessity of a contractual discourse premised on rights.

This parceling of sixteenth- and seventeenth-century political and economic life created space for the development of a relatively autonomous class, the bourgeoisie, which was concentrated in urban sites. Economically speaking, the bourgeoisie stood between the nobility and the clergy on the one hand and the peasantry on the other hand. Its members earned their living by manufacturing, shopkeeping, banking, trading—in general, by the various activities that had been stimulated by the expansion of commerce. In countries like England and France or regions like Flanders—where governments helped create a national market and an industrious nationwide labor supply for their great merchants—the bourgeoisie became even more prominent, and succeeded in gaining a degree of economic strength independent of the political and religious control of their provinces. Needless to say, a merchant backed by a national monarchy was in a much stronger position than one supported by a city, such as Augsburg or Venice. National governments could endorse local merchants, subsidize exports, and pay bounties for goods whose production they wished to encourage, or erect tariff barriers against imports to protect their own producers from competition. A national tariff system was thus gradually superimposed on the old network of provincial and municipal tariffs.22

From the mid-seventeenth century to the eighteenth century, the European bourgeoisie, however, felt trapped within a tale of two economies, that is, between a prosperous international economy and the still backward, traditionalist, and autarkic national market. The nobility still dominated the government, public administration, the church, and most social institutions. It resisted any change in the status quo that might undermine its political privileges. These conflicts of interests were exemplified in Molière’s play Le bourgeois gentilhomme, which portrayed a ruined nobleman begging for more loans from an enriched bourgeoisie. Art was imitating life, reproducing the economic wealth and political frustration of the burgeoning middle class. The needs of the bourgeoisie, in the end, collided with monarchical interests, fueling the English, American, and French Revolutions. Facing resistance, the political demands
of this new class in formation grew more revolutionary and universalist in orientation; as it gained power, it also revealed its particularist tendency.21

During the English Puritan revolution (1642–1648), universal claims of rights were first advanced against Charles I’s effort to restore his centralized power at the expense of Parliament. Seeking funds to crush a Scottish rebellion in 1637, the king convoked the English Parliament for the first time in eleven years. Neither that Short Parliament (1640) nor the subsequent Long Parliament (1640–1660) supported that goal. Instead, new members of the Long Parliament, led by Oliver Cromwell (1599–1658), John Hampden (1594–1643), and John Pym (ca. 1583–1643), challenged royal authority, culminating in the execution of Charles I and the establishment of the republic. After using the support of radicals like the Levellers (whose influence had spread among the rank and file of the army fighting the king) to press popular demands, such as the rights to life, property, and religious freedom, Cromwell turned against those democratic supporters and purged them from the army.

Despite these dramatic turns of events, the revolution ultimately empowered the propertied class by granting sovereignty to Parliament and dissolving prerogative courts. It overlooked the demands of starving peasants, led by the communist Diggers, who tried but failed to radicalize the revolution by calling for broader political representation and a more egalitarian redistribution of wealth. With the monarchical restoration, human rights hopes that had been unleashed by the English Revolution were thwarted. Yet the revolutionary spirit remained alive amidst peasants’ grief and despair. It was to reemerge in a brief explosion during the 1688 Glorious Revolution, as the bourgeoisie fought for parliamentary and civil rights—later embraced by the English Bill of Rights.

In the late eighteenth century, England became overburdened by the cost of its colonial possessions and resorted to imposing inequitable taxes on the American colonies. The colonists rebelled. The English revolution of the 1640s provided a worthwhile example of resistance for them to emulate. Fighting for independence from England, they recalled the British Levellers’ struggle for the rights to life, to property, to manhood suffrage, and the rights to rebel against tyrannical authorities and to establish republican institutions. With the ratification of the Declaration of Independence in 1776, they were soon able to celebrate their new human rights achievements.

As in the English Revolution, the new American republic was initially divided. Competing economic interests separated merchants, farmers, and
plantation owners. There were also differences between the new and old states of the confederation, and already some tensions between Southern slave-owning states and Northern states. While these tensions would ultimately result in a civil war (1860–1865), in the 1770s, supporters of independence in both North and South were drawn together in opposition to the British crown and its American loyalists. After their fight for independence from England, Americans inscribed in the 1788 constitution rights that favored wealthy property owners. However, restricted the human rights claimed by the American republic, the success of the revolution drew international admiration.

French soldiers who had fought on the side of the American revolutionaries returned to France to extol the accomplishments of the American revolutionaries. With the country on the verge of national bankruptcy and confronting a nobility unwilling to share its power, many of these returning soldiers would follow the horde of hungry peasants and angry bourgeois from the streets of Paris to the Tennis Court, where the Third Estate General rallied and affirmed that it now constituted the National Assembly. The mixture of solemnity and optimism that first revolutionary moment was admirably captured by the neoclassical painter Jacques-Louis David (1748–1825) in his Oath of the Tennis Court (1791). A month later, on July 14, 1789, the movement took the streets as a crowd stormed the Bastille. Soon after, the revolutionary leaders drafted the Declaration of the Rights of Man and of the Citizen, one of the most important human rights documents of the eighteenth century, affirming the principles of the new state based on the rule of universal law, equal individual citizenship, and collective sovereignty of the people. With it, Jacobins and defenders of the French patrie proclaimed a new world in which “liberty, equality, and fraternity” would become, they hoped, universal norms.

Yet social divisions in France, initially eclipsed by the Third Estate in its fight against the ancien régime, now reemerged as voting rights were restricted to owners of property, along the lines of the British and American example. Struggling to repel invading armies, the Third Estate was further divided by domestic social tensions. If the influence of property owners during the early phase of the revolutionary wars soon yielded to the ascent of a popular force, the sansculottes (1792–1794), the execution of their leader, Maximilien de Robespierre (1758–1794), marked the end of the revolutionary process and the empowerment of a new regime of notables whose ranks were drawn from monarchists and moderate republicans. As in England and America, the revolutionary universalism
of the French middle class gave way to an era of conservatism. Those seventeenth- and eighteenth-century struggles represented, however, the first important affirmations of liberal ideas, and they were crucial for establishing the secular foundation of human rights. These important events also serve as a guide to the first part of our journey, which begins with the historical struggle for freedom of religion and opinion and leads to assertions of rights to life and to property.

**FREEDOM OF RELIGION AND OPINION**

The fight for freedom of religion and opinion repeatedly jolted medieval Christendom. Religious intolerance had long since superseded the charitable and universalist promise of the Gospels. The pervasive Christian fear of the Turks, a result of the Crusades (1096–1099, 1147–1149, 1189–1192, and 1202–1204), contributed to sharpening Catholic intolerance toward other religious groups. In addition to Muslims, European Jews were considered foreigners and often persona non gratae in Western Christendom, and as such were subjected to various levels of discrimination. The Fourth Lateran Council (1215), for instance, banned Jews from government employment. In 1290, Jews were expelled from England, in 1306, from France. In Spain, initial tolerance gave way to persecution during the Inquisition (1492), and Jews were forced to choose between conversion and eviction. In addition, Jews were often accused of performing acts of sacrilege and murdering children, charges that intensified during the Crusades and the Black Plague (1347–1351), and as a result were often targeted as scapegoats and massacred.

Challengers from within the Catholic faith endured similar persecutions in the medieval age. The church, jealously guarding its wealth, was unwilling to accommodate sprouting heretic groups whose demands for a new spirituality called for a genuine solidarity with and renewed interest in the plight of the poor. The Cathari, the Humiliati, and the Waldenses were among the early heretic groups whose members defied the monopoly of the Catholic Church only to be subjected to many forms of discrimination and even public immolation. For those dissenters and sinners who evaded earthly punishment, Dante’s *Inferno* (1306–1308 and 1321) and Michelangelo’s *Last Judgment* (1534–1541) served as reminders of their fate in hell. Similar Catholic intransigence existed in the Spanish colonies, where, despite protests by the Dominican priest Bartolomé de las Casas, Indians were persecuted without mercy in the name of Catholicism. Catholic efforts to crush all opposition finally encoun-
tered a force that could not be suppressed, as the rise of Protestantism reshaped prospects for religious freedom and helped ultimately to launch the broader Enlightenment struggle for human rights.

Against the indisputable authority of a highly hierarchical Catholic Church, its spectacular and mundane authority, its claim to each person’s body and soul, its control of the individual’s destiny and the promise of eternal felicity in heaven—all demanding unconditional obedience to the feudal church—Protestantism proposed radical reforms. Martin Luther (1483–1546), the first to formulate Protestant principles, called for the centrality of the Bible as primary authority on issues of faith; the return to simple liturgies; separation between church and state; and individual responsibility in matters of salvation and in finding happiness on earth. Luther’s notion that “a Christian man is the most entirely free lord of all, subject to none,” while at the same time he was the “dutiful servant

**BARTOLOMÉ DE LAS CASAS, IN DEFENSE OF THE INDIANS, 1548**

[You seek Indians so that gently, mildly, quietly, humanely and in a Christian manner you may instruct them in the word of God and by your labor bring them to Christ’s flock, imprinting the gentle Christ on their minds, you perform the work of an apostle and will receive an imperishable crown of glory from our sacrificed lamb. But if it be in order that by sword, fire, massacre, trickery, violence, tyranny, cruelty, and in inhumanity that is worse than barbaric you may destroy and plunder utterly harmless peoples who are ready to renounce evil and receive the word of God, you are children of the devil and the most horrible plunderers of all. . . .

Now if we shall have shown that among our Indians of the western and southern shores (granting that we call them barbarians and that they are barbarians) there are important kingdoms, large numbers of people who live settled lives in a society, great cities, kings, contracts of the law of nations, will it not stand proved that the Reverend Doctor Sepúlveda has spoken wrongly and viciously against peoples like these, either out of malice or ignorance of Aristotle’s teaching, and therefore, has falsely and perhaps irreparably slandered them before the entire world. From the fact that the Indians are barbarians it does not necessarily follow that they are incapable of government and have to be ruled by others, except to be taught about the Catholic faith and to be admitted to the holy sacraments. They are not ignorant, inhuman, or bestial. Rather, long before they heard the word Spaniard they had properly organized states, wisely ordered by excellent laws, religion, and custom. They cultivated friendship and, bound together in common fellowship, lived in populous cities in which they wisely administered the affairs of both peace and war justly and equitably, truly governed by laws that at very many points surpass ours.

*From In Defense of the Indians, 40, 42.*
of all, subject to everybody,” restated Paul’s injunction: “[O]we no man anything, but to love one another.” This became a rallying cry against the abuses of the Catholic Church.

Luther’s views, as espoused, or revised, by supporters like Jean Calvin (1509–1564), had far-reaching political repercussions: they not only undercut the power structure cemented by the feudal church, but also the system of privileges granted by divine grace. The progress of the Protestant reformation alarmed the Catholic custodians of the status quo, and eventually also Luther himself, who feared social chaos and ended up condemning in 1524 the German peasant rebellion against manorial lords. Even as Luther reverted to a more conservative view of Protestantism, hostility between Protestants and Catholics escalated, culminating in a religious conflict that plagued late-sixteenth- and seventeenth-century Europe.

The 1555 Augsburg Peace seemed to resolve the conflict by officially recognizing Lutheranism in the Holy Roman Empire. According to the principle of *cuius regio, ejus religio*, each prince was to decide for himself whether he or his state should be Catholic or Lutheran. Yet the continuous spread of Protestantism was now becoming more threatening for Catholics, who ended up mobilizing armed forces against Lutheran advances. This religious clash led to a series of wars that spread throughout Europe: the French civil wars of 1562–1598; the Dutch revolution against Philip II of Spain in 1567–1579; the Spanish Armada Católica against England in 1588; the Scottish rebellion against Mary Stuart in 1565–1568; the Thirty Years’ War of 1618–1648; and the Puritan revolution of 1642–1648 in England.

Revolted by the appalling atrocities committed in the name of God during these religious conflicts, the Dutch legal scholar Hugo Grotius (1583–1645) urged warring parties to maintain a spirit of religious tolerance. “It seems unjust,” he said, “to persecute with punishments those who receive the laws of Christ as true, but entertain doubts or errors on some external points.” During the English civil war, the spokesman of the Levellers, John Lilburne (1614–1657), proclaimed that “all men by nature are the children of Adam, and regardless of religious differences, they are all equal and alike in power, dignity, authority and majesty.”

In the end, the struggle for religious freedom during the wars of the Reformation won some enduring success. The Treaty of Westphalia, ratified in October 1648, put an end to the wars of religion. It granted, for instance, “the privilege of emigration to the subjects of such states if they dissented from the religion of their territorial lord; and whereas later,
for the better preserving of greater concord among the states, it was agreed that no one should seduce another’s subjects to his religion.” It stopped short of providing individuals with freedom of religion, but the treaty nevertheless asserted the right to religious asylum and states’ prerogative to select their own religion. The treaty also divided Europe according to religious spheres of influence. A balance of power between Catholics and Protestants was achieved in Germany; England asserted its Anglican colors; Calvinism maintained a strong foothold in the Netherlands; France and the Italian states (despite intermittent occupations by the Austrian Empire) remained loyal to the papacy.

With his famous *Letter concerning Toleration* (1690), the English philosopher John Locke (1632–1704) moved beyond the conservative concessions of Westphalia, demanding the individual’s, rather than the state’s, right to select a religion. Such a right, he argued, comes from “an inward persuasion of the mind, without which nothing can be acceptable to God.” Yet the battle for religious freedom was far from over. In France, an important advance in that struggle had been the Edict of Nantes (1598), in which Henry IV had sought to end the French wars of religion by guaranteeing religious freedom to French Protestants (or Huguenots). In 1658, however, Louis XIV revoked the edict, depriving the Huguenots of all civil and religious liberties. In England, the Parliament passed the Tolerant Act in 1689, which, though allowing some dissenters to practice their religion, continued to exclude Jewish and Catholic worship. Alarmèd by these violations, Locke called for a clearer separation between the church and the state. “Political society,” he maintained, “is instituted for no other end, but only to secure every man’s possession of the things of this life. The care of each man’s soul, and of the things of heaven, which neither does belong to the commonwealth nor can be subjected to it, is left entirely to man’s self.” With these statements, Locke opened a new chapter in the struggle for religious freedom and freedom of opinion.

The context for reviving that struggle was propitious. Throughout Europe, the most dramatic effort to silence opinions (of religious or secular nature) was the *Index librorum prohibitorum*—a list of proscribed books developed by the Roman Catholic Church that included the work of the well-known scientist Galileo. Licensing (or control over publication) came to be regarded by many in England as an excess of Roman Catholic influence. So, when the Puritans disestablished the Anglican successor to the Roman church and the English Parliament reinstated licensing in 1643, the political pamphleteer John Milton (1608–1674) rose
in protest: "He who kills a good book kills reason itself, kills the image of God . . . in the eye," he exclaimed in Areopagitica, a book that remains a classic plea for the freedom of the press.\(^3\) While conceding the need for criminal prosecutions in response to some types of publications, Milton proclaimed the importance of freedom of opinion: "[G]ive me the liberty to know, to utter, and to argue freely, above all liberties . . . If truth is let free, it will overcome and win over all possible errors."\(^3\) Milton's beliefs ultimately prevailed, leading in 1695 to the abandonment of prepublication censorship in England. This victory became an important milestone in the fight for freedom of opinion and the press, and was repeatedly invoked throughout the American and French Revolutions.

Given the strong communal theocratic beliefs held by the early English Pilgrims in America, one may have wondered whether American soil would prove fertile for the development of Milton's and Locke's perspectives. The Pilgrims, after all, represented the radical fringe of the English Reformation. For them, the Reformation had not gone far enough, having ended by merely supplanting one ruler (the pope) with another (the British crown). They believed that nowhere in England could they find a true church, and concluded that their ultimate salvation required their migration to the New World. In the first Puritan colonies of Plymouth and Boston, as in Calvin's Geneva, the church was an integral part of the state. The fundamental laws were drawn from the Bible, and only where the Bible was silent could men create laws.\(^3\) By the second half of the seventeenth century, Calvinism in America had grown to such an extent that the French and the Dutch were unable to limit its expansion.\(^4\) Its growing influence in America, however, would ultimately clash with that of the established English church.

The major cleavage among the churches in colonial America divided Anglicans from Puritan dissenters. With growing political tensions between England and the American colonists, this split might well have been a necessary condition for ensuring pluralism and religious tolerance. The rapid spread of religious sects during the prerevolutionary period, called the "Great Awakening," further secured this prospect.\(^5\) The Methodist movement seized upon the elements of feelings and conscience that Protestant orthodoxy had tended to neglect and gave a renewed and devotional impetus to the doctrine of grace and to the tradition of moral earnestness. In the middle years of the eighteenth century, waves of revivals and conversions led by Congregationalists and Presbyterians spread through the colonies. Many small, independent, Bible-centered groups, which
often professed allegiance to Baptist teachings, also came into being during this period.

Undoubtedly, the spread of divergent churches, combined with the increasing influence of the press, helped to influence the prerevolutionary spirit. There were initial efforts to hinder the freedom of the press, which paralleled similar attempts in England. The 1735 trial of the German immigrant printer John Peter Zenger, indicted for his attacks on Governor Cosby of New York, and the 1765 British Stamp Act, which placed a severe tax on newspapers, were among the many efforts to control the press. The Stamp Act, in particular, intensified colonial resentment of the British, which was already growing in response to other taxes, and unleashed a radical form of journalism against the crown. Anti-British printers and activists such as Isaiah Thomas (1749–1831) and Samuel Adams (1722–1803) were among the inciters of the rebellious spirit of the 1770s. Nothing, however, could surpass the agitational journalism of Thomas Paine (1737–1809), whose work was actually read out loud to the revolutionary troops before battle. The “last Cord between England and America” was now broken, Paine announced in 1776, while urging his American compatriots to stand against England. “O ye that love mankind! Ye that dare oppose not only the tyranny but the tyrant, stand forth! . . . Let none other be heard among us than those of a good citizen, an open and resolute friend, and a virtuous supporter of the rights of mankind and of the free and independent states of America.”

Such combative pleas on behalf of freedom influenced the founding fathers. Thomas Jefferson (1743–1826) championed the right of the individual to religious opinion and freedom of conscience based on the reasoning of Locke, Paine, and the French philosophes. “Religion,” Jefferson asserted, “is a matter which lies solely between man and his God,” and therefore it was necessary that “a wall of separation [be] erected between the Church and the State.” This position was restated in the Virginia Act for Establishing Religious Freedom (1786), a statute that entrusted people with the right to follow the dictates of their conscience and called on the state to tolerate all religions without favoring one in particular. Three years later, the concept of the separation of church and state took its place as the first article of the Bill of Rights, part of the new Constitution of the United States of America. The struggle to separate church and state was not completed on the day the Bill of Rights (1791) was adopted, however. Instead, “The wall was slowly erected stone by stone, in some states earlier than in others, in some states more completely than in others.” Even today, this partition is fragile and un-
der challenge, as some Christian groups seek to institute religious curricula (e.g., prayers, the teaching of Creationism, etc.) in American public schools.

After American independence, limits on state control over the press needed to be secured. In anticipation of a war with France, a law restricting criticism by the press was passed in 1798. The Sedition Act, defined in national security terms, made criminal the publication of "any false, scandalous and malicious writing ... against the government of the United States, or either House of Congress ... or the President ... with the intent to defame [them], to bring them into contempt or disrepute." Thomas Jefferson's first inaugural address, however, provided the moral grounding for jurists to repudiate that act: "If there be among us those who wish to dissolve the Union or to change its republican form, let them stand undisturbed as monuments of safety with which error of opinion may be tolerated where reason is left free to combat it." When the threat of war passed, the Sedition Act was repealed and freedom of the press restored.

On the other side of the Atlantic, French intellectuals welcomed the winds of freedom coming from revolutionary America. Baron de Montesquieu (1689-1755), Jean-Jacques Rousseau (1712-1778), Voltaire (1694-1778), Baron Paul-Henri d'Holbach (1723-1789), and Denis Diderot (1713-1784), among many other French thinkers, had proclaimed the importance of freedom of expression and other civil rights long before the American Revolution. They saw in revolutionary America the realization of such ideals. Voltaire, more than any other deist philosopher of his time, has been identified as the archenemy of revealed knowledge and intolerance. "What is toleration?" he asked in 1764. "It is the natural attribute of humanity. We are all formed of weakness and error: let us pardon reciprocally each other's folly. That is the first law of nature."

Such a law of nature, advancing "freedom of communication of ideas and opinion," was later singled out as "one of the most precious of the rights of man" in the French Declaration of the Rights of Man and of the Citizen (1789). In its fight against religious intolerance, the French revolutionary patrie became the first country in the world ever to grant Jews civic emancipation and to allow them to hold public office—and this well before the hard-won legislative passage of the 1826 Maryland "Jewish Bill of Emancipation" in America. If the American Revolution left the church free from state supervision, with complete freedom in moral and educational tasks, the French revolutionary government im-
The French Declaration of the Rights of Man and of the Citizen, 1789

... The National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and citizen.

1. Men are born and remain free and equal in rights; social distinctions may be based only upon general usefulness.

2. The aim of every political association is the preservation of the natural and inalienable rights of man; these rights are liberty, property, security, and resistance to oppression.

3. The source of all sovereignty resides essentially in the nation; no group, no individual may exercise authority not emanating expressly therefrom.

4. Liberty consists of the power to do whatever is not injurious to others; thus the enjoyment of the natural rights of every man has for its limits only those that assure other members of society the enjoyment of those same rights; such limits may be determined only by law.

5. The law has the right to forbid only actions which are injurious to society. Whatever is not forbidden by law may not be prevented, and no one may be constrained to do what it does not prescribe.

6. Law is the expression of the general will; all citizens have the right to concur personally, or through their representatives, in its formation; it must be the same for all, whether it protects or punishes. All citizens, being equal before it, are equally admissible to all public offices, positions, and employments, according to their capacity, and without other distinction than that of virtues and talents.

7. No man may be accused, arrested, or detained except in the cases determined by law, and according to the forms prescribed thereby. All who solicit, expedite, or execute arbitrary orders, or have them executed, must be punished; but every citizen summoned or apprehended in pursuance of the law must obey immediately; he renders himself culpable by resistance.

8. The law is to establish only penalties that are absolutely and obviously necessary; and no one may be punished except by virtue of a law established and promulgated prior to the offence and legally applied.

9. Since every man is presumed innocent until declared guilty, if arrest be deemed indispensable, all unnecessary severity for securing the person of the accused must be severely repressed by law.

10. No one is to be disquieted because of his opinions, even religious, provided their manifestation does not disturb the public order established by law.

11. Free communication of ideas and opinions is one of the most precious of the rights of man. Consequently, every citizen may speak, write, and print freely, subject to responsibility for the abuse of such liberty in the cases determined by law.

12. The guarantee of the rights of man and citizen necessitates a public force; such a force, therefore, is instituted for the advantage of all and not for the particular benefit of those to whom it is entrusted.

13. For the maintenance of the public force and for the expenses of adminis-
tration a common tax is indispensable; it must be assessed equally on all citizens in proportion to their means.

14. Citizens have the right to ascertain, by themselves or through their representatives, the necessity of the public tax, to consent to it freely, to supervise its use, and to determine its quota, assessment, payment, and duration.

15. Society has the right to require of every public agent an accounting of his administration.

16. Every society in which the guarantee of rights is not assured or separation of powers not determined has no constitution at all . . .

17. Since property is a sacred and inviolable right, no one may be deprived thereof unless a legally established public necessity obviously requires it, and upon condition of a just and previous indemnity.

plemented a more restricted and regulated policy toward the church. Its lands were placed at the disposal of the patrie, the clergy was provided with an honorable stipend, and bishops and clergymen were elected like any other public officials. Such a policy was designed to control the power of the clergy, which was closely allied with the feudal nobility. Not surprisingly, as the conflict between the supporters of the ancient regime and the defenders of the French Revolution deepened, anticlerical measures assumed proportions not known in the New World. Indeed, after refractory French priests rose in revolt on the side of the aristocracy and allied with the royalists in the Vendée counterrevolution, the young Jacobin government was marked by attacks on priests, including the wholesale closure of churches and the enthronement of the Goddess of Reason in Notre-Dame Cathedral. The de-Christianization process, further inflamed by an ultra-atheist group called the Enragés, might have alienated believers among the French peasantry and could have led to domestic chaos at a time when France was fighting a war with external enemies. At least this was what Robespierre believed. He thus called for a patriotic compromise, based on Rousseau's view of civic religion, that he identified as the cult of the Supreme Being (or the cult of reason). Religious feasts were celebrated under the banner of universal reason and were organized in order to raise popular feelings of solidarity against the old regime.

The triumph of reason associated with the Enlightenment reached its pinnacle during the French Revolution. Despite many setbacks over the succeeding centuries, the fight for freedom of religion and opinion was not in vain. Those rights would be recognized in the twentieth century as fundamental human rights proclaimed in the first clause of the UN

**THE RIGHT TO LIFE**

Appeals to trust the human capacity to reason and think freely long preceded the Enlightenment, as chapter 1 showed. Such efforts were rooted in the writings of ancient Greek and Roman political thinkers, who ultimately provided European Enlightenment thinkers and leaders with new moral tools in their struggle against tyranny. Because of these struggles surrounding the human capacity for rational thought, the Enlightenment was aptly described by the German philosopher Immanuel Kant (1724–1804) as the “Age of Reason.” Reflecting on the wisdom of nature and its laws, which some characterized as God’s imprint on earth, European visionaries of the new age employed reason not merely as a new way to combat religious oppression and arbitrary ruling, but also as a starting point to further individual rights, starting with the right to life. With the injunction “thou shall not kill,” Judaism had already instructed people to honor individuals’ right to life, an entitlement not only respected by other monotheistic religions, such as Christianity and Islam, but also by Buddhism, Hinduism, and Confucianism. The difference was that reason rather than revelation or mystical devotion was now advanced as the basis for such a belief.

Unfolding historical events had already shown that many who acted in God’s name could easily dismiss religious formulations of the sanctity of life. The record of human carnage created by waves of religious fanaticism during the Reformation evidenced the futility of bartering human lives for religious power. If life could be so casually disposed of by rulers, whose “revealed” wisdom could not be questioned, then new criteria other than revelation needed to be developed to constrain their arbitrary actions. Where else could humanists of the Reformation appeal, but to human reason, to its universalist attributes, to its deist and peaceful intent? If religion could not unite everyone, then reason would provide more concrete guidelines for transcending religious and parochial differences.

Brandishing a torch of optimism amidst the graveyards of the English civil war, the English philosopher Thomas Hobbes (1588–1679) argued
for a fundamental right of nature, namely that "each man has to use his own power, as he will himself for the preservation of his own nature—that is to say of his own life." 48 From this natural right derived "a precept or general rule of reason that every man ought to endeavor peace, as far as he has hope of obtaining it." 49 To secure that inalienable right to life, an individual could consider entering a social contract to join the commonwealth. For no reason other than the security of one's life and peace, maintained Hobbes, should one surrender other forms of liberty enjoyed in the precivilized state of nature.

With other Enlightenment social contract theorists, Hobbes understood the state of nature as a hypothetical place in which no government existed. By speculating on how humans would fare under those conditions, one could identify why one would consider entering into a social contract that would secure minimal rights. For Hobbes, the right to life was essential, and a social contract would be void if it did not defend this right. The human rights discourse was emerging as a worldview wedded to realpolitik concerns. Ironically, one of the first realists in international politics was also a human rights advocate. His assertion of a right to life would ultimately be echoed in many international bills of rights (article 3 of the UN Universal Declaration, article 6 of the International Covenant on Civil and Political Rights, article 2 of the European Convention, article 4 of the American Convention, and article 4 of the African Charter).

If indicted by the state, Hobbes further argued, one should not be forced to incriminate oneself. In short, for Hobbes, self-defense in all circumstances was a paramount human right. 50 No matter how much the protection of one's body and life was trumpeted as inalienable during the Enlightenment and thereafter, what such protection meant in practice would become the subject of many controversies. When applied to those accused of crimes, for example, it was unclear where to place limits concerning imprisonment, torture, and the death penalty. In the same year as Hobbes's death, the Habeas Corpus Act of 1679 was promulgated in England as an ancient common law writ intended to correct violations of personal liberty by the state. In the spirit of the Magna Carta, granted in 1215 by King John to his barons, the Habeas Corpus established appropriate processes for checking the illegal imprisonment of people by inferior courts. 51 Ten years later, the English Bill of Rights restated similar rights and liberties of subjects by condemning abuses of those accused or convicted of crimes: "[E]xcessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted." 52 Although
there had been no explicit legalization of “cruel punishments” or torture in England, torture was hardly forbidden. The threat of “pressing to death” under weights, for instance, was used to compel the accused to testify in court, while the rack and other instruments of torture were employed to elicit legally admissible confessions.53

THE ENGLISH BILL OF RIGHTS, 1689

. . . Thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid; do in the first place (as their ancestors in like case have usually done) the vindicating and asserting their ancient rights and liberties, declare:

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of later, without consent of parliament, is illegal.

3. That the commission for erecting the later court of commissioner for ecclesiastical causes, and all other commissions and courts of like nature are illegal and pernicious.

4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

5. That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning, are illegal.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against the law.

7. That the subjects which are protestants, may have arms for their defence suitable to their condition, and as allowed by law.

8. That the election of members of parliament ought to be free.

9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliament ought to be held frequently. . . .
Whether in Europe, China, Japan, India, the Middle East, or elsewhere, the most intricate and horrible tortures were used as common forms of interrogation and punishment. Some, like Sir Francis Bacon (1561–1626), defended the efficiency of torture; others, like Hobbes, qualified its usage. If torture was used, Hobbes suggested, it should be under very specific circumstances and only to promote the search for truth, and this with the understanding that “accusations upon torture are not to be reputed as testimonies.” Yet the eighteenth century also witnessed vociferous condemnations of torture. Indebted to Montesquieu, the Italian criminologist and economist Cesare Beccaria (1738–1794) claimed that punishments should be relative to the severity of the offense, and imposed only when a defendant’s guilt was proven. With compelling logic, he argued that

\[ \text{[the dilemma is not a novelty: either the crime is certain or it is not; if it is certain, then no punishment is called for other than what is established by law and other torments are superfluous because the criminal’s confession is superfluous; ... if it is not certain, then an innocent man should not be made to suffer, because in law, such a man’s crimes have not been yet proven. ... [Further, a sensitive but guiltless man will tend to admit guilt if he believes that, in that way, he can make the pain stop.}\]

In France, where the use of supplice (referring specifically to the public torture and execution of criminals) was one of the great evils of judicial procedure up to the time of the French Revolution, Beccaria found in Voltaire a kindred spirit who would condemn torture repeatedly in his writings: “It is as absurd to inflict torture to seek out truth as it is to order a duel to assess who is the culprit,” Voltaire wrote. “[O]ften the robust and guilty one resists the ordeal, whereas the debilitated innocent succumbs to it.” If Voltaire and Beccaria’s cutgeries against torture often fell on deaf ears in the eighteenth century, they were very much in the minds of the drafters of the major twentieth-century international legal documents on human rights.

The right to life and to the integrity of one’s body, including the condemnation of illegal imprisonment, was invoked with each unfolding war and period of political turmoil during the eighteenth century. During the Seven Years’ War (1756–1763), Rousseau defended life “as an essential gift of nature”; during the American revolutionary war, Jefferson echoed that view in the 1776 Virginia Declaration of Rights; and in pre-revolutionary France, Kant admonished rulers, in The Metaphysics of Morals (1785), for treating individuals as a means rather than an end.
This stipulation of an essential law of nature, along with related personal guarantees mentioned in the Habeas Corpus and the English Bill of Rights, would have lasting effects on the promulgation of the American Bill of Rights and the 1789 French Declaration of the Rights of Man and of the Citizen—the two documents most responsible for modern legal formulations of human rights.\textsuperscript{60} By the end of the eighteenth century, torture was widely denounced as a relic of the barbarism of another age, as the mark of a savagery decried as “Gothic.”\textsuperscript{61}

The question of the death penalty for criminals (or the limitations of the “inalienable” right to life), however, created a deeper divide among intellectuals.\textsuperscript{62} The death penalty was taken for granted throughout the history of medieval criminal law. John Locke, among others, reiterated in modern terms the argument that life could be forfeited if anyone attempted to violate another’s natural rights.\textsuperscript{63} Should a criminal be punished with death, he asked? “Each transgression,” he answered, “may be punished to that degree and with so much severity, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like. Every offense that can be committed in the state of nature may be also punished equally, and as far forth as it may in commonwealth.”\textsuperscript{64} More than half a century later, Rousseau echoed Locke’s view, observing that “it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins.”\textsuperscript{65}

Rousseau’s influence on the German philosopher Kant was considerable. Like Rousseau, Kant did not see any contradiction between his support for the right to life (defined as a categorical imperative) and his defense of capital punishment. Referring to the idea of retributive punishment (the talion law), he maintained that “if [an individual] has committed a murder, he must die. In this case, no possible substitute can satisfy justice.”\textsuperscript{66} Aside from murder cases, Kant identified other crimes punishable by death, including crimes against the state. Invoking the Scottish rebellion of 1745, he believed that conspirators against the state deserved the death penalty, yet he warned that if a great part of the population was accomplice to such a plot, a sovereign should not get rid of all his subjects and reduce the country to chaos.\textsuperscript{67} He thus urged sovereigns, perhaps with a favorable eye toward the early achievements of the French revolutionaries, to consider other punishments, including granting mercy, so that the community of people might be preserved. Clearly, he suggested, “[T]he state will not wish to blunt the people’s feelings by a spectacle of mass slaughter.”\textsuperscript{68}

Yet the spectacle of death as a form of punishment was not about to
end with Kant's warnings. How many deaths by torture would be
deemed necessary to revive the collapsing ancien régime? How many
times would the guillotine dull its blade on the necks of enemies of the
French Revolution? Executions were then public events and belonged to
a series of rituals in which power was either "eclipsed" or "restored."
"The public execution of the seventeenth and early eighteenth century,"
Michel Foucault has insightfully stated, "was not . . . with all its theater
of horror, a lingering hang-over from an earlier age. Its ruthlessness, its
spectacle, its physical violence, its unbalanced play of forces, its metic-
ulous ceremonial, its entire apparatus were inscribed in the political func-
tioning of the penal system."

The horrible displays of public execution, often preceded by torture,
stirred the minds of many Enlightenment humanists, who decried the sav-
agery of their contemporaries. "For most people," Beccaria complained,
"the death penalty becomes a spectacle and for a few an object of compas-
son mixed with scorn." Beccaria's thesis was that the severity of the
death penalty was inferior to the prospect of life imprisonment as a
deterrent to murder. "With the death penalty," he explained, "every les-
son which is given to the nation requires a new crime; with permanent
penal servitude, a single crime gives many lasting lessons." He argued
further, "Murder which we have preached to us as a terrible crime, we
see instituted without disgust and without anger." Only in extreme cir-
cumstances was Beccaria willing to consider the death of a citizen: if the
life of that citizen truly jeopardized the survival of the social contract,
and when "the nation stands to gain or lose its freedom, or in periods of
anarchy, when disorder replaces the law."

Beccaria's powerful arguments against the death penalty had wide
influence. First published in 1767, his work was soon well known in
British colonial circles and was reflected in calls from American politi-
cal leaders such as Benjamin Franklin (1706-1790) and Benjamin Rush
(1746-1813) to abolish the death penalty. For Rush, death penalty laws
were "as unchristian as those which tolerate or justify revenge." In
France, Voltaire drew on Beccaria to criticize the French penal system:
"[A] Roman citizen could be condemned to death only for crimes that
threatened the security of the state. Our masters, our first legislators, res-
pected the blood of their compatriots, while we lavishly waste that of
ours."

Influenced by Beccaria, whose ideas were popularized in France by
Voltaire, Robespierre called in 1791 for the repeal of the death penalty,
on the grounds that it was an unjust and ineffective way to deter crime.
When the state becomes an executioner, he maintained, it does not act like an individual who has been attacked and is using force in self-defense, but like a cold-blooded barbarian: “In the eyes of truth and justice, the scenes of death that society commands with so much ceremony are nothing but cowardly murders, solemn crimes committed according to legal procedures, but by the nation at large.” Just a year later, when Beccaria made his exception allowing the death penalty in cases where national security was at risk, Robespierre called for the death of Louis XVI after the king’s intercepted flight to the foreign enemies of France:

Yes the death penalty in general is a crime and for that one reason: that according to the indestructible laws of nature, it can be justified only in cases where it is necessary for the security of the person or the state. . . . Society can prevent [common-law offenses] by other means and render the culprit harmless to injure her further. But when a king is dethroned in the midst of a revolution whose laws are still in the making, a king whose very name draws the scourgé of war onto a nation in tumult, neither prison nor exile can destroy the influence that his existence continues to exert on the public welfare. . . . Louis must die in order that our country must live. 

Robespierre’s seemingly dichotomous view on capital punishment reflected the Enlightenment’s divide over this issue. Today’s controversy on this matter dramatizes the Enlightenment’s legacy as supporters and opponents of the death penalty echo and expand upon positions defined two centuries ago. Thus modern abolitionists argue about the futility of capital punishment as a deterrent against crimes; that judicial errors have condemned the innocent to death; that perpetrators are often social victims who should be provided with the possibility to redeem themselves; and that society’s deliberate violence can only generate more violence. These views are opposed by defenders of the death penalty who, in reply, assert that killing murderers indeed provides a deterrent, that only death ensures that a convicted murderer will not kill again, and that the families of murder victims deserve nothing less than the killer’s death and may require it as the psychological closure necessary for resuming their lives.

The liberal camp remains split over the idea of capital punishment (particularly in the United States), and tensions over this issue are evidenced by the careful wording of some current human rights documents. For example, the 1966 United Nations International Covenant on Civil and Political Rights states in article 2 that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the
commission of the crime.” Article 4 states that “anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.” This prudent language may well underlie the divisiveness generated by a more general question, namely, under what conditions may the state deprive an individual of inalienable rights? Liberals’ answers to this question diverge, not just with regard to the question of the death penalty, but also with regard to another central tenet of liberal rights: the right to private property.

**THE RIGHT TO PRIVATE PROPERTY**

New forms of mercantilist activities that emerged during the Renaissance rekindled efforts to define the individual’s right to private property. Strengthened by trade overseas, the call for such a right by merchants and the rising bourgeoisie could no longer be dismissed. With the advance of Lutheranism and the Reformation, the fight for property rights was initially couched in the terminology of revelation. The English Levellers, for instance, identified property earned as the fruits of one’s labor as sacred under the biblical injunction “thou shall not steal.” The work ethic of the emerging capitalist age was consistent with the Protestant vision of man’s providential destiny on earth, Max Weber later explained in his *Protestant Ethics and the Spirit of Capitalism*. Indeed, Protestants maintained that only through relentless work on the land, God’s imprint on earth, could individuals reach an intimate communion with the Almighty. Regarded as a radical human rights affirmation in the seventeenth century, the right to property would become a major source of contention in nineteenth- and twentieth-century human rights discourse.

If Hobbes could apply the importance of an inalienable natural right to the property of one’s own body and life, the Levellers would extrapolate from that the equally sacrosanct right to acquire property from one’s work. Yet not everyone among the English rebels agreed with this formulation. Parliamentary Independents like Cromwell and Henry Ireton (1611–1651) argued at the 1647 General Council of the Army in Putney that equating the right to life with the right to property was tantamount to claiming a right to take anything that one may want, irrespective of the rights of others. If the right to property is a natural right, proposed Ireton, “then show me what step or difference there is why I may not by the same right take your property.” A Leveller spokesman, Thomas Rainborough (?–1648), replied that this was merely a mischaracterization of the Levellers’ position, which was consistent with respect for oth-
ers' natural rights. This view had been developed a year earlier by the English pamphleteer and Leveller Richard Overton (1631–1664). In his tract entitled "An Arrow against all Tyrants," he stated:

To every individual in nature is given an individual property by nature not to be invaded or usurped by any. For everyone, as he is himself, so he has a self propriety, else he could not be himself; and of this no second may presume to deprive of without manifest violation and affront to the very principles of nature and of the rules of equity and justice between man and man. Mine and thine cannot be, except this. No man has power over my rights and liberties, and I over no man.

Debating the legitimacy of property rights as a natural right was not a mere semantic exercise but had additional civil rights implications, including implications for the question of universal manhood suffrage. For Independents like Cromwell and Ireton, only property in freehold land or chartered trading rights entitled men to voting rights. Levellers, on the other hand, argued for a less restrictive property franchise than the one stipulated by the Independents. They believed that all men except servants, alms recipients, and beggars should be granted voting rights. This was consistent with their belief that political freedom was best ensured when individuals (e.g., soldiers and craftsmen) were engaged in independent activity.

Despite these differences over what constituted reasonable qualifications for political freedom and manhood suffrage, Independents and Levellers alike equated political freedom with some sort of individual property ownership and independence. Thus they introduced the liberal notion that freedom is first earned through independent economic activity. Although the right to vote remained limited, the right to property was eventually won, albeit at a high human cost, and feudal land tenures and arbitrary taxation were abolished in England. Whereas the first phase of the revolution (1642–1648) empowered the propertyed by granting sovereignty to Parliament, the second phase galvanized more radical concerns, voiced by peasants like the Diggers, who were animated by the vision of an agricultural communist society.

The Diggers’ beliefs were more radical than those of the Levellers, who had the support of independent men of small property. Under the leadership of Gerrard Winstanley (1609–1669) and William Everard (1575–1650), the Diggers, who conceived of the English civil wars as a struggle against the king and the great landowners, asked for the establishment of communal property. Now that Charles had been executed, they argued, land should be available for the very poor to cultivate. They also
called for further legal and political democracy and the rejection of the state church. Their increasing activities, however, alarmed the commonwealth government and triggered the hostility of local landowners. Harassed by legal actions and mob violence, they had dispersed by the end of March 1650.

With the restoration of Charles II in 1660, the disbanding of the New Model Army, which had won the English civil war for Parliament, and the return of confiscated estates to the crown and to bishops, the liberal as well as the radical hopes of the civil wars seemed vanquished. Yet the debates that unfolded throughout the two periods of the English civil war were to inform subsequent debates over property and political rights. Not only did these early English civil war debates on property and voting rights anticipate future liberal tensions, they also heralded some of the radical dimensions of the nineteenth-century socialist critique of liberalism. Starting with Locke, forty years after the English civil wars, the Levellers' position was once again echoed during the relatively more conservative settlement of the 1688 Glorious Revolution.

Like the Levellers, Locke argued in 1689 that "everyman has a property in his person; this nobody has a right to but himself. The labor of his body and the work of his hand, we may say, are properly his." In

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**GERRARD WINSTANLEY, "A DECLARATION FROM THE POOR OPPRESSED PEOPLE OF ENGLAND," 1649**

We whose names are subscribed, do in the name of all the poor oppressed people in England declare unto you, that call yourselves lords of manors, and lords of the land, that in regard the King of Righteousness, our Maker, hath enlightened our hearts so far as to see that the earth was so made purposely for you to be lords of it, and we to be your slaves, servants, and beggars; but it was made to be a common livelihood to all, without respect of persons; and that your buying and selling of land, and the fruits of it, one to another is the cursed thing, and was brought in by war; which hath and still does establish murder and theft in the hands of some branches of mankind over others, which is the greatest outward burden and unrighteous power that the Creation groans under. . . .

And while we are made to labour the earth together, with one consent willing mind; and while we are made free, that every one, friend and foe, shall enjoy the benefit of their creation, that is, to have food and raiment from the earth, their mother; and every one subject to give account of their thought, words and actions to none but to the one only Righteous Judge and Prince of Peace, the Spirit of Righteousness that dwells and that is now rising up to the rule in every creature, and in the whole globe.

From Selections from His Works, 44-45.
urging individuals not to spoil or waste God’s creation and to leave enough for everyone’s subsistence, Locke also voiced some of the more collectivist concerns expressed in the English civil wars. Further, he maintained that the rights to life and property were inalienable rights of nature that the state, to gain moral legitimacy, had to secure. Without spelling out how people’s political voice would be heard in civil society—other than suggesting people’s right to rebel if a government failed to respect its mandate—Locke offered innovative proposals to curb political abuses. By proposing a separation of powers (legislative, executive, and federative) based on a system of checks and balances, he developed a unique institutional model for safeguarding natural rights principles, principles that would inspire eighteenth-century European revolutionaries.

American revolutionaries enthusiastically modeled their new government according to ideas advanced by Locke, the Levellers, and Montesquieu, who owed his popularity to his lucid philosophizing about English institutions. What the American founding fathers took from the British, following Locke’s Second Treatise (1690) and Montesquieu’s Spirit of Laws (1748), was the idea of the division and the balancing of power. Indeed, the constitution clearly reflected the view that unless the three classes of governmental power—the legislative, the executive and the judicial—were separated, political freedom and the certainty of basic human rights would not be secured. In an atmosphere of protests against a centralized sovereign power, American revolutionaries developed a unique federal system by allocating power between central and local governments and drafting all constitutions so as to limit each level of government by means of a separation of powers.

Following Paine’s impassioned condemnation of the British monarchy in Common Sense, they also rejected the English system of constitutional monarchy, which was identified with George III. Along with Paine, many expressed their dislike for special hereditary privileges, a position exemplified by the constitution of Massachusetts (and many other state constitutions), which affirmed that no government should be instituted “for the profit, honor or private interest of any one man, family or class of men.” Not only did the Declaration of Independence reject monarchy, it also called for the protection of inalienable rights, famously referring to the rights to life, liberty, and the pursuit of happiness. The same year it was signed, George Mason placed property rights in the first clause of the Virginia Declaration of Rights. In the spirit of Locke, the Virginia Declaration granted people the right “to institute a new government” should the state fail in its mandate to secure individual rights.
THE UNITED STATES DECLARATION OF INDEPENDENCE, 1776

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these States...

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states: that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.
This should not suggest that all state constitutions were fully egalitarian, as even the most liberal ended up providing advantages to the owners of property. That principle was expressed in some of the state constitutions that supported manhood suffrage for those who showed "sufficient evidence of attachment to the community." Even the most radical proponents of the revolution accepted that premise. Benjamin Franklin, presumably a staunch believer in the equality of all men, insisted that to allow those who had no land to vote in legislative elections was "an impropriety." Thomas Jefferson contended that suffrage should be extended to "everyman who fights or pays." James Madison voiced concern about the following dilemma: "[A]llow the right to vote exclusively to those with property, and the rights of persons may be oppressed. . . . Extend it equally to all, and the rights of property or the claims of justice may be overruled by a majority without property."

The Constitutional Convention initially called for universal male suffrage but soon adopted, following Samuel Adams’s draft, a restriction on the franchise. Under the restriction, a white man was allowed to vote if he owned real estate worth £3 a year or real and personal property with a value of £60. As a result, the voting constituency was far less than half of the adult male population. The property franchise was justified along the same lines as those advanced by advocates of the Parliamentary cause during the English civil war, namely that political freedom and public office holding would be best served by white independent men who were either free of material concerns or had property at stake. In some instances, the property franchise was fixed at a very considerable figure; in Massachusetts, for example, it was established at £1,000, in Maryland at £5,000, and in South Carolina at £10,000. These requirements were consistent with the political ascendancy of a propertied ruling elite that included rich governors and senators—all elected by the wealthy sector of the electorate.

Despite these conservative features of its outcome, the American Revolution inspired people to fight tyrannical regimes and to spread the human rights credo of an emerging liberal age. Constitutionalism, federalism, limited government, property and civic rights were not new ideas in Europe. John Adams (1735–1826), a great figure of the Continental Congress (1774–1777) and the second president of the United States (1797–1801), would later report that the American Revolution was "Locke, Sidney, Rousseau, and de Mably," that is, the ideas of European philosophers put into practice. The American struggle for independence turned the human rights aspirations of the French into a tangible possi-
bility. As the news of the revolution spread in French salons, clubs, and the press, it began to stir members of the Third Estate, who felt increasingly frustrated by the political corruption and economic abuses of the ancien régime.

The fall of the Bastille opened the gates for the arrival of new civic rights, and the Declaration of the Rights of Man and of the Citizen hailed universal rights previously acclaimed by the Americans. Its article 7, for instance, stated that no one "may be deprived of property rights unless a legally established public necessity requires it and upon condition of a just and previous indemnity." In reference to political freedom, it declared that "sovereignty resides essentially in the nation... The law is the expression of the general will; all citizens have the right to contribute personally or through their representatives... All citizens being equal before it, are equally admissible to all public offices, positions and employment according to their capacity, and without other distinction than that of virtues and talents" (articles 3 and 6).93

These words initially suggested that in contrast to the American system, no property qualification would be required for political participation and manhood suffrage. Yet after having fought strenuously for the elimination of privileges granted to the nobility, Abbé de Sieyès (1748-1836) and other like-minded deputies found no inconsistency in favoring male taxpayers or property owners as the only eligible "active" voting citizens capable of holding public office. "All the inhabitants of a country should enjoy the right of a passive citizen... but those alone who contribute to the public establishment are like the true shareholders in the great social enterprise. They alone are the true active citizens, the true members of the association."94 With revolutionaries like Jacques Guillaume Thouret and Rabaut Saint Etienne, Sieyès presented a report that formed the basis for subsequent legislation on suffrage qualifications and office holding. Only three months after the French declaration of rights was issued, voting rights and public office holding were denied to passive citizens—including domestic servants, women, and all those who did not pay taxes equivalent to three days of labor. Invoking the principles of the declaration, Robespierre was among the few who protested the decree:

What sort of system is it in which an honest man, despoiled by an unjust oppressor, sinks into the class of the belots while his despoiler is raised by this very crime to the ranks of the citizens... in short, what is the worth of my much vaunted right to belong to the sovereign body if the assessor of taxes has the power to deprive me of it by reducing my contribution by
a cent if it is subject at once to the caprice of man and the inconsistency of fortune?

Although the property-based franchise was set at a lower threshold than the one adopted in the United States, it reflected the liberal and bourgeois character of the initial phase of the French Revolution. Revolutionaries such as Abbé de Sisyphes, Marquis de Lafayette (1757–1834), Georges Danton (1759–1794), Pierre-Joseph Cambon (1756–1820), and François-Antoine Boissy d’Anglas (1756–1826) were all proponents of a rapid expansion of commerce and the unrestricted accumulation of property. They opposed supporters of the popular class, like Robespierre and Louis de Saint-Just (1767–1794), who were associated with the more radical phase of the French Revolution. Robespierre had warned the Jacobins to limit the free accumulation of wealth. The right to property, he insisted, should not be permitted to infringe upon the rights of others, in particular those of the poorer citizens: the sansculottes (the urban popular class) and the peasantry. He also proposed a progressive tax on incomes and the drawing of a clear distinction between property rights justly and unjustly exercised; only the former type, he believed, should be protected by the state. His views, however, were defeated and omitted from the constitution of 1793, and the property qualification was maintained.

This decision reflected the eighteenth century’s endorsement of property as a right and voting as a male privilege to be earned. It also illustrated the tension of a bourgeois consciousness torn between self-interest and a humanistic opposition to feudalism and self-interest. J. A. Pocock aptly remarks that the social thought of the eighteenth century can be envisaged as a single momentous quarrel oscillating between the worldwide compassion of Roman patriotism and the particularism of private investors. The Enlightenment’s inability to reconcile economic and political rights sharpened domestic social divisions that would later be further intensified by the rise of the nineteenth-century labor movement.

The notion of property, recognized as an inalienable right by the UN Universal Declaration of Human Rights, the American Convention on Human Rights (article 2), and the African Charter on Human and Peoples’ Rights (article 14), would remain a point of contention among the participating members of the UN. For instance, soon after the establishment of the UN, the Soviet Union rejected article 17 of the Universal Declaration, insisting that large units of property should be in the hands of the state (see chapters 3 and 4). Meanwhile, the question of
how to implement liberal rights internationally added another source of division to the human rights debate as conflicting views on that question further shaped the developing liberal character of human rights.

THE STATE AND JUST-WAR THEORY

The Enlightenment's vision of human rights stipulated that rights to property, religious freedom, and life needed to be protected by the state not only against aggressive individuals, but also against predatory states. Today, as during the Enlightenment, the state is both admired as an efficient vehicle for promoting human rights and feared for its potential to abuse those rights, especially during wartime. Italian interstate conflicts in the fourteenth century had already prompted lawyers like Bartolo de Sassoferrato (1314–1357) and Baldò degli Ubaldi (1327–1400) to address the proper wartime conduct of states. Their doctrines became influential in Spain, Portugal, and Germany. Machiavelli, in the fifteenth century, further elaborated guidelines aimed at tempering conflicts over the unification of Italy. The Dominican friar Francisco de Vitorio (1485–1546) joined the critical chorus, denouncing in the sixteenth century the conquests and colonial policies of the Spanish empire and defending the rights of non-Christians and American natives, thereby becoming the founder of the Spanish school of international law.97

Throughout Europe, the wars of the Reformation intensified debates over the international application of natural law and highlighted the role and responsibility of states as central actors in the world community. Mercantilists looked to the state as the best vehicle to promote their interests and pursue their economic ventures. At the same time, the state, rather than the supranational authority of the Catholic Commonwealth, was also envisioned as the most efficient vehicle for the advancement of human rights norms—norms consistent with religious tolerance and mercantilist pursuits. "Just wars" were thus rationalized accordingly.

The German publicist and jurist Samuel Pufendorf (1632–1694), the English scholar and jurist Richard Zouche (1590–1661), the Swiss jurist Emmerich de Vattel (1714–1767), and the Dutch legal scholar Hugo Grotius were major participants in the debates over just war.98 Each offered advice to state leaders, finding in Islam and medieval Catholic scholasticism important contributions to this question.99 Because of the growing importance of the nation-state, they also pledged loyalty to the mercantilist state, which they viewed as an important mechanism for waging just wars and promoting peace and human rights. Their views, above
all, captured a period in transition between the medieval system of international law and the birth of the modern international system, between a system established under the control of the Roman papacy and the emperor and one based on state sovereignties as sanctioned by the Treaty of Westphalia.

No one was better able than Hugo Grotius, one of the most influential legal thinkers of his time, to imagine the changes of the time and new possibilities for international cooperation. To mitigate the occurrence and the effects of the wars that plagued his epoch, he called on heads of states to restrain violence for reasons of humanity and freedom of religion. State leaders, he argued, along with others, needed first to avail themselves of negotiations and diplomacy. If military action was inevitable, he insisted that it needed to be both tempered and used only for the right reasons. Natural law instructed leaders on whether and how to initiate a just war and provided guidelines consistent with the prevailing spirit of mercantilism and free enterprise. With Pufendorf and other legal theorists, Grotius defined just wars as wars waged for defense, recovery of property, and punishment of the unjust.100 Preventive war undertaken because of fear of an imminent attack, he added, was also legitimate. Which types of war were then forbidden according to natural law? Those infringing upon natural law principles, namely, wars for the appropriation of others’ property, wars that subjugated “any people by force on the grounds that they deserved to be slaves,” wars aimed at repressing religious differences, and wars driven by expediency rather than necessity.101

Retaining many of Grotius’s teachings, Pufendorf partly disagreed with his Dutch counterpart, asserting, “[F]ear alone does not suffice as a just reason for war, unless we determine with a morally evident certitude that there is an intention to hurt us.”102 Customary laws, Pufendorf further elaborated, needed to be adopted by states intervening on behalf of a third party:

It is obvious that people wage war not only on their own behalf, but often on the behalf of others. But for this to be done rightly, a just cause for warring is required, at least in the one who is being assisted. In the one who is going to render aid to the other, however, there should be some special bond by which he is connected to the chief belligerent, one that makes it appropriate for him, in order to meet his obligation to one man, to treat another who is equally a man in a hostile fashion.103

At first glance, Pufendorf’s notion of a “special bond” is evasive and seems to contrast with his initial insistence on the need for clear criteria
before waging preventive war. Indeed, an unqualified notion of a “special bond” could indulge a third party’s whimsical preferences by encouraging that party to act only when its perceived national self-interest was at stake and exempting it from acting on humanitarian grounds. Reflecting his epoch’s preoccupation with curtailing the strong authority of the Catholic commonwealth, Palefond’s views also illustrate growing sentiments favoring the sovereignty of nation-states in intervention and other matters.

That concern was deemed so important that neither Grotius, Vattel, Pufendorf, Christian von Wolff (1679–1754), nor any other Enlightenment humanist thinker advanced the idea of a supranational state reminiscent of papal or imperial dominion. If anything, the natural law among nations was characterized by its advisory nature: it informed nations of their mutual advantages and the range of actions that were “permissible” if they were to abide by the rule of nature and reason. “The law of nations,” Grotius commented, “derive[s] its authority from the consent of all, or at least of many nations. It was proper to add many, because scarce any right can be found common to all nations, except the law of nature, which itself too is generally called the law of nations. Nay, frequently in one part of the world, that is held for the law of the nations, which is not so in another.” The law of nature encouraged cooperative behavior among nations but rejected the idea that the state ought to be subjugated to a supranational power. Referring to the example of the Roman province, Grotius asserted, “For those nations are not sovereign states of themselves, in the present acceptance of the word; but are subordinate members of a great state, as slaves are members of a household.”

Such a statement resulted in the commonly held belief that natural law could be secured by strong states without any need for authoritative supranational political structures. This view also grew out of the concomitant historical development of human rights norms and mercantilism. Mercantilism required a strong state to launch trade expeditions overseas, yet it also needed new international norms of cooperation to prevent wars and other possible obstructions to the free flow of goods. If the seventeenth century united the interest of the mercantile nobility and that of merchants, by the eighteenth century such an alliance was questioned. For members of the rising middle class, state mercantilism would prove to be too restrictive both domestically, where they were excluded from the political process, and internationally, where the weak political leverage of property owners undercut opportunities for trade.
The towering Scottish economist Adam Smith (1723–1790) formulated best the principles of this new economic challenge. Against the monopolistic nature of both feudalism and mercantilism, Smith saw in the pursuit of individual self-interest the possibility of an unimpeded development of the common good. In a concept he introduced in The Theory of Moral Sentiments (1759) and developed in the Wealth of Nations (1776), Smith depicted self-seeking individuals as being led by “an invisible hand . . . [that] without knowing it, without intending it, serves to advance the interest of the society.”106 The system of perfect liberty, he asserted in his 1776 masterpiece, must operate according to the drives and constraints of human nature as channeled by intelligently tailored institutions.107 Should such institutions ensure free economic competition, the individual’s constant drive for self-improvement, pitted against others driven by the same competitive urge, would maximize the prosperity of the entire society.

Reviewing four main historical stages of political organization—the age of huntsmen, nomadic agriculture, feudal or manorial farming, and commercial interdependence—Smith concluded that the final stage represented the highest form of individual liberty. Insightfully, he observed that a civil government established for the purpose of protecting property rights “is in reality instituted for the defense of the rich against the poor, or of those who have property against those who have none at all.”108 Yet the forces of the market, he explained, constituted a mechanism that would drive the prices of commodities down to their “natural” and most affordable level, despite short-term aberrations and inequality. Praising a guild-free wage and private ownership rather than government-constrained enterprises, he introduced the case for what would become known as laissez-faire capitalism.109

Left largely unexplored by Smith, however, was the question of which form of government was best suited to ensuring free markets. In the second half of the seventeenth century and throughout the eighteenth century, many visionaries viewed a republican regime as the best way to promote laissez-faire policies and peace between nations and to ensure liberal rights domestically. Cromwell and Lilburne had justified the pursuit of an English revolutionary war on behalf of a British republic, but it was with Jean-Jacques Rousseau that the concept of the nation-state, justified by his theory of the social contract, was substantially broadened. Rousseau went beyond Hobbes’s notion that the state should be protective yet authoritarian, and further than Locke’s view of a minimal liberal state ratified by a social contract of atomistic individuals. The state
had a different task, insisted Rousseau. It needed to be identified with people’s will, or the volonté générale (the general will), an organic entity that transcended the sum total of the individuals who comprised it. In the state, individuals were not merely securing the rights they acquired in the state of nature but were creating a new entity, one committed to the common welfare. Later joined by revolutionaries and illuminati like Jefferson, Paine, Robespierre, and Kant, Rousseau advanced the idea that inequitable and unrepresentative states were by nature the basis of global disorder. It was only by means of just political institutions that the rights of a citizen could blossom and war would disappear.

What would promote the development of such political institutions? The spread of commerce would encourage republicanism, argued Paine. By rendering individuals as well as nations useful to one another, the necessity for war would be eclipsed. “If commerce were permitted to act to the universal extent it is capable,” Paine explained, “it would extirpate the system of war, and produce a revolution in the uncivilized state of Governments. The invention of commerce has arisen since those Governments began, and it is the greatest approach towards universal civilization that has been made by any means not immediately flowing from moral principles.”

The principle of republicanism, now linked with the spirit of laissez-faire, was widely viewed as a panacea against the outbreak of wars. Echoing Paine, Kant remarked that “civil freedom could no longer be infringed without disadvantage to all trades and industries, and especially to commerce,” and vice versa. That view, essentially unchanged since its eighteenth-century origins, would find expression in the post-cold war foreign policy doctrine of the world’s only superpower, which linked world peace to the synergetic expansion of markets and democracy.

Yet not everyone was so optimistic about the widely accepted affinity between commerce and human rights. Rousseau had warned the Polish and Corsican governments that commerce bred inequity and war. In the tradition of the French Physiocrats, Rousseau, like François Quesnay (1694–1774), instead favored representative states based on self-sufficient agrarian economies. “Leave all the money to others,” . . . [f]arm well your fields without worrying about the rest . . . financial systems produce venal souls,” wrote Rousseau, pointing to the possible flaws of a human rights vision predicated solely on commercial transactions, a view later shared by Jefferson and Robespierre. Whether capitalism should be applied solely to agriculture, as the Physiocrats suggested, or to commerce, as Smith argued in repudiating the Physiocrats’ belief system, all
of the sympathizers of the revolutions agreed on a central point: republican institutions were the only way to promote peace and human rights.

Should a republican supranational entity be instituted to force aggressive states to enter the civilized world community? With the exception of Kant, no supporters of the French Revolution were willing to endorse such an option. In *Abridgement of the Project for Perpetual Peace* (1713), the French publicist and reformist Abbé Charles de Saint-Pierre (1658–1743), following Henry IV’s idea of a “grand design plan,” proposed the establishment of a European confederation that would name a permanent, indissoluble arbitration council to solve disputes between states and even stipulated that the council’s arbitration would be binding. Yet as Rousseau argued in his *Judgement on Perpetual Peace* (1756), the development of international harmony and rights could never be achieved by self-serving princes and monarchical regimes. Sympathetic to the objectives of the world federation proposed by Saint-Pierre, he nevertheless remained skeptical about its viability and deplored the repressive tendencies of big governmental institutions that were sure to be manifest in such a supranational behemoth.

Addressing part of Rousseau’s concerns, and loyal to the spirit of the categorical imperative that invited individuals “to act according to principles which can be adopted at the same time as universal law,” Kant further explored the idea of a cosmopolitan confederation premised on republican states. He suggested that since individuals had relinquished their “lawless freedom” for their own good upon entering the republican state, the state now needed to surrender some of its “lawless freedom” for the sake of global welfare. The “general will,” he insisted, could only exist peacefully as long as each state recognized an authority above itself. In an effort to develop accountable domestic and international institutions for securing human rights, he envisioned that

*There shall be no war, either between individual human beings in the state of nature, or between separate states, which, although internally law-governed, still live in a lawless condition in their external relationships with one another. . . . [W]e must simply act as if it could really come about (which is perhaps impossible), and turn our efforts towards realising it and towards establishing that constitution which seems most suitable for this purpose (perhaps that of republicanism in all states, individually and collectively).*

Whereas most intellectuals and politicians remained unconvinced, at the end of the eighteenth century, that such a confederation of states was feasible, many agreed with Kant and Paine that republicanism and some
version of laissez-faire would favor peace. If, while constructing this republican and laissez-faire order, war had become a necessity to eradicate the vestige of the old regimes, then the eighteenth century needed to redefine the seventeenth century’s contribution to just-war theory. Indeed, though condemned in principle, revolutionary wars were now deemed just so long as they promoted property rights for all, laissez-faire economic policies, and republicanism.

In the 1770s, there was seldom disagreement among supporters of republicanism over the justice of a revolutionary war to redress American rights usurped by the British. At one end of the spectrum, revolutionaries like John Dickenson (1732–1808) continued to praise the king while calling for some form of resistance. At the other end of the spectrum were defenses of the people’s right to change the government at any time. As one speaker at the annual orations in colonial Boston expressed it, civil liberty is “a power existing in the people at large, at any time, for any cause, . . . to alter or annihilate both the mode and essence of any government and adopt a new one in its stead.” 118 The Declaration of Independence ultimately advanced a relatively more moderate position on the justifications of revolutionary change: “Whenever any form of government becomes destructive of these ends [life, liberty, and property], it is the right of the people to alter or to abolish it, and to institute new government, laying its foundations on such principles and organizing its power in such form, as shall seem most likely to affect their safety and happiness.” 119 Although America did not use the sword to spread its revolutionary message beyond its natural frontiers, its example inspired others to take up arms against tyranny.

Soon after the fall of the Bastille, French revolutionaries found themselves facing troops sent by foreign dynasties that feared the diffusion of human rights ideas beyond the newly established French patrie. Drafted in a levée en masse, French soldiers of the new patriotic army saw themselves as the liberators of Europe. “O! Ye Austrians, ye Prussians!” wrote Paine in his address to the people of France, “ye who turn your bayonets against us, it is for you, it is for all Europe, it is for all mankind, and not for France alone that she raises the standard of liberty and equality.” 120 Robespierre defined the objectives of the French revolutionary wars in similar terms:

We wish an order of things . . . where distinctions arise only from equality itself; . . . where industry is an adornment to the liberty that ennobles it, and commerce the source of public wealth, not simply of monstrous riches for a few families. . . . May France stand for the glory of all people, fight
the terror of oppressors, console the oppressed, become the ornament of the universe; and in sealing our work with our blood may we see at last the dawn of universal felicity gleam before us. This is our ambition, this is our aim.\textsuperscript{121}

The credo of the Declaration of the Rights of Man and of the Citizen, invoking the vision of universal felicity, justified the wars against the enemies of the French revolutionaries. With counterrevolutionary forces on the rise at home and abroad, Robespierre even called for the institution of a strong centralized government: "The object of constitutional government," he explained, "is to preserve the Republic; the object of the revolutionary government is to establish it."\textsuperscript{122} If centralism could be depicted as essential for warding off the enemies of the revolution, it would be less easy to rationalize the creation of an expedient judiciary machine during the last phase (1793–1794) of the French Revolution, a vehicle for killing many less radical revolutionaries like Danton or the feminist Olympe de Gouge (1748–1793).

Was Saturn now eating his own children? asked Danton before his execution. It might have been the similar use of violence on behalf of a revolutionary cause in the early nineteenth century that prompted the Spanish painter Goya to paint with disturbing sensationalism a fear-crazed old man, Saturn, driven by the blind instinct of self-preservation, eating one of his children (1821). The revolutionary excesses carried out during the Red Terror and its aftermath begged crucial questions: Which means are justified to promote human rights? Do all means justify their human rights goals? These questions would be widely debated within the socialist movement in the nineteenth and twentieth centuries. In the late eighteenth century, however, violence and war were generally accepted as means of last resort for implementing republican ideals—with the assumption that once republics were established worldwide, wars would vanish. Would revolutionary wars, however, in fact lead to a world federation that would secure the rights upheld domestically by new republican regimes? Even Kant, the only defender of a confederation of republican states, remained conflicted on that question. On the one hand, he saluted the French Revolution "as a moral predisposition within the human race."\textsuperscript{123} On the other hand, consistent with his central belief in the supremacy of individual life, he denounced "any uprising that bursts into rebellion . . . [as] the worst punishable crime in a community."\textsuperscript{124} It is left unclear from Kant’s statements how France could have fought against despotism except through resistance to authority, rebellion, the
breach of agreements, killings, or interference with the internal affairs of the enemy's country—recourses that were all condemned by Kant.\textsuperscript{123}

Nevertheless, if Kant was unique in trying to grapple with the problem of ends and means, his inconsistency on how to promote human rights was in fact symptomatic of his era. Many revolutionaries were unclear about how to proceed with a just-war strategy. For instance, no one asked at what point in the revolutionary war process republicanism and commerce would triumph, or what the acceptable extent was to which violence could be used to save the revolution. These incongruities and omissions were born in the tumult of an uncertain age that lacked historical precedents for a democratic revolutionary struggle. Yet the eighteenth century's standards nevertheless offered an important contribution to the human rights debates over means of implementation. The eighteenth century revisited the seventeenth century's criteria for just wars—that is, those waged for self-defense, the recovery of property, and freedom of religion—by considering legitimate the right to wage wars to establish a more inclusive republican sovereignty and to promote republican ideals.

The late Enlightenment's preference for laissez-faire economics over a supranational authority as central to the spread of republican ideals and peace is still shared by many Western politicians. Despite increased international recognition of human rights today, nothing contained in the UN charter authorizes "the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state" (article 2). Nevertheless, recent inconsistent humanitarian justifications for military interventions reflect continued liberal ambivalence about loyalty to the national interest versus solidarity with an international authority predicated on human rights. Both during the Enlightenment and today, this dual allegiance has contributed to the perpetuation of a double standard of moral behavior in which various appeals to human rights obligations remain subordinated to "the national interest."

**HUMAN RIGHTS FOR WHOM?**

In addition to being characterized by such conflicts over means and ends, the eighteenth century universal liberal agenda was undermined by another set of concerns over who would be the primary beneficiaries of human rights. Unquestionably, the social conditions of many improved during the Enlightenment. The struggle for the right to life, freedom of religion and opinion, and property rights broke the back of feudal regimes
and transformed humankind’s prospects for realizing human rights. Despite the Enlightenment’s critical contribution to the development of the modern human rights agenda, the revolutions of the mid-seventeenth and eighteenth centuries remained incomplete. Many individuals were still considered ineligible to be entrusted with all the freedoms invoked by the English, American, and French declarations of rights. Propertyless male citizens and all women were considered secondary or passive citizens and denied voting rights and political participation; women’s legal status continued to be subjugated to the authority of their husbands; with rare exceptions, slavery persisted; the rights of indigenous populations within European colonies were violated; in many places, homosexuality was still regarded as a criminal act; the civil rights of Jews continued to be denied even in revolutionary countries; and finally, despite the pledge of the French revolutionary army to liberate all European nationalities, their lack of political freedom remained unchanged under Napoleon’s continental system.

As the drama of revolutionary upheavals unfolded, the Enlightenment era gradually revealed the limits of its universal promise of rights. The English civil war might have coincided with the development of fundamental rights (i.e., the right to life, freedom of opinion, and property), but those rights were not extended to everyone. The emergence of radical groups like the British agrarian communists the Diggers, who strove to be recognized as full-fledged citizens under the British sky, attested to the exclusive character of the revolution; their hopes for civil equality were soon thwarted by the political ascendancy of men of property. The Diggers’ disillusionment with the revolutionary process was well described by Gerrard Winstanley: “[S]ome of your great offices, . . . told me that we Diggers took away other men’s property from them by digging upon the common; yet they have taken mine and other men’s property of money (got by honest labour) in taxes and free quarter to advance themselves, and not allowed us what they promised us; for it [is] this beam in their own eyes they cannot see.”

Similar sentiments against the inequitable resolution of the American Revolution were expressed by Thomas Jefferson, who complained in 1785 that “the property of this country is absolutely concentrated in a very few hands.” More consequential outrage was expressed by the 1786–1787 Shay’s Rebellion in western Massachusetts. Rebuffed after an appeal to the state legislature for relief, debt-ridden farmers organized a rebellion under the leadership of Daniel Shay (1747–1825). The rebels argued that the state legislature was in the hands of the wealthy
and was being used for their benefit. Growing support for the rebellion worried many in the upper classes in other states. Their concerns were ultimately allayed when the federal arsenal crushed the rebellion. As a result of the rebellion, however, the Massachusetts legislature enacted laws easing the economic condition of debtors.  

Similar popular disillusionment over the consolidation of power by French propertied men could be observed in revolutionary France. Robespierre's proposal to limit the accumulation of wealth and grant every man the right to vote was rejected by the French National Assembly. Economically disadvantaged and politically disempowered, members of the Fourth Estate—the peasantry and the sansculottes—were not able to bridge the growing economic gap between themselves and the wealthier sector of the population. Though they were briefly in power, their radical agenda did not outlast Robespierre's revolutionary government and was superseded (in 1794) by the Thermidorian reaction. The Thermidorians wanted to guarantee the social preeminence and political authority of the bourgeoisie within the liberal regime. With Thermidor, the progressive forces of the Enlightenment era were in retreat, challenged by the interests of a greedy commercial class.

By casting aside dated customs and old economic structures, the emerging commercial age had initially infused women with new emancipatory hopes. "With every great revolutionary movement," observed Friedrich Engels, "the question of free love came into the foreground." Coinciding with the advent of Protestantism, sexual revolutionaries argued that a monogamous partnership based on mutual love should replace arranged marriage. Theoretically, a single moral standard would now have to be applied to both sexes. This prospect unleashed radical speculations by Milton, who, with the clergyman Hugh Peters (1598–1660) and Ms. Attaway, defended the freedom to divorce. The essayist and playwright Francis Osborne (1593–1659) entertained even more daring propositions by celebrating polygamy and annulment as a new marital contract, and the novelist Henry Neville (1620–1694) depicted a cheerful polygamous utopia in the Island of the Pines (1668).  

In reality, these assaults on conventional thinking were ephemeral, soon supplanted by a conservative backlash that defended the inequality of the sexes and a strict division of labor between men and women. Although the social condition of Englishwomen was better than that of most women in other parts of Europe, their legal position remained inferior to that of men. They were, for instance, subjected to different forms of punishment than were men, for the same offense. They were not al-
allowed to sit on the same bench as their husbands when in church and were often subjected to beatings. Some contract theorists, such as Pufendorf, Hobbes, and Locke, had recognized some form of women's equality in the hypothetical state of nature, but none entertained such ideas when considering women's status in civil society. Women, they assumed, would consent to their husbands or male political authorities in exchange for protection once they entered a conjugal or a social contract. At the turn of the seventeenth century, a British feminist writer, Mary Astell (1666–1731), highlighted her era's double standard, comparing the limits placed on the power of sovereigns with the almost limitless power of husbands over wives. Sarcastically, she asked, "If the authority of the husband, so far as it extends, is sacred and inalienable, why not that of the Prince?"

Her concerns were echoed throughout the eighteenth century. In 1775, Thomas Paine deplored the plight of women in the *Pennsylvania Magazine*: "Society, instead of alleviating [women's] condition, is to them the source of new miseries." Abigail Adams (1744–1818) suggested in a famous letter to her husband John, "Remember the Ladies" (1776), that he be more generous than his ancestors as he helped orchestrate America's independence from Great Britain. She warned him not to grant husbands unlimited power over their wives: "Remember all men would be tyrants if they could." Despite her warning that women were determined to foment a rebellion if they had no political voice, John Adams scornfully rebuffed her request, asserting that "we know better than to repeal our Masculine systems." Confirming this position, the constitution avoided mentioning women, that is, one-half of the population under its jurisdiction.

The French Declaration of the Rights of Man and of the Citizen, like the American constitution, excluded women from political participation. With the hope of converting Queen Marie-Antoinette to the women's cause, the French pamphleteer and playwright Olympe de Gouge, echoing the views of the French philosopher the Marquis de Condorcet (1743–1794) and Etta Palm d'Aelders (1743–?), wrote a Declaration of the Rights of Women in 1791. In it, she called for respect for women's natural rights as equal to the rights of male citizens outlined in the 1789 declaration. Writing in a time which still viewed women as passive citizens, dependent socially and economically on the male sex, she added a special proviso to protect women from plights specific to their gender. Her declaration included the right to have one's children recognized by their fathers and various other protections for unmarried women to be
provided by the state. Invigorated by the militancy of the French women, the English writer Mary Wollstonecraft (1759–1797), in her *Vindication of the Rights of Woman* (1792), made a similarly passionate and insightful plea for women’s education combined with social and political equality.

French law was not changed in response to the important role women had assumed in the revolutionary process. While they were active in popular assemblies, galleries, and clubs, and even risked their lives in the battle to save the revolution, women were nonetheless denied the full rights of citizens. Their dual role was justified by Louis-Marie Prudhomme (1752–1832) who, without scruple, urged Frenchwomen of all ages and all stations to arm themselves with burning torches for the sake of the revolution, but who continued, “[o]nce the country is purged of all these hired brigands, we will see you return to your dwellings to take up once again the accustomed yoke of domestic duties.” In the final stage of the French Revolution, women’s opportunities were further curtailed. French deputies like Philippe Fabre d’Eglantine (1750–1794), Jean-Baptiste Amar (1753–1816), and Pierre Gaspard Chaumette (1763–1794) decided that organized women’s activities, including women’s involvement in political associations, were threatening, and forbade their existence. With the Thermidor, and later with the establishment of the Napoleonic Code, women’s hopes of emancipation were crushed.

While women and propertyless individuals remained at the margin of English, American, and French societies, France advanced considerably the status of homosexuals, slaves, and Jews. At the beginning of the revolution, the death penalty was removed for all sexual crimes. With the revision of the criminal codes under Napoleon, homosexuals were granted the same rights as other citizens. To be more specific, the codes now left unpunished any sexual activity occurring in private between consenting adults (whether between women, men, or men and women), as long as their actions were not the subject of public indecency. The French legislated for the first time in favor of sexual privacy, while sexual freedom remained severely restricted in the English and American penal books (although prosecutions of sodomy or “acts against nature” were rare).

On the issue of slavery, Montesquieu’s work *L’esprit des lois* was a pivotal contribution to the abolitionist cause. It influenced many other French revolutionaries, like the constitutional monarch the Comte de Mirabeau (1749–1791) and Lafayette, as well as members of the 1788 Black Friends Association, which supported the emancipation of slaves.
OLYMPÈ DE GOUGE, THE DECLARATION OF THE RIGHTS OF WOMAN, 1790

... Mothers, daughters, sisters [and] representatives of the nation demand to be constituted into a national assembly. Believing that ignorance, omission, or scorn for the rights of woman are the only cause of public misfortunes and of the corruption of governments, [the women] have resolved to set forth in a solemn declaration the natural inalienable and sacred rights of woman in order that this declaration constantly exposed before all the members of the society, will ceaselessly remind them of their rights and duties; in order that the authoritative acts of women and the authoritative acts of men may be at any moment compared with any respectful of the purpose of all political institutions and in order that citizens' demands, henceforth based on simple and incontestable principles, will always support the constitution, good morals, and the happiness of all. Consequently, the sex that is as superior in beauty as it is in courage during the sufferings of maternity recognizes and declares in the presence and under the auspices of the Supreme Being, the following Rights of Woman and of Female Citizens...

Article I. Woman is born free and lives equal to man in her rights. Social distinctions can be based only on the common utility.

Article II. The purpose of any political association is the conservation of the natural and imprescriptible rights of woman and man; these rights are liberty, property, security, and especially resistance to oppression...

Article VI. The law must be the expression of the general will; all female and male citizens must contribute either personally or through their representatives to its formation; it must be the same for all: male and female citizens, being equal in the eyes of the law, must be equally admitted to all honors, positions, and public employment according to their capacity and without other distinctions besides those of their virtues and talents...

Article XI. The free communication of thoughts and opinions is one of the most precious rights of woman, since that liberty assures the recognition of children by their fathers. Any female citizen thus may say freely, I am the mother of a child which belongs to you, without being forced by a barbarous prejudice to hide the truth: [an exception may be made] to respond to the abuse of this liberty in cases determined by the law...

Article XIII. For the support of the public force and the expenses of administration, the contributions of woman and man are equal; she shares all the duties [corvées] and all the painful tasks; therefore, she must have the same share in the distribution of positions, employment, offices, honors, and jobs [Industrie].

Article XVII. Property belongs to both sexes whether united or separate; for each it is an inviolable and sacred right; no one can be deprived of it, since it is the true patrimony of nature, unless the legally determined public need obviously dictates it, and then only with a just and prior indemnity...
Nevertheless, the fear that the eradication of the slave system would contribute to the decline of French national wealth silenced many early sympathizers. Slavery and the slave trade, essential to the maintenance of colonial plantations, thus remained in place for the next five years. Vincent Ogé, a young representative of the Assembly of the Colonists, went to Paris in 1789 to present mulatto claims for equal civil and political status on the grounds that mulattoes were men of property and slave owners. His plea was rejected. Yet Robespierre, along with the parish priests and revolutionary sympathizers Abbé Grégoire (1750–1831) and Abbé Raynal (1733–1796) went further, decrying the lot of slaves in the colonies. Their efforts were countered by individuals like Antoine Barrême (1761–1793), a lawyer for the city of Grenoble and a central figure in the French National Assembly, who unscrupulously warned his audience against abolition. "Abandon the colonies," he said on behalf of the Colonial Committee, "and the sources of prosperity will disappear." With the spread of slave rebellions in the 1790s in Saint Domingue (now the Dominican Republic), Haiti, Guadeloupe, and Martinique, the Committee of Public Safety finally adopted, at the National Convention on February 4, 1794, a decree abolishing slavery. Yet the taste of emancipation enjoyed by former slaves soured eight years later, in 1802, when Napoleon restored colonial slavery.

The British, who abolished the slave trade in their colonies in 1807,
were nonetheless influenced by the early French revolutionary example. In North America, however, abolitionist efforts were less successful as Thomas Paine’s passionate denunciation of the African slave trade in 1775 was rejected. Although he kept slaves on his estate, Jefferson shared some of Paine’s discomfort, and in 1782 called for the abolition of slavery and for respect for Indians. Nonetheless, the interests of slave owners on the Southern plantations prevailed in the constitution. Indeed, articles 1 and 4 perpetuated slavery and, with a perverse mathematical logic, called for counting each black and mulatto as three-fifths of a person; Article 1 also excluded Native Americans from apportionment for representation.

Despite the limitations described above, France carried the torch of freedom further than any other country. It was the first country to free slaves, decriminalize homosexual activity, and emancipate Jews. The Declaration of the Rights of Man and of the Citizen had proclaimed freedom of religion and opinion, yet it was initially unclear whether Jews would qualify as citizens. The Prince de Broglie (1756–1794), an officer from Colmar, spoke against the idea, arguing that the Jews’ “present existence can be regarded as a great misfortune for [the Alsace] province.” Blaming Jews for lending enormous sums of money, he called for denying them the title and rights of citizen. The Bishop of Nancy, La Fare (1752–1829), joined the anti-Semitic chorus by stating that Jews were foreigners and should not be allowed to enjoy rights held by the French people. Yet after tumultuous discussions of the rights of the Jewish communities, a deputy of the National Assembly, Adrien Jean Francois Dupont, proposed a daring motion that would finally admit Jews as equal citizens of the republic. The motion passed on September 27, 1791. The French decision was soon emulated in Holland, Germany, Austria, Hungary, and England.

Granting minority rights and freeing all repressed nationalities throughout Europe was part of the French revolutionary agenda. With the decree of November 19, 1792, the Constituent Assembly declared “in the name of the French nation [the decree] will bring fraternity to all people wishing to recover their liberty.” Revolutionary principles as celebrated by the French began to spread through all of Europe, not only through “wars of liberation,” but also through well-organized local minority groups who had been influenced by French republican ideals. In the most despotically governed countries of eastern Europe, such as Hungary, political unrest took the form of conspiracies. In England and Prus-
sia, Jacobin clubs, such as the London Corresponding Society and the Wednesday Society, proliferated.

By 1807, French armies under Napoleon Bonaparte had swept across Europe. Napoleon now organized a continental system to unite Europe and cripple Britain by cutting off its trade. The system attempted to organize the economy of continental Europe with France as its center. It promulgated an internationalist human rights ideology that presupposed the consent of the European peoples to a new era of republican governance. European Jacobins initially regarded Napoleon as their liberator. He spoke repeatedly of the Enlightenment and urged all people to work with him against the medievalism, feudalism, ignorance, and obscurantism still prevailing in Europe. Hopes were high that France would continue to champion the principles of liberty and equality, and that Napoleon, whose victories spread these principles abroad, was the “man of destiny,” what Hegel called “the world spirit on a white horse.” For the continental bourgeoisie, The Declaration of the Rights of Man and of the Citizen became the charter of a new world, the constitution of a universal society that Europe should exemplify.

The rhetoric of a French crusade to liberate enslaved people, however, was soon swept aside in Napoleon’s policies, as the deeds of the liberator began to resemble the play of old-fashioned power politics. The united European flag, which Napoleon brandished during the “wars of liberation” against absolutist regimes, served mainly to increase France’s economic power and national prestige at the expense of its allies. Indeed, national emancipation was not really granted to Jacobins outside of France. The unification of Italy, for instance, may have been implied by the creation of the Italian kingdom, but the new state was promptly truncated by the French annexation of one-third of the peninsula, including all the territory north of Rome to France. Sections of Croatia, Carnolia, and the Dalmatian coast, annexed as the Illyrian provinces, were given a strictly administrative unity: the name was borrowed from a Roman prefecture, and the language favored there was not Croat, nor Italian, but French. The unfulfilled promises of national emancipation began to be ever more deeply resented by the subjects of the Napoleonic Empire.

It was nevertheless the case that the rational reforms Napoleon introduced in Italy and in the German states helped shatter feudal particularism and clear the way for the development of national institutions. As a champion of liberal reforms in spite of himself, Napoleon taught the Italians and the Germans how to reorganize their national institutions—a
lesson that would later help them build their respective national states. However, he failed to perceive that nationalist sentiment, which he hoped to arouse against absolutist regimes, would instead turn on him and his empire. The first signs of his decline coincided with what was ostensibly his period of greatest power. As the expansion of French reach became increasingly identified with blatant imperialism, the seeds of nationalist revolt began to bear fruit—first in Spain and then in Austria—and finally broke Napoleon’s power at the Battle of Waterloo in 1815.

The reestablishment of the old dynasties during the 1815 Congress of Vienna suppressed even the limited liberties instituted by the French emperor. The resulting Concert of Europe was specifically designed to prevent revolutions based on either individual rights or national self-determination. The new European balance of power, however, did not succeed in extinguishing the hope of emancipation brandished by revolutionary France, and rebellious sentiments would now be directed against aristocratic regimes. If advocates of human rights ideals were now, at least temporarily, on the defensive in Europe, the Enlightenment had nevertheless transformed the Western world. Slavery had been temporarily abolished in the French colonies. The United States entered a new century as the first constitutional republic founded on human rights principles. The idea of national liberation, temporarily suppressed, was ready to reemerge with a vengeance in the nineteenth century. Many women had recognized their inferior legal status and were resolved to change it. Finally, the first stirrings of popular demand for economic justice had challenged the classic liberal assumption that free markets and human rights were always compatible.
Janata Party refers to a Hindu nationalist party; and Komeito (the Clean Life Party) is a Japanese conservative Buddhist party.

CHAPTER 2

3. Ibid.
4. Ibid., 434.
5. Samir Amin, “The Ancient World-Systems versus the Modern Capitalist World System,” 357. Amin defines the categorization of this vast region, whose centers of power shifted over time.
7. Ibid., 187.
8. Ibid., 331.
11. Ibid., 194.
13. Ibid., 203.
17. Ibid.
18. Ibid., 187.
19. Parts of the following section are drawn from Ishay, Internationalism and Its Betrayal, 5–10.
23. Numerous explanations of these revolutions are possible. Class-based analyses have been recently challenged by a variety of alternative historical explanations. Egret and Eisenstein contest the class demarcation of the revolutionary movement; Furet emphasizes the struggle of the political elites; Skocpol focuses on the structural weakness of the state; and Goldstone concentrates on population growth. What is important, however, for the purposes of this book is to identify a trend: the expansion of capitalism and its relationship to the evolving worldview of a class in formation. For more detailed accounts and interpretations of these revolutions, see Albert Mathiez, The French Revolution; Albert Soboul, Histoire de la révolution française; Georges Lefebvre, La révolution française; Simon Schama, Citizens; Jean Egret, The French Pre-Revolution; Elizabeth Eisenstein, “Who Intervened in 1788?”; François Furet, Penser la révolu-
tion française; Theda Skocpol, States and Social Revolutions; Jack Goldstone, Revolution and Rebellion in the Early Modern World; and Herbert G. Gutman, Who Built America?
29. John Locke, A Letter concerning Toleration, 44.
30. Ibid.
32. Ibid., 128.
34. Ibid., 60.
35. Ibid., 93.
36. Ibid., 144.
37. Thomas Paine, Common Sense, 34, 52.
40. Marnell, The First Amendment, 144.
43. See Baron de Montesquieu, Lettres persanes, letters 83 and 85; Voltaire, “Toleration,” in Philosophical Dictionary, 360–361, and Œuvres complètes; Jean-Jacques Rousseau, “Profession du Vicaire Savoyard,” in Œuvres complètes; Denis Diderot, Œuvres complètes.
44. Deism is a belief advocating a natural religion emphasizing human over revealed morality.
47. See also Ishay, Internationalism and Its Betrayal, 53–55.
49. Ibid., 83.
50. Ibid., 88.
51. The Habeas Corpus was directly inspired by clause 39 of the Magna Carta, which states, “No freeman shall be arrested, or detained in prison, or outlawed, or banished, or in any way molested; and we will not set forth against
him nor send against him, unless by the lawful judgment of his peers and by the law of the land.” In George B. Adams, *The Origin of the English Constitution*, chap. 5.


58. See article 5 of the UN Universal Declaration, article 7 of the Covenant on Civil and Political Rights, article 3 of the European Convention, article 5.2 of the American Convention, and article 5 of the African Charter; see also Nigel S. Rodley, *The Treatment of Prisoners under International Law*.
60. More precisely, see articles 3, 5, and 8 of the UN Universal Declaration; articles 2 and 3 of the European Convention; and articles 6 and 7 of the Covenant on Civil and Political Rights (in the documents section in Ishay, *The Human Rights Reader*).
67. Ibid., 157.
68. Ibid.
71. Ibid., 126.
72. Ibid., 123.
74. Voltaire, “Commentaires sur le livre des délits et des peines,” in *Oeuvres de Voltaire*, 58. Voltaire’s work referred to Beccaria’s. Although the German philosopher Hegel repudiated Beccaria’s abolitionist view, he nonetheless recognized in his *Philosophy of Right* that “Beccaria’s effort to abolish the death penalty had some advantageous effects; even if neither Joseph II nor the French have ever managed its total abolition, there has been more awareness of which crimes are punishable and which are not” (par. 100).
76. Robespierre, “On the Action to be Taken against Louis XVI” (December 3, 1792), in Robespierre, 31.
77. See also Bobbo, The Age of Rights, 145–162.
82. See Macpherson, The Political Theory of Possessive Individualism, 148.
83. See Christopher Hill, The World Turned Upside Down, 15.
85. C. Edward Merriam, American Political Theories, 75.
86. Ibid., 84.
87. Ibid., and see A. J. Beitzinger, A History of American Political Thought, 183.
89. Ibid., 295.
91. Merriam, American Political Theories, 85.
92. Ibid.
97. See Bartolo da Sassoferrato, La Tiberiade; Cecil Nathan Sidney Woolf, Bartolo de Sassoferrato; Joseph Canning, The Political Thought of Baldus de Ubaldi; and Francisco de Vitorio, Relaciones sobre los indios y el derecho de guerra y Poltical Writings.
99. John Kelsay and James Turner Johnson, Just War and Jihad; Terry Nardin, The Ethics of War and Peace.
Notes to Pages 100–110


105. Ibid., bk. 1, chap. 3, sec. 7, 62.


108. Ibid., bk. 5, 236.

109. See ibid., bk. 4.


111. Kant, “Idea of a Universal History,” in Kant’s Political Writings, 50.

112. By focusing on commerce, Adam Smith later reversed what the Physiocrats thought was profitable.


120. Paine, “Address to the People of France,” in Complete Writings of Paine, 540.


122. Robespierre, National Convention, December 25, 1793, in ibid. (my translation).

123. Kant, “The Contest of the Faculties,” in Kant’s Political Writings, 182.


125. Refers to Kant, Perpetual Peace, in Kant’s Political Writings, 94–96.

126. Gerard Winstanley, “A New Yeers Gift (1650),” in David Wooton, Divine Right and Democracy, 522; see also Winstanley, Selections from His Works.


128. See Monroe Stearns, Shays’s Rebellion.


131. Ibid., 314.

132. Ibid., 308.
136. Abigail Adams to John Adams (March 31, 1776), and John Adams to Abigail Adams (April 14, 1776), in Lyman Tower Sargent, _Political Thought in the United States_, 66–67.
138. Mary Wollstonecraft, _A Vindication of the Rights of Woman_.
140. Philippe Fabre d’Eglantine (National Convention, October 19, 1793), Jean Baptiste Amar (Committee of Public Safety, October 30, 1793), Pierre Chaumette (Moniteur Universel, November 19, 1793), in Hunt, _The French Revolution and Human Rights_, 135–139.
142. Vern L. Bullough, _Homosexuality_, 45, and generally chap. 3.
143. Lefebvre, _The French Revolution_, vol. 1, 151.
144. “Motion Made by Vincent Ogé the Younger to the Assembly of Colonists, 1789,” in Hunt, _The French Revolution and Human Rights_, 103–104.
146. On April 6, 1793, a Committee of Public Security was created as a political police designed to protect the revolutionary republic from its internal and external enemies.
148. See Jefferson, _Notes on Virginia_ (1784), in _The Life and Selected Writings of Thomas Jefferson_, 210–213, 255; see also Eugene D. Genovese, _The Political Economy of Slavery_.
Notes to Pages 114–126

153. Jacob Katz, Out of the Ghetto, 2; Birnbaum and Katzenelson, Paths of Emancipation, 128; Pierre Plochon, Nègres et juifs au XVIIIe siècle.

154. Some passages of the following section are drawn from Ishay, Internationalism and Its Betrayal, 78–82.


156. See A. J. Grant and Harold Temperley, Europe in the Nineteenth and Twentieth Centuries, 197.

Chapter 3


3. From about 1760 on, enclosure meant the transformation of formerly common or open fields into private property. Because of their control over parliament, landlords succeeded in accelerating the conversion of land. The result was a patchwork of individual ownership in which landlords employed wage workers. This enabled independent farmers, freed from old custom-based restrictions, to improve commercially cultivated lands.


5. See Eric Hobsbawm, The Age of Revolutions. For an interesting discussion of the impact of 1848, see Stephen Bronner, Socialism Unbound, 12–15.


7. Norman Davies, Europe, 802.


11. The People’s Charter was a bill drafted by the London radical William Lovett in May 1837. See Mark Hewitt, The Chartist Movement.

12. For an interesting discussion of Chartism, see Gareth Stedman Jones, “Rethinking Chartism,” in Languages of Class.


15. Hobsbawm, The Age of Revolutions, 140.

