

The History of Human Rights

CAL 6001

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A prelude

- <http://www.youtube.com/watch?v=oh3BbLk5UIQ>

Outline

1. On the issue – new academic interest
2. What is history and how to study it? Methodological point
3. What are *human rights*? As different from *rights*?
4. Six controversies in historical debates about human rights (Ishay)
5. A ***prehistory*** of modern human rights – three dimensions
 - Universalism
 - Legal justice and fairness, tolerance
 - Economic justice
6. Two important historical periods: Enlightenment and industrialization
7. A political history of rights development: Four “critical junctures”
8. The International Bill of Human Rights, post WWII
9. A critique: Samuel Moyn’s *The Last Utopia*

1. On the history of human rights

- A relatively new topic
 - Human rights have not been much of a concern for historians; the first article on human rights in a leading US academic journal – came in 1998
- Human rights as a legal issue – not much preoccupied with history in legal faculties

1. On the history of human rights: Some main questions

- How to think about human rights in historical terms?
 - a long continuous process?
 - or a more recent phenomena?
- Why being interested in the history of HR?
 - To understand how human rights came about – help us understand their strengths and weaknesses
- Important question:
 - Why has “human rights” become the contemporary ***watchword of hopes for a more civilized world?***

1. On the history of human rights: Some main questions

If human rights are today's most important “***watchword of our hopes for a more civilized world***”, did human rights get this status:

- Because of a *long historical evolution* of civilization towards the current state of affairs, championed by the ICC and the possibility of a World Human Rights Court?
- Did the world ***have*** to move this way, if looking back to older civilizations?
- NO – we have to look for the ***trigger events and social forces*** that made human rights important in today's world
- Samuel Moyn: *The Last Utopia? Human Rights in History* (2010)

2. A methodological comment on history

A main methodological distinction:

- Probabilistic vs. deterministic explanations

3. What are *human rights*? As different from *rights*?

- Citizenship:
 - Citizenship right defines membership of political community, a state (or nation-state). It defines your rights and duties as member of this political community. It may also produce political and national identity and *loyalty*

- Human rights:
 - entitlements, immunities, “privileges” that human beings have ***in spite of their state membership***, and in spite of which state they live in
 - They are “above” and “outside” the state. They are universal in terms of “for all, at any place”
 - A key characteristic of human rights: International monitoring and supervision. *Some* limitation of state sovereignty

4. Six controversies in historical debates about human rights (M. Ishay, 2003)

- ① The origins of human rights: Religion is not antithetical to human rights – “Each great religion contains important humanistic elements that anticipated our modern conception of human rights”. Religions “contributed” to human rights to different degrees
- ② Human rights are mainly of a European origin (chapter 2) – in because of ***the expansion of the modern state***
- ③ The liberal contents of early rights (16-17 century) were supplemented with socialist ideals that grew out of industrialization in the nineteenth century

- ④ Human rights contain cultural rights, and respect for cultural diversity; yet cultural rights or traditions must always be checked against a universalist perspective of human rights (chapters 3,4,5)
- ⑤ How to understand historical progress – is there historical progress: Yes, Ishay says, the existence of human rights is a correction and supplement to security and real (economic etc.) policies. Do you agree? Note: Probabilism vs determinism
- ⑥ Globalization are producing several *treats* (dangers) to human rights: private sphere surveillance and control, but without any clear conclusion (chapter 6)

5. A *prehistory* of human rights – three dimensions

- Early ethical contributions to
 - Universalism
 - Legal justice and fairness, tolerance
 - Economic justice

A prehistory of human rights – Vietnamese traditions?

Early ethical contributions to

- Universalism?
- Legal justice and fairness, tolerance?
- Economic justice?

Universality

- Socrates (469-399 B.C.E): “Goodness” is universal (Plato, *Republic*)
- The Stoics introduced the term “Cosmopolite” - citizen of the world
 - Zeno of Citium (335-263 B.C.E):
 - “a well-admired republic is founded on the principle that human beings should not be separated within cities and nations under laws particular to thembecause all humans are compatriots andthere is only ...one order of things (cosmos)”
- Cicero (106-43 B.C.E) – the concept of natural law:
 - “ there is in fact a true law – namely right reason – which in accordance with nature, applies to all men, and is unchangeable and eternal” (*On the Commonwealth*)

Legal justice and fairness, tolerance

- Against bribery and corruption of judges (Hebrew Bible)
- Just rulings of kings, good leadership (Confucius, Aristotle, Plato, Cicero)

Economic justice

- Many examples on this in ethical systems and thinking
 - Right to property , not to steal
- ***Buddhism*** (essential freedoms as virtues of a good life):
 - Freedom from violence, freedom from want, freedom from exploitation;
 - Social insurance - from early death and disease etc.
- To give *Tithe* (support the poor): In Judaism, Christianity, Islam, Buddhism etc.

6. Two historical epochs - particularly important

- The Enlightenment (approx. 1650-1790/1800 (counter enlightenment)
 - Focus on reason, critique of metaphysics and religion, technical innovation, modern science, mercantilism and capitalism and the consolidation of the nation-state, protestant reformation (1546). Gave rise to natural rights theory. (Thomas Hobbes (1588-16799; John Locke (1632-1704), Isaac Newton (1643-1727), Immanuel Kant (1724-1804))
- Industrialisation
 - Universal suffrage (liberals and working class demanding political rights): “No taxation without representation!”
 - The rise of the working class: demanding social justice
 - Workers rights (limiting working hours, child labour)

7. Political history of *rights* development

Important historical developments:

1. Resistance against feudalism: legal arbitrariness, privileges (lack of rule of law): Magna Charta 1215 in Great Britain
2. Resistance to religious prosecution in Europe after the Protestant Reformation (After 1517; Martin Luther): Lack of religious freedom and religious intolerance, religious fundamentalism, religious wars
3. Resistance to state absolutism (1500th century): Limit the kings power/defeat of Kings:
 - Glory Revolution in England (1689)
 - American Independence (1776)
 - French Revolution (1789)
4. Capitalism, laissez faire, and resistance to brute (“Manchester”) capitalism: Economic and social rights, socialism, social democracy – including political rights

Important conceptual developments:

- The emergence of the notion of **legality** and **rule of law**
- The evolution of *national citizenship* and *citizen rights*
 - T. H. Marshall. *Citizenship and Social Class and Other Essays* (1950)

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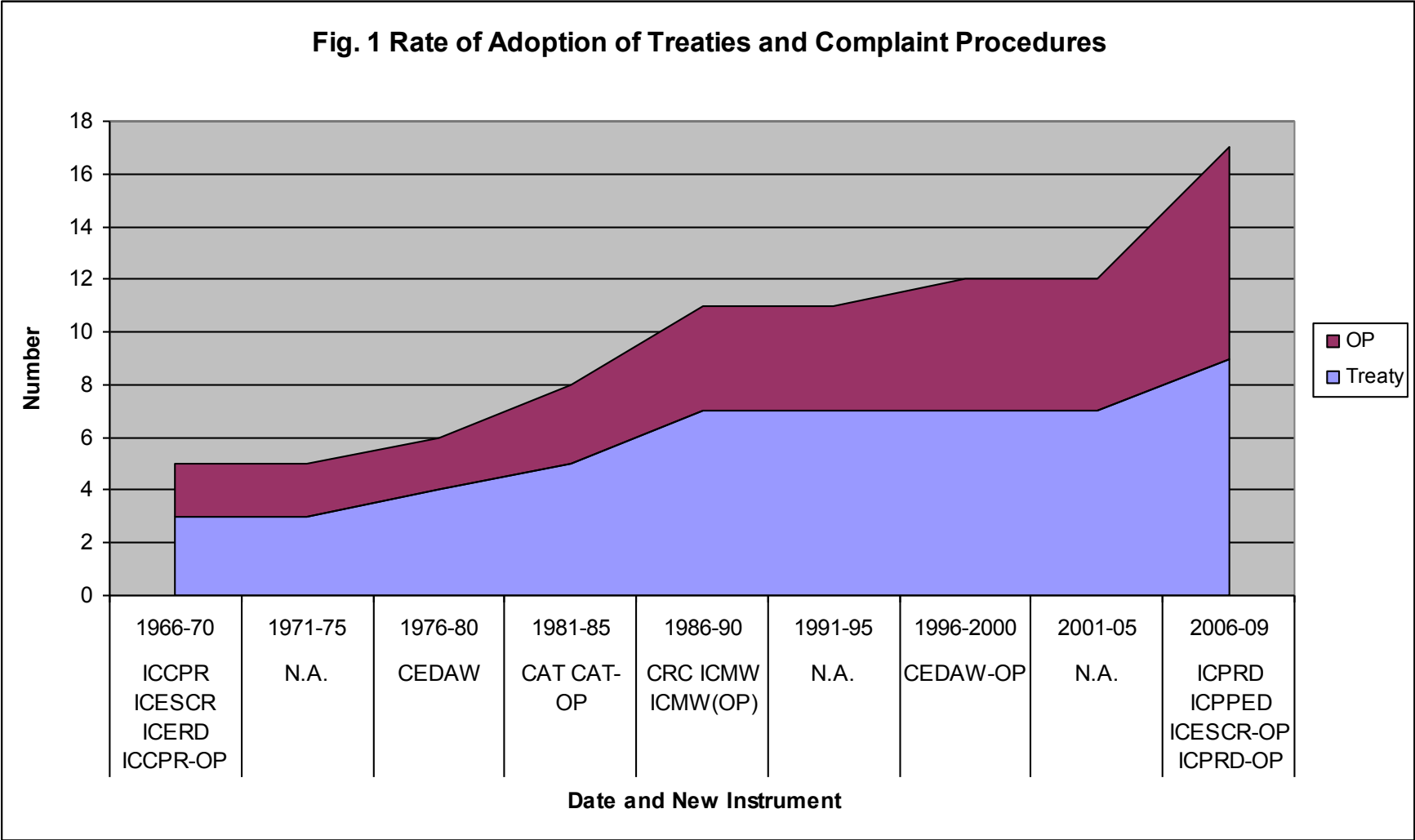
The International Bill of Human Rights after 1945

- The Second World War as context
 - Against fascism, Nazism and Japanese imperialism
 - Franklin D Roosevelt, state address in January 1941: four freedoms (speech, want, worship, fear)
 - Atlantic charter, of 1942 reference to human rights
 - Formation of the UN in May 1945 – the Charter
- The International Bill of Rights
 - The Declaration
 - The two UN Covenants

- <http://www.youtube.com/watch?v=2rDoS7XErcw>
- <http://www.youtube.com/watch?v=jNIF-77cP60>

The Rise of International Human Rights Treaties

Fig. 1 Rate of Adoption of Treaties and Complaint Procedures



- The Impact of the Cold War 1949-1989
- A negotiated package of norms and standards: “as a common standard of achievement”
- Human Rights Commissions: On its work from 1947-48 (1,5 years - remarkably short time)
- How did the Commission manage to agree?
 - » Rejecting controversial issues
 - » General and vague formulations
 - » Limitation clauses
 - » No philosophical justification
 - » Luck with the time factor – before the Cold War
 - » Skilled and well connected leadership (Eleanor Roosevelt)

The International Bill of Human Rights

- The Bill of 1948/66 (UNHR, ICCPR, ICESCR)
 - Why so long with the covenants? Colonialism and the self-determination clause
 - ICCPR and ICESCR – effective as law only in 1976 (after 30 countries had ratified the two Covenants)
- The history of the next 7 conventions, from 1969
- Why did human rights become “catchword of today” in particular from the 1970s (Moyn)? Important factors:
 - The Impact of the formation of the UN (as necessary background)
 - The decolonization process and the right to self-determination
 - Developments in the 1970s: Amnesty International, Carter foreign policy based on HR), ending of the Vietnam War
 - The ending of the Cold War (Glasnost/Perestroika in USSR 1985)
 - The process of (current forms of) globalization, from 1980s
 - Growth of the local, national and international civil society