



# THE SACREDNESS OF THE PERSON

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A New Genealogy of Human Rights

Hans Joas

Alex Skinner, Translator

Georgetown University Press/Washington, DC

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To  
*Bettina Hollstein*  
*Matthias Jung*  
*Wolfgang Knöbl*

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# PREFACE

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Readers may understand this book better if they know something about its lengthy genesis. The basic idea was directly inspired by the two books I wrote in the second half of the 1990s (*The Genesis of Values* and *War and Modernity*). I wished to test out the theory presented in the first of these books, which centers on the genesis of value commitments of all kinds, by examining a specific value system. I wanted this to be a value system that has been influenced by and has itself exerted an influence on the history of violence, to which the second book was dedicated. The history of human rights seemed an ideal choice for such a project.

But as I set about implementing this plan I found myself confronted with a problem that caused me far greater trouble than I had expected. Familiarizing myself with the extensive historical literature and getting to grips with a wide range of philosophical and theological contributions to the justification of human rights proved not just unavoidable but extremely time-consuming. This came as no great surprise. But it became increasingly unclear how, in a positive sense, I should conceive of my own contribution—which I envisaged neither as history, philosophy, nor theology. The individual chapters of the present book certainly draw extensively on major sociologists and their theories: [chapter 1](#) on Max Weber, [chapter 2](#) on Émile Durkheim, and [chapters 5 and 6](#) on Talcott Parsons. But my central aim is not just to explain historical processes of value change through the prism of social science, but to link such explanation with a discussion of the justification of these values. This approach is so far from being self-evident that it requires detailed explanation. I therefore had to supplement the historical-sociological sections with a methodological chapter. Here one author emerged as crucial, an author who has done more than anyone else to think through the problems lying at the intersection of a sociologically informed historical science and a philosophical-theological discussion of values: Protestant theologian Ernst Troeltsch, who might also be said to have pioneered the historical sociology of Christianity. I was, however, increasingly concerned that these studies were becoming unmanageable and impossible to integrate into a whole.

A number of invitations to present my ideas and discuss them with others proved extremely useful to the progress, and ultimately to the successful conclusion, of this program of study. I am truly grateful for all these opportunities, but can mention only the most important here.

At an early stage I was aided by an invitation from Susanna Schmidt, then director of the Catholic Academy in Berlin, to give the Guardini Lectures at Humboldt University of Berlin in 2002; this allowed me to impose an initial order on my ideas. I am greatly indebted to her and the discussants of the four lectures (Wolfgang Huber, Herfried Münkler, Michael Bongardt, and Wilhelm Schmidt-Biggemann). An invitation from the Forschungsinstitut für Philosophie Hannover in February 2009 to teach a so-called master class in philosophy on the topic of this book played an important role. I would especially like to thank its then director, Gerhard Kruij, and the young scholars who attended this course for this opportunity to sharpen up my arguments. Important to the book's final form was an invitation from the Berkley Center for Religion, Peace, and World Affairs at Georgetown University, Washington, DC, to hold a series of public lectures on the topic in autumn 2009. This allowed me to streamline a project that risked becoming hopelessly unwieldy. Thanks are due here to the directors of the center, Thomas Banchoff and José Casanova. In certain chapters of the book I draw on some of the ideas already set out in published essays; this is indicated throughout.

Over the last few years I have had the privilege of being invited to take up fellowships at the Swedish Collegium for Advanced Study, Uppsala, the Berlin Wissenschaftskolleg (Institute for Advanced Study), and the Stellenbosch Institute for Advanced Study (South Africa). As well as

working on other book projects, I used these fellowships to advance the present work. I am deeply grateful to the directors of these institutions and the other fellows for the excellent working atmosphere.

Bettina Hollstein, Wolfgang Knöbl, and Christian Polke read the entire manuscript and made helpful comments. It's wonderful to have such friends and colleagues. I dedicate this book to three of them with whom I enjoyed a particularly productive association during my years as director of the Max Weber Center for Advanced Cultural and Social Studies at the University of Erfurt. I am grateful also to all my other colleagues at the Max Weber Center for our time together there. Eva Gilmer at Suhrkamp Verlag has supervised the production of the original German version of this book (Frankfurt am Main: Suhrkamp Verlag, 2011) with great care and attention; my thanks to her too. I would like to thank Ella Müller and Jonas Lindner, who carefully proofread the manuscript and compiled the index following my move to the Freiburg Institute for Advanced Studies (FRIAS). And finally many thanks again to Alex Skinner, my translator, for all his efforts.



# INTRODUCTION

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This book deals with the history of human rights and the problem of their justification. But it provides neither a comprehensive intellectual or legal history nor a new philosophical justification for the idea of universal human dignity and the human rights based upon it. Anyone harboring such expectations will be disappointed. This is not for essentially trivial reasons, such as the fact that—despite all the impressive preparatory work that has been done—further in-depth research is needed for any comprehensive history of human rights. Nor is it because any of the existing philosophical justifications, those put forward by Kant, Rawls, or Habermas, for example, have rendered any new effort of this kind superfluous. The approach I am taking here is characterized by a specific way of linking justificatory arguments and history, a linkage not found in this form in histories of human rights or in philosophical treatises, a linkage moreover that these approaches do not usually seek to achieve. The ambitious philosophical attempts to justify human rights make do without history. They construct their arguments in light of the (alleged) character of practical reason and of moral oughts, the preconditions found in thought experiments on the establishment of political order, or the characteristics of an idealized discourse. A strangely tense relationship inevitably exists between such constructions and history. From this perspective it must appear strange that the timelessly valid has so rarely been recognized as such in the history of humankind. Here, the history of ideas merely presents the steps on the way to the real discovery. It becomes a prehistory consisting of tentative and imperfect efforts. Empirical history, meanwhile, becomes the mere process of moving closer toward or farther away from an ideal, unless a model of progress enables us to think in terms of gradually moving closer to this ideal in the past and continuing to realize it in the future.

Consciously or unconsciously, the writing of history is in turn often pervaded by philosophical justifications; it may also include a history of the various philosophical, political, and religious arguments and debates on human rights and human dignity. As science, however, this history must limit its aspirations to the empirical level of an appropriate reconstruction of historical processes. Through their division of labor, then, the disciplines of history and philosophy reinforce the distinction between genesis and validity, which many consider to be one of the foundations of any genuine engagement with normative questions. On this model, we are concerned either with the validity claims of normative statements or with their historical origins; historical knowledge cannot help us reach a conclusion about normative validity claims, at least not in any definitive way.

In this book, I attempt a fundamentally different approach. Perhaps historically oriented sociology, on which I repeatedly draw, can overcome this gulf between philosophy and history. The first reason for taking this approach is a negative one. I do not believe in the possibility of a purely rational justification for ultimate values. This way of putting things itself seems to me to be self-contradictory. If we are really talking about ultimate values, what exactly might any rational justification refer back to? What could lie deeper than these ultimate values and yet itself have a value-like character? Or are we to derive ultimate values from facts? These questions provide, of course, no more than a very rough indication of why I am so skeptical about philosophical attempts to justify values; I do not claim to do justice here to the great intellectual edifices aimed at the rational justification of a universalist morality. Even those, however, who share the skepticism I have expressed may shy away from its consequences because they assume that doing without rational ultimate justifications opens the door to a historical or cultural relativism or a (supposedly) postmodern arbitrariness. Human rights and universal human dignity are, however, such a sensitive topic that a shoulder-shrugging or playful stance is surely out of the question. But does giving up rational ultimate justifications really force us to embrace relativism? This concern is also inspired by the notion that genesis and validity

are clearly separable. And it is this notion that I vigorously challenge here. If issues of genesis and validity cannot be separated so sharply with respect to values, then I may also state my intentions here in positive terms. On this premise, we may construct the history of the genesis and dissemination of values in such a way that narrative and justification are interwoven within this history in a specific way. As a narrative, such an account makes us aware that our commitment to values and our notion of what is valuable emerge from experiences and our processing of them; this shows them to be contingent rather than necessary. Values no longer appear as something pregiven that we merely have to discover or perhaps reestablish. But by making us aware that our values are historical individualities, such a narrative by no means inevitably weakens and corrodes our commitment to these values. Unlike Nietzsche, I do not assume that discovering the genesis of values removes the scales from our eyes to reveal the false gods and idols we have believed in. If, with Nietzsche, we want to do justice to the interleaving of genesis and validity through a genealogy, then we can certainly produce an *affirmative genealogy* as opposed to a destructive history of origins.

This book, then, aims to provide an affirmative genealogy of the universalism of values. As objections can be raised to such a project at every stage, in the middle of this book ([chapter 4](#)) I say more about the reasons for taking this approach in some intermediate methodological reflections. It is vital to explain the idea that there are such things as universal values, what a genealogy in general and an affirmative genealogy in particular is, and much more besides. For now, all we need to know is that the concept of the “genesis of values”—developed in a previous book whose ideas the present work attempts to apply in a historically concrete way—is equally distant from the concept of “construction” and that of “discovery.” While the concept of discovery implies a preexisting realm of values or an objectively given natural law, that of construction is redolent of deliberate creation, which could scarcely engender commitment; at any rate, such commitment could be no more than a choice. The concept of genesis, meanwhile, aims to identify the genuine historical innovation represented by human rights *as* innovation, while at the same time preserving the self-evident character that such innovation may also exhibit for those involved. For those who feel bound to values, they obviously represent the good. This is not because these individuals have made a decision or come to an agreement. The metaphor of birth might be another appropriate way of expressing how something historically new may take on an unconditional quality. It is in this sense that I am concerned with the “birth,” with the “genesis,” of a central complex of universalist values and its legal codification.

Since the end of the nineteenth century at the latest, the genesis of this value complex has been subject to constant and heated debate. One of the most common, though unproductive, debates revolves around whether the origins of human rights lie in the religious or secular-humanistic sphere. One conventional view, found not so much in the academy as among the general public, assumes that human rights emerged from the spirit of the French Revolution, which is in turn considered a political expression of the French Enlightenment; this was allegedly at least anticlerical if not openly anti-Christian or antireligious. From this perspective, human rights are clearly not the fruit of any religious tradition, but rather the manifestation of resistance to a power alliance linking state and (Catholic) church, or to Christianity as a whole.

There is a kind of elective affinity between this conventional view and a secular humanism, as there is between the convictions of Christian, chiefly Catholic, thinkers of the twentieth century and an alternative master narrative. The exponents of this latter view concentrate on long-term religious and intellectual traditions. For them, the path to human rights was paved by the understanding of the human person imparted by the Gospels, and by the philosophical elaboration of this religious inspiration in connection with a personalist concept of God since the days of medieval philosophy. This narrative emerged when, in the course of the twentieth century, the Catholic Church repudiated

its original condemnation of human rights as a form of liberal individualism and began instead to vigorously defend them.

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Of course, these two views of history are not the only ones, just as there is no simple opposition between secular humanism and a self-satisfied or triumphalist understanding of Catholic Christianity. There is also a compromise position. This asserts that while the Enlightenment may have seen itself as anti-Christian, its deepest motives were in fact a consequence of the Christian emphasis on individuality, sincerity, and love of neighbor (or compassion). But my aim here is not to list further nationally or confessionally imbued variations on this theme. It is instead to set out along a new path one that takes us beyond these unproductive debates. Such a path is not only necessary because the exchange of opinions in this field has so far led to very few modifications of the original arguments on either side. More important is the fact that neither of the above positions is tenable. The conventional secular-humanist narrative is untenable for empirical reasons. This will become apparent in this book in a number of different ways. While this narrative distorts the historical reality above all of the eighteenth century, it at least has the merit of attempting to explain a cultural innovation in light of the historical period in which it occurred. The alternative history, meanwhile, cannot convincingly explain why a particular element of Christian teaching that for centuries proved compatible with the broadest range of political regimes, none of which were founded on the idea of human rights, should suddenly have become a dynamic force in the institutionalization of such rights. Maturation across centuries is not a sociological category, and even if we switch from the listing of intellectual forerunners to the level of institutional traditions, where this thesis sounds more plausible, we must keep in mind that traditions do not perpetuate themselves but are sustained through the actions of individuals. Even if we concede, at least retrospectively, that human rights may to some extent be considered a modern rearticulation of the Christian ethos, we must be able to explain why it took seventeen hundred years for the Gospel to be translated into legally codified form in this regard. I am also highly skeptical about the above-mentioned compromise position. It looks a bit like sleight of hand when something is claimed as an achievement of one's own tradition despite its having been condemned by representatives of that same tradition when it first emerged.

The message of this book is that there is a fundamental alternative to this *mélange* of narratives. The key term here is "sacrality" or "sacredness." I propose that we understand the belief in human rights and universal human dignity as the result of a specific process of sacralization—a process in which every single human being has increasingly, and with ever-increasing motivational and sensitizing effects, been viewed as sacred, and this understanding has been institutionalized in law. The term "sacralization" should not be understood as having an exclusively religious meaning. Secular content may also take on the qualities characteristic of sacrality; namely, subjective self-evidence and affective intensity. Sacredness may be ascribed to new content. It may migrate or be transferred; indeed, the entire system of sacralization that pertains within a culture may undergo revolution. The key idea of this book, then, is that the history of human rights is a history of sacralization—the history of the sacralization of the person.

We have now identified the book's two basic and intertwined motifs ("sacralization" and "affirmative genealogy"). They are intertwined because a specifically genealogical argument is necessary if justifications are to be adequate to the phenomenon of sacrality. If a commitment to values does not grow out of rational considerations, purely rational arguments may perhaps unsettle value commitments or prompt the reinterpretation of existing concepts of self and world, but they cannot themselves generate the force inherent in value commitments. This requires an affirmative genealogy.

The book begins with three historical-sociological chapters. The first explores the genesis of the

first declaration of human rights in the late eighteenth century. Here I scrutinize the conventional view of “Enlightenment” origins, but especially Max Weber’s thesis that human rights are a case of the “charismatization” (or sacralization) of reason. In light of the abolition or widespread repression of torture in eighteenth-century Europe, the second chapter sets out an alternative to the typical Enlightenment—and Foucauldian—account; namely, the sacralization of the person. This chapter also explains in more depth precisely what this means.

The genesis of human rights, and above all their subsequent dissemination and the increasing commitment to them, should not be understood as a process of cultural diffusion. Human rights might have emerged and then disappeared again. We might now be scoffing at them as a curiosity of the eighteenth century—rather like mesmerism. The third chapter deals with one segment of this history, namely, the significance of experiences of violence to the maintenance and dissemination of human rights. The historical case that I draw on here is the (American) antislavery movement of the nineteenth century. Certainly, this movement—in light of which I propose a model of the transformation of experiences of violence into mobilization to achieve universal values—and experiences of violence in general represent just one piece of the puzzle. But in the context of the sacralization of the person, we must consider not only how positive experiences that are constitutive of values may lead to a commitment to universal values, but how negative, distressing, traumatizing experiences of our own and others’ suffering may do so as well.

The historical-sociological chapters are followed by a chapter of methodological self-reflection. Here I provide detailed justification for what is merely asserted in this introduction: When it comes to fundamental values, there is no philosophical justification that may make unconditional, universal claims independently of all history, but this does not force us to adopt a relativistic perspective from which all values are merely the subjective suppositions of individuals or cultures. What I am defending here, drawing extensively on the “existential historicism” of Ernst Troeltsch, is an alternative to Kant and Nietzsche, to put it in formulaic terms, but also to Hegel, Marx, and Max Weber.

These intermediate methodological reflections bring us to a turning point in my account. If the focus so far was on the main features of an affirmative genealogy of human rights as the sacralization of the person, our attention now turns to two basic elements of the Christian (mostly Judeo-Christian) tradition, elements often claimed to have paved the way for human rights and to be essential to sustaining them. These two elements are the idea of the immortal soul of every human being as her or his sacred core, and the notion of the life of the individual as a gift that incurs obligations, which limit our right to self-determination. I do not, however, introduce these two elements as the historical “progenitors” of human rights; as the historical-sociological chapters show, the relationship between Christianity and human rights is significantly more ambiguous than rose-tinted retrospectives tend to suggest. This chapter aims to examine how, in the name of human rights and on contemporary intellectual premises in general, we might lend new credibility to these two elements of the Christian view of humanity. Such an endeavor is a prime example of the task of rearticulating a religious tradition in light of dramatic value change.

This also lays the ground for the concluding chapter. If human rights do in fact draw on cultural traditions such as Christianity, but also demand that these traditions be articulated in novel ways, the values such as universal human dignity and rights such as human rights are not confined to a particular tradition. They are also approachable in light of other traditions and under new conditions, to the extent that these traditions manage to creatively reinterpret themselves in the same kind of way that the Christian tradition has undoubtedly done. Such religious or cultural traditions may therefore discover new areas of common ground without abandoning their unique perspectives. This is the idea

behind the concept of value generalization to be discussed in this chapter, which comes from the sociological theory of social change but is applied here to a more philosophical subject matter. With the help of this concept I conclude by portraying the emergence of the UN Declaration of Human Rights of 1948 as a successful process of value generalization.

All of this will flesh out the affirmative genealogy of human rights that I seek to develop. In order to demonstrate the plausibility of a particular approach, I consider two “declarations” of human rights developed over brief spans of historical time—toward the end of the eighteenth century and after the Second World War—and two long-drawn-out processes of the abolition of phenomena that contradict the sacredness of the person—torture and slavery. This approach, and thus the structure of this book, entails the interleaving of argument and historical narrative. Pure narration or pure argument would be an easier undertaking. But logically and even aesthetically the affirmative genealogy compels us to construct neither an entirely chronological nor purely logical form. It is, however, only by putting it into practice that we can discover how persuasive this program really is.

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# THE CHARISMA OF REASON

## *The Genesis of Human Rights*

If we look at the vast literature on the prehistory and history of human rights, the defining impression is that “success has many parents.” The triumphal march of human rights is undoubtedly one of the great success stories in the realm of values and norms. Even those inclined toward skepticism in light of the many conspicuous cases of empty human rights rhetoric or the cynical, legitimizing misuse of the term will be able—to quote an old dictum—to discern in such cant a compliment to morality and its central importance. The triumphal march of human rights gives the lie to claims that the present era, or processes of modernization in general, involve only a decline in values or the loss of shared values. This very triumph, however, turns the spotlight on older “visions,” on the seeds or roots of human rights in specific (or in all) religious and cultural traditions. Efforts have therefore been made to collate emphatic statements on the dignity of human beings—all human beings—and on the duty to help the suffering whoever they may be, in all major religions—Hinduism, Judaism, Buddhism, Confucianism, Christianity, and Islam—and to declare these statements the origin of human rights.<sup>1</sup> All of these so-called world religions, at least, do in fact contain statements on the sacredness of human life, an ethos of love and universal respect. In the present era, each of these traditions has produced thinkers and activists—we need think only of Mahatma Gandhi or the Dalai Lama—who, motivated by this ethos, have intervened in modern-day struggles and striven to give contemporary expression to their religious beliefs.

But it is easy to contrast such well-meaning efforts, which make human rights appear as the historical goal toward which religious history has always been headed, with an equally plausible *conspicuous* demonstrating a persistent tendency to limit morality and notions of human dignity to the internal life of religious or political communities. There is no lack of statements to be found within religious traditions that imply that these noble principles are not to be applied to “other tribes, barbarians, enemies, or unbelievers, to slaves or manual workers,” either not at all or at least not at present.<sup>2</sup> The Christian religion as well, which is particularly frequently claimed to have laid the ground for human rights over the centuries, is still far from immune either to such limitation of its universalist potential or instrumentalization to political ends.

If we find universalist potential and particularist limitation in all these traditions, a general debate comparing these traditions is unlikely to get us anywhere. What we need to do is radically narrow down the historical explanandum; otherwise, anything and everything can all too easily be proved with cleverly selected quotations. In considering the genesis of human rights, our temporal focus must clearly be on the late eighteenth century. It was then that the first solemn declarations of human rights were made in France and, earlier, in North America. This temporal limitation to the emergence of the first codified declarations of human rights is linked with a spatial and to some extent cultural limitation. The question here is which motives and cultural traditions we might identify to explain the French and North American declarations. Few of the religions mentioned above are then of any relevance in this respect, perhaps none of them, if we believe that secular humanism played the lead role here, as is generally implied by the many references to the “Enlightenment” or to long-term philosophical or legal forerunners and precursors of human rights. In line with what I have already said, however, I emphasize that this does not mean that we must privilege a specific tradition, let alone identify all other religions and worldviews as having limited potential in this regard. It is simply the case that the innovation of a legally momentous declaration occurred for the first time within a

very specific set of historical circumstances, and that if we wish to examine the genesis of human rights, we must therefore focus on this case. This takes nothing away from later cases; but these presumably always have something to do with the reception of this first case. In this sense, the specific cultural conditions for the adoption of human rights ideas come strongly into play.

In mentioning France *and* North America we have already touched on a problem that emerges as unavoidable however radically we narrow down the question of genesis. How do we explain these two cases? What role was played by religious or antireligious motives in these particular circumstances? I cited the conventional answer in the introduction primarily because it is more or less the antithesis of the view I adopt in this book. In a nutshell, my thesis is that, far from their origins lying in France, human rights emerged in North America; that while the spirit of the Enlightenment was significant to their genesis, it was by no means necessary in the sense of an antireligious enlightenment; and that Kant's philosophy does not represent the inevitable rational justification of human rights but is instead the perhaps most impressive expression of a cultural change, though his philosophy articulated this change in highly problematic ways. To justify these countertheses and explain the emergence of human rights, I draw mainly on a debate that has been going on for more than one hundred years. This is necessary in order to reveal the problems involved in any view of the history of human rights derived from the idea of the *charisma of reason*.<sup>3</sup>

There are two good empirical reasons for believing that the conventional understanding does not provide an appropriate picture of the historical reality of the eighteenth century. The first prerequisite for correcting this picture is that we free ourselves from the myth that the French Revolution was antireligious; the second is that we pay more attention to the North American case and its particular characteristics.

## HUMAN RIGHTS AND THE FRENCH REVOLUTION

The myth of the antireligious character of the French Revolution, along with the supporting notion that the Revolution was inspired by a philosophy amounting to “a modern paganism”—as in the subtitle of Peter Gay's well-known book—has become a constituent feature of the secular-humanist worldview.<sup>4</sup> Yet the origins of this view probably lie in the polemics against the Revolution produced by reactionary clerics, aristocrats, and allied intellectuals.

In the early stages of the Revolution—and this is when the Declaration of the Rights of Man and of the Citizen was made—it was certainly not anti-Christian in character. As one writer has vividly expressed it, in the early stages of the Revolution “it seemed that no meeting could take place without invoking heaven, that every success had to be followed by a *Te Deum*, that any symbol which was adopted had to be blessed.”<sup>5</sup> The all-too-close ties between throne and altar were first loosened and then cut by the Revolution; but this does not mean there was any decrease in religious intensity. Attendance at church services seems to have increased rather than decreased during the first few years of the Revolution, as a new connection between the Revolution and the altar began to take hold: “The Festival of the Federation marking the anniversary of the fall of the Bastille, continued to be framed with religious ceremonial. Traditional Catholic feast days and processions were also widely celebrated in both Paris and the provinces, at least through the summer of 1793. Indeed, before that date, efforts by certain radicals to halt processions in Paris were roundly opposed by the population itself.”<sup>6</sup>

Of course, this changes nothing about the fact that the French Revolution led to the first state-sponsored assault on Christianity in Europe since the time of the early Roman Empire.<sup>7</sup> If this differs from the revolutionaries' original motives to a far greater extent than the conventional view implies, what might have brought about this escalation? Alexis de Tocqueville made the crucial point here as

early as 1856, when he wrote in his retrospective of the ancien régime and the Revolution,

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It was far less as a religious faith than as a political institution that Christianity had stirred these uncontrolled loathings. It was not that priests claimed to regulate the affairs of the other world but that they were landowners, lords of the manor, exactors of tithes and administrators in this world; not that the Church was unable to find a place in the new order of society about to be created but because it occupied at that time the most privileged and most powerful place in the old society which people were concerned to reduce to dust.<sup>8</sup>

The close connection between throne and altar in the prerevolutionary order was in fact crucial to what came next. This connection was not just political and cultural, in the sense that the state protected the Church from religious competitors, while the Church reciprocated with educational services. It was also straightforwardly economic. In some parts of France the Church was the largest landowner, and the revenue raised was vital to the chronically underfunded state. The Church offered young aristocrats privileged career options and an easy income. By the eighteenth century, these realities, which can only be described as abuses, particularly from the perspective of the Christian faith, had led to tensions between the lower and higher clergy and to various forms of popular anticlericalism, which must of course be clearly distinguished from hostility to Christianity.

The first steps of the Revolution in ecclesiopolitical terms involved the complete elimination of the compulsory church tax (“tithes”)—without restitution—and of the Church’s manorial rights. These measures were extremely popular among the people and were also backed by the many deputies in the National Assembly who were members of the lower clergy. A few months later, mainly for economic reasons, the Assembly passed legislation facilitating the confiscation of Church property, which was implemented after some delay. The prohibition and dissolution of religious orders also appear to have been carried out primarily for economic reasons. In retrospect, the introduction of state regulation of clerical affairs and, above all, of an oath of political loyalty for priests appears as the first stage in a religious policy that degenerated into religious repression. The background to these encroachments was, first of all, the fact that without Church property the clergy had to be funded in some other way. Guided by the vision of the nationalization of the Catholic Church, the revolutionaries saw this as an opportunity to link the state payment of priests and bishops with provisions regarding their selection by parishes and rejection of the role of Rome. There was no respect here for canon law and Church traditions; the idea of national sovereignty outweighed any notion of institutional autonomy. This greatly strained the loyalty to the Revolution of both clergy and believers. The Church was split by the requirement for an oath of loyalty that, moreover, was to be taken in public after Mass and whose correctness was to be certified by local parishes. The clergy was divided among those who were prepared to swear this oath of loyalty to the nation and those who saw it as a violation of their priestly vows. The numbers in each camp differed greatly in different regions, dependent on the religious situation before the Revolution and the people’s attitude to the Revolution in general. Oath refusers were increasingly the target of revolutionary activists’ hostility. This hostility intensified when the so-called refractors disputed the validity of the sacraments administered by priests loyal to the Revolution. These ecclesiopolitical conflicts were one of the key reasons why the Revolution escalated to the point of terrorism; it is not the case that religion was simply affected by this escalation.<sup>9</sup> In wartime (from 1792 on) hostility toward the oath refusers often took on a lethal character, as they were assumed to be accomplices of the external enemy (Austria), elevating the hatred felt toward them to hysterical heights. Refractors were now banished from their parishes, arrested and executed or forced to emigrate. Churches were closed and cult objects desecrated or destroyed, while reforms aimed to eliminate every hint of Christianity from the calendar. Even basically loyal priests were forced to marry and harassed in a variety of ways. While the Catholic Church was the main focus of these revolutionary activists’ hatred, Protestant ministers and church



buildings were no more spared than were rabbis and synagogues.<sup>10</sup>

There is no consensus about which actors were behind this generally unpopular violence. Local militants undoubtedly played a role, but it seems to have been largely the work of itinerant revolutionaries and government agents.<sup>11</sup> What is certain is that it took the inflamed quasi-millennial passions of wartime for “certain aggressively anti-religious or atheistic positions, positions advocated by a marginal fringe of eighteenth century philosophers and by a tiny minority of Parisian intellectuals early in the Revolution, [to acquire] for a time a substantially larger following.”<sup>12</sup> Tocqueville himself already stated of these activists that we can understand their rage and zeal for conversion only if we see their convictions as a kind of new religion, “barely formed, it is true. Godless, without ritual or an afterlife but which, nevertheless, like Islam, has flooded all the Earth with its soldiers, apostles and martyrs.”<sup>13</sup>

Religious life continued even at the height of the campaign of de-Christianization, though it was forced underground. Mass was celebrated without priests, baptisms were performed by believers, and religious literature was traded illegally. Women in particular defended churches and cult objects against those who sought to destroy them. The defense of religion was increasingly a unifying force for all those who felt threatened by the excesses of the Revolution. This applied all the more in the French borderlands and in those neighboring states invaded by the revolutionary armies, and was one of the key reasons for popular resistance to the reforms implemented by the French. In French society in particular, this pitted Catholic Christianity against the values of the Revolution, a polarizing development that continued to have an impact long after the collapse of the most extreme form of revolutionary rule. One of the tragic results of this escalating spiral was the intervention in the conflict by Pope Pius VI following a lengthy period of hesitation. But he no more invoked the value of religious freedom than did the French revolutionaries. Instead, in his brief titled *Quod aliquantum* of March 10, 1791, he condemned the Revolution in its entirety and the principles it proclaimed, including human rights, as blasphemous, heretical, and schismatic. This polarization triggered attempts by both sides to enhance their legitimacy through historical narratives; these were based on a fundamental opposition between faith and Revolution not found in the real history of the Revolution. This escalation and polarization were largely contingent. The antireligious campaign of 1793/4 should not be seen, either in a positive or negative sense, as representative of the Revolution and all its different stages, such as the Declaration of the Rights of Man.

But if this escalation was contingent and if the dynamics of the Revolution are best explained not in light of a closed worldview but in terms of economic and political motives and concatenations of actions, then the next stage in the correction of what I call the conventional view of history becomes far less significant. It is enough, therefore, to examine very briefly whether the Enlightenment was in fact antireligious and whether a bitter conflict between Enlightenment and Christianity paved the way, ideologically for the intense religious struggles of the Revolution. The more scholars have considered the Enlightenment in countries other than France over the last few decades, the more skeptical they have become about the notion of the Enlightenment’s constitutive areligiosity or antireligiosity.<sup>14</sup> What has emerged is that in most European countries the Enlightenment is better understood as a movement of religious reform than as an attempt to overcome or destroy religion. If we learn to understand key motifs of the intellectual and religious history of the eighteenth century without assuming a fundamental hostility to religion, these motifs emerge as aspects of a learning process internal to Christianity or Judaism, in light of which a scattered group of thinkers identified reasons for rejecting these religious traditions altogether.

But the contingency of the ecclesiopolitical escalation characteristic of the French Revolution not

only changes how we perceive the Enlightenment. It also sheds a different light on the history of Christianity in eighteenth-century France than if we view this history merely as laying the ground for the Revolution. French Catholicism before the Revolution then appears “more like the harvest of the goals and ideals of reform Catholicism than a decline announcing revolution that turned anti-Catholic.”<sup>15</sup> In many respects, the eighteenth century emerges as an age in which, particularly in rural areas, the religious knowledge of clergy and simple believers attained unprecedented levels and the internalization and individualization of religion advanced. While the alliance between throne and altar was important to the political fate of Christianity during the Revolution, there is much more to the religious dynamics of the period before, during, and after the Revolution than this political aspect.

The Declaration of the Rights of Man and of the Citizen of August 26, 1789, is unmistakably a product of the earliest phase of the Revolution. This text, which has had such a huge historical impact was in fact discarded during the more radical phases and replaced with a different one on a number of occasions. On sober reflection it is clear that the genesis of the existing version, which has increasingly taken on an aura of transhistorical validity, involves numerous contingencies. The debates on the text were broken off after a few days without having come to any real conclusion. Even now, this invites speculation about what else would have been included in the catalog of rights, such as social rights, had the debates continued as planned. The elevation of this text to the status of “spiritual center at which all the various tendencies toward a moral renewal and toward a political and social reform meet and in which they find their ideal unity” is not, therefore, entirely plausible.<sup>16</sup>

Even superficial study of the wording shows that the thrust of the text was not antireligious, which is the key question for us here. The preamble not only includes the statement that the National Assembly recognizes and declares the human and civil rights subsequently listed in detail “in the presence and under the auspices of the Supreme Being.”<sup>17</sup> Human rights as such are described as “sacred”; in Article XVII, property in particular is described as a “sacred and inviolable right.” Just one of the existing articles relates to the guaranteeing of religious freedom, though in a rather indirect way. Article X declares that “no one should be disturbed on account of his opinions, even religious, provided their manifestation does not upset the public order established by law.” This brief provision, which makes religious freedom a subordinate aspect of freedom of expression, neither excludes the possibility of a state church nor guarantees religious communities specific rights. But this stipulation certainly cannot be interpreted as antireligious.

The true core of this declaration is the affirmation of natural, inalienable, and sacred human rights with the aim of establishing a timeless yardstick for the evaluation of state institutions and actions, “in order that the acts of the legislative power, and those of the executive power, may at each moment be compared with the aim of every political institution and thereby may be more respected.” This aim of every political association is in turn described (in Article II) as “the preservation of the natural and imprescriptible rights of man,” which are listed as “liberty, property, security and resistance to oppression.” The notion of rights that precede and are superordinate to the state had a long and substantial prehistory, both in philosophy and in the political discourse of the ancien régime. In the absence of this previous history, the members of the National Assembly would surely have struggled to compose the declaration in just a few days. What is crucial, though, is not the prehistory. It is the fact that philosophically sophisticated reflections, and spontaneous or traditional articulations of perceptions of injustice, not only gave rise to a coherent whole, but undergirded the aspiration to refound the state itself. For many, it is this aspiration that puts the epoch-making character of this document of political history beyond all doubt.

Things are more complicated than this, however, in two respects. Some researchers do not simply accept the document as something complete but reconstruct the discussions that led to its specific

phrasing.<sup>18</sup> They make it abundantly clear that the Rousseauist pathos that derives sovereignty exclusively from the nation, as Article III declares—in other words the notion that “no body, no individual can exercise authority that does not proceed from it in plain terms”—arose from a specific situation. This centered on a legislative body that wished to assert its own legitimacy without questioning (in a practical sense) the monarch, who after all continued to reign, or questioning (in a theoretical sense) the ongoing possibility of a monarchist executive. This was precisely the problem: how to assert individual liberties at the same time as the legitimacy of one’s own role. Without considering its context, the text tends to be seen as far more radical than it was intended to be. Its authors did not write it as an attack on dynastic authority, but as a moderate *modus vivendi*.<sup>19</sup> The text lists a number of norms, but it does not pin down how they should be applied to reality. The language of natural rights was ideally suited to the abolition of aristocratic and clerical privileges; the concurrent emphasis on a single sovereignty left room for a monarchical executive to represent this role symbolically.

But, and this is the second complicating factor, this built into the Declaration of the Rights of Man and of the Citizen a virtually indissoluble tension between the founding of sovereignty in the nation and the protection of individual liberties, which includes protecting them against the sovereign. It may have seemed to the authors of the declaration that they had found an entirely coherent solution to this problem. On the one hand, they underlined that people could do anything they wanted that was not against the law, and that the law could only prohibit that which was damaging to society; on the other however, they declared that all citizens must obey the law unconditionally and—as stated in Article VII—would render themselves liable to prosecution by resisting arrest and so on. It is no coincidence that it was the experience of twentieth-century totalitarianisms that increasingly caused intellectuals, especially French ones, to question the coherence of this solution.<sup>20</sup> The idea of the inalienability of individual rights gives rise to a more fractured conception of sovereignty than the French declaration implies. Individuals, but also pre- and extrastate associations of individuals, do not obtain their legitimacy as a gift from the sovereign, not even if this sovereign justifies his actions in light of the general will of the citizenry. But in the declaration “the individual” and “the nation” appear as the two highest values, as if no fundamental conflict were possible between them.

The historical impact of the Declaration of the Rights of Man and of the Citizen has much to do with the open-ended and unclear way in which it identifies rights and their bearers. An increasing number of groups invoked the declaration while the Revolution was still going on, in ways its authors neither wanted nor anticipated, in order to express their ideas and interest in the form of demands. Protestant Christians, Jews, free blacks and slaves in the colonies, the propertyless, women, occupational groups excepted from full legal status such as actors and executioners—all demanded recognition as human beings in the spirit of the declaration.<sup>21</sup> All these demands had their opponents; some—such as the abolition of slavery—were bitterly resisted, implemented for a time but quickly reversed; others—such as full rights for women—were viewed, even by the most radical universalists, partly as preposterous, and partly as a danger to the life of society. What happened in this regard during the Revolution was a harbinger of disputes that continued throughout the whole of the nineteenth and twentieth centuries, making a document that might otherwise have faded into obscurity a universal point of reference.

There is one significant aspect of the genesis of the Declaration of the Rights of Man we have not yet considered; namely, the huge importance of North America as role model for the French revolutionaries. The French Revolution and the struggle of Great Britain’s North American colonies for independence were linked in a variety of ways. France even provided the American revolutionaries with military support in order to hurt Great Britain, its main political rival on the world stage. The

financial consequences of this support were one of the main causes of the fiscal crisis that helped trigger the French Revolution. Because of this support, the censors tolerated translations of American writings and travelers' accounts of the events in North America. Frenchmen fought alongside Americans; some of the most important leaders of the American Revolution such as Thomas Jefferson and Benjamin Franklin lived in Paris for a number of years and were involved in its intellectual and political life. The model for a formal "declaration" itself lay on the other side of the Atlantic. The proposal to compose such a declaration was first put forward by the Marquis de Lafayette, one of the most important military leaders and greatest heroes of the American War of Independence. We even know that he discussed his plan with the American ambassador in Paris—none other than Thomas Jefferson.<sup>22</sup> On the day when the declaration was adopted, a number of deputies met with Jefferson in his residence to clear up remaining differences of opinion. None of this is meant to imply that the declaration was a mere copy. The political situations differed in many ways, and some French revolutionaries wanted their declaration to surpass the American prototype and serve as role model for all other peoples. But there can no longer be any doubt that America played a massive role—contested in the details, but indisputable overall—as model for the French Declaration of the Rights of Man.

It was vital to demonstrate this point here in such detail because there has often been a failure to recognize it. We shall come to the second historical reason why the conventional secular-humanist narrative is untenable as soon as we take a closer look at the role of North America.

## HUMAN RIGHTS AND THE AMERICAN REVOLUTION

The point of departure for the discussion that follows is Georg Jellinek's book *The Declaration of the Rights of Man and of Citizens: A Contribution to Modern Constitutional History (Die Erklärung der Menschen- und Bürgerrechte: Ein Beitrag zur modernen Verfassungsgeschichte)*. First published in 1895, this book is widely regarded as the seminal text that initiated work on this subject.<sup>23</sup> It advanced four intriguing hypotheses.<sup>24</sup> One of the most important constitutional historians and legal theoreticians of the time, Jellinek begins by arguing that the declaration of human and civil rights in the French Revolution did not represent the ultimate wellspring of codified human rights, as widely assumed at the time. Rather, he argues, this declaration was directly influenced by, or even modeled on, the American Declaration of Independence, and the various "bills of rights" proclaimed in Virginia, Pennsylvania, and other newly independent North American states in 1776. Jellinek also contested the claim—dominant in his time—that Rousseau's "Contrat social" was the model for the French declaration. In addition, and this is the third point, he stressed that we should not overestimate the continuity between natural law and human rights, since the concepts of natural law could never have led to the institutionalization of human rights in or by themselves. There must have been a driving force behind this development, and Jellinek's fourth thesis is that this was provided by the struggles of Protestant dissenters for religious freedom in North America. With these propositions, Jellinek shifted the credit for the first declarations of human rights away from the French Enlightenment, which was seen to be skeptical or even hostile toward religion, tracing them back instead to Christian roots. He thereby provided the inspiration for a much more famous text: Max Weber's *The Protestant Ethic and the Spirit of Capitalism (Die protestantische Ethik und der Geist des Kapitalismus)*. Weber was deeply impressed by Jellinek's argument, and especially by his "demonstration of religion's relevance to the genesis of 'human rights'" insofar as it contributed to "the investigation of the scope of religious influences in general, even in areas where one would not expect to find them."<sup>25</sup>

To what extent can Jellinek's hypotheses be maintained given our current state of knowledge? In answering this question, we must constantly bear in mind three different time periods. The first period

is the late eighteenth century, when declarations of human rights were proclaimed in North America and France. The second is the time around 1900, when the question of the Christian, and specifically Protestant, roots of modernity more generally became a key subject of intellectual debate. And the third time period is, of course, the present day, from which we look back over the development of human rights and the effects of their changing historical interpretations (*Wirkungsgeschichte*). The middle period continues to be important because we are concerned here not just with historical detail and facts, but also with the interpretation of the historical process that produced human rights. For such interpretation, disputes over the status of human rights as part of modernity, such as those that occurred around 1900, are still of the utmost importance.

Jellinek's book became the subject of a heated national and international debate immediately upon publication. It was translated into numerous languages, including Russian and Chinese. Its reception in France was to prove particularly significant. French critics perceived it as a perfidious attempt to deny France's contribution to one of the most significant achievements of modernity.<sup>26</sup> One can still sense a certain degree of resistance even in Marcel Gauchet's 1989 book on the origin of the French declaration of human rights, where he concedes that "German scholarship" has shown the influence of the American declarations to have been decisive.<sup>27</sup> In Germany, Jellinek's thesis was an important point of reference for all those who wished to separate the question of human rights from the constitutional traditions of France, Germany's "historical enemy," traditions that were usually looked upon with skepticism and resentment. Here, however, Jellinek's text provoked the ire of Catholic critics, who vehemently contested any claims of Protestant superiority with respect to the historical development of freedom and tolerance. Jellinek felt that his intentions and his book were misunderstood in many respects. And indeed such petty, nationalistic, and confessional suppositions surely miss the point. Instead, it seems to me that Jellinek's work must be interpreted as an effort to move beyond the dead-end debate between historicism and the theory of natural law.<sup>28</sup> Like the historicists, Jellinek did not believe that binding metanorms for the regulation of positive law could be derived from any philosophy, not even from natural law or Kant. In this sense he remained a proponent of unlimited state sovereignty. But in contrast to many German historians of his time, especially antiliberal and nationalistic ones, he did not hold conceptions of natural law to be "idle dreams," but sympathized with the notion of a state that limited itself by law and through the positivization of individual rights and freedoms.<sup>29</sup> So he had to try to find a place for such rights within his historicist approach. In this sense, his text marks the point where historicism, becoming aware of the dangers of being turned into relativism, seeks to transcend itself. This is hardly foreign to us today. If the question of the historical roots of inalienable individual rights is not conceived of simply as a question of genesis that is completely independent of the question of their grounding and validation, then this marks a crucial point. We must then find out whether it is fundamentally possible to advance universal validity claims while remaining aware that the genesis of values is historically contingent.<sup>30</sup>

Despite all the objections that were and are raised against it, much of Jellinek's argument can now be regarded as well confirmed. He was correct not only in his emphasis on the chronological priority of the American declarations of human rights and their influence on the French declaration (though the latter was certainly no mere imitation of the American declarations). He was also correct to point out that there is a difference between theories of natural law and the legal codification of specific individual rights intended to hold for all people and removed from legislative authority. "The assertion of objective moral and legal limits to all worldly powers," writes Hasso Hofmann, agreeing with Jellinek, does not itself equate with "a theory of subjective rights. The idea of constitutional freedom and security against *illegal* tyranny is not equivalent to the human rights idea of basic,

individual freedoms and protection against *legal* tyranny.”<sup>31</sup> We must also agree with Jellinek when he rejects the view that the English legal tradition, with its codification of rights and freedoms, led directly to the declarations of human rights of the late eighteenth century, since these guarantees only applied to the traditional rights of the subjects of the English king and by no means to all people. This is not to deny entirely the influence of this legal tradition, but as the universalization of these rights is the crucial step in need of clarification, it is not enough merely to refer to this influence.

More difficult to evaluate is Jellinek’s view that Rousseau’s influence was not of constitutive significance. It would in fact be absurd to dispute that Rousseau played a role for some of the most important initiators of the French declaration, such as Sieyès. For Jellinek, Rousseau was out of the question as author of the idea of inalienable liberties that must be respected by the state because he had argued against any limiting of popular sovereignty by legislatures. But it might also be argued that Rousseau’s work itself already features the unresolved tension between collectivism and individualism mentioned above with respect to the French declaration. Rousseau, after all, is not just the author of *The Social Contract*, which is what Jellinek clearly had in mind, but also—as in the “Profession of Faith of the Savoyard Vicar” in his pedagogical novel *Émile*—the defender of an undogmatic religiosity, which by no means points in the same direction as the idea of a state-oriented civic religion. Some have deduced from this that it is quite possible to claim Rousseau as defender of religious freedom against an omnipotent sovereign. Against this, however, “the space left by Rousseau for citizens’ positive religions is determined in light of these religions’ capacity to support citizens’ ‘moral aptitude.’ ... Clearly, this proviso, which amounts to the functionalization of religion to political ends, cannot form the basis for freedom of conscience and religion.”<sup>32</sup> All these points are disputed by one author or another. If it is nonetheless correct to state that there is now a broad consensus that Jellinek was right, then the debate revolves solely around the last, though boldest, hypothesis in his book, that of the religious roots of the American declarations of human rights.

The utmost caution is necessary here. We must first demonstrate that we are not simply dealing with an intellectual background. Of course, Jellinek was aware that the belief in the dignity of all human beings had deep roots in the centuries-old Judeo-Christian tradition—though this tradition cannot be treated as an unbroken process of maturation that gave rise to modern ideas, especially when one considers how often its universalism was violated, when Jews, heretics, or native peoples were denied these same rights. The intellectual roots of human rights in Renaissance humanism, the Reformation, or late Spanish Scholasticism are generally of less help in understanding our problem than the dynamics of their sudden institutionalization. And it is here that Jellinek saw the struggle for religious freedom of American Protestants, especially (Calvinist) Congregationalists, as decisive. Although religious toleration can be observed in the most varied regimes—the enlightened absolutism of Frederick the Great in Prussia, for example, or colonial Maryland under Catholic leadership—utilitarian calculations usually formed the basis for policies of toleration. Jellinek, however, was interested in the religious roots of the struggle for religious freedom—meaning religious freedom not just for one’s own confession but for all believers. Accordingly, the hero of Jellinek’s story is the Puritan preacher Roger Williams, who left Massachusetts in 1636 for Rhode Island, where he guaranteed religious freedom not only for Christians of all sorts but also “for Jews, heathens, and Turks.” Jellinek’s central thesis is that “the idea of legally establishing inalienable, inherent and sacred rights of the individual is not of political but religious origin. What has been held to be a work of the [French] Revolution was in reality a fruit of the Reformation and its struggles. Its first apostle was not Lafayette but Roger Williams, who, driven by powerful and deep religious enthusiasm, went into the wilderness in order to found a government of religious liberty, and his name is uttered by Americans even today with the deepest respect.”<sup>33</sup> According to Jellinek, this is the source of all other

individual rights, such as freedom of opinion, of the press, and of assembly. The whole idea that individuals not only have rights within a state, but also rights against the state, and that these are not simply conferred by the state, points to a religious origin, at least if we are looking for a historical explanation.

Our current state of knowledge necessitates three corrections to Jellinek's fourth thesis. The first comes from none other than Ernst Troeltsch. In contrast to Jellinek, for him it was not the Calvinists but the Baptists, Quakers, and certain types of free spirituality—the “stepchildren of the Reformation” as he famously called them—who helped win acceptance for a religiously founded idea of religious freedom, as he argued in his great work, *The Social Teachings of the Christian Churches (Die Soziallehren der christlichen Kirchen und Gruppen)*. “The only real source of toleration is that individualistic form of spirituality which considers that all external religious forms are merely relative; the only Calvinistic element in this point of view is the feeling that the state has no right to interfere with religion.”<sup>34</sup> Jellinek himself accepted this correction in the third edition of his book, albeit a little reluctantly.

The second correction relates to the claim—historicist in the negative sense—to have found the seedbed of all human rights in religious freedom. This view cannot be defended. It certainly does not apply to France. Nor did religious freedom exist in most of the North American colonies or states. Indeed, it was not until the twentieth century that the separation of church and state at the national level was legally secured in the various states of the union. The historical codification of human rights was, of course, generally affected by the opportunistic and strategic considerations of social actors, by constellations of power, and by structures of opportunity. While it is true that the legal recognition of freedom of religion and conscience represents the first form of universal human rights, and represents in a sense the logical structure of all such rights, we should by no means ascribe to this legal recognition of one specific human right an autonomous causal power or overestimate its significance in the late eighteenth century. To do so would be an injustice to the actual dynamics of institutionalization.

At the same time, however—and this is the third correction—we should not underestimate the role of religious interpretations and motives at this time either. What we need to do is abandon this undialectical opposition of two explanatory hypotheses, one that identifies the source of human rights as American Protestantism, the other the French Enlightenment. Troeltsch, much more than Jellinek, recognized the transformative effects that Enlightenment thought exerted on Protestant Christianity in North America. In a well-known phrase, Americans in the eighteenth century learned their Enlightenment from the pulpit.<sup>35</sup> Conversely, there were also affinities between certain forms of Christian spirituality and Enlightenment rationalism. For Troeltsch, admixtures of this sort were nothing new. In his opinion, the entire history of Western culture was characterized by an interplay between the Christian idea of love and conceptions of natural law. Current work on the historical genesis of the American Declaration of Independence shows vividly just how impossible it is to draw any clear boundaries in America's Puritan-Enlightenment synthesis.

The statements with which the American Declaration of Independence begins have taken on an almost sacred character in the American political and legal tradition, but also in the history of human rights: “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 . . .”<sup>36</sup> Yet despite the aura that has come to surround it, this text should not be read as though Thomas Jefferson received it from the hand of God like a latter-day Moses.<sup>37</sup> It is in fact the outcome of a collective process and came into being in difficult

circumstances that did not allow leisurely composition. The second Continental Congress, held in Philadelphia, tasked not Jefferson but a committee of five members with composition of a declaration on the topic of independence (*on* rather than *of* independence). These five then asked Jefferson to produce a first draft; neither the instructions that the Congress gave its committee nor those the committee gave Jefferson have survived. In his haste, Jefferson drew on a number of documents, some of which he himself had written, some of which were composed by others. Initially, in view of the subject matter of the declaration as a whole, the preamble, which was to prove so crucial to the document's effective history, was most likely of secondary importance. The aim of the document was to establish a consensus within the colonies on the legitimacy of efforts to achieve independence and to garner greater sympathy for these efforts abroad, especially in France. When the draft, mainly composed by Jefferson, was presented to the plenum of the Continental Congress, to Jefferson's disappointment the members set about revising it substantially. The text was shortened by a quarter; several references to God as the supreme judge and the protection of divine providence were added to the text. So the final text cannot simply be put down to Jefferson's worldview.

Why are these details important to answering our key question as to the religious or secular origin of human rights declarations? Simply because they demonstrate to us that we cannot answer this question merely by referring to Jefferson's personal convictions. There is no doubt that Jefferson himself was a deist and that, like the contemporary Freemasons, he was a Christian only in the very limited sense that he accepted Jesus's teachings in a moral sense without viewing him as divine. In this, however, he was not representative of others—not even all the leaders of the American Revolution, let alone rank-and-file revolutionaries or the majority of the population. For them, the religious revivalist movements that preceded the Revolution were central. These established an overarching intellectual and spiritual framework that encompassed the various colonies, without which the revolutionary uprising seems almost unthinkable.<sup>38</sup> So it is more appropriate to refer to an alliance between a quasi-Pietist mass movement and an Enlightenment-rationalist elite—featuring a wealth of intersecting and transitional phenomena as well as a willingness to forge alliances on all sides. There were also simple pragmatic motives, particularly in the religio-political field; so there was a restrained approach to spreading one's faith beyond the borders of one's colony in order to encourage similar restraint from others. Jefferson in particular was willing to make alliances and accepted amendments to his text even if these deviated from his personal beliefs. As the struggle for independence entered this dramatic phase, when it was still unclear how the military conflict would turn out and whether all those responsible for the Declaration of Independence would end up being condemned for high treason, what mattered above all else was to secure the consent of the American people. Jefferson was aware that they would give their consent only if they had the sense of acting justly in the eyes of God. So the Declaration of Independence cannot be clearly classified either as deist or Christian. Neither group wished to exclude the other. What was needed was a language that was understandable to both sides and could inspire their allegiance. So all those who discern traces of both Enlightenment rationalism and biblically grounded Christian faith in this text are correct; but all those who see just one or the other are wrong.<sup>39</sup> Jellinek requires correction in the sense that the American declarations have religious roots, but not exclusively so. Though other human rights do not emerge organically from religious freedom, it is true that in the America of the late eighteenth century this was “viewed as the ‘first freedom’, as the most significant of liberties, which forms the foundation for the rest of the constitution.”<sup>40</sup>

If true, this thesis has important implications for our understanding of modernity, of which human rights are incontestably a part. It destabilizes the view that the development of human rights is part of a larger process that has been called the sacralization or charismatization of reason. For some authors



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