

# Against the Historiographical Hierarchization of Human Rights

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*Social and economic rights have often been considered part of so-called ‘second-generation rights’ – falsely, as Steven L. B. Jensen argues. Instead, he calls for a new historiography of social rights. A conversation about tensions in the history of social rights, political practice and historiography of human rights, and the ‘intimacies of international law’.*

**Dear Steven, in your book [Social Rights and the Politics of Obligation in History](#), co-edited with Charles Walton, you and your authors contradict the narrative that social rights are ‘second-generation rights’. You argue that this is a myth. To start our conversation: can you explain why that is the case?**

In short, the idea of the Three Generations Theory of Human Rights is a fake theory that emerged in 1977 out of UNESCO. The longer answer is that it was an unfortunate attempt to synthesize contemporary developments from a late 1970s vantage point. The theory then took on a life of its own over the ensuing decades. You may be surprised how prevalent it has been – explicitly or implicitly – with a damaging impact on how we conceive of human rights and how we have understood their history. The problem is the type of historical understanding it inspired, namely a hierarchization of human rights and a delegitimization of social and economic rights.

My co-editor Charles Walton is a specialist on the French Revolution during which debates on social and economic rights were certainly present and [politically significant](#). He saw clearly how misguided the theory was from this vantage point.

I am a historian of the 20<sup>th</sup> century and saw the same. We came together from these different historical perspectives agreeing that we needed to undo the ‘second-generation rights’ idea. It was made easier by the fact that upon closer scrutiny of how the theory was developed it just collapses. After doing this, we could then start on our larger project – to develop a new historiography of social and economic rights emphasizing their long history and the trajectories up to present-day. That is essentially what our book does – starting with [our opening chapter](#).

**How did this myth come about? Why were social rights subordinate to civil and political rights for such a long time? Or, to quote a question that you cite in your book (p. 9): ‘why have social rights become “the Cinderella of the human rights corpus”?’**

There are several questions here – each deserving attention. The question on the relationship between the different human rights categories – and the issue of subordination – needs a much more elaborate response compared to what is

possible here. The myth of the “second-generation rights” gained traction, I would say, because it was a narrative that fitted the ideological transformations of the era and how this (re-)positioned the West, the Communist and the Global South in the post-colonial era. Ironically, the 1970s was a decade when human rights seemed to have lost their history. I mean that in the following sense. In 1969, the UN published a major report on social and economic rights that presented them with a long history. Eight years later, that history gets dramatically shortened by a UN agency pitching an arbitrary idea of human rights history. This is of course a more symbolic argument to get at an answer to your question. Although the dramatic shifts between the 1960s and the 1970s are very real in terms of changes in international politics, economics and law.

It is clear to me that social and economic human rights also served as critical enablers for advancing work on civil and political rights in the early decades of the international human rights project after 1945. We need to allow these aspects of the larger story catch up with existing understandings and from there we can change the Cinderella narrative that you alluded to above. It will imply taking of the Cold War lens that has influenced the readings of post-1945 international politics and see other, more complex patterns that were always at play and defined what internationalism meant in more concrete terms and in institutional processes.

**In your anthology, you and your authors examine the development of social rights, following a broad definition, since the Middle Ages. In a nutshell: What continuities and changes can be identified?**

A fruitful way of thinking about the continuities and ruptures in social rights over the ages is to focus on three tensions: 1) social rights and their relationship to law; 2) social rights and the problem of obligation (which set of obligations is most important); 3) social rights and political economy.

A first tension is the way that the obligation to help others in society to achieve well-being moves in and out of law: Before the eighteenth century, [charity was a legal obligation](#). A person of means dodged this obligation at their own moral peril. It's easy to overlook this since the term 'charity' is still used but has different valences today (much more voluntary). So the continuity is that societies have always had moral obligations related to care and well-being, but the way that this obligation has been managed has moved in and out of the sphere of the judicial system.

A second tension running through the long history of social rights is which set of obligations gets foregrounded: is social assistance premised on the recipient upholding an obligation as a condition of that assistance (the deserving/underserving poor idea, which came into being with the Protestant Reformation and spread during the modern secular era) or is the obligation to help others the main focus of 'duty-talk'?

A big 'modern' change to social rights is the invention of political economy.

Beginning in the late 18<sup>th</sup> century, social rights could be imagined as being achieved through proper economic policies, which unlock society's potential to provide fair

shares for all. I like how our book moves through the different centuries to try and capture this story.

Our book also gives significant attention to the post-1945 internationalization of human rights. I would say that the 1970s is an important rupture in this story but maybe not quite the way we have thought about this. The decade of the 1970s has often been described as a “human rights revolution” as a lot of evidence seemed to point in this direction. I would argue that the 1970s contain a parallel narrative of a “human rights contraction” with a delegitimization of social and economic rights – a legacy that we still live with today. This interpretation draws on a more detailed investigation of their importance to the larger international human rights project during the 1950s and 1960s. This version of the story – [a nuancing corrective](#) – is only beginning now to be written.

An important part of responding adequately to your question about continuities and changes involves a willingness to rethink the temporal ordering of human rights history.

**You are a political/diplomatic historian of international law, but you also have a background as a practitioner, inter alia as a former UN civil servant. That’s very interesting for our interview series. Has this close perspective to political practice influenced your scholarly work on how to write histories of social rights?**

Absolutely. I have worked with global health since the beginning of the 2000s, mainly with the global response to HIV/AIDS. This includes a number of years with UNAIDS (the Joint UN Programme on HIV/AIDS) as well as in other capacities. It has greatly influenced my academic work. I have my formal education (BA, MA, PhD) but I would not hesitate to say that my real education comes from what I over the years have learned from persons living with HIV, LGBTQ+ persons, sex workers, drug users and other representatives from the communities from all around the world involved with the response to HIV and AIDS. I owe them a tremendous debt of gratitude for the ways they taught me “to see.” I regard them to be among the greatest makers of international public policy in this century. The health and human rights movement has been one of the few successes the international community has had in the 21<sup>st</sup> century – as a site of learning it has been formidable.

As a former UN staff member, I obtained an in-depth understanding of how agenda items and issues move through the different multilateral institutions and governance structures and how the whole UN ecosystem operates and the many ways it leaves its traces. This helps when navigating failures and successes in normative and political processes that can have both short and very long lifespans before they reach a form of conclusion. International lawyers will often want something more consolidated (a treaty or a declaration adopted) to draw legal interpretation from. As a historian, I have the advantage that failed normative or legal projects can still be important if I can show political significance on broader processes. All of this was crucial in the work on my 2016 book [The Making of International Human Rights. The 1960s, Decolonization and the Reconstruction of Global Values](#). It remains

important. My experience has therefore provided both methodological, interpretive and communicative benefits.

**Currently, you are working on a new book project on social and economic human rights in 20th century international politics. What role does the interplay between law and politics, and, as you call it, the ‘intimacies of international law’ play in this context?**

Firstly, this remains such an under-explored topic historically. We should be careful drawing to far-reaching conclusions without having explored this adequately. I certainly see a different history emerging that offers an important re-balancing of our narratives.

There is such a dynamic interaction between law and policy at different levels in this story. I should say that my main attention is on the processes of making conventions, declarations and resolutions and the institutional and diplomatic dynamics involved rather than an interest in jurisprudence and court practices that emerge later. What becomes clear is that the social and economic rights story is more than a human rights story. It is in significant ways a story of the role, mandate and meaning of international organisation at least for the post-1945 era and thereby also a story of international politics.

This again points to the dynamic interfaces and fluidities between the domestic and international levels. It becomes increasingly clear how the international law story is not just a trickle-down story but one also with domestic and bottom-up influences shaping normative and legal developments. This opens up a significant space for politics in the specific processes of shaping international law in terms of chronology, accentuations and the factors that lead to normative agreements or consolidation. This means that you as a scholar have to be attentive to a lot of different geographies and the histories embedded herein (e.g. the 1953 Bantu Education Act in South Africa or domestic [political visions in late colonial Jamaica](#) because of the wider international significance they would come to represent). The UN setting is a crucial vantage point from which to navigate this as the diplomatic negotiations offer a guide for this approach. It is not by coincidence that human rights history became one of the “paradigmatic sites” for the transnational history approach that emerged during the 2000s.

I have previously written about the shift [from the normative to the transnational](#) as a methodological approach in human rights history together with Roland Burke. Today, I would argue that another dimension needs to be added, namely the need to capture the intimacies of international law. My current book project has made it clear to me how close we get to the most intimate spheres of human experience in the processes of drafting international human rights law in UN meeting rooms – processes that otherwise in so many ways feel so distant to so many. It may seem contradictory what I am saying here but my source work pushed me more and more in this direction.

I have been grappling with how to frame or capture this question of intimacies because the task is both methodological and interpretative. Eventually, I found help

for the latter from the young French novelist Edouard Louis who eloquently has spoken about the relation between political decision-making in the socio-economic domain and our physical and intimate histories and how that informs his writings. I am seeing what I also label “global intimacies” informing decision-making processes in the evolution of international human rights law. It is part of the dynamics of international organisation. I am trying to capture this in the book project that I am currently working on.

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