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Why the neglect?

Social rights and French Revolutionary historiography *

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Abstract

Despite the growth of 'human rights' history in recent decades, the subset of social rights has been largely neglected. To the degree that social rights – to food, work and education – are acknowledged, they tend to be treated as 'second generation rights' – as mid twentieth-century additions to the corpus of civil and political rights stretching back to the eighteenth century. This essay shows that debates over social rights also stretch back to that period. The author discusses why historians of the French Revolution have largely neglected social rights. One reason has to do with post Cold War conceptions of human rights, which stress their liberal rather than socioeconomic content. Another has to do with the tendency to subsume the 'social' within liberal political economy. In their effort to recast revolutionaries as 'social liberals' – as supportive of markets and welfare – recent historians have obscured the deep tensions among revolutionaries over social rights and how to finance them.

The history of human rights has become a flourishing field of inquiry in recent decades, replete with its own journals, book series and historiographical debates. One of those debates concerns origins. Are human rights an invention of the twentieth century – the product of a post World War II consensus? Or do they stretch back to the early modern and Enlightenment periods? Another debate turns on their global spread. Did this occur with the United Nations' Universal Declaration of Human Rights of 1948 or only later upon decolonisation in the 1960s, the rise of

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the United States' human rights agenda in the 1970s or the creation of international tribunals to adjudicate for genocide in the 1990s?¹

Answers to these questions are still fluid, but one thing is certain: the boom in human-rights history is a post Cold War phenomenon. The collapse of communism in Eastern Europe and the Soviet Union between 1989 and 1991 accelerated the turn towards human rights in international law and global ethics in the 1990s. The 'human rights' zeitgeist spread to the humanities and social sciences, including the discipline of history.

Blind spots and myths

The post Cold War context influenced how historians approached the study of human rights. It shaped which rights they considered and which they neglected. Among those receiving little attention were economic and social rights ('social rights' hereafter): to subsistence, work, education and, more recently, health. Despite the inclusion of social rights in the UDHR of 1948 and despite their long history, they scarcely appeared in the literature.² Not that the themes encompassed by social rights were ignored. There were many histories of poor relief, work, education and healthcare. But these themes were rarely framed as human rights issues. Historians tended to focus on civil and political rights, such freedom of speech and religion, the abolition of torture and slavery, and those pertaining to women and minorities. Rights involving freedom and civil equality were emphasised; those involving social justice were not.

The neglect of social rights in human rights scholarship had much to do with conservative and neoliberal inflections of the 'rights talk' of the last two decades of the twentieth century. As Daniel T. Rodgers observes, in the United States of the

¹ S. L. B. Jensen, *The Making of International Human Rights: the 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge, 2016); the case for the 1970s is made by S. Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA, 2010) and S. Moyn and J. Eckel (eds.), *The Breakthrough: Human Rights in the 1970s* (Philadelphia, 2013); for the legal consolidation of international human rights in the 1990s, see J. Donnelly and D. J. Whelan, *International Human Rights*, fifth edition (New York, 2018), esp. chapter 1.

² The contributors to a special issue of a recently founded journal on human rights and humanitarianism have attempted to rectify this neglect; see *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 3 (Winter 2012).

1980s, 'Conservatives' fears that aggressive human rights advocacy might [...] play into socialist demands for economic and collective rights retreated as conservatives learned how to mobilize human rights rhetoric for their own politically compatible ends.'³ Silence on social rights made human rights 'safe' for globalisation, at least in the Global North, where economic development eclipsed, or stood in for, social rights. In *Not Enough: Human Rights in an Unequal World*, Samuel Moyn observes that, in this period, 'proposals to heed the importance of economic and social rights were, if noted at all, treated as interferences with the development agenda.'⁴ While NGOs in the Global South in the 1990s did, in fact, take up the cause of social rights, the only northern NGO to do so was the Centre for Economic and Social Rights, founded in New York in 1993.⁵

If social rights were marginalised in human rights advocacy in the post Cold War period, they were all but invisible in human rights histories. The neglect is discernible in histories of France, a country that helped pioneer the modern rights tradition. Olwen Hufton's edited collection of lectures on *Historical Change and Human Rights* of 1996 makes no mention of social rights – a surprising omission given that she herself is a specialist of eighteenth-century poverty and charity.⁶ Dale Van Kley's edited collection on the history of the Declaration of the Rights of Man and of the Citizen of 1789, published in 1994, is also silent on the subject of social rights.⁷ Nor can this omission be attributed to the fact that social rights were absent from the 1789 document since, as Marcel Gauchet had already observed, they were widely proposed in 1789, well before they appearance in the Jacobin Constitution of 1793.⁸ But neither the 1789 proposals nor the 1793 Constitution received much attention from historians of human rights in the post Cold War period.

³ D. T. Rodgers, *Age of Fracture* (Cambridge, MA., 2011), 251.

⁴ S. Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA, 2018), 192.

⁵ *Ibid.*, 195.

⁶ O. Hufton (ed.), *Historical Change and Human Rights: The Oxford Amnesty Lectures* (New York, 1996).

⁷ D. Van Kley (ed.), *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789* (Stanford, 1994).

⁸ M. Gauchet, *La Révolution des droits de l'homme* (Paris, 1989), 96.

A notable exception can be found in Jean-Pierre Gross's *Fair Share for All: Jacobin Egalitarianism in Practice* (1997), which appeared in two expanded editions in French in 2000 and 2016.⁹ Unlike the other institutional histories of revolutionary welfare, several of which appeared in the 1990s and 2000s, Gross's study (discussed further below) links welfare, progressive taxation and other social policies to revolutionary debates over natural and constitutional rights.¹⁰ But Gross is the exception that proves the rule. He never entered the historical profession. After receiving his *doctorat d'état* under the direction of Albert Soboul and Marcel Reinhard in 1972, he worked as an international functionary in the Global South (Africa and Latin America). He conducted his research on the margins of academia, and it appears that his experience working in countries where social rights were recognised shaped his thinking on the French Revolution.¹¹

Even when post-Cold War historians of human rights acknowledged social rights (usually in passing), they tended to treat them as 'second generation rights' – as twentieth-century additions to the corpus of civil and political rights of the late eighteenth century. But the generational theory of human rights development, common in the scholarship today, is a myth. It first appeared in an article by the human-rights scholar and legal advisor to UNESCO, Karel Vasak, in 1977.¹² Vasak did not go far in fleshing out this theory, and he could have derived it from the social rights 'talk' of the 1940s. Franklin Delano Roosevelt's 'Second Bill of Rights' speech of 1944, George Gurvitch's *Bill of Social Rights* of 1945, and T. H. Marshall's *Citizenship and social class* of 1950 all presented social rights as much needed supplements to the corpus of civil and political rights passed down from the late

⁹ J.-P. Gross, *Fair Share for All: Jacobin Egalitarianism in Practice* (Cambridge, 1997).

¹⁰ The most thorough institutional study of French Revolutionary welfare is C. Duprat, *Pour l'amour de l'humanité: le temps des philanthropes*, vol. 1 (Paris, 1993). See also I. Woloch, *The New Regime: Transformations of the French Civic Order, 1789-1820s* (New York, 1994) and L. DiCaprio, *The Origins of the Welfare State: Women, Work, and the French Revolution* (Urbana and Chicago, 2007).

¹¹ Latin America has long been seen as a driver for social rights throughout the twentieth century. The drafters of the UDHR drew inspiration from Latin American constitutions, which included them; J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, 1999), chapter 6, esp. 192-193.

¹² S. L. B. Jensen, 'Putting to rest the Three Generations Theory of human rights', *Open Global Rights*, November 15, 2017, at www.openglobalrights.org/putting-to-rest-the-three-generations-theory-of-human-rights/, consulted on 28 August 2018.

eighteenth century. The drafters of the UDHR also regarded them as new.¹³ In any case, Vasak's generational theory soon became common wisdom, especially in human rights law and advocacy. It persists today.

Although historians do not invoke the generational theory explicitly (probably because of the discipline's general aversion to 'progress' narratives), they often sneak it into their accounts anyway. In *Dreams of Peace and Freedom: Utopian Moments in the Twentieth Century* (2006), Jay Winter claims that the appearance of social rights in the UDHR of 1948 demonstrates that 'the twentieth century went beyond the eighteenth.'¹⁴ In *Inventing Human Rights: A History*, which focuses mostly on the eighteenth century, Lynn Hunt introduces social rights only at the end of the book, in a brief passage about the UDHR of 1948.¹⁵ She sees their emergence as proof of the inherently expansionary potential of the eighteenth-century concept of human rights. Arguably, however, discussions about social rights during the French Revolution would bolster her thesis. Drawing on cognitive neuroscience, she maintains that human rights grew out of an Enlightenment culture of empathy. Sentimental novels about social injustices and grisly accounts of torture, she explains, 'had physical effects that translated into brain changes and came back out as new concepts about the organization of social and political life.'¹⁶ Human rights were among the new concepts.

Since we cannot examine eighteenth-century brains, Hunt's thesis can only be speculative. If we accept it, however, wouldn't it go further to account for the rights declaration prefacing the Constitution of 1793, which included social rights, than it does the declaration of 1789, which excluded them. Hunt does not discuss the 1793 Constitution. Her narrative leaps from the extension of universal male suffrage in 1792 to the abolition of slavery in 1794.¹⁷ Yet, it was in 1793 that the most contentious debates over *droits sociaux* (revolutionaries used the term) took place. Moreover, a case could be made that her 'empathy' thesis better explains the

¹³ Morsink, *The Universal Declaration of Human Rights*, esp. 222-232.

¹⁴ J. Winter, *Dreams of Peace and Freedom: Utopian Moments in the Twentieth Century* (New Haven, 2006), 117.

¹⁵ L. Hunt, *Inventing Human Rights: A History* (New York, 2007), 207.

¹⁶ *Ibid.*, 33.

¹⁷ *Ibid.*, 149.

rise of humanitarianism in the nineteenth and twentieth centuries than it does the rights of 1789. After all, it is easier to argue that humanitarian responses to slavery, poverty and genocide sprang from empathetic sentiments than did many of the principles of the 1789 rights declaration, such as free speech, the general will and, most importantly for revolutionaries, property rights.

Hunt is not alone in passing over the social rights of the French Revolution and situating their emergence in the twentieth century. Most human rights historians in the post Cold War period do so. Why this neglect? Part of the problem owes to the tendency to associate 'human rights' with 'natural rights'; and since natural rights went into decline in the nineteenth century, it is easy to overlook the struggles over social rights.¹⁸ But social rights have lineages that go beyond the natural right tradition, as this special issue shows. Although the radical French revolutionary François-Noël Babeuf would link the two (as Stéphanie Roza shows in her contribution), many revolutionaries distinguished between *droits sociaux* and *droits naturels* during the constitutional debates of 1793. The consensus at the time (to the degree that there was one) held that natural rights were the imprescriptible rights of the individual, while social rights *and duties* were those of the citizen in society. But in stressing the 'natural right' origins of human rights and ignoring other conceptual frameworks, historians have failed to appreciate the importance of the debates over social rights between the Declaration of the Rights of Man and of the Citizen of 1789 and the Universal Declaration of Human Rights of 1948.

The contributors to this special issue of *French History* seek to redress this neglect. It is our view that, even if social rights did not achieve international legitimacy until the mid twentieth century, they were very much part of historical struggles over rights throughout the modern period. We thus concur with Michael Freeman's passing observation that it is common, but erroneous, to assume that social rights were not thought about before 1948.¹⁹ We also believe that, contrary to what the generational theory of rights development suggests, the history of social

¹⁸ J. Waldron, 'The Decline of Natural Right' in A. W. Wood and S. S. Hahn (eds.), *Cambridge History of Philosophy in the 19th Century (1790-1870)* (Cambridge, 2012), 623-650.

¹⁹ M. Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge, 2011), 36.

rights is not one of linear progress. Social rights have moved on and off political radar screens since their inception. Nor does their history map neatly onto left wing politics. As we show, socialists proved to be wary of social rights, dismissing them as 'bourgeois' claptrap, just as conservatives could end up advancing their cause, sometimes without intending to.²⁰ The task of the historian, in our view, is to explain why social rights, which appeared at the same time as civil and political rights in the late eighteenth century, have failed to garner the same recognition and legitimacy as civil and political rights in the modern period. Answering this question – why social rights have been 'less equal' than other rights, to borrow Roland Burke's pithy spin on George Orwell – might offer clues as to why they have been marginalised and neglected by post Cold War advocates and scholars.²¹ Among its other objectives, this special issue offers insight into how a historical concept – social rights – turned into a historiographical blind spot.

'Wrong' rights and historiographical amnesia

As problematic as the generational theory of human rights may be, the scholars who subscribe to it generally look upon social rights favourably. They see them as welcome additions to the eighteenth-century rights corpus rather than perversions of that corpus. But the latter view – that social rights are the 'wrong' rights – appears in at least one recent history of human rights in modern France. In his *Between Justice and Politics: the Ligue des droits de l'homme, 1898-1945* (2007), William Irvine expresses scepticism about social rights. His views echo those found in several Cold War liberal critiques of social rights. Between the 1950s and 1970s, Isaiah Berlin, Hannah Arendt and Maurice Cranston all argued that social rights were philosophically flimsy and politically dangerous.²² Irvine echoes this view in

²⁰ For the conservative origins of European Human Rights Convention, see M. Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (New York, 2017).

²¹ R. Burke, 'Some Rights Are More Equal than Others: The Third World and the Transformation of Economic and Social Rights', *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 3 (Winter 2012), 427-448.

²² I. Berlin, *Liberty: Incorporating Four Essays on Liberty* (Oxford, 2002); H. Arendt, *On Revolution* (New York, 1963), esp. chapter two 'The Social Question', 49-105; M. Cranston, *What are Human Rights?* (London, 1973), esp. 65-71.

his study of the French Human Rights League. Founded in the heat of the Dreyfus Affair in 1898, the League operated until the collapse of the Third Republic in 1940. Over the course of its existence, it became mired in internal debates over the scope of rights and the best strategies for achieving them. Irvine faults the League (which included René Cassin, who would draft an early version of the UDHR) for conflating human rights and left wing politics. ‘The League ought to have been spared these confusions,’ he opines. Its ‘guiding principle was not the various and conflicting traditions of the French Left but the Declaration of the Rights of Man and of the Citizen of 1789.’²³ Irvine concedes that ‘the Declaration [of 1789] was not without its shortcomings,’ especially ‘with respect to the best way to organize society and the economy’. But he adds, somewhat contradictorily, that such matters ‘were – and remain – essentially political questions’, not questions of justice.²⁴ He thus takes the 1789 declaration – ‘a remarkably lucid document’ – as the definition of legitimate rights and dismisses social rights on the grounds that they do not appear in it.²⁵

One wonders how the conclusions of Winter, Hunt and Irvine might differ had they acknowledged French Revolutionary social rights. Winter’s twentieth-century ‘utopia’ might end up being a recycled eighteenth-century one; Hunt’s ‘empathy’ thesis might explain the Jacobinism of 1793 more than the liberalism of 1789; and the bitter disputes within the Human Rights League over how to achieve social justice might constitute just another chapter in a centuries-long struggle to establish the legitimate scope of human rights. Be that as it may, what is striking in these post Cold-War histories of rights is the amnesia: they all forget the eighteenth-century story of social rights.

I refer to this neglect as ‘amnesia’ because throughout most of the twentieth century it was taken for rote that the French Revolution had created liberal and social rights. Sympathisers and critics of the latter agreed on this fact. Marxist historians, who dominated the field between the 1920s and 1970s, wove this view

²³ W. D. Irvine, *Between Justice and Politics: the Ligue des droits de l’homme, 1898-1945* (Stanford, 2007), 215.

²⁴ *Ibid.*, 215-16.

²⁵ *Ibid.*, 215. Irvine refers to the social rights in the 1793 document only once, qualifying them as giving ‘only a marginally more social flavor’ than the 1789 document, 22.

into their 'class' narrative, which contained something of a compressed generational theory of its own. According to the narrative, the bourgeois revolution of 1789 inaugurated civil and political rights; social rights were added four years later in the proto-'proletarian' revolution led by the *sans-culottes* and radical Jacobins.

One of the earliest versions of this narrative appeared in *Histoire socialiste de la Révolution française* (1901-1904), written by Human-Rights-League founder and leader of the French Socialist Party, Jean Jaurès. Unlike some on the left who dismissed rights as 'bourgeois', Jaurès believed in them. He took the 1793 Constitution, with its liberal and social rights, to be a model for the Third Republic. The demise of that constitution in the Revolution (it was suspended in October 1793 for the duration of the war and jettisoned in the rights declaration of 1795) did not prove that its principles were unviable. 'Was the Constitution of 1793 doomed to fail? Was it not possible to implement it? It *was* possible, and one searches in vain to find in its principles and mechanisms reasons for the failure of its implementation'²⁶

Fifty years later, Hannah Arendt made the contrary case. She insisted that the two sets of rights (liberal and social) could never be reconciled. Writing at the height of the Cold War, she argued that the social rights of 1793 – 'the rights of the *sans-culottes*' – undermined the freedoms proclaimed in 1789. However compassionate Jacobins may have been, their humanitarian sentiments constituted an unsound basis for rights. (Although Hunt does not mention Arendt, it is worth noting that her favourable view of compassion is diametrically opposed to Arendt's.) Jacobin efforts to resolve the social question through the political means of rights 'doomed' the Revolution to authoritarianism. And the fate of the French Revolution, she believed, was the fate of all revolutions inspired by it. 'The whole record of past revolutions demonstrates beyond doubt that every attempt to solve the social question with political means leads into terror.'²⁷

Despite their starkly different views on social rights, Jaurès and Arendt accepted the same chronology: liberal rights emerged in 1789; social rights followed

²⁶ J. Jaurès, *Histoire socialiste de la Révolution française*, A. Soboul and E. Labrousse (eds.) (Paris, 1968), vol. 6, 166 (my translation, original italics).

²⁷ H. Arendt, *On Revolution* (London, 1962), 112.

in 1793. In 1989, Marcel Gauchet exploded this sequence. He showed that social rights had been proposed as early as 1789. What's more, they were proposed by economic liberals – figures such as Pierre-Samuel Dupont de Nemours, a renowned political economist, Ancien Régime ministerial aid and deputy in the National Assembly.²⁸ Nor was Dupont exceptional. Social rights were widely demanded in 1789, on the left and the right. Nearly half of the thirty model declarations submitted to the National Assembly for debate in July and August included them. According to my own calculations, a greater proportion of the model declarations of 1789 circulating in the National Assembly included social rights than those that circulated in the National Convention in debates on the Constitution of 1793.²⁹

Though unacknowledged at the time, the implications of Gauchet's study were profound. If 'class' no longer explained the vicissitudes of social rights in the French Revolution, what did? Gauchet himself points to circumstances. The omission of social rights from the declaration of 1789, much like their inclusion in the Constitution of 1793, owed to contingencies, he believes.³⁰ But his notion of circumstances remains vague. He refers to 'the demands of the hour' in 1793 but does not specify what those demands were or how they differed from those of 1789 and 1795. Since unrest over food, work and social protection spanned the entire period, the vicissitudes of social rights may owe to something more than circumstances. They may have owed to deeper ideological factors – namely, to tensions between liberal and social visions of society.

Rethinking 'social liberalism'

Gauchet's study was part of an late twentieth-century trend to recast French revolutionaries as 'social liberals'. Prior to this trend, the Revolution was usually

²⁸ M. Gauchet, *La Révolution des droits de l'homme*, 93-101.

²⁹ M. Gauchet identified thirteen of thirty model declarations circulating in the National Assembly with social rights; *ibid.*, 96. I have found fourteen of thirty, based on the model declarations collected in A. de Baecque, W. Schmale and M. Vovelle (eds.), *L'An I des droits de l'homme* (Paris, 1988). Only nine of the thirty-two published model declarations subsidised by the Convention contained them; they are reproduced in J. Mavidal et al., *[A]rchives [P]arlementaires de 1787 à 1860* (Paris, 1867-1913), 1st series, vol. 62, annexes 3-34, 287-598.

³⁰ M. Gauchet, *La Révolution des droits de l'homme*, 214.

portrayed as a struggle between bourgeois liberalism and proto-socialism. With the decline of Marxism in the 1970s, historians began to question this dichotomy. Perhaps (it was argued) revolutionaries should be seen not as social *or* liberal but as social *and* liberal. After all, if an economic liberal like Dupont de Nemours supported social rights in 1789 (and again in 1791 when the Constituent Assembly revisited the declaration before attaching it to the Constitution promulgated that year), maybe the dichotomy was anachronistic. Perhaps it projected the class struggles of later centuries onto the late eighteenth.³¹

Depictions of Jacobins as social liberals – as having supported a mix of free markets and social welfare – flourished in the 1990s and 2000s.³² Jacobins became the very vision of Third Way politics. No longer egalitarian absolutists tragically committed to Rousseau’s ‘general will’ and ‘moral regeneration’ (the view of François Furet and his followers in the 1970s and 1980s), they were now depicted as ‘Adam Smith’ acolytes. But their ‘Adam Smith’ differed from the one neoliberals were pedalling in the late twentieth century. Jacobins were not cold-hearted free-marketeers but humane pragmatists for whom reasoned self-interest would produce sentiments of compassion, strengthening social bonds. Jacobins believed in the benefits of free markets but were not averse to all forms of government regulation or welfare. They supported public education, social insurance and a progressive income tax. Their failure to achieve these goals during the Revolution owed to circumstances, specifically, economic crisis and war.

Historians advancing the ‘social liberalism’ interpretation generally focused on political economy and not the debates over social rights. Jean-Pierre Gross, again, was – and still is – the exception. His study of Jacobin egalitarianism links the ‘social liberalism’ of revolutionaries to the story of human rights. In making this connection, he challenges two sets of distinctions in the historiography. First, he argues that, contrary to what is commonly thought, the declarations of 1789 and

³¹ Ibid., 97-98.

³² E. Rothschild, *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment* (Cambridge, MA, 2001); G.-S. Jones, *An End to Poverty: A Historical Debate* (New York, 2004); Woloch, *The New Regime*; P. Higonnet, *Goodness Beyond Virtue: Jacobins during the French Revolution* (Cambridge, MA, 1998).

1793 did not substantially differ. Despite the omission of social rights in the first declaration, that declaration pointed in their direction by legitimising state action in the name of the ‘general will’ and the ‘well-being of all’.³³ (I would add that it is worth noting that contemporaries also tried to read social rights into the 1789 declaration.³⁴) Both declarations, Gross insists, expressed a combination of Rousseauian egalitarianism and Physiocratic liberalism – hence, their ‘social liberalism’. Oddly, Gross does not acknowledge Gauchet’s finding, which reveals that full-blown social rights had been proposed in 1789; those rights did not require a four-year gestation period before finding their articulation. Had Gross acknowledged their presence in the model declarations of rights of 1789, he would have had to explain why deputies omitted them from the final draft. This might have led him to discover tensions over social rights and reticence to sanction them. Such a discovery, however, would have contradicted his thesis, which holds that revolutionaries were ‘social liberals’ across the whole period; that explicit formulations of social rights simply needed some time to develop; and that their disappearance later owed to ‘circumstances’.³⁵

The second distinction Gross aims to disrupt is the one between the Girondins, who were expelled from the Jacobin Club in 1792, and the ‘Montagnards’, Jacobins who dominated in the National Convention. He downplays the role of social rights in generating tensions between the two factions. Despite acrimony over other matters, the two sides, he believes, were equally committed to social rights. The 1793 Constitution was, he writes, ‘the synthesis of the egalitarian liberalism of Condorcet, Paine [both aligned with the Girondins] and Robespierre [a leading Montagnard]’.³⁶ He adds, ‘Even if the Girondins and Montagnards confronted each

³³ J.-P. Gross, *Égalitarisme jacobin et Droits de l’homme* (Paris, 2016), 42.

³⁴ Anonymous [J.-F. Lambert], *Adresse à l’Assemblée nationale à l’effet d’en obtenir la formation d’un comité dans son sein, pour appliquer, d’une manière spéciale, à la protection et à la conservation de la classe non-proprétaire, les grands principes de justice décrétés dans la déclaration des droits de l’homme et dans la constitution* (Paris, 1789), esp. 42; see also C. Bloch and A. Tuetey (eds.), *Procès-verbaux et rapports du Comité de mendicité de la Constituante, 1790-1791* (Paris, 1911), 3, 5, 310.

³⁵ Dupont’s request to add social rights to the Declaration before promulgating the Constitution of 1791 was vigorously opposed by the Constituent Assembly; *AP*, vol. 29, 267; M. Gauchet, *La Révolution des droits de l’homme*, 98.

³⁶ J.-P. Gross, *Égalitarisme jacobin et Droits de l’homme*, 43.

other with rage in developing the articles of the 1793 constitution, the Declaration was the fruit of a consensus among republicans of good faith rather than the result of a compromise.³⁷

Depicting revolutionaries as like-minded 'social liberals' may have chimed with post-Cold War sensibilities of the 1990s and 2000s, when historians sought an alternative to the 'liberal/social' dichotomy of the Marxists and the 'totalitarian' framing of the Furetians. But it distorted just how vexed the question of social rights was during the Revolution. Social liberalism was an unstable compound. It may have held together on the level of rhetoric – revolutionaries did indeed agree that 'all men have the rights to assistance from other men' (Dupont's model declaration of 1789) and that 'public relief is a sacred debt owed by society (Condorcet's in 1793). But as soon as these rights were given any content – such as how to pay for them, how much aid should be given and whether recipients should have a say in these matters – the compound exploded. The problem was not social rights. The problem was the duties and obligations associated with them.

Tensions over duties and obligations are not easy to discern because national deputies, aware that the public was listening, often chose their words carefully. But occasionally they let their guard down, and in these moments, cracks appear over financing rights to social provisioning. In early June 1789, before the formation of the National Assembly, the clergy proposed sending a delegation of all three estates to the king to request food provisions for Paris. The nobles and third estate were outraged by the idea. The state could not afford it, the nobles insisted. 'It would require sums, enormous sums!' – sums, it did not have to be said, that would have to be diverted from debt servicing.³⁸ But it soon dawned on the nobles that Parisians might not forgive them if they showed themselves to be insensitive to their plight, so they reluctantly joined the clergy. The third estate was even more enraged than the nobles and declined the invitation. One deputy went so far as to propose punishing

³⁷ Ibid., 45. Already in his briefer discussion of social rights in *Fair Shares for All*, he argued: 'The newly proclaimed social rights may have been heavenly music to the ears of Marat, Hébert and the radical sans-culottes, but no true son of the Enlightenment would seriously have repudiated them,' 45.

³⁸ *AP*, vol. 8, 73.

the clergy for having proposed it by expropriating a quarter of the Church's property.³⁹ (Soon, deputies would expropriate all of it.)

A week and a half later, however, when the third estate declared itself to constitute a 'National Assembly' on 17 June, the deputies put food provisioning at the top of their agenda, alongside debt servicing. They now considered both to be sacred obligations.⁴⁰ But as the summer dragged on, their preferred solution to the bread crisis was to liberalise the grain trade and to encourage voluntary charity. Whenever taxes were proposed to subsidise subsistence, counter-arguments were made to the effect that taxes would deprive individuals of the opportunity to act on their benevolent sentiments. 'It is not appropriate in a time of hardships to force the French to be generous and compassionate when sentiment alone suffices to open their hearts to *bienfaisance*.'⁴¹ Generosity depended on voluntary sentiments, not compulsory taxes. Taxes risked eroding compassion, causing the rich to care less, not more, for the poor.

The politically explosive implications of the National Assembly's decision to prioritise the public debt over social spending in 1789 cannot be underestimated. The debt was the main reason the Estates General had been summoned in the first place, and the National Assembly's commitment to putting the debt under the safeguard of the entire nation would not be broken until 1797. Though they framed social needs in the language of rights, they sought ways to address those needs without dipping into the public coffers. The 'sacred debt' that society owed to unfortunate citizens was understood to be held by individuals acting voluntarily in civil society, not by the state. More significantly, economic liberals espousing social rights believed that 'mutual assistance' and 'reciprocity' was best achieved through markets.

The political risk that social rights might be construed as imposing obligations on the state, and not just civil society, probably explains why social rights were not included in the final draft of the Declaration of the Rights of Man and

³⁹ Ibid., 75.

⁴⁰ Ibid., 128-129.

⁴¹ Ibid., 197.

of the Citizen in late August. But the idea, or at least the spirit, of social rights persisted, as advocates tried to reconcile them with the liberal economic commitments of the early Revolution.

On 29 August, two days after finalising the Declaration of the Rights of Man and of the Citizen (without social rights), the National Assembly passed a decree liberalising the grain trade. The decree was drenched in the language of empathy. It insisted that all citizens ‘must see themselves as true brothers, always disposed to give each other all sorts of reciprocal assistance’ and that ‘that this obligation is all the more pressing and sacred when it concerns a matter as important as subsistence.’⁴² The language echoed that found in the model rights declarations, many of which contained social rights and spoke of them in terms of ‘sacred obligations’, ‘reciprocity’, and ‘mutual aid’. It also echoed Enlightenment political economy, especially Physiocracy, which saw markets, compassion and reciprocal assistance as overlapping and mutually reinforcing. In the cahier de doléances for the circumscription of Nemours, which included his model declaration calling for social rights, Dupont de Nemours argued: ‘The great means of *bienfaisance* that are in the hands of Enlightenment governments are not to multiply expenses; they are to let the people take care of itself [*laisser faire le peuple*] and not to divert work or capital from the ends to which it is destined.’ He continued, ‘[the government] is not to arbitrarily take people’s money.’⁴³

Liberal economic notions of social rights predominated in the early Revolution. Even the pioneers of revolutionary *bienfaisance* – those who worked on the National Assembly’s Mendicancy Committee after it was founded in January 1790 – insisted that a commercial economy, supplemented by voluntary charity, would suffice to meet people’s needs. After laying out his welfare plan in the summer of 1789, Jean-François Lambert (later a consultant on the committee) assured his readers that welfare could be implemented ‘without a tax; individuals

⁴² *Réimpression de l’ancien Moniteur* (Paris, 1850), vol. 1, 398.

⁴³ *AP*, vol. 4, 157.

will continue to be the masters of their purse strings'.⁴⁴ The founder and head of the committee, François-Alexandre-Frédéric La Rochefoucauld-Liancourt, adopted a similar position. To allay his colleagues' concerns about the initially bold principles he had announced in the committee's first report of June 1790, in which he had declared subsistence to be a right of the individual and a duty of the state, Liancourt now tempered them. In subsequent reports, he reassured fellow deputies that the charitable endowments currently in existence were adequate for poor relief. To make this claim, however, he surreptitiously lowered the sums his own committee had calculated would be necessary for subsistence.⁴⁵ Liancourt also supported policies to stimulate economic productivity through tax incentives. Reversing the assertions made in his first report, he came to oppose the very notion of the providential state. Although depriving individuals of work or food might cause some suffering, it would be 'a useful punishment and salutary example.'⁴⁶

A rethinking of social rights began in spring 1793, when the Convention took up debate on a new constitution following the fall of the monarchy. Tensions over how to finance social rights persisted, although they were not always evident in many of the formulations of social rights, which resembled those of 1789. Back then, even the future right-wing deputy, André-Louis de Sinéty, felt comfortable proposing in his model declaration that 'men can only protect themselves from the dangers of inequality through social bonds that protect the weak from the initiatives of the strong; they owe each other the mutual aid of humanity and fraternity, which corrects for this inequality.'⁴⁷ Such sentiments were expressed in 1793 by the Girondins, the Montagnards, and people elsewhere on the political spectrum, such as the extraordinarily wealthy and socially conservative Lazare Carnot. This future adversary of Robespierre on the Committee of Public Safety opposed social redistribution by the state. Yet, his model declaration sounded very similar to those of the *robepierristes*. It stated: 'society must provide for the needs of those whom it

⁴⁴ J.-F. Lambert, *Objet d'une importance capital et décisive soumis à la considération de l'Assemblée nationale* (Paris, 1789), 6.

⁴⁵ C. Duprat, *'Pour l'amour de l'humanité': le temps des philanthropes*, 315.

⁴⁶ *Ibid.*, 310-319; the quote is from 317.

⁴⁷ M. de Sinéty, *Projet de Déclaration des droits de l'homme, et des devoirs du citoyens, par M. de Sinéty, député, 4 août 1789* in de A. de Baecque et al. (eds.), *L'An I des droits de l'homme*, 224.

requires to work for it; it must also provide aid to those unable to work due to age or infirmities.' Robespierre's model declaration scarcely differed: 'society is obligated to provide subsistence to all its members, either by providing them with work or in providing the means of existence for those who cannot.'⁴⁸ In all of these formulations, society was invariably the duty bearer, but what 'society' meant was unclear. Did it refer to civil society or the state? Was the financing of social rights to be secured through voluntary giving or compulsory taxes?

Deep tensions over obligation – imperceptible in the formulations of social rights, which is why Gross thought he had discovered consensus on them – are to be found in the preambles of model declarations and various pamphlets and speeches. The preamble of Carnot's model declaration drew on liberal economic notions of the individual, which saw empathy emerging from the utilitarian exchanges springing from '*amour de soi*', or reasoned self-interest – a view with Physiocratic and Smithian overtones. 'It is evident that the individual must assist others as much as possible, but without', he stressed, 'sacrificing his own advantages.'⁴⁹ Carnot insisted that the principle of reciprocity, by which he meant generosity, was 'a false maxim'. It may be 'splendid' in theory, but it was 'simply not practicable.' He believed that compassion, self-interest and voluntarism were all bound up with each other. It was the responsibility of individuals, not the state, to balance self-interest and generosity. Despite his call for social rights, nowhere does the redistributive state appear in his rationale for them.

The 'social liberalism' interpretation of social rights in the French Revolution thus obscures the problem of obligation – the different ways revolutionaries conceptualised the duty to finance social rights. Liberal revolutionaries (notably the Girondins but also some Jacobins, such as Carnot) saw civil society as the duty bearer for social rights and imagined those duties being met voluntarily, either through markets or charity – or a combination of the two. If all citizens upheld their

⁴⁸ M. Reberieux et al., *Ils ont pensé les droits de l'homme: Textes et débats, 1789-1793* (Paris, 1989), 160.

⁴⁹ *AP*, vol. 62, 336; for Carnot's opposition to Robespierre and Saint-Just's ideas of state welfare, see M. Reinhard, *Le Grand Carnot*, 2 vols. (Paris, 1950-52); R. R. Palmer, *Twelve Who Ruled: The Year of the Terror in the French Revolution* [1941] (Princeton, 1973), 286.

duties to respect private property and to be productive (and calls to do so appear *ad nauseum* in the political-economic literature of the late eighteenth century), economic forces would ensure mutual prosperity. This reasoning accounts for why so many revolutionaries could support social rights and property rights in the same breath. Without property rights, they argued, social rights could not be ensured. Yet, some radical 'Montagnard' Jacobins began developing an alternative view. They saw the state as a duty bearer and were open to the idea of regulating markets (the Law of the General Maximum of September 1793 put price ceilings on staples) and redistributing wealth to deal with indigence.

Pace Gross, then, the final draft of the 1793 declaration rights should be read as a political compromise rather than a consensus – and it was a fragile compromise at best. It contained two articles safeguarding property.⁵⁰ (The 1789 declaration had included only one.) And while it included the rights to work, subsistence and education, it remained vague on financing them. Article 21 read: 'public relief is a sacred debt; society owes subsistence to unfortunate citizens, either in procuring work or in providing the means of subsistence to those who not in a state to do so.'⁵¹ But what was 'society' – civil society or the state? And if the state was to play a role, was this role limited to managing a system of *bienfaisance* funded voluntarily or would it finance *bienfaisance* through taxes?

The authors of the 1793 Constitution thus kicked the can of obligation down the road, leaving it to local authorities and the Convention's representatives on mission to sort out. They did so through a wide range of voluntary and compulsory measures. On the one hand, they summoned all good citizens to provide 'patriotic gifts'. On the other, they imposed taxes and forced loans. Sometimes they resorted to intimidation and extortion. Local revolutionary committees who imprisoned political suspects often fleeced them for substantial sums – sums far superior to the cost of imprisoning them. Revolutionaries thus blurred the distinction between the voluntary and the compulsory. This confusion gave the impression of arbitrariness, making it easy for critics of the 1793 Constitution to attribute the Terror to its

⁵⁰ Rebérioux et al., *Ils ont pensé les droits de l'homme*, 176.

⁵¹ *Ibid.*

principles. Unable to acknowledge the failure of liberal conceptions of social rights between 1789 and 1792, which had been rooted in voluntary charity and markets, they now saw state-financed social rights as dangerously utopian and a threat to private property. The former Girondin deputy Étienne François Sallé, recently come out of hiding from the Terror in 1794, inveighed against the 1793 Constitution in these very terms. 'Ah, the intriguers and imposters can no longer deny their desire to effect a revolution against Property since [their constitution] has given indefinite scope to their maxims of brigandage!'⁵²

Popular demands for the restoration of the Constitution of 1793 in the Germinal and Prairial uprisings of 1795 only reinforced the association of social rights with brigandage. After repressing these insurrections and executing their leaders, the deputies of the National Convention – some of whom had supported the social rights of 1793 – drafted a new constitution. It omitted social rights but was larded with duties regarding private property.

In the end, the price of kicking the can of obligation down the road in 1793 – of declaring social rights without clarifying financial duties – was the delegitimisation of social rights for more than a century. Social insurance schemes, proposed but rejected in the early Revolution, arrived in France only in the late nineteenth century, well after their implementation in Otto van Bismarck's Prussia in the 1870s. Progressive income tax, another novel but short-lived idea of French revolutionaries, was established in Britain in 1798 – ironically, to pay for the war against revolutionary France! But it did not take hold in France until 1914. The Revolution's failure to finance social rights through the voluntary means of markets and charity and its recourse to compulsory and coercive measures in 1793 brought about the association of social rights with terror. Thus, what was essentially a problem of obligation became *the* problem of social rights.

Duties and the politics of obligation

⁵² Étienne François Sallé de Chou, *Examen critique de la Constitution de 1793, par feu Salle [sic], Député de la Meurthe à la Convention nationale* (Paris, Year III), 29.

In seeking to explain the historical vicissitudes of social rights in France before 1948, the contributors to this special issue of *French History* approach the matter from the perspective of obligation. Most histories of human rights have either ignored this problem or have treated it parenthetically. We see duties as inseparable from the history of rights. One of the challenges to realising human rights in many societies has been that, when separated from duties, they are widely considered meaningless. Mahatma Gandhi made this point in his response to a survey about human rights conducted by UNESCO in 1947:

I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us, only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.⁵³

Gandhi's reasoning may jar with current 'rights' sensibilities, but it chimes with European thinking about rights before our times. "There are no rights without duties, nor duties that do not engender rights: cursed be the man who doubts this. He would be either a barbarous despot or a worthless slave", wrote the philanthropic society in Bern in 1778.⁵⁴ This view was the norm before the late twentieth century.⁵⁵ And as Thomas Bouchet and Marie-Emmanuelle Chessel show in their contributions to this special issue, the duties of the citizen rather than the natural rights of the individual have been central to conceptions of social rights.

That said, there is no denying that duties have been invoked at times to undermine rights. One of the reasons French revolutionaries rejected proposals to include duties alongside rights in the declaration of 1789 was because they worried

⁵³ M. Gandhi, 'A letter addressed to the Director-General of UNESCO', 25 May 1947, in M. Goodale (ed.), *Letters to the Contrary: A Curated History of the UNESCO Human Rights Survey* (Stanford, 2018), 191.

⁵⁴ Société des philanthropes de Berne, *Mémoires de la Société des philanthropes* (Bern, 1778), 139.

⁵⁵ For the nineteenth-century discourse on duties, see S. Moyn, 'Rights vs. Duties: Reclaiming Civic Balance', *Boston Review: A Political and Literary Forum*, May 16, 2016, at <http://bostonreview.net/books-ideas/samuel-moyn-rights-duties>.

that doing so would give political leverage to the Church, whose antipathy to the Revolution was apparent and whose properties revolutionaries were eyeing to deal with the national debt. But to dismiss duties as invariably detrimental to the cause of rights is myopic. Put simply, social rights require financial resources, and without a duty bearer, they are not so much dangerous as sterile.

Obligation thus offers a fresh lens through which to examine the history of social rights. It opens up several avenues of investigation: of ideas (what do duties consist in and what are their relation to rights?); of law (are obligations to be voluntary or legally binding?); of politics (who are the duty bearers and who has a say in determining and enforcing obligations?); of the economy (what kind of political economy do social rights require?); and of culture (how do individuals or groups deploy the language of rights and obligation and what cultural norms are thereby established?).

All of these questions are treated in the course of this issue. Obligation is not, however, the only lens through which the contributors examine the history of social rights. Other themes are addressed as well: the role of women as agents who advance social rights (Katie Jarvis and Marie-Emmanuelle Chessel); liberalism and socialism and their vexed relationship with these rights (Thomas Bouchet and Valentine Zuber); and Enlightenment ideas and how the French Revolution altered them (Mark Philp and Stéphanie Roza). Taken together, these essays show that the story of social rights in the modern era is not linear and cannot be reduced to socialism. We eschew the 'generational' theory of rights development and show how social rights sprang from sources on the political left and the right.

The question then arises: where did the progressive narrative of social rights come from? In her study of key theorists of human rights, Valentine Zuber traces its emergence between the nineteenth and the twentieth centuries. She shows how ambivalence about social rights on the left in the mid nineteenth century began to evaporate by the turn of the twentieth. Jean Jaurès's attempt to reconcile liberal and social rights (discussed above) was taken further by members of the French League of Human Rights (which Jaurès had co-founded). But these members, notably Albert Bayet and René Cassin, gave rights a history, one that began with the civil and

political rights of the late eighteenth century and culminated in the social rights of the twentieth. Their progressive history of human rights shaped the views of the authors of the Universal Declaration of Human Rights of 1948, of which Cassin was one of the most influential. It was this notion of historical progress that underlay the generation theory of human rights in the late 1970s. In debunking the 'generation' myth, we aim to expose the long and complex history of social rights in modern France.