HUMANITIES INSTITUTE
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# **HUMAN RIGHTS IN HISTORY** – Ancient Period

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## INTRODUCTION

**Premodern limits** It is arguably a mistake to think of the long stages of human history in terms of the presence or absence of rights. With partial exception of the Romans, who were particularly entranced with legal thinking, rights just did not describe the way most philosophers, or leaders, or as far as we know ordinary people thought. Attachment to property rights, for people who had access, was the most obvious exception. It was noteworthy that, although in general their status was markedly inferior to that of men, Roman women regarded as citizens did have property rights (in contrast to the earlier situation in Greece).

**Rights over others** We have seen that in many cases, rights often described claims one group of people had over other groups. Upper-class Chinese in the Confucian system could expect certain kinds of service and deference from the masses, though admittedly this was not explicitly framed in terms of rights. The same applied to the higher castes in India, who expected lower castes to carry out a number of jobs they found degrading. Roman law devoted great attention to the rights of owners over slaves – including children born of slaves. And while husbands did not "own" wives in most of the legal codes – which meant that at least in theory they had a few obligations – wives could be punished for a number of failings. Clearly, it is often important to distinguish between ideas of rights, which can be quite diverse, and human rights. Indeed, one of the challenges of modern human rights involves efforts to supersede older ideas of unequal group rights.

**Rights and the state** To the extent that any rights thinking existed, it was also rarely applied to claims against rulers or the state. The big exception here was a right attached to full Roman citizenship: the right not to be whipped or tortured as a punishment except for treason, and if accused of treason the right to be tried in Rome. Otherwise, rulers – in any of the major civilizations -- might be moral and benign, or cautious, but there was little sense of a right to restrain their actions. Of course, for most people in these agricultural societies, the state was a fairly remote entity, encountered rarely; but there were few protections in principle if it did intrude through military, fiscal or other means.

**Regional differences** Human rights development during the classical period does suggest one important finding – but even this must be treated with caution. The fact that developments in Greece and Rome provided at least important preliminaries to human rights approaches, in contrast to India's caste system and the rather different approaches to social justice and stability espoused by Confucianism, legitimately suggested regional distinctions that might endure. Traditions established in some regions might be more receptive to human rights standards than those elsewhere. There is no question that, as human rights thinking emerged in more modern times in Western society, philosophers pointed back to aspects of the Roman emphasis on rule of law or Greek ideas of citizenship.

**Slavery** Yet making too much of this regional distinction is risky for several reasons. First, as we have seen, the Greeks and the Romans did not think in terms of human rights; their easy justification of slavery is the most blatant example, but so were the deep gender distinctions and the limitations on access to citizenship even among the nonslave population.

**Geography of classical heritage** Second, the classical Mediterranean heritage did not pass to Western Europe alone. It was taken up more fully, in fact, by the Byzantine Empire, and through it other parts of eastern Europe – but even a partial human rights legacy was not part of the package. The Byzantine Empire retained and further codified Roman belief in the rule of law, but it also introduced a variety of new

legal tortures and a host of Christian religious restrictions, and it also subjected peasants to new community controls. The Roman legal heritage must also be evaluated in dealing with the development of Islamic law.

**Collapse in the West** And third, the disruptions of the Roman Empire in Western Europe, where so many political and cultural traditions collapse, cautions against assuming that this region was clearly conditioned for further human rights progress. One of the most basic institutions of the ensuing period – the institution of serfdom – thus showed scant impact of classical thinking. Serfs did have rights: most notably, they had the right not to be dispossessed by their manorial landlords if they met their obligations, which means they were not slaves. But this was a right framed amid obvious inequality. Serfs did not have the right to leave their land. They were obliged to pay considerable rents, in kind or in money, and more important to perform labor on their lords' estates.

In other words, there is no straight line development from the classical period to more elaborate ideas of human rights, even in the regions influenced by classical Mediterranean civilization.

Study questions:

1. What kinds of rights were established by early civilizations that run counter to modern ideas of human rights?
2. What are some of the key problems in moving from relevant Greek and Roman thinking to the emergence of a fuller idea of human rights?
3. What were the differences between the rights embodied in West European serfdom, and more modern notions of human rights?

Further reading:

Zachary Chitwood, *Byzantine Legal Culture and the Roman Legal Tradition* (Cambridge University Press, 2017).

Benjamin Jokisch, *Islamic Imperial Law* (de Guyter, 2007).

Clifford Backman, *The Worlds of Medieval Europe* (Oxford University Press, 2003).

EARLY LAW CODES

**Premodern constraints** Two crucial features of what are now regarded as human rights standards did not emerge, at least in any full sense, until modern times: the notion that the whole of humanity was entitled to certain common standards and the belief that, in one's own society, everyone (or at least every adult) should share in some basic rights as citizens.

**Idea of humanity** On the first point, there is simply no evidence that early peoples and societies had any real concept of humanity at all. Their focus was on their own small groups, relations with neighboring groups, perhaps slightly larger entities defined by shared religious beliefs. Early religions, after all, were for particular peoples, not for everyone – as was true of Judaism. One task of human rights history thus involves determining when notions of humanity did emerge, but there is no way to force them into interpretations of early societies.

**Inequality** On the second point, as soon as societies began to become more complex, with the advent of agriculture and the emergence of small early cities, they clearly established a number of internal divisions: between men and women, between propertied and unpropertied, often between slave and free. It would be a long time before these boundaries began to be transcended – another task for human rights history.

**Fairness and law** This said, there are two reasons to spend a moment on early human societies in dealing with human rights history. First, to make it clear that many early societies might treat people, or at least many people, decently without a notion of rights. And second, to acknowledge that the development of ideas of codified law – a product of several early civilizations – might generate some notion of rights (though not fully modern human rights).

**Hunting and gathering** On the first point: hunting and gathering societies seem to treat most members of their characteristically small groups fairly equitably. People share in work and informal governance, and while tasks are gender-specific women usually enjoy a fairly high position; and there are no other systematic social divisions. This is true today, in remaining small hunting-gathering groups, and it seems to have been true in the past. In this context, ideas of rights were arguably unnecessary. Some notions of fairness probably existed, but thinking about formal rights was not present.

Good rulers Moving into early civilizations, now supporting organized governments, many individual states or rulers might decree considerable tolerance for various religions, or seek to curb excessive punishments – this was true, for example, of the great emperor Ashoka in India (268-232 BCE). Their principles were not necessarily expressed as rights (which admittedly meant another ruler might take a different tone), but they did limit oppression.

**Revenge** Early human societies may have entertained the idea of one right that is not explicitly in the modern lexicon: the right of revenge. One of the potential sources of violence among hunting and gathering groups was the impulse to take revenge if a family or group member was injured by another – this may have been one of the early causes of war. Civilizations usually sought to limit revenge-taking by setting up law courts to deal with crimes, but the notion of a right was hard to eliminate – and it still crops up in modern societies, despite more careful constraints.

**Law codes** On the second point: early civilizations did generate codes of law – particularly the series of societies operating in Mesopotamia, from the Sumerians onward (including the famous Code of Hammurabi, issued around 1750 BCE). And several historians have argued that these codes, in turn, provided original statements of rights. After all, law codes were intended to establish rules, with punishments for their violation: were these rules not protecting rights?

**Hints of rights** Thus all the early law codes outlawed murder. So were they establishing a right to life? To be sure, the murder of a slave was punished far less than that of a free man – again, there was no modern notion of citizen rights here. And there were no clear rules on when it was legitimate for the state to take a life, or to torture. On another front: A woman was allowed to leave her husband if he was not providing for her – was this a right? Of course husbands had far more rights over wives than the other way around, which complicates the picture (they had a “right” to sexual fidelity, for example; whereas male adultery was not necessarily punished even in principle).

**Property** Arguably the right that shines through most clearly in the early law codes – other than efforts to deter murder through clear if socially-differentiated punishments – was a right to property. The codes devoted great attention to protecting property against seizure or damage by a non-owner (except, again, possibly if the government acted). This was true in ancient Egypt as well as Mesopotamia, and follows from the general importance of landed property in agricultural societies. Of course, property rights extended no protection to those without property, or to slaves who were regarded as property.

**Parents** Many early codes also protected extensive rights for parents in the treatment of their children – including physical punishments and in some cases actual murder. In Jewish law for example, a parent could in principle put an extremely disobedient child to death.

**Persian tolerance** A few historians have claimed that the Persian Empire, particularly under Cyrus the Great, advanced human rights. After his conquests in 539 BCE Cyrus issued a “cylinder”, rediscovered in 1879, that protected inhabitants against religious persecution or forced conversions. But other historians see this interpretation as anachronistic – again, making firm decisions about rights elements in early civilizations is no easy task.

**Results of codes** Law codes were an important innovation in human history, a recognition that societies were becoming larger and more complex than had been the case in the long hunting and gathering period or even in early agriculture. They did establish the notion that subjects were assured certain protections, at least in principle – life and property headed the list, though they were qualified by the rights parents had over children, husbands over wives, owners over slaves.

Study questions:

1. Why might hunting and gathering societies not have needed concepts of rights?
2. What are some of the greatest problems in finding “rights” in the early law codes?
3. Why was property such an important principle in the law codes?

For further reading:

Micheline Ishay, *The History of Human Rights from Ancient Times to the Globalization Era* (University of California Press, 2004).

Peter N. Stearns, *Human Rights in World History* (Routledge, 2012),

Stephen Bertman, *Handbook to Life in Early Mesopotamia* (Oxford University Press, 2003).

CLASSICAL CIVILIZATIONS

**Classical civilizations** The expansive civilizations that developed in China, South Asia and the Mediterranean during the final millennium BCE all established political institutions, cultures, and social systems that continued to affect these regions long after the great classical empires themselves tumbled (between about 200 and 600 CE). The traditions had varying implications when it comes to rights – though again it is vital to note that none of them developed a full concept by modern standards.

**India** In India, the rise and gradual elaboration of the caste system, and its relationship to the Hindu religion, seriously complicated any idea of rights. Caste membership was hereditary, and each caste had certain obligations in life. The upper castes, at least, arguably had certain rights that protected their work roles and social contacts from interference by the lower castes (though definitions of caste privilege did not use a rights language). Pretty clearly, however, the caste system complicates any claim that Indian tradition developed concepts of rights that foreshadowed current notions. To be sure, Hinduism also emphasized the sanctity of life and the importance of not taking life except in a just war. And Indian rulers might display considerable religious tolerance, particularly in interactions between Hinduism and Buddhism. But formal rights concepts were not really suggested.

**China** Patterns in China were more complex. Confucianism, by far the most important political philosophy, shied away from undue emphasis on laws and prescriptions: Confucius was much more comfortable urging more general standards of behavior. When a person “does nothing amiss, is respectful toward others and observant of ritual”, then he is at peace with his fellows throughout society. Confucianism placed great emphasis on the importance of wisdom and fairness, even compassion, on the part of the upper class: they should keep the interests of ordinary people in mind, in return for which the people would be properly deferential and would contribute to society through work. Solid family life, appropriate education and the inculcation of morality should anchor social order, along, normally, with obedience to authority. Confucianism placed far more emphasis on self-restraint and attention to the social good than to any idea of rights. To be sure, the Confucian approach did suggest that, if the upper classes turned selfish, they might be unseated and replaced by a more virtuous leadership group – and this could be construed as a “right” to revolt. But this was not explicitly stated, and Confucianism simply did not promote thinking in terms of rights. The importance of social order and society’s right to decide held center stage.

**Citizenship** Greek and Roman philosophy and political practice most clearly introduced some innovations relevant to human rights. In the Greek city states, for example, people who were citizens had rights to participate in political life (except in periods dominated by tyrants – a major exception). The association between citizenship and rights was an important step. Of course most adults were not citizens – women, foreigners, slaves; again, there is no modern idea of rights here. But the citizenship concept was an important development. Romans would maintain the concept, and Roman citizens had important rights, for example in the legal system, attached to their status.

**Natural law and Ius gentium** Further, both Greek and Roman political thinkers developed the idea that human society should be organized in keeping with certain natural laws. For Aristotle a political community should reflect natural principles, though he was somewhat vague on their content. The innovation here was the implication that certain basic laws applied to the whole of humanity. Roman legal thinkers carried the idea of natural law further, seeing this as standard against which actual human laws

could be measured and, in some cases, dismissed as “wicked and unjust” (as Cicero put it). As their empire expanded, Roman jurists also talked about a *ius gentium,* or law of the peoples, that might apply equally to foreigners and citizens (even though the latter also had their special legal status). Early Christian thinkers, like Tertullian, tried to use the Roman concepts to claim religious freedom from persecution, writing of “fundamental human rights” as a “privilege of nature” (though his arguments did not win imperial favor). However, while the idea of evaluating according to natural law sounded great in principle, it had little impact in fact. And the “law of the peoples” addition could actually constrain it: thus Roman jurists admitted that slavery was against the law of nature (for people be free), but the law of the peoples superseded it, establishing slavery as a common and therefore acceptable human institution. Many applications of the *ius gentium* idea attached to definitions of property rights, available to foreigners as well as citizens.

**Limitations** Greek and Roman innovations unquestionably provided some basis, and language, for the emergence of human rights thinking later in European history. Again, they should not be pressed too far for the classical period itself. To take an obvious example: claims about widely applicable natural law butted against the fact the legal enslavement was more widespread in Greece and Rome than in the other classical societies. Nor did they have any measurable impact on the treatment of women, viewed as a separate legal category. Rome was in fact frequently fairly tolerant of various religions, but as their recurrent persecution of Jews and Christians demonstrated, this did not follow from any notion of rights.

**Comparisons** The classical period highlights significant differences in regional approaches to social and political organization, and these differences undeniably help explain why societies in the Mediterranean tradition were more likely to develop human rights concepts than their counterparts in South or East Asia. But full human rights thinking had yet to emerge anywhere; it is vital to avoid anachronistic analysis. And each of the classical traditions proved compatible with considerable social stability and prosperity, which is one reason people outside the Mediterranean tradition might prefer their own approach.

Study questions:

1. Was the Confucian approach compatible with human rights thinking?
2. What are the problems in interpreting Greek ideas of citizenship in human rights terms?
3. Does the acceptance of slavery by Greek and Roman thinkers and jurists nullify any apparent advances in thinking about rights?

Further reading:

Richard Bauman, *Human Rights in Ancient Rome* (Taylor and Francis, 2000).

Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: continuity and discontinuity in the history of ideas* (Continuum 2005).

Samuel Moyn, *The Last Utopia: human rights in history* (Harvard University Press, 2010).