The Foundation of International Human Rights Law:
The 19th Century Anti-Slavery Movement and Rise of International Humanitarian Law

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International human rights law has only recently emerged in just over the past half century, but its key propositions echo the groundwork laid by human rights advocates hundreds of years prior. Humanitarian law (also known as law of armed conflict) is an ancient concept substantiated through times of war in the Middle Ages and 16th century Europe; despite its senectitude, the basic ideals of humanitarian law, “emphasized by the contributions of Christianity, and the rules of chivalry, and of jus amorum” (law of arms) have shaped international legislature throughout history to today.¹ Between the 16th and 19th centuries, European abolitionists overturned the purpose of international law, which was first used to justify slavery (via Roman ius gentium), to suppress the transatlantic slave trade.² Standards of morality were then brought into question as world powers evaluated the ideals of academic scholars concerning matters of natural law vis-à-vis the law of nations. This philosophical reimagining of international moral affairs prepared global leaders for a universal mindset on human rights, which has influenced modern international law. Through an analysis of historical context, political morality, and international legislatures, the 19th century anti-slavery movement and the rise of humanitarian law are proven to be the fundamental principles upon which international human rights law is constructed.

**Historical Context**

International humanitarian law was created in response to the injustices brought on by times of war, and unlike international human rights law, it only applies during those periods of

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engagement between conflicting nations.\textsuperscript{3} Humanitarian law is divided into two separate domains; one concerning the aspect of warfare and military operations, and the other concerned with the protection of civilians and unarmed combatants. \textsuperscript{4} Founded upon the basic principles of civilizations and religions, humanitarian law’s potency increased exponentially during the 19th century thanks to the codification of anti-slavery policies and the Geneva Convention.

The 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was a defining moment in the history of international law. It formed the International Red Cross and demanded that no discrimination by nationality be made concerning wounded combatants.\textsuperscript{5} This was the one of the first instances during the New World, that issues of equality and human rights were addressed on a global scale. These issues were further emphasized during the 19th century anti-slavery movement.

The transatlantic slave trade was the practice of exploiting and exporting human beings, which had begun during the peak of 15th century exploration. Arguments for and against the practice were debated, until the matter accumulated in the 19th century, affecting the Americas, Europe, and much of the rest of the world. As a powerful force in the movement, British abolitionists “conceptualized the issue [the slave trade] in terms of human rights, and spoke as well of a religious and moral obligation to end the practice.”\textsuperscript{6} This enabled legislature and court trials to outlaw the operation and bring to justice the crew members of the slave ships. In reflection of the anti-slavery movement, prominent 19th century abolitionist, Frederick

\textsuperscript{4} Ibid., 405.
\textsuperscript{5} Emma Gilligan, "International Human Rights Law: The Origins of IHRL Part 2" (Lecture, Indiana University, Bloomington, IN, September 10, 2018).
\textsuperscript{6} Martinez, The Slave Trade and the Origins of International Human Rights Law, 17.
Douglass, observed that “immediate and unconditional emancipation was proclaimed, as the right of the slave, and as the duty of the slaveholder.” The idea of duties (especially ones regarding positive action to relieve an issue) held a fundamental concept that assisted in shaping modern international human rights law.

**Political Morality**

Other prominent figures who had a role in shaping the foundation of human rights law, include notable philosophers such as Aristotle and political scholars such as John Locke. Aristotle argued that slavery was not a man-made concept but one divinely instituted that predestined some as superior and others submissive, “but he also noted that ‘[o]thers affirm that the rule of a master over slaves is contrary to nature, and that the distinction between slave and freeman exists by law only, and not by nature; and being an interference with nature is therefore unjust.’”

One notable scholar famed for his study of law concerning nature is John Locke.

John Locke’s *Second Treatise on Government* delves into the rudimentary facets of international law, looking first at the intuitive human condition of mankind by examining biblical Adam’s relationship with nature and how that has carried over to citizens’ connection with the monarchy (national leaders). Locke notes how according to the law of nature, “all men may be restrained from invading others rights, and from doing hurt to one another” in order to maintain the “peace and preservation of all mankind,” which is the law’s chief objective. Locke’s establishment of national morality as fair and equal treatment is auspicious enough; however, several counterarguments stand.

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7 Frederick Douglass, *Anti-Slavery Movement: A Lecture*, (1855), 18, Hathi Trust.
The “law of nations,” which originated from Roman law of ius gentium, creates discourse with this statute as it sanctions slavery in the aspect of captured prisoners of war; European writers accepted this theory all the way up into the late 16th century.\(^\text{10}\) Hugo Grotius was one of the first early 1600s theorists to combine the ideas set forth by ius gentium and the philosophical ideals set by Aristotle and Locke beforehand. Grotius “argued that slavery was an ‘inducement to captors to refrain from the cruel rigour of putting prisoners to death.’”\(^\text{11}\) Servitude as an incentive may be seen as similar to today’s community service sentences; however, Grotius’ proposal was abused by the “captors”, which led to the atrocity that is the transatlantic slave trade.

**International Legislature**

In response to the slave trade and the 19th century anti-slavery movement, world leaders created new legislature. One of the first efforts occurred at the Congress of Vienna in February 8, 1815, which resulted in a declaration that did little more than shame those involved in the actual practice.\(^\text{12}\) Even though it was not a legally binding document, the declaration at the Congress of Vienna paved the way for future international human rights legislature to exist and started a serious global conversation on the necessity of international human rights law. Humanitarian law as the law of armed conflict, though, dominated much of the world legal practice up until the 20th century and the end of the Second World War.

Consequences of the Second World War, including Jewish genocide and the trying of Nazi generals during the Nuremberg Trials, spurred the United Nations to create a declaration of human rights, similar to those outlined by the law of armed conflict, but which could be


\(^{11}\) Ibid., 18.

\(^{12}\) Ibid., 33.
enacted in times of peace and not just war. Thus, the Universal Declaration of Human Rights was created in 1948 “to proclaim a solemn and succinct declaration modelled on the great declarations of national rights.” The Universal Declaration of Human Rights, like the 1815 declaration of Vienna had no legal binding but instituted several salient human rights convocations, such as the Geneva Conventions of 1949, which intended to create covenants to ensure fundamental rights such as “respect for the human person, protection against torture and against cruel, inhuman or degrading punishments or treatment.” Also the Universal Declaration of Human Rights engendered instrumental pieces of international human rights law, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) both also stem from humanitarian law and 19th century philosophy. The ICCPR in particular “uses the phrase ‘public emergency which threatens the life of the nation’ and is well understood to encompass armed conflicts.” This type of language comprising the ICCPR not only confirms the notion that humanitarian law has shaped the foundation of international human rights law but even more so, that the ancient principles of the law of armed conflict are intrinsically intertwined in each piece of legislature. In the ICESCR, concerning the obligation of States, the main purpose “is the ‘undertaking to guarantee’ that relevant rights ‘will be exercised without discrimination.”

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14 Ibid.
16 Ibid., 322.
importance of nondiscrimination being integrated in international law was emphasized by the abolitionist movements during the 19th century, strengthening the argument that the anti-slavery movement also had a major role in shaping the foundation of international human rights law.

**Discussion**

The international infrastructure of human rights law can be dated back to the religious and primitive concepts prevalent in the law of armed conflict and also to moral obligations elicited by 19th century abolitionist leaders. The abhorrent history of the transatlantic slave trade evoked a plethora of ideologies regarding the preferred methods of new human rights legislation. With the emergence of human rights declarations, came the questioning of morality and the moral obligation of the States. However, the unfathomable calamity of the Jewish genocides during the Second World War, forced global leaders to recognize the demand for human rights law outside of the law of armed conflict. The result was an eruption of human rights legislation stemming from the Universal Declaration of Human Rights to covenants brought up by the Geneva Convention, to the United Nations’ two paramount covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

Even though there is debate on whether modern international human rights law was founded on philosophies originating from the Enlightenment era and even from the Universal Declaration of Human Rights and the Nuremberg Trials, there is significant evidence stating otherwise. The convictions that sparked 19th century abolitionists long outdated the Enlightenment era. Additionally, the preeminent tenets of humanitarian law unfolded during the
Middle Ages, and the law of armed conflict is noted as “one of the oldest areas of public international law.” However, age is not the only resounding argument, but also the fact that abolitionist and humanitarian ideals are found prevalent in Enlightenment thinking and in the international law that constructed the 20th century. Therefore, an illustrious history, progressive political morality, and robust presence in contemporary international legislature validates the argument that the 19th century anti-slavery movement and the rise of humanitarian law shaped the foundation of international human rights law.

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Bibliography


