

THE SMUTSIAN CONCEPT OF 'HUMAN RIGHTS'

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ABSTRACT

There are times when the visions seen of a world of possibilities provide a far better measure of a person's qualities and contributions than the immediate accomplishments of his or her lifetime. That is, those unique individuals who possess a capacity to go beyond the confines of what is or what have been, and to creatively dream or imagine what might be, sometimes have an impact on history that far transcends their own time and place.¹

1. INTRODUCTION

The United Nations today occupies a political space at the centre of the global dialogue.² To most of the world, the United Nations symbolises much of the hope for international peace and security through global cooperation, dialogue, collective responses to security threats and, perhaps predominantly, through human rights.

However, as Mark Mazower illustrates in *No Enchanted Palace* (2009),³ the origins of human rights standards are not as pristine and pure as humankind generally would like to believe. In this regard Mazower raises the question of the part played by the South African and Commonwealth statesman, Jan Christian Smuts (1870 - 1950), in the creation of the post-Second World War global institutions:⁴

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¹ PG Lauren *The Evolution of International Human Rights: Visions Seen* (2003) 1.

² J Krasno 'A Step Along an Evolutionary Path: The Founding of the United Nations' (2000) 2 *Global Dialogue* 37.

³ M Mazower *No Enchanted Palace: The End of Empire and Ideological Origins of the United Nations* (2009).

⁴ *Ibid* 5.

What to make of the fact that Jan Smuts . . . helped draft the UN's stirring preamble? How could the new world body's commitment to human rights owe more than a little to the participation of a man whose segregationist policies back home paved the way for the apartheid state?

The central aim of Mazower's chapter on Smuts is to lay bare Smuts' Janus face: the dichotomy of how Smuts could promote a colonial system and advocate segregationist policies in South Africa *and* be chiefly responsible for the the drafting of the Charter's lofty preamble, through which the world expressed its determination to 'reaffirm faith in fundamental human rights [and] in the dignity and worth of the human person.'⁵

The purpose of this article is to gain a better understanding of what Smuts might have meant when he introduced the phrase 'human rights' into the Preamble of the Charter of the United Nations.

2. THE HUMAN RIGHTS IDIOM DURING THE EARLY 1940s: 'AN EMPTY VESSEL?'

Today we live in what Louis Henkin has called an age of rights.⁶ Human rights have been described as a 'global religion'⁷ and 'the *lingua franca* of modern political discourse.'⁸ In perhaps no other facet of its work has the United Nations been so prolific or, some would argue, so successful as it has been in the adoption of new international norms for the protection of human rights.⁹

It would be incorrect to state that 'human rights' was a new term born of the Second World War.¹⁰ As a figure of speech it did, however, enter the lexicon of educated readers and influential commentators in the World War II era.¹¹ Roosevelt's Four Freedoms speech,¹² the repeated references thereto and to the Atlantic Charter,¹³ the American entry

⁵ Ibid 19 - 21. Mazower describes Smuts as 'the architect of white settler nationalism who did more than anyone to argue for, and help draft, the UN's stirring preamble.' Ibid 19.

⁶ AWB Simpson *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (2004) 9.

⁷ As quoted in Ibid.

⁸ K Sellars *The Rise and Rise of Human Rights* (2002) 197.

⁹ H Hannum 'Human Rights' in CC Joyner (ed) *The United Nations and International Law* (1997) 131.

¹⁰ It is true that the phrase 'human rights' has an extensive history. It was first used by Thomas Paine in 1791 in *The Rights of Man*, in which he translated the *Declaration of the Rights of Man and of the Citizen*, adopted by the French National Assembly on 27 August 1789. Paine wrote: 'The representatives of the people of France, formed into a National Assembly, considering that ignorance, neglect, or contempt of human rights, are the sole cause of public misfortunes and corruptions of Government, have resolved to set forth in a solemn declaration, these natural, imperceptible, and inalienable rights . . .' Simpson (note 6 above) 9. Although the phrase was used intermittently in the 19th and early 20th centuries, before the Second World War it was by no means in common use.

¹¹ E Borgwardt "'When You State a Moral Principle, You Are Stuck With It": The 1941 Atlantic Charter as a Human Rights Instrument' (2005 - 2006) 46 *Virginia Journal of International Law* 541.

¹² When Roosevelt addressed the United States Congress on 6 January 1941, almost a year before declaring war on Japan, he concluded his State of the Union message with his famous peroration on the

into the war, and the publication of the United Nations Declaration,¹⁴ 'combined to generate widespread interest in human rights and their protection.'¹⁵

However, to determine what specifically was meant by this phrase 'human rights' being bandied about during the Second World War is problematic.¹⁶ That is because the

Four Freedoms. He proclaimed that he sought to secure 'four essential freedoms' for all: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear - everywhere in the world. Significantly, in the speech Roosevelt employed the phrase 'human rights,' thereby facilitating the popularisation of its use: 'The nation has placed its destiny in the hands and heads of its millions of free men and women; and its faith in freedom under the guidance of God. *Freedom means the supremacy of human rights everywhere.* Our support goes to those who struggle to gain those rights or to keep them.' President's Message to Congress, 87 *Congressional Record* (daily ed 6 January 1941) 44, 46 - 47 as quoted in Borgwardt (note 11 above) 516 - 17 (my emphasis).

¹³ On 9 August 1941 Roosevelt and Churchill met for three and a half days under conditions of strictest secrecy and under heavy naval protection at Placentia Bay, off the coast of Newfoundland. The document that resulted from this series of meetings was issued *via* telegram to the world on 14 August 1941, and became known as the 'Atlantic Charter.' Eight points came to be articulated in the Charter. In the name of 'their hopes for a better future for the world,' the Anglo-American leaders publicly announced that they sought no territorial aggrandisement for themselves; supported freedom of trade and of the seas; and respected 'the right of all peoples to choose the form of government under which they will live.' In addition, they aspired to ensure 'improved labor standards, economic advancement, and social security' in all nations; desired people everywhere to be able to have the right to 'live out their lives in freedom from want and fear;' and sought to establish a 'wider and permanent system of general security' for the world. See 'Joint Declaration of the President of the United States and the Prime Minister of Great Britain (Atlantic Charter) 14 August 1941' *US Department of State Bulletin* (16 August 1941) 125 as reprinted in H von Mangoldt & V Rittberger (eds) *The United Nations System and its Predecessors Volume 1* (1997) Document 1.

¹⁴ With the United States once again taking the lead, the Declaration of the United Nations resulted from the second Churchill-Roosevelt summit, held four months after the Atlantic Conference in December 1941 and January 1942. This was a joint declaration, signed on 1 January 1942, by 26 nations in the anti-Axis coalition, in which they subscribed to the purposes and principles of the Atlantic Charter, and committed their full resources, military and economic, to winning the war against the Axis Powers. Each government also pledged itself to cooperate with the other signatory governments, and not to enter into a separate peace. Twenty six additional countries subsequently adhered to the Declaration. It was in the preamble to this Declaration that 'human rights' *eo nomine* first appeared: 'Being convinced that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and *to preserve human rights* and justice in their own lands as well as in other lands and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world.' 'Joint Declaration by United Nations' (1 January 1942) *US Department of State Bulletin* (3 January 1942) 3 as reprinted in Von Mangoldt & Rittberger (eds) (note 13 above) Document 2 (my emphasis).

¹⁵ Simpson (note 6 above) 185.

¹⁶ The question about the meaning of the term 'human rights' in the early 1940s is situated within a larger topical debate about the birth of the international human rights movement. There has in recent years developed an influential new school of revisionist history, exemplified by the work of Samuel Moyn, which locates the origins of the international human rights movement in the 1970s, because it was only then that 'they were widely understood as a moral alternative to bankrupt political utopias,' such as socialism, nationalism, and communism. S Moyn *The Last Utopia: Human Rights in History* (2012) 227. The revisionists have come under scrutiny from among others, Philip Alston, who rejects the "big bang" theory of human rights. Alston argues that the history of human rights is both long and deep, which is not to say that its progress has been linear, steady, or even predictable. Alston states: 'Any meaningful history of human rights must disaggregate and address separately the different analytical dimensions of the overall enterprise. The enterprise of "human rights" consists of too many distinct facets to be reduced to one or two variables. The history and power of ideas, the force of grassroots social and political movements, the impact of legal and constitutional traditions, and the influence of institutions at both the domestic and international levels constitute indispensable elements that need to be factored into any effort to understand the origins, nature, and potential significance of the present regime.' P Alston 'Does the Past Matter? On the Origins of Human Rights' (2013) 126 *Harvard Law Review* 2077. Likewise, Paul Gordon Lauren points out that the historical origins of powerful visions that are capable of shaping world events and attitudes - like those of human rights

language of human rights is, to use Kenneth Cmiel expression, 'fluid.' The term has meant widely different things at different points in time.¹⁷

Nevertheless, by 1944 there was extensive interest in the subject of 'human rights' (whatever the term's precise meaning), and a burgeoning belief that the protection of human rights against oppressive regimes should be embodied in the new world order.¹⁸ Moreover, there was a growing consciousness during the Second World War of the importance of 'human rights' and their relationship to world peace.¹⁹ Early in the war already Allied statesmen began making grandiloquent references to the new world on the far horizon.²⁰ The United States, closely followed by Great Britain, realised the value of the ideological power of 'human rights' to mobilise support for the war effort.²¹

Samuel Moyn argues that the phrase 'human rights' made its 'fateful entry' as mere rhetorical adornment - as a 'politically inspiring phrase,' as a 'war slogan' to justify why the Allies had to be 'now engaged in a common struggle against savage and brutal forces seeking to subjugate the world.'²² But, 'no one could have said what the slogan implied.'²³ It remained to be clearly defined.

Some scholars argue that war-time references to human rights in the Four Freedoms and the Atlantic Charter were 'all very vague, deliberately so.'²⁴ Moyn holds that, '[h]uman rights entered history as a throwaway line, not a well-considered idea.'²⁵ The significance of Roosevelt's 'nonchalant elevation of the phrase to its wartime career' was chiefly that 'it became an empty vessel that could be filled by a wide variety of different conceptions.'²⁶ In the opinion of Brian Simpson, 'the vague generalities with which the politicians

- are rarely simple. Instead, they 'emerge in complicated and interrelated ways from the influence of many forces, personalities, and conditions in different times and diverse settings, each flowing in its own unique way like tributaries into an ever larger and mightier river.' Lauren (note 1 above) 4.

¹⁷ K Cmiel 'The Recent History of Human Rights' (2004) 109 *The American Historical Review* 125.

¹⁸ Simpson (note 6 above) 219.

¹⁹ PG Lauren 'First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter' (1983) 5 *Human Rights Q* 21.

²⁰ E Luard *A History of the United Nations Volume 1: The Years of Western Domination, 1945 - 1955* (1982) 17.

²¹ *Ibid* 83.

²² Moyn (note 16 above) 49. Borgwardt concedes that it is distinctly possible that the ubiquitous language of the Atlantic Charter regarding human dignity, self-determination, and equal access to trade and raw materials was initially composed for its rhetorical effect. Borgwardt (note 11 above) 508.

²³ Moyn (note 16 above) 49.

²⁴ P Kennedy *The Parliament of Man: The United Nations and the Quest for World Government* (2006) 25.

Mazower also points to the fact that the Atlantic Charter was a 'deeply ambiguous document.' He describes the United States' position as an international commitment to dismantle European empires. Mazower (note 3 above) 55.

²⁵ Moyn (note 16 above) 51.

²⁶ *Ibid*.

expressed themselves had the attraction of avoiding commitments which might be embarrassing later.²⁷

One of the best illustrations of the vagaries of the phrase 'human rights' during the Second World War is the major Anglo-American colonial controversy over the interpretation of the third principle of the Atlantic Charter:²⁸

[T]hey respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.

The American anti-colonial tradition predisposed the Roosevelt administration to favour a broad interpretation of this principle as applicable to dependent peoples, as well as to states under Axis occupation.²⁹ By contrast, for Churchill, at a time of crisis, with the greater part of Europe crushed under the heel of the *Herrenvolk*, the Atlantic Charter was intended for Europeans only - an 'inspirational polemic' to raise up the morale of the British and the occupied countries of Europe.³⁰ As the Prime Minister was at pains to explain in the House of Commons shortly after the publication of the Atlantic Charter:³¹

At the Atlantic meeting, we had in mind, primarily, the restoration of the sovereignty, self-government and national life of the States and nations of Europe now under the Nazi yoke . . . So that is quite a separate problem from the progressive evolution of self-governing institutions in the regions whose peoples owe allegiance to the British Crown.

Despite Churchill's protestations, the Atlantic Charter 'quickly took on a life of its own, unanticipated by those who drafted it.'³² It soon became celebrated for a resounding phrase that seemingly described the essential character of the post-war world it

²⁷ Simpson (note 16 above) 160.

²⁸ As quoted in KJ Twitchett 'The Colonial Powers and the United Nations' (1969) 4 *Journal of Contemporary History* 171.

²⁹ N Bentwich *From Geneva to San Francisco: An Account of the International Organisation of the New Order* (1946) 19. As Louis mentions, this was also the view of an influential segment of the British political left. According to the headline of the *Daily Herald* after an interview with Clement Attlee: 'The Atlantic Charter: IT MEANS DARK RACES AS WELL.' As quoted in WR Louis 'The Era of the Mandates System and the Non-European World' in H Bull & A Watson (eds) *The Expansion of International Society* (1984) 205.

³⁰ Borgwardt (note 11 above) 532. Mazower describes Churchill's view as a reaffirmation of the Victorian idea that only Europeans were fit for sovereignty, but others were not. Mazower describes the United States' position as an international commitment to dismantle European empires. Mazower (note 3 above) 55.

³¹ Statement by Churchill in the House of Commons 9 September 1941 as quoted in Twitchett (note 28 above) 171 - 172.

³² David Reynolds as cited in Borgwardt (note 11 above) 510. Moyn writes that the eyes of the rest of the world remained fixed on the Atlantic Charter, given its promise of self-determination, even as 'behind the scenes Churchill struggled to convince Roosevelt that his interpretation of this promise as applying only to Hitler's empire, not empire generally, should win out. It became clearer and clearer that 'human rights' would not imply collective self-determination. Moyn (note 16 above) 54.

envisioned: a peace 'which will afford assurances that all the men in all the lands may live out their lives in freedom from fear and want.'³³

A young black lawyer in South Africa verily seized on this construction.³⁴ In his autobiography, *Long walk to freedom*, Nelson Mandela chronicles: 'The Atlantic Charter of 1941 . . . reaffirmed faith in the dignity of each human being and propagated a host of democratic principles.'³⁵ Mandela continues:³⁶

Some in the West saw the [Atlantic] Charter as empty promises, but not those of us in Africa. Inspired by the Atlantic Charter and the fight of the Allies against tyranny and oppression, the ANC created its own Charter . . . We hoped that the government and ordinary South Africans would realise that the principles they were fighting for in Europe were the same ones we were advocating at home.

Needless to say, the Atlantic Charter of Nelson Mandela's aspirations - as expressed in the African National Congress' *Africans' Claims in South Africa* - were worlds removed from the Atlantic Charter of Winston Churchill's intentions: Churchill's Atlantic Charter was an 'ephemeral press release intended for European ears only,' whereas Mandela's Atlantic Charter was a 'manifesto of individual dignity.'³⁷

The Atlantic Charter thus provided ideological justification for accusations of hypocrisy by the leaders of the awakening Afro-Asian peoples, whenever the European colonial powers attempted to interpret it as applying only 'to states and nations now under the Nazi yoke.'³⁸ In reaction to the Declaration of the United Nations, Gandhi wrote to Roosevelt on 1 July 1942:³⁹

I venture to think that the Allied Declaration that the Allies are fighting to make the world safe for freedom of the individual and for democracy sounds hollow, so long as India, and for that matter, Africa are exploited by Great Britain, and America has the Negro problem in her own home.

However, notwithstanding the inherent ambiguities, inexact definition, and deliberate obfuscation by political leaders, it is clear that by the end of the war the phrase 'human

³³ Borgwardt (note 11 above) 503.

³⁴ Lauren (note 11 above) 139. Aborigines in Australia, Indians and Inuits in Canada, blacks in South Africa, and Maori in New Zealand, among many others, wanted to know how the proclaimed principles would apply to them. Would the principles set forth in the Atlantic Charter apply to the domestic laws of racial segregation or immigration restrictions based on race in the United States, Canada, Australia, New Zealand, or South Africa? Would the expressions of the concepts of universalism or self-determination actually extend 'over the four hemispheres of the globe,' and apply to the indigenous populations of the colonial possessions of Great Britain, France, the Netherlands, Portugal, Spain, and the United States? Ibid.

³⁵ N Mandela *Long Walk to Freedom* (1994) 83 - 84.

³⁶ Ibid. See also Mazower (note 3 above) 56.

³⁷ E Borgwardt *A New Deal for the World: America's Vision for Human Rights* (2005) 34.

³⁸ Twitchett (note 28 above) 172.

³⁹ As quoted in Borgwardt (note 11 above) 545.

rights' had come to symbolise those fundamental freedoms that set the Allies apart from their totalitarian foes.⁴⁰ The political theorist, Hannah Arendt, asserts:⁴¹

Antisemitism . . . imperialism . . . totalitarianism . . . - one after the other, one more brutally than the other, have demonstrated that human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity . . .

Lest there be any misunderstanding of the crusade at hand, Roosevelt declared that this was nothing short of a global struggle against 'tyranny and cruelty and serfdom' in which there could never be a compromise 'between good and evil,' and where 'only total victory' could bring about the realisation of human rights.⁴² The text of the United Nations Declaration expressed the conception that savagery and lack of respect for human rights are inextricably linked. This led to general acceptance that the notions of human rights and 'civilisation' go hand-in-hand.⁴³ It was in this context that Smuts gave expression to the phrase 'basic human rights' in his initial draft of the Preamble to the Charter.

3. 'RIGHTS,' 'DUTIES' AND 'CIVILISATION'

In order to fully appreciate Smuts' inchoate understanding of the concept of 'human rights,' it is necessary to briefly explore Smuts' conceptions of 'rights,' 'duties' and 'civilisation.'

Saul Dubow points out that, in Smuts' original draft of the Preamble that he presented at the British Commonwealth Meeting in April of 1945, he espoused 'basic' rather than 'fundamental' human rights.⁴⁴ It would appear that in Smuts' view there was a significant difference.⁴⁵ Dubow argues that, in Smuts' mind, human rights concerned basic or minimal needs like security and life, and that they pertained to matters such as freedom

⁴⁰ Ibid 541.

⁴¹ H Arendt *The Origins of Totalitarianism* (1975) ix.

⁴² 'Joint Declaration by United Nations' (1 January 1942) *US Department of State Bulletin* (3 January 1942) 3 as reprinted in Von Mangoldt & Rittberger (eds) (note 13 above) Document 2. See also Lauren (note 1 above) 140.

⁴³ Simpson (note 6 above) 183.

⁴⁴ Smuts' initial draft of the Preamble presented to the British Commonwealth Meeting of Prime Ministers in London on April 1945 stated in part: 'We declare our faith in *basic human rights*, in the sacredness, essential worth and integrity of the human personality, and affirm our resolve to establish and maintain social and legal sanctions for safeguarding the same.' See CH Heyns 'The Preamble of the United Nations Charter: The Contribution of Jan Smuts' (1995) 7 *African Journal of International and Comparative Law* 334 - 335 (my emphasis).

⁴⁵ S Dubow 'Smuts, the United Nations and the Rhetoric of Race and Rights' (2008) 43 *Journal of Contemporary History* 55.

of expression or religion. But, human rights were not synonymous with equality – whether of a political, social or racial variety.⁴⁶

As part of its submissions in defence against the attack of India at the first meeting of the General Assembly in 1946, the South African delegation explicitly argued that human rights had never been internationally agreed-upon. The Charter itself did not define such rights, and only spoke of promoting them.⁴⁷ Smuts was adamant that political rights were also not fundamental.⁴⁸ It was also inconceivable to Smuts that the framers of the Charter could ever have intended to elevate political equality to the status of a fundamental human right.⁴⁹ 'Such an argument was tantamount to saying that the more progressive races should be retarded by the less progressive, if, in fact they constituted a majority.'⁵⁰

In July 1947 Smuts corresponded with Chung-Shu Lo, a Confucian philosopher consulted by UNESCO with regard to the universality of human rights.⁵¹ Although Smuts agreed with Lo's expression of the right to live, to self-development, to self-expression and to enjoyment, the affirmation of these 'rights' did not advance the argument.⁵²

Smuts revealingly stated:⁵³

I find our modern emphasis on 'rights' somewhat overdone and misleading. It is a modern way of expression, probably owing something to Rousseau and the French Revolution and the American Declaration of Independence. It made people forget that the other and more important side of 'right' is 'duty.'

Indeed, the 'great historic codes of our human advance' emphasised duties, and not rights. The laws of Hammurabi, the Roman Twelve Tables, the Ten Commandments, 'even that

⁴⁶ Ibid 72.

⁴⁷ Doc A/C 1 & 6 *United Nations Official Records of the Second Part of the First Session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30* (November 1946) 3. See also L Loyd "A Most Auspicious Beginning:" The 1946 United Nations General Assembly and the Question of the Treatment of Indians in South Africa' (1990) 16 *Review of International Studies* 140.

⁴⁸ Doc A/C 1 & 6 *United Nations Official Records of the Second Part of the First Session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30* (November 1946) 3 - 4, 20 - 21, 44. Compare the viewpoint of the leader of the Indian delegation, Mrs Pandit: 'There could be no question of "fundamental" and "non-fundamental" freedoms; freedom was indivisible, and should be enjoyed by all peoples, whatever their colour.' Ibid 45.

⁴⁹ WK Hancock *Smuts: The Fields of Force 1919 - 1950* (1968) 469.

⁵⁰ Doc A/C 1 & 6 *United Nations Official Records of the Second Part of the First Session of the General Assembly Joint Committee of the First and Sixth Committees Summary Records of Meetings 21 - 30* (November 1946) 21.

⁵¹ Dubow (note 45 above) 65.

⁵² Smuts to Chung-Shu Lo 29 July 1947 in J van der Poel (ed) *Selections from the Smuts Papers Volume VII August 1945 - October 1950* (1973) 155.

⁵³ Ibid.

highest, noblest code of man,' the Sermon on the Mount of Christ - 'all are silent on rights, all lay stress on duties.'⁵⁴

Smuts believed that 'rights' are.⁵⁵

[M]uch too individualistic and give no due recognition to that organic human and social unity which the duties of the older codes recognized as the real rule and law and pattern of right living.⁵⁶

Smuts continued:⁵⁷

I should think the preamble to the Charter fairly expresses the fundamental objective of our advancing human society in their most general form. If we have to be more specific we would stress justice, the rule of law, and the like.

Smuts' expressions on 'rights' elucidate the fact that Smuts was by no means an 'individualist.' His most enduring legacy is, after all, as an 'internationalist;' as the 'visionary, globe-trotting statesman-philosopher, committed to his evolutionist paradigm of cosmic harmony under beneficent white guidance.'⁵⁸ The thrust of Smuts' ideas, words and actions was to secure the freedom of the *world* from Bolshevism, Fascism, and later Communism; he was never much concerned with *individual* rights or *individual* freedom.

For Smuts always the spread of western civilisation was the driving logic or spirit;⁵⁹ the notion of civilisation was at the core of his thought.⁶⁰ Smuts was a figure of empire – of the British Empire at the very height of its power. He was born on Queen Victoria's fifty-first birthday, as a British subject. He was fully intellectually formed during his student days at Cambridge of the early 1890s. This was a time when Western civilisation was held by many to be the highest ideal, and the spread of Western civilisation deemed a sacred

⁵⁴ Ibid.

⁵⁵ Smuts to MC Gillett 17 May 1943 in J van der Poel (ed) *Selections from the Smuts Papers Volume VI December 1934 - August 1945* (1973) 155 - 156.

⁵⁶ Smuts would in all likelihood have agreed with his one-time adversary, Gandhi, in this regard. Cmiel notes that many works on human rights in the twenty-first century invoke Mohandas Gandhi as a friend of human rights. In truth, Gandhi disliked 'rights-talk' of any kind, associating it with the self-indulgence of the modern age. He was inclined to phrase his rhetoric in terms of 'duties,' instead of 'rights,' and generally kept his distance from the human rights campaigns of the 1940s. Cmiel (note 17 above) 119.

⁵⁷ Ibid 155.

⁵⁸ Mazower (note 3 above) 72.

⁵⁹ Dubow (note 45 above) 55.

⁶⁰ J Hyslop "'Segregation has Fallen on Evil Days': Smuts' South Africa, Global War, and Transnational Politics, 1939 - 46' (2012) 7 *Journal of Global History* 444.

duty; when 'advanced people had the responsibility to look after the more backward.'⁶¹
Smuts carried the torch of the Enlightenment:⁶²

The human spirit having once broken its primeval shackles and emerged from its bondage will never again submit to them for good. Evolution never reverts back to discarded forms or organs. And the light that has dawned on our human horizon can never permanently set again . . . There may be a temporary eclipse, but never again can there be a return for good to the dark ages of the human spirit. Time has one direction and never moves back.

4. HUMAN RIGHTS AS AN IDEOLOGICAL RESPONSE TO WAR

One has to bear in mind that by the time Smuts used the phrase 'human rights,' he had been integrally involved in, and had helped to end, three of the most devastating military conflicts in human history - the Second World War, the First World War, and 'the most devastating colonial war ever,' the Anglo-Boer War.⁶³ It is most likely that the Smutsian concept of human rights grew out of his experience of the horrors of war

Smuts did not see war as merely one between visible bodies of men and institutions, but as an invisible, unbending, and unflagging struggle within the minds of men.⁶⁴ In his address to both Houses of the British Parliament on 21 October 1942 Smuts stated:⁶⁵

[W]hat will it profit a nation if it wins the world and loses its soul? . . . I speak . . . of that inward glory, that splendour of the spirit, which has shone over this land from the soul of its people, and has been a beacon of light to the oppressed and downtrodden peoples in this new martyrdom of man.⁶⁶

'This at bottom is a war of the spirit, of man's soul,'⁶⁷ Smuts declared, '. . . [a]t bottom therefore this war is a new Crusade, a new fight to the death for man's rights and liberties, and for the personal ideals of man's ethical and spiritual life.'⁶⁸

⁶¹ As one example of the civilising mission of imperialism, after the First World War Lionel Curtis stated: 'In tropical Africa . . . the only hope of those races who cannot as yet govern themselves of ever learning to do so is in the tutelage by some great democratic civilised nation.' WR Louis *Ends of British Imperialism: The Scramble for Empire, Suez, and Decolonization* (2006) 205 – 25. In Smuts' view South Africa needed to stay within the Empire, not only for its own safety, but also in order to carry out its mission as the bearer of civilisation of the Dark Continent. Mazower (note 3 above) 20.

⁶² As quoted in P Blanckenberg *The Thoughts of General Smuts* (1952) 67.

⁶³ M Koskenniemi *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870 - 1960* (2001) 120. Smuts experienced first hand human suffering on a scale almost unimaginable to anyone living in a developed country today. On his arrival in San Francisco Smuts had told reporters: 'Our race has reached the limit of human endurance . . .' Quoted in Heyns (note 44 above) 337.

⁶⁴ K Tsokhas 'A Search for Transcendence: Philosophical and Religious Dialogues in WK Hancock's Biography of JC Smuts' (2010) 90 *The Round Table: The Commonwealth Journal of International Affairs* 79.

⁶⁵ JC Smuts *Toward a Better World* (1944) 252.

⁶⁶ 'The right of freedom which has guided our slow and faltering advance through the ages still shines in the night which has overtaken us.' *Ibid* 254.

⁶⁷ *Ibid* 260.

During his address to the 6th Plenary Session of the San Francisco Conference on 1 May 1945, Smuts again reiterated that:⁶⁹

This war has not been an ordinary war of the old type. It has been a war of ideologies, of conflicting philosophies of life and conflicting faiths. In the deepest sense it has been a war of religion perhaps more so than any other war of history . . . [T]his was not a mere brute struggle of force between the nations but for us, behind the mortal struggle, was the moral struggle, the vision of the ideal . . .

The Nazi threat had touched the 'bedrock of human advance,' and 'something very deep and far-reaching' indeed would have to be attempted to deal with the 'evils now emerging on our path.'⁷⁰

There is some controversy in the scholarly literature over whether the renewed focus on human rights at San Francisco could be explained as a reaction to the atrocities of the Second World War.⁷¹ JH Burgers does not doubt that there is *some* connection between the horrors perpetrated by the Nazis during the war and the renewed emphasis on human rights at this time but, this could be only a partial explanation. Burgers concludes that all the decisive steps toward strengthening the Charter provisions with regard to human rights were taken before the capitulation of the German forces.⁷² Mazower likewise states that 'we now know that the Holocaust as such was much less central to perceptions of what the war had been about in 1945 than it is today.'⁷³

Most scholars, however, subscribe to the view that what lay behind the enthusiasm for human rights at the San Francisco Conference was the knowledge of the atrocities committed during the war, and hence the political necessity of embodying suitable language in the Charter of the new international organisation.⁷⁴ 'War,' as Thucydides famously said, 'is a forcible teacher.'⁷⁵

⁶⁸ Ibid 262.

⁶⁹ 'Address by Field Marshal Jan Christian Smuts, Prime Minister of the Union of South Africa and Chairman of the South African Delegation, at the Sixth Plenary Session of the Conference' (1 May 1945) No 34 3 in *United Nations Archive* S0596/Box 7/File 13.

⁷⁰ Smuts to MC Gillett 4 July 1943 in Van der Poel (ed) (note 55 above) 439.

⁷¹ JH Burgers 'The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century' (1992) 14 *Human Rights Quarterly* 448.

⁷² Burgers credits two groups of actors for the improvement of human rights clauses in the Charter: The Latin-American states (with the exception of Argentina) that held a conference on war and peace problems in Chapultepec, Mexico, from 21 February to 8 March 1945; and non-governmental organisations in the United States. Ibid.

⁷³ M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 381. In further support of this argument, see also Sellars (note 8 above) ix.

⁷⁴ Simpson (note 6 above) 264; DV Jones *Toward a Just World: The Critical Years in the Search for International Justice* (2002) 213; Krasno (note 2 above), 33; J Kunz 'The United Nations Declaration of

The argument of Burgers and Mazower is unsustainable. It assumes that the knowledge of the full horror of the Final Solution came to the attention of the San Francisco delegates - in most cases high ranking officials in their respective countries' foreign relations and military establishments - only after Germany surrendered on 8 May 1945. Even accepting, for the sake of argument, the proposition that no intelligence reports about the Nazi extermination camps reached the United Nations prior to Germany's capitulation, many of the camps were liberated by Allied forces well before Germany's surrender.

On 11 April 1945, some two weeks prior to the opening of the San Francisco Conference, the British 11th Armoured Division had uncovered the death camp at Belsen. Within the camp, more than 60 000 inmates were suffering from disease, malnourishment and appalling mistreatment. A further 100 000 corpses of murdered victims lay about the camp and in open pits.⁷⁶ By the time of the liberation of Belsen, information had also become available about the concentration camps liberated by the Red Army in Poland - at Majdanek in July 1944 and Auschwitz in January 1945.⁷⁷

The Conference was in a very real sense dominated by the war then in progress, the events that led to that war, and the hope that that war would not recur.⁷⁸ Alger Hiss, the acting Secretary-General of the United Nations during the San Francisco Conference stated: '[T]here was almost a physical revulsion at the destructiveness of the war, at the horrors. We wanted to think that mankind just wouldn't permit this to happen again.'⁷⁹ The participants at San Francisco were, after all, mostly the same states which had participated in the war effort of the Allies and had acceded to the Declaration of the United Nations of 1 January 1942.⁸⁰

Likewise, Lawrence Finkelstein states: 'The San Francisco stage had World War II as its backdrop'.⁸¹

Human Rights' (1949) 43 *American Journal of International Law* 317; LM Goodrich & E Hambro *Charter of the United Nations: Commentary and Documents* (1946) 56; Lauren (note 19 above) 5.

⁷⁵ As quoted in Bentwich (note 29 above) 16.

⁷⁶ M Jones *After Hitler: The Last Days of the Second World War in Europe* (2015) 67.

⁷⁷ Ibid.

⁷⁸ LS Finkelstein 'The United Nations: Then and Now' (1965) 19 *International Organization* 369.

⁷⁹ Yale-UN Oral History Interview with Alger Hiss (13 February and 11 October 1990) 43.

⁸⁰ Finkelstein (note 78 above) 369.

⁸¹ Ibid.

The conference was convened as an act of faith in the future and of remorse for the past even as the allied armies were driving through a bleeding and prostrate Germany to their fateful meeting in the heart of Europe.

In fact, on 25 April 1945 - the day on which the San Francisco Conference convened - the United States troops of the First Army and the vanguard of the First Ukrainian Army Group met on the Elbe.⁸²

However, in the final analysis the goal is to determine (i) what Smuts - as the person who actually wrote the phrase 'human rights' into the Preamble of the Charter - knew of Nazi atrocities; and (ii) whether that knowledge had any impact on the meaning that Smuts imbued to this phrase.

Smuts was gravely concerned over the threat that Hitler posed to the European and international balance of power. He was deeply troubled by the destruction of democratic rights and liberties, associated in his mind with the rule of law and British parliamentary institutions.⁸³

Smuts was repulsed by Hitler's crudity and the vulgarity of the Nazis.⁸⁴ He described Hitler as 'the Devil . . . let loose among mankind . . . a scourge of God, like Atilla the Hun.'⁸⁵ Civilisation, Smuts believed would 'stand the scourge and emerge . . . stricken, but not . . . beaten.' Civilisation could not go under, and the world could not revert to the 'brutality and bestiality that have disgraced Nazi Germany.' The reason for the perseverance of civilisation was that there were 'certain fundamental ideals of life' which have emerged and could not 'go under again.'⁸⁶

Nazism was '[e]vil enthroned and worshipped, and what we have considered good is spurned and suppressed.'⁸⁷ Should Hitler prevail, 'the currents of the future will be turned into strange new channels which will carry us far away from the civilisation we have

⁸² Ibid. See also JC Smuts *Jan Christian Smuts: A Biography* (1952) 383.

⁸³ Tsokhas (note 64 above) 83.

⁸⁴ 'We know beyond all doubt what Hitler's New Order means. Persecution, domination, suppression, enslavement of the free spirit of man, aye, extermination . . .' Smuts (note 65 above) 260.

⁸⁵ Smuts to Lord Brand 13 November 1939 in Van der Poel (ed) (note 55 above) 199. Elsewhere Smuts wrote: 'If ever there is devil's work in this world, Hitler is doing it. He will smash our civilization in addition to the political organization of Europe. And a mere barbarian! If he had been a Napoleon one might have doubts, but Hitler is a mere barbarian of the spirit for whom I have no time.' Smuts to LS Amery 19 June 1940 in Ibid 237. And on another occasion Smuts said: 'From the Hilters and the Himmlers with their blood-stained hands and blackened souls anything may be expected.' Smuts to MC Gillett 26 July 1944 in Ibid 486.

⁸⁶ Smuts to Lord Brand 13 November 1939 in Ibid 199.

⁸⁷ Ibid.

known.⁸⁸ If he was beaten - 'and God give he will be' - some 'new reconstruction of the spiritual foundations of the past could be attempted and the continuity of our civilization could be secured . . .'⁸⁹

On 21 June 1940, in a radio address to the people of the United Kingdom and the United States, Smuts stated:⁹⁰

From this distance, I speak to you about the war, a war of freedom if ever there was one, a war in which the fundamental question is whether freedom shall prevail or perish from the face of the earth before the most gigantic and diabolic onslaught that has ever been made against it.

With reference to the peace he 'envisage[d] and hope[d]' to see established after this 'titanic struggle,' Smuts declared: 'Our vision is still freedom, the liberation of Europe from the deadly Nazi thrall and its organization in a new creative freedom.'⁹¹ 'We envisage,' Smuts said:⁹²

[A] free Europe, free for the individual and for the nations, free in the sense of giving full scope for personal and national self-development and self-perfection, each according to his own individual lines. In that fundamental sense we continue on the historic trail of human progress.

There can be no doubt that Smuts was fully aware of the consequences of the Nazi scourge across Europe. As early as June 1938 Smuts said: 'The plight of Jewry in Central and Eastern Europe is terrible in the extreme and one finds it difficult to express in words what one feels in this connection.'⁹³

During his address to both Houses of Parliament on 21 October 1942, Smuts stated:⁹⁴

The sufferings [Hitler] has inflicted on Jews and Christians alike, the tide of horrors launched under his Gestapo regime over the fair West, constitute the darkest page of modern history. He has outraged and insulted and challenged the very spirit of humanity and tried to found a new barbarism.

⁸⁸ Smuts to MC Gillett 28 May 1940 in Ibid 229.

⁸⁹ Ibid. In April 1942 Smuts said to a friend: 'One would rather be dead than live as a slave in a Nazi world.' Smuts to MC Gillett 12 April 1942 in Ibid 360. On 7 May 1943, in a telegram to Roosevelt to congratulate him on the victory of the American forces in the capture of Bizerta, Smuts stated: 'This feat of arms will prove historic. From now on the Allied tide of victory will roll on until it covers and refertilizes our fair world and saves it from the new barbarism.' Smuts to FD Roosevelt 7 May 1943 in Ibid 427.

⁹⁰ (Speech 1940) as reprinted in Ibid 244.

⁹¹ Ibid 246.

⁹² Ibid 247.

⁹³ As quoted in Blanckenberg (note 62 above) 128.

⁹⁴ Smuts (note 65 above) 261.

On 19 October 1943, in a speech at the Guildhall, London, Smuts again described the horror of Nazi tyranny.⁹⁵

For carrying on his war Hitler is draining occupied Europe of all its resources of food, materials, and manpower.⁹⁶ Everywhere the enslaved populations are being reduced to destitution and despair with the most brutal ruthlessness . . . They are moved about like dumb cattle, far away from home and friends, shot on the least show of resistance, shot as hostages even without the allegation of guilt, while the Jews and Poles and other sections of the population are being systematically exterminated . . .

The moral and physical sufferings of the victim peoples surpass all limits of human nature and of past experience even in this most barbarous times. Even the reading of authentic accounts of these outrages is more than ordinary human feeling can bear. A new darkness of ruthless, monstrous inhumanity, unilluminated by the mercy of Christ, covers the face of Nazi Europe in this twentieth century.'

According to the journalist, David Friedmann, who accompanied the South African delegation to the San Francisco Conference, on the afternoon of 3 May 1945 - the day Smuts submitted the South African proposal for the Preamble containing the phrase 'fundamental human rights' - Smuts explained what he meant with the phrase.⁹⁷

According to Friedmann, Smuts said that he was in possession of detailed and confirmed accounts of the appalling atrocities committed at Auschwitz, Bergen-Belsen, Treblinka, Dachau and other Nazi extermination camps. He also had full reports of the gross violations of the Geneva Convention governing the treatment of prisoners of war, who were forced into slave labour, starved to death, and shot out of hand.

It is clear that for Smuts, the Nazi challenge to human dignity had brought the question of human rights down from the plane of philosophical speculation to that of life and death - life in freedom, or death in gas chambers.⁹⁸

Smuts stated that it was in the context of these crimes that he wanted the United Nations, to 're-establish faith in fundamental human rights.'⁹⁹ The second paragraph of his draft Preamble containing this phrase had to be read in conjunction with the preceding

⁹⁵ Ibid 301, 305.

⁹⁶ Ibid 301.

⁹⁷ Papers of David Friedmann, former chief editor of the South African Press Association, available at the Smuts House Museum, Doornkloof, Irene (*Friedmann Papers*). Copies of the relevant portions of the *Friedmann Papers* are on file with the author.

⁹⁸ CW Jenks *The World Beyond the Charter in Historical Perspective: A Tentative Synthesis of Four Stages of World Organization* (1969) 103.

⁹⁹ *Friedmann Papers*.

paragraph, which stated 'to prevent a recurrence of the fratricidal strife which twice in our generation has brought untold sorrow and loss upon mankind.'

At no time, states Friedmann, did Smuts speak of 'civil and human rights as they became known in later years with the independence of African and Asian colonies.'¹⁰⁰ Friedmann maintains that the delegations from the other countries - especially Great Britain, France, Belgium, and Portugal, with their colonial empires, the United States with its system of entrenched racial segregation in the South, Australia with its discriminatory policies against Aborigines, and Saudi Arabia with its feudal system - were fully aware of the meaning with which Smuts had imbued the phrase 'fundamental human rights.' Otherwise, they would not have voted in favour of it.¹⁰¹

The day after the South African delegation submitted Smuts' draft preamble to the Secretariat of the San Francisco Conference, Friedmann accompanied Smuts to the University of California to receive an honorary doctorate. In his address, Smuts expounded on 'the destruction of fundamental human rights' by 'Hitler's Germany and Tojo's Japan':¹⁰²

Hitler . . . has trampled on the rights of smaller nations regardless of law and treaties and moral considerations. It has through the police state and its Gestapo built the Buchenwald, Belsen, Dachau and other concentration camps with all the sadistic horrors which our victory is now revealing and much more which may never be revealed . . . the skeletons and wrecks of the concentration camps are the answer to this libel on human nature.

Smuts provided further confirmation on his conception of 'fundamental human rights' in a briefing to the heads of the delegations on 7 May 1945.¹⁰³ Smuts declared that the intention of the Preamble was to give the spiritual background, 'the human background of this vast struggle through which we have gone and from which, thank God, we have successfully emerged.' Continuing, Smuts stated:¹⁰⁴

I think we should say at the very forefront of this document that this was a . . . struggle for the human person, for the soul of man, for the fundamental rights which are basic to *our civilisation*. That is what

¹⁰⁰ Ibid.

¹⁰¹ Friedmann also includes the totalitarian regimes of the Soviet Union and its satellites, as well as India with its one hundred million 'untouchables' under the caste system, but these member states were even more reluctant to openly admit potential 'human rights' violations in their domestic spheres. These were also the states which would lead the hue and cry again South Africa at the first meeting of the General Assembly the following year. Ibid.

¹⁰² Ibid.

¹⁰³ David Friedmann states that it was a private meeting, but he was given a copy the next day, 8 May, of the remarks that Smuts had made by way of introducing his draft Preamble. Ibid.

¹⁰⁴ My emphasis.

this preamble purports to do . . . It states the fundamental objectives for which we fought . . . This was not an ordinary war, not one of the usual wars of history, but something that went to the very foundations of *our civilisation* and *our existence as civilised man*.

Friedmann comments as follows:

By the time the amended preamble emerged after a series of debates behind closed doors, all delegations knew that what General Smuts was aiming at was the prevention of a repetition of wholesale atrocities, such as the systematic extermination of peoples, to sustain undemocratic political systems.

Thus, it would seem that the context in which Smuts gave expression to the phrase ‘basic human rights’ in his initial draft of the Preamble to the Charter, was the same as Churchill’s intended context with the Atlantic Charter - *i.e.*, applying ‘to states and nations . . . under the Nazi yoke.’ Smuts used the phrase ‘fundamental human rights’ to symbolise those fundamental freedoms that set the Allies apart from Hitler’s new order.

Thus, a fair conclusion seems to be that Smuts saw the concept of ‘fundamental human rights’ as short-hand for those values, the violation of which had led to the wars in which he had witnessed such carnage and devastation. He had experienced wholesale slaughter between (predominantly European) states engaged in international armed conflict. That is what Smuts set himself to put an end to. It is clear that Smuts’ primary concern was not the maltreatment perpetrated by governments against their own populations, but against the populations of other states. Such a view was in accordance with the prevailing idea of his time that only states could be subjects, and thus holders of rights, under international law, and that only states were therefore entitled to the protection of the international community.¹⁰⁵

5. CONCLUSION

The concept of human rights as we know it today has developed much farther than Smuts’ rudimentary and limited understanding of that notion. Smuts viewed the ideological commitment to ‘human rights’ first and foremost as a method ‘to save succeeding generations from the scourge of war’ - to prevent at all costs, a third world war that humanity, let alone Western Christian civilisation, could not survive. However, human rights were emphatically not synonymous with political, social or racial equality. Smuts can thus hardly be seen as a proponent of the modern understanding of human rights.

¹⁰⁵ The general acknowledgment of the idea that individuals, too, were subjects of international law, is a later development.

In advancing human rights, Smuts' point of reference were the conflicts in which he fought, which were directed against international aggression, and which originated as European conflicts. The struggle for racial equality on the domestic front in South Africa was still in its infancy during his lifetime. His great failure - made all the more apparent by his expansive vision in matters of international relations - was the fact that he did not see what is so obvious today, namely that the same underlying issues were at stake both internationally and domestically.

Schwarz formulates the essential point thus:¹⁰⁶

[W]e . . . have to remember how difficult it is to deal with such issues without the condescension of posterity, whatever its enormity. Positions which to us look bizarrely self-contradictory can be experienced in their own historical time as banal in their obviousness. So it was . . . with Smuts.

Moreover, advances in the human rights project are almost always - as a matter of course and not exception - accompanied by a measure of duality. In addition to Smuts' duality, the differing interpretations of the Atlantic Charter by its principal drafters, Roosevelt and Churchill, also illustrates this principle. Such duality arises inevitably from the nature of human rights advances.

Seminal human rights developments come about, not as the coherent manifestations of self-executing principles, but, rather, as the contingent and circumscribed responses by individuals to specific problems that they face. Human rights specifically, just as international law more generally, largely has a retroactive nature.¹⁰⁷ This is simply a consequence of human agency, and what Christof Heyns has termed the 'struggle approach' to human rights.¹⁰⁸ The example of Smuts illustrates this as well as any other.

The fact that human rights evolve through struggle mean that they will, by necessity, be incomplete at any given time. Because change is fundamental to evolution, contradiction is possible - indeed inevitable. The advance of human rights has often depended on the exposure of dualism of this kind. However, the alternative to expressing a commitment to an unattainable ideal is a sterile acceptance of what seems to be the confines of the current reality. Ralph Barton Perry, professor of philosophy at Harvard

¹⁰⁶ B Schwarz *Memories of Empire Volume 1: The White Man's World* (2011) 319.

¹⁰⁷ In a similar context, Bentwich opines that the idealists who fashioned the League were reactionary. Bentwich (note 29 above) 12.

¹⁰⁸ 'A 'Struggle' Approach to Human Rights' in C Heyns and K Stefiszyn (eds) *Human Rights, Peace and Justice in Africa: A Reader* (2006) 15 - 34. Using a similar idiom, the record of human rights within the United Nations has been described as 'a story of striving.' R Jolly, L Emmerij & TG Weiss *UN Ideas that Changed the World* (2009) 57.

University, in commenting on the Dumbarton Oaks Proposals that preceded the United Nations Charter expressed this sentiment as follows in a letter to the *New York Times* in January 1945:¹⁰⁹

[They] do not create, and are not designed to create . . . an ideal political and legal order. It is right and proper to judge them . . . imperfect . . . It does not follow, however, that they should be rejected or despised. They should be enthusiastically applauded for the good that they promise, rather than condemned in the name of the perfection they do not reach . . . Those who refuse to take a step towards their goal because it does not at once reach the goal are likely to stand still or move backward.

Smuts knew better than most that both the Covenant of the League of Nations and the Charter of the United Nations were drawn up in sharp and immediate revulsion for war.¹¹⁰ In neither case was the mood one appropriate to profound enquiry or dispassionate deliberation. Nothing less than a swift promise of a vigorous check on violence in world politics would have satisfied the emotional demands of the time.¹¹¹

As Mazower notes, some of history is the 'product of accident and the inability to foresee outcomes or control events . . .'¹¹² Even though the United Nations was established as a Great Power hegemony, Third World nationalists took its universalist rhetoric at face value, exploited its mechanisms, and fostered international public opposition to continued colonial rule.¹¹³ As the Cold War confrontation between the United States and the Soviet Union escalated, the smaller nations found that they were able to advance their own interests - often linked to the human rights agenda - in unexpected ways.¹¹⁴ The General Assembly thus turned 'astonishingly quickly' into a forum for anti-colonialism,¹¹⁵ and publicising human rights abuses internationally.¹¹⁶

Smuts was among those caught off-guard. As early as the second part of the first session of the General Assembly in 1946, the delegation of India succeeded in placing on the agenda an item concerning the treatment of people of Indian descent in South

¹⁰⁹ As quoted in Moyn (note 16 above) 58.

¹¹⁰ PE Corbett 'Governments vs. Peoples' (1954) 6 *World Politics* 246.

¹¹¹ *Ibid.*

¹¹² Mazower (note 73 above) 394. As opposed to much of history, which is, of course, the 'product of conspiracy of policy-makers' deliberate shaping of events.' *Ibid.*

¹¹³ Mazower (note 3 above) 188.

¹¹⁴ M Mazower 'The strange triumph of human rights, 1933 - 1950' (2004) 47 *The Historical Journal* 394, 397. Sufficient ambiguity had been built into the Charter to allow a new emphasis on human rights to emerge during the Cold War.

¹¹⁵ Mazower (note 3 above) 152.

¹¹⁶ Mazower (note 73 above) 395.

Africa.¹¹⁷ This issue was debated extensively in the General Assembly. Smuts - the person responsible for introducing the phrase 'human rights' into the language and politics of the United Nations - also became the first person to be branded by the new world body as a human rights violator.

The most important consequence of the resulting resolution was the opening of the door to a wider international discussion of South Africa's racial policies.¹¹⁸ This question became a test case for the United Nations over the next several decades. The restriction of South Africa's sovereignty through the meta-institution of the United Nations was seen at that time, and should be seen historically, as a great moment of possibility, when older paradigms could be rejected and the world could be fashioned anew.¹¹⁹

The Charter of the United Nations that emerged from the San Francisco Conference did bear the unmistakable traces of competing Great Power interests.¹²⁰ By the same token, however, it did 'highlight human rights in an entirely unprecedented fashion,' both in the Preamble and the main body of the Charter itself.¹²¹ In this regard the Charter did indeed represent the genesis of practical accomplishments and genuine change during the remaining years of the 20th century.

The inclusion of human rights provisions in the Charter changed the parameters of the debate. It introduced radical new principles into international law and world politics, thereby seeing the world on a path that would be remarkably different from the immediate past.¹²²

Herein lies Smuts' paramount contribution. Smuts insisted on the fundamental connection between human rights and peace. This connection became the bedrock and has remained central to the United Nations' *modus operandi* in pursuing world peace over the course of the past 70 years. Smuts also used his international stature to ensure that human rights became binding law. By including the phrase 'fundamental human rights' in the Preamble of Charter, human rights became part and parcel of the treaty that every state has to accede to in order to become a member of this international organisation.

¹¹⁷ RB Ballinger 'UN Action on Human Rights in South Africa' in E Luard (ed) *The International Protection of Human Rights* (1967) 251.

¹¹⁸ *Ibid* 251 - 252.

¹¹⁹ M Bhagavan 'A New Hope: India, the United Nations and the Making of the Universal Declaration of Human Rights' (2010) 44 *Modern Asian Studies* 325.

¹²⁰ Mazower (note 73 above) 393.

¹²¹ *Ibid*.

¹²² F Jhabvala 'The Drafting of the Human Rights Provisions of the UN Charter' (1997) 44 *Netherlands International Law Review* 2.

In this way the Charter became the primary legal foundation of the international human rights project.

In short, Smuts' lasting contribution did not lay in defining the contents of human rights, but in playing a monumental role in the evolution of human rights from a noble aspiration into binding law.

Smuts may have shaped his time, but he was also shaped by it. The historical moment in which Smuts had introduced the phrase 'fundamental human rights' into the Preamble of the Charter of the United Nations was more receptive to the human rights idea than any preceding period in history.

The birth of the United Nations in 1945, combined with the end of the Second World War, the defeat of fascism and Nazism, and the beginning of the terminal decline of overt colonial authority, gave rise to a unique instant in the world's history, a 'global moment' unparalleled by any other point in time.¹²³ The confluence of these events enabled what one scholar, in a different context, had termed a 'Grotian moment.'¹²⁴ That is to say, it was a time when old ways of thought and old institutional arrangements were so obviously inadequate - as they had been in Grotius' time - that something different was required.

Smuts crossed more bridges than most in helping to lay the foundations for a world body that would pursue sustainable world peace based on human rights - a notion that Smuts himself barely understood at the time. Therein lies his genius. His monumental shortcoming lies in his inability or unwillingness to chart the same course for his own country regarding the issue of race. This proved to be a bridge too far.

¹²³ See Bhagavan (note 119 above) 311 - 312.

¹²⁴ Jones (note 74 above) 212 - 213.