

University of Vienna
Faculty of Historical and Cultural Sciences

**10th Gerald Stourzh Lecture
on the History of Human Rights and Democracy 2018**

Sophia Rosenfeld
University of Pennsylvania

Human Rights and the Idea of Choice

held on **23 May 2018**

Edited on behalf of the Faculty of Historical and Cultural Studies
by Thomas Angerer, Birgitta Bader-Zaar, and Margarete Grandner

The history of human rights and democracy is a major field of activity in which the Faculty of Historical and Cultural Studies at the University of Vienna is engaged. Gerald Stourzh, professor emeritus of modern history and one of the most renowned Austrian historians of his generation, has prominently positioned the history of human rights and democracy at the University of Vienna during nearly three decades of research and teaching. At the same time, his academic achievements in the field have provided profound and lasting incentives internationally. In the annual *Gerald Stourzh Lectures on the History of Human Rights and Democracy* distinguished scholars present new insights in this field and put them up for discussion.

The lectures are published at <http://www.univie.ac.at/gerald-stourzh-lectures>.

Abstract

This lecture considers the importance of the idea of choice for the development of the modern human rights movement. The notion of freedom entailing the proliferation of both opportunities for choice-making and choices themselves is widely understood to be central to the rise of consumer culture in the West. This understanding of freedom-as-choice should, however, equally be recognized as critical to conceptions of the self that increasingly shaped human rights ideology from the eighteenth century onward. This lecture explores how this came to be by focusing less on key philosophical texts than on the rise of new, quotidian social practices associated with choosing, including both voting (in which one is asked to pick representatives) and couple-based social dancing (in which one is asked to pick potential romantic or marriage partners), that flourished in the wake of the age of revolutions.

The language and the practice of choice-making are critical to consumer culture under late twentieth-century and early twenty-first century capitalism. We choose airlines, we choose shampoos, we choose books to read, movies to see, even winners among game show contestants through on-line voting. Advertising campaigns all over the world urge us to choose well, to make the “right” choice. This comes as no surprise to anyone.

Less obvious is the fact that statements of human rights and democratic principle in the modern era are similarly rife with tributes to the value of choice. This linkage was already nascent in 1948. The Universal Declaration of Human Rights includes references to the necessity of protecting all humans’ “free choice of employment” (art 23), “right to choose the kind of education that shall be given to their children” (art 26), and “right to take part in the government ... directly or through freely chosen representatives” (art 21).¹ By 1966, in the International Covenant on Civil and Political Rights, the wording of the basic protection of religious freedom had been modified to guarantee every individual “freedom to have or to adopt a religion or belief of his choice” too.² Today, the idea of

¹ The text of the UDHR is available at: <http://www.un.org/en/universal-declaration-human-rights/>.

² See Paul TAYLOR, Religion and Freedom of Choice. In: John WITTE, Jr., M. Christian GREEN (eds.), Religion and Human Rights: An Introduction (Oxford/New York 2012) 170-187, on the changing language related to religious choice from art 18 of the UDHR (1948), to art 18 of the International Covenant on Civil and Political

choice is highly valued across the political spectrum in much of the world, even as we continue to fight over who gets to choose, what alternatives we should be choosing among, and how. Consider all the talk in the United States, for example, about “reproductive choice” on the left and “school choice” on the right. Even authoritarian governments now feel they need to pay lip service to the idea of supporting individual choice, for example, instituting sham forms of elections as a way to suggest that they are committed to basic democratic values beginning with self-rule.

This trend shows no signs of slowing down. In countries around the world and at the United Nations alike, the right to make choices for oneself is still continually being expanded to members of new social categories: the disabled, the elderly, children. Moreover, new arenas for individual choice continue to be granted formal protection, from the right to choose one’s sexual orientation and gender identity (from a 2017 United Nations report), to choice of place of residence (see the constitutions crafted in Ethiopia in 1994 and Finland in 1999), to even the choice of “endemic seeds [to plant] and agricultural species” (from the constitution of Nepal from 2015).³ Conversely, contemporary explanatory models regularly draw, and often in punitive ways, on the idea of one’s personal responsibility for choices made, good or bad, in explaining varied outcomes and circumstances.⁴

My primary point is that, whether we are talking about picking shampoos or picking presidents, we take the proliferation of choice to be the hallmark of freedom at the level of the individual. Indeed, freedom of choice and freedom have become essentially synonymous in the contemporary world. That is true whether we mean the expansion of opportunities for choice-making or of the expansion of options to choose among.⁵ Human

Rights (1966), to the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion and Belief (1981).

³ The UN Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (2017) is available at <https://digitallibrary.un.org/record/1301206?ln=en>; the constitutions of Ethiopia, Finland, Nepal and other nations are available at <https://www.constituteproject.org/>.

⁴ See Yascha MOUNK, *The Age of Responsibility: Luck, Choice and the Welfare State* (Cambridge, Mass. 2017). For an argument specifically about the effects of this understanding of responsibility for women, see Jennifer M. DENBOW, *Governed through Choice: Autonomy, Technology and the Politics of Reproduction* (New York/London 2015).

⁵ On freedom as an “opportunity concept” involving having choices versus freedom as an “exercise concept” involving getting to make choices, see Ian CARTER, *Choice, Freedom, and Freedom of Choice*. In: *Social Choice and Welfare* 22:1 (2004) 61-81. Carter points out that freedom, choice, and freedom of choice are now conventionally employed, in both ordinary language and in social choice scholarship, as synonymous terms without regard to this distinction.

rights today, like consumer capitalism, are linked to the idea that all people, to preserve their essential autonomy, need agency. And agency, as political theorist Michael Ignatieff puts it in defense of human rights principles, is nothing less than the “the right to choose the life they see fit to lead”.⁶ This commitment has also long been established as a key tenet of feminism, which depends on this same liberal, individualist understanding of the existence of choice as a necessary condition for the exercise of self-governance, simply extended to women and independently of the cultural conditions in which the choices are made or reverberate. In effect, this whole way of thinking about and experiencing the world has, by now, become so doxic, so natural, across so many domains, that we rarely contemplate it except occasionally to ask if we have now, in advanced capitalist democratic societies, reached a point of saturation. Have we, as some psychologists and behavioral economists believe, finally become overwhelmed with too many personal choices to make – with negative effects for our personal psychological well-being and our capacity for collective social action alike? Is there an upper limit to our capacity for fruitful choice?⁷

That question is well worth pondering, certainly. But before we can address this normative question, we need to pose a historian’s question that, rather surprisingly, rarely gets asked: How did this happen? How did choice, or the discrimination among multiple options, come to serve as the main link between human rights and democracy promotion, on the one hand, and consumer culture, on the other? Or, to put it slightly differently: how did choice ultimately become a proxy for freedom across so many different realms of modern life – especially since freedom once looked so different? For the historian is perhaps uniquely aware that, until relatively recently, to be free in Western history had very little to do with having the ability to make unconstrained decisions at every turn about how to forge one’s own life path.⁸ Furthermore, the historian is well positioned to

⁶ Michael IGNATIEFF, *Human Rights as Politics and Idolatry*, ed. by Amy GUTMANN (Princeton, N.J. 2001) 57, which links human rights – at the nexus of universalism and cultural pluralism – closely with liberal individualism. See also William A. EDMUNDSON, *An Introduction to Rights* (Cambridge/New York 2004) on “choice theory” as an approach to human rights based on the idea that the function of rights is to produce and foster individual autonomy, which means very specifically “the making of autonomous choices”.

⁷ See, for example, Barry SCHWARTZ, *The Paradox of Choice: Why More is Less* (New York 2004); Renata SALECL, *The Tyranny of Choice* (London 2011); and Sheena IYENGAR, *The Art of Choosing* (New York 2011), as well as my essay *Free to Choose? How Americans have become tyrannized by the culture’s overinvestment in choice*. In: *The Nation* June 23-30, 2014: <https://www.thenation.com/article/free-choose/>. For an earlier philosophical argument against this kind of thinking, see Gerald DWORKIN, *Is More Choice Better than Less?* In: *Midwest Studies in Philosophy* 7: *Social and Political Philosophy* (1982) 47-61.

⁸ There is a large literature both on the history of non-Western conceptions of freedom and of pre-modern Western conceptions of freedom, neither of which have typically been structured around choice; see, for

recognize that choice-making has involved ever more elaborate rules and regulations about who gets to choose what and when and how. So how did this ultimately peculiar, but now dominant, view of freedom as choice come into existence?

To answer this question, we need a long historical view albeit not one that goes all the way back to time immemorial. Humans have, of course, always made choices; we are hard-wired in a certain respect to do so. And the origins of this particular story of the expanding experience and valuation of choice go all the way back, in the West, to the first age of empire, with the emergence of new forms of consumer choice, especially around cotton cloth of varied colors and patterns, and to the afterlife of the Reformation, which gradually opened up the possibility of intellectual choice among multiple modes of belief as well. But, that said, making choices was not yet, in the early modern era, inextricably bound up with personal freedom. Furthermore, this linkage did not instantly make itself felt as a natural byproduct of the Age of Democratic Revolution, even if popular sovereignty depended at least symbolically on the idea of choice at election time, either.⁹ Thinking back, for example, to the Declaration of the Rights of Man and Citizen of 1789, which is often deemed a key moment in the history of modern human rights doctrine, we would do well to recall that not only do its terms remain nationally bounded rather than universal. There is also no discussion of choice or *choix* in any of its articles. Rights and liberty are presented in very different rhetorical packaging.

To understand the story of the diffusion and naturalization of choice-as-freedom, we need, I want to suggest, to look primarily to the post-revolutionary world. Moreover, I submit that we need look less to the great statements of political philosophy or “declarations,” hoping to see the origins of this connection and imagining it trickling down from philosophers’ and political leaders’ pens straight to the psyches of ordinary people, than we do to changes in experience and social practice. My hypothesis, in brief, is that, starting at the end of the eighteenth century, as life in cities around the Atlantic basin and in parts of Europe began to involve more goods, peoples, and ideas than one could ever hope to be directly acquainted with, more and more activities came to depend upon

example, William C. KIRBY (ed.), *Realms of Freedom in Modern China* (Stanford, Calif. 2003), and Quentin SKINNER, *Liberty Before Liberalism* (Cambridge/New York 1998).

⁹ Sophia ROSENFELD, *Of Revolutions and the Problem of Choice*. In: David BELL, Yair MINTZER (eds.), *Rethinking the Age of Revolutions: France and the Birth of the Modern World* (Oxford/New York 2018) 236-272. On the significance of the nineteenth century, in particular, for the study of human rights history, see Stefan-Ludwig HOFFMANN, *Human Rights and History*. In: *Past and Present* 232:1 (2016) 279-310.

deliberate acts involving the choosing from menus of two or more options. Slowly, the conventions for how to do all this picking became habitual, internalized, a regular part of navigating the world, as well as linked to a concept that we call (in English) “choice”. So that even as the rules became more defined and the process became subject to more regulation and constraint in terms of who, and how, and when, and what sets of options, this is what came to be understood, increasingly positively, as *feeling* free. By the time something called human rights were being re-imagined in the wake of the Second World War, the equation of choice with liberty, for men and increasingly for women too, had already been well established through experience, making it feel like a truism despite all the obvious constraints surrounding it. Conversely, the formalization of human rights doctrine, with its dependence on an ideology and language of unfettered choice, has helped to further entrench and naturalize this way of conceiving of self and freedom to the degree we barely notice this connection any more even as it permeates so many aspects of modern life.

That is the big picture to which we will return at the end. First, let us try to make this case from the historical record, looking at two very different but specific areas of choice-making experience that emerged in the aftermath of the Age of Revolutions and considering how they came to shape the modern vision of human rights. One of these arenas, not surprisingly, concerns the formal invention of new modes of voting in an era well before the advent of the secret ballot (which is a form of choice-making procedure that by now has acquired a very specific human rights pedigree, but did not for more than a century after the first Atlantic revolutions). The other, perhaps more surprisingly, concerns a practice, governed by informal laws and, superficially, conducted at a considerable remove from politics, but that also has a big role in my story about the origins of a choice-based human rights ideology. That is the advent of new, couple-based forms of social dance and, especially, the waltz. Let me try to explain how and why, starting with two very different and fairly humble texts to guide us rather than either the Declaration of the Rights of Man or the Universal Declaration of Human Rights. Both of these minor texts are French in origin, but they draw our attention to what came to be ordinary trans-European *and* trans-Atlantic social practices in the nineteenth century.

The first is a hand-written sign, displaying a *formule de serment*, or compulsory oath of just thirty-six words, that was composed by the Committee of the Constitution of

the National Assembly a little less than one year after the start of the French Revolution. According to the *Archives Parlementaires*, the Committee of the Constitution determined in May 1790 that identical copies of this notice were henceforth to be placed next to ballot boxes in all spaces across France where voting for any kind of representatives was subsequently to take place. All voters would be required to “swear” to this text, with the words “je le jure”, just before casting their votes. It reads in full: “You swear and promise to name only those [representatives] whom you have chosen in your soul and conscience as the most worthy of public confidence, without being swayed by gifts, promises, solicitations or threats.”¹⁰

The second text is, on the surface, entirely different – which partly is what makes it interesting. It is a small book, printed in 1847, and again in 1849, by the Parisian-Polish dancing instructor Cellarius (he went by one name only), who was famous for claiming that he had brought the polka from Bohemia to Paris. Most of the hundred-plus pages of *La Danse des salons* are filled with very detailed descriptions of all the most fashionable dances of the moment. Here is a typical passage describing a particular *cotillon*, a dance to which we will return, called “The Chairs” (*Les Chaises*): “The conductor sets out and makes his partner sit down in a chair placed in the centre of the room. He then takes two gentlemen and presents them to the lady, who must choose one of them. He then makes the rejected gentleman sit down, and presents two ladies to him that he may select one. The first gentleman retains the rejected lady, and conducts her to her place in dancing or waltzing. This figure may be performed by one, two, three, or four couples.”¹¹ There are many more similarly dull passages in this vein in Cellarius’s pages.

¹⁰ Archives parlementaires de 1787 à 1860, ed. by M. J. MAVIDAL, M.E. LAURENT, 1^{ère} série, vol. 15 (1883) 704, which is also cited in Malcolm CROOK, *Le Candidat imaginaire, ou l’offre et le choix dans les élections de la Révolution française*. In: *Annales historiques de la révolution française* 321 (2000) 91-110. Apart from a brief experiment in 1797, declared candidates were only formally required in French elections starting in 1889; on the significance of this policy, see also Patrice GUENIFFEY, *Le Nombre et la raison: La Révolution française et les élections* (Recherches d’histoire et de sciences sociales 58, Paris 1993).

¹¹ See [Henri] CELLARIUS, *La Danse des salons* [1847 and in a new ed. published by the author with backing of Lamartine in 1849], ed. by Rémi HESS (Grenoble 1993), see 13-14. Translations immediately spread the work widely. One English version, called *Fashionable Dancing*, was published simultaneously in 1847 in London, and another was published, also in 1847, as *The Drawing Room Dances* in London and again in New York with the same title in 1858. The translation of the quotation above is taken from the latter, see 86 (no. 3), A Swedish edition, entitled *Etthundra moderna parisiska cotillon-turer*, was published in 1847 in Stockholm, and a German edition, called *Hundert neueste Pariser Cotillon-Touren*, was published in 1847 and again in 1855 in Leipzig.

Neither of these two texts is, in fact, “great” in the sense of having major literary or historical significance. They also differ in terms of date, material form, genre, format, and intended audience, making them an odd pairing for historical consideration. However, to a historian’s eye, they do share certain important characteristics. Both have an instructional quality, a “how-to” ethos; they are meant to be *put to use* in performing some kind of action that is at once individualized and fully public, as well as reproducible in multiple venues. And despite, or really as a result of this orientation toward practice, both take us to the heart of the question of how and what one is doing when one “makes a choice”. The first, on voting, draws our attention to an interior, mental process. The second, on dance, is concerned primarily with logistics and bodily navigation. But, read together, they start to reveal an answer to the question of how we – meaning the people of today across much of the world that sees itself as democratic-capitalist – became habituated to a historically anomalous position: that to have and to make choices in multiple domains among multiple options is precisely what it is to be free – *even* as these documents are also all about the necessity of learning and following other people’s rules in the process. So let us look more closely at each text in turn.

The first, our practical sign, introduces (as the Declaration of Rights of Man and Citizen does not) a variant of the word “choix” (*choisi*) at the start. Importantly, it does so in connection with elections, a newly critical feature of French political life after 1789 insofar as the act of voting for representatives was widely seen as essential to the idea of implementing popular sovereignty. In the case of this instructional poster, there is also the suggestion that making a choice is an active process: it depends on one having interior convictions (“in one’s soul and conscience”) and then actualizing them, as outward commitments, in a public act or ritual (first swearing an oath, then handing in some kind of ballot). They are to be performed with an understanding that this process – if done by “the people” *en masse* in a specially demarcated setting – will have positive effects on and in the exterior world. Voting is here envisioned as the instantiation of the people’s commitment not only to an original social contract, but also to making their own choices, in the realm of political representation, on a semi-regular basis.

Thus far we are very close to standard democratic theory. This reading might also seem to suggest that the modern idea of choice was already lurking in the background of the Declaration of the Rights of Man, even if unspoken, there. But what is also striking

(from our contemporary vantage point) is all that is left out and even forbidden in the text of this oath. These are all features, which we know, thanks to the work of historians like Malcolm Crook and Philippe Tanchoux, to have been missing from suffrage in general in the revolutionary era.¹² Most obviously, while voters are informed that they will have to make a choice about personnel, and they must choose the best of the options before them (the “most worthy of public confidence”), they are told neither how, nor where to find these options, nor what criteria to use in constructing a list of the worthy, not to mention determining among them. Successive revolutionary assemblies deliberately balked at providing voters with a formal slate of candidates from which to make selections, leaving the possibilities essentially limitless. Moreover, we see that anything like campaigning or “soliciting” votes, and not just vote buying or intimidation, was strictly prohibited by revolutionary law, meaning that it was not possible for potential candidates to signal to those doing the choosing either that they wanted to be chosen or, in an age before political parties, that they embodied any substantive differences, personal or political, from anyone else. Choice is introduced here without a choice-set or menu of options (to use today’s jargon), but also without ceding any space to individual preference.

And that is not all. In this oath, voters are asked to swear primarily to an absence – *not* having committed certain actions, rather than to doing anything concrete. For let us say that one were able to make up one’s mind and select a legitimate option reflective of one’s interior convictions without any form of outside influence impinging on the process. There is still nothing here about the manner in which the externalization of those sentiments, or the actual voting process, will be executed. The record of the debates around this oath, preserved in the *Archives Parlementaires*, indicate no discussion about how ballots will be marked and sealed, or if the vote will always be delivered in writing rather than orally, secretly rather than publicly, anonymously rather than registered and recorded by voter name. This too accords with what we know about revolutionary-era elections. They were, as before the Revolution, conducted and then tabulated in a wide

¹² On the history of voting practices during the era of the French Revolution, see Malcolm CROOK, *Elections in the French Revolution: An Apprenticeship in Democracy, 1789-1799* (Cambridge/New York 1996); Philippe TANCHOUX, *Les Procédures électorales en France de la fin de l’Ancien Régime à la Première Guerre Mondiale* (CTHS Histoire 12, Paris 2004); Yves DÉLOYE, Olivier IHL, *L’Acte de vote* (Paris 2008); Olivier CHRISTIN, *Vox Populi: Une histoire du vote avant le suffrage universel* (Paris 2014). On pre-modern forms of voting, which were the basis for revolutionary practices, see also Serena FERENTE, Lovto KUNCEVIC, Miles PATTENDEN (eds.), *Cultures of Voting in Pre-Modern Europe* (London/New York 2018).

variety of manners, from secret balloting to very public, non-quantified shows of hands, with limited attention initially not only to eligibility (aside from the assumption that the chooser and chosen would be property-owning men, the chief representatives of their family unit), but also to the details of voting practice. With the important exception of Condorcet, few revolutionaries had really anything much to say on the subject. That was the case in the new United States as well.

Indeed, the very fact of the demand for an oath suggests a set of attendant worries about the implementation of the main principles that our placard articulates. Not least of these was that all this choice-making would turn on self-interest and personal tastes and thus exacerbate division and conflict when the goal of any kind of election remained, as it had been in the Old Regime, primarily unanimity, a group or people or nation who spoke consensually and instinctively, with one voice, about the public good. Our oath was intended as an active check on this possibility of private interest or whim dictating one's choices. As such, it was only a small step, process-wise, in the direction of formalizing the business of voting, and it was not intended as a step toward individuated choice at all. Despite the emergent, loose rhetorical connection to liberty, or self-rule, attached to political choice-making in the era of the Revolution, it actually took a long time – more than an additional century and what might be called a *second* democratic revolution – before one of the ideas that is now so intrinsic to human rights ideals coalesced into a global norm or even a French one. That idea is that freedom required an electoral process, which allowed for individuated and confidential expression of personal preferences from a set and limited menu of options. Its adoption was neither preordained nor a natural outgrowth of the expression of the original idea of popular sovereignty circa 1789. In the course of the long nineteenth century endless tinkering with election protocol happened as a result of new political and legal debates and, even more, lots of sheer doing, year after year, in France and elsewhere around the globe, from school board elections to national referenda.

In fact, though, politics was not the only realm in which nineteenth-century French or other European people were called upon to make selections on a routine basis. That same century also saw numerous other experiments in the institutionalization and adaptation of forms, types, and protocols of choice-making, from choice in commerce and employment to choice in courtship and marriage. Many of these opportunities were also

available with wider social parameters than voting was, at least initially. The historian Suzanne Desan has, for example, drawn our attention to short-lived efforts, in the wake of changes in revolutionary family law, to create official marriage bureaus and even marriage want-ads to help in the bewildering business of spouse selection for men and women across classes.¹³ This is also where our mid-nineteenth-century dance manual comes in.

Cellarius's *La Danse des salons* says little, by contrast with our electoral oath, explicitly about choice as a concept. It says nothing at all about interior convictions of any kind, even about preferences for some dancing partners over others, except to say that it is important to avoid expressing them in any public way. But nineteenth-century social dances were often centrally focused on the business of choosing – in this case, of partners and, potentially, suitors on the path to marriage rather than political representatives. And indirectly, alongside discussion of rhythm and foot placement, Cellarius's *La Danse des salons* is all about the performance of choice. Specifically, it is about the complex and, in this case, explicitly gender-differentiated choice-making etiquette required in modern social life to allow for the idea and experience of what we now call “freedom of choice” that does not dissolve into lawlessness or social strife, on the one hand, or psychological torment, on the other.

The years 1847-1849 we associate mainly with a second wave of political revolution across Europe, as well as the rise of universal male suffrage. But this same moment also marked the height of the craze, especially in France, for balls. That included balls of every kind, from society affairs in great private houses to popular balls in public dancehalls for which the price of tickets, rather than whom one knew, determined to a considerable degree the social makeup of the clientele.¹⁴ All this social dancing was, in part, an effect of big structural shifts, much like the rise of voting after 1789: the growth of new kinds of entertainment in an increasingly urban and commercial world; shifting class patterns and alliances among both elites and former peasants in these spaces; and especially, the transformation of the business of courtship, marriage, and even divorce around new

¹³ Suzanne DESAN, *The Family on Trial in Revolutionary France* (Berkeley/Los Angeles 2004).

¹⁴ On social dancing in the nineteenth century, and especially the significance of the ball – public or private – as a social site, see Carol McD. WALLACE et al., *Dance: A Very Social History* (New York 1986); François GASNAULT, *Guinguettes et lorettes: Bals publics et danse sociale à Paris* (Paris 1986); Monika FINK, *Der Ball: Eine Kulturgeschichte des Gesellschaftstanzes im 18. und 19. Jahrhundert* (Innsbruck/Vienna 1996); [Pierre CHARTRAND], *Histoires de bal: Vivre, représenter, recréer le bal* (Paris 1998); Henri JOANNIS-DEBERNE, *Danser en société: Bals et danses d'hier et d'aujourd'hui* (Paris 1999).

contractual but also sentimental norms.¹⁵ Still, those big stories aside, the rage for balls, or *la dansomanie*, in the 1840s also stemmed directly from the first closed-couple dances becoming socially acceptable in France. (At least that is what Cellarius meant when he talked about “revolution”; his revolution was all about the polka!)

Early in the nineteenth century, the *quadrille* or *contredanse* still held sway in most social settings in Europe. What distinguished such traditional dances was their collective ethos, the fact that they were danced by a group of couples, often organized with social hierarchy in mind and following established patterns that required little physical intimacy but lots of changes in partners within each dance. That all began to change in the aftermath of the great balls of the Congress of Vienna and then the gradual acceptance in Parisian high society of a dance called the waltz. The novelty of the waltz lay in the fact that each couple stayed together exclusively for the duration of the dance, a male and a female dancer facing one another in a sort of close embrace, steadily turning both internally as a unit and in a giant, socially leveling counterclockwise circle, largely unmoored from the group as a whole.¹⁶

The waltz – and variant closed-couple dances like the slightly later galop, polka, and mazurka – had two great effects on nineteenth-century French, urban social life. They introduced into the public realm what was sometimes called “the charms of liberty”, which really meant the possibility of a kind of intimate and daringly physical, even sexual behavior, often among strangers or mere acquaintances, that was totally taboo in all other settings. Simultaneously, these dances unleashed their own set of anxieties about decorum, especially around the fraught business of choosing from among the many human options, suitable and not.¹⁷ For as any reader of nineteenth-century novels, from

¹⁵ On the Revolution’s effects on family law and ideals alike, see James F. TRAER, *Marriage and the Family in Eighteenth-Century France* (Ithaca, N.Y./London 1980); Irène THÉRY, Christian BIET (eds.), *La Famille, la loi, l’Etat de la Révolution au Code Civil* (Paris 1989); DESAN, *The Family on Trial. Recent accounts of the ideals and practices upholding marriage in nineteenth-century France* include: Patricia MAINARDI, *Husbands, Wives and Lovers in Nineteenth-Century France* (New Haven, Conn. 2003); Agnès WALCH, *Histoire du couple en France, de la Renaissance à nos jours* (Rennes 2003); Michelle PERROT, *La Vie de famille au XIXe siècle* (Paris 2015); and Andrew J. COUNTER, *The Amorous Restoration: Love, Sex, and Politics in Early Nineteenth-Century France* (Oxford/New York 2016).

¹⁶ On the history of the waltz, the key sources are: Eduard REESER, *The History of the Waltz* (Stockholm 1949); J. S. RICHARDSON, *The Social Dances of the Nineteenth Century in England* (London 1960); Ruth KATZ, *The Egalitarian Waltz*. In: Roger COPELAND, Marshall COHEN (eds.), *What is Dance? Readings in Theory and Criticism* (Oxford/New York 1983) 521-532; and especially, Rémi HESS, *La Valse: Revolution du couple en Europe* (Paris 1989).

¹⁷ On fears of the effects of intimate social dancing and, especially, the waltz, see also Elizabeth ALDRICH, *From the Ballroom to Hell: Grace and Folly in Nineteenth-Century Dance* (Evanston, Ill. 1991); Mark

Pride and Prejudice to *La Comédie humaine* to *Anna Karenina*, knows, choosing properly with whom to have all this consensual bodily contact could potentially lead to love and a successful marriage. This was a prize that, ironically, ultimately required one to give up subsequent choice, or liberty, in the domestic sphere. But if navigated incorrectly, choice in partners led to thwarted ambition, humiliation, heartbreak, ruin, or – once again – social discord.¹⁸

The solution lay, again, in rule-following or ever increasing public vigilance not only about mastering the execution of the steps before setting out on the dance floor, but also about avoiding any kind of indecorous behavior along the way. This was not only true of France, since the rules were exported with only small modifications for different political climates from place to place across Europe, North America, and even parts of Latin America;¹⁹ dancing masters claimed to be following the dictates of Cellarius as far afield as Stockholm and Boston in the 1850s. The difference from the voting case is that regulation of behavior in the ballroom, as in courtship in general, depended largely on community norms, not formal laws (though public balls in Paris, where fights sometimes broke out over the picking of partners, certainly depended on the presence of the police).

Cellarius does not actually go over the basic rules of ballroom comportment or etiquette. He does not tell us – as most dancing masters of the era do (as readers of Jane Austen are well aware since her characters are routinely hampered by them) – that the man must always ask the lady to dance and never the other way around, whether in public or private venues; that she has the power of refusal on account of needing rest, but must not then choose to dance with someone else until later in the evening; that no man can

KNOWLES, *The Wicked Waltz and Other Scandalous Dances: Outrage at Couple Dancing in the 19th and Early 20th Centuries* (Jefferson, N.C./London 2009); and more generally, Ann WAGNER, *Adversaries of Dance: From the Puritans to the Present* (Urbana, Ill./Chicago 1997).

¹⁸ On the function of social dancing in the nineteenth-century French and English novel, including the novels of Jane Austen, see: Timothy DOW ADAMS, *To Know the Dancer from the Dance: Dance as Metaphor of Marriage in Four Novels of Jane Austen*. In: *Studies in the Novel* 14:1 (1982) 55-65; Richard HANDLER, Daniel SEGAL, *Jane Austen and the Fiction of Culture: An Essay on the Narration of Social Realities* (Tucson, Ariz 1990); Cheryl WILSON, *Literature and Dance in Nineteenth-Century Britain: Jane Austen to the New Woman* (Cambridge/New York 2009); Sarah DAVIES CORDOVA, *Paris Dances: Textual Choreographies in the Nineteenth-Century French Novel* (San Francisco/London 1999); and Sylvie JACQ-MIOCHE, *Le bal dans la littérature romanesque française*. In: Claire ROUSIER (ed.), *Histoires de bal: Vivre, représenter, recréer le bal* (Paris 1998) 141-152. See also the passages collected in Allison THOMPSON, *Dancing through Time: Western Social Dance in Literature, 1400-1918. Selections* (Jefferson, N.C./London 1998).

¹⁹ See C.H. CLEVELAND, Jr., *Dancing At Home and Abroad* (Boston 1878) provides guidelines for how the rules shift in different places and, interestingly, suggests they stem from basic political differences between nations.

occupy any woman for more than three dances in an evening; that he must escort her after each dance to her seat, her left hand in his right, without delay or small talk, just a bow as he takes his leave; that women should keep track of who has chosen them and for what dance with little dance cards and pencils hung from wrists or skirts; that staring or explicit displays of personal preference should have no place in any of this; and more. Cellarius leaves such rules unstated to compliment his readers by suggesting that such rules are, by now, too well known by people like them to require restating. From high-society events to servants' balls, the rituals of the dance floor were encouraged and enforced by external forces, but ultimately designed to be internalized, much like the form of the dances themselves – and by men and women alike.

But Cellarius adds something else of interest to the historian of the rules of choice and human rights, as well as dance. After he finishes going over all the basic dances of Parisian high society, he gets to a final section on the so-called *cotillon*, a new fad of the 1840s, built around the waltz that is best described as a series of dance games with props to be played at the end of an evening in a private ball.²⁰ In a little-remarked passage in Gustave Flaubert's *Madame Bovary* of 1856, right after the great quasi-sexual ball scene in which the heroine is almost overcome by dancing a waltz with a Viscount who is not her husband, the very next passage describes her astonishment at the return to normalcy involved in watching a carefully orchestrated and tame *cottillon* in the waltz's wake. Cellarius describes eighty-three possible variations of this dance. Later in the century, some dancing masters list hundreds. To us they seem shockingly silly. The fun centers on such activities as chasing the opposite sex with butterfly nets while waltzing or forcing the

²⁰ For descriptions of the purpose and function of *cotillons*, the best sources are dance manuals, some of which, starting in the 1850s (post-Cellarius), specialize; see, for France: LABORDE, professeur de danse, *Le Cotillon* (Paris 1853) with illustrations; Philippe GAWLIKOWSKI, *Guide complet de la danse contenant ... toutes les figures du cotillon ...* (Paris 1858); Charles PERIN fils, *Le Cotillon. Soixante figures choisies* (Paris [1876]); G. DESRAT, *Le Cotillon: Vade-mecum du conducteur de cotillon* (Paris 1881, originally 1855); P. BAIL, *Guide du cotillon, et les danses de salon* (Paris 1895); and Henri DE SORIA, *Le Cotillon: Théorie complète* (Paris [1899]). Similar guides were also published in the second half of the nineteenth century in London, Florence, Madrid, Munich, Erfurt, Leipzig, Vienna, and Santiago. See, for example, Casimiro MARTÍN, *Teoria del cotillón según Cellarius: Con la explicación de treinta figuras distintas* (Madrid 1872) for a sense of the reach of the genre. Guides to the *cotillon*, sometimes called "the German" in the US, were also published in the same period in many American regional cities, including New York, Chicago, Boston, Buffalo, and St. Louis. The phenomenon took off in the 1820s (the *cotillon* was admitted at court in France in 1827), and the first guide to music and forms seems to be the now-rare *Le Cotillon: danse nouvelle avec douze figures variées, et chorégraphie* (Paris c. 1825), in Harvard's Houghton Library, which already includes figures like "La Trompeuse" and "Le Prisonnier."

opposite sex to try to eat biscuits off the end of fishing rods as a prelude to a galop. My earlier example involved dancing around chairs in a way that evokes a contemporary child's birthday party game. But these dance games turn out, much like our oath, to be all about making the business of picking among too many options work. That is, choosing functions in these odd dance games not as the precursor to the real action; it becomes the focus of the festivities themselves.

A good number of Cellarius's *cotillon* variations, not surprisingly, involve men doing the choosing from among the assembled women, much as all the major nineteenth-century ballroom dances do. (For this reason, those who criticized Parisian balls as debauched spaces sometimes compared them to "Oriental bazars" in which women put themselves up for auction.²¹) Some variants even seem to have turned on humiliating the gentlemen's potential female partners insofar as these games involved the public witnessing of the rejection of some of the human "options" before them as part of the fun and performance. Cellarius describes, for example, one that is actually called "The Ladies Mocked" (*Les Dames Trompées*) in which the main gentleman "approaches several ladies pretending to invite them to waltz or dance. The moment the lady rises to accept his offer, he turns away quickly to address himself to another, on whom he plays the same game, till he at last really makes a choice".²²

But significantly, a substantial number of the games described by Cellarius involved role reversal: women picking certain men and explicitly leaving other ones out in the cold. This is an activity that had little counterpart in the world outside the ballroom in an era before female suffrage, with the possible exception of household staff. Consider Cellarius's description of a figure that, even though men still initiate the activity and construct the choice set, fits this seemingly subversive mold. In "The Cushion" (*Le Coussin*), Cellarius tells us: "The first gentleman sets out, holding a cushion in his left hand. He makes the round of the room with his partner, and leaves the cushion to his partner, which she must present to several gentlemen, inviting them to kneel upon it. The lady should draw back quickly from the gentleman she means to mock, and let it fall before the one she intends to choose."²³ "The Fan" (*L'Eventail*) ends similarly with the leftover or un-chosen man

²¹ Jean-Baptiste GLAIRE, *Encyclopédie catholique* (Paris 1841), article "bal."

²² CELLARIUS, *The Drawing Room Dances*, 96 (no. 23).

²³ *Ibid.*, 88-89 (no. 7).

simply following the waltzing couple, forced to “hop around” and fan them as they dance without him.²⁴

Cellarius leaves us to draw our own conclusions about all this temporary, highly orchestrated and consensual role reversal, which seems to function something like a modern-day charivari. It is hard to know if turning the indignities of not being chosen in a game of this sort becomes a way of affirming or mocking the growing power of choice. This is, after all, strictly a how-to manual. But another well-known author on social dancing, Lily Grove, writing at the end of the century in England (to which this fashion was exported, in part with help from Cellarius’s quickly translated text), stated that “[w]omen like the *cotillon*, for it gives them the rare chance of showing their preferences and of enabling them to pay out now and again the men who through conceit, neglect, or indolence, have displeased them”. Indeed, she called it an innovation likely to last in this “age of woman”.²⁵ Some French writers made similar points about the role reversal in choice-making aided by costuming and masks in the public opera balls of the mid-century. Alphonse Karr, author of *Encore les femmes* of 1858, noted that “women in life must wait to be invited to love, just as, in the salon, they wait to be invited to dance”. But masked in the special space of the opera ball, something else transpired: “they [women] chose before being chosen, chose outside the circle of their acquaintances, and spoke for once with unmanned tongues”.²⁶

And still other variants of the *cotillon* described by Cellarius played with decision-making alternatives in different ways. This included using the chance to get rid of the obligation (for men *and* women) to pick at all; or using combinations of choice and chance (as in games like the “Blind Man’s Bluff” that involved picking with impaired vision and thus without full information); or using a master of ceremonies to do the selecting and creating of new couples from the assembled crowd, though one imagines that a word in his ear ahead of time might have produced predetermined results.

The important point is that all these games introduced men and women alike to a kind of freedom from the normal constraints on the expression, whether verbal or

²⁴ Ibid., 109 (no. 47).

²⁵ Lily GROVE, *Dancing* (London 1901 [orig. 1895]) 427-428. See also WILSON, *Literature and Dance in Nineteenth-Century Britain*, on this question of gender and the *cotillon*.

²⁶ Alphonse KARR, *Encore les femmes* (Paris 1878) 89-90. See also GASNAULT, *Guinguettes et lorettes*, on the confusion of gender and class identity promoted by costuming and masking of the opera balls at mid-century.

physical, of sentimental and erotic preferences. That was clearly their intended purpose, along with some relief from the need to choose at all, as in the case of those employing serendipity. But far from authorizing a free-for-all, *cotillons* made choice a matter of ever-more elaborate rules, props, procedures. In fact, they subjected choice to formal, stylized, repetitive choreography as happened, finally, with the advent of the modern election by secret ballot orchestrated by political parties, an innovation of the late nineteenth century almost everywhere. That combination of license, on the one hand, and strict regulation of the navigation of possible choices, on the other, must have been their appeal. The dancing of *cotillions* – silly as they sound – only faded from popularity in France just before the First World War, right about when the *isoloir* or voting booth was introduced across the nation,²⁷ solidifying the basic format of modern French elections, but also reshaping modern notions of choice and freedom once again. This system of organized voting certainly formalized the basic association of masculinity with the capacity and right to express preferences as individuals and to act upon them; the formal business of public choosing became associated more than ever with specifically male epistemic dignity and autonomy. But the secret ballot, followed by the *isoloir*, may also have helped pave the way for women's suffrage everywhere. For in subjecting the voting process to so many rules as to, in effect, tame it entirely, suffrage also became a safe, organized activity at some distance from the more chaotic forms of collective choice-making of the past.

Still, we might ask: does it make sense to try to link these two texts, one so clearly embedded in the history of voting and the other in the history of social dancing – or what might now be framed as public and private life? Do we actually have a story here or anything more than a thematic or semantic coincidence? My argument is that these two documents are but minor nodes in a larger story that, to this day, remains largely untold. We now neither swear oaths before voting nor dance the *cotillon*, two activities that these documents, as material artifacts as well as texts, helped concretize. Both practices are now

²⁷ On the introduction of the *isoloir* along with the secret ballot on the eve of World War I, see Alain GARRIGOU, *Histoire sociale du suffrage universel en France, 1848-2000* (Paris 2002); Malcolm CROOK, Tom CROOK, *The Advent of the Secret Ballot in Britain and France, 1789-1914: From Public Assembly to Private Compartment*. In: *History* 92:4 (2007) 449-471; and Malcolm CROOK, Tom CROOK, *Reforming Voting Practices in a Global Age: The Making and Remaking of the Modern Secret Ballot in Britain, France and the US, c. 1600-c. 1950*. In: *Past and Present* 212:1 (2011) 199-237. On the cultural meanings attached to the secret ballot as a more general historical phenomenon, see Romain BERTRAND, Jean-Lois BRIQUET, Peter PELS (eds.), *Cultures of Voting: The Hidden History of the Secret Ballot* (London 2007), introduction; and Alain GARRIGOU, *Le Secret de l'isoloir*. In: *Actes de la Recherche en Sciences Sociales* 71-72 (1988) 22-45.

thoroughly obsolete, not least in an era of increasing on-line voting and on-line partner selection. Neither, furthermore, seems connected except very tangentially to the history of human rights, which is our subject today. But I want to suggest that our democratic, capitalist imaginary – or what some people now like to call neo-liberalism – was shaped in part by both kinds of activities, not to mention many other ordinary experiences of choice-making in practice, complete with their own formal and informal rules and constraints. These experiences were as formative, or quite possibly even more formative, than statements of philosophical principle. Widely experienced social practices rooted in the business of choosing helped, over the long nineteenth century, make possible the particular form that the modern human rights imaginary has taken in the twentieth and twenty-first century because these practices had already become central, maybe even hegemonic at the level of lived experience, to conceptions of modern personhood and modern liberty.

What I have aimed to demonstrate in this paper is that no straight line actually runs automatically from the political principles of the French Revolution to widespread acceptance of human rights ideals rooted in choice. Nor can we chart any direct trickle-down effect from that century's great philosophical texts. Yes, a nascent idea of some kind of choice as a positive opportunity can be found in numerous eighteenth-century domains, the political being actually a rather belated one. But for the duration of that century and into the new one, choice-making remained restricted in its field of application, in part because it had so little to do then with getting ahead in a world in which birth status and land holdings counted more than anything else; it was precisely not having to make any choices, by virtue of having a particular name and knowing one's destiny, that constituted freedom and autonomy.²⁸ Choice-making was also long considered mainly a practice for men, as heads of households, if it were to be done properly; usually it had more to do with communities than individuals anyway; and largely functioned without much by way of rules and regulations. It was, finally, an explicit source of new anxieties, not least for the

²⁸ Consider the important distinction, defined by Quentin Skinner and celebrated and extended by Philip Pettit, of an early modern tradition of thinking of freedom or independence as *non-domination* – or not being subject to the will of someone more powerful, as a slave or servant would be – and thus capable of participating in the articulation of the collective will, as opposed to a more modern version that stresses freedom as *non-interference*, or a capacity to make choices; see SKINNER, *Liberty Before Liberalism*, and Philip PETTIT, *Republicanism: A Theory of Freedom and Government* (Oxford/New York 1997); Philip PETTIT, *Free Persons and Free Choices*. In: *History of Political Thought* 28:4 (2007) 709-718.

philosopher Immanuel Kant who proposed on the eve of the French Revolution that the discovery of choice both made human history possible *and* introduced all subsequent mental anguish, in good part because of the effects of the experience of options without restraint.

What happened over the long nineteenth century, between the French Revolution and First World War, was that the organization of choice-making (*how*, rather than simply who and what) became a live problem to be worked out in practice just as much, or even more than, in theory. As occasions for engaging in choice-making behavior, but also the formal and informal choreography and constraints around this behavior, grew (we might think of the *cotillon* writ large as a kind of metaphor for grappling with the problems around choice), even ordinary people, including women and the poor by the end of this period, became increasingly habituated to choice-making as a part of life. Arguably, individual choice-making came to seem more vital to shaping a life too. In other words, in this way, an old term (choice) could be fixed to a new set of circumstances with a new set of meanings, now associated with being, even feeling autonomous and free. Indeed, one could argue that this is how ideology, which is another name for a political imaginary or *doxa* that comes to seem like such a natural, direct representation of the world as it really is that it largely avoids being the subject of discussion and even detection, is made.

That also finally brings us back to the middle of the twentieth century. The 1948 Universal Declaration of Human Rights (UDHR) – which is really the critical third text hovering in the background of this story – becomes here the end result of a long process of ideological gestation rather than a departure or paradigm shift. It also helps make the link between the domains of the oath and the ballroom dance concrete. I mentioned at the beginning of this paper that there are three instances already in the short text of the UDHR in which the word “choice” crops up. But to point out the presence of the word only is insufficient. In the UDHR, freedom conceived of as choice also plays a larger, more crucial role; it becomes here a common denominator that links *all kinds* of different human activities, including voting and marriage, both understood as rights regarding personal choice so essential to human well-being that the laws protecting them should transcend the laws of specific states. Crafted by an international team, albeit with a heavy French bias, in the aftermath of the Second World War, the UDHR betrays a view of the world in which the right to “freely chosen representatives” in the political sphere is also

conceptually linked to the right to enter into marriage, a domestic arrangement, “with the free and full consent of the intending spouses”, described by the 1970s as the “the same right [for men and women] to choose a spouse and to enter into marriage only with their free and full consent”.²⁹ In the 1940s, this was a victory for a still-burgeoning international legal position: what would come to be the dominant vision of modern human rights. But it was also the culmination of one hundred and fifty years of experimentation that had rendered the foundation for this way of seeing the world – as a matter of encouraging and protecting choices and choice-making – already doxic.

This logic, I want to suggest in closing, has only expanded in subsequent years. Of course, it is clear upon reflection that the choices enumerated in this text and subsequent human rights documents are of very different types, and the rules governing them and even our feelings about them are unlikely to ever be identical; in practice we do not choose religions the way we choose shampoos *or* the way we choose spouses. But the UDHR has, over the last seventy years, come to encapsulate something like modern common sense, a way of thinking that is now universally accepted, we assume, by all decent, meaning democratically-inclined, people everywhere. That means that it enjoys enormous persuasive power. And this is not necessarily a bad thing either even as violations of its norms accumulate. But there lurks the danger of a kind of extreme individualism or market thinking hidden just below the surface of human rights ideology in the modern era. This way of thinking is also not coterminous with democracy in its original, eighteenth-century incarnation. So if we want to consider seriously whether we have been misguided in putting so much emphasis on choice in a landscape of inequality, or whether the logic has gone too far in the age of the internet and we have become *too* invested in choice-making with *too* many choices of *too* many different kinds required of us, with just the kind of deleterious effects on our social and personal lives that once worried writers of

²⁹ See again the text of the Universal Declaration of Human Rights (1948), Art. 21 (3), which states that “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and *shall be held by secret vote or by equivalent free voting procedures*” (italics mine), and Art. 16, which states “Marriage shall be entered into only with the free and full consent of the intending spouses”. Note that article 16 in the Convention on the Elimination of All Forms of Discrimination against Women (1979) adapts this statement to incorporate the word “choice”: “On a basis of equality of men and women”, article 16, 1 (b) of this text states “[t]he same right freely to choose a spouse and to enter into marriage only with their full and free consent” and 1 (g) adds “[t]he same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation”. See <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>.

voting and dancing rules, we have to do more to historicize the natural and the taken-for-granted. That starts with the equation of freedom with freedom of choice and even choice that is so central to contemporary human rights thinking as well as consumer culture. History is an extraordinary tonic in this way. It gives us a rare – and necessary – chance to see just a bit more clearly the world we inhabit now, including its hidden premises.

Citation:

Sophia ROSENFELD, Human Rights and the Idea of Choice. 10th Gerald Stourzh Lecture on the History of Human Rights and Democracy 2018, online at <<http://gerald-stourzh-vorlesungen.univie.ac.at/vorlesungen/>> and <<https://phaidra.univie.ac.at/view/o:953714>>