Midterm Exam:
WEDNESDAY, Oct. 23, 11:15-12:05 in this room

Regular discussion classes DO NOT MEET next week

No Friday discussion this week; you can attend

- Wednesday, 2:30-3:20 Ballantine 344
- Wednesday, 3:30-4:20 Woodburn 118
- Thursday, 8:00-8:50 Woodburn 112
- Thursday, 2:30-3:20 Ballantine 345
A nation is made one by virtue of common laws and common representation. ... In France today, the moment any citizen is granted privileges against the common laws, he no longer forms part of the common order. His new interest is contrary to the general interest.

*What is the Third Estate?* (1789)

Emmanuel Joseph Sieyes, 1748-1836
French Revolution = idea of “national” sovereignty
But who is “the nation”? Who belongs, who doesn’t?

*How* is the nation sovereign?
direct democracy or representative institutions?
can the nation delegate responsibility?
If not, how can national sovereignty work with 
25 million people?

Citizenship and Rights

rights versus privileges

sources for the idea of “human rights”

controversy in summer 1789

resolved in distinction of active-passive citizens?
Who was Privileged? (Review)

First Estate (Clergy)
- pays no “taxes”
- collects its own tax or tithe (dîme)
- separate ecclesiastical courts

Second Estate (Nobility)
- does not pay the taille
- collects feudal, seigneurial dues
- fishing, hunting, pigeon raising
- swords; coats of arms

BUT ALSO: master craftsmen and merchants in the guilds;
residents of particular provinces;
entities such as the parlements or the provincial estates.
August 26, 1789: Declaration of the Rights of Man and the Citizen
The Constitution, on an altar, shows the Rights of Man in one hand and a pike with the red cap of Liberty… France’s guardian angel protects the Constitution with her shield and with the other hand fights off monsters

Rights of Man: What are the uses of such a document?
France strikes down the counter-revolutionaries with the Rights of Man (1790-1791)

Rights of Man: What are the uses of such a document?
How did “rights” become a meaningful idea in a society organized by privilege?

Anglo-American context

Sieyes, *What is the Third Estate?*

public sphere not of rational debate but of empathy and “sensibility”
Natural Rights and the Social Contract

John Locke (1632-1704), *Two Treatises on Government* (1690)

“I think it may not be amiss, to set down what I take to be political power; that the power of a MAGISTRATE over a subject may be distinguished from that of a FATHER over his children, a MASTER over his servant, a HUSBAND over his wife, and a LORD over his slave.”

“The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another.”

Robert Filmer (1588-1673)
*Patriarcha; or the Natural Power of Kings*

written in the 1630s-1640s
first published in 1680
defense of divine-right monarchy
color of Charles I and English Civil War/Revolution

Where does the idea of “rights” come from? Anglo-American context
A nation is made one by virtue of common laws and common representation. ... In France today, the moment any citizen is granted privileges against the common laws, he no longer forms part of the common order. His new interest is contrary to the general interest.

Abbé Sieyes and *What is the Third Estate?*

Where does the idea of “rights” come from? Sieyes and the nation as a legal entity
“It is so natural and simple that the observer might think he could do as well himself… I can only answer such a person by saying, of course you would have grouped the children around their mother, lavishing caresses on her, and you would of course have introduced the husband coming in at the moment so cheerful and happy at having such a wife and proud of being the father of such children. And, of course, you would have remembered the grandmother.”

Denis Diderot, The Salon of 1765.
Sources for the idea of “rights” in a society of privilege:

- Anglo-American intellectual tradition, social contract theory
- Experience of American revolution
- Sieyes, *What is the Third Estate?* polemic against “privilege” as if privilege were something distinctive to the Second Estate
- Culture of sensibility: idea that all human beings have similar feelings

Once the idea of “human rights” exists, what do you do with it?

Where does the idea of “rights” come from? three different ways to answer this question
“We have already considered a plan for working on a constitution… but we must first fix our attention on the principles that underlie any constitution. However simple, however common they may be, it will be useful to remind us of them. …

A Declaration of Rights will remind us of the sentiments that nature has engraved in the heart of each individual and encourage their growth. … For a nation to love liberty, it is enough for it to know it and for a nation to be free, it is enough that it wants to be.

A Declaration of Rights will also express all those eternal truths from which must follow all our institutions… it will be a faithful guide that will recall us always to the source of our rights. … It should say what everyone knows, what everyone feels.”

Marquis de Lafayette, July 11, 1789.

“My bailliage [unit that elected him] ordered me to request a Declaration of the Rights of Man… This declaration should be posted in the cities, in the courts, even in the churches; it will be the door through which one enters the edifice of the national constitution.

A people who has lost its rights…must know the basis on which they are founded and make them public.

Pierre Toussaint Durand de Maillane (lawyer from Arles), August 1, 1789.
There is an enormous difference between a society of new men, enjoying primitive sovereignty in the bosom of nature… and an ancient people… where a vast multitude of men without property [exists alongside] the spectacle of luxury and opulence…”

Pierre Victor Malouet (colonial administrator, elected by commoners in Riom), Aug. 1789.

“If we must have one, I ask that this declaration of rights be as short, clear, and concise as possible… such that having transported man to the forests, he is brought back at once to the midst of France”

Marquis de Lally-Tollendal (captain in the cavalry, elected by Paris nobility), August 1789.

* members of the Assembly committed to the idea that France already had a “constitution,” in the form of the monarchy’s institutions and customs

Rights of Man: a controversial idea, summer 1789
A declaration of rights will necessarily include abstract claims that will be the topic of discussion. It would not be wise to set out a list of rights without establishing duties, as well. A declaration of rights is like a moral treatise that will not necessarily be well understood by all classes of citizens and which could be abused.

François Grandin (parish priest from Le Mans),
August 1, 1789.
Natural and civil rights are those for the defense of which society is formed; and political rights, those by which society is formed. It would be better and more clear if we called the first passive rights and the second, active rights.

All the inhabitants of a country must enjoy passive rights… they all have a right to protect themselves, their property, etc. … But all cannot be active citizens. Women, at least in our current state, children, foreigners, and in general those who contribute nothing to the public order must not have an active influence… All can enjoy the advantages of society, but those who contribute to the public good are truly the stockholders of the great social enterprise…

Sieyes, “Introductory Comments,” Plan for a Declaration of Rights

Emmanuel Joseph Sieyes, 1748-1836

Rights of Man: a controversial idea, summer 1789
“The representatives of the French people, constituted as a National Assembly, and considering that ignorance, neglect, or contempt of the rights of man are the only causes of public misfortune and governmental corruption…

3. The principle of all sovereignty rests essentially in the nation.
4. Liberty consists in the right to do whatever does not harm another.
5. The law only has the right to prohibit those actions which injure society…
6. The law is the expression of the general will. All persons have the right, in person or by their representatives, to take part in its formation.”

Declaration of the Rights of Man and the Citizen (1789).
Active and Passive in the 1791 Constitution

4.3 million active citizens (population, 25 million)

male
has taken civic oath
25 years old
fixed residence for one year
member of National Guard
pays tax equal to three days’ labor
not a bankrupt, servant, or slave

“Justice holds the scales that equalize all citizens in the face of the law” (1791)
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tr>
<td>1395</td>
<td>Jews banned from France (as had been in 1182 and 1306)</td>
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<td>1492</td>
<td>Jews banned from Spain; a small merchant community re-locates to Bordeaux</td>
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<td>1675</td>
<td>Alsace, with its comparatively large Jewish population, becomes part of France; Louis XIV grants them special status</td>
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<tr>
<td>1785</td>
<td>Jews allowed to settle anywhere in France</td>
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<td>1787</td>
<td>Academy of Metz sets annual essay question on the improvement of the Jews</td>
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<tr>
<td>1789</td>
<td>Total Jewish population, perhaps 40,000</td>
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I observe first of all that the word Jew is not the name of a sect, but of a nation that has laws which it has always followed and still wishes to follow. To call Jews citizens would be like saying that without letters of naturalization and without ceasing to be English and Danish, the English and Danish could become French.

The Jews have passed through seventeen centuries without involving themselves with other nations. They have never undertaken anything other than commerce based on money; they have been the scourge of agricultural provinces; not one of them has yet known how to ennoble his hands by driving a plow. The law that they follow leaves them no time to engage in agriculture; in addition to the sabbath they have fifty-six more holidays each year than the Christians.

In Alsace they hold 12 million in mortgages on the land. In a month, they would become owners of half of this province.... People feel for the Jews a hatred that cannot fail to explode as a result of this aggrandizement. For their own safety, we should not consider this matter further.

They should not be persecuted... Let them be protected as individuals but not as Frenchmen, for they cannot be citizens.

abbé Maury [King’s preacher, member of the French Academy; elected by First Estate of Péronne], Dec. 23, 1789.
Every creed has only one test to pass in regard to the social body: it has only one examination to which it must submit, that of its morals. It is here that the adversaries of the Jewish people attack me. This people, they say, is not sociable. They are commanded to lend at usurious rates; they cannot be joined with us either in marriage or by the bonds of social interchange; our food is forbidden to them; …

They say to me, the Jews have their own judges and laws. I respond that it is your fault and you should not allow it. We must refuse everything to the Jews as a nation and accord everything to Jews as individuals. We must withdraw recognition from their judges; they should only have our judges. We must refuse legal protection to the maintenance of the so-called laws of their Judaic organization; they should not be allowed to form either a political body or an order within the state. They must be citizens individually. But, some will say to me, they do not want to be citizens. Well then! If they do not want to be citizens, they should say so, and then, we should banish them. It is repugnant to have in the state an association of non-citizens, and a nation within the nation. . . .

Count Stanislas–Marie–Adélaide de Clermont–Tonnerre [cavalry colonel],
“Speech on Questionable Professions and Religious Minorities,” 23 December 1789.