

Review - The New Historiography of Human Rights

Written by Peter Brett

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PETER BRETT, FEB 18 2013

The Last Utopia: Human Rights in History

By: Samuel Moyn

Cambridge: Harvard University Press, 2010

The Human Rights Revolution: An International History

By: Akira Iriye, Petra Goedde and William I. Hitchcock (eds.)

Oxford: Oxford University Press, 2011

Introduction

Human rights history matters for IR debates. Different theories of human rights depend upon different (more or less explicit) historical accounts of their genesis. For instance, the liberal internationalist John Ikenberry traces the 'human rights revolution' to the 1940s and a new willingness by the United States to guarantee a 'liberal international order' by force[1]. The 'agentic constructivist' Kathryn Sikkink foregrounds human rights activism in the 1970s and its effects on U.S. foreign policy and Latin American governments[2]. The Left critic David Chandler highlights geopolitical shifts after 1989[3], whilst the (sophisticated) realist Stephen Krasner grants rights in international affairs a much longer history, but claims they have typically been invoked as vehicles for states' interests[4]. It is therefore very welcome that historians have now begun to seriously investigate the topic, and move away from overly celebratory, teleological accounts[5]. Much of the credit for this goes to Sam Moyn's highly impressive *The Last Utopia*, which has dynamised the field in recent years. Here I provide an overview and critique of this work and another recent collection representative of the new debate, *The Human Rights Revolution: An International History*. Whilst not seeking to draw all possible consequences for IR, I also sketch some implications for parallel discussions emerging in the discipline.

The quest for 'origins' is always difficult. Such histories often fall into one of two traps. As explained by the late Kenneth Cmiel – whose pioneering 2004 essay 'The Recent History of Human Rights' is reprinted in *The Human Rights Revolution* – it is easy to become language-dependent. Just looking for the language of human rights, that is, 'potentially crabs us to those places where some magic words – *rights of man*, *human rights*, *derechos humanos*, *renquan*' – were actually being uttered' (p.29). If, on the other hand, one attempts to define human rights analytically, it can be tempting to simply equate with them things that are universal, and 'good'. Here 'Buddha and Jesus now become human rights activists. This sort of thing can get soggy fast' (ibid). Both volumes under review seek to escape from such difficulties and the teleological tendencies associated with them. In celebratory accounts, especially, disparate collections of universalists – many of whom never even thought in terms of 'human rights' – are frequently recruited into linear narratives of moral progress[6]. Now, however, more than a decade after 9/11, such projects are increasingly out of fashion[7].

The Last Utopia

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Moyn's core thesis in *The Last Utopia*'s is aimed squarely at those who see human rights as inherent in Graeco-Roman philosophy, Judeo-Christian religious and natural law traditions, the Enlightenment constitutions of revolutionary France and America, and/or global consensus embodied by the 1948 Universal Declaration of Human Rights (UNDHR) (esp. ch.1). Moyn argues, instead, that contemporary human rights advocacy has its origins in the failure of utopian alternatives to state socialism produced after 1968 (Eurocommunism, Maoism, Third-Worldism, new social movements etc). Only in the mid-1970s did human rights emerge as the sole survivor from this ideological struggle, transcending the Cold War partisan (ab)uses that had contaminated it for the previous 25 years (ch.4). Moyn thus minimises the significance of the UNHDR, seeking to free the 1940s 'from the widespread myth that the era represented a kind of dry run for the post-Cold War world' (p.45). Human rights, in fact, 'failed to take' at the time (p.44). It has often been argued that the advent of the Cold War was a set-back for human rights[8]. But here Moyn goes further, arguing that even before 1948 social democracy had constituted greater mobilising force (p.73). Like Mark Mazower, he sees the United Nations as having 'neutered' the concept at Dumbarton Oaks (p.57)[9]. Until its triumphant return three decades later, it remained largely the province of Christian anti-communists and anti-colonialists. The latter, crucially, used the language almost solely in order to demand self-determination (ch.3). This was not a 'capture' of the human rights project focused on individuals, as many would now see it, but rather a 'distinctive tradition' to be contrasted with it (p. 86).

As one might expect from this argument, much of *The Last Utopia* is taken up with excluding thinkers and politicians from the canon of human rights history. Moyn frequently avoids Cmiel's language-dependence trap by coining his own analytical definition. He refuses, however, to simply equate human rights with what is 'good' and universal because 'distinctive globalisms and internationalisms existed all along in modern history' (p.14); Christianity, Kantian cosmopolitanism, and labour internationalism, to name only a few. He therefore narrows to the field those advocating protecting the rights of humans beyond the nation-state. Thus, whilst Thomas Paine, Jewish liberals, Haitian revolutionaries, anti-colonialists, civil libertarians and early feminists may all have used the language on occasion, Moyn shows that what all these groups and figures demanded, above all, was the right to (improved) citizenship *within* the nation-state (pp.25, 32, 34, 37-8; ch.3). Conservative Christian uses are excluded for primarily opposing state intervention (pp. 74-79). The Geneva Conventions applied only to soldiers (p.249, n.62). Conflicts over labour and property, meanwhile, which were also frequently conducted within a 'rights of man' idiom, are similarly disqualified (pp.34-37).

This demonstration is performed with clarity, concision, and considerable breadth of learning. Yet certain objections can be anticipated. There is, firstly, the risk inherent in any analytical enterprise: circularity. Definitions can predetermine conclusions. When dealing with a concept as contested as human rights, of course, this is practically unavoidable. To me, however, Moyn's focus on humans (and not just Christians, free adult male Athenians and so forth) beyond the nation-state seems eminently defensible. Such positions were logically available to a number of important figures and movements examined by Moyn, but were not adopted. Indeed, many of his exceptions prove his rules. Very few late eighteenth-century cosmopolitans followed Anarchasis Cloots in advocating world government, not nation-states (p.28). And few post-war civil libertarians followed Roger Baldwin in seeking to extend rights protections to imperial subjects (pp.125-6). On one point, nevertheless, perhaps circularity does creep in. A desire for the international 'legalisation' of rights is sometimes added to Moyn's basic definition, and used to exclude groups from the human rights canon (e.g.p.39). But chapter 5 of *The Last Utopia* is dedicated to showing how international lawyers (with the exception of Hersch Lauterpracht) only became concerned with human rights after its 1970s revival (pp.183-186). Whilst generations of earlier political actors might conceivably have advocated legalisation despite this lack of interest, failure to do so may be an overly stringent criterion for exclusion from the canon.

A second difficulty relates to language-dependence. Whilst, as noted, Moyn generally avoids this trap, on occasion earlier movements such anti-slavery – which many point to as meaningful precedents for contemporary campaigns – are dismissed on the grounds that 'these causes were almost never framed as rights issues' (p.33)[10]. Elsewhere in the book, at the 1941 Arcadia Conference, the phrase human rights makes a 'fateful entry into world history' (p.25). Whilst we are told that Thomas Paine's 'accidental variation of his translation of *droits de l'homme* as 'human rights' once in his book did not [...] catch on' (p.49). Here it's the words, not the ideas that count. There is an inconsistency that IR scholars and social scientists are likely to seize upon. Christian Reus-Smit, for example, has suggested that

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the *The Last Utopia* is actually so language-dependent that it commits the classic historians' error: over-estimating the significance of its source material[11]. Human rights, that is, may become significant even without a large social movement in their name. More specifically, Reus-Smit argues, even if Moyn is right that activism around the UN human rights system after 1945 was weak and partisan, this does not mean – as Moyn sometimes implies – that it was politically inconsequential (pp.122-8). Institutions have independent effects on politics (see conclusion).

Many readers, thirdly, are likely to find the book too focused on American debates about ideas. Some will certainly find it implausible that the Carter administration incorporated human rights into its foreign policy in response to the changing intellectual climate, rather than because of less noble motives (pp.151-9). Others, in an equally sceptical vein, have suggested that most embraced the idea not because of other failed utopias, but because it allowed them to talk the new language of U.S. state power[12]. I find these charges unpersuasive. Moyn's focus on the United States – with one eye also on the Parisian Left – may however lead him to somewhat understate the significance of developments elsewhere. He refers, for example, to Amnesty International's 'impressive inroads in Britain' in the 1960s, but doesn't analyse this success as part of the wider appeal of human rights at the time in Northern European liberal Christian circles (p.132)[13].

A final line of criticism is more fundamental, aiming not at *The Last Utopia*'s internal coherence, but at the project itself. Moyn's book is resolutely that of an intellectual historian. He takes his subjects' specific intellectual commitments very seriously indeed. He takes advocating the rights of citizens to be wholly different from advocating the rights of all humans, for example, rather than treating both as expression of Enlightenment and/or liberal values. Whilst I am sympathetic to this approach, perhaps it has been taken too far in this case. Moyn himself cites the case of Ronald Dworkin's response to the rights revival of 1977: simply adding the word 'human' to his argument about rights as moral trumps (p. 216). Here it does not appear as if the great legal theorist underwent any significant intellectual conversion. Rather than signifying a dramatic expansion of his moral concern, this is surely more plausible evidence for a simple strategic adjustment on Dworkin's part. In a more favourable political environment, he could now more easily argue beyond the domestic sphere. Thinkers too are often political actors, in other words, and frequently endorse specific intellectual traditions strategically, and in order to further political projects associated with deeper sets of values[14].

So whilst there may be an analytical pay-off in sharply distinguishing ideas and intellectual traditions (see above), there can be explanatory value in seeking to connect them. Two other examples come to mind here. *Contra* Moyn, previous historians have surely been right in linking advocacy for the 'rights of man' with early animal rights activism – hardly a matter of citizenship (p.32)[15]! Likewise, the global anti-apartheid movement of the 1970s and 1980s was clearly a direct outgrowth of its earlier, civil-rights inspired phase. This is something that Moyn tacitly concedes, but seeks in general to deny (p.106). The point, however, has wider significance. Criticism of South Africa after 1948 was not just limited to calls for self-determination at the United Nations (e.g. p.95). By 1960 a significant international movement had formed – with important roots, amongst other places, in the non-aligned liberal Christian circles mentioned above – calling for the protection of rights *within* states under white minority rule[16]. What needs explaining, in fact, is why advocacy for human rights was limited to places where self-determination was denied[17].

The Human Rights Revolution

The Last Utopia has the great merit of bringing all these questions clearly into focus, for perhaps the first time. This is a testament

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to its ambition and achievement, unparalleled in the field. The essays in the *Human Rights Revolution* also betray a scholarly sophistication previously missing from historical work in this area. Perhaps, however, this is brought at the cost of theoretical clarity. Cmiel, quoting Joan Scott, rather endearingly describes historians as 'that tribe with 'only paradoxes to offer'' (p.42). There is indeed much of this on offer in this volume. Cmiel accuses constructivist political scientists like Kathryn Sikkink of telling an 'it's getting better story', ignoring Kosovan and Rwandan atrocities (p.41). Whilst he criticises intellectual historians for neglecting 'race ... gender ... the pursuit of interest ... [and] the grime of past politics' (p.31). Almost all the contributors heed these warnings, steering well clear of teleology and over-abstractness. It is unclear, though, what they would put in their place. Instead, they largely follow the editors in refusing to engage with theoretical issues on the grounds of complexity: 'the history of human rights is local and global, particular and universal, and above all, it is a history of both advances and setbacks' (p.6).

In keeping with this, the majority of essays restrict themselves neither to the use of human rights language in particular contexts, nor to fields defined by analytical concepts. They focus on a wide range of topics under the human rights umbrella. Anita Grossman, for example, looks at the UNHCR's 'right to adequate food' in the political context of rationing in occupied Germany after 1945. Brad Simpson contrasts the Carter administration's approach to East Timor with that towards Indonesia. Barbara Keys examines condemnation of the Greek junta for torture in the United States. Carl J. Bon Tempo looks at Freedom House's rights work in the 1970s and 1980s. Paul Robinson shows how human rights concerns boosted campaigns on behalf of Soviet scientists in the 1980s. Sarah Snyder evaluates the role of human rights during the Conference on Security and Cooperation in Europe (1986-9), and the end of the Cold War. Kelly Shannon, meanwhile, traces the framing of female genital mutilation as a rights issue, and Alexis Dudden illustrates how the global trend for apologies for past atrocities complicated Japanese-Korean relations in the 1990s.

All of these essays, like the rest of those in the collection, are generally informative and well-written. (Allida Black's defence of Eleanor Roosevelt against contemporary feminist critics, whilst convincing, is however perhaps a bit out of place). They miss opportunities, however, to engage with larger questions. Sarah Snyder, for example, mentions in a footnote that IR constructivist analysis of her topic has over-stated 'formal norms' and under-stated 'human rights activism' (p.277, n.2). This tradition has of course discussed these issues at length and her material now awaits locating within that discussion. The second part of the book, moreover – entitled 'the globalization of human rights history' – avoids the thorny issue of 'vernacularisation' this normally evokes[18]. That is, when human rights claims are made with objectives different from, and in cultural idioms alien to, those of their self-proclaimed Western guardians, when do they stop being 'human rights'? Historians still have a lot to tell us about this process. But almost all the chapters in this section are focused on U.S. foreign policy.

What the collection does provide, however – read as a whole – are some useful proposals for empirical correctives to Moyn's account. Daniel Cohen suggests that the social memory of the Holocaust informed human rights thinking before 1970s to a somewhat greater extent than Moyn allows. Keys claims that Amnesty International's careful documenting of torture in Greece around 1970 was a 'critical catalyst for surging interest in human rights' in the later period Moyn describes (p.202)[19]. Whilst Mark Bradley very briefly sketches two arguments: that the prospects for international human rights protections in the 1940s were more 'open' than Moyn allows, and that the legacies of this pre Cold-War period 'lingered' in ways that he does not allow for (pp.331-2, 337). In fact only Simpson's argument fits closely matches that of *The Last Utopia*. Mirroring a summary of his account of anti-colonialism contributed by Moyn to this volume, Simpson provides an impressive demonstration of the extent to which self-determination fell off the Western ideological radar in the mid-1970s. With the end of European empire and the revival of human rights, Indonesian massacres of nationalists in East Timor were treated with much less seriousness than comparatively minor issues related to the treatment of political prisoners.

Conclusion

Historians, then, inspired by Moyn, are beginning to inform us about the relationship between domestic political contests in the West over human rights, and their incorporation into (U.S) foreign policy. Many of the IR histories cited at the beginning of this issue will have to be revised as a result. In particular, the new historiography represents a substantial advance over their account of 'norm entrepreneurs', who all-too-often emerge from the ether with fixed

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preferences for moral progress. That is not to say, however, that social science approaches have nothing to contribute to our understanding of human rights. Far from it. This is confirmed, in fact, by the contribution to *The Human Rights Revolution* by the historian and lawyer Elizabeth Borgwardt. She tells the story of the Bricker Amendment 1951-3: an attempt by early Cold War isolationists to prevent international treaties altering domestic law, and to safeguard the United States from international human rights conventions. Despite sustained activity, and a number of short-term gains, the isolationists were ultimately unsuccessful. Proposed legislation was ill-matched against the 'generative power' of global legal trends (p.83). The important point here is that rights-protecting institutions are responsive to *both* their immediate political contexts *and* a wider international set of legal institutions and milieux. Historians' focus on social movements and political controversies help us understand the former, but not the latter. This is where the insights of liberal, constructivist and English School IR can help us understand the international and institutional embeddedness of domestic political contests.

Inevitably, finally, work in this area is shot through with normative concerns, and these works are no exception. Despite his analytical concern to limit the field, Moyn recognises in places that human rights is not a 'stable concept' and is 'up for grabs' (p. 316). This instability, it is fairly clear, he considers a weakness when paired with the utopian expectations that emerged in the 1970s. Expansive, 'maximalist' ideas have displaced an earlier 'minimalist' concern with 'avoiding catastrophe' (pp.216-7). The maximalist programme involves treating poverty, governance and even the environment as 'rights violations'. Moyn sees human rights as 'ill-equipped by the fact of their suprapolitical birth' to deal with these difficult challenges (p.214). His point, which he appears to argue against Martti Koskeniemi, is not that this conceptual inflation undermines its effectiveness, but rather that it renders us dangerously naïve about political power (pp.218, 293, n.3)[20]. Here the argument could be aligned with David Chandler's: by creating categories of rights-abusing and rights-protecting states human rights activists have in fact facilitated the domination of strong states over the weak[21].

As a rule, the contributors to *The Human Rights Revolution* are much more sanguine about the expansion of human rights into new domains. The editors, for example, warn us against the 'treachery of hierarchies' in the introduction (p.17). Shannon first identifies a 'long-standing tension' between sovereignty and human rights, but then goes on to tell a story of their 'continuous expansion' suggesting they have no stable conceptual core (pp.287, 301). Bon Tempo, perhaps most provocatively, argues that Freedom House's neo-conservative appropriation of rights should not be seen as a defeat for their 'liberal-left' essence, but rather 'battle joined' (p.238). All of this fits with the collection's inclusive vision of what counts as human rights history, and an increasingly popular view in political theory that rights can no longer be defined, but should be simply understood as political tools[22].

The one essay from the volume not discussed so far, however, should give us reason to pause at this point. William Hitchcock's study of the Geneva Conventions, which Moyn excludes from human rights history (see above), argues that the laws of war have in fact 'advanced the propositions inherent in human rights law'; propositions which can 'travel' across legal regimes' (pp. 95, 109). The principal proposition is that there are some things states can never do to people, no matter how expedient. So Article 5 of the Conventions 'effectively bans the use of 'physical or moral coercion' upon anyone, no matter how useful and timely his information might be to a state of war' (p.102). This greatly frustrated British counter-insurgency planners in the last decade of Empire (pp.99-104). And, as Hitchcock points out, being able to point to this same notion as the quasi-sacred conceptual core of human rights has been of tremendous political value in opposing recent U.S. administrations' attempts to recycle British justifications in the 21st century (p.94). It is perhaps this sacred quality which is most at risk in efforts to pluralise and complexify our definitions and understandings of human rights.

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[1] G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order*,

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(Princeton University Press: 2011), p.191.

[2] Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*, (New York: W.W. Norton and Company: 2011), and Idem. *Mixed Signals: U.S. Human Rights Policy and Latin America*, (Ithaca: Cornell University Press: 2004).

[3] David Chandler; *From Kosovo to Kabul: Human Rights and International Intervention*, (London: Pluto Press 2002).

[4] Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, (Princeton University Press: 1999), ch. 4.

[5] E.g. Micheline Ishay, *The History of Human Rights: From the Stone Age to the Globalization Era* (Berkeley: University of California Press: 2004)

[6] Ibid.

[7] See Tim Dunne and Marianne Hanson, 'Human Rights in International Relations', in Michael Goodhardt ed. *Human Rights: Politics and Practice*, (Oxford University Press: 2009), pp. 59-74.

[8] Carol Anderson, *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955*, (Cambridge University Press: 2003).

[9] Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, (Princeton University Press: 2009).

[10] E.g. Robin Blackburn, 'Reclaiming Human Rights', *New Left Review* 69, (2011): 132-4.

[11] Christian Reus-Smit, 'The Liberal International Order Reconsidered' (paper delivered at School of Oriental and African Studies, October 17th 2012). This argument is due to form part of his forthcoming book on individual rights and the making of the international system.

[12] Yves Dezalay and Bryant Garth, 'From the Cold War to Kosovo: The Rise and Renewal of the Field of International Human Rights', *Annual Review of Law and Social Science* 2, (2006): 231-255.

[13] See Stephen Hopgood, *Keepers of the Flame: Understanding Amnesty International*, (Ithaca NY: Cornell University Press, 2006).

[14] See Thomas Young, 'A Project to be realised': Global Liberalism and a New World Order', in E. Hovden and E. Keene eds., *The Globalisation of Liberalism*, (Palgrave: 2002), pp. 173-190.

[15] As suggested by Jane Spencer, 'Creating Animal Experience in Late Eighteenth-Century Narrative', *Journal for Eighteenth-Century Studies* 33 (2010):476, this is implied by the argument of Lynn Hunt, *Inventing Human Rights: A History*, (W.W. Norton and Co.: 2007). See also Hilda Keen, *Animal Rights: Political and Social Change in Britain since 1800* (London: Reaktion Books, 1998) and David Perkins, *Romanticism and Animal Rights* (Cambridge: Cambridge University Press, 2003). For a Hegelian connection between animal rights and human rights, Norbert Bobbio, *The Age of Rights*, (Cambridge: Polity Press, 1996).

[16] See Rob Skinner, *The Foundations of Anti-Apartheid: Liberal Humanitarians and Transnational Activists in Britain and the United States, c.1919-64*, (Palgrave MacMillan: 2010).

[17] Jack Donnelly, 'Human Rights at the United Nations 1955-85: The Question of Bias', *International Studies Quarterly* 32: 3, (1988): 275-303.

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[18] See Mark Goodale and Sally Engle Merry eds., *The Practice of Human Rights: Tracking Law Between the Global and the Local*, (Cambridge University Press: 2007).

[19] There is an interesting contrast here with the treatment of Greece in Sikkink, *The Justice Cascade*.

[20] *Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, (Cambridge: Cambridge University Press, 2001), ch.6.

[21] See n. 3 above.

[22] Cf. *Jean Cohen, "Rethinking Human Rights, Democracy and Sovereignty in the Age of Globalisation", Political Theory* 36:4, (2008): 578-607.

About the author:

Peter Brett is a Teaching Fellow in Politics at the London School of Oriental and African Studies. He writes on the 'judicialisation' of African politics with a focus on Southern Africa.