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## ABSTRACT

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This essay summarizes the author's argument for the recent genesis of international human rights and asks what implications for the future that argument has. The essay lays emphasis on the mobilizational origins of current human rights, and insists on the need to reorient them away from the historically specific and politically minimalist compromise between utopianism and realism that human rights current represent.

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## KEYWORDS

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ARTICLE

## THE FUTURE OF HUMAN RIGHTS\*

Samuel Moyn

I have long been fascinated by the hold of international human rights on the utopian imagination. Precisely when did a concept so central to the moral consciousness of so many idealists today become the supreme cause?

Finding an answer to this question required looking back at prior meanings of rights claims - which certainly were made before, but generally worked very differently. It was also crucial to carefully examine eras in which the notion could have spread in a broad-based movement, and could have become a touchstone, but failed to do so: notably the aftermath of World War II, when many people dreamed of a new deal, and during the decolonization that followed.

The conclusion of this study was an unexpected one: human rights as we understand them were born yesterday. Human rights crystallized in the moral consciousness of people only in the 1970s, whether in Europe, Latin America, or the United States, and in transnational alliances among them, chiefly as a result of widespread disappointment with earlier, hitherto more inspirational forms of idealism that were failing. In other words, human rights emerged as the last utopia, but not from scratch: they appeared only after other, perhaps more inspiring utopias failed (MOYN, 2010).

It seems odd to say that the utopian imagination has to start from the real world, but, when it comes to international human rights, it is clear that utopia and reality do not so much exclude but depend on each other. At least, the hope embodied in human rights norms and movements, which germinated in the last part of the twentieth century, emerged from a realistic assessment of what sort of utopianism might make a difference.

One possible response to this finding of mine could be a proposal to return to the utopian imagination in its pure form, divorced from attempts to institutionalize it. When Plato earned Niccolò Machiavelli's scorn for dreaming of a politics based on a different sort of men than in fact existed, perhaps the Florentine neglected the value of thought experiments, even if they prove entirely useless. If the utopia

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\*This essay originally appeared in somewhat different form in an art catalogue: (Gregos; Sorokina, 2012)

of human rights emerged out of a historic compromise with reality, then perhaps the very attempt at compromise was a mistake: a better utopianism would proceed from the refusal to pay reality the respect of conforming to it.

In my view, this stance is mistaken. Human rights at least answered to the need to begin reform of the world — even utopian reform — from the way it is now. I worry, however, that human rights may have conformed *too much* to reality. Human rights proved so minimalist in their proposals to change the world that they easily became neutered, and have even been invoked as excuses—for example, in wars serving other interests—for choices that their original advocates did not intend.

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Surveying both the scholarly and popular history of human rights, I found a shocking mismatch between common attempts to attribute the concept to the Greeks or the Jews, early modern natural law thinkers or French revolutionaries, and the far more recent conjuncture that my evidence suggested. One book even went back to the Stone Age! (ISHAY, 2004). Now, it is true that many historical ideologies across the millennia make morality and humanity central. But they do so in starkly different ways than in human rights movements today.

Even as late as the revolutionary era of European and American history, after which “the rights of man” became a watchword, it was universally assumed that the goal was that a State—even a nation-state—would protect them. Then there were disputes within these States to define the entitlement of membership. For this reason, if one likes, there was a “rights of man” movement before there was a human rights movement, and it was called nationalism. Yet, human rights today are neither revolutionary in their associations nor offer entitlements based on common membership in a space of protection, whether within or beyond the nation-state.

Furthermore, while it is true that a critique of national “sovereignty” bloomed before, during, and after World War II, when the Universal Declaration of Human Rights (1948) was framed, I also found the extraordinary attention this era gets among scholars and pundits to be misplaced. It is not even clear how many people who talked of human rights in the 1940s had in mind the creation of the supranational sorts of authority on which “human rights” are now based. In any case, almost no one appealed to human rights then, either in an old or new version. The victorious ideology of World War II, in fact, was what I would call “national welfarism” — the commitment to update the terms of nineteenth-century citizenship to include social protection, an obligation that was unfailingly undertaken within the terms of the nation. It was no accident that it was precisely in this era that the nation-state globalized and finally, after centuries, became the dominant political form of humanity. If human rights were resonant at all, it was as one synonym for the sorts of new entitlements States would offer their citizens: hence the Universal Declaration’s self-description as a “common standard of achievement for all peoples and nations.”

But if national welfarist politics globalized through decolonization, it was not thanks to the notion of human rights. Indeed, that idea was introduced in the

midst of World War II as a *replacement* for the liberation from empire of which most around the world dreamed. Early in the war, Franklin Roosevelt and Winston Churchill formulated their war aims – before the United States even entered the conflict — in the famous Atlantic Charter (1941). One of their promises was “the right of all peoples to choose the form of government under which they will live,” and so the document was celebrated the world over as effectively a promise of decolonization. But Churchill — who successfully convinced Roosevelt — had meant that promise to apply only to Adolf Hitler’s empire in Eastern Europe, not empire in general, and certainly not Churchill’s empire. During the war, as the promise of colonial self-determination fell, human rights became more popular—as a kind of consolation prize, that was therefore spurned. And no wonder: not only did human rights not imply the end of empire, indeed the imperial powers were their most significant proponents. Those living under empire resolved to struggle for the self-determination they had originally been promised (MOYN, 2011).

Meanwhile, in the north Atlantic world, contests over a fraying wartime welfarist consensus took pride of place. The pressing problem, as most people understood it, was not how to move beyond the State, but what sort of new State to create. And, in this situation, the fiction of a moral consensus of “human rights” provided no help. Instead, everyone accepted the political battle. It is obvious why: if I say I have a right, and you say you have a right, there is no alternative when we share citizenship except to struggle with each other for victory or compromise, legislation if possible and revolution if necessary, which is what modern politics are about. As Hannah Arendt put it, it was for these very reasons that those committed to spreading citizenship in modern times began to talk less rather than more about rights: “If the laws of [your] country did not live up to the demands of the Rights of Man, [you] were expected to change them, by legislation ... or through revolutionary action” (ARENDR, 1973, p. 293).

Ironically, in the 1970s, the same consensus around moral principles that once provided no help offered salvation. With the exhaustion of reform schemes behind the Iron Curtain and the collapse of student dissent in the West, it did not seem feasible to dream of a better world the old way: that is, by proposing a genuine and controversial political alternative. In the East, dissidents recognized that such programs would be crushed. A morality of human rights provided an ‘anti-politics’ to resist and indict the communist State. In the West, a moral alternative beckoned too—especially for idealists who had tried other things first, including leftist commitments, and found them equally wanting. It also made sense in an America seeking recovery from the self-imposed disaster of Vietnam. For a brief moment, and to liberals most of all, American president Jimmy Carter’s moralistic criticism of politics—as he chastised his country in terms of sin for its Vietnamese catastrophe—resonated with voters.

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In view of the historical claims, some foundations for political argument now seem stronger than before, and others weaker. Clearly, thinking that international human rights have been God-given or naturally occurring, or even that they were

a legacy of continuous moral insight following the genocidal horror of World War II is mistaken.

Human rights came to make sense in a world of decolonized States (but in which not all States are trusted to exercise their sovereignty equally.) Outrages against humanity, such as the slave trade, once justified empire, as in the “scramble for Africa” after 1885; now they justify opprobrium against States that spent the first decades after World War II winning independence from empire. And even for Westerners—especially for Westerners—human rights were discovered by masses of people only after they had first tried other things, like socialism, and given up on them in despair. Our idealism is one born of disappointment, not of horror or of hope.

But this suggestion does not translate easily into a set of specific consequences. History shows that even the most cherished beliefs are always up for grabs. They may settle for a while, but they are never stable. This also means that the burden falls on the present not to turn to the past for reassurance, but to decide for itself what to believe and in what way to change the world. History, at its best, liberates, but it does not construct. Yet perhaps it offers a lesson about what sort of idealism people should, or at least can, seek.

For the longest time in modern history, programs for bettering the world mattered most when they were politically controversial—such as when they sought to overturn the *status quo*. The achievement of the nation-state required dispensing with kings and aristocrats, just as the “rights of man movement” of the decolonized Twentieth Century demanded that empires should finally end. In the 1940s, human rights were bypassed because they offered the mere fiction of a moral consensus that plainly did not match the need for political choice.

As mentioned before, the 1970s inaugurated an exceptional period in which the morality of human rights made sense; if and when that period ends, the need for contestatory political options may once again seem the most relevant one to meet. Of course, every, or almost every, political agenda appeals to transcendent moral norms. But programmatic politics is never about those moral norms alone. It assumes that the other side—for politics always has at least two sides—can likewise appeal to moral norms. So politics becomes a battle, hopefully waged through persuasive means, from advertising to arguments, to gain power and enact programs.

Strangely, it is still a taboo to think this is also what should occur in international affairs. Partisanship acceptable at home—the ordinary contest for power amongst parties—is not openly available abroad, except through the alliance or contention of States alone rather than of broader parties or movements. Instead, thanks in large part to human rights, agendas for the world are argued in terms of morality.

For contemporary international human rights, there is only one side. The invasion of some country is demanded as if it follows from the moral norm of the responsibility to protect, while a philosopher burning with shame at the poverty of the globe insists that morality requires economic redistribution. Humanitarian militarism is not defended as a highly political agenda, while the moral principle demanding redistribution does not by itself tell us how to realize it—though it will necessarily involve a potentially violent agenda of taking wealth from the powerful and giving it to the wretched of the earth.

Of course, the struggle for power is equally operative at the global level. But because no one has discovered a way to constrain partisanship in international affairs—which has so frequently led to military hostilities—it has seemed preferable to argue in absolute or sentimental moral terms. But to those who express this fear of “politicizing” world affairs, one must point out that the global space is already a realm of power politics. Because of this reality, invoking moral principles will either have no effect, like the philosopher’s complaint about poverty, or will mask the realities of power, as when humanitarian invasions occur. Pretending everyone already agrees with invoked moral norms does not change the fact that nobody does, or that people interpret them under the pressures of interest and partisanship.

The conclusion is that we can and should risk the development of more openly partisan enterprises in international affairs. The choice is not between whether to have them or not, but whether they are explicit or not. Another way to put this claim is in terms of Friedrich Engels’s old contrast between utopian socialism and scientific socialism. His distinction was confused—if Marxist socialism was anything, it was utopian. But Engels was right to draw a distinction between utopias that acknowledge that they are controversial and oppositional, and therefore need to descend into the programmatic contest for power, and those that pretend that wishful thinking alone will change the world. The former approach needs to be recovered for utopia’s sake, because the latter constantly proves ineffectual. “Human rights,” in short, need to become more scientific.

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It is here that the puzzle of contemporary human rights as a set of global moral principles and sentiments becomes clearest. In the way that they are generally presented, they do not intervene in power politics. But, precisely for that reason, they often seem to make little practical difference, amounting to an ornament on a tragic world that they do not transform. Because they are not realistic enough, they end up accommodating reality too much. A better compromise between utopianism and realism is required. How to find this compromise is anything but obvious. But it may help to conclude with a list of theses that indicate the sort of compromise I have in mind.

*A politics of human rights must involve a transformation in steps.* Radical politics have long been torn between the options of reform and revolution; but, if anything has been learned by the Left, it is the need to reject this dichotomy. Instead, the goal should be to start with international human rights ideas and movements as they currently exist, and radicalize them from there.

*A politics of human rights must acknowledge that it is mobilizational.* No casebook of international human rights law contains a section on human rights as a global movement. Instead, human rights norms are presented as norms to be enforced by judges. Realists know this presentation is not only historically false; it also avoids scrutiny of the conditions in which movements succeed (MOYN, 2012). For the sake of the non-partisanship that judging seems to demand, the role of contemporary judges depends on suppression of the fact that they are in league with a global movement of opinion. An occasional judge, like Antônio Augusto Cançado Trindade (who sits on the International Court of Justice), is more honest

about his desire to affiliate with “humanity” as the source of human rights law.<sup>1</sup> But the moment judges are recognized as mobilizational agents, hard questions about whether they are the right agents start to be posed.

*A politics of human rights must transcend judges.* History shows that movements relying on judges alone are weak. In American history, judges succeeded in forcing genuine political change in the name of moral norms only when they allied with grassroots political movements, as the history of the American civil rights movement of the 1950s and 1960s shows. As the grassroots lost strength, judges did too, as the collapse, truncation, and destruction of America’s civil rights revolution just when “human rights” became prominent shows. In any case, judges today have power to mobilize for human rights only in highly specific institutional contexts: in domestic polities that give them a role, or regional courts gathering together nations that have already agreed to cede some sovereign prerogatives to judicial elites. For human rights to make more of a difference, the movement has to be more honest about the fact that its success depends on its own mobilizational strength and grassroots penetration. For this reason, Amnesty International’s recent decision to return to its mobilizational roots and cultivate local centers of authority is a promising step in the right direction. But few other NGOs work in this way.

*A politics of human rights must seek power over the real conditions of enjoyment of formal entitlements.* What a global politics of human rights will look like will follow from prior domestic experiences in developing contestatory programs. When a transatlantic progressive movement coalesced in the nineteenth century to challenge the misery of unregulated capitalism, it realized that invoking formal rights was insufficient—especially since the defenders of unregulated capitalism also commonly appealed to natural rights, such as the sanctity of the property entitlement. So progressives deformed rights, suggesting they were not absolute metaphysical principles but contingent tools of pragmatic social organization (FRIED, 1998). The same move needs to happen at the global level now.

*A politics of human rights will move away from framing norms individualistically and will cease to privilege political and civil liberties.* In the same vein, and for the sake of targeting the world’s worst miseries, human rights must move in the same direction as prior domestic progressives did. Just as they deformed rights, they attacked the individualist character of rights for the sake of the common good or social solidarity, and insisted that the real conditions for the enjoyment of any rights are to be sought not simply in the possession of personal security but also in the entitlement to economic welfare.

Some movements—like Marxism—moved away from individualism and indeed rights altogether, but a politics of human rights will not do so. Yet, it will have to move far from the classic concerns of the human rights movement since the 1970s, based as it has been on the campaign for political and civil rights against the totalitarian and authoritarian State (and now, most frequently, the postcolonial State). While it should not totally abandon its concern with evil States, it will need to make what has been an obsession, a peripheral element in a larger campaign. Ultimately, it should engage in the programmatic concern with designing good States, for the sake of global economic welfare.

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One might fairly ask what the incentive is to transform human rights in this way. The answer, I think, is that if the human rights movement does not offer a more realistic and politicized utopia, something else will take its place.

The geopolitical situation is changing rapidly. Human rights as depoliticized moral norms ascended far and fast in a particular world-historical situation, between the bipolar era of the Cold War and the multipolar era that is surely coming. In the immediate aftermath of the Cold War, before 9/11 intervened, Europeans flirted with the idea that American power needed to be balanced. Today, most people think that China will become the agent of balance.

A return to a geopolitics of contest inevitably brings about a world in which appealing to moral norms will no longer seem paramount. Human rights can retain their current prominence by becoming an open language of partisanship, so that other realists, for whom universalist justice is at best a secondary concern, do not hold the field.

But history also teaches us that partisanship is bittersweet. Human rights will descend into the world as a language of contest and struggle, but the other side will no longer be forced to defer to them as binding—a morality above politics. The other side may also offer its own interpretations of rights. We are fast departing from a world in which human rights became prominent, precisely because they seemed an alternative to contest and struggle, a pure utopia where others failed. Some people will view the descent of human rights into programmatic contest as too high a cost for relevance. But if the alternative is irrelevance, it is a small price to pay.

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## NOTES

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1. Consider this remarkable language from an advisory opinion when Antônio Augusto Cançado Trindade sat on the Inter-American Court of Human Rights: "It is not the function of the jurist simply to take note of what the States do, particularly the most powerful ones, which do not hesitate to seek formulas to impose their 'will' ... [The law] does not emanate from the inscrutable 'will' of the States, but rather from human conscience. General or customary international law emanates not so much from the practice of States (not devoid of ambiguities and contradictions), but rather from the 'opinio juris communis' of all the subjects of International Law (the States, the international organizations, and the human beings). Above the will is the conscience. ... Law is being ostensibly and flagrantly violated, from day to day, to the detriment of millions of human beings, among

whom undocumented migrants all over the world. In reacting against these generalized violations of the rights of undocumented migrants, which affront the juridical conscience of humankind, the present Advisory Opinion of the Inter-American Court contributes to the current process of the necessary humanization of International Law ... In so doing, the Inter-American Court bears in mind the universality and unity of the human kind, which inspired, more than four and a half centuries ago, the historical process of formation of the *droit des gens*. In rescuing, in the present Advisory Opinion, the universalist vision which marked the origins of the best doctrine of International Law, the Inter-American Court contributes to the construction of the new '*jus gentium*' of the XXIst century" (INTER-AMERICAN COURT OF HUMAN RIGHTS, 2003).