

Human Rights: A Reckoning

THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY. By Samuel Moyn.
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Reviewed by Caroline Anderson*

INTRODUCTION

“The Last Utopia” is a revisionist history of human rights. Samuel Moyn rejects the conventional wisdom that human rights surfaced as a reaction to the horrors of World War II, instead insisting that the movement did not emerge until the 1970s (p. 7). By arguing that human rights achieved prominence only because other idealistic visions “imploded” (p. 4), Moyn casts human rights as a romanticized afterthought, a movement that has “done far more to transform the terrain of idealism than . . . the world itself” (p. 9).

Because Moyn’s arguments proceed against the grain of human rights orthodoxy, which views post-Holocaust global consciousness as a pivotal moment in the movement’s history, his claims are deeply defensive in tone. Indeed, he labors throughout the first half of the text to proclaim what human rights are *not*.¹ Human rights are not political community rights: “there is a clear and fundamental difference between earlier rights, all predicated on belonging to a political community, and eventual ‘human rights’” (p. 12). Human rights are not natural rights: “the history of natural rights . . . is the history of the very state that ‘human rights’ would later attempt to transcend” (p. 22). Human rights are not citizenship rights: “[t]he ‘rights of man’ were about a whole people incorporating itself in a state, not a few foreign people criticizing another state for its wrongdoings” (p. 26). Human rights are not rights to self-determination: “human rights entered global rhetoric in a kind of hydraulic relationship with self-determination: to the extent the one appeared, and progressed, the other declined, or even disappeared” (p. 88). Most controversially, human rights are not a response to the Holocaust: “[c]ontrary to conventional assumptions, there was no

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1. As Moyn explains, “[i]f there is a pressing reason to concentrate on human rights in the 1940s, it is not because of their importance at the time but because doing so provides precious insight into why they could and did not take off until decades later. *It matters what human rights, at the time, were not*” (p. 47) (emphasis added).

widespread Holocaust consciousness in the postwar era, so human rights could not have been a response to it" (p. 7). And thus, human rights did not emerge in the 1940s: "[a]s a plot point in the history of human rights, the mystery of the 1940s is not why human rights emerged, but—given future developments—why they *failed* to do so" (p. 68).

Instead, as Moyn argues throughout the second half of the text, human rights ascended precisely because prior universalistic schemes collapsed (p. 7). Not until the 1970s did a "genuine social movement around human rights [make] an appearance," explained by catalysts ranging from the search for a European identity outside of Cold War terms, the end of formal colonialism, and shifts in American foreign policy toward moralized parlance (p. 8). It is in his exploration of this last alleged catalyst that Moyn-as-historian hits his stride. He colorfully assesses movements toward a human rights "utopia" in 1970s American politics and policy (p. 7). Moyn charts the movement's point of origin in domestic politics,² its moment of capture by American elites (pp. 157, 201–07), and its transition to broader public salience:

The year of human rights, 1977, began with Carter's January 20 inauguration, which put 'human rights' in front of the viewing public for the first time in American history. This year of breakthrough would culminate in Amnesty International's receipt of the Nobel Peace Prize on December 10. Carter's inaugural address on January 20 made 'human rights' a publicly acknowledged buzzword (p. 155).

Yet for all the rich detail present in Moyn's account of human rights as a 1970s-era American social movement, the text devotes remarkably little space to defining, in positive terms, what human rights actually consist of, an inquiry that is far from having a fixed answer. Are they individualistic? Are they communitarian? Can they be defined in culturally relativistic terms? Are they a hegemonic political discourse, used to prop up injustice? Are they liberal, westernized, masculine, and anthropocentric?

Beyond conclusory platitudes, Moyn's history gives few clues to answering these central queries. The book vaguely suggests, for example, that human rights must be understood as a set of superordinate rules to which states must defer (p. 111) and that the "central event in human rights history is the recasting of rights as entitlements that might contradict the sovereign nation-state from above and outside rather than serve as its foundation" (p. 13). But if such a defining "central event" existed—and especially if it is anything other than President Carter's use of the phrase "human rights" (pp. 4, 155), the rise of Amnesty International (p. 129), or

2. To this end, Moyn notes that "[i]n America, human rights started as a way for the contending sides of a Democratic Party at war with itself to restate their pre-existing positions" (p. 151).

Professor Louis Henkin's breakout career (p. 201)³—it is largely eclipsed by Moyn's dogged focus on explaining away all pre-1970s developments as insufficient to signify a viable movement. This lack of clarity is evidence of a larger structural problem: Moyn devotes the first half of the text to proving what human rights *are not* and the second half of the text to demonstrating *when* human rights emerged, effectively bypassing entirely the theoretical question of what human rights *are* in positive terms. Moyn's failure to navigate this transition detracts significantly from the punch of his argument. If the reader does not know what human rights are with some measure of philosophical or analytical certainty in the first order, how can Moyn possibly pinpoint the moment of their historical emergence?

Moyn attempts to overcome this problem with a feat of literary quick-stepping: he implies a definition of human rights that is sufficiently demanding and circumscribed to demonstrate the infallibility of his conclusions. At the outset, he simply starts from a particular perspective—that human rights are individualistic, moralistic, and supranational—and assumes its exclusivity without pausing to justify his vantage point:

When people hear the phrase 'human rights,' they think of the highest moral precepts and political ideals The phrase implies an agenda for improving the world, and bringing about a new one in which the dignity of each individual will enjoy secure international protection It promises to penetrate the impregnability of state borders, slowly replacing them with the authority of international law (p. 1).

Armed with this unsubstantiated definition of human rights, Moyn marches through his narrative, discounting alternate visions of the movement along the way. He does so not because these visions are inconsistent with appropriate rights philosophy, political grounding, or any other articulable justification, but rather precisely because they do not conform to the model that he presumes to be exclusive. Voilà! Human Rights did not emerge until Moyn's unchecked paradigm presented itself in the 1970s.

The problems with this analysis are manifold, though I will address only two here. First, his argument is internally inconsistent. Moyn admits that communitarian thinking was critical to the emergence of human rights (pp. 54, 74), yet simultaneously assumes an exclusively individualist model of rights to demonstrate his conclusions. In failing to address seriously legitimate competing conceptions of the movement, Moyn presupposes a non-existent definitional consensus that undercuts the force of his ambitious

3. Moyn emphasizes the popularization of the phrase "human rights" as such and the professional trajectory of Columbia Law Professor Louis Henkin in the 1970s as apparent evidence of the movement's crystallization. See *infra*, Parts II.B & II.C.

“church-history”⁴ critique. Second, even the soundest version of Moyn’s argument would fail on its own terms. In faulting earlier permutations of the movement, Moyn unwittingly transforms human rights into a chimera that could be realized no more in the 1970s than in the 1940s. By pronouncing certain touchstones as prerequisites to the realization of the movement during his skeptical appraisal of its pre-1970s iterations, Moyn cements the impossibility of human rights’ ultimate ascendance on his own terms.

I. DEFINING HUMAN RIGHTS

Throughout the book, Moyn assumes a definition of human rights that is unduly narrow. His vision appears to coincide roughly with one contemporary version of the movement championed by atomistic philosophers and political theorists; he posits a modern-day consensus surrounding a definition of human rights as supranational, amorphous, individually-oriented⁵ and involving moralistic rhetoric⁶ (p. 1).

That Moyn’s human rights are supranational is evident from his focus on a perceived shift from state-centered international politics to a flatter globalism: “[t]he true key to the broken history of rights, then, is the move from the politics of the state to the morality of the globe, which now defines contemporary aspirations” (p. 43).⁷ That Moyn’s human rights are amorphous is clear from his view that a contemporary vision of human rights has left behind former aspirations: “[W]hen human rights exploded in the 1970s they were focused so centrally on political and civil rights, their social and economic cousins have come to be regarded as ‘second-generation’ principles” (p. 17). And that Moyn’s human rights are moralistic is manifest in his repeated invocations of imagery conveying diminutive liberalism, portraying the movement as “a politics of suffering abroad” (p. 12); “the protection of ‘humanity’” (p. 26), “a nonpartisan morality exist[ing] outside and above [politics]” (p. 132), and even “a few foreign people criticizing another state for its wrongdoings” (p. 26). The reader gleans this definitional baseline not from any sizable, consolidated analysis, but rather from hints sprinkled throughout the text that betray a casual confidence in his premise. Moyn’s blitheness is surprising in light of his failure to justify the

4. “Church history” refers to the traditional understanding of human rights history advanced by the movement’s orthodoxy.

5. Moyn sets up a dichotomy between the protection of states, which he identifies with a nation-state international model that predates the emergence of the human rights movement, and the “protection of individuals” (p. 84).

6. Moyn places great weight throughout the text on “rights talk” (p. 117), human rights as a “widespread moral vernacular” (p. 117), referring to “‘human rights’ as such” (p. 215), and the necessary “upsurge of the language” (p. 174), suggesting that phraseology—referring to human rights in no other terms—is crucial to the movement’s realization.

7. Moyn alludes to this point even earlier in the text: “the central event in human rights history is the recasting of rights as entitlements that might contradict the sovereign nation-state from above and outside rather than serve as its foundation” (p. 13).

superior accuracy, philosophical underpinning, or relative soundness of this vision.

Thus, to the extent Moyn defines human rights *at all*, his shapeless vision is presumptive and superficial. It fails to take seriously any of the major, sincere critiques of contemporary rights discourse, all of which present legitimate competing visions of human rights.⁸ Worse still, Moyn glazes over competing visions of human rights *which he himself acknowledges* contributed significantly to the rise of the human rights movement as he sees it. Such internal inconsistency dramatically undercuts the force of his conclusions.

A. Ignoring Group Rights

The omission of any theoretical analysis surrounding the theory of group rights as human rights provides one crucial example of this shortcoming. Moyn references the relevance of communitarianism⁹ to the emergence of human rights more than once in the text (pp. 54, 74),¹⁰ and rightly so: communitarian thinkers undoubtedly *did* significantly influence the human rights movement over the past century, much as they do today. Nevertheless, Moyn proceeds to unveil an exclusive, contemporary vision of human rights purged of communitarian thinking, dismissing self-determination rights—one permutation of group rights—as imperialism devolved rather than human rights evolving. In branding self-determination a rival to human rights, Moyn insists that such a group-centered arcadia had to expire before human rights could prevail (p. 118).

But why must the self-determination idyll be juxtaposed against the human rights movement, rather than recognized as a legitimate part of it, if Moyn concedes the validity of communitarian threads underpinning his human rights utopia? Without a satisfying answer to the first-order inquiry of why an individualistic conception of human rights is the right one, the reader is left with no choice but to take Moyn's word for it.

In reality, the human rights movement can reasonably be described as *embracing* a nuanced mosaic of alternative visions and philosophical founda-

8. Communitarianism is the primary critique of contemporary rights discourse with which Moyn fails to engage, even after noting its formative impact on the evolution of the human rights movement. *See infra*, Part I.A.1.

9. Communitarianism is a theory of rights premised upon the relevance of communities rather than individuals. *See id.*

10. Moyn repeatedly acknowledges the role of communitarian thinkers in shaping the human rights movement: "Crucially for its postwar European fate, Maritain rallied to rights in communitarian terms, exalting the moralistic 'human person' against the atomistic individual as their bearer" (p. 54); "Briefly, it was the disappearance of Christian reaction and fascism that set the stage for the preeminent role Christianity could play in the postwar framing of human rights; but that role also deeply affected the meaning of those rights as a third-way, personalist, and communitarian alternative to liberal atomism and materialist communism alike" (p. 74).

tions,¹¹ rather than defining itself in opposition to discrete narratives. The communitarian faction within the human rights movement, championed by contemporary scholars such as Mary Ann Glendon¹² and James Nickel,¹³ with foundational support from Jacques Maritain,¹⁴ have infused vastly important group-based narratives into human rights discourse. Accordingly, it is worth briefly exploring the communitarian vision of human rights in order to appreciate its looming absence throughout Moyn's arguments.

1. *Absence of Communitarianism Perspective*

Communitarians criticize atomist, universal visions of human rights of the sort Moyn endorses for their faulty philosophical foundation and dangerous practical effects.¹⁵ Rejecting the assumption "that we are separate, individual persons, each with our own aims, interests, and conceptions of the good," communitarians insist that individuals are bound by inherent affiliations and incapable of considering choices without reference to the tethers of community.¹⁶ Because individuals cannot shed their skins of affiliation—be they ethnic, tribal, religious, etc.—atomistic visions of rights rely upon a "defective conception of the self" in which individuals purportedly exercise choice unfettered by communal ties.¹⁷

At its core, communitarianism disdains the contextual insensitivity that plagues atomistic discourse. Scorning the universalism advocated by Rawls and the like, communitarians argue that standards of justice will vary from society to society, depending on "the interpretive framework within which agents view their world," as well as the political reasoning and moral judgments which flow directly from one's particular societal perspective.¹⁸ The communitarian argues that by imposing Western-oriented atomism on all peoples, liberals neglect the fundamental relevance of particularism and are accordingly "doomed to philosophical incoherence."¹⁹

11. In fact, Moyn himself acknowledges Harvard Law Professor Henry Steiner's understanding that "[t]he human rights corpus is very spacious in the rights, freedoms and liberties that it embraces" (p. 226) (internal quotation marks omitted).

12. See generally MARY ANN GLENDON, *RIGHTS TALK* (1993).

13. See generally JAMES W. NICKEL, *MAKING SENSE OF HUMAN RIGHTS* (2010).

14. Indeed, Jacques Maritain is one of the few communitarian scholars that Moyn even mentions in the text. He acknowledges that Maritain, a primary drafter of the Universal Declaration of Human Rights, was the "main publicist of Christian personalism, [and] had pioneered the introduction of a kind of communitarian liberalism into earlier Catholic traditions" (p. 64).

15. The term atomism is used by communitarians to loosely "characterize the doctrines of social contract theory . . . which inherited a vision of society as in some sense constituted by individuals for the fulfillment of ends which were primarily individual." CHARLES TAYLOR, *PHILOSOPHY AND THE HUMAN SCIENCES* 187 (1985).

16. MICHAEL SANDEL, *DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* 11 (1996).

17. Allen E. Buchanan, *Assessing the Communitarian Critique of Liberalism*, 99 *ETHICS* 852, 856 (1989).

18. See Daniel Bell, *Communitarianism*, *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Jan. 2012), <http://plato.stanford.edu/archives/spr2012/entries/communitarianism/>.

19. *Id.*

Worse than just philosophically incoherent, the ramifications of envisaging an individualistic, distorted version of the self are precarious. An atomistic human rights discourse will “emphasize benefits to the rightholder rather than social responsibilities, thereby promoting egoism and self-centeredness.”²⁰ The faulty liberal notion of the “freely choosing individual” will herald a world in which rights are prioritized over the common good.²¹ Such institutionalized narcissism risks the lingering danger that rights talk will replace a “normative focus on love, trust, and community.”²²

Whether or not one finds the communitarian perspective on human rights compelling, it is undoubtedly a serious and sophisticated critique of the approach that Moyn appears to support. That Moyn ignores the communitarian vantage point in his analysis of modern human rights discourse after acknowledging its formative influence on the movement itself highlights a major philosophical tension in his argument.

2. *Distorting Self-Determination Rights*

Self-determination rights are another manifestation of the group-rights-as-human-rights camp that Moyn casts aside as incompatible with the human rights movement. In Moyn’s view, “[o]nly when self-determination entered crisis, for Western observers at least, could there be an opening for a move from the enduring dream of postcolonial liberation to the far more recent utopia, the hope for a world of individual human rights” (p. 119).

But the self-determination struggle need not have existed in competition with human rights; rather, it can be viewed as propelling the movement further forward. In the 1950s, human rights protections were built into the very constitutions of the liberated states spawned by post-colonial self-determination initiatives. The Charter of Rights contained in India’s constitution, for example, codifies fundamental rights available to all Indian citizens, including guarantees such as the right to be free from forced labor²³ and discrimination based on caste,²⁴ as well as the freedoms of expression²⁵ and religion.²⁶ Indeed, Moyn admits that India’s self-determination movement resulted in “one of the fullest-fledged bills of rights in human history” which could be viewed as “overlapping more than chronologically with the Universal Declaration [of Human Rights]” (p. 112). Yet he summarily announces that it was “more typical” to understand the Indian constitution in terms of the traditions of state citizenship or domestic protections than in

20. NICKEL, *supra* note 13, at 96–97.

21. See SANDEL, *supra* note 16 at 152.

22. See NICKEL, *supra* note 13 at 97.

23. See INDIA CONST. art. 23.

24. See *id.* art. 15.

25. See *id.* art. 19.

26. See *id.* art. 15.

terms of human rights (p. 112). But because the Indian Charter's origins ranged from France's Declaration of the Rights of Man to the U.S. Bill of Rights and England's Bill of Rights, it is not at all clear why Moyn's all-important "Western observers" would not have recognized the inclusion of their own cherished human rights as integral to the self-determination movement rather than necessarily at odds with it (p. 119).

In fact, there is evidence that Western and non-Western observers alike conceived of self-determination rights as encompassed by the broader human rights movement. Self-determination rights were entrenched in human rights treaties themselves in the 1960s.²⁷ Even earlier, principles of self-determination and racial equality were enshrined in the U.N. Charter itself, alongside fundamental freedoms that are indisputably understood as human rights.²⁸ Indeed, "The Last Utopia" acknowledges the entanglement of self-determination rights and the larger human rights movement in the United Nations in the 1950s: Moyn notes that by 1955, "self-determination bec[ame] the chief and threshold right—'a perquisite,' as the Bandung Final Communiqué put it, 'of the full enjoyment of all fundamental Human Rights'" (p. 108).

Moyn promptly explains away this development by insisting that human rights underwent a "conceptual revolution" to arrive at this point of entanglement with self-determination rights (p. 108).²⁹ Yet just a page earlier, the text recognizes that the anticolonial movement drew upon the "original, collectivist direction of earlier rights talk" (p. 107). That a collectivist notion of rights is originalist is *precisely the point*: human rights need not have undergone a "conceptual revolution" to be relevant to the self-determination movement; communitarian, group-based underpinnings had provided philosophical support for the human rights movement all along. Rather than existing in a zero-sum relationship (p. 88),³⁰ the success of the self-determination project can properly be understood as catapulting the ascendance of human rights thanks to their shared doctrinal character.

27. See, e.g., INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, art. 1(1), Dec. 19, 1966, 999 U.N.T.S. 171 ("All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."); INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, art. 1(1), Dec. 16, 1966, 993 U.N.T.S. 3 (containing identical language).

28. See U.N. Charter art. 1, para. 3.

29. Moyn reiterates this point later in the text, noting that "[i]t was the process of decolonization that made the fortune of human rights at the United Nations—*albeit with a stark reconceptualization of their meaning, grounded in the collective right of self-determination*" (p. 195) (emphasis added).

30. Moyn explains that "[t]he detailed history of wartime promises to the colonial world shows, in fact, that human rights entered global rhetoric in a kind of hydraulic relationship with self-determination: to the extent the one appeared, and progressed, the other declined or even disappeared . . . [T]he specific appeal to supranational values encapsulated in the new human rights failed to affect [self-determination]" (p. 88).

II. FAILING HIS OWN TEST FOR WHAT CONSTITUTES THE MOVEMENT'S REALIZATION: VENERATING THE SEVENTIES WHILE DISMISSING THE FORTIES

Moyn's argument suffers from incoherence not only in the way that it defines human rights—by admitting the formative impact of communitarianism then announcing that contemporary human rights cannot be understood as encompassing any version of group rights—but also in the manner that it charts their progress. Moyn alludes to a variety of signals that seemingly represent the sine qua non of a legitimate ideological movement and then describes why each of these preconditions remained unfulfilled in the realm of human rights before the 1970s. Yet based on the metrics that Moyn himself identifies, the movement would decidedly *not* have materialized in the 1970s. This section will stipulate that Moyn's vision of the human rights movement is accurate and then demonstrate that its 1970s-era iteration would not satisfy the test that he apparently requires for the formation of a full-fledged ideological movement. It will also identify distracting tangents that Moyn explores and suggest evidence that might have more powerfully supported his claim that the human rights movement solidified far more recently than the church history recognizes.

A. *Benchmarks for the Realization of a Viable Human Rights Movement*

Moyn wavers dramatically in his suggestions of what indicators would theoretically demonstrate the existence or emergence of human rights in a pre-1970s world. At times, he suggests that the widespread circulation of human rights rhetoric would signify a potent movement³¹ and result in the necessary "spike in cultural prestige" (p. 122). At other times, he suggests judicial enforcement of human rights norms is required (p. 26 & p. 79).³² At still other times, it is universal, rather than Western-oriented international institutions,³³ non-governmental organizations,³⁴ or potent treaty-based

31. Moyn extols the fact that "[t]he year of human rights, 1977, began with Carter's January 20 inauguration, which put 'human rights' in front of the viewing public for the first time in American history Carter's inaugural address on January 20 made 'human rights' a publicly acknowledged buzzword" (p. 155). He also faults earlier iterations of the movement for lacking such parlance: "Unlike later, [human rights] were bound up with international organization rather than a larger popular language" (p. 47).

32. Moyn criticizes the European Convention and the European Court of Human Rights it established as involving "much more ideological signaling about the values on which Western European identity depended than it did legally enforceable guarantees" (p. 79).

33. Moyn criticizes early international institutions as Western-oriented, and failed attempts at achieving universality: "The fact that the [European] [C]onvention's negotiation extended later than that of the Universal Declaration meant that the fiction of ideological consensus about basic values could no longer be maintained, and by 1950 European human rights consecrated the basic values of the *Western side in Cold War politics*" (p. 79) (emphasis added).

34. Moyn places great stock in the ascendance of non-governmental organizations in the 1970s, and Amnesty International in particular: "[H]uman rights exploded in the 1970s in direct relation to the breathtaking marginalization of the UN as the central forum for and singular imaginative custodian of

codifications that would herald the realization of a human rights movement incarnate.

Yet at each moment in history when one of these preconditions materialized before the 1970s, Moyn quickly rejects it as insufficient, incomplete, or impotent to galvanize a movement. The international lawyers who defined human rights in the early 1940s did nothing more than create paper promises through itemized lists (p. 52).³⁵ The Nuremberg Tribunal is over-emphasized by the movement's orthodoxy (p. 82).³⁶ The 1950s-era European Court of Human Rights was too local to matter (p. 79).³⁷ Eleanor Roosevelt's early stewardship of the movement was merely symbolic (p. 63).³⁸ The human rights project was at every relevant moment incomplete before the 1970s and therefore doomed to irrelevance.

If Moyn faults these institutional developments as insufficient to propel the movement merely because they were imperfect, surely it is not possible to arrive at his conclusion that in the 1970s human rights had achieved an "era of . . . true prominence" (p. 106). The 1970s maintained mere "lists" of codified rights, and arguably Western-oriented institutions. The 1970s retained localized enforcement mechanisms of justice. The 1970s had Professor Louis Henkin, instead of First Lady Eleanor Roosevelt, apparently stewarding the human rights campaign. And the 1970s boasted no new international tribunals. If Moyn's point is that the pre-1970s human rights movement amounted to nothing precisely because it could not do everything, then the post-1970s movement must also be deemed a failure by Moyn's own terms.

the norms It was Amnesty International, above all, which made this move most decisively" (p. 129).

35. Moyn quickly discards the codifications of human rights in the early 1940s, explaining, "[t]wo of the main groups—in any case essentially overlapping—to give human rights play in 1942–43 were lawyers, including international lawyers, and those members of the peace movement who laid most stress on rethinking the international order to avoid future war. In these groups, definition occurred, but primarily to lay out possible lists of rights, rather than to disrupt the long-term connection of rights and state sovereignty" (p. 52).

36. Moyn's single reference to the Nuremberg Tribunal is the following: "More important, it is not at all obvious that, at the time, Nuremberg and related legal innovations like the genocide convention were conceived as part of the same enterprise as the itemization of human rights, let alone falling under their umbrella—though they are no often treated as if they were a single if multifaceted achievement" (p. 82).

37. Moyn bemoans the localization of the 1950s-era ECHR on multiple occasions: "While these local political factors accounted for the existence of the European Convention, and the European Court of Human Rights it set up, it would be a gross error to assume that the language of human rights, let alone the law of human rights, mattered much in the beginning" (p. 79); "Even as a scholastic literature grew up around the European Convention on Human Rights (1950) in the early years, there was no serious promotion by European international lawyers of human rights as a wider project, as the European Convention signaled values without bringing a serious legal regime into being. Geographical localization of human rights proved an alternative to their global universalization" (p. 191).

38. Moyn describes Ms. Roosevelt's role in the following fashion: "The American representative on the Commission on Human Rights, Eleanor Roosevelt, led the symbolic campaign. A much admired figure with a background in the peace movement, Roosevelt assumed the role of the commission's 'schoolmistress,' chairing the proceedings and keeping fractious delegates in line, while also acting as a U.S. representative, and generally deferring to State Department direction" (p. 63).

B. *Failed Expectations: The 1970s Era That Wasn't*

Taking just two of these critiques in turn, it becomes apparent that Moyn's castigation of pre-1970s developments produces the externality of erecting insurmountable hurdles to the movement's eventual claimed fruition in the 1970s. Moyn's treatment of the Nuremberg Tribunal, for example, is exceptionally circumscribed. He implies that the Tribunal did little to advance human rights because it did not embody a comprehensive moral reaction to the horrors of the Holocaust: He explains that the trials "in reality had contributed to ignorance of the specific plight of the Jews rather than establishing a morally familiar tradition of responding to mass atrocity" (p. 82). Accordingly, Moyn suggests that the Tribunal is overemphasized by the church history of human rights.

Moyn fails to expand upon this argument, a remarkable omission in light of the conventional wisdom that "the emergence of human rights as a field" is directly linked to Nuremberg's "personalization of international law through international criminal law."³⁹ Indeed, the orthodoxy views the Tribunal's declaration that the barbarities of the Holocaust were committed "not by abstract entities but by men" as a revolutionary shift toward individual guilt and away from sovereignty in the international arena.⁴⁰ As scholar Gerry Simpson explains, "punishing individuals through criminal sanction is important . . . because it links international law explicitly to international human rights law and anticipates the future enforceability of these norms . . . and because it contributes further to the recession of sovereignty."⁴¹

Because Moyn is adamant that the sovereignty-based nature of 1940s-era human rights institutions solidified their irrelevance,⁴² a closer examination of the Nuremberg Tribunal was warranted. To be sure, there is an argument that Nuremberg's focus on the crime of *state*-led aggression rather than the infringement of *individual* rights indicates that the Tribunal remained in large part state-centric.⁴³ But if this is Moyn's view, he fails to say so explicitly. The dawn of individual culpability for the perpetration of international

39. GERRY SIMPSON, *LAW, WAR & CRIME: WAR CRIMES, TRIALS, AND THE REINVENTION OF INTERNATIONAL LAW* 57 (1st ed. 2007). Simpson further explains that "[t]he move from thinking of international law in terms of 'abstract entities' to conceiving of it as a legal order about individual human beings is invigorated at Nuremberg, and transforms the soul of international law." *Id.*

40. *See id.* at 55.

41. *Id.*

42. Moyn criticizes the United Nations for this reason: "In the 1940s, the UN arose as a concert of great powers that refused to break in principle with either sovereignty or empire" (p. 8).

43. And if Moyn had actually articulated these contentions, there are of course counterarguments. It is possible to view the crime of aggression (or the state of declared war) as simply a jurisdictional hook that permitted the Nuremberg Tribunal to adjudicate various crimes against humanity, which *do* contemplate the perpetration of atrocities by individuals against individuals. *Cf.* SIMPSON, *supra* note 39, at 49, 69–70. This fact has particular resonance with respect to the assertion of jurisdiction over crimes committed against the German people: "to place the treatment of a state's own citizens by that state under public international law supervision was a radical step in 1945. The zone of sovereign power was being internationalized." *Id.* at 49.

crimes at the Nuremberg Tribunal, however imperfect, was a radical development deserving of serious attention.

Moyn's brief critique of Nuremberg, coupled with his calls for "mechanisms of judicial protection against sovereign authority" (p. 26), suggest that a legitimate pre-1970s movement would have required international enforcement mechanisms calibrated to respond to individualized atrocity rather than to sovereign aggression. And yet Moyn fails to point to any such institutions emerging in the 1970s, because he cannot do so. If such a tribunal were in fact an essential precondition to the movement's realization, Moyn would have been wise to point to the 1990s, a decade in which "160 of the world's states came together to establish a mechanism for trying those responsible for grave atrocities," with critical assistance from 135 of Moyn's beloved NGOs, to establish the International Criminal Court.⁴⁴ Moyn's failure to require of human rights in the 1970s what he did of human rights in the 1940s unmasks a brittle veneer of consilience.

Moyn also critiques initial human rights institutions, such as the 1950s' creation of the European Convention on Human Rights and the Court it established, as too local to matter: "Geographical localization of human rights proved an alternative to their global universalization, not a step toward it" (p. 191).⁴⁵ Yet this contention cannot be squared with Moyn's unconditional lionization of the same "newly prominent European Court in Strasbourg symboliz[ing] the great strides a rhetoric of human dignity and rights made at every level of the continent's affairs" (p. 218) in the 1980s. What was in the 1950s too local to constitute even a "step toward" the movement's realization was in the 1980s a "great stride" (p. 218). Without a meaningful explanation as to why the localized nature of tribunals no longer limited the scope of their contributions to the movement, Moyn's argument again rings hollowly contrarian. If universal, rather than localized international legal mechanisms were truly central to the emergence of human rights, Moyn's argument would again have been better served by pointing to the emergence of the ICC in the 1990s, an institution that substantively reflected "a universalist orientation," boasting broad jurisdiction "over crimes of 'international' concern."⁴⁶

C. Digressions

While Moyn downplays and even ignores⁴⁷ key developments in the 1940s, 1950s, and 1960s, he indulges in distracting 1970s-era tangents. Moyn's fixation on the role of the 1970s American legal academy in propel-

44. *Id.* at 35.

45. Moyn also decries the localized nature of 1940s-era human rights elsewhere in the text, denouncing them as "geographically specific and ideologically partisan" and suggesting that in later years they adopted a "different," presumably cosmopolitan, "guise" (p. 47).

46. SIMPSON, *supra* note 39, at 36.

47. There is no mention in the text of the postwar Tokyo trials, for example.

ling the human rights movement to cultural relevance is a primary example. He asks the reader to “examine the evolution of the career of Louis Henkin, who became the single leading figure on the American scene” as a “proxy” for the development of the movement’s rise to prominence in the 1970s (p. 201). Moyn exalts Henkin as an “idol for younger generations,” a “disciplinary hero,” and notes that “[i]t would be hard to overstate Henkin’s eventual centrality as ‘grandfather’ of human rights in American international law” (p. 201). This excursus is slightly surprising in light of Moyn’s seemingly broader point that it is the ordinary citizen, rather than members of the American elite, whose acceptance of human rights as a concept, and as a language, is critical.⁴⁸ Of course, academia has undoubtedly played an important role in shaping the rhetorical, theoretical and philosophical underpinnings of human rights, but nowhere before Moyn’s last chapter does he suggest that the blessing of Columbia’s Law faculty (or Louis Henkin alone) would be a sufficient condition for the catharsis of culturally relevant human rights.⁴⁹ By extolling Henkin as the sultan of the contemporary rights movement while dismissing Eleanor Roosevelt as its “schoolmistress” (p. 63), Moyn colors himself iconoclastic. In a text that makes only a single passing reference to the Nuremberg trials (p. 82), the depth with which Moyn explores the asserted influence of the 1970s American elite legal academy is perplexing.

Moyn’s preoccupation with specific sloganeering and phraseology, as adopted by ordinary citizens and elites alike, is also puzzling. He may well be right that the rhetoric of “human rights” *as such* did not achieve mass circulation until the 1970s and that different terminology percolated in earlier decades.⁵⁰ But it’s not immediately clear why this matters, if there had been substantive and philosophical continuity throughout the course of the movement. For example, Moyn takes great affront at the fact that “Ronald Dworkin’s response to the events of 1977 was simply to introduce the phrase [‘human rights’] to his vocabulary as if he had always been talking about them” (p. 216). But here Moyn is ignoring the obvious; perhaps Dworkin *had* always been talking about human rights as a substantive matter, whether or not he utilized the precise phrase. Accordingly, nitpicking linguistic variations seems superficial.

48. Moyn frequently emphasizes the importance of the movement gaining “broad popular appeal” (p. 47) and had indicated that human rights became prominent in the 1970s because “[f]or the first time in large numbers, people started to use the language of human rights” (p. 121).

49. Indeed, the efforts of pioneering international lawyers of 1942–43 were apparently insufficient: “Two of the main groups—in any case essentially overlapping—to give human rights in 1942–43 were lawyers, including international lawyers, and those members of the peace movement who laid most stress on rethinking the international order to avoid future war. In these groups, definition occurred, but primarily to lay out possible lists of rights, rather than to disrupt the long-term connection of rights and state sovereignty” (p. 52).

50. Moyn notes that “social movements adopted human rights as a slogan for the first time [in the 1970s]” (p. 121).

III. CONCLUSION

In the end, “The Last Utopia’s” largest flaw is perhaps the scale of its ambition. If Moyn had staked out the more modest claim that the 1970s remain underrated by conventional human rights historians, the book may have achieved far greater purchase. Indeed, Moyn makes a strong case that the 1970s deserve recognition as a period in which American intellectual discourse, domestic politics, and public rhetoric enriched and propelled human rights as a social movement. However, Moyn’s actual claim—that the pre-1970s movement was a false start that failed to capture the attention of global citizens, law professors, and lawmakers—required a level of analytical rigor that was largely absent throughout the text. Of course, “The Last Utopia” cannot be faulted for failing to treat thoroughly every possible competing vision of human rights that might contradict Moyn’s own. It would be unfair, perhaps, to criticize Moyn’s failure to address the panoply of scholarship that portrays human rights as care-based ethics, as utilitarian, or as stratified First, Second, and Third Generation Rights. Nor should it be troubling that Moyn’s largely historical text refrains from delving into the philosophical scuffle surrounding whether human rights are the product of monistic, pluralistic, or denial theories of moralism.

But because Moyn attempts a formidable condemnation of human rights as a pre-1970s failure, it *is* fair to expect scrupulous theoretical treatment of how communitarianism and derivative group-based rights interact with his theory of the movement’s development.⁵¹ This is so precisely because it is critical to Moyn’s argument—indeed, it is the crux of his argument—that human rights not have gained prominence until the 1970s, such that he *must* find a way to explain why group rights (which indisputably blossomed decades before then) are not human rights. Conclusory language suggesting that self-determination had to implode before human rights could take center stage is unsatisfying,⁵² absent an explanation of why, as an initial matter, the two are of fundamentally discrete characters. This exigency is further underscored by Moyn’s acknowledgement, on multiple occasions, of the historical impact that communitarianism had upon the human rights movement in its formative years. Accordingly, Moyn’s failure to explicate this apparent contradiction in terms is a serious blow to the persuasive thrust of his argument. This philosophical inconsistency, viewed alongside the convenient omissions and distracting tangents present in the text’s glorification of the 1970s, renders Moyn’s “Last Utopia” an incomplete, and at times incoherent, history of human rights.

51. This necessity is further underscored by Moyn’s own treatment of human rights as offering a “*philosophy of global amity*” (p. 191) (emphasis added).

52. An example of such conclusory language includes: “Given the uncertainty of the meaning and the marginal power of the idea of human rights in the 1940s, it is better to regard the eventual force of anticolonialism at the UN as its own distinctive tradition—one that the rise of human rights in their more contemporary sense would have to displace” (p. 86).