
Toward a New Politics? On the Recent Historiography of Human Rights

DEVIN O. PENDAS

Elizabeth Borgardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, MA: Belknap Press of Harvard University Press, 2005), 437 pp., \$26.50, ISBN 978-0674025363.

Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010), 234 pp., \$55.00, ISBN 978-0812242195.

Lynn Hunt, *Inventing Human Rights: A History* (New York: W.W. Norton, 2007), 272 pp., \$15.95, ISBN 978-0393331998.

Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009), vii + 236 pp., \$24.95, ISBN 978-0691135212.

Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), 337 pp., \$27.95, ISBN 978-0674048720.

Jean H. Quataert, *Advocating Dignity: Human Rights Mobilizations in Global Politics* (Philadelphia: University of Pennsylvania Press, 2009), xv + 355 pp., \$24.95, ISBN 978-0812221275.

Darius Rejali, *Torture and Democracy* (Princeton: Princeton University Press, 2007), xxiii + 849 pp., \$37.50, ISBN 978-0691143330.

When the late Kenneth Cmiel undertook the first systematic analysis of the emerging historiography of human rights in 2004, he surveyed a field that was 'refreshingly inchoate'.¹ In the ensuing seven years, the scholarship on the history of human rights has burgeoned considerably. Yet one might still reasonably characterise the field overall as inchoate. Like any new subfield of historical inquiry, there is a clear lack of consensus among leading historians of human rights about even the most elementary contours of the subject. What are human rights? When and where did they emerge?

Department of History, Boston College, 140 Commonwealth Avenue, Chestnut Hill, MA 02467, USA; pendas@bc.edu

¹ Kenneth Cmiel, 'The Recent History of Human Rights', *American Historical Review*, 109 (Feb. 2004), 119.

How and why did they spread (if, indeed, they spread at all)? Who were the crucial agents in this history? Few historians working in the field seem to agree in their answers to any of these questions.

While interpretative disagreements are the lifeblood of historical inquiry, and without them there would be little point to historical research save in those rare instances where new ‘facts’ are discovered, more mature subfields will often evince broad areas of consensus alongside zones of intense historiographical debate. Not so for newer subfields, such as the history of human rights. As is often the case, differences of interpretation in the history of human rights frequently derive from differences in methodology. Intellectual historians tend to view the field differently from political or legal historians, while social historians (relative latecomers to the field) bring yet another different perspective to the table. Added to this is the fact that the geographic scope of human rights history is both uncertain and enormous. There are a myriad of regional and national histories of human rights, as well as more global ones. Can they be successfully integrated? Do they even need to be? In many ways a paradigmatic site for the new transnational history, human rights historiography shares the challenges of that broader endeavour. What are the relevant archives and sources? In what languages? How does one acquire the necessary local knowledge to write transnational histories of multiple locations?

Given the striking diversity of the field, it is difficult to give a ‘state of the field’ report, because the state of the field is in many ways fragmented and fragmentary. What I propose to do in this essay is to analyse the fault lines, to describe the axes of divergence, and to unpack some of the sources of disagreement. It is also worth stressing, however, that for all the divergence in the historiography of human rights, the most recent literature is characterised by a genuine historicism that was largely absent from the very earliest work in the field. It is really only very recently that we have begun to develop a genuine *history* of human rights.

It is for this reason that the most consequential (and certainly the most dramatic) conflict within the recent historiography of human rights is what might be aptly described as a *bataille des origines*. When – and by extension, where – did human rights originate? This is, in many ways, a basic historical question. Of course, Samuel Moyn is right to recall for us Marc Bloch’s warning against the ‘idol of origins’, that is, confusing the earliest antecedents for the proximate cause of subsequent developments.² Bloch also notes that the true problem with seeking origins is the confusion of beginnings with causal explanation. ‘In popular usage, an origin is a beginning which explains.’³ Yet for all that, questions of periodisation, which encompass questions of origin, lie at the very heart of the historical endeavour. When something occurred is taken as a crucial element in explaining why it occurred.⁴ Indeed, it is this sense that *when* matters as much as *what*, and that one cannot explain

² Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), 41.

³ Marc Bloch, *The Historian’s Craft* (New York: Knopf, 1953), 29.

⁴ As Bloch also noted. ‘In a word, a historical phenomenon can never be understood apart from its moment in time’: Bloch, *Historian’s Craft*, 35.

why without both, that is arguably most distinctive about history as a scholarly discipline.

In the case of human rights, the question of origins and periodisation is a particularly challenging one. Aside from the problem of infinite regress that afflicts all historical analysis, in writing the history of human rights, we are confronted with a historical object that fundamentally denies having any history whatsoever. Conceptually, the core of human rights is the claim that they are rights one has simply by virtue of being human. This would make them universal, both with respect to space *and* time.⁵ As long as there have been humans, there have been human rights.

Such an understanding of human rights poses profound challenges for historical thinking. If human rights have always existed everywhere, it can be tempting simply to deny outright that they can have any history. Where that temptation has been resisted, many historians have been reduced to only partially historical explanations of human rights. Transhistorical rights can only have one of two kinds of history: a Whiggish one, in which people come increasingly to recognise ancient liberties that persisted beneath a patina of alternate forms of political legitimacy, or a Hegelian one, in which human rights unfold themselves in the world, realising their immanent potential and eventually coming to be what they always already were. It is hardly surprising, then, that the first two efforts at a synthetic history of human rights, Paul Gordon Lauren's *The Evolution of International Human Rights: Visions Seen* and Micheline Ishay's *The History of Human Rights*, embody these two tendencies.⁶ Although he thinks human rights progress in response mainly to their violations, Lauren is an avowed Whig, in that he thinks that human rights have persisted despite their neglect and that, for all the violence and oppression in the world, human rights ultimately do progress. 'Despite all the formidable odds and forces aligned against them, these visions could not be extinguished and those visionaries who saw them refused to be silenced.'⁷ As a result, he affirms, 'today the impact of human rights upon international relations is profound', marking a 'dramatic and radical transformation' in the world. This transformation was, according to Lauren, neither easy nor inevitable, but it marks unambiguous moral progress in realising 'visions seen' long since. His is a history which, in Herbert Butterfield's phrase, 'is the ratification if not the glorification of the present'.⁸

Ishay, on the other hand, is more a tacit Hegelian. After declaring the universality of rights, both with respect to their content and bearers, Ishay notes that 'across the centuries, conflicting political traditions have elaborated different components of

⁵ The philosophical debates addressing whether human rights *really are* universal, whether they are, in other words, natural, are enormously complex. One could usefully start with Michael Boylan, *A Just Society* (Lanham, MD: Rowman and Littlefield, 2004) vs. Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002).

⁶ Lauren, *Evolution of International Human Rights*, and Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2004).

⁷ Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 2003), 2.

⁸ Herbert Butterfield, *The Whig Interpretation of History* (New York: Norton, 1965 [1931]), v.

human rights or differed over which elements had priority'.⁹ The rights were always there; the disagreements were only about the details of implementation. She then turns to more Hegelian terms:

Yet in historical reality, each major stride forward was followed by severe setbacks . . . This is not to say that reactionary forces have completely nullified each phase of progress in human rights. Rather, history preserves the human rights record as each generation builds on the hopes and achievements of its predecessor.

This preservation of old rights amid renewed repression helped reveal the 'contradictions' within diverse 'human rights projects – whether liberal, socialist, or "Third World".' Finally, she concludes, 'if inconsistencies within each project exposed the boundaries of this or that world-view, they also moved the history of human rights forward'.¹⁰ One could hardly ask for a better example of applied Hegelianism.

By contrast, most of the more recent historiography of human rights is both less sweeping in scope and more genuinely historicist in its inclinations. In this literature, human rights are interpreted less as something which always was than as something which came to be. But this puts the question of origins firmly on the table. At what point in time can we speak about human rights as a meaningful concept and a viable political project? Broadly speaking, there are three main contenders in the current literature: the late eighteenth century, the 1940s and the 1970s. Earlier contenders, most notably the natural rights theories of the seventeenth century, have not resonated as strongly with recent historians of human rights.¹¹ One suspects this is emblematic of the mounting scepticism of stories of long-term continuity and the unfolding of rights among historians of human rights. So we are left with three competing accounts that privilege the Enlightenment moment, the aftermath of the Second World War, or, most dramatically, the very recent history of the 1970s.

To situate the origins of human rights in the Enlightenment is hardly new. Karel Vasak's by now canonical division of human rights into three generations (roughly: civil/political, economic/social, and solidarity/self-determination) located the first generation in the Enlightenment.¹² Lauren and Ishay both give pride of place to the eighteenth century as well.¹³ What Lynn Hunt's highly stimulating *Inventing Human Rights* adds to this story is a provocative alternative account of why it is that the Enlightenment mattered. According to Hunt, it was not so much Enlightenment *ideas* as Enlightened *feelings* that led to the invention of human rights. She begins by noting a paradox. Rights were declared to be 'self-evident' in the eighteenth century. Yet if they were indeed so self-evident, why did people feel the need to declare them?

⁹ Ishay, *History of Human Rights*, 3.

¹⁰ *Ibid.*, 4–5.

¹¹ Some, however, have pointed to the coincidence of natural rights and the first wave of European imperialism. See, for example, Richard Tuck, *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999) or Anthony Pagden, 'Human Rights, Natural Rights, and Europe's Imperial Legacy', *Political Theory*, 31 (2003), 171–99.

¹² Karal Vasak, *Les Dimensions internationales des Droits de l'Homme* (Paris: UNESCO, 1978).

¹³ See, for example, Lauren, *Evolution*, 10–21 and Ishay, *History of Human Rights*, 63–116.

And, she adds significantly, why were such declarations ‘only made in specific times and places?’¹⁴ According to Hunt, ‘sometime between 1689 and 1776 rights that had been viewed most often as the rights of a particular people – freeborn Englishmen, for example – were transformed into human rights’.¹⁵ This transforms a philosophical problem – are rights universal? – into a historical one – when did people come to believe rights were universal? It is in this respect that human rights can be subject to genuine historical investigation and Hunt’s book makes a major contribution to the field by formulating the issue in this way. No longer are we in a conceptual realm of perpetual rights unfolding. Rather, we are in the world where rights can be and have been ‘invented’, and once invented, must be defined, promulgated and defended.

So why did people in the eighteenth century come to think of rights as self-evident?¹⁶ According to Hunt, ‘the claim of self-evidence relies ultimately on an emotional appeal’.¹⁷ The emotional appeal of rights, in turn depended on a ‘set of assumptions about individual autonomy’, which, to become politically meaningful, in turn depended on the ability of people to ‘empathise with others’.¹⁸ Autonomy and empathy, according to Hunt, are ‘cultural practices, not just ideas’. Each entails the recognition of the embodied selves of others. Autonomy ‘hinges on an increasing sense of the separation and sacredness of human bodies’, while empathy ‘depends on the recognition that others think and feel as we do’.¹⁹ On Hunt’s account, for all their long pre-history, autonomy and empathy enjoyed a ‘spurt in . . . development’ in the late eighteenth century, a set of ‘changes in views that seem to happen all at once’. She traces these changes to a specific set of then new cultural practices, including public picture exhibitions, epistolary novels and the publicity surrounding the campaign against judicial torture. For Hunt, these were not just media for the dissemination of ideas, but cultural experiences that changed people. Indeed, she makes the dramatic assertion that

reading accounts of torture or epistolary novels had physical effects that translated into brain changes and came back out as new concepts about the organisation of social and political life. New kinds of reading (and viewing and listening) created new individual experiences (empathy) which in turn made possible new social and political concepts (human rights).²⁰

As Hunt herself acknowledges, much of her argument is beyond verification. In the absence of inter-temporal CAT scans, there is no way to know what happened to the brain chemistry of eighteenth-century French people when they read *Julie*. Whatever one makes of Hunt’s efforts at historical neuroscience, her account leaves unresolved several crucial questions. She herself asserts that ‘human rights require

¹⁴ Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton, 2007), 19.

¹⁵ *Ibid.*, 21–2.

¹⁶ If, indeed, they did think of them as universal. This is one of the issues at stake in the debate on origins.

¹⁷ *Ibid.*, 26.

¹⁸ *Ibid.*, 27.

¹⁹ *Ibid.*, 29.

²⁰ *Ibid.*, 33–4.

three interlocking qualities'. They must be natural, equal and universal.²¹ It seems reasonable to claim that eighteenth-century rights were considered natural and equal; it is far less clear that they were considered universal. She herself argues that 'rights questions . . . revealed a tendency to cascade', that is, granting rights to some led others to lay claim to rights as well.²² By articulating rights in universalist terms, the white, property-owning males who first declared and claimed them soon found themselves confronted by rights claims from religious minorities, enslaved Africans, and women, at least some of which were ultimately successful.²³

Yet this history of cascading rights confronts two limitations. First, not all subaltern claims to rights were successful, most notably in the case of women. Second, and perhaps more fundamental, is the fact that eighteenth-century rights were tightly bound to the nation state, then entering its golden age. There is a striking elision in Hunt's text at one point. She cites the Declaration of the Rights of Man and Citizen of 1789: 'The principle of all sovereignty rests essentially in the nation.' She then expounds on this: 'Political authority, in this view, derived from the innermost nature of individuals and their ability to create community through consent.'²⁴ Yet it is far from clear that the nation needs be conceived as a consensual community of autonomous individuals, even in the French context. After all, Sieyès famously saw the Third Estate as equivalent to the nation in and of itself. 'The Third Estate then contains everything that pertains to the nation while nobody outside the Third Estate can be considered as part of the nation.'²⁵ So much for universal individual rights. Nor is it in any way clear that such a nation has any obligation to constrain its actions in terms of individual rights, as the Terror revealed shortly after 1789. Indeed, François Furet has argued that the Terror can be viewed as, in effect, a war of the nation against the individual.²⁶ Finally, as Samuel Moyn has pointed out in his trenchant critique of Hunt's book, empathy as such hardly necessitates the embrace of human rights. It can equally well lead to humanitarian imperialism and civilising missions.²⁷

If the eighteenth century offers one obvious starting point for the history of human rights, the 1940s provides the other. Here again there are many proponents for this periodisation. Louis Henkin introduced his influential collection of essays, *The Age of Rights*, by asserting 'the contemporary idea of human rights was formulated and

²¹ *Ibid.*, 20.

²² *Ibid.*, 147.

²³ This is a story Hunt first told in Lynn Hunt, *The French Revolution and Human Rights: A Brief Documentary History* (Boston: Bedford, 1996).

²⁴ Hunt, *Inventing Human Rights*, 31.

²⁵ Emmanuel-Joseph Sieyès, *What is the Third Estate*, in Keith Michael Baker, ed., *Readings in Western Civilization*, vol. 7: *The Old Regime and the French Revolution* (Chicago: University of Chicago Press, 1987), 157.

²⁶ 'The Terror was a regime where men in power designated those who were to be excluded in order to purify the body of the nation', François Furet, *Revolutionary France, 1770–880* (Oxford: Blackwell, 1988), 140.

²⁷ Samuel Moyn, 'On the Genealogy of Morals', *The Nation*, 16 April 2007.

given content during the Second World War and its aftermath'.²⁸ He also pointed out that 'American rights [i.e., eighteenth-century rights] and international human rights are intimately related, yet they are different.'²⁹ Only in the 1940s did rights become truly human on Henkin's account. Likewise, Mary Ann Glendon has argued that 'the moral terrain of international relations was forever altered late one night in Paris, on December 10, 1948, when the General Assembly of the United Nations adopted the Universal Declaration of Human Rights without a single dissenting vote.'³⁰

The reasons for the appeal of the 1940s as a starting point for the history of human rights are easy to see. To begin with, it is the first time the phrase itself enters into common parlance. Moreover, the aftermath of the Second World War was marked by the first serious efforts to codify *individual* rights in international instruments. Collective minority rights were of course a different matter, having long been a part of European international order.³¹ Indeed, this older model of collective protections for endangered minorities continued into the post-war world, most notably in the UN Genocide Convention, but existed in some tension with the newly emerging human rights paradigm.³² The catastrophic failure of the inter-war minority protection regime and its exploitation by the Nazis in the annexation of Austria and the Sudetenland revealed the dangers of linking rights talk to national minorities. Individual rights seemed to many to be far less dangerous and politically fungible in this respect.

Among recent historians, none has argued more forcefully for situating the origins of human rights in the 1940s than Elisabeth Borgwardt.³³ In contrast to Henkin or Glendon, however, Borgwardt argues for a distinctly American origin for human rights. Indeed, the very title of her book, *A New Deal for the World*, implies a disseminationist view of human rights, which originate in an American domestic context and then spread globally.

Borgwardt's story begins with the Atlantic Charter, the joint communiqué issued by Roosevelt and Churchill in 1941, framing their key ideas for the post-war settlement. (An ambitious agenda, considering the United States was not yet even at war.) Upon its release, the Charter resonated more broadly than anyone expected, certainly more broadly than Churchill had intended. Its promises of self-government and of 'freedom from fear and want' resonated with anti-colonial activists such as a young Nelson Mandela, as well as framing the broadly 'anti-totalitarian' purpose of the war. The Charter incorporated three elements: first, an updated Wilsonianism

²⁸ Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), 1.

²⁹ *Ibid.*, 143.

³⁰ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), xv.

³¹ See, for example, Carole Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878–1938* (Cambridge: Cambridge University Press, 2004).

³² Devin O. Pendas, 'Toward World Law? Human Rights and the Failure of the Legalist Paradigm of War', in Stefan-Ludwig Hoffmann, *Human Rights in the Twentieth Century* (Cambridge: Cambridge University Press, 2011), 215–36.

³³ Elisabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, MA: Belknap/Harvard, 2005).

that promised to curtail great power expansion and secure self-determination; second, free trade (though limited by British interests in imperial trade preferences); and third, a Rooseveltian vision of welfare state economic security. Yet according to Borgwardt, it was Roosevelt's New-Deal-inspired vision that came through most strongly in the Charter:

FDR's vision of the Atlantic Charter as a New Deal for the world supplements Winston Churchill's vision of the 'Atlantic Charter as press release' and Nelson Mandela's vision of the Charter as a manifesto of individual dignity. It included the other two approaches and then went on to fold in the Four Freedoms to produce an expanded list of rights – human rights – that included economic security.³⁴

For Americans, the Second World War offered an opportunity to make good on their mistakes after the First, when isolationism and an excessive distrust of multilateral institutions scuttled any leadership role for the United States in the post-war period, with disastrous results. The question was how to envision world order and multilateral institutions that could both secure US support and preserve international stability and economic prosperity. According to Borgwardt, an expanded vision of the New Deal guarantees Americans had come to embrace during the 1930s, now framed in more universal terms as 'human rights', provided the answer. 'Taken all together, these World War II-era proclamations and organisations embodied a key conceptual step at which earlier multilateralist initiatives only hinted: a vision of the individual as the ultimate object of protection by the international community, with individuals in turn having responsibilities to that community.'³⁵ Borgwardt reads this as, in essence, an internationalisation of the New Deal understanding of the relationship between the citizen and the government. Moreover, she contends, the notion of multilateral institutions as, in effect, embodying a 'fragment of sovereignty' that enabled them to develop regulatory regimes on behalf of individuals was likewise an outgrowth of domestic New Deal concepts.³⁶ But the New Deal's greatest contribution to the development of an international human rights regime in the late 1940s was to give multilateralism the 'cultural traction' necessary to overcome isolationism. This enabled the United States to take on the leadership role it had so conspicuously rejected after the First World War, which it did in a series of major international institutional undertakings. (Bretton Woods, the United Nations and Nuremberg are Borgwardt's key examples.) 'Human rights are a response to human wrongs, as the saying goes, but also a product of the domestic political culture within the promulgating nations, especially the United States.'³⁷

Borgwardt is undoubtedly correct that the United States was a key architect of the post-war settlement, but one cannot help but wonder if she does not overstate her case. Whether at Bretton Woods, San Francisco or Nuremberg, other powers often played crucial roles, not infrequently at cross purposes to the United States. John

³⁴ *Ibid.*, 53.

³⁵ *Ibid.*, 71.

³⁶ *Ibid.*, 72.

³⁷ *Ibid.*, 251.

Maynard Keynes was of course a chief architect of the Bretton Woods system, and Borgwardt's fascinating and detailed account of the negotiations creating the post-war monetary system themselves reveal the give and take between British and American interests. More significant still is the way the new United Nations was pressed (at least temporarily) into the service of preserving European imperialism. It was the South African Jan Smuts who drafted the preamble to the UN Charter, the key locus for human rights talk at the UN prior to the Universal Declaration. And as Mark Mazower has persuasively demonstrated, Smuts's agenda was decidedly racist and imperialist. His was the 'language of pre-war liberal idealism, an approach that took the moral mission of empire for granted'.³⁸ It is true that the idea for an international trial (which eventually became the Nuremberg Trial) was initially formulated by the Americans and many of the details of procedure and structure originated in Washington.³⁹ Yet even here, the Americans were far from dictating their vision to the other participants. The Soviets in particular were strikingly successful in shaping the Nuremberg agenda.⁴⁰

Borgwardt does emphasise the resonance American human rights rhetoric found among anti-colonial activists, in a variant of Hunt's cascade theory of rights.

The inspirational impetus of . . . 'Nelson Mandela's Atlantic Charter' helped to generate powerful, and ultimately transformative, expectations in constituencies far from Roosevelt and Churchill's targets, such as subjects of colonial regimes the world over, as well as African-American communities and a variety of non-governmental organisations in the United States.⁴¹

In other words, on Borgwardt's account, human rights operated globally as a kind of 'derivative discourse', much as nationalism may have done a generation earlier.⁴² There is undoubtedly an element of truth in this, but for Borgwardt, there is an element of temporal determinism at work here as well. Because the 1940s undoubtedly were a moment of American ascendancy (though by no means unchallenged), to the extent that human rights emerged in that decade, they did so with an American imprimatur. Human-rights-based multilateralism was, in effect, an act of American world system building.

[T]he *Zeitgeist* of 1945 saw an America ascendant in the world but also willing to limit the returns to power; firmly entrenching its own interests but also voluntarily constraining its influence through institutional channels; coercing smaller countries but also consolidating their consent through robust policies of aid, trade, and consultation.⁴³

³⁸ Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton: Princeton University Press, 2009), 61.

³⁹ Arieh J. Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment* (Chapel Hill: University of North Carolina Press, 1998).

⁴⁰ Francine Hirsch, 'The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Post-War Order', *The American Historical Review* 113 (June 2008), 701–30.

⁴¹ Borgwardt, *New Deal for the World*, 286.

⁴² Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse* (Minneapolis: University of Minnesota Press, 1986).

⁴³ Borgwardt, *New Deal for the World*, 251.

That may well be, but it might also be wise to decouple questions of agency from questions of periodisation, an issue to which I will return below.

By far the most daring and original attempt to think through the starting point of international human rights to emerge thus far in the historiography is Samuel Moyn's *The Last Utopia*.⁴⁴ This will doubtless be the indispensable starting point for any discussion of the history of human rights for many years to come, in part because Moyn's revisionist account poses a direct challenge to virtually all of the existing scholarship on the topic, but also because Moyn's is a brilliant analysis, full of incisive and insightful accounts of an astonishing array of thinkers and movements. Moyn argues that, far from originating in the 1780s or even the 1940s, human rights are in fact of quite recent vintage, dating to the 1970s. 'It is striking to register how recently this programme [of human rights] became widespread. Over the course of the 1970s, the moral world of Westerners shifted, opening a space for the sort of utopianism that coalesced in an international human rights movement that had never existed before.'⁴⁵

Moyn does not deny that there were earlier forms of rights discourse, both in the Enlightenment and the 1940s, but these, he insists, were not 'human rights' in the contemporary sense. The rights of man, as proclaimed in the seventeenth and eighteenth centuries were 'so profoundly different in their practical outcomes . . . as to constitute another conception altogether'.⁴⁶ The reason for this is that Enlightenment rights were irreducibly bound to the state. As exhibit A for this, Moyn cites Hobbes. The 'individual' as a bearer of rights was modelled on the 'state', which in turn served as the source and guarantor of those rights. 'The argumentative goal of the first right [to self-preservation] . . . was to empower the state, not limit it.' Even the softer visions of natural rights that followed Hobbes merely 'furthered the very alliance between rights and the state through which rights had emerged'.⁴⁷ In this respect, the rights discourse of the Enlightenment period, and the democratic revolutions to which they were ineluctably bound, served more to negate than promulgate 'human rights'. This is because, according to Moyn, the core logic of human rights is that they seek to 'transcend' the state, which is why they are necessarily international in character and why they are most often promoted and embodied by NGOs and civil society, even if states on occasion will sign up to a human rights agenda.

As for the 1940s, Moyn is perfectly aware that human rights talk, in precisely this universalist, internationalist sense, was first articulated in this decade. Yet here too, Moyn argues, it would be misleading to view the result as 'human rights', as the term is currently understood. There are two reasons for this. First, within western Europe and the United States, the states that initially took the lead in formulating human rights instruments at the United Nations, the language of human rights remained strikingly marginal on Moyn's reading. It was largely the Christian Democratic right

⁴⁴ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap/Harvard, 2010).

⁴⁵ *Ibid.*, 1.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, 22–3.

that picked up that language and used it to reframe anti-communism and redeem it from its potentially fatal association with inter-war Fascism. Second, on a more global scale, human rights were initially promulgated, as Jan Smuts well knew, as a substitute for decolonisation. 'Human rights turned out to be a substitute for what many around the world wanted, collective entitlement to self-determination. For the subjects of empire were not wrong to view human rights as a kind of consolation prize.'⁴⁸ This in turn explains why Moyn interprets anti-colonial movements, for all that they occasionally spoke the language of human rights, as in no way forming human rights crusades. The goal of such movements was in fact sovereignty, for Moyn the antithesis of human rights. After all, sovereignty is collective, not individual, and inextricably bound up with the territorial nation state.

So why did human rights then finally emerge in the 1970s? Moyn links this to the collapse of revolutionary hopes in the wake of 1968 and as the new postcolonial states often revealed themselves to be anything but beacons of human liberty; self-determination, it turned out, was no panacea. 'Human rights thus emerged on the ruins of one sort of hope for former colonial areas and the search for some alternative'.⁴⁹ At the same time, the end of colonialism allowed the 'reclamation of liberalism, including rights talk, shorn of its depressing earlier entanglements with oppression and violence abroad'.⁵⁰

Equally important, on Moyn's account, was the emergence of widespread dissidence in the Soviet Union and Eastern Europe. The institutional linkages are obvious in the way that Human Rights Watch emerged from Helsinki Watch, which was set up after the Helsinki Accords to monitor Soviet compliance with their human rights commitments. More significant is the way Moyn interprets human rights as emerging as a kind of anti-politics from the repressed situation of East European dissidents. In a particularly brilliant reading of Vaclav Havel's 'Power of the Powerless' essay, Moyn elucidates the way that the failures of reform communism in 1953, 1956 and especially 1968 left few hopes for a political process in the Soviet sphere. Havel's response, which Moyn reads as in many ways embodying the core logic of modern human rights, was to reject politics. The inability of politics to make significant improvements in people's lives was, for Havel, only more obvious in the totalitarian states of the East, but this merely reflected a larger problem with modern society in general. Consequently, Havel turned to legalism as an alternative to politics, a strategy that had been pioneered by earlier Soviet dissidents. The appeal to international legal norms became a basis for a critique of all politics, even if, as Havel was well aware, the effort to escape politics remained in many respects political, an instrumental attempt to effect change. 'At a deeper level, however, Havel claimed that human rights could not simply mean politics at a later date or by another means. Morality, he maintained, could permanently substitute for politics.' For Havel, and by extension, for Moyn, human rights thus formed a kind of morality based anti-politics, 'a morality rooted

⁴⁸ *Ibid.*, 45.

⁴⁹ *Ibid.*, 116.

⁵⁰ *Ibid.*, 117.

in a “hidden sphere” and not practical concerns provided purity and authenticity, not compromise, violence and failure’.⁵¹

Thus, for Moyn, human rights emerged quite recently as a form of utopian anti-politics in response to the failure of earlier utopian projects, mainly anti-colonialism and socialism. This argument hinges on several premises. First, there is the definitional issue. For Moyn, human rights means *international* human rights that seek to transcend national boundaries, breach the wall of sovereignty and root themselves institutionally in international law. This is why, for him, neither Enlightenment natural rights nor anti-colonial claims to sovereignty as a right can be considered human rights. It is undeniable that human rights in the 1970s came to acquire this transnational, even anti-national, character. It is less clear whether this marks an emergence of an entirely new form of politics or simply a reconfiguration or modification of earlier political discourses. After all, much of this hinges on an adjective. There is no denying that rights talk precedes the 1970s by some several hundreds of years. Moyn’s point is that those rights were not yet human rights. Yet the argument advanced in different ways by both Enlightenment thinkers and anti-colonial activists, as well as by many contemporary conservatives, is that rights are indeed human, but can only adequately be embedded in democratic states. International law and international norms, so this argument goes, lack not only the executive enforcement mechanisms to make rights effective (a point rather well demonstrated by the human rights failures of the 1990s and the war on terror), but also the democratic accountability requisite to ensure consensus on the bundle of rights to be protected.⁵² International human rights, in other words, can be read as suffering from a democracy deficit that can only be bridged by nation states.

To be fair, it is far from clear how persuasive such arguments ultimately are. It may be that strong regional confederations, such as the European Union, can offer alternative routes to democratic oversight beyond the nation state. More significantly, it is far from clear that even democratic nation states offer sufficient protections for human rights. Darius Rejali’s magisterial survey of democratic torture makes plain that democracies can be particularly cruel and inventive in their violations of human rights.⁵³ Moreover, if Moyn is right that human rights constitute an anti-politics, then embedding them in the nation state becomes more challenging, because this would intrinsically link them to power rather than morality. Fundamentally, though, it seems to me that what we are confronting here is not human rights versus citizenship or national rights, but rather two different visions of how to realise rights that are conceived as human.

True, sovereignty can be a justification for atrocity, but so too can humanitarianism or human rights talk. And nationalists are right that sovereignty can also be a vessel

⁵¹ *Ibid.*, 165. One is reminded here of Julian Bourg’s account of the turn to ethical theory in France in the aftermath of the perceived failure of revolutionary activism in ‘1968’. Julian Bourg, *From Revolution to Ethics: May 1968 and Contemporary French Thought* (Montreal: McGill-Queen’s University Press, 2007).

⁵² Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge: Harvard University Press, 1986 [1964]), 209–24.

⁵³ Darius Rejali, *Torture and Democracy* (Princeton: Princeton University Press, 2007).

for the formulation and codification of rights. It seems to me too simple to posit an antithesis between human rights and sovereignty; rather, the relationship should be seen as ambiguous. Both sovereignty – and its occasional corollary, democracy – and rights (human and otherwise) can serve to shield humans from the worst impulses of their fellows. Both can function as self-limiting checks on the abuse of power. Above all, the two can be mutually reinforcing, even mutually constitutive.

The second premise upon which Moyn's account relies is that human rights are first and foremost a concept. One of his key pieces of evidence for the emergence of human rights in the 1970s is that this was the first time social movements broadly adopted them as a 'slogan'.⁵⁴ But if it is just a matter of slogans, perhaps earlier social movements engaged in human rights practices without the slogan (or without that precise slogan, but one very much like it). If one thinks, for instance, about abolitionism or the Congo Reform movement, there is a sense that they responded to human wrongs that had to be righted, not in connection with self-determination or sovereignty, but within empire.⁵⁵ The claim made by these movements was that no human beings – even ones too 'primitive' for self-governance – should be treated in certain ways. The specific framing rhetoric was often one of condescending paternalism, of 'humanitarian' sympathy, not human rights, but was the end result all that different? After all, condescension and paternalism are by no means unheard of among human rights activists today. Is not what matters the notion that all human beings deserve a certain minimum protection from ill treatment?

Moyn's third premise is that the human rights talk which flourished in the 1940s proved to be a dead end because it was hijacked by anti-communism. The cold war effectively killed off human rights. Yet one striking finding of the recent scholarship on human rights is that the Soviets themselves had a surprisingly robust and durable tradition of human rights talk throughout the post-war period.⁵⁶ This was not simply a dichotomy between a defence of civil and political rights in the west and economic and social rights in the east, as one might expect. Rather the Soviets had a deeply ambivalent rhetorical relationship with rights talk, including political rights. So thinking globally, it might make sense to think of human rights as a kind of secondary discourse that was embedded in, but also had the potential to transcend, the cold war. This would help explain the turn to human rights among east bloc dissidents after 1968; they were turning to a language that already had some cultural traction, as Borgwardt would put it.

⁵⁴ Moyn, *Last Utopia*, 121. He demonstrates this with a striking chart tracking the usage of the phrase 'human rights' in the *New York Times* and the *London Times*, showing a dramatic spike in the 1970s (appendix 1).

⁵⁵ Adam Hochschild has made a case for considering both as early human rights movements without specifically considering the definitional issues Moyn raises. See Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Boston: Houghton Mifflin, 1998) and idem, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves* (Boston: Houghton Mifflin, 2005).

⁵⁶ See, for example, Jennifer Amos, 'Embracing and Contesting: The Soviet Union and the Universal Declaration of Human Rights, 1948–1958' and Benjamin Nathans, 'Soviet Rights-Talk in the Post-Stalin Era' both in Hoffmann, *Human Rights in the Twentieth Century*, 147–65, and 166–90.

Similarly, Moyn's account, while by no means wrong to stress the centrality of self-determination to anti-colonial activists, to a degree needlessly flattens the temporality of human rights and decolonisation. Like Brian Simpson and Reza Afshari, Moyn is profoundly sceptical that anti-colonialism was ever a human rights movement.⁵⁷ By contrast, Roland Burke has recently revealed the ways in which 'Third World' attitudes towards human rights underwent a transformation, from a relatively positive perspective in the 1950s to a more sceptical stance that prioritised self-determination in the 1960s and 1970s.⁵⁸ For instance, although several Third World countries at the Bandung Conference, most notably China, were openly hostile to human rights as a western colonial imposition, their manoeuvres were largely defeated by a coalition of smaller Asian and African states, who defended the Universal Declaration from open critique or repudiation.

The successful defence of the Universal Declaration of Human Rights at Bandung . . . was a remarkable achievement. It demonstrated the significant engagement many of the new states had with the concept of human rights in the early phase of their independence, and the absence of any prejudice against the principles in the Universal Declaration, despite the Western intellectual provenance of both its form and a considerable number of its provisions.⁵⁹

The Third World's eventual reconceptualisation and reduction of human rights to self-determination was thus by no means a foregone conclusion. Rather, as Burke demonstrates, it was itself an artefact of the complicated territorial and ethnic contours of the so-called new states, which came to view self-determination for themselves as an end, rather than a means to greater liberation, while often denying it to their own internal minorities, as for instance the Biafran crisis demonstrated. In the 1950s, self-determination had been seen as a means to protect individual rights; now it was the sole end.

By the mid-1960s, the right to self-determination had become little more than the one-sided anti-colonial weapon that self-interested European critics had charged it to be. The claims of the colonial powers had been unjust in the 1950s, but when the two human rights covenants were passed in 1966, the rhetoric of independence as the gateway to democracy had begun to look less and less plausible . . . The self-determination of 'sovereignty' had consumed its 'democratic' sibling.⁶⁰

So it appears that the 1940s human rights moment was both broader and full of greater potential than Moyn gives it credit for. By the 1950s in the West and the 1960s in the decolonising world, human rights had fallen into disuse and in some quarters disrepute – a historical phenomenon that itself needs explanation. It is not that human rights had yet to be born, but rather, that their initial efflorescence had withered.

⁵⁷ A.W.B. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001); and Reza Afshari, 'On the Historiography of Human Rights: Reflections on Paul Gordon Lauren's *The Evolution of International Human Rights: Visions Seen*', *Human Rights Quarterly*, 29 (2007), 1–67.

⁵⁸ Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010).

⁵⁹ *Ibid.*, 33–4.

⁶⁰ *Ibid.*, 58.

Moyn is right that the 1970s mark a dramatic increase in human rights discourse and activism, but this is perhaps better explained as a revival than as an entirely new development. Crucial here is that much of the human rights law to which activists and dissidents in the 1970s would appeal, not only the Universal Declaration, but the two United Nations Charters and international criminal legal instruments such as the Genocide Convention and the so-called Nuremberg Principles, had already been codified and ratified. The turn to human rights as a form of legalistic anti-politics depended upon their prior incorporation into law.

Finally, to the extent that Moyn is right that the 1970s mark the breakout – or as I have suggested, at least a reconfiguration and recrudescence – of human rights, the question is why. Moyn's argument, that the failures of 1968 and decolonisation led to broad disillusionment with revolution and a decline of competing utopian ideologies is quite persuasive on its own terms, but it leaves open the issue of the social conditions of plausibility. Why, in terms of people's lived experience of the world, did human rights make sense as a way of understanding and seeking to change the world, much as socialism had done for earlier generations? Here it may be that intellectual history reaches the boundaries of its methodology, and that one needs to incorporate elements of social history.⁶¹

Jean H. Quataert has recently sought to write just such a social history of human rights activism.⁶² Unlike Mazower's brilliant dissection of the United Nations, which concentrates on a handful of prominent intellectuals and statesmen, or Moyn's book, which while arguing for the importance of NGOs, focuses fundamentally on unpacking the historical logic of human rights, Quataert offers a broad, 'bottom-up' history of human rights activism. Across a series of case studies, she examines the role of ordinary people turned activists, arguing that it was the grass roots that drove human rights. And in contrast to Borgwardt's disseminationist account of American-influenced human rights, she stresses the small rather than the great powers, and indigenous rather than global activism. 'The focus on the external sources of change overlooked the local and indigenous movements for democratic reform and human rights principles bringing their own understandings, definitions and sense of timing to reform efforts.'⁶³ Quataert's other great contribution is to emphasise, in a way that most of the rest of the recent human rights historiography has not, the centrality of gender and women's rights issues to the development of a global human rights agenda.

Yet for all that Quataert is right to shift the focus to the local, the particular, the indigenous, and to the agency of ordinary people, such an emphasis necessarily fails to explain the confluence of all of these diverse local movements. Whether we are talking about the anti-Apartheid movement, various movements for women's rights,

⁶¹ At least, if properly understood as engaging the intersection of social structure and short-term, agentive 'events'. See William J. Sewell Jr., *Logics of History: Social Theory and Social Transformation* (Chicago: University of Chicago Press, 2005).

⁶² Jean H. Quataert, *Advocating Dignity: Human Rights Mobilizations in Global Politics* (Philadelphia: University Pennsylvania Press, 2009).

⁶³ *Ibid.*, 295.

or the mothers of the Plaza de Mayo, these local responses to local problems all spoke in related terms. Otherwise, there would be no reason to put them all together in one book and call them all human rights campaigns. So aside from Moyn's argument about exhausted utopias, what might account for this broad revival of human rights among ordinary people and grass roots activists after 1968?

Here it might be worth thinking rather more systematically about the 1970s as a moment in world history. This was also the moment when the organised, 'Fordist' capitalism that had characterised the post-war settlement began to break down rather dramatically. It hardly seems coincidental that the breakout (or revival) of human rights coincided with the post-Fordist turn in the global economy. Perhaps one could argue that if postmodernism was one intellectual response to 'flexible accumulation', so too was the human rights turn.⁶⁴ The new social movements that succeeded the collapse of the New Left were fragmented in part because it was becoming harder to identify a single 'system' against which opposition could be formulated.⁶⁵ In some respects, 'human rights' were simply a useful umbrella concept through which to formulate the diverse demands of these various movements.

If the shift to dissidence among various east bloc intellectuals was partially a response, as Moyn argues, to the 'transformation of hopes for socialism's salvation and redemption', this in turn was linked to the reconfiguration of the global economy. Stephen Kotkin has argued that the collapse of the Soviet Union was due largely to the maladaptation of the Soviet economic system to the new realities of the 1970s.⁶⁶ The transformation from industrial to post-industrial, from production to consumption-driven, from manufacturing to early instantiations of information technology, and the energy inflation of the 1970s – all these undermined a Stalinist system geared to a very different kind of economic activity. It is in this context that the human-rights-based critique, not just of the Stalinist system, but of modernity overall, makes sense. The revival of human rights in the 1970s originated in the east bloc because that was the region where the impact of this global economic reconfiguration was most immediately destabilising.

For all that the historiography of human rights remains in many respects in its infancy, the debate over the periodisation of human rights is a productive one. By its nature, it encompasses within it a number of other important questions, regarding the locus of human rights history, the relevant agents of that history, and the relationship between human rights and other key concepts for modernity, such as sovereignty and the nation state. It seems likely that we remain far removed from a consensus on any of these issues, yet, as I have suggested in this essay, it seems to me that there may be ways to reconcile at least some of the competing accounts to arrive at a nuanced, yet comprehensive account of the history of human rights. Such an account would seek

⁶⁴ On the link between postmodernism and post-Fordism, see David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Oxford: Blackwell, 1989).

⁶⁵ Moishe Postone, 'History and Helplessness: Mass Mobilization and Contemporary Forms of Anticapitalism', *Public Culture* 18/1 (2006), 93–100.

⁶⁶ Stephen Kotkin, *Armageddon Averted: The Soviet Collapse, 1970–2000* (Oxford: Oxford University Press, 2008).

to interrogate the complex relationship between the state, sovereignty, citizenship, and human rights, rather than merely positing a blanket incompatibility among them. In doing so, it would seek to understand the multiple points of origin for human rights, that they did not have one birth, but many. By implication, of course, this would mean that human rights can be destroyed as well as invented.⁶⁷ That too would be part of their history. Finally, such an account would try to incorporate insights from multiple historical methodologies, recognising that human rights are forms of ideas and practices, politics and culture, institutions and activism. Such an integrated history of human rights might begin to analyse the complex, multiple periodisations of the history of human rights.

⁶⁷ Michael Geyer, 'The Disappearance of Human Rights post 1800 with an Eye on the Situation post 2000', paper presented at the conference, *Human Rights in the Twentieth Century: Concepts and Conflicts* (Berlin, 21 June 2008).