Member States would have given a more complete picture (even the Scottish accused has no right to demand a jury trial). Tugendhat's argument that Article 6 is narrower than the common law right of access to justice could touch on the deeper protection offered by the former. It is a shame not to have discussion of how the Criminal Justice and Public Order Act 1994 has stripped away the privilege against self-incrimination in English law alongside Tugendhat's discussion of the ECHR's role in ending the executive's sentencing function. Equally, the assertion that the Strasbourg Court could have fitted a right to reputation more logically into Article 5 than Article 8 requires more elaboration. Another example is the statement that the ECHR suits originalist interpretation to a greater extent than common law rights. Discussion of the living instrument doctrine would have been helpful here, as would some discussion of the ability for common law rights to shrink, as well as grow. And more discussion might have been desirable of the difference between rights and liberties. The author touches on this when he discusses the positive obligations placed on the state by the ECHR, such as to facilitate protest. Arguably, he underplays their importance.

Tugendhat is optimistic to a fault. He suggests that no Government which proposed to abolish unemployment benefits (inter alia) would be elected because of the British public's strong belief in such a safety net. That view seems almost idealistic. Elsewhere, he notes that the legislature's power to reverse judges' decisions is generally used only when the judge was wrong. The fuller picture is less rosy. For example, the Jobseekers (Back to Work Schemes) Act 2013 was designed retrospectively to re-activate regulations struck down by the court and was subsequently declared incompatible (*R. (on the application of Reilly) v Secretary of State for Work and Pensions* [2016] EWCA Civ 413, [2017] Q.B. 657 being the final case in the saga).

This reader does not quite share the author's optimism. Indeed, not everyone will agree with the arguments advanced in this book. Those who need convincing may be the least likely to read it. But its publication to provoke a discussion is to be welcomed. This review is designed to inform lawyers as to whether they might wish to read this book. It should not dissuade the general public (its main target audience) from doing so.

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The International Covenant on Economic, Social and Cultural Rights: Travaux Préparatoires 1948–1966. Edited by Ben Saul. [Oxford University Press, 2016. 2 vols. cxxvi + 2,580 pp. Hardback £325. ISBN 978-0-19-875832-7 (set).]

What purpose do the *travaux préparatoires* of an international instrument serve? Formally, the codified law of treaties accords them a limited role. They are designated as a "supplementary means" of interpretation, which may be resorted to only in order to confirm a meaning already reached by application of the "general rule" of interpretation, or to establish a meaning where the general rule gives rise to a meaning that is manifestly absurd or unreasonable. Since the general rule includes examination of the "ordinary meaning" of the treaty text as a whole, in light of several other factors – its preamble and annexures, object and purpose, any related agreements, any subsequent practice and any other relevant rules of international law applicable between the parties – one might wonder when, if

ever, it will be necessary to turn to the *travaux* for assistance. Would not all these elements ensure that a non-absurd meaning can be conclusively established without reference to the drafting history?

The question seems to acquire a normative tinge in the context of human rights treaties. Such treaties are widely perceived to constitute a special category, which inter alia must be interpreted as living instruments. That is to say, they must be read as capable of evolving in meaning over time, in keeping with contemporary standards. For instance, the archaic references of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – the subject of Ben Saul's masterly compilation – to "himself and his family", must be read as accommodating diverse persons and relationships, regardless of gender. Should not then, the question might be posed, the elements prescribed in the general rule, with their attentiveness to this very quality of change, ensure that a non-absurd meaning is conclusively established without the need for resort to the *travaux*?

Such questions build upon a mistaken impression of the role that *travaux préparatoires* actually play in the interpretation of treaties. As Jan Klabbers noted in "International Legal Histories: The Declining Importance of *travaux préparatoires* in Treaty Interpretation?" ((2003) N.I.L.R. 267 at 268), in practice "most international lawyers will almost automatically include a discussion of preparatory works in legal argument, and will consider it vital to do so". Moreover, the uses of the *travaux* are not limited in the ways suggested by the codified law of treaties. They are consulted from the outset as part of the process of giving meaning to a text: the *travaux* are used alongside the other aids mentioned in the general rule. Nor, to answer the normative question, is the use necessarily with the aim of fixing the meaning according to the standards of the past. As Klabbers, again, notes, *travaux* are often used for the opposite end: "demonstrating that the drafting history does not stand in the way of a particular (often more teleological) interpretation" that might represent a rather creative reading of the text (p. 283). Doubters, who might view the creative interpretation as stretching the meaning of a treaty beyond what its text can bear, may be thus convinced via the *travaux* that this meaning is appropriate not only because it is more in line with the treaty's purpose, but also because it is a meaning that might have been attractive to the drafters (even though they failed to offer a reflection of it in the text) or disregarded simply because the circumstances necessitating its consideration had not yet arisen.

The use of the *travaux* to unsettle meaning might be all the greater outside the contexts of legal argument. *Travaux préparatoires* are also archives that offer insight into a particular moment – in case of the ICESCR, the period from post-War to Cold War and decolonisation (or as Saul characterises them, *three* critical global historical periods (p. xciv)). This is not necessarily because they offer particular reflections on these times. Indeed, as Saul notes, the ICESCR's *travaux* – like those of any other instrument – are marked by ambiguity and silence, and capture nothing of the "action behind the scenes" (ibid.). Nevertheless, we might take our cue from what Ann Stoler suggests in *Along the Archival Grain* (2010), and think about what is left unsaid in them and why – "what was 'unwritten' because it could go without saying and 'everyone knew it', what was unwritten because it could not yet be articulated, and what was unwritten because it could not be said" (p. 3). The silences in the *travaux* may be as meaningful as the expressed dissonances in offering insight into the projects of law-, state- and world-making that drove the negotiations over economic, social and cultural rights.

We are living in times which we might well come to see as another period of global historical significance. Our current moment is characterised by the questioning (from both ends of the political spectrum, although this review engages only with

one) of the twentieth century enterprise of translation of the yearnings for social justice and economic redistribution into the language of individual human rights. As some scholars – for example, Samuel Moyn in *The Law Utopia* (2010) – have noted, human rights must be recognised for the minimalist and apolitical alternative they offered at a specific juncture of history to those reeling from the failure of more maximalist utopian projects, such as communism. In such a time, it was their very pallidity that permitted human rights to emerge as the new focus for activism. In Moyn's evaluation, human rights did more to "transform the terrain of idealism than they [did] the world itself" (p. 9). Other scholars, like Susan Marks in *Four Human Rights Myths* (LSE Law, Society and Economy Working Papers 10/2012), take the critique further, invoking Naomi Klein's work to suggest that human rights perhaps did play a role in transforming the world, although not in the way one might have hoped: the human rights movement with its "non-political creed" was "part of the context for the consolidation of neoliberalism" (p. 9). Still others, such as Philip Alston, in "Does the Past Matter? On the Origins of Human Rights" (2013) 126 Harv.L.Rev. 2014, call attention to the polycentric character of human rights, perhaps then encouraging us to consider whether the translation of justice into rights was also multi-determined. What all these works have in common is their call to move away from simple progress narratives and examine more closely the contexts of emergence and flourishing of the ideology of human rights. And here again, the *travaux* might help us make sense of some part of this story: allowing us to unpick the interventions, moves and choices through which the text of the ICESCR took the shape that it did; permitting us to evaluate it not as a document stating eternal truths about human flourishing but as an embodiment of intensely time- and place-specific politics.

It is against this backdrop that we should evaluate the significance of Saul's contribution. Before the compilation (and publication by Oxford University Press) of this two-volume set, anyone wishing to look up the ICESCR's *travaux préparatoires* needed to visit a number of libraries and archives across different countries. Saul's acknowledgments refer to the library of the University of Sydney, the State Library of New South Wales, the National Library of Australia in Canberra, the Dag Hammarskjöld Library at the United Nations headquarters in New York, and the Bodleian Law Library at Oxford. They would have also had to work through "tens of thousands of pages" (p. cxxi) of mostly un- or under-indexed material. Saul's work has been to collate, sort, select, edit and produce two handy tomes that complement the already published *travaux* of the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights and several other UN human rights treaties. The ICESCR materials were due, even overdue.

It is important – not least in order fully to appreciate the effort expended – to recognise the extent to which the compilation of *travaux* is an act of authorship. Because, for researchers, practitioners and teachers of international law, global justice and human rights across the world, Saul's selections will now become *the travaux* of this treaty. There being no specific definition of what counts, or does not, even those few who might wish to read the tens of thousands of archival pages for themselves will find in these two volumes their starting point. For most others, they will be the last word. This fact might make one wish that the materials were more comprehensively presented: without redactions, substitutions of proposal summaries, and the no doubt careful disentangling of "issues specific to economic, social, and cultural rights" from the wider themes considered within the relevant debates (p. cxxi). For comparison, Renate Platzoder's materials on the UN Convention on the Law of the Sea, spanning a similar length of time, run to 18

volumes, delivering the drafting process on a platter to the interested reader who can access them. But that is the key here: an 18-volume outcome does rather strain affordability as well as portability; and although a huge asset for research, is less likely to find use as a teaching aide or any other function entailing a brief consultation. At £325.00 and 2,580 pages the ICESCR *travaux* are also not your average commuter's read, but they can be carried about and worked through in a relatively efficient way.

Helping that possibility along is Saul's detailed list of contents, in which the title of each document is accompanied by a keyword summary of the issues covered in it. Most usefully, this list further identifies documents that have not been reproduced but might be relevant; a title and keyword summary are also provided for these documents. There is no separate index. There would have been added benefit to arranging the keywords of the list of contents into one, but the list in itself does offer valuable guidance. Of value also is Saul's succinct introduction, which explains the texts that preceded and were influential upon the drafting of the ICESCR, and contains an account of the drafting process, including of moments at which the inclusion of economic and social rights in a binding legal agreement became a matter of debate. The whole is a short yet nuanced overview of the chain of events that shaped the ICESCR. It whets the reader's appetite to know more, and also paves the ground for the more intricate record of deliberations that is provided via the materials selected as the *travaux*.

In short these volumes of the *travaux* are timely and well compiled. The editor has made thoughtful presentation decisions that will facilitate the use of the volumes at various level of engagement (here it is also worth acknowledging the design elements; especially the clean, well-spaced layout of the text). An immensely valuable resource in themselves, we should now hope that their publication will also catalyse the complete electronic transcription (and free online availability) of the full record of ICESCR's preparation.

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Gerrymandering in America: The House of Representatives, the Supreme Court, and the Future of Popular Sovereignty. By ANTHONY J. MCGANN, CHARLES ANTHONY SMITH, MICHAEL LATNER and ALEX KEENA [Cambridge University Press, 2016. vi + 261 pp. Paperback £24.00. ISBN 978-13-16507-67-4.]

Writing a book that intervenes in a topical debate while making a lasting scholarly contribution is a high-wire act. Authors must comment on a transient state of affairs while establishing a durable truth. In commenting on the manipulation of legislative districts for political gain and the appropriate standards to proscribe such practice, the authors of *Gerrymandering in America* have identified a topical debate. Partisan gerrymandering is one of the most sharply contested issues in the American federal courts and in the American legal academy. However, the book's most intriguing contributions are discrete observations, and the potential impact of these observations will be undermined by the facts that the law is complex and changing quickly and the scholarship is fast-moving.

The authors' main claim is that the US Supreme Court case of *Vieth v Jubelirer*, 541 U.S. 267 (2004) and its impact on US democratic representation have been broadly ignored. This claim might have been tenable at the time the book was