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## Book Reviews

Samuel Moyn. *Not Enough: Human Rights in an Unequal World*. Cambridge, Massachusetts: Belknap Press, 2018. Pp. 296. \$29.95, £21.95, €27.00. ISBN: 9780674737563

Samuel Moyn's writings about the history of human rights have left deep marks in the discourse of the international legal discipline. In *The Last Utopia*, Moyn famously claimed that human rights only emerged as a relevant practice in the 1970s. Furthermore, he interpreted the turn to human rights as the embracement of a kind of ersatz religion after the disenchantment of utopias like socialism and anti-colonialism.<sup>1</sup> Both claims were somewhat provocative for international (human rights) lawyers because they often regard the (non-binding) Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR), which were drafted in the late 1940s and early 1950s as the founding documents of human rights law.<sup>2</sup> Moreover, to view human rights as a mere utopia could be perceived as marginalizing their relevance in legal practice. Nonetheless, the *Last Utopia* was and is frequently cited by international lawyers. In debates among academics as well as practitioners about the direction of human rights, the *Last Utopia* seems to have become a common reference point for signalling critical self-awareness about the contingency of human rights.

Moyn's new book *Not Enough: Human Rights in an Unequal World* might have a similar, maybe an even stronger, impact on the international legal discipline because of its original and provocative character. While the *Last Utopia* focused on civil and political human rights, *Not Enough* traces the rather unexplored history of economic and social rights. Furthermore, in *Not Enough*, Moyn makes his argument about the limits of human rights much more explicit, arguing that a mere focus on human rights peripheralizes alternative conceptions of social justice. In this review, I will discuss Moyn's empirical findings, followed by a methodological remark about how these relate to his normative claim. At the end, I will ask which potential lessons international lawyers might draw from his argument that human rights are not enough.

### 1 The Evolution of Economic and Social Human Rights in Context

Moyn's eloquently written and nuanced account contains seven chapters structured in a partly chronological and partly thematic fashion. Being an expert of intellectual history and human rights, Moyn not only focuses on the evolution of human rights instruments in the narrow sense but also studies how broader political programmes and philosophical debates relate to ideas of sufficiency, equality and human rights. Starting with the French Revolution, Moyn claims that during the Jacobin period the visions of sufficient material protection for the poor, on the one hand, and equal levels of wealth through progressive taxation, on the other hand, emerged as competing projects of social justice. These visions were partly taken up not only in the Mexican

<sup>1</sup> S. Moyn, *The Last Utopia: Human Rights in History* (2010).

<sup>2</sup> Universal Declaration of Human Rights, GA Res. 217, 10 December 1948; Convention for the Protection of Human Rights and Fundamental Freedoms 1950, 213 UNTS 222.

and Weimar constitutions but also in the policies of forced collectivization in the Soviet Union and in the egalitarian (but discriminatory) *Volksgemeinschaft* policies in National Socialist Germany. Moyn stresses, however, that it was the Western national welfare states that, since the 1940s, became most strongly committed to the ideas of sufficiency and equality.

In this context, legal sociologists such as George Gurvitch subscribed to the idea of a bill of social rights, a vision that tried to contribute to social justice via the means of human rights. Moreover, the UDHR, with its broad social rights catalogue, was adopted as an uncontroversial ‘template for national welfare states’ (at 57), even though in general the concept of social rights played a rather marginal role in the discussions about national redistribution. Moyn explains that in the United States ideas of redistribution had a harder time. He interprets Franklin D. Roosevelt’s Second Bill of Rights in 1944 as the last (failed) attempt to uphold the aspirations of the New Dealers to social rights and redistribution. Moyn then underlines that, up until the era of decolonization, the idea of redistribution had only been realized within nation-states. Anti-colonial freedom fighters like Kwame Nkrumah and Julius Nyerere were the first to push for the idea of material equality between nation-states as a principle for ordering the world. Similarly, the sociologist and economist Gunnar Myrdal proposed to move towards a welfare world based on the idea of material equality. However, Moyn argues that the International Covenant on Economic, Social and Cultural Rights (ICESCR), which came into force in 1976, only focused on protecting a sufficient minimum and was not created as a tool for transferring global wealth.<sup>3</sup> Furthermore, the New International Economic Order (NIEO) emerged in Moyn’s view as a promising alternative to the human rights movement by attempting to close the economic gap between the global North and global South. But it failed due to discord between its supporters, scepticism in the North and the global debt crisis of the 1980s.

Moyn then shows how the debate about development shifted from the ideal of an egalitarian world to a vision of putting basic needs first. The World Bank official Mahbub ul Haq believed that the priority should be alleviating the suffering of the poor, an idea that informed the creation of the Human Rights Development Index. The ‘basic need’ approach at first had a strained relationship with human rights, but slowly both discourses started to overlap. Moyn then traces how global justice theories evolved in the 1970s when Peter Singer wrote about famines in East Bengal. Moyn argues that Charles Beitz’s more egalitarian vision of global justice was the ‘road not taken’, and, instead, Henry Shue’s idea of basic rights, which advocated for a minimum standard of protection for everyone, came to dominate the emerging philosophical discourse. In the last chapter, Moyn demonstrates that human rights in general became much more popular just when neo-liberalist economic policies were being implemented in Chile, the USA, Great Britain and later in Eastern Europe. Moyn claims that even though human rights did not encourage neo-liberalism, as its ‘doppelgänger’ (at xi) and ‘companion’ (at 181) they did nothing to restrict its negative consequences. With the rise of neo-liberalism the ambition of distributive justice was lost.

Moyn’s original account of the evolution of different ideas about global justice is inspiring. It is a particular strength of Moyn’s approach that he situates the history of economic and social rights in the larger political and philosophical debates about equality and sufficiency. In his doing, we receive a sense of the alternatives and potentially missed opportunities of other global justice projects that were sidelined by human rights. However, the broad context sometimes leads to a marginalization of the legal documents that entail economic and social rights and the practices of the institutions responsible for upholding them. For instance, even though Moyn describes the adoption of the ICESCR as an ‘epoch-making event’ (at 111) in the history

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3.

of economic and social rights, he discusses the document's evolution and impact in only three pages. Also, Moyn could have delved deeper into the evolution of social rights jurisprudence in some national courts since the 1990s (at 200) and could have explored the General Comments of the Committee on Economic, Social and Cultural Rights or the report of the UN human rights commissioner on austerity measures more thoroughly. Furthermore, when Moyn presents the NIEO as the superior alternative 'road not taken', he somewhat downplays that redistributive claims in the context of the NIEO were also partly framed in human rights language.<sup>4</sup> For instance, Moyn does not mention the 1973 report on *The Widening Gap* by the Iranian Manouchehr Ganji as special rapporteur of the United Nations (UN) Commission on Human Rights and does not explore how the Senegalese lawyer Kébo M'Baye linked the NIEO discussions with the right to development.<sup>5</sup> Of course, it is also true that the strength of Moyn's dense study is that it comes at readable length and is accessible to lawyers, political scientists, philosophers and historians alike. Nonetheless, future research should not shy away from digging deeper into the history of economic and social rights practices of human rights bodies and courts because Moyn's intellectual history leaves part of the institutional history unexplored.

## 2 Taking a Normative Stance in Historical Writing

Aside from the intriguing historical account, Moyn's study stands out for his strong normative claim. Moyn does not only explain the historical evolution of the relationship between the competing visions of global justice but also takes a clear position. As the title indicates, human rights are not enough for him. By understanding human rights as the sole highest goal, contemporary visions of a just world would expose a 'crisis of ambition' (at ix). Because human rights have done nothing to stop 'the crisis of national welfare, the stagnation of middle classes, and the endurance of global hierarchy' (at xii), Moyn suggests readjusting one's commitments. In order to diminish the widening gap between the rich and the poor, Moyn proposes to embrace the once flourishing ideals of material equality, egalitarianism and social redistribution that, in his view, have been lost due to the rise of neo-liberalist economics since the 1970s.

The choice to take such a strong normative position in a historical study seems to be dictated by present concerns about the political situation in the USA and the crisis of liberalism more generally. Moyn claims that 'the transition from an era of liberal ascendancy to one of liberal crisis demands an attempt to rethink where our highest ideals of human rights come from' (at x). Furthermore, for him, the turn to populism in the USA and Europe can be backtracked to the feeling of the working and middle class that they are being left behind materially (at 5). Against this background, Moyn decides to take a more straightforward position. While, in the *Last Utopia*, he rather hesitantly propagated a minimalist focus on a few core values,<sup>6</sup> he now advocates global redistribution.

For international legal historians, Moyn's embrace of a normative vision in a historical study is highly interesting, when seen against the backdrop of a general debate about the role of historical scholarship in international law. In the current controversy about presentism, anachronism and contextualism, some international lawyers have distanced themselves from works written by historians. Martti Koskeniemi pointed to the 'limits of contextualism' and suggested

<sup>4</sup> Dehm, 'Highlighting Inequalities in the Histories of Human Rights: Contestations over Justice, Needs and Rights in the 1970s', 4 *Leiden Journal of International Law* (2018) 1.

<sup>5</sup> Manouchehr Ganji, United Nations Economic and Social Council, *The Widening Gap: A Study of the Realization of Economic, Social and Cultural Rights*, Doc. E/CN.4/1108/Add. 5, 9 January 1973.

<sup>6</sup> Moyn, *supra* note 1, at 227.

a move beyond context because contextual studies would often believe in ‘a “positivist” separation between the past and the present.’ This would encourage ‘historical relativism, indeed an outright uncritical attitude that may end up suppressing efforts to find patterns in history that might account for today’s experiences of domination and injustice’.<sup>7</sup> Anne Orford even praised the ‘legitimate role of anachronism in international legal method’<sup>8</sup> and warned that a too ‘historical method’ might have a ‘constraining effect on critical approaches to the field of international law’.<sup>9</sup> Now Moyn’s study seems to demonstrate that historical studies can also be critical if they pay close attention to the language of the contemporaries, are open to multi-causal explanations and take the intellectual and political contexts of the respective times seriously. Moyn skillfully uses a broad reading of the historical context of economic and social rights to point to potential alternative projects of global justice. Also, he does not read contemporary conceptions of social rights into past documents but is aware of differences. Hence, Moyn’s *Not Enough* might be an argument against distancing international lawyers from historians and their contextual approach and, instead, a plea for bringing the groups closer together again.

Nonetheless, I have to admit that coming from a continental research tradition I am sceptical of sweeping normative claims in a historical analysis. Moyn’s approach has clear advantages. He draws a broad readership with his intellectually resonating call for global redistribution. He might even reshape the direction of some academic discussions. However, for me, the strength of the historian is showing the tensions, ambivalences and heterogeneity of historical evolutions.<sup>10</sup> Even though Moyn seems to be a master of the sources, one might wonder whether social rights are treated in a more cursory fashion than they deserve because he wants us to turn our attention to alternative normative visions. Do the institutions and courts that try to protect social rights receive little attention because their practices do not fit into Moyn’s narrative of exposing the limitations of the sufficiency approach and of calling for more egalitarian social justice projects? Of course, normatively less explicit histories might also come with a (hidden) political agenda and telling history ‘how it really was’ is not possible. However, embracing a normative leitmotif might make a fair assessment of the sources even harder because one approaches the sources with the preferred normative outcome in mind. Thus, I am intellectually more convinced by histories of human rights like Jan Eckel’s *Ambivalenz des Guten: Internationale Menschenrechtspolitik seit den 1940er Jahren*, which is grounded on a broad empirical basis, highlights the polycentric origins of human rights and stresses the discontinuities but takes no strong normative stance in order to influence contemporary political outcomes.<sup>11</sup>

### 3 Should We All Become Tax Lawyers Now?

Be that as it may, it is Moyn’s normative claim, in particular, that invites the reader to think about the future development of international law. Even though Moyn does not present a master plan on how material equality can be achieved, he gives some hints. He argues that ‘not merely a floor of protection against insufficiency is required, but also a ceiling on inequality’ (at 4). For Moyn, embracing governance is key for institutionalizing a ‘global welfare structure’

<sup>7</sup> Koskeniemi, ‘Histories of International Law: Significance and Problems for a Critical View’, 27 *Temple International and Comparative Law Journal* (2013) 215, at 229.

<sup>8</sup> Orford, ‘On International Legal Method’, 1 *London Review of International Law* (2013) 166, at 175.

<sup>9</sup> Orford, ‘International Law and the Limits of History’, in W. Werner, M. de Hoon and A. Galán (eds), *The Law of International Lawyers: Reading Martti Koskeniemi* (2017) 297, at 304.

<sup>10</sup> Graf and Priemel, ‘Zeitgeschichte in der Welt der Sozialwissenschaften: Legitimität und Originalität einer Disziplin’, 59 *Vierteljahrshefte für Zeitgeschichte* (2011) 479, at 507–508.

<sup>11</sup> J. Eckel, *Die Ambivalenz des Guten: Internationale Menschenrechtspolitik seit den 1940er Jahren* (2014).

(at 220). Moreover, he often refers to interventionist antitrust and tax policies as the means by which material equality has been achieved in the past. For Moyn, it is unlikely that the human rights movement will become the torchbearer of egalitarianism. The movement's anti-statist and individualistic attitude and the focus on naming and shaming would rather make it unfit for 'redesigning markets or at least redistributing from the rich to the rest' (at 218). He maintains that even when the human rights movement did not focus on stigmatizing political atrocity and repression and 'accorded more importance' to social rights, these rights 'generally concern a threshold above indigence, not how far the rich tower over the rest' (at 217).

But does human rights law have to be powerless when faced with the growing gap between the rich and the poor? Is it unfit as a political programme for enhancing redistribution? I am not as sure as Moyn. He convincingly demonstrates that human rights in the past have not been used successfully for achieving material equality. Indeed, Amnesty International and Human Rights Watch have tended to focus on issues such as torture and political prisoners. However, embedding economic and social rights in the policies of international institutions could have some repercussions on wealth distribution. Also, the business and human rights treaty currently under negotiation – if realized – might be an avenue to compensate individuals for excesses of transnational businesses. Furthermore, Moyn's historical survey itself mentions examples of how human rights could be redesigned for distributive purposes. In 1944, George Gurvitch proposed the (vague) 'right to share in the distribution of the fruits and benefits of the national economy', which is informed by the idea of egalitarianism (at 56). Maybe, thinking along these lines could be a step into the direction of distributive justice. In any case, one lasting value of Moyn's study is that it invites us to ponder about how international lawyers can contribute to creating a just global order.

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Oisín Suttle. ***Distributive Justice and World Trade Law: A Political Theory of International Trade Regulation***. Cambridge: Cambridge University Press, 2018. Pp. 420. £95. ISBN: 9781108415811

There is an inevitable myriad of theoretical preconceptions and disciplinary proclivities among academics and policy professionals currently deliberating reforms to the present institutional structures and legal content of the international economic system. Oisín Suttle's *Distributive Justice and World Trade Law* falls well within this universe. Suttle's analysis is a timely reminder for the interdisciplinary reformers of world trade law to pause with precision, reflection and caution. As aptly titled, his opus is not about distributive justice in the world trade law system but, rather, offers a conjunctive exploration of both topics. The result is a provocative and pragmatic defence of the current world trade system seen from Suttle's proposed explanatory theory of an 'equality in global commerce' (EGC) Principle, while narrowly criticizing some tribunals' substantive interpretations in different World Trade Organization (WTO) disputes. The book's core strength – and, at the same time, its potential weakness – is how it aspires to 'a rational moral critique of the trade regime' (at 7). To do so, Suttle takes up two fundamentally challenging questions: 'what does justice demand in the regulation of international trade ... [and] to what