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## Book Reviews

Benjamin Mason Meier and Lawrence O. Gostin (eds). **Human Rights in Global Health: Rights-Based Governance for a Globalizing World**. Oxford: Oxford University Press, 2018. Pp. 585. £43.00. ISBN 9780190672676.

The book under review is part of a growing body of international law literature exploring the role of international human rights law in global health governance. Growing interest in such perspectives is not surprising considering that it was largely the HIV-AIDS pandemic, with its dramatic context of stigmatization, suppression and inequity, that transformed public health in the 1990s from a social and technical issue into one of politically and morally charged contestation of existing international policy and legal regimes in the name of human rights and dignity.<sup>1</sup> Whether it is fighting against stigmatization, criminalization and discrimination of vulnerable groups or for equitable access to health care, medicines and the 'underlying determinants of health' (to use the influential concept coined by the United Nations Committee on Economic, Social and Cultural Rights, comprising food, water and sanitation, education and safe working conditions),<sup>2</sup> human rights law has played an influential role in advocacy and political mobilization and in improving the legal protection of important human health-related values against the challenges brought about by globalization and economic liberalization. This is very much a work in progress, however, not only due to the persistent challenges in implementing and enforcing economic and social rights as 'real' human rights, but also because of the 'imbalance' between the individual nature of human rights and the inherently collective dimension of public health. From an academic perspective, scholars have focused on developing the normative content of the 'right to health' as a social right in international law<sup>3</sup> as well as on exploring the role of other human rights (for example, the rights to life, privacy and personal freedom as well as the prohibition against inhuman treatment) in upholding important aspects of public health and enforcing the protection of individuals in health-care settings.<sup>4</sup>

Scholarly analysis, policy statements and judicial pronouncements have mostly focused on the position of states as duty bearers under international human rights law and the agency of individuals in claiming entitlements and freedoms, often as proxy for the protection of vulnerable groups. *Human Rights in Global Health* takes a different approach and focuses on the 'influence of human rights in global health' and the 'relationship between human rights, global governance and public health' (at 1–2) from the perspective of the responsibilities of international organizations to mainstream human rights for public health advancement. The main starting point for this approach is that globalization not only has created unprecedented challenges for public health that require a human rights approach but, at the same time, has also

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<sup>1</sup> This rapid development is also the result of pioneering work carried out by a group of largely North American law and public health scholars. Seminal is J.M. Mann *et al.* (eds), *Health and Human Rights* (1999).

<sup>2</sup> Committee on Economic, Social and Cultural Rights, General Comment no. 14 on the Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2000/4, 11 August 2000.

<sup>3</sup> J. Tobin, *The Right to Health in International Law* (2012).

<sup>4</sup> B. Toebes, *The Right to Health as a Human Right in International Law* (1999).

eroded the capacity of states to address them effectively. A comprehensive analysis of the role of human rights in global health governance, therefore, has to include the role played by other actors, such as international organizations or, in the peculiar terminology used by Benjamin Mason Meier, ‘institutions of global health governance’ (see, for example, at 13, where United Nations [UN] human rights monitoring bodies are similarly referred to as ‘institutions of human rights governance’).

The stated purpose of the book is to offer a comparative analysis of the diverse approaches used by those institutions, from mostly rhetorical uses of human rights language to effective and sustained engagement and translation of human rights standards into policy and programmatic tools. The book is very much a normative project rather than a critical analysis of the state of the law and policy as expressed through the work of the international organizations concerned. Both editors and authors share the goal of contributing to the advancement of global health with justice by positing the necessary role of international institutions in ‘implementing human rights through global governance for health’ (at 6) as well as offering a wealth of research material about their human rights responsibilities for health. Consequently, the co-editors adopt a broad and all-encompassing notion of health, going beyond health care or public health *stricto sensu* and focusing also on the ‘underlying determinants of health.’<sup>5</sup> This expands the scope of the comparative analysis beyond ‘core actors’ such as the World Health Organization (WHO) to include international organizations dealing with topics as diverse as food and agriculture (the Food and Agriculture Organization [FAO]), education and science (the United Nations Educational, Scientific and Cultural Organization [UNESCO]), labour (the International Labour Organization [ILO]) and development financing (the World Bank). Reflecting the ‘health-centric’ nature of the project, these institutions are seen as part of global health governance, and the book’s chapters devoted to them investigate whether their mandates and/or institutional practices incorporate a human rights approach that may contribute to the advancement of public health.

It is clear that this is a book populated by believers in the paramount importance of the synergy between human rights as a tool for justice and equity in global health and public health as a driver for fighting poverty and discrimination and upholding human rights. This vision explains both the strengths and weaknesses of the book. One of its undeniable strengths is the impressive interdisciplinary group of contributors gathered by the co-editors; they include renowned scholars on health and human rights as well as global health governance, public-private partnerships and a range of other related disciplines. Most importantly, several authors are current or former officials of the international organizations analysed in the volume or have held other international offices and are thus able to provide first-hand information, insights and perspectives that could not be credibly contributed ‘from the outside’. The co-editors themselves are renowned scholars on global health law, with Lawrence Gostin having authored the flagship publication on this topic.<sup>6</sup>

Conversely, one weakness in my view is the absence of critical voices who could question, for example, the expansive notion of the right to health implicitly espoused by the contributors, which seems to ‘swallow’ other legal and policy dimensions and to blur legal with moral or equitable considerations.<sup>7</sup> By the same token, the book does not question whether a human-rights based approach to health is an absolute value in itself (as advocated by the co-editors)

<sup>5</sup> See *supra* note 2.

<sup>6</sup> L.O. Gostin, *Global Health Law* (2014).

<sup>7</sup> Seminal is Tasioulas and Vayena, ‘Just Global Health: Integrating Human Rights and Common Goods’, in T. Brooks (ed.), *The Oxford Handbook of Global Justice* (forthcoming), which I see only mentioned in the chapter by Therese Murphy and Amrei Müller on the United Nations special procedures (at 493).

or whether it should be subject to an empirical assessment of its effectiveness for delivering the mandate of the international organizations under review. As a result, and even considering the honest and at times sober assessments emerging from some of the organization-specific chapters, *Human Rights in Global Health* sometimes veers into advocacy and ideological positions. As such, it is partly a reference book offering a broad overview of human rights and health in global governance, partly an attempt at theorizing a novel field of research and partly a statement of normative and policy positions. This is not a shortcoming as such, but the non-initiated reader may wonder where critical analysis ends and advocacy begins.

The book comprises 26 chapters, including an introduction and conclusions by the co-editors. Mason Meier is a co-author of seven of the chapters, which is unusual for an editor and is an indication of his personal and professional commitment to the spirit of this project. The structure of the book reflects the rationale of the research project. Section 1 (containing four chapters) provides a historical and conceptual framing of human rights in global health. Section 2 (containing three chapters) focuses on the WHO as the prominent global health agency and assesses its uneven historical engagement with human rights and the current efforts by its Secretariat to mainstream human rights across its technical programmes. The chapters, largely authored by current or former WHO officials, focus on the Secretariat as the main actor in human rights engagement and mainstreaming but strangely neglect the political debates occurring in the WHO's governing bodies and the long-standing divisions within its membership that partly explain the WHO's hesitation to overtly use human rights language and tools. This part provides a wealth of information and detail that offer a welcome 'reality check' on the WHO and human rights; while valuable, this information and detail will probably be overtaken by events given the frequent changes in the structure and organization of the WHO's Secretariat.

Section 3 (containing seven chapters) uses a vertical, organization-by-organization, approach in exploring the human rights engagement of a number of specialized agencies as well as UN programmes such as United Nations Children's Fund and the United Nations Population Fund (UNPF); in other words, each chapter is dedicated to a single organization or programme. This approach is replicated by some of the chapters in section 4 (containing six chapters and dealing with health-related human rights in economic governance and health financing) on the World Trade Organization (WTO), the World Bank and the Global Fund to Fight AIDS, Tuberculosis and Malaria, the only public-private partnership to be reviewed in the volume. All of these chapters also can be read as a 'reality check' on the general claim set out in section 1, which suggests that engagement with health-related human rights is an almost ineluctable development; as the sobering, but revealing, analysis in parts 3 and 4 illustrates, the adoption of human rights policies and practices by 'technical' agencies, as well as their translation into programme design and implementation as well as monitoring and accountability tools, faces significant endogenous and exogenous challenges. This looks very much like a challenging work in progress, where even agencies long engaged in social justice (such as the ILO) have only begun since the 1990s to progressively shift their focus to a human rights-based approach (at 204).

The general feeling emerging from some of the chapters in sections 3 and 4 is actually one of stasis, if not regression, in human rights engagement at the present time of increasing populism and disenchantment with multilateral governance. Interestingly, the political impact of human rights on governance and policies is visible in the case of the WTO, a normatively self-contained organization dominated by economic interests where the discourse surrounding access to medicine (an essential aspect of the right to health) has led to successful challenges against the strict enforcement of pharmaceutical patents under the terms of the Agreement on Trade-Related Aspects of Intellectual Property Rights (at 375–396).<sup>8</sup> Specific health-related arguments are

<sup>8</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, 1869 UNTS 299.

virtually absent from some of the other chapters – for example, from the chapter on the FAO (at 261–80), which understandably focuses on the right to food; the discussion in those cases is more about engagement with human rights in general, with health mentioned only occasionally. The editors' decision nevertheless to cover organizations such as the FAO could be justified because access to food is surely one of the 'underlying determinants of health'.<sup>9</sup> Yet one wonders whether these organizations, despite their very indirect contributions to health-related human rights, are included more for the purpose of supporting the general argument underpinning the whole book than to single out their importance.

Even though the purpose of the book is to offer a comparative analysis of approaches adopted by diverse international organizations/actors, the comparative part is limited to a relatively short concluding chapter by the co-editors that focuses on governance, bureaucracy, collaboration, partnerships and accountability as the main structural factors explaining the level of human rights engagement (at 557–572). The emphasis in this chapter is again largely on the secretariats with valuable considerations, including, for example, the importance of leadership in shaping the Secretariat's agency for overt engagement with human rights. The main champions here are former executive heads such as Gro Harlem Brundtland (WHO), Jacques Diouf (FAO), Nafis Sadik (UNPF) and former High Commissioner for Human Rights Mary Robinson who are credited with having promoted a human rights approach addressing public health and its determinants (at 558–559). It would have been helpful, however, to elaborate and analyse in more detail the main comparative lessons arising, for example, from the role of member states, their political positions and divisions in the different organizations and, more generally, the agency relationship between political governance and secretariats; this would likely have enabled readers to better understand why the organizations covered in the book continue to have different attitudes towards human rights.

Also missing from the comparative chapter is an analysis of the consequences of the mode of financing of international organizations – in particular, the increasing reliance on short-term and project-based voluntary contributions, which affects the possibility for secretariats to engage sustainably in longer-term programs focusing on structural questions of health and human rights. This is presented as a hurdle in the chapter on the FAO but, interestingly, is not mentioned as a constraint in the chapters discussing other actors, such as UNAIDS (at 266). In conclusion on this point, the balance between the vertical and cross-cutting dimensions of the book would have benefited from a more systematic and critical comparative section.

Section 5 (containing four chapters) reverses the perspective of the previous two sections and looks at the role of the UN human rights machinery in the implementation of the right to health and health-related human rights. The chapters cover, respectively, the Office of the High Commissioner, special procedures of the Human Rights Council (in particular, the special rapporteurs), treaty bodies and the Universal Periodic Review (UPR). Despite some repetitions in the narrative of the historical development of the UN human rights system, this is one of the best parts of the book, thanks to the quality of the writing and the wealth of information and analysis provided. In addition, some of the chapters (I would single out those by Therese Murphy and Amrei Müller on special procedures and by Judith Bueno de Mesquita, Connor Fuchs and Dabney Evans on the UPR) frame the interaction between health and human rights in a systemic and holistic manner that moves beyond the normative confines of the right to health and reacts to some of the over-expectations and misunderstandings nurtured by global health advocates with regard to the power of human rights law.

As Murphy and Müller cogently state with regard to special procedures, for example, there is a need 'to resist the lure of legal enforceability and precisely-worded standards, engaging instead

<sup>9</sup> See *Supra* note 2.

with what can be achieved by means of deliberation, iteration and inclusivity in a radically pluralist field of law' (at 500). Given the diffuse nature of health with regard to its determinants, in particular, and the human rights addressing them, Murphy and Müller argue convincingly that the special procedures (and also, by extrapolation, the broader UN mechanisms for human rights protection and promotion) should be seen as a 'system' whose strengths and weaknesses can be assessed as a whole and that extends beyond treaty-based obligations. As stated in the chapter on the UPR, this more flexible and systemic approach strengthens accountability by exploiting the convergence between, on the one hand, global health commitments generated, for example, by 'soft' normative instruments such as the 2030 Sustainable Development Goals and, on the other hand, human rights standards (at 550–551).

The latter considerations concerning the legal basis for commitments and accountability of both states and international organizations contrast with what, in my view, are some weaknesses in providing the conceptual bases underpinning the whole book. For example, the co-editors and several authors seem to take for granted that international organizations have direct international legal obligations – separate from those of their member states – under human rights law (for example, chapter 6, at 76). However, this is a notoriously controversial view that cannot be taken for granted, and some discussion on such a seminal point would have been warranted.<sup>10</sup> In fact, the book recalls in critical terms the long-standing resistance of the World Bank to the recognition of direct human rights obligations (at 355). While the bank's attitude is politically controversial and has generated criticism from scholars and social activists, the general international law question still deserves separate consideration since it not only underpins the whole conceptual framework of the book but also depends on the position of international organizations as subjects of international law.

In addition, it is not clear what the normative basis is for the comparative analysis offered in the book. Besides the right to health as principally embodied in the International Covenant on Economic, Social and Cultural Rights, the benchmark for analysis and comparison consistently mentioned across the book is 'health-related human rights'.<sup>11</sup> However, this concept seems to be taken as generally clear and accepted and is not explained or analysed at any length in section 1. The normative basis for assessing the performance of international organizations and drawing general lessons therefrom consequently remains unclear and subject to self-interpretation by the co-authors of the various chapters, thus reducing comparability. The only place where the scope of 'health-related human rights' is indirectly spelled out is in the list of 'health-related general comments and recommendations' in the chapter on human rights treaty bodies (at 522). If we use that list as indicative of the notion implicitly adopted by the co-editors and the contributors, the range of topics is very expansive, spanning from 'migrant domestic workers' and 'right to inclusive education' (for persons with disabilities) to 'equality in marriage and family relations' and 'children's rights in juvenile justice'. Are these components of specific human rights under international law all 'health related'? If so, on what basis? Do they all have plausible causal relations with health outcomes? Such a broad scope responds again to the strong health-centric ethos and normative approach of the project, but an explicit and critical conceptualization of the universe of human rights seen as functional to the pursuit of global health with justice would make the book more accessible and relevant for the non-initiated on health and human rights.

Despite the limits summarized above, *Human Rights in Global Health* is an impressive and ambitious achievement that will define the field of institutional responsibilities for human rights in

<sup>10</sup> For a recent contribution on this issue, see Daugirdas, 'How and Why International Law Binds International Organizations', 57 *Harvard International Law Journal* (2016) 325.

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3.

global health governance for the time to come. The book offers a wealth of information, analysis, insights, perspectives and bibliographical resources enriching each chapter that will be precious for scholars, practitioners and policy-makers as well as a basis for further research.

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Marcos Zunino. ***Justice Framed: A Genealogy of Transitional Justice***.  
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9781108475259.

Transitional justice initiatives, broadly speaking, respond to systematic human rights abuses. These initiatives take multiple shapes and forms. This means that the actual practice of transitional justice is diverse and organic. Transitional justice discourse, however, is aspirational, normative and selective. It is less heterogeneous and far more directive. Marcos Zunino's eye-opening book, *Justice Framed*, is about gaps between narrative discourse and tangible practice. It is about the effects of discourse on practice. More pointedly, *Justice Framed* is about how discourse 'surfaces' certain kinds of practices of the past while sidelining and ignoring others. Hence, to come full circle, this book is about how discourse affects the recorded history, official content, epistemology and genealogy of transitional justice. Only some initiatives of the past are retroactively bestowed with the edifying crown of 'transitional justice'. The effects of discourse are therefore constrictive, judgmental and ideological.

Zunino's core argument, brilliantly delivered, is that those transitional justice initiatives that are 'remembered' are ones that share several key characteristics: technical legalism, teleology, neo-liberalism, state-centrism and comparability within a universalist logic (at 38ff). Among these characteristics, Zunino's treatment of apolitical legalism and capitalist liberalism are wildly insightful. Regarding apoliticism, he notes how the term 'victim' has become a monochromatic straitjacket, leading to a sense of befuddlement:

Peruvian peasants who fought against the guerrilla forces resented that the truth commission labelled them with the legal figure of 'victim of violation' because it denuded them of their political activity. Likewise, members of liberation movements during apartheid South Africa felt aggrieved when the SATRC's [South Africa Truth and Reconciliation Commission] amnesty process classified them as perpetrators on an equal footing with the regime's henchmen. (at 45)

Although not taken up by Zunino as an example, perceptions among Sierra Leoneans that the Civil Defense Forces, which rallied to protect the besieged state, were prosecuted on an equal footing with the rebel Revolutionary United Front reveal a similar disconnect even if, indeed, each side contributed abuses to varying degrees. To be sure, differences in gravity can be mediated through sentencing, but, to be blunt, this would not dull the stigma of conviction as a war criminal or as a perpetrator of crimes against humanity.

As to liberalism, Zunino is absolutely right when he points out how 'official' transitional justice tends to neglect and leave unexamined the economic sphere. This sphere is ceded to the market, without deracinating how markets may conduce the very conduct that leads to the massive human rights violations that transitional justice is intended to repair and redress. Transitional justice, officially, has focused on civil rights violations and has lagged when it