

Perhaps, as he argued, political philosophy is suitable only for a few skeptical intellectuals. In that case we can say that it isn't dying out; it's just settling down to its natural, restricted constituency.

TAKING RIGHTS SERIOUSLY

Mark Shiffman

The Last Utopia: Human Rights in History
by Samuel Moyn (Cambridge, MA:
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Columbia University jurist Louis Henkin has been called “the father of human rights law.” Samuel Moyn points out the revealing fact that, whereas in 1974 Henkin was arguing, as he had been for at least a decade, that human rights had become an incoherent concept in which proponents of international law should place no hope, by 1978 he had founded Columbia’s Center for the Study of Human Rights and penned *The Rights of Man Today*, propounding a convenient myth of the steady rise of human rights from American principles to international norms.

The observation strikingly illustrates Moyn’s central thesis: human rights conceived as a viable international standard is a recent and nearly unprecedented historical

novelty. The era of human rights dates almost precisely from 1977, a year that began with President Carter’s invocation of human rights as a foreign policy principle and ended with a Nobel Peace Prize awarded to Amnesty International, and in which the *New York Times* used the phrase “human rights” five times as often as in any previous year.

Moyn’s history pursues three aims: to debunk the myths of inevitability surrounding human rights, to reconstruct an accurate tale of the developments and events that brought them to worldwide prominence, and thus to provide grounds for a sober assessment of the promise and pitfalls of the international human rights movement. In order to clarify the phenomenon, Moyn draws upon Hannah Arendt’s sharp distinction between “contemporary human rights as a set of global political norms providing the creed of a transnational social movement” and the older nation-based natural rights “to be achieved through the construction of spaces of citizenship in which rights were accorded and protected.” Hence Moyn contends that the “true key to the broken history of rights . . . is the move from the politics of the state to the morality of the globe, which now defines contemporary aspirations.”

While Moyn thus sounds a theme familiar to readers of Pierre Manent (whom he never cites), his treatment of the theme differs from Manent’s in two crucial respects. First, Moyn sees no continuity between modern natural rights and contemporary human rights: the latter emerges as an accidental and opportunistic linguistic appropriation responding to a distinct set of historical and political circumstances. Second, while Manent worries about the weakening of the political framework in which rights can be effectively embodied and adjudicated, Moyn’s concern is rather for the fate of the human rights movement.

Mark Shiffman is associate professor in the Department of Humanities at Villanova University, where he also teaches classical studies and political theory. He is the translator of Aristotle’s *De Anima* (Focus) and a scholar of the writings of Plutarch.

Moyn's narrow definition of human rights in terms of linguistic practices does most of the work in his first three myth-busting chapters. The first chapter argues against retrospectively interpreting anything that came before as a root or precedent. Prior universalisms all had implications too various and underdetermined to demand that they issue in human rights universalism. Modern rights, whether circumscribing or grounding state authority, always assumed the national framework. They also lacked the theological grounding of natural law and the preestablished harmony this entailed: "Rather than originating all at once as a set and then merely awaiting later internationalization, the history of the core values subject to protection by rights is one of construction rather than discovery and contingency rather than necessity."

Chapter 2 argues for the general irrelevance of the 1948 Universal Declaration of Human Rights. It quickly became evident that "the true goal of the prospective United Nations was to balance great powers, not to moralize (let alone legalize) the world." The UN left the Declaration a dead letter by putting no effective mechanisms in place for addressing human rights appeals. A tendency already evident in the drafting discussions became clear in the 1950 European Convention on Human Rights: Cold War conflicts prevented any consensus among great powers. As they were defined by European conservatives (i.e., anticommunists), most of them Christian personalists, "human rights" were destined to be understood as expressions of Western identity in opposition to Soviet totalitarianism. The main source of their general irrelevance in this period was that human rights had nothing to offer for resolving the paramount social question within the West between capitalism and socialism.

In the third chapter, Moyn dispels the notion that the anticolonial movement of

the 1950s and 1960s was a human rights movement. French colonials appealed to the 1789 Declaration, just as Martin Luther King appealed to the 1776 Declaration. So far were colonials from drawing inspiration from the 1948 UN Declaration that their ultimate effect was to seal its uselessness as an internationalist instrument: the enshrinement of "self-determination" as the fundamental right underlying the possibility of all others took hold at the UN, rendering human rights decisively state-encompassed (and incoherent, since self-determination is not a right of individuals). "The dominant thrust internationally emphasized collective sovereignty, not individual prerogative, and the supremacy of the nation-state, rather than its subordination to global law."

One of the conditions for the emergence of the new human rights consensus was the revelation (stunning to French leftist intellectuals) that revolutionary violence would not purify the violent revolutionary leaders into rights-respecting rulers. Repressive regimes were not only installed by the Soviets or propped up by the Americans, but were newly founded by nearly everyone else. Political disillusionment set in.

When he turns in chapter 4 to explaining the conditions of possibility for the new consensus, Moyn borrows an explanatory framework from Judith Shklar's *After Utopia* (1957): moralistic universalism emerges in the vacuum left by discredited political utopias. At a September 1968 conference in Paris, NGOs concluded from the spring repressions in Prague and the farce of the summer UN Human Rights Conference in Tehran that they would be better served by acting directly rather than through governments or the UN.

Amnesty International was the first to pursue this strategy thoroughly, especially in Latin America, where the cascading

replacement of socialist hopes by autocratic realities both quelled the energies of political utopianism and led grassroots dissidents to look for external partners to help defend their confreres. At the same time, Soviet dissidents began to appeal to the outside world, Andrei Sakharov famously having done so in terms of human rights in 1968. In supporting these causes, Amnesty made a concerted effort to eschew political alignment and to focus on particular moral acts rather than political visions, thus providing the model for international antipolitical human rights activism.

Moyn argues that in both the Soviet world and Latin America, human rights had the crucial virtue of providing a coalitional language for factions otherwise in fundamental disagreement (mainly Christians and secularists); it was their lack of precise meaning that made them useful as a rallying rhetoric. Likewise in the 1976 convention of the Democratic Party, human rights allowed anticommunists and opponents of U.S. support for dictators to find a common language for their opposed policy priorities. These obscure currents were finally given *éclat* by, respectively, the 1975 Helsinki Accords and President Carter's decision to adopt the language prominently in his administration.

Helsinki provides Moyn's most convincing case study. Looked at retrospectively, the Soviets seem terribly shortsighted in signing agreements that would contribute to the downfall of their authority. Moyn shows, however, that the decades-old habitual association of human rights with sovereignty and self-determination prevented the Soviets (and even most human rights activists) from realizing beforehand that the new process "provided an exciting new forum for activism, compared to the creaky UN mechanisms, and institutionalized state-to-state human rights claims for the first time."

The post-utopian origin of human rights, however, ultimately gives rise to the danger Moyn sees for their partisans. "Because they were born at a moment when they survived as a moral utopia when political utopias died, human rights were compelled to define the good life and offer a plan for bringing it about precisely when they were ill-equipped by the fact of their suprapolitical birth to do so." While he leaves open the question whether human rights can move "from anti-politics to program," Moyn clearly inclines to the view that "the concept of human rights, and the movement around it, should restrict themselves to offering minimal constraints on responsible politics, not a new form of maximal politics of their own." Only this merely moral utopianism "can honestly confront its lack of answers and acknowledge that it must make room for the contest of genuinely political visions for the future."

Perhaps the least compelling aspect of Moyn's account is its principle of radical discontinuity. A more adequate framework would reflect upon a three-way tension among natural law, natural rights, and human rights. Modern natural rights, intended as they are to delimit the parameters of state power, nonetheless inhere in the individual, are associated with a state of nature, and (after Hobbes) serve to justify revolutions and to legitimate laws, all of which implies a status prior to the state. Natural law implies a moral obligation, grounded in an order transcending individuals, to respect the good of others. Human rights attempts to combine the individualism of the one with the obligatory character of the other. But individualism sacrifices the universality of the good, and obligation cannot be built on the universality of interest (or compassion). Thus human rights are always involved in the quest (initiated *avant la lettre* by Kant) to find their proper ground of universality.

In an earlier book (*Origins of the Other: Emmanuel Levinas between Revelation and Ethics*, 2005), Moyn tried to come to terms with one of the dominant contemporary philosophical attempts to provide this universalism. Convinced that we need a “restatement of values originally rooted in theological premises in persuasive secular terms,” Moyn found that Levinas offers a “crypto-theological” ethics, insufficiently purged of transcendent demands. To validate the suspicion that Moyn dogmatically embraces the affirmation of “autonomous secular individualism” because it is the credo imposed upon its members by the New York intelligentsia as the condition of respectability, one would have to subject him to as careful a biographical study as the one he pens on Levinas. It seems nevertheless likely that this dogmatism prevents him from reflecting on a suggestive Christian counternarrative that emerges from the record he presents in *The Last Utopia*.

The persistence with which Christian (and primarily Catholic) figures pervade Moyn’s narrative is hard to ignore. Pope Pius XI proclaimed in 1938: “Christian teaching alone gives full meaning to the demands of human rights and liberty because it alone gives worth and dignity to human personality.” Bishop Lucey in 1940 argued, “The natural law demands that all human rights be afforded to all human beings.” Yet we are told that when Jacques Maritain “began claiming Catholic natural law as the proper framework for human rights” in 1948, he was “breaking with Catholic political thought,” and that he “could only have imagined” John XXIII’s explicit linkage of Catholicism and human rights in 1963 (though the important thing seems precisely that he could imagine it).

The fascinating Lebanese philosopher Charles Malik (Greek Orthodox) convinced fellow Christians John Peters Humphrey

and Eleanor Roosevelt to focus the Universal Declaration’s vision on the personalism articulated by Maritain. Throughout the history of human rights, Latin American Catholics played crucial roles in elevating its profile. Amnesty International founder Peter Benenson was a convert to Catholicism. Pope John Paul II provided powerful arguments for the necessity of a transcendent foundation for human dignity. And so on.

If, in fact, the “true significance of the creation of Catholic human rights . . . was for the coalitions it was to allow around the concept when the time was right,” might this not support the claim that human rights are a contemporary idiom for communicating certain truths grounded in natural law, and thus apprehensible to all men of good will? The novelty of human rights implies that they are either a new discovery, or grounded in older truths, or ungrounded rhetorical constructions. Moyn dogmatically opts for the last alternative and leaves us wondering why he nonetheless takes them so seriously.