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Review Essay on:

Samuel Moyn. *The Last Utopia: Human Rights in History*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 2010. ISBN: 9780674048720 (hardcover, \$27.95)

Michael Barnett. *Empire of Humanity: A History of Humanitarianism*. Ithaca, N.Y.: Cornell University Press, 2011. ISBN: 978-0801447136 (hardcover, \$29.95).

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Reviewed by **Jay Winter**, Yale University

Samuel Moyn's study of human rights movements is a path-breaking book. It moves the study of human rights out of the realm of virtue and into the realm of politics. By desacralizing the subject, he has historicized it, and thereby has enabled us to measure the claims of human rights against other political claims and projects. Trained both as a lawyer and as an intellectual historian, Moyn tilts the chronology of human rights history towards a bifurcation, between a period of failed activism prior to 1970 and of successful mobilization in the form of a set of popular trans-national movements after that date. Why the divide? Because prior to 1970, other utopias, especially the Marxist one in Europe and elsewhere, as well as its anti-colonial variants in Asia, Africa, and Latin America, still commanded the loyalty and commitment of millions. After that date anti-colonialism had more or less completed its historical mission, and Marxism, as a theory of action and as a political movement, slowly and then spectacularly collapsed. Into the vacuum rushed human rights as a political weapon of choice.

I want to reiterate my view that this book is essential reading for anyone interested in this field before challenging the central premises of Moyn's argument. Books like this – inspiring and maddening in equal parts – are wonderful polemics. Here the lawyer in Moyn has taken charge and given us a lawyer's brief in an argument about what human rights were before and after D-day, that is, sometime in 1970, when (according to him) they came into their own.

In order to show the nature of the caesura, Moyn must empty the period before 1970 of any essential significance in the ordering of human rights activism after that date. And here is where we part ways. Consider the way he treats the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights in December 1948. The Universal Declaration was, Moyn claims, a failure, both in that it abjured constructing legally-enforceable rules and in attracting public support to it. In contrast, human rights came to be a mass movement in the 1970s, building on the ruins of 1948 and of the effort of decolonization, which produced abusive new states alongside the abusive old ones. Why the success in the 1970s? Because the 'new' human rights movement filled the vacuum created by the collapse of old belief systems. Thus human rights are the last utopia, that is, until a new one, as yet off the horizon, supersedes it.

What went wrong in 1948? First, the Universal Declaration did not add self-determination to its thirty articles as a human right for all. In sum, "Human rights turned out to be a substitute for what many around the world wanted, a collective entitlement to self-determination" (45). It was a document of imperial hegemony, not human liberation. "The now well-understood drafting of the Universal Declaration ... cannot be separated from far larger historical forces" (for which read the division of the world order and resistance to decolonization) "that doomed it to irrelevance at the time." Instead of celebrating 1948 as a step on the way to something else, Moyn says that the "main point" about 1948 "is the marginality and miscarriage of the concept in an era in the ferment of debate about prospective global orders" (46).

Was the Universal Declaration a statement of revulsion over Nazi crimes? Nonsense, says Moyn. "It matters what human rights, at the time, were not. They were not a response to the Holocaust, and not indeed focused on the prevention of catastrophic slaughter" (47); that was the intent of the Convention on Genocide, passed the day before the Universal Declaration by the General Assembly of the UN.

Did anyone take notice of the Universal Declaration? Not many, says Moyn, because its language was "bound up with international organization rather than a larger popular language." That popular language was not to emerge until the mid-1970s. "Human rights," he writes, "entered history as a throwaway line, not a well-considered idea." (51) And again, "As a plot point in the history of human rights, the mystery of the 1940s is not why human rights emerged, but – given future developments – why they *failed* to do so" (68).

There is some force in this argument, considering the deep freeze into which the Declaration, the Commission on Human Rights and other Allied causes were consigned in the early days of the Cold War. But both in general and in detail, Moyn's polemic cannot be sustained.

Here is Moyn on Second World War debates on human rights: "Outside intra-American discussion, there was no comparable activity. Tireless, *but alone*, British international lawyer Hersch Lauterpacht also hit upon the idea of developing an international charter of rights in 1942..." (52). The inter-Allied committees in London and the tireless work of *la France Libre* to create a new charter of rights have apparently escaped Moyn's notice, and so has René Cassin's use of them to create a human rights bill to take to the UN.

Moyn's language is so sweeping that he inevitably misses part of the landscape he intends to survey. Here is Moyn on NGOs: "No NGO in the contemporary sense or even of a general character, save the ineffectual International League of the Rights of Man, emerged in the era" of the 1940s (60). The work of the *Alliance Israélite Universelle* is surprisingly absent in a book by a scholar deeply familiar with French Jewish history. René Cassin's work in the Alliance, extending as we have seen, into Moyn's 'true' era of human rights in the defense in the 1970s of the right of Soviet Jews to emigrate, seems to have vanished into thin air too.

Moyn is right in pointing to the failure of the *Alliance* or a host of other groups to create large grass-roots movements of the kind which exist today. But in highlighting the innovative character of the post-1970 period, he seriously misinterprets the preparation of these breakthroughs in the very period he brushes aside, that of the 1940s.

Returning to the genesis of the Universal Declaration of Human Rights enables us to assess the human rights movement in ways at variance with Moyn's revisionism. Firstly, Cassin and the other draftsmen of the document saw it as an initial step, and only a step, but one which had to be taken by the UN before political paralysis set in. Time and again, Cassin emphasized the fundamentally educational and moral mission of the Declaration. He believed in work for *la longue durée*. The point of the Declaration was to help prepare the ground for others to work, to think, to dream, and not to abandon human rights in the face of defeat and catastrophe. And that he did.

The human rights movement of the 1940s was limited in its achievements, but historians do well to avoid surgical divisions of the kind Moyn deploys. The history of human rights, like all history, is messier than that. Moyn is right to say that in the 1940s, the human rights idea "solved no problems" (72). But having taken the first step, others could take the next. And the next, thereafter. These later solutions in the 1970s and 1980s were based on the same notions that Cassin held of defending the individual and social groups against the all-powerful state. The 'problem' that could not be solved, was that the state, robust and supple, refused to go away. It is with us too, and – as the sorry story of Guantanamo Bay shows – human rights have withered in the age of 'the war on terror'. Withered, but not disappeared.

In this respect, Moyn's critique is salutary. The history of human rights is not the history of good versus evil. Sacralizing the story is to take it out of history. René Cassin was no saint, and the Universal Declaration of Human Rights was no new gospel. Cassin was a lawyer, like Moyn, someone who believed, like Moyn, that the law was a powerful tool to use in the face of injustice. But his notion of international law was imbedded in his view, developed in the League of Nations and in *la France Libre* before he got to the UN, that it described a space above that of the jurisdiction of national law, and that it had to be applied to the way states exercise violence both against their own citizens and against other states. Cassin was a pacifist, and was committed to the view that recourse to war had to be made a criminal act, *hors de loi*. It is this belief which made it impossible for him to command a mass movement in the 1940s and after.

The predicament he faced was different from the one Moyn sketches. Cassin underestimated the mobilizing power and the affective force of the nation state. In a sense this is surprising, given that he almost gave his life for his country in the bloody early days of the war in 1914. But his patriotism was always tinged by a kind of internationalism, one which sought to give the benefits of his country to those living without the privileges he took as his birthright. The Second World War was fought by millions of people to defend their countries and

to retake their countries from occupiers. Territorial boundaries mattered, and so did the reconstruction of political life and culture in its aftermath.

In addition, the reconstruction of France after 1944 meant the reconstruction of its empire. Cassin was committed to decolonization, but he did not believe that having an empire was a crime. Here too, he was a man of his times. In one respect, he was different from many contemporaries. His belief in the higher authority of the law was not shared by most of those with whom he had served in *la France Libre*, including Charles de Gaulle. National reconstruction and the revival of national pride were the order of the day in 1945. It took roughly until 1970 for this effort to succeed, and to create a political order in Europe of a stable and peaceful kind.

Only after this act of resurrection could European states turn their attention to what kind of judicial order Europe needed. Only after the postwar period was well and truly over could new kinds of trans-national movements emerge which were not obsessed with rebuilding what had been compromised or destroyed during the 1939-45 war. Only after the ground rules of the European Court of Human Rights were set up in the 1960s could the Court take off as a site of complaint by individuals, whose standing was recognized in an international court of law. Cassin prepared the ground for the human rights movement of the 1970s and 1980s. It is no disrespect to those who came after to say they build on foundations laid before many were born.

The beliefs imbedded in the Universal Declaration were those of Cassin's generation. But in one respect, the debate about the differences, if any, between the 1940s and the 1970s has illuminated a critical point. The message Cassin proclaimed was pacifist. He was a soldier pacifist, a living oxymoron. He believed fundamentally in the pacifist message that the path from war to peace passed through the law. This credo is only very rarely the stuff out of which mass movements have been made. That is what makes the case of the French *anciens combattants* movement so unusual. It was as grassy as any of the grass-roots movements we see today. But that movement failed to make war anathema. It failed for many reasons, one of which is that it had a sense of party politics as so contemptible, so corrupt, so cancerous, that men of good faith had to hold their noses and step aside from it. That kind of holier-than-thou stance is a recipe for disaster, as the debacle of 1940 attests. Furthermore, pacifism did not fit in to the post-1945 political world. After three decades, it came of age during the long-term nuclear standoff, which seemed insane to those of a younger generation, who picked up the moral commitments of Cassin's generation and turned them to new uses. The anti-nuclear movement – pacifist at its core – was part of the new human rights generation Moyn so eloquently describes.

One of Moyn's complaints is that Cassin's ideas in the Universal Declaration were insufficiently trans-national. The Universal Declaration retains, rather than supersedes, he says, "the sanctity of nationhood." (81). This is both true and false. The Universal Declaration is not a document about the nation or the state, but about civil society, and it was precisely those agents of civil society which took up its claims and breathed life into them from the mid-1970s on. If Cassin can be faulted, it is for striving to use the law to advance a pacifist commitment. As recent history has shown, war is capable of mutating into new and even more dangerous forms than the ones he knew viscerally. Like the state, war is here to stay, and today's pacifists know it.

Moyn argues that there were two 'causes' which failed before the post-1970 human rights movement – the only one worthy of the name – emerged triumphant, filling the vacuum created by the collapse of ideologies

and utopias, including the 1940s human rights movement. The first is the cause Cassin championed, that of the Universal Declaration. The second is the cause of self-determination or national liberation. Both, in his view, got nowhere in the effort to change the international system or the hegemony of state power in domestic or in world affairs.

In fortifying his claim for truncated evolution in the history of human rights, Moyn cites a passage in a Philip Roth novel to the effect that “history is a very sudden thing” (4). This has some truth, but why is history only one thing, sudden, rather than many things, slow, moderate, fast, the outcome of multiple currents, accidents, coincidences and inspirations which draw their force from the distant past, the near past, and yesterday? To say that human rights emerged, like Aphrodite, full-blown out of the head of Zeus, or in this case Václav Havel, or Jimmy Carter, or a host of other people, in the 1970s, is not so much mistaken as unnecessary. The law of uneven development is worth a thought here. History moves in different rhythms and with unexpected turns, and returns.

And one of those returns was the moral commitment stated in the 1948 Universal Declaration of Human Rights. They were there when the activists of the 1970s decided to turn away from Marxism and the Cold War and flower power and to challenge the power of the sovereign state to do whatever it will with the dignity of a solitary individual like Havel or Andrei Sakharov or Nelson Mandela. In other fields of history, few credit claims that there is one and only one true church, and predecessors were dry runs for the real one. Why disconnect the work of early abolitionists from later abolitionists? And that of eighteenth-century feminists from today’s women’s movement? Ideas don’t simply vanish or turn direction, like hologrammes when we move a step or two away from them. They present possibilities, hopes, the stuff for future innovations, which may or may not add up to something totally different from the impulse or objectives which gave them birth.

It is to Moyn’s credit that he has presented an interpretation of human rights history with which scholars can engage and disagree. There is much in Michael Barnett’s history of humanitarianism with which to engage, but it is written in a style which tends to re-sacralize the subject. “I do not want to lose sight of the possibility,” he writes, “that humanitarians, at times, project their moral imagination in ways that reshape the world.”(9) Maybe and maybe not, but the very broad brush with which he paints his portrait of humanitarianism diminishes a comparison which would place his story more usefully alongside Moyn’s.

The comparison which Barnett’s book points to – but does not engage in – is between the remit of humanitarian law and human rights law. One way to put the point is to say that humanitarian law is the law of war, and human rights law is the law of peace. Of course that is much too simple a distinction, but in the trilogy of war, capitalism, and ethics which Barnett pulls together in his book, the place of war in law has had a much longer history than he registers here. Until the 1860s, he says, war operated without rules (76). That is untrue. The laws of war, pertaining to soldiers and to their targets are much older than that. What changed from the 1860s was that the rights of war’s victims became the subject of international action, leading to the Hague Conventions and much besides. War crimes, and now crimes against humanity, can be judged in courts, and lawyers train to defend clients or to convict them in that setting. The International Criminal Court deals with violations of the rules of war.

Who deals with violations of human rights laws? That is a much harder question, and it only now has three regional answers: the European Court in Strasbourg, the African Court in Arusha, Tanzania, and the American Court in San José, Costa Rica. Only the European Court makes decisions which can be read into

the body of laws of its member states, but the work of all three is a direct continuation of the principles agreed in 1948 when the Universal Declaration of Human Rights was signed.

A comparison of law – humanitarian and human rights law – would make Barnett’s case stronger, since it would move his discussion out of the rhetorical and into the courtroom. He says that “Human rights relies on a discourse of rights; humanitarianism a discourse of needs. Human rights is about law; humanitarianism about ‘moral codes and sentiments’” (16). I wonder if the distinction between them is of a different order. Humanitarians have all too frequently accepted as a given the authority and sovereignty of the nation state; human rights activists and lawyers have struggled to go beyond it, to truncate state sovereignty, if necessary, in the interests of what Cassin termed the fundamental principles of law, those commitments which make justice thinkable.

Barnett is on sure ground when he claims that humanitarians, like human rights activists, are always engaged in politics. But politics need not mean bowing down before what Cassin termed the Leviathan state; yes, it happens all too often, and many of the compelling stories Barnett tells in his book focus on the pusillanimity of UN leaders in refusing to challenge states engaged in monstrous crimes. Such respect for state sovereignty is a political position which can and must be changed. Yes, “the urgent goal of keeping people alive” (16) is what the business of humanitarian action has meant; but keeping people alive is also what human rights movements are about. They work in different places but for similar ends. Religious groups are active in both, but as Moyn has shown, it is only when we separate ourselves from hagiography, from the study of the war of the sons of light against the sons of darkness, that we can turn the story of humanitarianism and human rights into history. That task still awaits.

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