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## The Breakthrough: Human Rights in the 1970s (Book Review)

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## BOOK REVIEWS

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***The Breakthrough: Human Rights in the 1970s (Pennsylvania Studies in Human Rights Series)*, edited by Jan Eckel & Samuel Moyn (University of Pennsylvania Press 2014) 337 pages, ISBN No. 978-0-8122-4550-9.**

### I. INTRODUCTION

*The Breakthrough*,<sup>1</sup> as the title suggests, is a kind of sequel to the provocative work of human rights history's current *enfant terrible*, Samuel Moyn. He co-edits this volume of contributed works with a kindred colleague, Jan Eckel, who teaches modern and contemporary history at the University of Freiburg, Germany. In an early footnote, Moyn recognizes the similarity of the project he and Eckel share: "[Eckel and I] propose somewhat different interpretations of why the decade [of the 1970s] was so pivotal."<sup>2</sup> Moyn, until this year a professor of history at Columbia University, and who is also trained in law, will join the faculty of his *alma mater*, Harvard Law School, in the fall of 2014 as a professor of law. Provocation can, in some circumstances, lead to academic ascendancy. Moyn's earlier work, *The Last Utopia: Human Rights in History* (2010), has become something of a bellwether in the field, the volume that must be responded to, whether by friend or foe, and the yardstick by which support for a certain view of human rights history,

indeed of human rights themselves, must be engaged. *The Breakthrough*, in many ways, continues the same line of critique; in others, it challenges the revisionist project.

At face value, *The Breakthrough* is a fascinating collection of essays, all by historians rather than lawyers (other than Moyn), and all with what is said to be a shared thesis that something special happened in the field of human rights in the 1970s, something transformative and definitional for the global movement (hence the title). The contributions are framed by an opening descriptive essay by Moyn and a grand synthesis chapter at the conclusion by Eckel. The Eckel chapter, well written and clear, is a place for the casual reader to get a sense of the overall project of the book.

In his introduction in this volume, Moyn restates the thesis of *The Last Utopia* in a passage that bears extended quotation:

In particular, historians have begun to focus on the era of the 1970s, when—initial indications suggested—the idea of international human rights achieved a prominence that far outstripped even that of its founding epoch thirty years before. Amnesty International, the first human rights non-governmental organization of note, achieved striking visibility, especially through its Campaign Against Torture [and won the Nobel Peace Prize in 1977]. Soviet dissidents rallied around human rights, attracting a massive global audience for their heroism in facing down a totalitarian state. After coups in the Southern Cone of

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1. THE BREAKTHROUGH: HUMAN RIGHTS IN THE 1970S (Jan Eckel & Samuel Moyn eds., 2014) [hereinafter THE BREAKTHROUGH].
  2. Samuel Moyn, *The Return of the Prodigal: The 1970s as a Turning Point in Human Rights History*, in THE BREAKTHROUGH, *supra* note 1, at 1, 261 n.5.

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the Americas beginning in the summer of 1973, appeals to human rights became a slogan of local response and international solidarity. The Helsinki Accords were signed in 1975, incorporating what became a fateful "third basket" of human rights principles. And President Jimmy Carter, beginning in January 1977, gave the United States a "human rights policy." Contemporaries registered these separate but converging events as an explosion.<sup>3</sup>

This, then, is both the central thesis of Moyn's revisionist work itself, and is more fully explored in this collection of essays authored by a distinctly Western group of historians, an eclectic set of readings bringing in perspectives from around the globe on human rights developments during the 1970s. In fact, the makeup of the contributors to this volume is one of several issues that drew my attention for this review. In addition to a short sketch on the contributors and their contributions, this essay will also explore four central questions: first, what is the "Moynian project," the animus of this historian—cum—law professor; second, what are the 1970s, at least as they are defined here; third, what are the human rights about which this history is written, in both theory and practice; and fourth, what is the broader context of human rights histories within which this work is set?

Before setting off on those questions, let's take a look at the contributors and their contributions, save Moyn himself, whom I will discuss more below. In looking over the contents of the book, one is struck by the organization of the topics. First and last, as mentioned above,

are the framing essays by the two editors. Eckel, perhaps lesser known than Moyn to US audiences, shares Moyn's focus on the 1970s as a pivotal fulcrum in human rights history. He says, at the beginning of his summative chapter, that "[he] will argue that the 1970s did mark a new moment in human rights history. Nonetheless, this new moment should not be viewed as homogeneous and clear-cut but as an intricate and manifold shift."<sup>4</sup> Moyn himself professes here to be cautious in his assessment of the central thesis, suggesting that "[n]othing is settled in the chronological shift forward," and that the first goal of this work is "to pool the results of researchers focusing on disparate areas of the globe and to pose basic questions about advancing the clock of scholarship." He concludes that the work "illustrates the need for further research, as well as the reconceptualization that always goes along with it." He notes the "paradox" that "[t]he general history of the 1970s" is one associated with "disaster or even 'nervous breakdown,'" not with "the moral breakthrough of human rights."<sup>5</sup>

The geography of the volume is wide. It begins with the breakaway efforts of the short-lived counterinsurgency of "the Biafran War of Secession" in Nigeria during the early 1970s.<sup>6</sup> It moves through the former Soviet Union (three chapters), and on to Latin America (two chapters) and the United States (two chapters), followed by essays on Poland, Indonesia, and South Africa, although the focus of the South African chapter, rather

3. *Id.* at 2 (footnotes omitted).

4. Jan Eckel, *The Rebirth of Politics from the Spirit of Morality: Explaining the Human Rights Revolution of the 1970s*, in *THE BREAKTHROUGH*, *supra* note 1, at 226, 227.

5. All quotes Moyn, *The Return of the Prodigal*, *supra* note 2, at 2–3 (footnotes omitted).

6. Lasse Heerten, *The Dystopia of Postcolonial Catastrophe: Self-Determination, the Biafran War of Secession, and the 1970s Human Rights Moment*, in *THE BREAKTHROUGH*, *supra* note 1, at 15, 15.

disappointingly in my view, was not on that country's struggle to end apartheid but on British anti-apartheid activism, again shifting the focus west and north. Although the chapter on Poland seems to focus somewhat on the Helsinki process, it seemed out of place for me, and would have been more appropriately placed with the chapters on the former Soviet Union (Russia, East Germany, and East Berlin). In fact, I found the Polish chapter to be the weakest in the volume, misplaced both in terms of location and content, the latter of which focused on Polish politics to the virtual exclusion of human rights, despite the supposed anchor of the Helsinki accords.<sup>7</sup> By contrast, I found the chapters on Latin America (the area of focus of a good deal of my own work) and the United States to be particularly strong and informative. The chapters on Biafra and Indonesia also were excellent and informative in their content, although the former may not fit well within the 1970s time frame, as I discuss below. Earlier I have noted that chapter authors were either from the United States or Western Europe; they are also largely young and male. Seven of the thirteen authors are doctoral candidates or lecturers, and only two are women. Whether they are acolytes of the Moyn/Eckel school remains to be seen.

## II. THE MOYNIAN PROJECT

Moyn describes the thesis of his earlier and still-controversial book *The Last Uto-*

*pia* in a later work as follows: "people too often present human rights, which make up merely a recent and temporary version of idealism, as if they were the exclusive and necessary inheritance from idealism's history."<sup>8</sup> If that articulation were not controversial enough, he adds a later, perhaps subtextual thesis in the same article: "I am so underwhelmed by what human rights have done for the world so far that I ask whether it is time to consider other things (new utopias, precisely) in theory and practice."<sup>9</sup> To the idealistic historians of human rights, who can trace their etymology to biblical sources and beyond, these are fighting words. Now there is a new elephant in the room, and human rights histories must, it seems, of necessity engage the revisionist views of what might be called the Moynian project, or some other adulatory term of choice. That debate, and Moyn's influence, is exemplified in a recent exchange between Philip Alston<sup>10</sup> and Jenny Martinez, regarding her own book on what she calls "the Origins of International Human Rights Law" in the slave trade.<sup>11</sup> Their exchange, published in the *Harvard Law Review* and its *Forum*, spills a good deal of ink not so much engaging each other's views, but in the explanation, defense, or refutation of Moyn and his last utopian thesis. In a later article by Moyn, previously cited here, he takes on critiques of his work by "three preeminent scholars" as part of the program of a 2011 meeting of the American Political Science Association.<sup>12</sup> He was, at least in 2011, the figure of

7. Gunter Dehnert, *The Polish Opposition, the Crisis of the Gierek Era, and the Helsinki Process*, in *THE BREAKTHROUGH*, *supra* note 1, at 166.
8. Samuel Moyn, *The Continuing Perplexities of Human Rights*, 22 *QUI PARLE* 95, 100 (2013).
9. *Id.* at 105.
10. Philip Alston, *Does the Past Matter? On the Origins of Human Rights*, 126 *HARV. L. REV.* 2043, 2066–80 *passim* (2013) (reviewing JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* (2012)).
11. Jenny S. Martinez, *Human Rights and History*, 126 *HARV. L. REV.* F. 221, 232–40 (2013).
12. Moyn, *The Continuing Perplexities of Human Rights*, *supra* note 8, at 100.

stature to be reckoned with—at the very least for his Warholian fifteen minutes.

Some clues to the roots of the Moynian project can be found in Moyn's own opening chapter in this volume, where he cites Michel Foucault, post-modernism's rebel supreme, for the proposition that "[w]here antiquarian history accumulates facts, and monumental history deploys them for the purposes of self-aggrandizing edification, critical history uses knowledge of the past to go on the attack."<sup>13</sup> And go on the attack he does. Eckel, too, invokes an image of the 1970s for historians as a time approached "from the angle of what was lost," as the decade that "constitutes the 'post-' age—postindustrial, postmodern, poststructuralist—and human rights certainly formed [a] . . . part of it."<sup>14</sup>

One is struck by Moyn's invocation of New Testament biblical metaphors in his work. His opening chapter here is called "The Return of the Prodigal," and invokes Luke 15:11–32, for the proposition that "[i]t was as if the history of human rights were the parable of the prodigal son . . . but only narrated his birth and departure—even though it is his return that really mattered."<sup>15</sup> In another article on his writing, he is bolder, invoking the Jesus story as metaphor for his own writings:

It seems obvious—it goes without saying—that without Jesus Christ there would have been no church, and with no church there would have been no Reformation, and so on and so forth. Self-evidently, in fact, some continuity back to the beginning of time is required for any later event to occur.<sup>16</sup>

However, he continues,

Christians to this day appeal to Jesus or the "primitive Christianity" that followed his coming for guidance when they worry that history since has parted ways with the miraculous origin. . . . [I]t is not as if one needs to return to Jesus to find alternatives to the current form of the church.<sup>17</sup>

In his own historiography on human rights, a masterful work in itself, he once again invokes the Jesus metaphor:

Much as Christianity was once attributed to Jesus rather than to the long-developing stages and politics of the institutionalization of his memory and teachings, the historiography of the 1940s teaches much about the substance of the Universal Declaration but nothing about why almost no one noticed it when it appeared (or if they learned of it, rejected its good news, much like Jesus's own contemporaries).<sup>18</sup>

One reads a whiff of the messianic in the Moynian project. Without Moyn, might there be no history of human rights?

The Moynian project, carried on in his provocative and regular writing of reviews and observations for *The Nation* magazine, seems impossible to ignore, whether by historians or lawyers. His views may be misguided or mistaken, but it seems they must be engaged, and the largely doting acolytes of this volume sit at the feet of a prodigious intellect, by any measure, one who has shifted the discourse on human rights, for good or ill. To quote another of his reviewers, a historian who calls his *Last Utopia* "daring and original": "Moyn's is a brilliant analysis, full of incisive and insightful

13. Moyn, *The Return of the Prodigal*, *supra* note 2, at 14, 263 n.24.

14. Eckel, *supra* note 4, at 259.

15. Moyn, *The Return of the Prodigal*, *supra* note 2, at 1.

16. Moyn, *The Continuing Perplexities of Human Rights*, *supra* note 8, at 95–96.

17. *Id.*

18. Samuel Moyn, *Substance, Scale, and Salience: The Recent Historiography of Human Rights*, 8 ANN. REV. L. & SOC. SCI. 123, 128 (2012).

accounts of an astonishing array of thinkers and movements.”<sup>19</sup> Polymath or smarty-pants; only time will tell.

### III. WHAT ARE “THE 1970S,” AND WHAT DID AND DIDN’T HAPPEN TO HUMAN RIGHTS THEN?

This section will explore some aspects of the time frame in which Moyn’s own work, and that of *The Breakthrough*, took place: the 1970s. I am not a historian. I am a lawyer and law professor, approaching human rights as a matter of legal doctrine; I read histories of human rights for personal interest, but also for professional use. While most of my students are most interested in knowing how to effectively enforce human rights through law, they are also eager to know when, where, and how human rights come about. Like Antony Anghie, who has engaged with Moyn’s work in a thoughtful and reflective way, I write here from that lawyer’s perspective, driven, like Anghie, by “doctrinal developments, the changes in legal principles and structures that led to such a dramatic expansion in the reach of international law, and the transformation in the relationship between the state and the individual that resulted.”<sup>20</sup>

I must rely on the characterizations by historians in framing human rights in the 1970s—indeed the 1970s themselves—from a historical perspective. Carl J. Bon Tempo, a historian, notes in his chapter in *The Breakthrough* that “[h]istorians of the United States recently have turned their attention to the 1970s. In the words of one chronicler, ‘something happened’ during this decade that shaped the United States for the rest of the twentieth century.”<sup>21</sup> Other historians seem to confirm this recent fascination with that particular decade as a focal period for change.<sup>22</sup> That focus has led other historians to signal, in the same year that Moyn’s *Last Utopia* was published, that the 1970s were a signal time and fulcrum period for human rights, on much the same basis as he.<sup>23</sup> That knowledge, I believe, is helpful in situating this work on human rights during the 1970s within the broader field of historical study.

Yet another aspect of the 1970s more broadly is the tendency of historians to treat particular historical periods using “long” or “short” time framing. Moyn himself notes this phenomenon and cites to other works that suggest that the 1970s may be one of those “long” decades.<sup>24</sup> He cites to the work of Bruce Schulman, who has defined the “long 1970s” as “the period between Richard Nixon’s entrance

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19. Devin O. Pendas, *Toward a New Politics? On the Recent Historiography of Human Rights*, 21 CONTEMP. EUR. HIST. 95, 104 (2012).
  20. Antony Anghie, *Whose Utopia? Human Rights, Development, and the Third World*, 22 QUI PARLE 63, 65–66 (2013).
  21. Carl J. Bon Tempo, *Human Rights and the U.S. Republican Party in the Late 1970s*, in THE BREAKTHROUGH, *supra* note 1, at 146 (footnote omitted).
  22. See, e.g., THE SHOCK OF THE GLOBAL: THE 1970S IN PERSPECTIVE (Niall Ferguson et al. eds., 2011) [hereinafter THE SHOCK OF THE GLOBAL].
  23. Michael Cotey Morgan, *The Seventies and the Rebirth of Human Rights*, in THE SHOCK OF THE GLOBAL, *supra* note 22, at 237, 240 (during the 1970s, human rights became “a new window of opportunity,” and “human rights [became] the common international language of the good.”).
  24. Moyn, *The Return of the Prodigal*, *supra* note 2, at 3.

in the White House in 1969 and Ronald Reagan's landslide reelection in 1984."<sup>25</sup>

Thus, although "[e]ven a generous definition of the 1970s has to begin and end somewhere,"<sup>26</sup> the "1970s" may, from a historical point of view, encompass a good chunk of other decades, both before and after. This is not the kind of precision to which most legal scholars are accustomed, but it does seem that a good number of the chapters in this book seem to elide the 1970s into other decades, most often in an earlier direction, sometime around 1968, a banner year for all things revolutionary and disruptive, particularly for students and activists (of which I was both).

This ambiguity as to the 1970s time frame is best exemplified, in my view, by two of the chapters in *The Breakthrough*. The Biafra chapter notes in the opening line that the Nigerian Civil War, an effort to create the secessionist Republic of Biafra, took place between 1967 and 1970;<sup>27</sup> to be precise, the secessionists surrendered only fifteen days into the decade, on 15 January 1970.<sup>28</sup> Whatever the chapter may teach about media representations of "starving Biafran babies" and the impression of impeding genocide in some quarters, does it teach anything about the explosion of human rights in the 1970s? The Biafran revolution was over before the 1970s began. The author

tries to wring some 1970s juice from the experience by citing Walter Schwarz's observation that the "ghost" of Biafra informed later movements, particularly the founding of *Médecins sans Frontières*, or *Doctors Without Borders*, in the next decade,<sup>29</sup> but the link feels all too weak to merit treatment as consistent with the Moyn thesis.

The other troubling chapter, in both time framing and subject matter, was one that invoked the trope of the long 1970s in its title.<sup>30</sup> In that chapter, Simon Stevens cites to Schulman again, framing "the long 1970s" as "the period from 1969 to 1984."<sup>31</sup> He then purports to "bracket" the long 1970s for his chapter's purposes with the actions of two anti-apartheid groups in Britain: the Stop the Seventy Tour in 1969 to 1970 and the City of London's Anti-Apartheid Group in 1982.<sup>32</sup> Aside from the troubling fact that these two events mostly do not take place in the 1970s (the Stop the Seventy Tour was successful by May of 1970, five months into the decade),<sup>33</sup> the chapter itself does little to convince this reader that human rights—whether in discourse or action—had much to do with these largely political movements, or that the 1970s was a fulcrum period for their activities. The chapter meanders from the late 1950s well into the 1990s, including a chart showing membership in British

25. Dolph Briscoe IV, *The Seventies: The Great Shift in American Culture, Society, and Politics* by Bruce J. Schulman (2001), *Not Even Past* (Mar. 7, 2012), <https://notevenpast.org/seventies-great-shift-american-culture-society-and-politics-2001/> (reviewing BRUCE J. SCHULMAN, *THE SEVENTIES: THE GREAT SHIFT IN AMERICAN CULTURE, SOCIETY, AND POLITICS* (2001)).

26. Moyn, *The Return of the Prodigal*, *supra* note 2, at 3.

27. Heerten, *supra* note 6, at 15.

28. *Id.* at 19.

29. *Id.* at 30, 268 n.86, quoting Walter Schwarz, *Biafra's Embarrassing Ghost Lingers On*, *GUARDIAN*, 28 Jan. 1970.

30. Simon Stevens, *Why South Africa? The Politics of Anti-Apartheid Activism in Britain in the Long 1970s*, in *THE BREAKTHROUGH*, *supra* note 1, at 204.

31. *Id.* at 205, 317 n.4

32. *Id.* at 205.

33. *Id.* at 210.



anti-apartheid organizations covering the period from 1963 to 1993 and showing a significant rise in membership during the late 1980s.<sup>34</sup> Where are the 1970s here? The absence of human rights discussion in the chapter is best demonstrated in the two conclusions reached by the author about the “origins and nature” of the two anti-apartheid campaigns studied. First, they sought to “transform the political and economic order not only in South Africa but also in Britain”; and second, South African exiles were able to be effective in focusing the groups on the issue of apartheid, thus empowering themselves.<sup>35</sup> This sounds more like politics than human rights. Aside from a discussion of the implicit human rights violation represented by apartheid itself, the chapter makes only rare mention of human rights themselves. Two brief mentions include the observation that “the language of human rights appears to have played little role in how the Young Liberals framed their opposition to apartheid,”<sup>36</sup> while another, several pages on, states that “the language of human rights was sometimes used” in anti-apartheid fliers.<sup>37</sup> This is hardly an overwhelming case for a ground-shifting explosion of human rights concerns about apartheid in Britain in the 1970s.

Several chapters in this volume, however, fit snugly within the Moyn-Eckel paradigm of a new human rights

regime, distinctive to the decade of the 1970s. One of the chapters that best fit this model was that by Daniel Sargent, on what he calls the US “[r]ediscovery” of human rights in the decade of the 1970s.<sup>38</sup> Sargent, who clearly subscribes to the Moynian project,<sup>39</sup> uses the clever metaphor of the oasis. “Like oases,” he says, “human rights breakthroughs are rare.”<sup>40</sup> An oasis metaphor, he goes on to say, works well because it “acknowledges both the specificity in place and time of particular human rights eruptions and their connectedness to deeper wells of action and thought.”<sup>41</sup> For him, the “groundwater” of human rights actions is made of two elements, one that is humanitarian, and thus ethical and moral, while the other is that “the idea of natural rights, is political and philosophical.”<sup>42</sup>

For Sargent, several key activities of the 1970s within the United States had global reach: President Jimmy Carter “would proclaim human rights to be ‘the soul of our foreign policy.’”<sup>43</sup> Congress passed laws that conditioned foreign assistance on compliance with human rights. The State Department began to issue reports on human rights conditions in foreign countries. “Law schools began to teach human rights,” and “the American Bar Association . . . endorsed the Genocide Convention.”<sup>44</sup> Before Carter’s presidency, President Richard Nixon used détente as a political lever to

34. *Id.* at 206–07, 208 (Figure 12.1).

35. *Id.* at 207, 209, 223.

36. *Id.* at 213.

37. *Id.* at 220.

38. Daniel Sargent, *Oasis in the Desert? America’s Human Rights Rediscovery*, in *THE BREAKTHROUGH*, *supra* note 1, at 125.

39. *Id.* at 126 (footnote omitted) (“Nobody states this revisionist hypothesis better than Samuel Moyn, who locates the emergence of a recognizable human rights doctrine in the 1970s.”).

40. *Id.* at 125.

41. *Id.* at 126.

42. *Id.*

43. *Id.* at 129.

44. *Id.*



expose human rights shortcomings during his travels to Moscow and Beijing in the early years of the decade.<sup>45</sup> Even Henry Kissinger said in 1976 that human rights had become "one of the most compelling issues of our time."<sup>46</sup> These and other examples make a strong case for viewing the 1970s as a distinctive human rights oasis in US history. Curiously, that chapter reads well together with the one that follows it, on human rights policy within the US Republican Party in the late 1970s, by Bon Tempo.<sup>47</sup> I was not prepared to buy into the notion of Republican embrace of human rights on the eve of the Reagan era, but I could accept Bon Tempo's more limited thesis that the party "grappled with human rights" during the 1976 Republican National Convention and its aftermath, when conservative Ronald Reagan began to articulate his own views on human rights. That "grappling" may well have been the result of the ascendancy of human rights as a central tenet of Carter's foreign policy, but the chapter was persuasive.

Two other contributions to this volume, both on Latin America in the 1970s, also seemed to fit the Moynian project well. Both focus on the turbulent times of dictatorship and oppression during that decade (although not necessarily begun then) in Brazil, Chile, and Argentina.<sup>48</sup> In reading these chapters, particularly after those on the invocation of human rights as shield by Soviet dissidents and socialist women, one is struck by their use in this context as sword. The distinction is one that might be called defense

of human rights versus defense from human rights. The dissidents sought the protection of human rights, while the dictatorial regimes in the Southern Cone sought to shield themselves from human rights criticism, invoking the well-worn shibboleth of protecting the population from "terrorist" or "Communist" threats. Coups occurred in Brazil in 1964, in Chile in 1973, and in Argentina in 1976, and all were followed by periods of brutal repression of weakly organized insurgent movements, primarily through coordinated regimes of torture and the "disappearing" of political opponents by police and militaries, a phenomenon invented in that era. The left's response to these actions was not passive; their response to the violence directed against them invoked the imagery of Fidel Castro and Che Guevara, one of armed struggle. "To these activists . . . [h]uman rights were nowhere on their moral radar," notes Patrick Kelly in his chapter.<sup>49</sup> Human rights, he continues, became an instrumental tool of the revolution, with several approaches to their invocation based on practical expediency. Activists, both domestically and internationally, particularly within the large and ever-growing exiled populations, built coalitions among the church and NGO communities and drew the attention (albeit reluctant at first) of the Inter-American Commission on Human Rights, the United Nations, the US Congress, the Carter administration, and ad hoc international support coalitions such as the International Commission of Enquiry into the Crimes of the Military

45. *Id.* at 133–37.

46. *Id.* at 129.

47. Bon Tempo, *supra* note 21, at 146.

48. Patrick William Kelly, "Magic Words": *The Advent of Transnational Human Rights Activism in Latin America's Southern Cone in the Long 1970s*, in *THE BREAKTHROUGH*, *supra* note 1, at 88; Lynsay Skiba, *Shifting Sites of Argentine Advocacy and the Shape of 1970s Human Rights Debates*, in *THE BREAKTHROUGH*, *supra* note 1, at 107.

49. Kelly, *supra* note 48, at 98.

Junta in Chile. At bottom, Kelly concludes, the idea of human rights “was fundamentally a minimalist solution to political cataclysm,”<sup>50</sup> but “the lexicon of human rights gradually snowballed,” culminating in the stirring language of the report of the Chilean Commission on Truth and Reconciliation in 1994: “[Human] rights are those than (sic) no power . . . can trample.”<sup>51</sup> Lynsay Skiba focuses her chapter on two pivotal events in the decade. One was the 1976 hearings on the human rights situation in Argentina, held by the House Subcommittee on International Organizations and Movements, chaired by Minnesota Representative Donald Fraser, which held more than 150 hearings on global human rights issues between 1973 and 1978.<sup>52</sup> The second was the September 1979 visit by the Inter-American Commission on Human Rights to Argentina.<sup>53</sup> These incidents provided an opportunity for human rights to transform the debate, in her view, and her meticulous documentation supports that conclusion.

Despite this powerful array of stories, however, I was left with one central question regarding time-framing and history: what if a similar lens were focused on any decade, particularly after the watershed events of the post-war period in which the UN and Universal Declaration of Human Rights came into being in the late 1940s? What about the 1950s or 1960s? What about the 1980s (if they are not included in the long 1970s) or 1990s? If historians focused their laser analysis on those decades, could similar pivotal events be found? And does the significance of the

events in the given time frame depend on the perspective of the historian, who can give or take value from any particular historical event? At least some insight into this issue is provided by the discussion of Moyn’s work by Anghie, mentioned above. In his critique of the Moynian project, Anghie invokes concepts from law, but not mainstream international law. Instead, he invokes a vision of human rights as experienced by those from the Third World, where, in historical perspective, the most important human rights, after self-determination, were racial equality and development.<sup>54</sup> Moyn responds to Anghie at length, and his concessionary response bears extended quotation here:

Anghie is persuasive in his commentary, for example, that I slight in the main narrative of my book what are some of the crucial developments in the international lawyer’s self-understanding (the Genocide Convention [which entered into force in 1951], the post-World War II refugee regime [and its principal treaty, adopted in 1951], or the United Nations human rights covenants [of 1966, and especially the Race Convention of 1969], for example, or UN activism around South Africa [from the 1950s on], of which I nevertheless do make recurrent mention). More broadly, my insistence on the centrality of self-determination to anticolonialism risks neglecting that without the work of the new states in the early Cold War on human rights—at the very least in the formulation and passage of those covenants—nothing else would have followed.<sup>55</sup>

Although Professor Moyn, of course, then defends his views, seeking to recover

50. *Id.* at 105.

51. *Id.* at 106.

52. *Id.* at 111–17.

53. *Id.* at 119–23.

54. See generally, Anghie, *supra* note 20.

55. Moyn, *The Continuing Perplexities of Human Rights*, *supra* note 8, at 108. Bracketed material is my own, to clarify context and dates.

from the Anghie critique, his concessions here are significant and point back to his own contention that the Moynian project is only a hypothesis.

There are two more chapters that may not fit the Moynian project's 1970s time frame well, although it appears that it is the authors themselves who conclude that to be the case. In the chapter on the 1975 World Congress on Women in East Berlin, Celia Donert concludes that "the 1990s rather than the 1970s appear to be the heyday of human rights mobilizations for women's advocacy groups and NGOs."<sup>56</sup> She reaches this conclusion, however, after a moving chapter on what she calls "the neglected role of the Soviet bloc in promoting gender equality as a human right during the 1970s." This occurred, she asserts, at a "forgotten episode: the East Berlin World Conference of Women in International Women's Year," which was held in 1975, smack in the middle of the allegedly pivotal decade.<sup>57</sup> Another chapter that seems to equivocate about the 1970s as pivotal years is the chapter on Soviet dissidents, by Benjamin Nathans.<sup>58</sup> Nathans adopts his own version of the "long 1970s" historical trick, calling the period from 1968 to 1979 "the Soviet seventies."<sup>59</sup> Nathans seems to conclude that the collapse of the socialist ideal occurred not in the moment of "the crushing of the Prague Spring in 1968 (as important as that was) but Khrushchev's 'unmasking' of Stalin's charisma-based cult of personality in 1956. Well before the 1970s, then, Soviet dissidents had

begun to shed their faith in the socialist utopia."<sup>60</sup> Again, however, this conclusion on socialism as a political system follows a trenchant analysis situating the actions of a group of Soviet dissidents—Yuri Orlov, Elena Bonner, Anatoly Shcharansky, and Petro Grigorenko—within the ambit of the Helsinki Watch Groups that sprang up in Moscow and elsewhere, firmly within the 1970s framework. That the dissidents changed their name in 1969 to the Initiative Group for the Defense of Human Rights in the USSR is strong testimony to a new narrative power of human rights language.<sup>61</sup>

The chapter on the East Berlin Women's Conference follows an analytical line that flows through the preceding chapters on socialist systems, one that distinguishes between individual versus collective human rights conceptions in socialist law. The Soviet dissidents, for example, are said to invoke human rights on their behalf while never "criticizing either the theory or practice of the USSR's elaborate system of socialist rights guaranteed by the state—from free child care, medical care, and education (up through the postsecondary level) to subsidized housing and vacations."<sup>62</sup> In his chapter on human rights in East Germany in the 1970s, Ned Richardson-Little suggests that the ruling Socialist Unity Party (known by its German acronym as the SED) invoked an alternative vision of human rights:

56. Celia Donert, *Whose Utopia? Gender, Ideology, and Human Rights at the 1975 World Congress of Women in East Berlin*, in *THE BREAKTHROUGH*, *supra* note 1, at 68, 86.

57. *Id.* at 68.

58. Benjamin Nathans, *The Disenchantment of Socialism: Soviet Dissidents, Human Rights, and the New Global Morality*, in *THE BREAKTHROUGH*, *supra* note 1, at 33.

59. *Id.* at 38.

60. *Id.* at 46.

61. *Id.* at 38, 39.

62. *Id.* at 45.

Human rights in a socialist society moved beyond the destructive egotistical right to act out of pure self-interest promoted by legal rights in a liberal democracy. Socialist human rights were instead the natural outcome of the new socialist economy and social order that the SED had created in East Germany. This did not mean that East Germans had the right to vote or organize as they pleased but that their human rights would be inherently fulfilled by their full participation in the socialist economic and social system.<sup>63</sup>

This shift from an individual to a collective view of human rights in the socialist regimes was one of the signal contributions of this volume, and it provocatively challenges the reader to adopt a view of human rights consistent with his or her own experience and study. The next section of this review will examine that area more closely.

#### IV. HUMAN RIGHTS AS SUBJECT: PRACTICAL AND THEORETICAL DEFINITIONS

Early in *The Last Utopia*, Moyn defines “contemporary human rights as a set of global political norms providing the creed of a transnational social movement.”<sup>64</sup> In a recent review essay mentioned above, Alston asserts that the two essential elements of this definition—global reach and being championed by a transnational movement—are both artificial and hollow.<sup>65</sup> Without reiterating his salient

criticisms of the Moynian project, Alston asserts that any definition of the human rights enterprise must acknowledge its “[i]ntrinsic [p]olycentricity.”<sup>66</sup> In support of that thesis, he argues that human rights conceptually “might be thought of” alternatively as an idea, an elaborated discourse, a social movement, a practice, a legal regime, or a system, and that “each of these categories would constitute a plausible focus for analysis.”<sup>67</sup> I tend to agree with Alston on this count and reiterate his views here for two reasons. First, Eckel adopts exactly the Alston formulation, in seeming contradiction to the Moynian project; and second, a polycentric view reflects the myriad ways in which the human rights are defined in *The Breakthrough*.

In his masterful concluding chapter, Eckel explains the 1970s human rights revolution “not . . . as a uniform shift. Rather, it evolved in a polycentric and fitful process, or perhaps . . . in a set of processes mutually reinforcing each other but nevertheless distinct in themselves.”<sup>68</sup> He describes various extraneous factors that contribute to an explanatory framework for examination of human rights. They include decolonization, détente, mass media, mass mobilization and the presence of suffering, and transformation of the political left and churches.<sup>69</sup> In sum, human rights appeared as “a profoundly moral yet multifunctional way of revitalizing politics, both as an ideal and as a practice.”<sup>70</sup> While he acknowledges the “polycentricity” hypothesis in

63. Ned Richardson-Little, *Dictatorship and Dissent: Human Rights in East Germany in the 1970s*, in *THE BREAKTHROUGH*, *supra* note 1, at 49, 54–55.

64. SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* 11 (2010).

65. Alston, *supra* note 10, at 2073.

66. *Id.* at 2077–79.

67. *Id.* at 2078.

68. Eckel, *supra* note 4, at 241.

69. *Id.* at 242–52.

70. *Id.* at 252.

his opening chapter, I am not sure Moyn buys it. He suggests this “does not mean that there is any obvious general perspective from which the explosion of human rights in the 1970s comes into view.”<sup>71</sup> He leaves it to readers to decide which story to accept, but it seems clear that his own lean is towards a particular vision of human rights.

If the Moynian project requires a particular definition of human rights for its realization, this book does little to stabilize definitions. Eckel’s polycentrism seems the more apt term. In addition to the socialist definition offered above, *The Breakthrough* offers at least four other definitions of human rights, some inconsistent with others. The socialist definition seems to have carried the day at the 1968 UN Conference on Human Rights, held in Iran and hosted by the Shah himself. One observer of that conference notes that “concentrated state power was lauded as the path to freedom as opposed to a serious threat to it.” Anti-imperialism and self-determination held sway.<sup>72</sup> A second definition swings in the opposite direction, lauding the “depoliticized” nature of human rights, a “language that seemingly hid its politics.”<sup>73</sup> The strong commitment to armed struggle and socialist principles, certainly part of the ethos of the decade in Latin America, led to approaches that saw human rights as “a savvy propagandistic tool” that extended the socialist cause, or “a strategic device that did not foreclose a revolutionary future,” or even a “global shift in the ‘ideological matrix’ of the left” during that decade.<sup>74</sup>

A third definition arises from the other end of the Cold War spectrum. In the West, human rights were seen as

“liberal and individualistic. Proponents stood for liberty, limited government, and the free movement of ideas and people. Defenders of human rights in the West paid little attention to collectivist concepts of rights, such as the right to national self-determination.”<sup>75</sup> And even within the West, liberals and conservatives clashed. A fourth view of human rights, from conservative Republicans, held that “human rights were most clearly expressed and honored when individuals eschewed reliance on government and its programs in favor of exercising their ‘responsibilities as free citizens.’”<sup>76</sup> These myriad variations on the meaning of human rights in theory and action suggest the heart of the problem for any historian who seeks, as Moyn and his apostles do, to locate human rights in any particular time frame; the political terrain of any decade may be too globally diverse to give human rights a single meaning in time and place.

Before leaving this issue of definitions, it seems to me that there are two issues that require mention. Both have to do with how governments responded to the rise in human rights rhetoric during the decade of the 1970s. One is very overt, the other covert. As to the first, I was struck by the repeated mention, in several chapters, of the use by governments or insurgencies of media consultants to convey their messages—professional public relations firms, almost always based in the United States. We see this first in the Biafra revolution, where rebels deftly portrayed the issue of starving Biafran babies through a media campaign that captured the world’s attention.<sup>77</sup> Almost unnoticed is a mention that the rebels “tried to open

71. Moyn, *The Return of the Prodigal*, *supra* note 2, at 13.

72. Richardson-Little, *supra* note 63, at 56 (quoting Roland Burke).

73. Kelly, *supra* note 48, at 90.

74. *Id.* at 98–99.

75. Sargent, *supra* note 38, at 137.

76. Bon Tempo, *supra* note 21, at 157–58.

77. Heerten, *supra* note 6, at 19–20.

a new front" by enlisting "the services of international public relations agencies to coordinate their campaign."<sup>78</sup> Again, when the Argentine government began to receive harsh criticism for its failure to protect fundamental human rights, "[t]he junta hired a U.S. public relations firm to manage its international reputation, and it produced propaganda for dissemination in the Argentine and international press."<sup>79</sup> I am amused by the parity given to "public relations" and "propaganda." Finally, in the case of Indonesia, the government "hired a New York public relations firm, Hill and Knowlton, to trumpet positive news" about the successes of the regime in power.<sup>80</sup> This routine turn to media control and pro-government spin speaks volumes about the rhetorical power of human rights, both as concept and moral force.

Finally, there is the issue of covert interference from abroad, either in support of or against a particular regime in power. Covert operations supported by the CIA (and the Soviet KGB) were in full force throughout the decade of the 1970s, continuing the work they had begun so successfully in the 1950s with the orchestration of the overthrow of the elected governments of Iran in 1953

and Guatemala in 1954.<sup>81</sup> Declassified documents show the role of clandestine operations in many of the areas covered by this book, including the Southern Cone of South America. Operation Condor, perhaps the most iconic of the covert operations, and supported covertly by the United States, involved the sharing of intelligence information across borders, beginning officially in 1975 and continuing throughout the Dirty Wars years in Brazil, Chile, and Argentina.<sup>82</sup> The information was used to hunt, arrest, and clandestinely transfer accused "subversives" across borders, where they were interrogated, tortured, and often killed by state authorities. While these operations do not bear directly on human rights, they provide damning evidence of unclean hands on the part of those who sought to defend their human rights record during the relevant period.

There is only one oblique mention of covert operations in this volume. The chapter on Indonesia is authored by Brad Simpson, a historian with extensive knowledge of US support for clandestine operations in that country.<sup>83</sup> Professor Simpson states, early in his chapter, that a "search of nearly nine thousand pages of declassified U.S. State Department docu-

78. *Id.* at 18.

79. Skiba, *supra* note 48, at 121.

80. Brad Simpson, "Human Rights are Like Coca-Cola": Contested Human Rights Discourses in Suharto's Indonesia, 1968–1980, in *THE BREAKTHROUGH*, *supra* note 1, at 186, 199.

81. See, e.g., STEVEN KINZER, *ALL THE SHAH'S MEN: AN AMERICAN COUP AND THE ROOTS OF MIDDLE EAST TERROR* (2008) (scrupulously documenting the role of the CIA in the overthrow of Mohammed Mossadegh in Iran in 1953, to be replaced by the brutal regime of Reza Shah); STEPHEN SCHLESINGER ET AL., *BITTER FRUIT: THE STORY OF THE AMERICAN COUP IN GUATEMALA, REVISED AND EXPANDED* (2005) (scrupulously documenting the role of CIA in the overthrow of Jacobo Arbenz in Guatemala in 1954, to be replaced by a brutal military dictatorship).

82. See, e.g., JOHN DINGES, *THE CONDOR YEARS: HOW PINOCHET AND HIS ALLIES BROUGHT TERRORISM TO THREE CONTINENTS* (2005).

83. The short bio on Professor Simpson notes his authorship of *Economists with Guns: Authoritarian Development and U.S.-Indonesia Relations: 1960–1968* (2010). He is director of the Indonesia/East Timor Documentation Project of the National Security Archive, which serves as a research institute on US government secrecy and clandestine operations. See *The Indonesia/East Timor Documentation Project*, THE NATIONAL SECURITY ARCHIVE, THE GEORGE WASHINGTON UNIVERSITY (28 Jan. 2008), <http://www2.gwu.edu/~nsarchiv/indonesia/index.html>, [http://www2.gwu.edu/~nsarchiv/nsa/arc\\_staff.html](http://www2.gwu.edu/~nsarchiv/nsa/arc_staff.html).



ments concerning the 1965–1966 killings [of alleged communists], for example, yields not a single reference to human rights.”<sup>84</sup> This seems to miss the point in an almost breathtaking way. First is the obvious point I have made before: these events take place in the 1960s, not the 1970s. More importantly, though, here is a historian with knowledge of the US role in human rights abuses committed during the regime of Indonesian President Suharto (1965 to 1998) who writes as though Indonesia’s political actions, and those who opposed them, were taken through their own independent agency during the relevant time period. Should we be surprised that the clandestine operations of the US government do not ever make reference to human rights? I should think not. But can a true and accurate history of Indonesia and human rights during the 1970s be told without fully exploring the role of those agencies in the domestic politics of that country? Again, I do not think so.

## V. HUMAN RIGHTS AND THE HISTORIOGRAPHIC EXPLOSION

Professor Moyn notes in his introduction that “[a] mere decade ago, no historians were working on human rights in any time period.”<sup>85</sup> We might ask, as he does, why this is so. The answer seems obvious: human rights have come to play a key role in world politics and international affairs and appear in headlines every day in every medium. This final section

notes the historiographic phenomenon and situates this work in the broader arc of historical research. *The Breakthrough* is part of the explosion of interest in human rights histories. I recall that in 1990, when I first opened a law school clinical program focused on international human rights law, it was impossible to find a comprehensive history of human rights. Eight years later, in 1998, Paul Gordon Lauren published his lovely and comprehensive volume, also a part of the Penn Studies in Human Rights Series, called *The Evolution of International Human Rights: Visions Seen* (1998), which has since been republished deservedly in new editions. I read it eagerly, and assigned some parts of it to my students. Quite soon, however, I found that I couldn’t keep up with the growing blizzard of histories. Kenneth Cmiel, in one of the earliest historiographies of human rights, included no comprehensive bibliography at the close of his 2004 article, and called the field “refreshingly inchoate.”<sup>86</sup> A growing bibliographical index followed a 2006 historiography written from the perspective of anthropology and human rights.<sup>87</sup> In it, the author documents what appears to be a rather stunning statement: in 1947, on the eve of the adoption by the UN of the Universal Declaration of Human Rights, the American Anthropological Association adopted a “Statement on Human Rights” that it submitted to the UN Commission on Human Rights in anticipation of the event. The statement, says the author, “rejected the validity of a universal declaration of human rights on both empirical and ethical grounds.” The Board of the Association “opposed

84. Simpson, *supra* note 80, at 190.

85. Moyn, *The Return of the Prodigal*, *supra* note 2, at 13.

86. Kenneth Cmiel, *The Recent History of Human Rights*, 109 AM. HIST. REV. 117, 119 (2004).

87. Mark Goodale, *Toward a Critical Anthropology of Human Rights*, 47 CURRENT ANTHROPOLOGY 485 (2006).



a universal declaration of human rights because of its imperialistic irony.”<sup>88</sup> Anthropology has come a long way from that early and embarrassing entry into the field of human rights.

Reza Afshari used the Lauren text, *The Evolution of Human Rights*, as the occasion for his authorship of another historiographic essay on human rights in 2007, published in this journal.<sup>89</sup> Afshari draws on his own knowledge of Islamic history and Third World politics to challenge, in a loving and supportive way, the premises set out in Lauren’s work, and his perspective thickens our understanding of the richness of the tapestry of human rights. In a post-war period normally dominated by discussions of the Universal Declaration of Human Rights, Afshari instead points to the importance of the gatherings of the group that became the Non-Aligned Movement, from the first in Bandung, Indonesia in 1955, hosted by the nationalist leader Sukarno, to the 1979 meeting in Havana, where the proposed New International Economic Order took precedence over more general discussion of human rights, with stress on “the rights to development and to equal opportunity to obtain it.”<sup>90</sup> Afshari’s critique of Lauren sounds quite similar to that by Anghie of Moyn, discussed above.

Two more recent historiographies deserve mention here. First, in its Fall/Winter issue of 2013, the interdisciplinary periodical *Qui Parle* published an insightful and incisive series of articles

in what it called a “Special Issue: Human Rights between Past and Future,” many pieces from which are cited in this review. They include the exchanges between Professors Moyn and Anghie at the 2011 meeting of the American Political Science Association and begin to show the ascendancy of Moyn as a historical force with which to be reckoned.

Finally, I will close where I began. In 2012, Professor Moyn published his own historiography of human rights.<sup>91</sup> It is grand, indeed, and focuses on three dimensions of human rights: their substance, or content; their scale, or geographical scope; and their salience, effectively their impact in the world. His bibliography covers more than a hundred titles. All but a very few are histories done by non-lawyers. As Professor Alston notes in his critique of Moyn’s work, he has ignored or neglected at least nine categories of actors, virtually all of whom are lawyers or players in major international movements such as those for minority rights, labor rights, women’s rights, or children’s rights.<sup>92</sup> The point remains, however: The Moynian project must be engaged, as I hope it has been here.

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88. *Id.* at 486. Another article that carefully parses the history of this conflict among anthropologists is found in Karen Engle, *From Skepticism to Embrace: Human Rights and the American Anthropological Association from 1947–1999*, 23 HUM. RTS. Q. 536 (2001).
  89. Reza Afshari, *On Historiography of Human Rights Reflections on Paul Gordon Lauren’s The Evolution of International Human Rights: Visions Seen*, 29 HUM. RTS. Q. 1 (2007).
  90. *Id.* at 55–62, quoting A.W. SINGHAM & SHIRLEY HUNE, NON-ALIGNMENT IN AN AGE OF ALIGNMENT 227 (1986).
  91. Moyn, *Substance, Scale, and Salience*, *supra* note 18.
  92. Alston, *supra* note 10, at 2070.

at CUNY Law School from 1985–1989, and has been a visiting professor at law schools in the Netherlands, Japan, and Peru, a Fulbright Scholar in Colombia, and during spring semester, 2010, he was the Tillar House Fellow at the American Society of International Law. He has consulted with law schools on curricular reform in more than forty countries worldwide. His litigation work includes representation of detainees at Guantanamo Bay, Cuba in federal courts and military commissions; several US capital cases at the Inter-American Commission on Human Rights; four cases in the Inter-American Court of Human Rights; and counsel for the European Union in friend-of-court briefs in the US Supreme Court, cited by the majority in striking down the death penalty in *Atkins v. Virginia* (2002) (persons with mental retardation), and *Roper v. Simmons* (2005) (juveniles under 18).

***Advancing the Human Right to Health* (Oxford University Press, José M. Zuniga, Stephen P. Marks, & Lawrence O. Gostin eds., 2013), 456 pages, ISBN 978-0-19-966161-9.**

## I. INTRODUCTION

More than sixty-five years have passed since the Universal Declaration of Human Rights proclaimed the right of all humans “to a standard of living adequate for the health and well-being of himself and his family.”<sup>1</sup> In the years since, while millions of preventable deaths occur each year, the right to health has been enshrined in numerous international

and regional human rights treaties, as well as in the constitutions of over 115 countries. Human rights and health are now inextricably linked as normative and legal matters.

Human rights scholars and practitioners, in turn, have endeavored to define and effect the right to health, at times making remarkable progress, like when activists successfully challenged the South African Ministry of Health for not making drugs to prevent mother-to-child transmission of HIV widely available to the population in *Minister of Health and others v. Treatment Action Campaign and others*.<sup>2</sup> At other times, advocates have encountered frustration, stagnation, and even retrogression, like when Haiti’s citizens recently confronted a devastating cholera outbreak that the government and international community could not swiftly address.<sup>3</sup> Notably, the right to health’s boldest expressions have often appeared in the world’s poorest and most unequal settings, while wealthier countries have frequently rejected positive framings of the state’s duties to its own citizens.

*Advancing the Human Right to Health* provides an insightful retrospective on the right to health advocacy and a foreshadowing of what is to come.<sup>4</sup> With authors who offer a broad view of conflicts that exist in international health discourse, such as the tensions that persist between public health and human rights, the book provides a refreshing opportunity to more closely analyze and potentially

1. Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess, art. 25, U.N. Doc. A/RES/3/217A (1948).

2. See *Minister of Health and Others v. Treatment Action Campaign and Others*, (10) BCLR 1033 (CC) (2002).

3. See Donna J. Barry, et al., *Haiti: An Overview of its Right to Health History and Future Directions*, in *ADVANCING THE HUMAN RIGHT TO HEALTH* 91 (Jose M. Zuniga, Stephen P. Marks, Lawrence O. Gostin eds., 2013) [hereinafter *ADVANCING THE HUMAN RIGHT TO HEALTH*].

4. See *ADVANCING THE HUMAN RIGHT TO HEALTH* *id.*