

# **The Last Utopia**

**Human Rights in History**

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The Belknap Press of Harvard University Press  
Cambridge, Massachusetts, and London, England 2010

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*Library of Congress Cataloging-in-Publication Data*

Moyn, Samuel.  
The last utopia : human rights in history / Samuel Moyn.  
p. cm.

Includes bibliographical references and index.

ISBN 978-0-674-04872-0 (alk. paper)

1. Human rights—History. I. Title.

JC571.M88 2010

323.09—dc22 2010012998

## **Epilogue: The Burden of Morality**

When the history of human rights is told beyond myths of deep origins, it illustrates the persistence of the nation-state as the aspirational forum for humanity until recently. The state was the incubator for rights claims, both in the rise of the absolutist state, with its well-disciplined interior order and colonialist exterior expansion, then in the creation of the modern nation, in which citizenship and rights, identification and contestation, were always bound up with each other. The relevance of the nation-state was amplified, rather than qualified, in the World War II alliance politics that led to the marginalization in the United Nations of the human rights that some wartime rhetoric had featured. It was geographically dispersed in the anticolonialist imagination, in which the new human rights were understood as a subversive instrument against imperial rule in the name of liberation and the construction of new states around the world. The perceived crisis of the postcolonial world, however, made the globalization of the nation-state unattractive as the sole formula for the achievement of modern freedom. Accordingly, rights finally lost their long connection with revolution.

When the history of human rights acknowledges how recently they came to the world, it focuses not simply on the crisis of the nation-state, but on the collapse of alternative internationalisms—global visions that were powerful for so long in spite of not featuring individual rights. The crisis of popular consent for the machinations of Cold War geopolitics left people looking for new causes to believe in, even as the decade after 1968 put unforgiving pressure on newer

alternatives, especially if those alternatives were internationalist in scope. The answer to why human rights emerged is thus not “globalization.” Whether the subaltern versions of internationalism that coexisted so uneasily with anticolonialist nationalism (most obviously, pan-Arabism and pan-Africanism), or communism and attempts to save it through “Marxist humanism,” it was not only the loss of faith in the nation-state but also the desertion of the stage by alternative promises to transcend the nation-state that accounts for the relevance of human rights in the last three decades.

The international human rights movement became so significant, then, neither because it offered a rights-based doctrine alone nor because it forged a truly global vision for the first time. Rather, it was the crisis of other utopias that allowed the very neutrality that had made “human rights” wholly peripheral to the aftermath of World War II—when taking sides in a contest of programmatic visions seemed so pressing—to become the condition of their success. As a number of its partisans in the 1970s were well aware, human rights could break through in that era because the ideological climate was ripe for claims to make a difference not through political vision but by transcending politics. Morality, global in its potential scope, could become the aspiration of humankind.

But the very neutrality that allowed for human rights to survive in the 1970s, and prosper as other utopias died, also left them with a heavy burden later. For even if their breakthrough depended on their antipolitics, human rights were soon affected by two transformative changes. First, the moment that favored pure moral visions passed, not least in American party and electoral politics, as Jimmy Carter’s brief presidential career illustrates so vividly. Second, and more important, partisans of the human rights idea were forced to confront the need for political agenda and programmatic vision—the very things whose absence allowed for their utopia to emerge so spectacularly and discontinuously in the first place. If human rights were born in antipolitics, they could not remain wholly noncommittal toward programmatic endeavors, especially as time passed.

For these reasons, the dynamics of the birth of the era of human rights in the later 1970s gave way to different ones in the youthful and adolescent struggles for the concept through the present day. But correctly identifying the historical origins of contemporary human rights aspirations is the only way to reckon with the profound dilemmas human rights continue to face as a utopian ideal and movement. If they had really been the fruit of democratic revolution, they would not have faced the demand for programmatic vision. If they had been forged in a moment of post-Holocaust wisdom, they would have had a completely different historical bearing, both focused on genocide prevention from the beginning and restricted to that incontestable cause without having to shoulder the burden of addressing all global ills and diverse political agendas. But they were neither of these things. 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.

Signs of trouble came when the contingency of their emergence—acknowledged by many in the moment of their startling breakthrough—was quickly forgotten. It was convenient almost immediately to represent human rights as a matter of longstanding tradition. In this regard, one of the most fascinating testaments to the breakthrough of “human rights” in the late 1970s is the response of philosophers, who after a moment of confusion about their novelty assimilated them to natural rights principles that were themselves being revived.

When John Rawls famously reclaimed individual rights, in his epoch-making *A Theory of Justice* (1971), it had no apparent consequences for either the general or the philosophical ascent of human rights (an expression Rawls did not use). This fact is perhaps unsurprising: the renaissance of rights in Anglophone thought of the era at first remained as restricted to the nation-state as rights claims had al-

ways been. Whatever else disappears in Rawls's "original position," the plurality of nations and the arbitrariness of borders among them remains. There had been next to no serious philosophical support for natural rights (let alone human rights) in the twentieth century to that point—except to the extent Christianity still helped define the discipline after World War II, as Jacques Maritain's career makes clear. Yet even after Rawls's *démarche*, rights prospered independently of human rights. Strikingly, in a tiny bibliography on rights composed by political theorists in 1978, next to no authors treated "human rights" as such.<sup>1</sup> (The main exception was the British liberal philosopher Maurice Cranston, whose contributions had little echo until after the mid-1970s.)<sup>2</sup>

When the human rights revolution occurred, a long half-decade after Rawls's groundbreaking treatise, philosophers at first registered their confusion at whether it involved what Rawls taught them to talk about. "Although the concept of 'natural rights' has not been completely displaced," one remarked, "the expression human rights certainly has a greater popularity today than has been true of 'natural rights' since the days of Tom Paine. . . . [P]eople differ about the significance of the shift in terminology from 'natural' to 'human' rights. Is this shift merely terminological? Or may it be that to speak of 'human' rather than 'natural' rights implies and fosters alteration of the original understanding of 'fundamental' rights?"<sup>3</sup> Philosophers, however, did not stick with that question, deciding instead to assimilate the surge of human rights to the Rawlsian revival, as if the former followed from the latter. The immediate homogenization of the two separate developments obscured the essential novelty of human rights, which still goes almost unmentioned in histories of rights penned by philosophers today.

It was at this moment that long historical trajectories in the history of early modern and Enlightenment natural law were widely invoked as the precedents for human rights.<sup>4</sup> It was more understandable that in other languages—where no new phrase was popularized—it was assumed that *droits de l'homme* and *Menschenrechte*

were the same concepts across time. In the English language, the phrase “human rights” still seemed strange in the 1970s, and so the assimilation of rights and human rights had to be quite intentional. Though he had developed his own demand for “taking rights seriously” in the later 1960s and never before mentioned human rights in their international relevance, Ronald Dworkin’s response to the events of 1977 was simply to introduce the phrase to his vocabulary as if he had always been talking about them. When invited by the Columbia University General Education Seminar to address the topic late that year, Dworkin gave a lecture called “Human Rights” but simply rehearsed his analysis of rights as so-called moral trumps.<sup>5</sup> Thomas Scanlon, another proponent of the revival of liberal rights, did turn to the independent novelty of human rights after the explosion, but in the long run he and others were understandably intent on allowing the rights revival and international human rights to combine.<sup>6</sup> It would be tempting to argue that the rediscovery of rights by Rawls and the birth of human rights were successors, except that there is no evidence for it. The historical fact of the matter is that the rights revival did not give rise to a specific concern with international human rights; without external stimulation, philosophers could easily have remained stuck in a discussion of rights in their state-based foundations and consequences. In fact, they did: even as philosophers learned the new phrase, the new era of philosophical rights by and large postponed current interest in global justice until a generation later. The rediscovery of rights and the invention of “human rights” did interact—but first of all to disguise immediately the novelty of the new phrase, and the political implications of that novelty.

Others who were interested in human rights in their role as a prominent new language of international legitimacy, however, were aware that their political implications had to be worked out, whatever the deep authority timelessness or tradition might provide. Already Carter’s elevation of human rights to a policy of the state meant that

the “politics of human rights” was introduced as the much-debated problem that it remains. The injection of morality into foreign policy, for example, compelled the leading realist thinkers of the postwar era to turn to it immediately—no mean accomplishment for moralists, to gain the attention of theorists who reduced international affairs to power alone.<sup>7</sup> In the short term, in the United States, Ronald Reagan’s election in 1980 meant a crossroads for the relationship of the human rights movement to state power.<sup>8</sup> During the Carter administration, to which it clearly owed its newfound public role, the human rights movement generally treated government as an ally. Reagan’s victory—not least when he nominated declared enemy of rights Ernest Lefever as lead State Department official—complicated this relationship profoundly. The era of Reagan foreign policy brought about a disturbing assimilation of human rights to the independently developed program of “democracy promotion,” with early neoconservatives arguing that human rights were best served by placing them in a larger framework. Unrelenting opposition to communist regimes that would never reform, they claimed, had to be balanced with a friendly attitude towards rightist dictators supposedly on a path to liberalism. The argument was to have many tragic consequences at the time and since.<sup>9</sup> In light of such events, it is perhaps more understandable that the Marxist critique of rights has never truly disappeared, even reshaping itself in light of the new concept of “human rights” of recent decades.<sup>10</sup>

There is no doubt that, after decolonization and the civil rights movement ended formal empire and racism, the language of human rights provided a potent antitotalitarian weapon for the first time. The claim that the proliferation of human rights activism brought the Soviet Union down, however, should not obscure the fact that human rights actually emerged out of exasperation with the Cold War and the hope for a way beyond its divisions. In any case, Reaganites were far from alone in making human rights into a language of partisan politics, to which private individuals could sign on and against which governments were willing to measure their foreign

policy, at least on paper. The emergence of “democracy promotion” revealed that human rights would have to incorporate concrete policy commitments and fuller-bodied social thinking to be meaningful, and to address the wide range of problems that required more than a set of abstract moral norms. The pure struggle of morality would have to enter the realm where political visions clash, with its hard choices, compromising bargains, and dirty hands.

Neoconservative democracy promotion, in spite of its almost immediate redefinition of human rights, nevertheless proved only one path among others. In America, the human rights community has sprouted many organizations and magnified its activities over the years. It opposed the rhetoric of democracy promotion as an excuse for repressive governments, but not without taking on a huge range of new concerns and activities of its own. Yet the slow but sure move toward a politics of human rights was most visible in Western Europe starting in the 1980s, where human rights NGOs proliferated and the newly prominent European Court in Strasbourg symbolized the great strides a rhetoric of human dignity and rights made at every level of the continent’s affairs. Some observers, indeed, were led to believe that at domestic, regional, and international levels European nations had gone so far in embracing human rights as to have substituted principle entirely for power—a charge that, though untrue, suggested the path of human rights from antipolitics to program that Europeans had indeed taken.<sup>11</sup>

Could human rights have remained a minimalist utopia of antipolitics, as it was in its era of breakthrough? It seems unlikely, for the obvious reason that the more it seemed like the last utopia standing in world affairs, the more substantive a role international rights norms would have to take in how individuals lived out their aspirations and how nation-states and supranational organizations sought public legitimacy. If there ever really was a “global human rights revolution,” it has occurred only since the 1980s, when a variety of groups around the world, and all governments, learned to speak the language. Close to the ground, one of the most hotly debated issues

is whether this process of “vernacularization” of human rights was one in which ordinary people in different places winnowed their demands in the direction of acceptability to Western audiences, or whether they were able to use them from below in creative and transformative ways.<sup>12</sup> Not surprisingly, having lately incorporated human rights ideas themselves, international lawyers assumed an altogether new prominence, along with the staffers of expanding and bureaucratizing NGOs, as the professionalized stewards of what human rights might mean beyond their use as a tool of moral resistance.<sup>13</sup> In this atmosphere, the grassroots character that had made Amnesty International so pioneering and exemplary entered relative decline, as new forms of expertise pushed the human rights movement away from the original conditions of its breakthrough. Human rights were forced to move not simply from morality to politics, but also from charisma to bureaucracy.

One of the most globally significant shifts in the concerns of the human rights agenda—and indeed in the immediate implications of the phrase human rights—was the unexpected rise in the imperative of genocide prevention. It is remarkable how little this humanitarian norm figured in public consciousness either in the 1940s or even in the 1970s. Popular concern about the Holocaust, though it was getting off the ground in the later era, seems like an originally separate development without profound connection to the contemporaneous surge in human rights. Strikingly, perhaps the major early examples of rising interest in preventing genocide, over the crises in Biafra and Bangladesh in the late 1960s, did not spark the creation of the international human rights movement. In that era, genocide consciousness continuing to make its way in the world gave rise to calls for aid, and a revival of the nineteenth-century tradition of humanitarian intervention (especially after India’s invasion of Pakistan in 1971).<sup>14</sup> But neither was yet conceptualized as part of a global human rights revolution. That had not yet become imaginable.

By the 1990s, a monumental change had occurred. Although it is still unclear whether, when, and how the popularization of Holo-

caust memory helped construct norms of universalist responsibility, it is quite striking that, with the possible exception of American Jewish guilt over prior inaction driving concern for co-religionists under Soviet rule, Holocaust memory was peripheral to the explosion of human rights in the crucial era of the 1970s.<sup>15</sup> The contest of utopias was far more relevant. Human rights and genocide prevention, separate in their 1940s invention, were independent as late the creation of movements around both after the 1960s. Yet somehow—since revelations of the Cambodian genocide, and certainly by the mid-1990s resurgence of “ethnic cleansing” on the European continent—genocide prevention is now among the first items on the human rights agenda.<sup>16</sup>

But the amazingly belated integration of genocide consciousness as a human rights concern is only one dimension of a far larger shift: the slow amalgamation of humanitarian concern for suffering with human rights as both a utopian idea and a practical movement.<sup>17</sup> Humanitarianism, with its origins in Christian pity and Enlightenment sympathy through its high era of imperialist entanglement in the nineteenth century, had developed in historical independence of rights talk. It entered into international organizations in the interwar League of Nations, with its concern over the “white slavery” of traffic in women and children, and in the cause of refugees, which also assumed a central place in United Nations affairs. Christian and secular NGOs like the Red Cross, Oxfam, and others, inheriting the philanthropic impulse of the nineteenth century, provided succor for the horrors of war and campaigned against famine and hunger all along. But it is simply mistaken to conceive of these as human rights organizations, as they were almost never understood in that way by their participants. Conversely, as late as the 1970s, the breakthrough for human rights—far more an antitotalitarian reflex—occurred in striking autonomy from humanitarian concern, particularly for global suffering. In their explosive moment, human rights were pursued for dissidents under Eastern European totalitarianism and victims of Latin American authoritarianism, not those in miserable cir-

cumstances in general. Highly restrictive in the sorts of depredations singled out for agitation in its earliest period, Amnesty International added only torture and disappearances to the list in its glory years. Yet today, human rights and humanitarianism are fused enterprises, with the former incorporating the latter and the latter justified in terms of the former.

In other words, the concern for genocide abroad is simply one dimension of the conversion of human rights into the worldview that sought to provide an answer to any area of global concern. Only in view of this shift from minimalism to maximalism can one understand the eruption in the varieties of rights claims, both by Western elites and local actors. And only as a struggle to overcome its enabling restrictions can one understand the logic of this expansion. From having triumphed because it lacked a political blueprint, the human rights movement was forced to draw up plans to remedy a crisis-ridden world. If human rights “occupied the space” left open by the departure of other utopian schemes, it was not wholly a matter of filling a vacuum.<sup>18</sup> The move to pervasive relevance required intellectual creativity and hard work, but also typically unacknowledged entry into a very contested political terrain—one that human rights had broken through by promising a way to avoid.

In this way, human rights were brought to new geographic areas around the globe and unsuspected concerns of substance, and into both the difficulty and drama of fundamental transformation from antipolitics to program. One obvious example of that creative mutation was the forging of “transitional justice,” which in the 1980s was invented as an optic based on the Latin American experience to allow human rights to be not just an external moral criticism of terrible regimes but an internal political resource in the erection of their successors.<sup>19</sup> But the history of what have been known as “social rights” is perhaps even more revealing than the move to transitional justice of how human rights, born in moral transcendence of politics, had to become a political agenda.

Among the most striking paradoxes of the trajectory of social and economic rights is their decline precisely when “human rights” came into their own. Why were those rights so prominent at the time of the discreet coinage of the concept in the 1940s (not to mention in the earlier history of citizenship struggles during the French Revolution and since) but so absent in the 1970s when human rights were canonized? The fact that the idea of “human rights” was forged in the 1940s, a time of some commitment to social equality and the common good, meant that social rights were comparatively uncontroversial. Yet at that time it was not the commitment to social rights by itself, but whether reformed capitalism or revolutionary communism would best protect them, that made human rights peripheral rather than central. In contrast, the conditions of totalitarian and authoritarian rule that were the context for the breakthrough of human rights in the 1970s meant that social rights simply did not figure on the agenda, as the world moved on from the high tide of social democratic commitments. Social rights were absent from Eastern bloc dissidence, and Latin American leftists seeking alliance abroad muted their critiques of capitalism to do so, while their Western audiences in an era of economic shock stripped down their appeals to focus on political and civil basics.

In the end, however, the conditions of breakthrough were not to continue. For some, like Aryeh Neier, a founder of Human Rights Watch, social rights—let alone other entitlements—were never crucial. When confronted with them, he argued for sticking with concern for so-called negative liberties instead of incorporating more positive entitlements that he treated as dubious. If he lost that argument, in his organization and in general, it was not simply the better arguments of other human rights activists in favor of expanding their concerns that explain why.<sup>20</sup> The main reason is that it was not clear, after the collapse of alternative utopias, what other ideology could address global wrongs, especially as events led the gaze to shift from totalitarian and authoritarian rule to global immiseration—notably on the African continent, which is now the privileged site of

human rights concern. Put differently, it was precisely the increasing role of human rights in Western social discourse, together with the collapse of alternative frameworks, which meant that practically all political concerns had to be reformulated in their terms and addressed by them. As totalitarianism and authoritarianism waned, social and economic rights consciousness could not help but surge.

The history of social rights suggests clearly, therefore, that the great irony of the larger history of human rights is the forced movement toward the very sort of maximalist utopia whose collapse in other forms in the 1970s allowed the concept to triumph on account of its minimalism. Human rights were compelled to assume exactly the sort of burden that had brought other ideologies low. Social and economic rights were not alone in these processes of inclusion or outright invention, even if they are the most vivid example. From women's rights—which were not a significant part of human rights consciousness in developed countries during its 1970s inception in spite of an exploding domestic and international women's movement—to various other rights of culture, indigeneity, and environment, the story of human rights since the 1970s has inevitably pushed the idea away from the particular conditions in which it emerged.<sup>21</sup> If human rights consciousness needs to be met “from below” by third-world constituencies lacking before, or to be “transformed” in view of truly outrageous global distress, it is because it arose when it did and in the specific form it did.<sup>22</sup>

Even as human rights continued to draw on the claim that their source of authority transcended politics, their transformation into the dominant framework of the government and improvement of human life in far-flung global locales changed them profoundly. The turn of the human rights movement to concerns with “governance” in postcolonial states around the world is perhaps the most vivid illustration of the embrace of politics.<sup>23</sup> It seemed obvious that episodic kinds of concern, in reaction to episodic crises, would never solve the problems that gave rise to those wrongs in the first place. And the notion of “governance” as a move from spectacular to struc-

tural wrongs, besides illustrating the transition from antipolitics to program, is now frequently combined in the human rights movement with a revived and rethought version of a Cold War theory of social development once notorious for its disinterest in rights but now based on them. On reflection, this evolution is unsurprising. Much as in the original history of rights in the nineteenth century and domestic civil rights in a later age, the early assertion of abstract entitlements prompted their advocates to scrutinize conditions for the enjoyment of entitlements, which are unfailingly structural, institutional, economic, and cultural.

In this process, the star-crossed trajectory of the notion of a “right to development” to which suffering humanity might be entitled is especially thought provoking. Contrary to what is sometimes suggested, the content of such a right was not a fundamental departure, given that anticolonialism had long since redefined human rights in the direction of nationalistic self-determination and collective development. But it was a specific act of creative appropriation when Senegalese jurist Kéba M’Baye—disciple of Léopold Senghor and associate of René Cassin’s Institut des droits de l’homme—coined the phrase “right to development” in 1972, almost a decade before it figured in the 1981 African Charter on Human and Peoples’ Rights (the UN General Assembly passed its Declaration on the Right to Development in 1986).<sup>24</sup> To that point, not least during the heyday of Western and especially American Cold War doctrines of modernization and development, rights had not figured as central concepts. And while it was precisely in the 1970s that the high tide of anticolonialism found expression in the attempt to craft a subaltern politics of development, international agencies as well as state and private actors in the decades since have devised schemes of development in which honoring human rights is conceived as both the means and the end.<sup>25</sup> Intellectually, the theoretical and doctrinal energy harnessed to the project of finding a vision of human rights adequate to global immiseration graphically illustrates the sheer dis-

tance from the landmark of their antitotalitarian invention that human rights have had to travel.<sup>26</sup> The jury is clearly still out on whether a rights framework for global poverty is the right framework.<sup>27</sup> But the verdict is debated only because human rights were forced to face—and it seemed believable that they might be able to face—problems that had been addressed by other schemes, and contending utopias, before.

Were human rights disabled by the circumstances of their birth from making precisely the moves they have made—and that so many demanded they make—from antipolitics to program? Was the movement too hobbled by its formulation of claims as individual entitlements, or its inattention to the relevance of economic and larger structural relationships for the realization of those entitlements, or was its challenge rather its far more general refusal of ideology? Is the process of its troubled expansion merely the story of the difficulty of combining cooperation with existing governmental and intergovernmental programs with criticism of them, or is its originally critical attitude toward power to blame? These are questions that are only beginning to be asked, based on perceived limitations of human rights as the best vessel of aspirations for a better world—dissatisfactions that are at the very least the burden of its success, but whose weighty consequences over the long term it is too soon to assess.

Instead of turning to history to monumentalize human rights by rooting them deep in the past, it is much better to acknowledge how recent and contingent they really are. Above all, it is crucial to link the emergence of human rights to the history of utopianism—the heartfelt desire to make the world a better place. That it is only one form of utopianism, indeed one that exists today because it weathered the recent storm in which others were shipwrecked, ought to be clear by now. But not every age need be as unsympathetic to political utopia as the recent one in which human rights came to the fore. And so the program of human rights faces a fateful choice: whether

to expand its horizons so as to take on the burden of politics more honestly, or to give way to new and other political visions that have yet to be fully outlined.

In some ways, the choice has already been made: to the extent the human rights agenda has extended its purview or been forced to do so, it inevitably became something new. Yet this transformation is neither an easy nor an obvious process, and should happen consciously rather than inadvertently. Henry Steiner, a law professor who eventually became an expert in the field and led Harvard Law School's human rights program until recently, lucidly cautioned the human rights movement that it needed to carefully distinguish two missions that it was apt to confuse: between human rights as catastrophe prevention and human rights as utopian politics. "The human rights corpus is very spacious in the rights, freedoms and liberties that it embraces," Steiner noted. "[Some] norms express what one could call the 'anti-catastrophe' goal or dimension of the human rights movement: stopping the massive disasters that have plagued humanity. That goal is complemented by another, related but distinct utopian dimension to human rights: giving people the freedom and capacity to develop their lives and the world. . . . When you get past the core, the absolute 'no's,' there is inevitable ambiguity and out-right conflict."<sup>28</sup> Historically, Steiner's contrast is false. In fact, it was due to minimalism and utopianism, indissociably and together, that human rights made their way in the world. But the conditions for this combination were fleeting. And they are long since gone.

Today, these goals—preventing catastrophe through minimalist ethical norms and building utopia through maximalist political vision—are absolutely different. One remains more compatible with the moralized breakthrough of human rights in the first place; the other follows from aspirations human rights have incorporated since that time, aspirations that are emphatically visionary but also necessarily divisive. The first version can honestly confront its lack of answers and acknowledge that it must make room for the contest of genuinely political visions for the future: seeking ways to constrain

the contest so it does not lead to disaster, perhaps, but playing no other role. Yet then human rights cannot be a general slogan or worldview or ideal. If it draws authority from its appeal to morality, the other, utopian version of human rights easily becomes a recipe for the displacement of politics, forcing aspirations for change to present themselves as less controversial than they really are, as if humanity were not still confused and divided about how to bring about individual and collective freedom in a deeply unjust world.

Born of the yearning to transcend politics, human rights have become the core language of a new politics of humanity that has sapped the energy from old ideological contests of left and right. With the advancement of human rights as their standard, a huge number of schemes of transformation, regulation, and “governance” contend with one another across the world. But if in the thirty years since their explosion in the 1970s human rights have followed a path from morality to politics, their advocates have not always forthrightly acknowledged that fact. Born in the assertion of the “power of the powerless,” human rights inevitably became bound up with the power of the powerful. If “human rights” stand for an exploding variety of rival political schemes, however, they still trade on the moral transcendence of politics that their original breakthrough involved. And so it may not be too late to wonder whether 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. If human rights call to mind a few core values that demand protection, they cannot be all things to all people. Put another way, the last utopia cannot be a moral one. And so whether human rights deserve to define the utopianism of the future is still very far from being decided.

- dentially, Henkin's letter includes the first use of the phrase "international human rights movement" in the history of the newspaper.
51. See Schwelb, "The Teaching of the International Aspects of Human Rights," *Proceedings of the American Society of International Law* 65 (1971): 242–46. UNESCO had entered the field in 1973, with its support of the Cassin institute's Karal Vasak, ed., *Human Rights Studies in Universities* (1973), also available in *Revue des droits de l'homme* 6, 2 (1973). Then, in 1978, it held a major conference on human rights education—the first focusing on the project of pedagogy—in Vienna and, two years later, the major American event took place at New York University's law school, supported by the Rockefeller Foundation. See UNESCO, *The Teaching of Human Rights: Proceedings of the International Congress of the Teaching of Human Rights* (Vienna, 1980) and Theodor Meron, "A Report on the N.Y.U. Conference on Teaching International Protection of Human Rights," *New York University Journal of International Law and Policy* 13, 4 (Spring 1981): 881–960; and also the landmark collection that Meron edited shortly after based on the conference, *Human Rights and International Law: Legal and Policy Issues* (New York, 1984), which includes teaching guides and syllabi on different topics by leaders in the field.
  52. See Henkin, ed., *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York, 1981); and Henkin, "International Law: Politics, Values and Functions," *Recueil des cours* 216 (1989), Part I, balancing a critique of the "mythology" of sovereignty with the building blocks of states.
  53. Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford, 1989), 99.
  54. Antonio Cassese, "The Helsinki Declaration and Self-Determination," in Buergethal, ed., *Human Rights, International Law, and the Helsinki Accords*.

## Epilogue

1. See Rex Martin and James W. Nickel, "A Bibliography on the Nature and Foundations of Rights, 1947–1977," *Political Theory* 6, 3 (August

- 1978): 395–413. By far the most interesting and significant philosophical engagements in the postwar era through the 1970s are to be found in Institut International de Philosophie, *Le Fondement des droits de l'homme* (Florence, 1966), with contributions from a number of European luminaries as well as American Richard McKeon.
2. Cranston's best known position was the critique of social and economic rights. See Maurice Cranston, *Human Rights To-day* (London, 1955, 1962), entitled in the American edition (and the new third British edition), *What Are Human Rights?* (New York, 1962; London, 1973). See also his "Pope John XXIII on Peace and Human Rights," *Political Quarterly* 34, 4 (October 1963): 380–90; and his roles in D. D. Raphael, ed., *Political Theory and the Rights of Man* (Bloomington, 1967); and headlining the *Daedalus* special issue 112, 4 (Fall 1983).
  3. From the editor's introduction to J. Roland Pennock and John W. Chapman, eds., *Human Rights: Nomos XXIII* (New York, 1981), vii. See also Stephen R. Graubard's preface to the *Daedalus* special issue: "Is the term 'human rights' simply a late twentieth century equivalent for the eighteenth century concept of the 'rights of man'? If so, why was the earlier formulation ever abandoned?" (v).
  4. See, e.g., Walter Laqueur and Barry Rubin, eds., *The Human Rights Reader* (New York, 1979).
  5. Ronald Dworkin, "Human Rights," in *Human Rights: A Symposium, Proceedings of the General Education Seminar* 6, 1 (Fall 1977): 40–51.
  6. Compare the paper originally presented at a conference on decision theory at Schloss Reisensburg in Germany in June 1976 and first published as T. M. Scanlon, "Rights, Goals, and Fairness," *Erkenntnis* 11, 1 (May 1977): 81–95 with Scanlon, "Human Rights as a Neutral Concern," in Peter Brown and Douglas Maclean, eds., *Human Rights and U.S. Foreign Policy* (Lexington, 1979), a hiatus which clearly reflects the intervening explosion. Both are rpt. in Scanlon, *The Difficulty of Tolerance: Essays in Political Philosophy* (Cambridge, 2003).
  7. See, e.g., Hans J. Morgenthau, "Human Rights and Foreign Policy," Distinguished Council of Religion and International Affairs Lecture on Morality and Foreign Policy (New York, 1979) and Raymond Aron, "The Politics of Human Rights," in Myres S. McDougal and W. Michael

- Reisman, eds., *Power and Policy in Quest of Law: Essays in Honor of Eugene Victor Rostow* (Dordrecht, 1985).
8. For an apt prediction as Reagan was about to come to power, see Ronald Steel, “Are Human Rights Passé?” *The New Republic*, December 27, 1980.
  9. Nicolas Guilhot, *The Democracy Makers: Human Rights and the Policy of Global Order* (New York, 2005); Guilhot, “Limiting Sovereignty or Producing Governmentality: Two Human Rights Regimes in U.S. Political Discourse,” *Constellations* 15, 4 (2008): 502–16.
  10. Some examples to ponder are Jacques Rancière, “Who Is the Subject of the Rights of Man?” *South Atlantic Quarterly* 103, 2/3 (Spring/Summer 2004): 297–310; Slavoj Žižek, “Against Human Rights,” *New Left Review* 34 (July–August 2005): 115–31; and Alain Supiot, *Homo Juridicus: On the Anthropological Function of Law*, trans. Saskia Brown (New York, 2007), chap. 6.
  11. See, for example, Mitchel Lasser, *Judicial Revolutions: The Rights Revolution in the Courts of Europe* (New York, 2009).
  12. Compare Bradley R. Simpson, “Denying the ‘First Right’: The United States, Indonesia, and the Ranking of Human Rights by the Carter Administration, 1976–1980,” *International History Review* 31, 4 (December 2009): 788–826 on how Indonesian activists were educated to speak human rights, to Sally Engle Merry’s work on translation of claims, including Mark Goodale and Merry, eds., *The Practice of Human Rights: Tracking Law between the Global and the Local* (New York, 2007).
  13. For contending presentations of the lived experience and moral significance of human rights work in the field, see James Dawes, *That the World May Know: Bearing Witness to Atrocity* (Cambridge, Mass., 2007); and David Kennedy, *The Rights of Spring* (Princeton, 2009).
  14. See, e.g., Thomas M. Franck and Nigel S. Rodley, “The Law, the United Nations, and Bangla Desh,” *Israel Yearbook for Human Rights* 2 (1972): 142–75 and “After Bangladesh: The Law of Humanitarian Intervention by Military Force,” *American Journal of International Law* 67 (1973): 275–305; Richard B. Lillich, ed., *Humanitarian Intervention and the United Nations* (Charlottesville, 1973).
  15. For sociological theses that show the need for much more historical re-

- search, see Daniel Levy and Natan Sznaider, *The Holocaust and Memory in Global Age*, trans. Assenka Oksiloff (Philadelphia, 2005); compare Jeffrey Alexander, *Remembering the Holocaust: A Debate* (New York, 2009).
16. See Samantha Power, “A Problem from Hell”: *America and the Age of Genocide* (New York, 2002), for a vivid presentation that fails to reflect on the very recent conditions for the possibility of its own moral position and energy.
  17. In legal doctrine, as well, the once secure border between old, so-called humanitarian law and new human rights law seriously eroded; see, e.g., Theodor Meron, “The Humanization of Humanitarian Law,” *American Journal of International Law* 94, 2 (April 2000): 239–289 and *The Humanization of International Law* (Dordrecht, 2006).
  18. The phrase is from Kennedy, “The International Human Rights Movement: Part of the Problem?” *Harvard Human Rights Journal* 15 (2002): 101–26, esp. 108–9, rpt. as *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, 2004), chap. 1.
  19. Paige Arthur, “How ‘Transitions’ Reshaped Human Rights,” *Human Rights Quarterly* 31, 2 (May 2009): 321–67.
  20. See Aryeh Neier, *Taking Liberties: Four Decades in the Struggle for Rights* (New York, 2005), xxix–xxxii.
  21. See, e.g., Catharine MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, Mass., 2006).
  22. See, e.g., Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third-World Resistance* (New York, 2003) and Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (New York, 2008).
  23. In a huge literature, see, e.g., Nira Wickramasinghe, “From Human Rights to Good Governance,” in Mortimer Sellers, ed., *The New World Order: Sovereignty, Human Rights, and the Self-Determination of Peoples* (Oxford, 1996); Paul F. Diehl, *The Politics of Global Governance: International Organizations in an Interdependent World* (Boulder, 1997); the journal *Global Governance* began to appear in 1995.
  24. Kéba M’Baye, “Le droit au développement comme un droit de l’homme,” *Revue des droits de l’homme* 5 (1972): 505–34; U.N. Gen. Ass. Res. 41/128 (December 4, 1986); and René-Jean Dupuy, ed., *Le droit au*

- développement au plan international* (Alphen aan den Rijn, 1980); compare Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Bloomington, 2008), chap. 9.
25. In light of the post-9/11 war on terror and integrated with a new notion of “human security,” see Mary Robinson, “Connecting Human Rights, Human Development, and Human Security,” in Richard Ashby Wilson, ed., *Human Rights in the “War on Terror”* (Cambridge, 2005).
  26. The leading legal doctrinalist is clearly Philip Alston, who has pursued the topic since the late 1970s; more recently, philosophers, with Thomas Pogge in the lead, have crafted arguments for “poverty as a human rights violation.” See Alston, “The Right to Development at the International Level,” in Dupuy, ed., *Le droit*, rpt. in Frederick E. Snyder and Surakiart Sathirathai, eds., *Third World Attitudes towards International Law* (Dordrecht, 1987); “Making Space for New Human Rights: The Case of the Right to Development,” *Harvard Human Rights Yearbook* 1 (1988): 1–38; and later Alston and Mary Robinson, eds., *Human Rights and Development: Toward Mutual Reinforcement* (Oxford, 2005); compare Jack Donnelly, “The ‘Right to Development’: How Not to Link Human Rights and Development,” in Claude E. Welch, Jr. and Roland I. Meltzer, eds., *Human Rights and Development in Africa* (Albany, 1984). Thomas Pogge, ed., *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford, 2007).
  27. Willem van Genugten and Camilo Perez-Bustillo, *The Poverty of Rights: Human Rights and the Eradication of Poverty* (London, 2001).
  28. These comments are to be found in Harvard Human Rights Program, *Religion and State: An Interdisciplinary Roundtable Discussion Held in Vouliagmeni, Greece, October 1999* (Cambridge, Mass., 2004), 52.