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Book Review: Not Enough: Human Rights in an Unequal World

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and the theory of transnational legal process does not allow for more fine-grained assessments.

The hard question for Koh is why Trump has been able to bring as much change as he has to international law and institutions in such a short period.²⁸ Trump has announced that the United States will withdraw from at least six international agreements, including a major arms control agreement and Obama's two signature agreements (Paris and Iran). He has refused to conclude, or stopped negotiating over, two important international trade agreements. He has upended the international trade system and publicly trashed the North Atlantic Treaty Organization, the G7, the G20, the United Nations, and most of the United States' traditional allies. He has withdrawn from two important human rights bodies, reversed the United States' historic position on human rights leadership, taken an aggressive initiative against the International Criminal Court, stopped cooperating with human rights rapporteurs, and possibly violated international law with his travel ban.

Perhaps, as Koh hopes, the Resistance will eventually reverse these initiatives. Its success will depend on the identity and attitude of the next administration, the depth and rigidity of the new international relations paths Trump charted during his years in office, and the impact of the actions Trump took (and did not take) on U.S. relationships with nations and international institutions. It will also depend on larger structural trends in international relations that were operating before and independent of Trump, but which Trump might have accelerated. These trends include the rise of China as a global power; the many failures of "liberal internationalism," which have contributed to a global populist and nationalist backlash; and the blowback and exhaustion from American military and financial overstretch during almost two decades of global war.

The future is hard to predict. But any way one looks at it, Trump has brought enormous change

to international law and institutions in just two years even though he is generally incompetent at wielding executive power. His actions to date attest to the fact that we live in an era of unprecedented presidential dominance over international law.²⁹

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Not Enough: Human Rights in an Unequal World. By Samuel Moyn. Cambridge, Massachusetts: Harvard University Press, 2018. Pp. ix, 220. Index.
doi:10.1017/ajil.2019.5

Many will read Samuel Moyn's latest, powerful book, *Not Enough*, as an intended wake-up call. For some of human rights law's critics on the left, the book's interrogation of human rights law's silence in the face of growing social and material inequality will seem a necessary and welcome call to arms. In human rights' failure to respond to the 2008 financial crisis or the trans-Atlantic populist politics that followed, those detractors see an indictment of human rights' collusion with neoliberalism. For defenders of human rights law, the reaction might instead be anger. To them, the strident and condemnatory tone—particularly of the last chapter, in which Moyn, the Henry R. Luce professor of jurisprudence at Yale Law School and professor of history at Yale University, calls human rights law "unambitious in theory and ineffectual in practice" (p. 216)—will seem unwarranted, unfair, and misdirected. Moyn, for his part, tries to tamp down these reactions. No fewer than six times, Moyn writes that human rights did not "abet" neoliberalism (pp. xi, 187, 192, 202), and he specifically writes that he is trying to find a middle path between "corrosive attack[s]" and "complacent apologetics" (p. xi). Nonetheless, "there is no doubt that the transition

²⁸ The points in this paragraph are fleshed out in Jack Goldsmith & Shannon Togawa Mercer, *International Law and Institutions in the Trump Era*, 61 GER. Y.B. INT'L L. (forthcoming 2019).

²⁹ See generally Curtis A. Bradley & Jack L. Goldsmith, *Presidential Control Over International Law*, 131 HARV. L. REV. 1201 (2018).

from an era of liberal ascendancy to one of liberal crisis demands an attempt to rethink where our highest ideals of human rights come from," Moyn writes (p. x).

This reading, and the conflict it invites, is likely to get the book attention, but it is not the best reading, nor is it the one that gives the book its full due. Rather than as a blaring alarm, *Not Enough* is better read as an invitation to dream. Moyn seeks to transport us to an imagined dreamscape in which things could have turned out differently, or in which we inhabit someone else's body and see the world through their eyes. "Before the age of human rights came," Moyn reminds us, "dreams of equality were taken quite seriously, both nationally and globally" (p. 3). By resuscitating these visions and visionaries, Moyn hopes to help us dream again, to imagine paths to social and material justice beyond human rights.

In Moyn's alternative narrative, we see the world through the eyes of a new protagonist—social and material justice. And its story is the story of competing paths. The primary choices pit a focus on sufficiency—a guarantee to everyone of basic material needs—against a focus on material equality, or at least, a commitment to shrink the margin of inequality between rich and poor. A secondary set of choices involves framing. While "rights" are now the dominant frame for conceptualizing social justice (so much so that even Moyn sometimes describes the central concern of the book as "economic and social rights" or "social rights" (p. xi)), social and material justice have been framed in other ways, using "more collectivist languages," "ideologies of class compromise," or "collective need or greatest benefit" (p. 32). As Moyn writes, "[i]f the rights of man were primarily those of free enterprise and sacrosanct property, many thought it best to oppose the whole notion of rights rather than supplement the list" (p. 31).

Moyn starts the journey down these paths and the struggle to achieve social and material justice with the French Revolution and the Jacobins. From there it meanders through the rise of socialism in the nineteenth century, in which poor laws compete with Marxist calls for equality; through the rise of the welfare state before, during, and following World War II; the post-colonial

struggle for global equality represented by the New International Economic Order; and finally, the tripled rise of concerns for global poverty and the guarantee of basic needs, human rights activism, and neoliberal economics. In the end, the story explains how human rights settled on a vision of social and material justice concerned primarily with poverty alleviation and provision of minimum core economic rights or basic needs. Once formulated this way, Moyn argues, human rights lost the ability to challenge the inequities created by neoliberal economics. As Moyn explains, human rights' failure was "not so much abetting the romance of market freedom as failing to cry foul about its likely effects when the time was ripe to do so" (p. 187).

Along the way, we see some familiar characters from human rights history: Thomas Paine, Franklin Roosevelt, John Rawls, Amartya Sen, Aryeh Neier, Peter Benenson, and Philip Alston. But in social and material justice's story, their role is reduced. Others who wrestled with core questions of sufficiency and material equality, T.H. Marshall, Gunnar Myrdal, Julius Nyerere, Charles Beitz, Henry Shue, and Mahbub ul Haq, are elevated to the main cast. Some of their ideas, like Marshall's, Shue's, and Haq's, won the day; others', like Myrdal's, Nyerere's, and Beitz's remain unfulfilled. (The full cast of Moyn's story is vast and too long to list. One of the strengths of the book is how it recreates a full conversation across time, including the range of styles and languages used to wrestle with the same basic questions. The cacophony of voices accentuates the point that there have over time been many ways to imagine social justice.)

The Universal Declaration of Human Rights (UDHR) remains a key pivot in this version of the story, but its role is quite different than in conventional narratives. Usually portrayed as the birth of human rights, in Moyn's story, the UDHR reflects the highpoint of the welfare state and the equality promoting vision of social and material justice. In the *Last Utopia*,¹ Moyn controversially argued that the UDHR was far

¹ SAMUEL MOYN, *LAST UTOPIA: HUMAN RIGHTS IN HISTORY* (2010).

less momentous at its passage than usually imagined. It remained largely forgotten until the flourishing of human rights activism in the 1970s. Here, he suggests why. The UDHR codified the post-World War II conventional wisdom that the world would be governed by welfare states. Its list of economic and social rights, far from being radical claims, represented consensus assumptions (perhaps even watered-down) about states' duties to guarantee their citizens the good things in life. But the world into which the UDHR entered was already changing. At least in the United States, the welfare state had reached its zenith and was already being rolled back. By the time the UDHR reemerged, together with the two Covenants that made it law,² material equality in the West had fallen victim to East-West divisions and its association with Third-World demands for a New International Economic Order. Human rights became the language not only of anti-communism and anti-authoritarianism, but of anti-poverty and minimum provision. As Moyn writes:

With human rights in ethics and neoliberalism in economics arising, with national welfare state in crisis and with initial visions of a more ambitious globalized welfare nipped in the bud, the ideal of equality died. The ideal of sufficiency was left to subsist alone. (P. 118)

The triumph of human rights is thus portrayed by Moyn as a sort of tragedy; human rights may have flowered, but only "amid the ruins of equality" (p. 9). One idea of social justice prevailed, but only at the expense of the other. Having travelled far down the path of sufficiency and rights, the path to material equality and collective compromise could no longer be discerned.

Many traditional human rights advocates are likely to be angered by this retelling—and their anger will be fair. Moyn already had a reputation for smashing human rights idols, and he certainly

does so here. Along with the UDHR, Amartya Sen and Philip Alston have been idolized by many in the field of human rights for their ideas, passion, commitment, and leadership. Moyn reduces both to human size. The widely renowned Sen, whose "capabilities" approach to human rights (co-developed with Martha Nussbaum)³ has inspired many and is often seen as the cutting edge in human rights thinking, is described here as a popularizer of the more limited vision of sufficient provision—and thus partly responsible for human rights' surrender to inequality. Alston, both in his youth and in his current role as UN special rapporteur on extreme poverty and human rights, is portrayed as passionate and well-meaning, but headed in the wrong direction. *Grootboom*,⁴ the famous South African Constitutional Court decision recognizing the right to housing, a totem for modern human rights lawyers, is similarly cut down. In Moyn's telling, *Grootboom* is not a triumph but a tragedy (pp. 199–201). Not only is the Court's mandate never fulfilled, but its vision of justiciable social and economic rights, in the hands of others, becomes a shield to protect the current social and economic hierarchy rather than a sword of revolution and reform (p. 201).

More broadly, human rights' struggles for and successes in achieving some level of status equality for women and minorities are recognized, but given short shrift.⁵ The protection of civil and political liberties, again under assault globally, is barely mentioned. Nor does Moyn's story make much room for democracy. The elections that produced the welfare state and replaced it with neoliberalism go unmentioned. Focused on the work of intellectuals, Moyn's story might even sound anti-democratic. Most of all, Moyn describes human rights as weak and feckless in the face of the world's most glaring social

³ See, e.g., MARTHA NUSSBAUM & AMARTYA SEN, *THE QUALITY OF LIFE* (1993).

⁴ Republic of South Africa v. Grootboom, Case No. CCT 11/00, 2000 (11) BCLR 1169 (CC) (S. Afr.). See also David Caron, Joan Fitzpatrick & Ron C. Slye, Republic of South Africa v. Grootboom, 97 AJIL 669 (2003).

⁵ "[E]veryone was treated more equally than ever before, except materially," Moyn sums up (p. 203).

² International Covenant on Civil and Political Rights, entered into force Mar. 23, 1976, 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights, entered into force Jan. 3, 1976, 993 UNTS 3.

problems. “The tragedy of human rights is that they occupied the global imagination but have so far contributed little of note, merely nipping at heels of the neoliberal giant whose path goes unaltered and unresisted” (p. 216). For all those advocates working to make sure states “respect, protect, and fulfill” all rights, civil and political as well as economic and social, this will be a tough message to countenance.

But *Not Enough* is not human rights law’s testimony; these are events as seen through the eyes of social and material justice. And in social and material justice’s version of events, the story is not a story of success, but one of nostalgia for a world that might have been.

This is the true power of Sam Moyn’s counter-narrative. It has been said that “humans are pattern-seeking animals.”⁶ If that’s true, then lawyers lead the herd. Lawyers are adept at finding the narrative thread running through events that can make sense of and justify the law.⁷ And in propounding the law, lawyers become the storytellers of the political community, preserving the normative narratives that hold it together and on which it is based.⁸ But we are often too good at our job. In finding and refining these stories, we emphasize the threads that reinforce them and discard those that do not. Like good brief writers, we minimize the facts that work against us to tell a compelling narrative. We, not just courts, are the agents of jurisprudence—killing off story lines of the law that do not fit our narratives.

In this case, we have told and retold a story about human rights, running from the horrors of World War II through the UDHR, the Covenants, and the successes of regional human rights courts, among others, in fighting for individual rights. Over time, those stories have been polished to a bright shine. Other potential narratives, told in vernaculars of social justice

rather than rights, have fallen away. A time when socialism rather than rights was the language of social justice is difficult to even imagine.

By resuscitating those alternative narratives, their vernaculars, and their viewpoints, Moyn has given us the room again to imagine. And the time is an auspicious one for new ideas about social justice. The human rights regime,⁹ international economic law,¹⁰ and the whole post-war liberal order are currently in flux.¹¹ Illiberal democracies are on the rise and freedom, globally, seems under attack.¹² With the World Trade Organization under attack, trade wars have been started, as states seek “better” deals than the one offered by the current system.¹³ Complaints about international investment law have reached a crescendo, as a range of states have sought to renegotiate and reform the system.¹⁴ The list could continue across fields of international law.

Whether or not growing economic inequality, at least in the West, is a cause of this turmoil is an open question. There is no doubt though that the flux in those regimes, along with the continuing after effects of the 2008 financial crisis, has brought the reality of economic equality back into the public imagination and the political conversation.¹⁵ The work of economists focused on

⁹ See, e.g., Ingrid Wuerth, *International Law in the Post-Human Rights Era*, 96 TEX. L. REV. 279 (2017).

¹⁰ See, e.g., Kathleen Claussen & David Singh Grewal, *Introduction to the Yale Symposium on Trade Law Under the Trump Administration*, 44 YALE J. INT’L ONLINE 1, 1 (2018); Anthea Roberts, *Incremental, Systemic, and Paradigmatic Reform of Investor-State Arbitration*, 112 AJIL 410, 410 (2018).

¹¹ See, e.g., Harlan Grant Cohen, *Multilateralism’s Life Cycle*, 112 AJIL 47, 47 (2018).

¹² See Wuerth, *supra* note 9.

¹³ See Cohen, *supra* note 11, at 47, 58–59, 62.

¹⁴ See, e.g., Sergio Puig & Gregory Shaffer, *Imperfect Alternatives: Institutional Choice and the Reform of Investment Law*, 112 AJIL 361 (2018); Roberts, *supra* note 9.

¹⁵ As Moyn, suggests (p. 210), Thomas Piketty’s book *CAPITAL IN THE TWENTY-FIRST CENTURY* (2013), with its tough lessons about the rates of return on capital versus labor and the return of historic inequality between the two, has played a particular role alongside populist politics in putting socio-economic justice on the mainstream intellectual-cultural-political agenda.

⁶ MICHAEL SHERMER, *HOW WE BELIEVE: THE SEARCH FOR GOD IN AN AGE OF SCIENCE* 61 (2000); Stephen Jay Gould, *The Panda’s Thumb of Technology*, 96 NAT. HIST. 14–23 (1987).

⁷ See, e.g., Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

⁸ See *id.* at 4.

the distributional effects of the current order, like Dani Rodrik¹⁶ and Branco Milanović,¹⁷ and historians of the modern economy, like Moyn, Quinn Slobodian,¹⁸ and Adam Tooze,¹⁹ have joined more popular chroniclers of current inequality, like J.D. Vance,²⁰ Alyssa Quart,²¹ and Edward Luce,²² in the pages of popular reviews and even some bestseller lists. And the calls to remedy the growing divide between rich and poor, capital and labor, the elite and the left-behind from within domestic policy,²³ human rights,²⁴ and international economic law²⁵ have been growing louder and more widespread. Figuring out how to reform these fields and their relationship to one another “is daunting in the extreme” (p. 220). “To date, a global welfare structure has only been imagined but never institutionalized” (*id.*). Reform will require breaking out of the intellectual and professional boxes or silos that we have so carefully built.²⁶ *Not Enough* helps us though start a new/old conversation about how we might think differently about social and material justice across those fields.

¹⁶ DANI RODRIK, *STRAIGHT TALK ON TRADE: IDEAS FOR A SANE WORLD ECONOMY* (2017).

¹⁷ BRANKO MILANOVIĆ, *GLOBAL INEQUALITY: A NEW APPROACH FOR THE AGE OF GLOBALIZATION* (2016).

¹⁸ QUINN SLOBODIAN, *GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM* (2018).

¹⁹ ADAM TOOZE, *CRASHED: HOW A DECADE OF FINANCIAL CRISES CHANGED THE WORLD* (2018).

²⁰ J.D. VANCE, *HILLBILLY ELEGY: A MEMOIR OF A FAMILY AND CULTURE IN CRISIS* (2016).

²¹ ALISSA QUART, *SQUEEZED: WHY OUR FAMILIES CAN'T AFFORD AMERICA* (2017).

²² EDWARD LUCE, *THE RETREAT OF WESTERN LIBERALISM* (2017).

²³ MEHRSA BARADARAN, *HOW THE OTHER HALF BANKS: EXCLUSION, EXPLOITATION, AND THE THREAT TO DEMOCRACY* (2015).

²⁴ See, e.g., Report of the Special Rapporteur on Extreme Poverty and Human Rights, UN Doc. A/HRC/29/31 (May 27, 2015).

²⁵ See, e.g., Harlan Grant Cohen, *What Is International Trade Law for?*, 113 AJIL 326 (2019); Gregory Shaffer, *Retooling Trade Agreements for Social Inclusion*, 2019 ILL. L. REV. 1 (forthcoming 2019); Frank J. Garcia & Timothy Meyer, *Restoring Trade's Social Contract*, 116 MICH. L. REV. ONLINE 78 (2018).

²⁶ See Cohen, *supra* note 25, at 336–340.

As edges of the current legal order has frayed, many have looked to history to try to make sense of what is happening. Oona Hathaway and Shapiro's book *The Internationalists*²⁷ looks to the birth of our current order and provides a historical pep talk. In their riveting, compelling story, law and lawyers matter; lawyers (the internationalists in question) succeeded in banning war. New problems have emerged, but lawyers can help solve them as well. Its history verges on hagiography. Adam Tooze's brilliant and nuanced *Crashed*,²⁸ covering the global history of the 2008 financial crisis and its aftermath, tells a story of well-meaning policymakers hemmed in by preconceptions, ideologies, and politics, doomed to fight immediate crises only to lose the longer-term economic war. It is history as tragedy. Moyn's book at times sounds like a tragedy too. He uses “grave” language to describe the death of ideas of equality and the rise of neoliberalism; some passages have an elegiac quality. But the book is better read as an attempt at redemption. It is history as imagination or potentiality. And the need for such imagination in a time of disaffection and anxiety will be the fuel of its ultimate popularity. As Moyn reminds us, “[m]any of our ancestors would have demanded more” (p. 213). Perhaps, we should too.

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The Crime of Aggression: A Commentary, Volumes 1 and 2. By Claus Kress and Stefan Barriga (eds.). Cambridge, United Kingdom: Cambridge University Press, 2016. Pp. xli, 1583. Index.
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The trial of twenty-two Nazi leaders by the International Military Tribunal at Nuremberg is often viewed, in popular imagination as well

²⁷ OONA HATHAWAY & SCOTT SHAPIRO, *THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR REMADE THE WORLD* (2017).

²⁸ TOOZE, *supra* note 19.