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The Long History of Human Rights: Review of Samuel Moyn, *Christian Human Rights*

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Abstract

This Essay assesses Samuel Moyn's revisionist argument that human rights were born only in the mid-twentieth century and then mostly as a shrewd Christian response to the secular liberalism and communist materialism that endangered the Church's political interests and influence. This account largely ignores the West's enduring and evolving tradition of rights, which have been an integral part of its commitment to the rule of law and constitutional order. Jurists since classical Roman and medieval times used rights language to define the law's protection, support, limitations, and entitlements of various persons and groups in society, and to map the proper interactions between political and other authorities and their respective subjects. Early modern Catholics, Protestants, and Enlightenment liberals built on this tradition, setting out most of the rights that the twentieth century declared to be universal rights of humankind. Moyn exaggerates the conservative Catholic influences on the mid-twentieth-century international human rights movement, and fails to credit the wide range of religious and philosophical views that were equally influential. And he exaggerates the secular character of contemporary human rights discussions, and fails to recognize the essential role of religion and belief in making rights real.

Keywords: Samuel Moyn, human rights, Christianity, Catholicism, Protestantism, Calvinism, Enlightenment, Universal Declaration of Human Rights, secularism, rights skepticism, religious freedom, Edict of Milan, Magna Carta, canon law, Act of Abjuration, *ius, libertas*, Holocaust

Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015), ix + 248 pages, \$24.95

An anguished picture of Jesus adorns the cover of Samuel Moyn's latest book. Entitled *Christ aux outrages* by French Catholic expressionist Georges Rouault, this somewhat abstract painting shows a deformed Jesus with a crown of thorns on his head

and streaks of blood dripping down. Large, pained, dark liquid eyes stare out into the distance. A vaguely formed mouth is set in a hard grimace. The flesh tones of his head, neck, and shoulders are slashed through with blotches of blue and green, as if bruises. Immense suffering and sadness exudes from this *Christ aux outrages* – this Christ figure subject to the mocking, beatings, and other outrages he suffered on the way to the cross. Yet, on the book jacket, Rouault’s deep, complex, layered, and subtle depiction of Christ bears the flat plain English title, *Head of Christ*.

This prosaic translation may well be the hasty work of a museum curator or cover designer. But it’s an apt metaphor for how the deep, complex, layered, and subtle history of Christianity and human rights over two millennia is flattened out in the revisionist history of human rights by distinguished Harvard historian Samuel Moyn. Professor Moyn has had a sensational run of publications over the past decade, which have attracted very wide attention. His 2005 titles on Levinas and the Treblinka affair got respectful nods. But it was his bold 2010 Harvard University Press title, *The Last Utopia: Human Rights in History*, and a score of follow-up articles and anthologies that have put him front and center on the academic stage. His new companion monograph *Christian Human Rights* will keep him there a while longer.

In *The Last Utopia*, Moyn argued provocatively that human rights emerged only in the 1970s and then as a new form of moral idealism and utopianism, virtually without precedent. Here for the first time the world embraced “a set of global political norms providing the creed of a transnational social movement.” Suddenly, everyone from politicians and popes to philosophers and reporters were talking about human rights as the new moral language, the new medium of diplomacy, the new hope for humankind. But this new human rights movement, though revolutionary, has proved to be “utopian,” “vague,” “empty,” “impotent,” “indeterminate,” “illusory,” and “abstract” -- lacking integrity, utility, or real practical significance. “I am so underwhelmed by what human rights has done for the world so far,” Moyn wrote later, “that I ask whether it is time to consider other things (new utopias, precisely) in theory and practice.”

Criticism of rights talk is nothing new, of course. Rights are “rhetorical nonsense, nonsense upon stilts,” Jeremy Bentham harrumphed in ca. 1795. A right is a “mere hypostasis of a prophecy,” Oliver Wendell Holmes, Jr. proclaimed in 1918. Rights are pure “fictions,” akin to “belief in witches and in unicorns,” Alasdair McIntyre grumbled in 1984. And rights critics still abound today, including Christian heavyweights like Stanley Hauweras, John Milbank, and Oliver O’Donovan.

But Moyn’s *Utopia* went further than this. He argued that there was, in fact, no such thing as human rights before the 1970s. At best, the prior two millennia of purported rights gave us only “fragmentary” doctrines and “state-centric” discussions that are almost “entirely distracting” for modern human rights discussions. What of the “visions” of “human universalism” in Plato, Aristotle, or the Stoics, let alone Jesus and St. Paul? “[A]lien conceptions,” “abstract,” “otherworldly,” and “of no real significance to a history of human rights,” Moyn concludes. What of the complex and evolving legal

concepts of *ius*, *libertas*, *facultas*, and related rights terms in classic Roman law that were slowly expanded by later Christian emperors, eventually becoming the “ryhtes,” “rihtes,” and “rihta(e) of later Anglo-Saxon law and the early common law? Not mentioned. What of the rich latticework of public, private, penal, and procedural rights developed in the medieval and early modern canon law, civil law, and common law? All the Middle Ages really gave us were aristocratic “rights to possession,” Moyn writes, and the few criminal procedural rights that later emerged in England were “simple legal rights” “totally independent in origins or meaning from later natural or universal rights.” What of the Protestant Reformation, and the rich biblical and natural rights theories and movements, particularly those led by Calvinist revolutionaries in France, the Netherlands, England, Scotland, and later America? Hardly mentioned. What of the contemporaneous Spanish neo-scholastics and their sweeping natural law and natural rights systems that extended even to indigenous peoples? Hardly mentioned. What of the Enlightenment arguments for the natural rights of “man and citizen” championed by revolutionaries in America and France and set out in detail in early federal and state constitutions? “Strikingly distinct from contemporary human rights.” What of the centuries-long movements in Europe and North America for the abolition of slavery, for the protection of soldiers and civilians in war, for the rights of women, children, workers, immigrants, religious and racial minorities, and others? “Not really about rights.” And what of the Universal Declaration of Human Rights forged in the aftermath of World War II and the Holocaust? “A funeral wreath laid on the grave of war time hopes,” which had little to do with the Holocaust, and had little effect on the political powers or legal professions of the day. Real human rights did not start until the 1970s, Moyn insists, but then they soon did not prove to be real either.

The many historians who insist on a longer and more layered history of human rights development have been engaged in fiction-writing and myth-mongering, Moyn further argues. Since the rise of human rights in the 1970s, “almost all historians” have “adopted a celebratory attitude toward the emergence and progress of human rights” with each special interest group falsely claiming ancient paternity and a long uninterrupted lineage of rights talk, while conveniently ignoring all the ways their predecessors betrayed rights. This is rather like the clever myth-making that goes on among Christian church historians:

Historians of human rights approach their subject, in spite of its novelty, the way church historians approached theirs. They regarded the basic cause—much as the church historian treated the Christian religion—as a saving truth, discovered rather than made in history. If a historical phenomenon can be made to seem like an anticipation of human rights, it is interpreted as leading to them in much the same way church history famously treated Judaism for so long, as a proto-Christian movement simply confused about its true destiny. Meanwhile, the heroes who are viewed as advancing rights in the world – much like the church historian’s apostles and

saints – are generally treated with uncritical wonderment. Hagiography, for the sake of moral imitation of those who chase the flame, becomes the main genre. And the organizations that finally appear to institutionalize human rights are treated like the early church: a fledgling but hopefully universal, community of believers struggling for good in a vale of tears. If the cause fails, it is because of evil; if it succeeds, it is not by accident but because the cause is just. These approaches provide the myths that the movement wants or needs.

Instead of giving us more such false “church history” about human rights – or “celebrat[ing] a black mass” about the death of rights – *The Last Utopia* promised readers a “more honest” and “true history of human rights.” While the book got rave reviews among some rights critics, major human rights scholars like David Little from Harvard and Gary Bass from Princeton tore the book to shreds.

Christian Human Rights -- published five years after *The Last Utopia*, though largely drawn from four large articles written in the interim – is a bit more conciliatory. “No one interested in where human rights came from can afford to ignore Christianity,” Moyn now writes. “The millennial history of Christianity is indeed a precious resource for anyone who speculates about the prospects of moral advocacy of any kind,” including that of human rights. “No one could plausibly claim – and no one ever has – that the history of human rights is one of wholly discontinuous novelty, whether in the 1940s or after.” “Novelty always comes about not ex nihilo but from a fragmentary past that is coaxed into a more robust form.” “Without Christianity, our commitment to the moral equality of human beings is unlikely to have come about.” This new text also gives us a bit more about rights formulations in the Middle Ages, Protestant Reformation, and revolutionary England. Vatican II gets slightly more attention. Moyn allows that there might be a bit more continuity between older concepts like *iura humana*, *droits de l’homme*, or *Menschenrechte* and modern “human rights.”

These olive branches aside, *Christian Human Rights* sticks to the argument of *The Last Utopia*, but now with an ironic new twist. Now Professor Moyn zeroes in on the first modern formulations of human rights in the 1930s and 1940, culminating in the 1948 Universal Declaration of Human Rights and its immediate progeny. He still insists that this international human rights movement had little to do with the Holocaust. And he still insists that the new human rights instruments had little influence on power politics or international relations until the “breakthrough” of the 1970s. The new twist is Moyn’s argument that the mid-20th century international human rights movement was not so much a liberal secular rebuke of a Christian faith that had failed so miserably to check the outrages of Hitler, Stalin, and Mussolini. It was a shrewd Christian response to the secular liberalism and communist materialism that endangered the Church’s political interests and influence. The early international human rights movement was primarily a conservative Christian movement, Moyn argues, driven by the aggressive

and theologically infused personalist philosophies of human dignity of Pope Pius XII, Jacques Maritain, Charles Malik, and other (mostly Catholic) Christians of the day. In Western history, Moyn writes, the mid-twentieth century was “the crucial period for a strong ideological link of Christianity and human rights.” Before 1930, there were no real human rights. After the 1970s, there was no real Christian influence on rights. The middle third of the twentieth century was the time of great mutual synergy of Christianity and human rights.

This is another counterintuitive thesis. Human rights historians have long treated the modern international human rights movement as a pan- or post-religious response to the bloody barbarism of World Wars I and II and the need for a global prophylactic against such outrages – a “global Peace of Westphalia,” Louis Henkin once called it. Constitutional historians have shown how the international human rights documents drew from existing constitutional bills of rights, and in turn helped to shape the new constitutional reforms after World War II. American historians have further shown how America’s elaborate enumeration of rights were essential raw materials for Eleanor Roosevelt and others who helped craft the international human rights instruments. Jewish historians have shown how Jewish leaders – armed with a “Never Again!” ethic born of the Holocaust – shaped several international documents. Political historians have documented how the reforms of the Second Vatican Council helped fuel what Samuel Huntington called “the third wave of democratization” around the world -- from the 1970s onward, precisely at the time when Christian influence was supposed to be waning. Moyn’s newest thesis runs contrary to all this. While *The Last Utopia* accused historians of doing too much false “church history” about earlier rights, *Christian Human Rights* indicts them for doing too little real “church history” about mid-20th century rights.

First, after reading both books carefully, it’s still not clear to me how Moyn defines human rights, or why he says that they start only in the mid- or late-20th century. Nor is it clear why those 20th century events and movements are ultimately more important or inspiring today for human rights than the revolutionary eras in America and France from 1776-1791, in England or colonial New England from 1640 to 1689, in various Protestant lands in the sixteenth century, or even in the High Middle Ages or later Roman Empire. In each of these earlier eras, monumentally important rights documents were enacted, theorized, and enforced by political officials -- sometimes by church officials too, as well as by feudal, manorial, guild, and other authorities. Why dismiss them as “alien,” “abstract,” “different,” “simple” or “not really” rights when they were as concrete as any modern human rights statement, and were legislatively enacted and judicially enforced for large portions of the population?

The “Edict of Milan” of 313, for example, for the first time guaranteed to all Roman subjects the “freedom (*libertas*) to follow whatever religion each one wished,” “a public and free liberty to exercise their religion or cult,” and a “free permission to follow their own religion and worship.” It also guaranteed bitterly persecuted Christian groups the “right” (*ius*) to property and places of worship, “which belonged by right to their

body—that is, to the churches not to individuals,” and the “right to restitution” of properties confiscated in earlier times of persecution.

The Fourth Lateran Council of 1215 and several related medieval canon laws set out the “rights of liberty” (*iura libertatis*) of clergy and laity in Western Christendom. These included the rights of the clergy to use church property without taxation, seizure, or encumbrance from secular authorities and the rights of parishes, monasteries, charities, and guilds to form and dissolve, to accept and reject members, and to establish order and discipline. They defined the rights of the laity to worship, evangelize, maintain religious symbols, participate in the sacraments, and travel on religious pilgrimages. They defined the rights of the poor, widows, and the needy to seek solace, succor, and sanctuary within the church. They defined the rights of husbands and wives, parents and children, orphans and bastards, masters and servants, teachers and students, workers and migrants, and more. All these rights and more were real rights that both church and state officials helped to enforce.

That same year of 1215, the Magna Carta of England guaranteed famously that “No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land” – the right of “due process” as fourteenth century English courts called this guarantee. In the Petition of Right 1628, Parliament generalized this into a guarantee of no harm or taking of “any man’s life, liberty,” or “property” “but by due process of law.” The same Parliament added rights of no taxation without “common consent”; no forced quartering of soldiers or mariners in private homes; no suspension of the writ of habeas corpus; and no criminal prosecution or punishment without a clear statute; among others. The 1689 Bill of Rights added further provisions.

In the 1581 Act of Abjuration, the Netherlands declared its independence from Spain “in accordance with the law of nature and in order to preserve and defend ourselves and our fellow-countrymen, our rights, the privileges and ancient customs and the freedoms of our fatherland,” which they then enumerated at length in national and provincial constitutions. In 1641, Cambridge jurist and Calvinist minister Nathaniel Ward set out a 25-page Body of Liberties for the new colony in Massachusetts Bay that enumerated almost every right that would appear in American state and federal bills of rights 150 years later, alongside sundry other private, procedural, and penal rights.

These historical examples can be multiplied. What they make clear is that the West has had an enduring and evolving tradition of rights which has been an integral part of its commitment to the rule of law and constitutional order. Jurists since classical Roman and medieval times used rights language to define the law’s protection, support, limitations, and entitlements of various persons and groups in society, and to map the proper interactions between political and other authorities and their respective subjects. Human rights ideas and terms were a tried and proven way of talking about the claims one legal subject could legitimately make against another, the charges that an authority

could legitimately impose upon its subjects, and the procedures that were to be followed in these legal interactions. They are an integral and vital part of the Western legal tradition.

This is not to deny that the twentieth century made its own distinct contributions to rights. With the Universal Declaration and other international documents before and after, the sundry particular rights of the past were now collected and lifted up as rights that every “State Party” within and beyond the West was called to enforce at the risk of international shame if not censure. Two millennia of prior rights theories – variously based on reason, conscience, nature, and custom, or on the Golden Rule, the Decalogue, the love commands, or sundry image of God and imitation of Christ anthropologies – were all now distilled into a more generic theory of human dignity. The international instruments added some specificity to rights concerning religion, race, laborers, migrants, refugees, prisoners of war, indigenous peoples, women, and children, and new protections against genocide and torture. But the vast majority of international “human rights” of today are the natural, constitutional, conciliar, customary, and treaty rights of earlier days writ larger. And those international rights still depend upon “State Parties” to make these rights real in each local community, and still depend upon alliances of “states” to have these rights vindicated when breached by a neighboring state.

Every serious new historian of human rights over the past century and more has tended to focus on a favorite period or person. Leo Strauss picked Hobbes and Locke as the founders of modern subjective rights talk, Perry Miller the New England Puritans, Lord Acton the English revolutionaries, Bernard Bailyn the American revolutionaries. Otto von Gierke picked German jurist Johannes Althusius as the rights founder; for Josef Bohatec it was John Calvin; for R.R. Palmer it was the later Calvinist monarchomachs. Michel Villey and Richard Tuck saw deep sources of human rights in late medieval philosophy, Brian Tierney in high medieval canon law, F.W. Maitland in the Magna Carta. Max Kaser, Charles Donahue, and Tony Honoré saw sources of subjective rights in Roman law, while Nicholas Wolterstorff and Pope Benedict XVI pointed to key biblical and patristic texts as foundational. In each of these periods, we see the same kind of “strong ideological link of Christianity and human rights” that Moyn sees in the mid-20th century. In each of these periods, we see new and newly reformed contributions to an enduring and evolving human rights tradition in the West. (The recent work of David Novak, Abdullahi An-Na’im, William Theodore de Bary, Werner Menksi, and others indicates that there are comparable deep rights traditions in various Jewish, Islamic, and Asian communities, too.) None of these historians has been engaged in the kind of “church history” that Moyn criticizes. They understand that rights were often born out of hard and cruel experience, and too often honored in the breach, just like they are today. They understand that rights were and still are sometimes denied to whole sections of the population. All legal traditions, including the human rights tradition of today and yesterday, experience lofty ideals and glaring blind spots, changes and growth, retreats and revivals.

Second, it's not clear to me that the 20th century international human rights movement was principally a "conservative Christian project," let alone a principally Catholic project. I'm all for lifting up the religious sources and dimensions of human rights, but Moyn overstates his case. Of course, two Catholics, Maritain and Malik, were part of the United Nations Commission on Human Rights, chaired by Eleanor Roosevelt. But other main drafters of the Universal Declaration included René Cassin (a Jewish jurist from France and later Nobel Peace Prize winner) and Peng-chun Chang (a distinguished Confucian scholar from China). Much of the first draft was penned -- not by Malik as Moyn says -- but by John Peters Humphrey (a largely unchurched Canadian jurist, albeit with Methodist upbringing). And the Commission itself had representation from countries with majoritarian Atheist, Buddhist, Christian, Confucian, Hindu, and Muslim populations, including India, China, the Philippines, the U.S.S.R., Iran, Egypt, Lebanon, Austria, France, the United States, Panama, and Chile. The Commission furthermore drew on bills of rights from around the world, and from the expert opinions of sundry scholars, advocates, and NGOs of all manner of professions and confessions. Much the same can be said for the drafting and ratification of the great 1966 Covenants on civil and political rights, and on economic, social, and cultural rights. Christianity certainly had an important influence on these monumental international documents, but by no means was this influence a monopoly.

Third, it's not clear to me that the Christian views that did help to shape international human rights discussions in the last century were the high-octave and high-octane personalist philosophies of scholars like Maritain, Pius XII, and other luminaries Professor Moyn brings to light. Personalism did have influence, but Christianity, at the time, had so much more on offer when it came to rights. Think of the broader social, political, and legal teachings movements of the Catholic Church inaugurated by Pope Leo XIII of which personalism was only a small and sometimes controversial part. Think of the momentous canon law reforms of the Catholic Church in 1917 and again in 1983 that sparked intense new scholarly interest in this millennium-old treasure trove of rules and rights. Think of the many streams of rights talk and rights reform -- from John Courtney Murray to John XXIII -- that led to the Second Vatican Council and the powerful rights and democratic advocacy by the church thereafter. Think of the massive rights activism of Catholics and Protestants in the developed and developing world seeking to protect women, children, workers, migrants, and refugees, and to furnish basic rights to food, water, shelter, education, health care, and vocational opportunities. Think of the Protestant social gospel movements inaugurated by Walter Rauschenbusch, the political realism of the Niebuhrs, or the rich justice theories of Dietrich Bonhoeffer or Emil Brunner -- all of which offset Karl Barth's famous "Nein!" to natural law and natural rights and the opposition to human rights in some Protestant quarters. The Christian contribution to human rights discussions in the last century was intensely diverse in method, perspective, and denominational participation.

Finally, it's not clear to me how Professor Moyn relates this mid-20th century story about Christianity and human rights to what he calls the "breakthrough" of human rights into a global movement in the 1970s. The upshot of his story is that after the 1970s,

Christian influences on human rights waned. Lingering Christian favoritism can still be seen, he suggests, in the recent case law of European Court of Human Rights, with Communists and Muslims losing many more cases than Christians. But Christianity has now lost its grip on much of Western culture, even in its traditional stronghold in the United States. At the same time, the modern human rights movement is losing its luster in many parts of the world, as it fails to deliver on its utopian promises or fails to break through into local cultures, especially outside of the West.

In my view, these twin developments are related. Human rights norms ultimately need Christian or comparably sturdy religious or philosophical narratives to ground them, and to adapt and apply them to the culture of each local community. There is, of course, some value in simply declaring human rights norms of “liberty, equality, and fraternity” or “life, liberty, and property”—if for no other reason than to pose an ideal against which a person or community might measure itself, to preserve a normative totem for later generations to make real. But, ultimately, these abstract human rights ideals of the good life and the good society depend on the visions and values of human communities and institutions to give them content and coherence—to provide what Jacques Maritain called “the scale of values governing [their] exercise and concrete manifestation.” It is here that Christianity and other religions must play a vital role. Religion is an ineradicable condition of human lives and human communities. Religions invariably provide many of the sources and “scales of values” by which many persons and communities govern themselves. Religions inevitably help to define the meanings and measures of shame and regret, restraint and respect, responsibility and restitution that a human rights regime presupposes. Religions must thus be seen as indispensable allies in the modern struggle for human rights, along with many other philosophical, moral, cultural resources. To exclude them from the struggle is impossible, indeed catastrophic. To include them, by enlisting their unique resources and protecting their unique rights, is vital to enhancing the regime of human rights.

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