
BOOK REVIEWS

Human Rights and the Challenge of Foundations

Abdulaziz Sachedina, *Islam and the Challenge of Human Rights* (Oxford University Press 2009) 248 pages, ISBN No. 978 0 1953 8842 8; Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press 2008), 324 pages, ISBN No. 978 0 6740 2776 3; *Reason, Freedom, and Democracy in Islam: Essential Writings of Abdolkarim Soroush* (Mahmoud Sadri & Ahmad Sadri eds. & trans., Oxford University Press 2002), 256 pages, ISBN No. 0195158202; Grace Y. Kao, *Grounding Human Rights in a Pluralist World* (Georgetown University Press 2011), 239 pages, ISBN No. 978 1 5890 1733 7; Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press 2010), 337 pages, ISBN No. 978 0 6740 4872 0; Jean H. Quataert, *Advocating Dignity: Human Rights Mobilizations in Global Politics* (University of Pennsylvania Press 2009), 355 pages, ISBN No. 978 0 8122 4163 1; Kate Nash, *The Cultural Politics of Human Rights: Comparing the US and UK* (Cambridge University Press 2009), 224 pages, ISBN No. 0521853524.

Are commonly given foundations for human rights convincing (or even needed)? And can the religiously minded accept such foundations if they do not flow out of a religion (presumably *their* religion)? These questions are a recurring undercurrent in critical thought on human rights that finds vague underpinnings such as "the conscience of mankind" unsatisfying, and finds equally unsatisfying utilitarian notions of human rights as the simple expression of the legal consent of states without need for further elaboration. The demand that human rights require a more explicit foundation may be misleading in a troubling manner. Is the spread of human rights really dependent on a specific foundation, religious or otherwise? It may well be, instead, that such a focus moves attention away from the pluralistic impulses and immediate claims that are actually behind human rights global spread, as a review of literature from a variety of disciplines dealing with human rights can help us understand.

An apt starting point in this regard is Abdulaziz Sachedina's *Islam and the Challenge of Human Rights*, which poses the questions noted above quite directly. As human rights have become more central to political discourse around the globe, work on human rights foundations has been a focus of literature in an expanding range of academic disciplines. It follows that, as disciplines such as religious studies (Sachedina's home), law, history, sociology, and international relations increasingly focus on human rights, each brings their own particular framings to these questions. Human rights and human rights-informed events

are clearly ripe for being explored from multiple disciplinary perspectives. It is less clear, however, if these disciplines are sufficiently exploring each other: we may have explorations of human rights from the perspectives of multiple disciplines, but is there a need for more explicitly interdisciplinary work? Questions of human rights foundations and the role of religion, in particular, would seem to lend themselves to interdisciplinary possibilities. This is, however, the first notable lack in *Islam and the Challenge of Human Rights*. Its disciplinary focus on religion as a possible foundation for human rights leads to a disconnect from exciting academic work being done on human rights in other fields. This work could give greater dimension to discussions of what allows human rights to make impacts.

Sachedina argues that common justifications for human rights are, simply put, not persuasive: human rights need to be placed on a firmer foundation if they are to continue spreading. Sachedina goes further to claim that this is because human rights have moved away from the sort of religious justifications that gave them what he says were their original impulse. Sachedina's solution, therefore, is that there must be a return to these sorts of foundations, particularly if human rights are to gain legitimacy in parts of the world where they are most contested. Most specifically, therefore, his book attempts to articulate how it is that Islam can serve as precisely the sort of religious foundation he maintains human rights needs.

In other words, Sachedina's book is seemingly mistitled. *Islam and the Challenge of Human Rights* has less to do with the challenge of human rights to Islam and more to do with the challenge of Islam (and religion, more generally) to human rights. According to Sachedina,

the challenge for human rights is to find how it can thrive in deeply religious parts of the world in which religions such as Islam have a more profoundly felt moral resonance than human rights. Sachedina's historically problematic assumption that human rights originally flowed out of religious impulses leads to his response to that challenge: for human rights to gain legitimacy they need to regain their religious groundings. Specifically, in regard to Islam, Sachedina argues that, properly understood, Islam corresponds to human rights and provides precisely the sort of religious justification that human rights needs. Islam can, thus, be converted from a challenge to human rights to being the foundation human rights currently lacks.

Who could argue against such a potential holy grail? Many are looking for just such incontrovertible moral foundations for human rights—how lovely would it be to find them, conveniently, in religions that have billions of followers around the world! This is particularly the case regarding Islamic justifications for human rights. It is no coincidence both that the Muslim world is often perceived (wrongly) as inherently resistant to human rights and that there have been a disproportionate share of studies that seek to find an Islamic foundation for human rights. Among the most prominent of these is Sachedina's eruditely argued claim to be able to ground human rights in rational, seemingly Mutazilite-influenced theology (Mutazalites being a rationalist school of thought in Islamic theology that rose during the Umayyad period and eventually both peaked and declined during the Abassid Empire). This leads to Sachedina's theologically compelling argument that traditional Islamic scholars have, for the most part, ignored aspects of the Qur'an that recognize the human dignity and moral consciousness of all human beings. From this, Sachedi-



na's claim is that Islam could and should be constructed as justifying rather than challenging human rights.

This may be compelling, but it is not necessarily as convincing as we might hope regarding reasons for human rights impacts and potential future impacts. Is this approach relevant to the real issues that underlie human rights resonance (or lack thereof) in the Muslim world and elsewhere? A persuasive academic case regarding theological possibilities for human rights in Islam is one thing. Sachedina accomplishes this in expert fashion. It is another thing, however, to claim that such a construct speaks to the realities of intersections between the Muslim world and human rights. It is unclear that theological arguments for a reconstructed Islam that corresponds with human rights would make human rights more resonant than they are currently, both globally and in the Muslim world. In other words, it is unclear that this search for a theological foundation for human rights is what is even needed if human rights are to justify (and, more importantly, expand on) their current resonance. It may be, instead, that such a search for a pre-existing foundation misses the reasons that human rights language *already* increasingly constitutes many claims for justice around the globe. Indeed, more than irrelevant, it may be that the assumptions that animate this approach are a damaging diversion from conceptualizing the Muslim world and human rights in a way that allows us to understand the issues that both impede and advance their intersections.

To put it bluntly, in the context of recent Muslim world politics, Sachedina's approach does not help us understand either the specific ways that human rights informed events such as Iran's Green Movement or the Arab uprisings or the specific ways in which human rights ele-

ments in such revolts have been stymied. The variables behind on the one hand, pushes for more democracy and rights and, on the other hand, their marginalization have little to do with theology. Focusing on theological justifications for human rights hinders more complex conceptualizations of the Muslim world and of human rights that could allow us to better understand these contradictory currents.

What is needed is not, in short, an idea that reinforces the notion of "authentic tradition" as the only legitimate justification for human rights. That will always be a dead-end. As I have argued elsewhere, this reifies the need for literalist religious justifications for human rights. Worse, it makes arguments for human rights on a non-religious basis subordinate or even extraneous. This sidelines the pluralistic impulses that have informed the ways in which human rights have given ballast to political, economic, social, and cultural struggles around the world. Instead, somewhat absurdly, it makes arguments over justifying human rights a matter of dispute over religious doctrine, as if that is really the issue for those who have struggled to stop torture by the United States, apartheid in South Africa, or dispossession of Palestinians.

The irony is that not only does this approach miss the impulses that keep human rights alive globally, but also that even on its own terms it is unlikely to have any success. Reformers such as Sachedina enter into a theological dispute that will inevitably take place on an elite juristic field on which liberal reformers (many of whom, like Sachedina, are based in US or European academic institutions) have little claim to institutional authority and on which human rights have scant normative power. These reformist readings are, in a word, marginal. More dangerously, specifically



in regard to the Muslim world, they risk reifying the Orientalist notion that Islam monopolizes the Muslim world's public sphere. In doing so, they contribute to squeezing out space for the normative diversity that, in fact, has characterized the Muslim world's actual history, and that has been key to the ways in which human rights have sometimes emerged out of the shadows. Thus, not only is this approach unlikely to produce positive results on a theoretical plane, it is actually likely to be strategically self-defeating in that it asserts the secondary place of arguments by those who lack religious authority (who are, frankly, the vast majority of those arguing for human rights).

Understanding what the degrees are of human rights resonance and the ways that resonance is either blocked or can be advanced are, in fact, key questions for academics and advocates. But answering those questions requires a more holistic conceptualization of human rights impacts than that offered by Sachedina. A starting point is a theoretical premise that political change flows out of pluralistic normative environments. To the degree that human rights are part of normative interchanges and speak to on-the-ground political, economic, social, and cultural struggles, then they have the chance to make an impact. This has been as true in the Muslim world as it is elsewhere, as we have seen most recently with Iran's Green Movement and the Arab uprisings. Some elements at the forefront of these movements have claimed that human rights are at least part of their demands: this speaks to ways in which human rights have increasingly informed struggles against various forms of political repression, economic privilege, and social and cultural patriarchy around the globe. This

suggests we need to focus more on the lived realities that lead peoples to connect their specific struggles to the anchor of human rights. Theological abstractions are not what lead to invocations of human rights; rather human rights are invoked when they speak to the tangible challenges that are part of everyday life.

And here is where the interdisciplinary approach noted above can be helpful. Authors from many fields can flesh out such a conceptualization. Abdullahi An-Na'im—like Sachedina, an academic grounded in religious studies but a student of international law, as well—is an interesting figure in this respect. An-Na'im's early works, especially *Toward an Islamic Reformation*, argued from an approach similar to Sachedina's, though with a different theological justification for Islam supporting human rights. Instead of isolating on a Mutazalite foundation for human rights, An-Na'im argued that the Qur'an's Medinan verses give that foundation, and need to be prioritized over its Meccan verses. An-Na'im's later works, however, have moved beyond that theological focus and, instead, into the historical experiences in the Muslim world that have given space for plural discourses to emerge, including those impacted by human rights.

Most notably, An-Na'im's *Islam and the Secular State* is a grand work that ranges across the history of the Muslim world to show how there has been a long-standing separation of Islam from state institutions. An-Na'im argues that historically and theoretically, "there is nothing 'un-Islamic' about the concept of a secular state as the necessary medium for negotiating the organic and legitimate role of Islam in public life."¹ To the contrary, he urges us to recognize

1. ABDULLAHI AHMED AN-NA'IM, *ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI`A* 267 (2008).



that this institutional separation actually was meant to allow for the inclusion of religion's spirit in politics without one construct of religion monopolizing the political sphere. An-Na'im is correct that during the era of the great Muslim empires the state justified itself as the protector of Islam, but not its instrument. This is an important distinction, showing how distant actual history is from the Orientalist trope of religion and politics being mutually constituted in the Muslim world. This is the same trope that, ironically, some contemporary Islamist movements have adopted, most notably in Iran with the Ayatollah Khomeini's coming to power as a sort of Platonic philosopher-king (Khomeini was a student of Plato's philosophy). The key point that An-Na'im's work makes clear is that the Muslim world is not a stranger to the sorts of pluralistic public spaces noted above as necessary to normative interaction, political change, and limiting the ability of any one ideological construct of knowledge to monopolize power. Contrary to common stereotypes, there has been an ongoing reality of pluralistic and transnational engagements in the Muslim world. What is problematic are attempts to impose the notion that such normative sources have ever been or should ever be singular.

There is a similarity between An-Na'im's arguments (which mainly reference the Sunni world) and those of contemporary Shia Iran's foremost reformist scholar, Abdolkarim Soroush, as translated into English in Sadri and Sadri's *Reason, Freedom, and Democracy in Islam: The Essential Writings of Abdolkarim Soroush*. Soroush asks the basic question that has always bedeviled political philosophers: "Who will guard the guardians." In other words, if religious leaders are to become political leaders—to attempt to merge religion into political

ideology as the basis of monopolizing the public sphere—who then will oversee and constrain their power in order to maintain a plural public space?

Soroush begins his argument by distinguishing between religion and religious knowledge: he argues the former is divine and the latter human. Unlike Ali Shariati, the theoretician of the Iranian revolution who "fattened" Islam into a political ideology, Soroush wants to prune religion of what is marginal to its essence and return Islam to something closer to the "thinner" role that An-Na'im describes it as having played over the centuries, and which was certainly the case in Iran during the centuries prior to the 1979 revolution. His most important reason for this is to guard against the corrupting ideologization of religion. Such an ideologization, he argues, takes place when the human becomes more important than the divine, and when religion becomes an instrument for obtaining worldly goals, be they political or material. This leads to dogmatism and exclusivism in which the official interpreters of a religion become the sole guardians of both religious and state power—neither one no longer serving as a check on the other. In this context, the outward appearance of religiosity becomes fetishized as a path to political power and the mystical essence of Islam is distorted and lost. This is primarily a religious argument against marrying religion to state power and claiming either primacy (or even a monopoly) for religiously-based norms in the public sphere.

In the political sphere, Soroush makes the further argument that this marriage of religious and political power militates against the pluralism and tolerance needed for democracy. In specific reference to human rights, Soroush makes a point that liberal reformers like Sachedina sometimes miss: that religion is not about



rights, it is about duties. Democracy and human rights, he argues, cannot be justified by religion, but rather need an extra-religious justification. This is, obviously, a call for secularism in some general sense, but a call that is based in religious mysticism and a sustained connection to Islamic traditions. The issue for Soroush is not excluding religious sensibilities from the public sphere, but making clear that it distorts both religion and politics to pose religion as the primary foundation for political action, including in regard to human rights.

This calls to mind the recent work of another scholar of religion, Grace Kao. Kao's *Grounding Human Rights in a Pluralist World* rejects what she calls "maximalist" frameworks for justifying human rights, be they religious or philosophical frameworks. In contrast to Sachedina, she argues that theological arguments for human rights are only convincing in a vacuum. In place of either legal minimalism or metaphysical maximalism, Kao proposes that justifications for human rights can be persuasively based in three interlocking conceptualizations: that there is an empirically verifiable normative consensus around human rights as relevant to peoples around the world; that a realist can note the self-interested good that is brought about by addressing rights violations; and the "let a thousand flowers bloom" notion that, while human rights cannot be exclusively based in a singular metaphysical tradition, a variety of ethical traditions can find an overlapping consensus over human rights, at least in a general sense.

Grappling seriously in this manner with how human rights are underpinned by norms, interests, and ethics in a way that goes beyond the purely religious is essential. An-Na'im began to open room for Kao's conceptualization by noting the Muslim world's historically pluralistic

public spaces. Soroush went further by giving a theological argument for, ironically, *not* making theology a foundation for human rights. But that still leaves us with this review's original questions: what are human rights foundations, do they need to be religious, or are human rights better served by reconceptualizing commonly invoked foundations?

Two contemporary historians can support further exploration of those questions. Samuel Moyn's *The Last Utopia* is particularly helpful in moving us toward a more realistic idea of what has pushed human rights into contemporary global politics. Classic histories of human rights tend to trace a line from which human rights have progressively grown. This is the historian's version of a philosophic or religious point of origin. The historic point of origin varies according to author; perhaps it is in ancient religions, perhaps in the Enlightenment or French revolution, or perhaps in a reaction to the Holocaust. But what is common in these histories is that there are, as Moyn says, a point at which human rights can be discovered and which connects directly to current human rights.

Moyn debunks these sorts of historic timelines. Specifically, he does a beautiful job discrediting the idea that human rights antecedents can be found in the French or American revolutions ("human rights" as a term only came to be used in English in the 1940s). Of course, a simple comparison of the documents that are elemental to these revolutions (or to other supposed human rights starting points) to documents that are at the base of the human rights regime would show how radically different they are. Too often it seems that disciplinary borders lead those studying human rights from a non-legal standpoint to overlook the declarations and treaties at the heart of contemporary human rights. Moyn, however, has no



problem dealing with these constitutive legal documents. This allows him to understand the discontinuities in human rights development and leads him to see this development as more contingent than historically determined.

The drama of human rights, as Moyn has it, is that they emerged in the 1970s “seemingly out of nowhere.”² Accident played a key role, says Moyn, most provocatively. Here he picks up on a notion he had expressed in earlier writings, that human rights recent emergence are akin to a chemical reaction that combusts into new forms out of the intersection of various elements from different sources. In *The Last Utopia*, Moyn goes further into how human rights did not emerge out of a specific point of historic origin, but rather were catalyzed out of unexpected intersections. He is more specific in *The Last Utopia*, however, in also contextualizing human rights as a reaction against the brutal failures of communist and nationalist utopias. This is essential in pointing to what is different about human rights in comparison to these utopian visions. These visions shared a foundation in some sort of *idée fixe* of what should constitute the core of the new state-society—be it based in ideology (for example, communism) or identity (for example, religious or ethnic nationalisms). Human rights, to the contrary, work toward a very different goal: not to provide one model of what politics should be, but rather toward granting agency to peoples to define from the bottom-up what a society will be—within some constraints, but beyond one identity or ideology.

While Moyn's is a brilliant historical deconstruction of human rights and he

is absolutely correct in differentiating human rights from previous utopian visions, his title nonetheless points to a fundamental flaw in how he conceptualizes human rights. Seeing human rights as “the last utopia” paints them as the successor rather than the antidote to the failed utopias that spurred human rights rise. I would argue that human rights are informed by these failures such that their power derives precisely from a reaction that was, and remains, deeply anti-utopian. Indeed, students of human rights can often be depressed at just how reformist human rights are, institutionalized as they have come to be in international law and the work of those so-called “temples of states,” international organizations. Nonetheless, the role of human rights in informing everything from constitution drafting to economic development planning to approaches to public health has grounded human rights in everyday political realities in a way that is in marked contrast to a utopian ideology.

Moyn acknowledges human rights presence in such fields, but sees this as being part of a negative transformation of human rights from “antipolitics to program.”³ This is a misconceptualization by Moyn: human rights have never been disconnected from political struggle. Ruti Teitel notes, for example, that Czechoslovakia's Charter 77 and South Africa's anti-apartheid movement—each pioneers in using human rights as an effective political tool to shame rulers and garner transnational and international support—also used human rights as the model for shaping the specifics of their transitions to new political orders.⁴ This is the flip side of the same coin; normative goals

2. SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* 3 (2010).

3. *Id.* at 221.

4. Ruti Teitel, *Human Rights: Political Not Metaphysical*, *OPINIO JURIS*, 14 May 2012, available at <http://opiniojuris.org/2012/05/14/human-rights-political-not-metaphysical/>.



and tangible practicality are mutually reinforcing, not contradictory—human rights have never been about disconnected idealism.

It is not just that Moyn is wrong to discount how political human rights have always been. What is problematic is his assumption that being political is inherently dangerous to human rights core. Moyn argues that “these once pure ideals are now much harder to separate from the impure world of daily policy making, international power and unfulfilled hopes.”⁵ In his opinion, human rights power comes from being utopian and anti-political, but this misses the essence of what human rights have brought to the table: a deeply political engagement with the messy realities of on-the-ground politics. The power of human rights is precisely in the anti-utopian ideal that the alternative to authoritarianism and repressive power structures is not yet another ideal of the perfect to be applied by an enlightened group. Instead, the practical alternative to failed utopias lies in opening space for fluid, overlapping, and multiple truths and identities that break down monopolies on power—it lies, in other words, in opening space for pluralistic politics.

Part of that practicality can be seen in even the first human rights documents. It is not just that, for example, the Universal Declaration of Human Rights (UDHR) explicitly avoids the sorts of references to foundations that authors like Sachedina maintain are inherent to human rights. It is also that, in a related way, it explicitly refutes the notion of human rights as a chaste ideal. Human rights as an expression of an eternal foundation or as a utopian ideal are, in fact, linked notions.

Sachedina’s claim that human rights have a religious foundation is, ultimately, a claim that human rights are an expression of an eternal truth. Sachedina and Moyn, thus, in their different ways share an epistemological assumption that is analogous to philosophers or historians who seek to trace human rights one true lineage: human rights must somehow be associated to an original, sustaining source that is, in a utopian manner, pure. The UDHR preamble, by contrast, explicitly notes its very political, very realistic, and very contingent aim of reducing the likelihood of civil wars and interstate wars (“development of friendly relations between nations”) through economic and social progress (“better standards of life”). “Friendly relations between nations” and “better standards of life” are hardly clarion calls to idealistic purism, but the sort of focus on political practicality articulated in the UDHR preamble aptly points to the sorts of impulses that underlie human rights expansions over the decades that followed.

Another historian, Jean Quataert, is particularly effective at emphasizing these practical impulses and at moving us past seeing human rights as dependent on either a singular foundation or an apolitical purity. Quataert’s *Advocating Dignity* explores the empirical realities behind the assumption underlying this review essay that evolving practice has more to do with what human rights are and will become than do ancient foundations of any sort, religious or otherwise. In particular, Quataert emphasizes the bottom-up social movements around the globe that keep human rights relevant by reinventing them to apply in different contexts. In *Advocating Dignity*’s chapter

5. Samuel Moyn, *Human Rights, not so Pure Anymore*, NY TIMES, 12 May 2012, available at <http://www.nytimes.com/2012/05/13/opinion/sunday/human-rights-not-so-pure-anymore.html?pagewanted=2>.



on gender, for example, she discusses this bottom-up impetus in the context of both conflict and resonance among different groups that came to make up the global feminist movement as these groups began to intersect in the 1970s. Would global feminism be dominated by Western feminists? Would there be a place for activists from other parts of the world and their perhaps distinctive concerns? As Quataert makes clear, these debates are still being worked out. Nonetheless, over the decades these debates have also led to a transformation in understandings of global feminism's relation to human rights—most specifically it led to a broad coalition of voices supporting the “women's rights are human rights” mobilization. This mobilization ultimately led to some fundamental changes in what human rights are. A key point regarding these changes is distinguishing between top-down and bottom-up impacts in how human rights came to be re-articulated in this instance. Institutions such as the UN Rapporteur on Violence against Women or legal instruments such as CEDAW were groundbreaking expressions of new articulations of human rights, but they did not impose from the top-down these evolving ideas of what human rights should be. Rather, to the contrary, the construction of these legal-institutional anchors was both impelled and substantively constituted by the churning energy of transnational contestations over such rights. These institutions are, in other words, reflective of global political and social energies that transformed human rights from the bottom-up.

In Quataert's conclusion, she writes that a “focus on the external sources of change overlooked the local and indigeneous movements for democratic reform

and human rights principles bringing their own understandings, definitions, and sense of timing.”⁶ Moving the focus to local groups does not negate that there are other forces that impact how human rights are constructed. Most powerfully, states (in particular great powers) have an outsized role in defining what human rights are. This is part of a peculiar human rights dance in which its tangible impacts depend on states being pressured, incentivized, and socialized into taking human rights seriously as a part of binding international law. On the positive side, as noted previously, this state nexus is key to moving human rights past idealism and into political reality. On the negative side, however, it also allows states to manipulate human rights to advance their own hegemonic priorities. What can help counteract such hegemonic uses of human rights are precisely the sorts of local movements that Quataert emphasizes. What we need to be attentive to is, therefore, emerging on-the-ground movements and how, in adapting human rights to their purposes, they give rights a vitality that will be lacking if rights are left to be solely the play toy of states.

This is quite different than looking for a pre-existing template—a foundation—that limits what human rights can be. We should not assume, in other words, that transnational linkages are only one-way avenues. This is as true for the cases Quataert discusses—transnational anti-apartheid movements, gender struggles, Mothers' mobilization, and many other movements for economic, social, and political justice—as it is for other struggles around the world. They have both informed and been informed by human rights. This is not to dismiss the importance of the UN or other in-

6. JEAN H. QUATAERT, *ADVOCATING DIGNITY: HUMAN RIGHTS MOBILIZATIONS IN GLOBAL POLITICS* 295 (2009).



ternational and non-state institutions. International law and organizations represent both an anchor for and a point of connection among these local and transnational movements. But the essence of the matter is to understand human rights as fundamentally about struggles from below. And, of course, these struggles are ongoing and deeply contested—as, again, we have seen in the aftermath of the Arab uprisings, the results of which are far more tentative and contested than some would have claimed in the heady aftermath of Hosni Mubarak and Ben Ali's overthrow. As Quataert says, "rooted in struggle rather than in one universal, moral Truth, rights gains can be lost."⁷

That contestation and struggle are at the heart of human rights is something that, from a disciplinary perspective, sociologists are perhaps best suited to appreciate. Fuyuki Kurusawa, for example, argues persuasively that human rights are less a top-down bequest than they are a product of ongoing political practices in the context of local struggles around the globe.⁸ Another sociologist, Kate Nash, is particularly powerful in moving beyond the binaries that have too often entombed discussions of human rights—are they universal or culturally specific, cosmopolitan or local, international or domestic—and into the intersections and interstices within which human rights may grow.⁹ This builds in important ways from the work on human rights in religious studies, law, and history I have already noted, and toward answering the key question that Sachedina poses: what is a convincing "foundation" to human rights work?

Nash's *The Cultural Politics of Human Rights: Comparing the US and UK* gives insight on how to approach this question of foundations in an entirely different way. Rather than looking for human rights noble lineage, the question for Nash is if and how ideas about justice have been routinized and globalized. Her initial contention is that, through institutions of global governance and global media, human rights have offered a framework for justice beyond states and beyond ethnic nations. Nash is particularly revealing in exploring the basis for this spread, the same basic foundational question we have been discussing, but approached in a way that provocatively reverses the usual frame for looking at such a question.

Nash discusses human rights as a "culture," with an insistence that we move beyond an essentialized notion of culture as a fixed way of life. Culture is not stable: it is both informed by power hierarchies that reproduce supportive cultural structures, but can also be dynamic and fluid in ways that challenge and contest such power structures. In other words, human beings are cultural in that we create culture, not that we are the passive recipients of pre-formed cultural constructs. This intersubjective understanding of culture informs Nash's analysis on two different levels. One, it moves us past the stubborn cultural relativist notion that change flowing out of interaction of the local with the international or transnational is inherently an imposition of the inauthentic on the locally authentic—this binary is far too simplistic. To the contrary, such interactions have always occurred and have

7. *Id.* at 304.

8. FUYUKI KURUSAWA, *THE WORK OF GLOBAL JUSTICE: HUMAN RIGHTS AS PRACTICE* (2007).

9. KATE NASH, *THE CULTURAL POLITICS OF HUMAN RIGHTS: COMPARING THE US AND UK* (2009).



always been part of informing changing cultural constructs. Indeed, it is fair to say they are vital to keeping cultures alive and vibrant rather than static and stuck to one eternal foundation or, more bluntly stated, one construct of power.

Most novel is Nash's application of that same sort of understanding of culture to human rights. Nash does so in a way that brings us full circle in terms of Sachedina's search for a foundation. If we understand human rights as being a dynamic and fluid culture, rather than a static entity, then we can understand why this search for a foundation is so futile: it is irrelevant to what keeps human rights alive and vibrant. Nash uses the rather inelegant term "intermestic" to describe what she sees as the interpenetration of currents from different locations—from the local to the global—in impacting how human rights come at times to be the language that frames conflicts over justice. The key thing to track in terms of such framing is the shifting language of human rights over the decades. Reflecting constructivist theory in my own discipline of international relations, this moves us toward a focus on how the transnational flow of ideas and norms, networked political and social movements, and domestic and local struggles all increasingly connect to international human rights. Importantly, they do so in a way that often impacts on and changes human rights. This cultural politics of human rights is very different than the classic search for a human rights foundation. It does not pose a blandly static, universalist human rights regime rooted in one historic, philosophic, cultural, or religious tradition. Instead it focuses on the everyday dynamism that has made human rights part of local politics around the globe, and that is essential to the continuous re-constitution of the human rights regime. It is these re-constitutions of

human rights that keep it alive and able to spread, despite powerful crosscurrents and contestations.

An understanding of human rights that moves beyond a search for a mythical foundation and into the dynamics of contemporary politics—as indicated by the diverse authors and diverse disciplines I have discussed—does not just allow us to better conceptualize human rights spread, it gives insight into how human rights have informed social and political movements around the world. Regarding the Arab uprisings of 2011–2012, for example, the Arab world's youth, the access of that youth to transnational currents, the reality of social networking, connections to normative frames impacted by human rights, greater acceptance of identity fragmentation, and the frank appeal of nihilistic rebelling against dominant social and political mores—regarding everything from gender and sexuality to music and media—have political implications that should have been obvious. That this was leading to an explosion was not predictable with any certainty, and there were, of course, many elements other than human rights that led to the Arab uprisings. Nonetheless, these events, including their human rights dimension, could have been better anticipated if less attention had been paid to singular meta-narratives such as Islam as all-defining and more to underlying political, social, and economic realities.

This is the ultimate lesson of the books referred to here. Not that Islam is irrelevant to human rights or to politics more generally. Changing constructs of Islam are a key part of the political landscape in the Muslim world and its ethical outlook can be, and is, taken by some as complementary to human rights. Those intersections are a fascinating part of the Muslim world's politics in a way that is unexceptional in terms of how reli-



gions across the globe intersect with and infuse politics. But, whether talking about human rights or about other sources of normative power, the key is to move the focus away from heritage—one singular historic, religious, or philosophic lineage leading to and justifying human rights as we know them today. The focus should be, instead, on the multiple ways peoples connect (or do not connect) human rights to their political, social, and economic realities. Cultivating insights from a variety of academic disciplines facilitates the search for this dynamic. Integrating these insights in an interdisciplinary manner can help take us outside the realm of foundations and into the resistances against authoritarianisms, hierarchies, and patriarchies that inform how human rights continue to evolve. It is key both for academics and advocates to emphasize that this continuing evolution, not a search for a mythical foundation, is what keeps human rights alive. Advancing the basis of that vitality—the degree of human rights permeability that allows it to change and develop under the influence of voices of the marginalized from around the world—is a key variable determining the degree to which human rights will or will not have impacts in the future.

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articulations of human rights and their intersections with Islam, globalization, transnational advocacy, and the politics of key states such as Egypt, Morocco, and Yemen. Chase has received Harvard Law School, Fulbright, and US Institute of Peace fellowships, among others, and has advised and worked with both international organizations and transnational nongovernmental organizations.

The Right to Health: Where Do We Stand and How Far Have We Come?

John Tobin, *The Right to Health in International Law* (Oxford University Press, 2012), 330 pages, ISBN 9780199603299.

Fourteen years ago, in these pages, I reviewed a monograph by Brigit Toebes with an almost identical title to the one under consideration now (*The Right to Health as a Human Right in International Law*).¹ Assessing the extent of developments that have taken place with respect to the right to health in the last ten to fifteen years is the principal subject of John Tobin's excellent new book, *The Right to Health in International Law*. As Tobin himself says, "one of the greatest challenges in undertaking such an assessment is to navigate between the extremes of great enthusiasm and optimism, manifested by many of the proponents of the right to health, and the deeply pessimistic views of those who doubt that the concept has sufficient traction in terms of coherence, definability, political viability, economic sustainability, or justiciability."² Indeed, this volume is most certainly not a call to action and it is virtually devoid

1. Alicia Ely Yamin, *The Right to Health as a Human Right in International Law*, 21 HUM. RTS. Q. 1123 (1999) (reviewing BRIGIT TOEBES, *THE RIGHT TO HEALTH AS A HUMAN RIGHT IN INTERNATIONAL LAW* (1999)).
2. JOHN TOBIN, *THE RIGHT TO HEALTH IN INTERNATIONAL LAW* 1 (2012).



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