

# FOREWORD

## THE FUTURE OF HUMAN RIGHTS SCHOLARSHIP

JAMES LOEFFLER & MILA VERSTEEG\*

This is a pivotal time for international human rights scholarship across disciplines. By any measure, the study of international human rights and humanitarian law is flourishing throughout the academy like never before. What was once the narrow technical province of specialists in public international law has expanded into a large and diverse field that includes anthropologists, sociologists, scholars of literature and religion, public health specialists, and physicians alongside lawyers, historians, and political scientists. Faculty interest is paralleled by strong student demand for courses, research opportunities, and service learning, both at the graduate and undergraduate levels. American and European universities have responded with numerous research and policy initiatives that seek to institutionalize human rights through new degree programs, academic institutes, and public-facing educational programming. Indeed, the academic study of human rights has come to epitomize a model of public scholarship explicitly engaging with critical contemporary issues and bridging ivory tower and society. In short, the formal study of human rights has never been more widespread, more popular, and more venerated in the academy.

The best of times, however, is also the worst of times. This golden age of human rights scholarship has been accompanied by a growing unease, if not crisis, in some academic circles about the utility and legitimacy of the human rights movement, and, relatedly, of human rights studies. Some recent high profile contributions in the literature have suggested that human rights law has failed to do what it was supposed to do: improve respect for human rights and minimize harm on the ground.<sup>1</sup> Against the popular image of human rights as a self-evidently positive endeavor, a growing counter-narrative challenges the movement for its putative blindness to the political ideologies and power dynamics at work in its own formation. These critiques also raise large-scale questions about the very nature of human rights scholarship.<sup>2</sup> They include

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\* Jay Berkowitz Professor of Jewish History, University of Virginia; Associate Professor of Law and Director of the Human Rights Program, University of Virginia School of Law.

1. STEPHEN HOPGOOD, *THE ENDTIMES OF HUMAN RIGHTS* (2013); ERIC A. POSNER, *THE TWILIGHT OF HUMAN RIGHTS LAW* (2014); Eric A. Posner, *Some Skeptical Comments on Beth Simmons' Mobilizing For Human Rights*, 44 N.Y.U. J. INT'L L. & POL. 819 (2012).

2. See, e.g., MAKAU MUTUA, *HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE* (2002).

methodological critiques of empirical approaches that seek to verify the efficacy of human rights via quantitative measurement. At their most severe, these critiques extend to philosophical criticisms of scholarship's own implication in moral questions abetting impunity and injustice.<sup>3</sup> The globalization of the contemporary university has further raised the stakes for these debates. As Western institutions expand into educational markets in non-democratic countries, new questions of the intersections between pedagogy, research, and professional ethics only proliferate.

Making sense of this fraught moment of promise and conflict requires patient dialogue and self-conscious reflection by scholars of human rights. It is to this end that the guest editors of this issue convened an international interdisciplinary conference devoted to the future of human rights scholarship at the University of Virginia in the spring of 2017. Conference participants were asked to reflect on "what's next for human rights scholarship?" This prompt was chosen in order to shift the collective attention from the debates of the present to the possibilities for the future and invite presentations of new research from scholars around the world that take cognizance of these looming questions and suggest emerging directions of study. Contributors were also asked to explicitly address the role of different disciplines in shaping the field of human rights studies. The study of human rights demonstrates just how much the methods of research define the questions and answers, and, in turn, determines the larger patterns of convergence and divergence in scholarship.

## I

### INTERDISCIPLINARY CONVERSATION

To facilitate our inquiry, we decided to concentrate on three areas of scholarship: international law, international relations, and history. Each of these areas have seen a growing interest in human rights in recent decades.

Over the last fifteen years, a wealth of empirical studies in international relations has made international human rights law the central object of inquiry, exploring questions of origins, compliance, and effects. Political scientists have sought to explain why states engage with treaties,<sup>4</sup> how multilateral agreements are designed and structured,<sup>5</sup> and to what extent treaties actually impact behavior

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3. See HOPGOOD, *supra* note 1; SAMUEL MOYN, NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD (2018); POSNER, *supra* note 1; KATHRYN SIKKINK, EVIDENCE FOR HOPE 22–54 (2017); David Kennedy, *The "Rule of Law", Political Choices and Development Common Sense*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL (David M. Trubek & Alvarez Santos eds., 2006); Pankaj Mishra, *The Mask it Wears*, 40 LONDON REV. BOOKS 9 (2018); Patrick William Kelly, *What is Hope for?*, LA REV. BOOKS (June 7, 2018), <https://lareviewofbooks.org/article/what-is-hope-for/#!> [<https://perma.cc/7SEM-CMZ4>] (focusing on the summary).

4. See, e.g., James Raymond Vreeland, *Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture*, 62 INT'L ORG. 65, 73 (2008) (arguing that autocrats have special incentives to ratify the CAT).

5. See, e.g., ANDREW T. GUZMAN, HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY (2008) (arguing that 'three Rs' motivate compliance with international law, including Human Rights and International Humanitarian Law); HAROLD H. KOH, WHY DO NATIONS OBEY

of governments, individuals, and non-state actors.<sup>6</sup> Three articles in this issue showcase the work on this tradition. Cosette Creamer and Beth Simmons quantify state reporting to the Committee on the Elimination of Discrimination against Women and find that self-reporting has a significant positive effect on respect for women's rights.<sup>7</sup> Hyeran Jo and John Niehaus analyze and quantify the written statements by rebel groups from around the world to capture how rebels understand international humanitarian law.<sup>8</sup> Most provocatively, Adam Chilton and Eric Posner challenge the existing quantitative literature on human rights treaty effectiveness: they argue and show that prior studies have failed to account for the fact that most treaties receive near-universal ratification and that rights records have improved over time, and that after accounting for these two phenomena the positive correlations between treaty ratification and human rights disappear.<sup>9</sup> These three contributions reflect the healthy state of the field, whereby scholars are exploring new avenues while also scrutinizing and replicating each other's work.

Among historians, human rights has also become an independent subject of tremendous disciplinary interest only in the past decade. In 2006, the President of the American Historical Association famously announced in her inaugural address, "We are all historians of human rights now."<sup>10</sup> Yet this credo reflected less an existing reality than a disciplinary call to arms. Indeed, it was only after that point that historians began to develop a discrete, self-conscious field of human rights history.<sup>11</sup> That historiographical trend reflected a larger pivot away

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INTERNATIONAL LAW? (1997) (showing that transnational networks facilitate international law compliance); BARBARA KOREMENOS, *THE CONTINENT OF INTERNATIONAL LAW: EXPLAINING AGREEMENT DESIGN* (2016) (noting how drafters address the special design challenges of human rights agreements); JAMES D. MORROW, *ORDER WITHIN ANARCHY* (2014) (developing a formal theory for when and why states follow humanitarian law); BETH SIMMONS, *MOBILIZING FOR HUMAN RIGHTS* (2009) (arguing that mobilization of domestic civil society impact rights performance); Abram Chayes & Antonia Handler Chayes, *On Compliance*, 47 INT'L ORG. 175 (1993) (same as KOH); Kevin L. Cope & James D. Morrow, *A Theory of Multilateral Treaty Negotiations: The Case of the International Criminal Court* (working paper) (modeling the negotiation of the ICC's Rome Statute and exploring the determinants of state positions on its salient issues); Barbara Koremenos, Charles Lipson & Duncan Snidal, *The Rational Design of International Institutions*, 55 INT'L ORG. 761 (2001) (describing the structural difference between various international agreements).

6. Kevin L. Cope & Cosette D. Creamer, *Disaggregating the Human Rights Treaty Regime*, 56 VA. J. INT'L L. 459 (2016) (summarizing literature).

7. Cosette D. Creamer & Beth A. Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, 81 LAW & CONTEMP. PROBS. no. 4, 2018 at 31.

8. Hyeran Jo & John Niehaus, *Through Rebel Eyes: Rebel Groups, Human Rights, and Humanitarian Law*, 81 LAW & CONTEMP. PROBS. no. 4, 2018 at 101.

9. Adam S. Chilton & Eric A. Posner, *Treaties and Human Rights*, 81 LAW & CONTEMP. PROBS. no. 4, 2018 at 1.

10. Linda K. Kerber, *We Are All Historians of Human Rights Now*, 44 PERS. J. AM. HIST. ASS'N. 3 (2006).

11. After all, a search of the American Historical Association's dissertation database reveals that of 43,202 completed dissertations in the United States and Canada between 1873 and 2006, only 19 included the words "human rights" in their titles. From that year onwards, however, the number jumped to 44. Directory of History Dissertations, (last visited Aug. 1, 2018) <https://secure.historians.org/members/services/cgi-bin/memberdll.dll/info?wpr=dissertations.htm>

from the nation-state as the primary unit of analysis for historians, especially Europeanists, towards global, international, and transnational historical frameworks. This trend also indicated a growing focus on international non-governmental organizations, transnational networks, and global civil society.<sup>12</sup> Equally strikingly, historical research on human rights quickly came to encompass a very broad range of historiographical sub-fields, from diplomatic and international history to cultural, intellectual, and religious history.<sup>13</sup>

A critical turning point in this story came in 2010 with the publication of Samuel Moyn's *The Last Utopia: Human Rights in History*.<sup>14</sup> Moyn's book generated much debate about his arguments over historical periodization, definitional questions, and methods.<sup>15</sup> The attendant controversies in turn helped to stimulate further historiographical discussion and new research agendas. His contribution to this volume reflects a continuing engagement with these issues, as well as a provocative assessment of the overlooked convergence between skeptics and defenders in the human rights studies field.

Both history and international relations brush up on and over the boundary of law, where legal scholars have long sought to analyze specific human rights treaties and domestic laws, often from a doctrinal, normative, or policy-oriented perspective. Indeed, in the American academic context, it was a legal scholar—Professor Louis Henkin—who first initiated human rights studies in 1978 via the establishment of the Institute for the Study of Human Rights at Columbia University. Since that time, legal scholarship has also grown side by side with the rise of clinical education, introducing law students to human rights lawyering and legal advocacy and fostering institutional convergence between scholarship and

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[<https://perma.cc/HPP5-WWSW>]. As Moyn has noted, the *American Historical Review*, the profession's flagship journal, did not include one mention of the "Universal Declaration of Human Rights of 1948 until October 1998, almost precisely fifty years after its passage." That year also marked the first time the phrase was used in an article title. Samuel Moyn, *The First Historian of Human Rights*, 116 *AM. HIST. REV.* 58 (2011).

12. JAN ECKEL, *DIE AMBIVALENZ DES GUTEN: MENSCHENRECHTE IN DER INTERNATIONALEN POLITIK SEIT DEN 1940ERN* (Vandenhoeck & Ruprecht, 2d ed. 2015); BARBARA J. KEYS, *RECLAIMING AMERICAN VIRTUE: THE HUMAN RIGHTS REVOLUTION OF THE 1970S* (2014); Tom Buchanan, *The Truth Will Set You Free: The Making of Amnesty International*, 37 *J. CONTEMP. HIST.* 575 (2002).

13. On religion see Loeffler, *infra* note 19; SABA MAHMOOD, *RELIGIOUS DIFFERENCE IN A SECULAR AGE* (2015); SAMUEL MOYN, *CHRISTIAN HUMAN RIGHTS* (2015); JOHN NURSER, *FOR ALL PEOPLES AND ALL NATIONS: THE ECUMENICAL CHURCH AND HUMAN RIGHTS* (2005); Lauren Turek, *To Bring the Good News to All Nations: Evangelicals, Human Rights, and U.S. Foreign Policy, 1969–1994*, (June 10, 2015) (unpublished Ph.D. dissertation, University of Virginia) (on file with author). On cultural turn, see James Loeffler, *The Particularist Pursuit of American Universalism: The American Jewish Committee's 1944 Declaration on Human Rights*, 50 *J. CONTEMP. HIST.* 274 (2014); MARK BRADLEY, *WORLD REIMAGINED* (2016).

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

15. On periodization, see *THE BREAKTHROUGH: HUMAN RIGHTS IN THE 1970S* (Jan Eckel & Samuel Moyn, eds., 2013); *THE HUMAN RIGHTS REVOLUTION* (Peter Goedde, William I. Hitchcock & Akira Iriye, eds., 2012); *HUMAN RIGHTS IN THE TWENTIETH CENTURY* (Stefan-Ludwig Hoffman, ed., 2010); *REVISITING THE ORIGINS OF HUMAN RIGHTS* (Pamela Slotte & Miia Halme-Tuomisaari, eds., 2015); William Hitchcock, *The Rise and Fall of Human Rights?: Searching for a Narrative from the Cold War to the 9/11 Era*, 37 *HUM. RTS. Q.* 80 (2015).

public service. What is more, as legal scholarship continues to become more interdisciplinary in nature, scholars of international law are increasingly embarking on joint projects with international relations scholars and historians.

Although these fields are increasingly taking on similar questions, much still separates them. At this time, there are robust interdisciplinary conversations between international law and international relations and between international law and history; but there is no genuine, three-way conversation between these fields. The joint enterprise of international law and international relations is now well-established. Ever since Ken Abbott's call to international lawyers to master institutionalism, a growing number of international lawyers have engaged with the discipline of international relations, spurring a growing number of explicitly interdisciplinary books and articles.<sup>16</sup> In 2000, the flagship international relations journal *International Organization* published a special issue on legalization in international relations, thereby putting international law squarely on the field's agenda.<sup>17</sup> Today, international law is a well-accepted sub-field of international relations and most international legal scholars—at least those in the American academy—engage with international relations scholarship in their work, often explicitly associating themselves with one of the field's intellectual traditions. Lawyers and international relations scholars have jointly been interested in empirical questions on human rights law's effectiveness, which has produced a body of empirical scholarship that is increasingly attuned to the nuances of international human rights law.<sup>18</sup>

Historians and legal scholars have similarly conducted an ongoing, vigorous dialogue in recent years. A host of historical studies over the last decade has traced the development of human rights law as an idea and an institution across time and countries, focusing also on questions of political and intellectual origins, norms diffusion via social movements, state policies, legal networks, and methodological periodization.<sup>19</sup> Where once legal history as practiced in history departments was largely restricted to scholars of American constitutional history, it now expanded rapidly to encompass the full range of geographic fields and time periods. This legal turn reflected the rise of cross-trained legal historians, who

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16. See Anne-Marie Slaughter, Andrew S. Tulumello & Stepan Wood, *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT'L. L. 367 (1998); Gary Bass, *The Old New Thing*, NEW REPUBLIC (Oct. 20, 2010), at <https://newrepublic.com/article/78542/the-old-new-thing-human-rights> [<https://perma.cc/LWC7-PBEP>] (reviewing historian Samuel Moyn's, *THE LAST UTOPIA*).

17. 54 INTL. ORG. (Summer 2000).

18. See, e.g., Paul Gordon Lauren, "To Preserve and Build on its Achievements and to Redress its Shortcomings": *The Journey from the Commission on Human Rights to the Human Rights Council*, 29 HUM. RTS. Q. 307 (2007) (analyzing how criticisms of the Commission on Human Rights led to the creation of the Human Rights Council); Eric Neumayer, *Qualified Ratification: Explaining Reservations to International Human Rights Treaties*, 36 J. LEGAL STUD. 397 (2007) (explaining reservations to human rights treaties).

19. See, e.g., MARCO DURANTI, *THE CONSERVATIVE HUMAN RIGHTS REVOLUTION* (2016); LYNN AVERY HUNT, *INVENTING HUMAN RIGHTS: A HISTORY* (2007); JAMES LOEFFLER, *ROOTED COSMOPOLITANS* (2018); MOYN, *supra* note 14; SARAH SNYDER, *HUMAN RIGHTS ACTIVISM AND THE END OF THE COLD WAR: A TRANSNATIONAL HISTORY OF THE HELSINKI NETWORK* (2011).

moved to historicize international legal thought and international relations in new ways.<sup>20</sup> This turn is also linked to the new histories of post-World War II decolonization and its legal dimensions.<sup>21</sup> The sophisticated interplay between law and history is exemplified in the contributions to this issue from Samuel Moyn and Umut Özsu; both revisit key moments in the formation of international humanitarian law and global development, respectively, to press history and law together in service of novel approaches to the master narrative of international law.

While law and history continue to converge and law and international relations are engaged in a robust conversation, the gulf between international relations and history appears harder to bridge. To judge from the selection of articles presented here, therefore, it remains difficult to imagine a truly sustained tri-dimensional conversation. The most yawning gap concerns the issue of quantitative methods. The development of statistical tools has intensified the scale on which many empirical researchers based in political science conduct their queries. Even as political scientists have grown in confidence based on the power of their analytical methods, they have also received fundamental methodological challenges from legal and historical critics.

Historians are perhaps the most skeptical of quantitative methods. Both history and political science scholars are deeply concerned with causality, but they employ very different tools to make causal claims. For a historian, establishing causality requires deep knowledge of the historical context. By contrast, many quantitative international relations scholars study human rights through cross-country quantitative analysis, whereby they reduce entire countries to a set of variables. Both history and political science scholars also express doubts about their own methods, and are engaged in robust methodological debates. Historians are heavily concerned with subjectivity, both in terms of how individual experience influences researcher choices regarding topic and sources, and how the power of narrative and stylistic conventions of writing shape historical interpretation. Quantitative political scientists, by contrast, are most concerned with endogeneity, that is, the possibility that there are confounding factors that are not accounted for in the statistical models.<sup>22</sup> Problems of subjectivity are addressed by reflection upon the role that the historian plays in the construction of narrative; problems of endogeneity are solved by adding more variables to the statistical model, as well as a range of

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20. See JENNIFER MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* (2011).

21. See STEVEN L. B. JENSEN, *THE MAKING OF INTERNATIONAL HUMAN RIGHTS: THE 1960S, DECOLONIZATION, AND THE RECONSTRUCTION OF GLOBAL VALUES* (2016); DANIEL MAUL, *HUMAN RIGHTS, DEVELOPMENT AND DECOLONIZATION: THE INTERNATIONAL LABOUR ORGANIZATION, 1940–70* (2012); Roland Burke, *Human Rights and Empire*, in *THE ROUTLEDGE HISTORY OF WESTERN EMPIRES* 468, 468–482 (Robert Aldrich & Kristen McKenzie eds., 2014); Jan Eckel, *Human Rights and Decolonization: New Perspectives and Open Questions*, 1 *HUMAN*. 111 (2010); Bradley Simpson, *Self-Determination, Human Rights, and the End of Empire in the 1970s*, 4 *HUMAN*. 239 (2013).

22. We are simplifying here. Concerns over endogeneity also concern the direction of the causality and measurement error.

statistical techniques, such as instrumental variable analysis, fixed effects, or matching. The emphasis that both fields place on methodology makes this gap particularly hard to bridge, as their training and intuitions cut in opposite directions.

Legal scholars are generally less concerned with methods, and therefore more easily cross disciplinary divides. This is not to say that lawyers have not expressed their share of skepticism of quantitative political science. Paul Stephan's contribution to this issue represents one such critique. Stephan locates the intellectual origins of the quantitative tradition in human rights in the failed human rights experiment of Russia in the 1990s, thereby putting on the table a new set of questions on the ideological roots of the enterprise. He further draws on Russia's experience with human rights to highlight the importance of intense local knowledge and to emphasize that the impact of human rights law is always contingent.<sup>23</sup> Another common critique from international lawyers is that quantitative work often oversimplifies international law.<sup>24</sup> Quantitative projects, in their defense, have increasingly taken some of these critiques onboard, leading to a divergent set of reactions from erstwhile critics: some remain skeptical while others have pursued collaborations with quantitative international relations scholars.<sup>25</sup>

## II

### FUTURE DIRECTIONS FOR THE FIELD

Although it might be difficult to bridge the methodological divide between all the fields in question—at least at the same time—that does not preclude the possibility of productive cross-disciplinary conversations, particularly regarding new questions of common interest. Recent developments and current events have brought to the fore many such new issues, as well as a sense of urgency about the stakes of scholarship in the current historical moment.

One obvious candidate for such dialogue (and cause of much anxiety among scholars) is the surge of national populism around the globe. The past years have seen a wave of electoral victories for populist politicians and parties who have made large gains based on anti-internationalist and anti-immigrant platforms. These new populist politics follow a script that involves condemnations of liberal norms such as tolerance; verbal and administrative attacks on the press, judiciary, and international civil society; political reforms that constrain or openly undermine the rule of law; and constitutional changes to permanently entrench

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23. Paul Stephan, *The Future of International Human Rights Law – Lessons from Russia*, 81 *Law & Contemp. Probs.*, no. 4, 2018 at 167.

24. Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 *EUR. J. INT'L. L.* 171 (2003).

25. See, e.g., Laurence Helfer & Erik Voeten, *International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe*, 68:1 *INT'L. ORG.* 77 (2014); Pierre-Hugues Verdier & Erik Voeten, *How Does Customary International Law Change? The Case of State Immunity*, 59 *INT'L. STUD. Q.* 209 (2015).

their populist agendas.<sup>26</sup> In most cases, these reforms have not directly affected current rights commitments, as few populists have withdrawn from international human rights treaties or removed rights from their respective constitutions. Despite the lack of formal change, rights commitments have been hollowed out while liberal democracy and the rule of law are being dealt one blow after the other. This broad development represents one of the main contemporary challenges for human rights law.

One of the contributions in this issue, by Geoff Dancy and Chris Farris, takes up this question by employing what they call a neo-constitutive approach, which suggests that “the human rights legal regime and global political society are mutually constitutive.”<sup>27</sup> Because human rights concerns are deeply embedded in global political society, they caution against excessive pessimism: human rights norms are not easily erased. The key enterprise, for Dancy and Farris, is to continue to understand how and why human rights claims succeed in some contexts and fail in others.<sup>28</sup>

Yet the current moment also demands a reckoning with scenarios once previously deemed largely unthinkable. One such possible development is a shift in the relationship between human rights and liberal democracy. Historians have long insisted that human rights were not wholly synonymous with liberalism or liberal democracy. They have stressed a narrow contingent definition of human rights as internationally guaranteed rights in order to properly differentiate them from domestic civil rights linked to citizenship. Many nineteenth-century European colonial projects and imperial agendas were pursued in the name of human rights and humanitarianism.<sup>29</sup> Legal scholars in turn have often emphasized the blurring of legal regimes, especially in Europe, where regional and transnational rights regimes combine domestic and international rights into unitary frameworks. Whatever their origins, legal scholars suggest, human rights and domestic democracy rise and fall together. Political scientists have argued for the relevancy of extra-legal norms and cultures of legality to domestic and international debates about global justice and democratic citizenship. The legal frameworks for human rights may change over time, but they generate a moral language that is indispensable to the modern practice of democratic politics.

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26. Nancy Bermeo, *On Democratic Backsliding*, 27 J. DEM. 5, 5 (2016); Tom Ginsburg, Aziz Z. Huq & Mila Versteeg, *The Coming Demise of Liberal Constitutionalism*, 85 U. CHI. L. REV. 239 (2018).

27. Geoff Dancy & Chris Farris, *The Heavens are Always Fallen: A Neo-Constitutive Approach to Human Rights in Global Society*, 81 LAW & CONTEMP. PROBS. no. 4, 2018 at 73.

28. *Id.*

29. See, e.g., Burke, *supra* note 21; DIDIER FASSIN, HUMANITARIAN REASON: A MORAL HISTORY OF THE PRESENT (2010); THE EMERGENCE OF HUMANITARIAN INTERVENTION: IDEAS AND PRACTICE FROM THE NINETEENTH CENTURY TO THE PRESENT (2016); DAVIDE RODOGNO, AGAINST MASSACRE: HUMANITARIAN INTERVENTIONS IN THE OTTOMAN EMPIRE, 1815–1914 (2011); Alice Conklin, *Colonialism and Human Rights, A Contradiction in Terms? The Case of France and West Africa, 1895-1914*, 103 AM. HIST. REV. 419 (1998); Abigail Green, *The British Empire and the Jews: An Imperialism of Human Rights?*, 199 PAST & PRESENT 175 (2008); Eric Weitz, *From the Vienna to the Paris System: International Politics and the Entangled Histories of Human Rights, Forced Deportations, and Civilizing Missions*, 113 AM. HIST. REV. 1313 (2008).



Recent events such as Brexit and populist crackdowns on migration have reopened questions concerning the intrinsic ties between contemporary liberal democracy and human rights. Will the challenges to democracy weaken the underlying support of human rights in the international sphere or lead to country-by-country efforts to safeguard democracy by internationalizing domestic rights? Will the legalization of anti-populist efforts see a new focus on disciplining rights discourse or produce a new focus on the extra-legal underpinnings of judicial systems? Will the rise of emboldened populist and anti-democratic regimes lead to frontal attacks on human rights organizations and norms or result in strategic attempts to employ human rights rhetoric to mask illiberal policies and delegitimize opponents? Would an anti-democratic human rights regime be an unthinkable development or a return to earlier eras in which religious opponents of modern liberal democracy and ostensibly liberal empires both used human rights rhetoric in service of their political aims? All of these questions are sure to bring historians, political scientists, and legal scholars together in analyzing the democracy-human rights nexus.

A second question is whether tried and true advocacy strategies of the modern human rights movement, such as naming and shaming, will still work in this new environment. Because the legal enforcement mechanisms of human rights law have always been weak, human rights advocates have long developed sophisticated techniques for political and social mobilization using information politics, media campaigns, and domestic advocacy networks. Typically, a human rights organization would conduct an investigation to raise awareness on a given issue in the hope that it would grab international attention, cause domestic uproar, and result in pressure by foreign aid donors. Yet, the new populist leaders appear to be largely immune to this type of criticism. Duarte in the Philippines, Erdogan in Turkey, or Trump in the U.S., to name just a few, are not moved by claims that they violated international law; on the contrary, they thrive on it, and use it to their advantage. Put differently, and more provocatively, it is difficult to make an impact through naming and shaming in a post-shame world. Another important corollary question for the field is whether human rights practitioners need to adjust their strategies for these types of environments, and, if so, how. Once again, historians, legal scholars, and political scientists may approach these questions from very different angles. But the questions of historical precedent, the fate of universal norms in a deglobalizing age, and the comparability of large and small state-actors will lead to converging attention from these disciplines.

A third and related question is whether human rights law has an answer to some of the possible underlying causes of the wave of national populism, such as growing global inequality.<sup>30</sup> Since the triumph of free trade and globalization in

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30. Global inequality has been used as explanation for rise of populist movements in Europe and North America, like Trump's campaign, the outcome of the Italian elections, and Brexit. Paul Solman, *The Hottest Chart in Economics and What it Means*, PBS NEWS HOUR (June 29, 2017, 4:19 PM) <https://www.pbs.org/newshour/economy/hottest-chart-economics-means> [https://perma.cc/U27M-UXD3]; see also EDWARD LUCE, *THE RETREAT OF WESTERN LIBERALISM* (2017).

the 1990s, global inequality has increased. Household surveys from around the world reveal that the world's richest one percent have made the largest gains in the post-cold war period.<sup>31</sup> The poorest deciles (mostly comprised by China and India) have also gained, but the lower middle class of the developed world has not. Unlike the rich in their own countries or the corresponding middle class of developing countries, the lower-middle class of the developed world remained comparatively stagnant during those twenty years.<sup>32</sup> The 1990s did not represent the heyday only of globalization, but also of international human rights law, and support for free trade has gone hand-in-hand with support for human rights. This is not to say that human rights law has caused global inequality, but it might have been tainted by association. Samuel Moyn forcefully develops this claim in his latest book *Not Enough*.<sup>33</sup> He argues that organizations like Amnesty International and Human Rights Watch have almost exclusively focused their naming and shaming efforts on civil and political rights at the expense of combatting global material inequality. One of the contributions in this issue takes up this same theme. Umut Özsu documents the intimate relationship between human rights and neo-liberalism by examining the North-South Commission chaired by German Chancellor Willy Brandt during the 1980s.<sup>34</sup>

The question of whether international human rights law can be deployed to fight global inequality has long been a hotly debated topic among legal scholars, especially in the Global South. These scholars have focused on the enforcement of social rights, which give people access to healthcare, education, and basic living conditions as a matter of right. In 2013, an optional protocol went into force that established an individual complaints procedure with the International Covenant on Economic, Social and Cultural Rights, thereby making social and economic rights justiciable at the international level for the first time.<sup>35</sup> What is more, a growing number of national high courts are active in enforcing social rights in their constitutions. For example, over the past decade, courts in Colombia and Brazil have heard hundreds of thousands of cases relating to the right to

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31. Solman, *supra* note 30.

32. Economists have plotted these insights visually and dubbed it the “elephant chart,” as the visual representation of income growth by income percentile takes the shape of the trunk of an elephant. Updating the elephant chart with post-2008 data has not improved the prognosis for the developed world's lower middle class. Instead, a data refresh conducted by the World Inequality Report shows slower gains in income for most of the planet's population—including the developed world's lower middle class—but even more growth for the top 1% across the board. Justin Sandefur, *Chart of the Week #1: Is the Elephant Graph Flattening Out?*, CENTER FOR GLOBAL DEVELOPMENT (Jan. 4, 2018), <https://www.cgdev.org/blog/chart-week-1-elephant-graph-flattening-out> [<https://perma.cc/B4XH-HXLG>].

33. Moyn, *supra* note 3.

34. Umut Özsu, *Neoliberalism and Human Rights: The Brandt Commission and the Struggle for a New World*, 81 LAW & CONTEMP. PROBS., no. 4, 2018 at 139.

35. *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/en/professionalinterest/pages/opcescr.aspx> [<https://perma.cc/22PR-GARJ>] (last visited July 29, 2018). Note however, that, even though the Committee on Economic, Social and Cultural Rights can now hear individual complaints, these decisions are not legally binding.

healthcare and have provided many with life-saving treatments that they may not otherwise have had access to. In the legal academy, these legal developments have spurred a tremendous amount of scholarship.<sup>36</sup>

Political science and history scholars have not nearly paid the same amount of attention to social rights, and focus the bulk of their attention on civil and political rights instead. The quantitative human rights literature in international relations has barely scratched the subject, as the essay in this volume by Kevin Cope, Charles Crabtree and Yon Lupu points out.<sup>37</sup> While there are dozens of empirical papers that deal with the impact of the International Covenant on Civil and Political Rights and the Convention Against Torture, to our knowledge, there has been very little empirical analysis of the impact of the International Covenant on Economic, Social and Cultural Rights.<sup>38</sup> More generally, political scientists remain focused on how international law can reduce repression, but not inequality.<sup>39</sup> Historians have only recently placed social rights on their agenda. This, in turn has led to a new wave of interest in the relationship between human rights and non-liberal political movements such as Marxian socialism and authoritarian capitalism.<sup>40</sup>

Beyond methods and research agendas, the articles included in this issue point to the ongoing value of collaboration. In some cases this effort is explicit, especially for political scientists, who have set a powerful example before other fields of the benefits of co-authorship. In other cases, collaboration takes more virtual forms of dialogue and exchange in historical and legal writing. We hope this volume will further encourage these vital efforts at collaboration between and within fields in pursuit of the future of human rights scholarship.

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36. See, e.g., DANIEL M. BRINKS & VARUN GAURI, *COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD* (2008); MARK TUSHNET, *WEAK COURTS, STRONG RIGHTS* 156 (2008); David Landau, *The Reality of Social Rights Enforcement*, 53 HARV. INT'L L. J. 189, 202 (2012).

37. Cope, Crabtree & Lupu, *Beyond Physical Integrity*, 81 Law & Contemp. Probs., no. 4, 2018 at 185.

38. Cope & Creamer, *supra* note 6.

39. Notable exception are works by Dan Brinks and David Landau. See BRINKS & GAURI, *supra* note 36, at 1-37; Landau, *supra* note 36.

40. See SAMUEL MOYN, *HUMAN RIGHTS IN AN UNEQUAL WORLD* (2018); Robin Blackburn, *Reclaiming Human Rights*, 69 NEW LEFT REV. 126 (2011); Paul Betts & Malgorzata Mazurek, *When Rights Were Social*, 3 HUMAN. 291 (2012); Nils Gilman, *The New International Economic Order: A Reintroduction*, 6 HUMAN. 1 (2015); Benjamin Nathans, *The Dictatorship of Reason: Aleksandr Vol'pin and the Idea of Rights under 'Developed Socialism'*, 66 SLAVIC REV. 630 (2007).