Itamar Mann. Humanity at Sea: Maritime Migrations and the Foundations of International Law. Cambridge: Cambridge University Press, 2016. 263 pp. Paperback: $34.99 ISBN 978-1-316-602652

Nothing conveys the absolute devastation, and the human rights failures that have come in the wake of the current refugee crisis like the photo of a young Syrian toddler laying lifeless on the beach. Immigration, and how to handle the refugee crises, have been hot button political issues for several years now and, pace Brexit, Trump, the elections in Italy, and the general rise of right-wing movements and governments in Europe and beyond, they have become a dividing force in many countries, illustrated by the increasingly punitive approach that officials are taking on this migration, particularly vulnerable migrants. We have seen children callously ripped away from their loved ones at the border, some of them never to be reunited again[1]. We've seen the desperation in the eyes of those crowded in unsecured vessels[2], clinging on for dear life. We've witness hundreds of thousands of people in flight, staring death in the eye, - and nothing or, pace the Global Compact, very little[3]. International law and, moreover, human rights law, can be inconsistently applied and difficult to enforce. This crisis begs the question; what more will it take to compel meaningful and enduring action?

Itamar Iman's book *Humanity at Sea* emphasizes the physical encounter between migrants and state agents in proposing his theory human rights and the "rights of the encounter" (13). In the introduction, Mann sets the foundation upon which he will neatly lay fragments of his argument by explaining his perspective regarding current human rights practices and defining terms. Note that instead of stating his argument outright, he lets it naturally evolve with each chapter, always building on this notion of the human rights encounter, and the new law that emerges in its wake. After successfully connecting with the reader emotionally, in part by injecting heartbreaking and descriptive imagery from both historical and current examples (including the story of Exodus, the ship that tried to bring survivors from Auschwitz into Palestine, only to be turned away and then attacked by British warships), he points out a tarnished silver lining: "Crisis is the counterweight to the formalism of the study of rules" (3). Lawyers who practice international law, he writes, feed on crisis to make positive change, and so while these atrocities can by their regularity become numbing, they aren't always in vain - they can sometimes be salvaged for a greater purpose.

Mann addresses the contradictions in both political sentiments around the globe[4], as well as the rampant contradiction in actual pronouncements of binding law, and calls out the international community in a painfully direct, important, and profound manner. While many countries appear to stay within the bounds of the law, they also take steps to deter and frustrate migrants from making it to their borders in the first place and, most egregiously, they (specifically circumventing non-refoulment and maritime duty to rescue). In doing this, countries are deviously managing to avoid triggering various human rights obligations to the detriment of migrants - "bare life" humans. Adopting a term popularized by Hannah Arendt, Mann explains that many migrants are "bare life" humans because they are "stripped of membership in a particular political community." These "bare life" humans don't enjoy governmental protection, so in encounters

[1] https://www.washingtonpost.com/news/fact-checker/wp/2018/06/19/the-facts-about-trumps-policy-of-separating-families-at-the-border/?utm_term=.322683610483
[2] https://www.nytimes.com/2018/04/26/magazine/refugees-mediterranean-rescue.html
[3] https://www.americanbar.org/content/dam/aba/images/rule_of_law/maestro-images/aba-roli-issue-paper-when-people-flee-rule-of-law-and-forced-migration-0418.pdf
[4] For instance, the United States' strict border policies versus those of the several European countries.

with state agents and other individuals, they present an "existential dilemma": do they help save a stranger's life, or do they ruthlessly let them die? Do they provide a "social contract" of sorts? I found it compelling that Mann highlighted two major concerns that States grapple with when addressing this existential crisis. They must ask themselves if they help refugees and risk changing who they are in terms of population, or if they reject these refugees and compromise their morals and constitutive commitments. These two concerns accurately simplify and reflect the political divide concerning the refugee crisis. While the former seems to be the driving force in many recent decisions concerning immigration, the latter is the reason for the valiant pushback. Mann also describes the "consequent collective embarrassment" stemming from legal contradictions, and stresses that such embarrassment must be considered and utilized in "proposing a new theory about the foundation of human rights."

Mann then goes on to explain a term that he touches on throughout the book, the "universal boatperson." He views "universal boat[people]" as refugees that "make demands collectively and generally - a figure of imagination as much as a group of particular people." This "universal boatperson" is an interesting way to approach theory concerning the refugee crisis, and I think that it is effective in illustrating his argument. The "universal boatperson" seeks self-determination and has no face or name, yet when the reader sees this term, they can easily empathize with and personify it. This triggers a moral response, because at the end of the day, each and every refugee at sea is a "universal boatperson." Regardless of their individual trials and tribulations, they all seek the same thing; the help of fellow human beings. Mann artfully sifts out contentious political underpinnings with the use of this term.

Near the end of the introduction, Mann states that migration at sea forces us to ask what protections accrue to all human beings. Positive and natural law can't answer this, and when states try to answer it themselves, they may experience a "command of conscience" triggered by "defenseless human presence." Mann propositions that this command is at the very core of human rights law, "properly conceived." He then plainly offers his overarching argument, that the history or unauthorized migration at sea shows that human rights are a part of international law that actually extends far beyond sovereign consent. He further argues that explaining his argument requires that the "notion of 'law'" must be reconsidered. The first 5 chapters each examine a past physical encounter between state agents and or other seafarers and refugees at risk, and with different perspectives. While occasionally tedious, the way he does it sufficiently bolsters his argument and emphasizes the distinction between common law and maritime legal duties. Chapter 6 centers around the State of the Union speech delivered by Jean-Claude Juncker (President of the European Commission) that addressed, among other things, the refugee crisis.

In Chapter 1, Mann offers the story of *Exodus*, and suggests that examining this story could allow us to understand what human right may look like if framed entirely through the prism of sovereignty. The Hagenah, a Jewish paramilitary group seeking to establish an independent Jewish state in Mandatory Palestine purchased a boat that they later poetically renamed *Exodus*. With about 4,500 European Jews on it, the ship left from the South of France to Palestine. They raised a blue and white flag embellished with the Star of David and took to the high seas. Because the ship was planning to enter Mandatory Palestine illegally, the British Navy intercepted *Exodus* before it was able to do so. The British court could provide no relief, and after a violent altercation that claimed three lives, many passengers of Exodus were deported to Germany. When they arrived in Hamburg, they refused to exit the ship. This resulted in the deportees being hosed and tear gassed until they cooperated with the British military police. With themes of "great courage" and "political success", the story of Exodus "seeped into the conscience" of people all over the world and put a face to their cause. They were successful in their mission - they wanted to sneak into Palestine or

embarrass the authorities and coerce them into doing the right thing. They leveraged the "power of their presence" against the boundless power of the State. Refugees may be defenseless, but they wield great power. Amazingly, most of the Exodus refugees were able to make their way to Palestine eventually, some with the help of forged documents. The story of the Exodus was a good place for Mann to start, and I think it beautifully depicted their struggle for human rights while tying into Mann's argument.

Chapter 2 expands upon the notion of the "universal boatperson" in exploring the next historical example of migration at sea, and it also focuses on one side of the physical encounter and contemplates what a human rights claim is. The Southeast Asian refugee crisis was instigated by the United States' withdrawal Vietnam in 1975. As a result, these displaced refugees were hosted by neighboring countries in refugee camps, unlike Exodus refugees who eventually established their own state. The situation slowly worsened as countries did everything in their power to stem the flow of refugees, and the conditions in the refugee camps deteriorated over time. Navies and coastguards actually pushed refugee boats out of their waters and back to the sea and mercy of pirates, though many countries had previously made human rights commitments that contradicted these actions. Mann explains that Chapter 2 argues that "a precondition for human rights law is a human rights struggle" because human rights aren't naturally given. I agree with his argument here, though I do think it was lost in translation just slightly. He points out, though, that human rights are granted "as a result of active assertions of rights by persons who have no rights within existing states." In explaining the Southeast Asian refugee crisis, he shows that Western countries tried to shirk their responsibility beyond the bare minimum.

Chapter 3 flips sides to examining the more powerful party in the physical encounters between state actors and refugees - the "addressee of the human rights claim." This chapter asks what it means to have a human rights commitment, and in doing so, it contemplates the United States' response to the Haitian refugee crisis (a result of a military coup in Haiti that forced thousands to flee the country) of the 1980's and 1990's, focusing on Sale v. Haitian Centers Council (1993). In Sale v. Haitian Centers Council, the Supreme Court held that "interception and repatriation of undocumented aliens travelling illegally on boats outside the territory of the United States, without determination of whether those aliens qualify as refugees" did not violate domestic or international law. Itamar argues that human rights commitments can't and shouldn't be meshed with constitutional obligations because the former are obligations that arise from "dislocation in our own pasts" and "remind us that we too are not always parties to a social contract."

Chapter 4 was the most interesting to me personally, and the themes of moral blackmail and moral risk were tactfully weaved throughout. Chapter 4 centers around the response to Australia's half-baked attempt to close their borders, which Mann argues was a de facto renouncement of any sort of human rights obligations they might have. Australia patrolled the Indian Ocean seeking to prevent unauthorized migrants from making landfall. When they were made aware of a boatload of migrants approaching, they approached it, careful to stop several nautical miles away in order to prevent a genuine physical encounter with the group and stay out of sight. While this looked callous and predatorial, Australia defended its actions by saying they were trying to prevent "moral blackmail." Australia's three branches of government attempted to eliminate the human rights encounter. When unauthorized migrants were confronted with the policies that came out of Australia's stance, they sometimes "generated their own emergencies" by practicing self-harm or jumping into the water to trigger positive obligations on part of the states. Humanitarian duties are much more difficult for States to evade.

Chapter 5 is a case analysis of two journeys that originated in Libya and set out to reach Italy. In examining these two separate cases (Hirsi and Others, Mann seeks to make sense of the

ways in which different actors have contributed in "manufacturing the place where the human rights encounter occurs" - where the less powerful refugees confront the powerful state agents. The first case started on May 6, 2009 when a group of refugees out of Libya were intercepted by the Italian coastguard. The passengers were loaded onto an Italian military ship and taken back to Tripoli. They requested refugee protection but were denied, and Italy transferred them back to Libyan custody. The court held that Italy violated the European Convention on Human Rights by taking positive action to avoid the human rights encounter without evaluating their case, when in reality the refugees fell within in their jurisdiction. The second case that Chapter 5 evaluates was the "left to die boat." In a similar but much more tragic set of circumstances, a group of refugees left Libya and made their way into Italian waters. A military helicopter circled above them and took photos, and the group believed they would be rescued, as they had run out of water, oil, and other necessities. The captain of the group threw all of his equipment overboard in order to avoid criminal prosecution for human smuggling. In a devastating turn of events, the helicopter never came back, except once to bring biscuits and water. They saw the dead bodies and the dire situation, but did nothing, leaving them to die. Other ships saw the refugees as well, but still failed to act, as maritime law requires. The group drifted back to Libya and went public with their tragic experience. Mann's inclusion of these two events successfully illustrated the point he was trying to raise - surveillance of the maritime space creates a responsibility, but at the same time casts doubt about the binding force of such a responsibility due to the "absence" of a clear physical encounter.

Chapter 6 pulls away from the focus on physical encounters between state agents and refugees and concentrates instead on a State of the Union speech delivered by Jean-Claude Juncker in 2015. In this speech, he addresses the refugee crisis. Mann seemingly critiqued this speech in order to draw attention to the political side of this entire conversation. While he asserts that human rights are "extra-political", he acknowledges that our treatment of them is absolutely political and suggests it is a fact we cannot escape. He concludes the books with a postscript involving the bible, specifically the text of Exodus. He reexamines the section concerning Pharaoh's daughter and baby Moses, putting a migration-oriented gloss on the story.

Overall, Mann's use of historical background coupled with his fragmented but evolving theory and argument worked well in Humanity at Sea. I appreciated his mixture of morality and law and think the handling of the refugee crisis could benefit from an approach like Mann's. Reconsidering the physical encounter and what it means for State agents and refugees alike could save lives and provide clarity in this muddled arena. At times the book could be slightly confusing and a little bit boring based on how he approached his argument. I would have preferred a concise and straightforward statement of his argument instead of one spread out and expanded upon throughout the book, but the way he did it was creative. The reader may have a little trouble following, but his outline in the beginning proved extremely helpful in providing the reader with an intelligible roadmap. Without an outline like that, it would have been difficult for even the most interested readers to clearly follow.

I would recommend this book to those that are interested in maritime law, those interested in the refugee crisis, and those looking for a good read in general. Mann made great arguments and I learned about several events and atrocities that I hadn't heard of before. Given the political climate, this could educate many people while simultaneously serving as a moral compass so many have seemingly lost somewhere along the way.

Ashlee Williams, Vanderbilt Law School