

Fresh Squeezed! The Opinio Juris Podcast

Freedom Dreams for Palestine and International Law: An Interview with Margot Salomon*

Hosts: Mohsen al Attar & Claire Smith

Mohsen al Attar (MA): Welcome, Margot. We're delighted to have you on Fresh Squeezed! Thanks for taking time to join us on the podcast.

In our invitation, we identified you as one of the leading critical thinkers on international economic law. In your response, you disavowed this label. Can you tell us a little bit about why you don't identify as an international economic lawyer, despite your research into the relationship between human rights and capitalism?

Margot Salomon (MS): Good morning, everyone. Thank you so much for having me. This is really engaging and wonderful, and I'm delighted to be having this conversation with both of you.

So that's a great question and perfectly legitimate that you would assume I'd be interested in international economic law, and I am, of course, interested in international economic law. I take as my point of departure international human rights law and I'm fundamentally interested in the various roles that international human rights law plays in relation to capitalism, and in relation to poverty and development: this can be as a buffer to the worst excesses of capitalism and of globalization and this can be as a facilitator of capitalism and further embedding it through reliance on growth and on redistribution, which we can probably come back and talk about. Indeed, in my most recent work, [I am] thinking about how we might emancipate human rights in order to play an entirely different role in terms of fundamentally challenging capitalism. So international human rights, political economy, and international political economy figure prominently [in my research].

Of course, international economic law is central. It's impossible to study capitalism as an international lawyer, and not take international economic law seriously. I teach a course on world poverty and human rights, and I teach these various regimes together. But I ground my approach and I guess what animates my interests and my thinking is the idea that the social conscience of international law—which is international human rights law—might serve us better. And for that, we have to understand how it serves us poorly and what its possibilities are. And that's linked to international economic law into the international economic order more generally. But it's my starting point in my frame of reference.

MA: We understand that capitalism is the dominant economic model. And we've seen a lot of critiques recently about the relationship between international law and capitalism. A new journal was launched to explore the links between PIL and political economy. Would you say that international law is beholden to capitalism? Is there any way around this sort of capitalist modality that we're operating within?

International law is a capitalist enterprise. And I don't think there's any part of international law that isn't integrated and fully embedded within capitalism. If we think of socioeconomic rights, they're part of this welfare model that makes capitalism viable, politically palatable and economically possible. If we think about international economic law and its embedding of the right to property and the right to contract. If we think about the founding of the ILO, it preceded the big push forward of standard setting of international human rights in 1945. The ILO was established in 1919 in large part as a response to the threat of Bolshevism. And it was an attempt to give organized labor some power within the confines of capitalism.

So capitalism is embedded and is maintained in very important ways through the structures of international law. A permanent feature? Well, I think that's probably something that I'll come back to in almost every question because I believe, at least within the realm of international human rights law—and I might regret saying this but I'm going to say it anyway—[everything is] endlessly fluid. And if not endlessly, then at least far more fluid than we've seen in its application so far. And so the possibility that it can do otherwise, that it can be emancipated from its commitment to capitalism and furthering in many ways, some of the worst excesses of capitalism, I think that's possible.

And I see that possibility already. International human rights lawyers working in this area will know very well in the area of indigenous rights, where landmark cases have reinterpreted fundamentally the right to property in the Inter-American Convention on Human Rights to apply to indigenous peoples, meaning the collective use and ownership of indigenous lands, really doing away with the interpretation as private property. And we see similar interpretive turns within the African human rights system. And I take that a bit further in some of my more recent research. So yes, everything is possible.

But the background assumption, I mean, socioeconomic rights rely on capitalism for their delivery? So it's an uphill battle to change things. But I think that's the direction of travel, not only among international human rights lawyers who think in this way, and we still might be something of a minority, but also incrementally, the thinking of the Committee on Economic, Social, and Cultural rights, even though that might be slower to move by virtue of its constellation and its political embeddedness. But we see change, we see we shift in this direction.

So is it a permanent feature? No, I think everything's for the taking. But that's not to say that we're not pushing up against entrenched assumptions and, indeed, the rootedness of this discipline and this field in capitalism itself.

Claire Smith (CS): One of the things that I really appreciate about your work is a hopefulness that a lot of us don't necessarily share. And so I'm genuinely curious about what drew you to this area and how you maintain that optimism?

MS: I guess the place to start would be my trajectory in a way, my intellectual trajectory. I started out as an optimist. I mean, I started out in a way as an activist, as some of us do. While I was doing my PhD, I was the representative of an NGO to the UN and to the African Commission on

Human Rights. But that's more of a footnote. I entered the academy right after my PhD, and I was committed to understanding the full potential of what we had as a normative framework in its most radical applications and incarnations. But I wasn't challenging capitalism. I wasn't challenging these background structures. I was trying to make sense of what was possible within the normative framework that we had at hand.

For people who know my work and my background on the right to development, it was a core part of my PhD for a very, very long time ago. For many years, I worked on obligations of international cooperation and assistance, which find expression in the International Covenant on Economic, Social, and Cultural Rights: what that could mean, what rich countries owe to people in poor countries, how we think about those relations, how we assess causation, how we consider when a state has given effect to its obligations at home (there's a moving target of the highest attainable standard of health at home, that's never actually reached for everybody, so at what point are there obligations elsewhere?). And how do we think about global economic justice more broadly through the prism of international. I was involved in the master principles on the extraterritorial application of ESC rights and all this kind of stuff. My work was animated by a sense of the existence of norms that could give effect to some applications of global economic justice, if I can put it that way. And I wanted to understand how we could apply them and make them better. And I spent quite a lot of time on that intellectually and engaged with others and in my research and my writing.

At a certain point, I felt that there were certain limits. And this isn't universally felt in the sense that I have colleagues still working in that area in a concentrated way doing amazing work. So it's not to say that there isn't a lot left to do on that trajectory, but it wasn't my trajectory to maintain a push towards something better within the confines of what we had. And I kept coming up against capitalism. So I integrated that and have now really taken on board this idea that we cannot get where we want to be within the current system of radical exploitation at multiple levels that plays out in many different ways and that we have to recognize where international human rights law, never mind international law more broadly or international economic law, is part of the problem and not meeting its objectives and never will through this model.

I think that's a key point. We can carry on and help the least well off, help the most vulnerable demarcate and protect certain areas, address evictions. These things are hugely important. And the minimum essential levels of rights is hugely important when you have very little. There's a struggle to be had at base with what socioeconomic rights set out to do, including the sort of progressive realization stuff. But it will never end and it will never get us very far. It just is a fix for the most egregious impacts of the system that we've created. And I want to look more systemically and more structurally at how we address those elements that will forever give rise to the kinds of socioeconomic rights issues that we have.

MA: We have a follow-up question to that one. You mentioned global economic justice and improving the human condition. But what comes across is a little bit of skepticism then towards the international legal framework as currently constituted. Is it that sort of dynamic that has led

you towards the work you're doing on peasants? You speak of peasants and their economic culture, and seem to have some hope in what this could offer us in terms of learning, or restructuring the framework. Is that what led to it? And then perhaps you can expand a little bit on what it is that you mean by the economic culture of peasants.

MS: I do increasingly see the fourth world as a world-making project. Or in any case, I believe in it. And that's part of this project of emancipation. And so, building on indigenous rights, the peasants' declaration is extremely important. It's radical in very particular ways. The way it focuses on local markets, it has a right to seeds, traditional uses of land on a small scale. It even has a provision on access to the means of production. It's really quite something! I mean, the idea of a right to seeds is incredible, right? In a time where 90% of [GMO] seeds are owned by one multinational company.

In the work I've done, the peasants' declaration is a mixed bag. Some of the rights reflect a rise against global capitalism, as I would say it, and they're important articulations. They address concentration in the holding of land and so forth. Other aspects of it reanimate and re-embed the kinds of problems the other parts of this declaration are seeking to address. So it's an amazing piece of work, with all the caveats about how far we can get with negotiated language. That's why we have this compromised language with the mechanisms of the state and human rights and with weak enforcement and all that kind of stuff. That said, this is still a really important advance in articulating quite radical claims.

And so that's one part of the answer. Relatedly, I wrote a blog post looking at this idea of economic culture. And what I was trying to do was in fact to elevate the idea that these new ways of doing things that pushback against capitalism and capitalist globalization are not just about their economies. They are part of their very culture, the way they live, the way they engage, the way they eat, the way they function in communities, the way they are mutually supportive, the way they're non-exploitative. So these cultures are embedded in the way they live and do things, without essentializing anything.

What I was trying to do was a bit of a strategic focus to say: within international human rights law, there's a primacy on protecting culture, a primacy on traditional ways of life, a primacy on non-discrimination, even at its most basic levels. Let us think about this economic turn, these radical provisions, and not merely as economic alternatives, but as embedding and necessary for the protection of culture, which comes out far more clearly in indigenous provisions. Because the culture element is there at the forefront.

With peasants, it's a more mixed bag. The peasants' declaration protects indigenous peoples and small fishers and farmers and pastoralists and refers to migrants and even landless people. So it's not a culture in the way we would normally understand, a cohesive culture that speaks the same language and so forth, but it's a cultural commitment to a way of life. And in that sense, it's culture. And so I wanted to harness the potential of international human rights law to

think about this, not just as alternative economic arrangements, but as embedded in a cultural way of life, which then affords them very particular kinds of protections.

MA: You're aware of the risks of empowering the state, if we were then to integrate this sort of peasant culture or even indigenous culture into human rights law. Are the benefits worth the risk?

MS: That's a great question. I talk about this change in the articulation of rights and there's something of a meta change I would suggest. It's not just about the articulation of these really important provisions about community, communal living, and so forth, the right to seeds, right, to reuse, so transcending ideas of private property and so forth. But what it reflects more broadly, and I've written a little bit about this in my peasants' piece from a few years ago, is a commitment to community. I think that commitment is extremely important because capitalism is based on breaking up that community. It focuses on the individual. As soon as we introduce ideas of communality, of commoning, of working together, it reflects a fundamental shift and a radical change from what capitalism actually requires.

But then you ask particularly about engaging states. So definitely, International Human Rights Law, International Law is a state-centered system. There's a problem, as I see it, with doing international human rights law precisely because it shifts the power from the community to the state. And it relies on the state for the delivery of these solutions. Through that, it embeds hierarchy, it embeds structures of dominance. I think there's a number of things that can be done, though, to counter that. I think one is to always think about the engagement as one step in a far bigger strategy. And I'm not the only one to approach it this way, right? This is not the end game, but this is an engagement that is a step towards a far greater sort of emancipatory strategy or a far greater turn.

Second, I think we should recognize that power is fundamentally with the community and that there should be the opportunity to step away from that engagement with the state when the time comes.

And I think there's a third and important point that comes up in discussions around how international human rights law and the nature of a state's party's obligations might be rethought to make space for their role in facilitating alternative economies, commoning and so forth. And what I mean here is that it wouldn't just be a sort of respect, protect and fulfill, which is the standard way in which we assess a state's obligations in this area, but they would have a duty to facilitate, to enable the creation of these sovereign communities, alternative forms of ownership and so forth. The role of the state would be to limit and do away with the role of the state in empowering these communities to be sovereign and to have shared ownership of their own property and to have forms of economic democracy.

Embedding a system that allows the state to take a far lesser role would be part of engaging with the state. So moving against the idea of constantly empowering the state, but making the state's legitimacy contingent on its acting as a facilitator towards these commitments that have

been articulated in these instruments, such as in the Peasants' Right instrument. So it's a very careful and strategic engagement with the state that doesn't cede power to the state, but makes demands on the state to do something differently.

CS: I'm curious about what role you see for lawyers in this. When we started the conversation, you said there is a limit to what we can do and what we can achieve. Can you share more about what you see that role as and the risks for lawyers and the potential for lawyers, particularly those of us who have a more revolutionary tendency?

MS: Thank you, Claire. I draw inspiration from decades of work that has manifested through different expressions, cohorts, and labels, but really foreground the same issue in many ways. If we think about, US legal realism and critical legal studies—and community lawyering and poverty lawyering approaches came out of the US—what ends up being key in my mind is that, as we do law, we don't lose sight of the structures and the background. If we're focused on a remedy for a particular harm, for a particular person—and international human rights law focuses us on the victim because you need a victim to bring the case in the first place—we must not lose sight in which conditions that harm was made possible. I find this extremely significant and helps me to think in, as you put it, in revolutionary terms.

And in our lawyering, whether as a practitioner defending a client, or as a professor teaching and writing, the idea is really just to think about what gave rise to those problems in the first place and always assume there are many victims not represented; they're equally situated, equally harmed. We should look for the root causes of those problems and address those and foreground those when we're doing our lawyerly stuff. I think part of what we do and what we have to do is to draw on a long intellectual and practical history that has taught us to engage with the structural and the assumptions that make possible these harms and to think about these harms broadly. [It's a balance between] protecting one person as the ultimate unit of international human rights protection and not to lose sight [that it's not an] isolated incident.

MA: You spoke about responsibility in my initial question, and I'm curious about how you bring that into our teaching and our pedagogy?

Like everyone, my teaching has evolved over time and I've matured as a teacher, as a thinker and as an activist academic, if I can use that term and I bring that to the classroom. I do a couple things: I foreground assumptions, I challenge conventional wisdom, and I'm interdisciplinary. So I bring to bear facts and figures from disciplines that help us to situate law, particularly economics, but also political studies, international political economy and some economic sociology. I find that philosophers and political theorists can be very helpful in challenging some of our assumptions. So I teach in a nuanced way, taking the international seriously.

I have a course on world poverty and human rights. I take seriously what human rights does here and what it can do here. But I also take the whole context. Everything's contextualized. I pay attention in my reading list to access the kinds of readings that give them a diverse sense,

both within international law, but also outside of international law. My reading lists are rarely exclusively international lawyers, even though that grounds our approach and is our entry point.

My courses—not only my world poverty and human rights course—but actually everything I teach at the master's level are open to other programs. So I get LLM students, of course, but I also get students from global politics, international development studies, the MSC in inequalities and the MSC in human rights. They enrich the conversations enormously, as you can imagine. But I also bring something to their learning they wouldn't have gotten within their own field. And so I'm committed to opening up my courses and I always get a very good number of students from these other programs. And I think that's really part of doing this stuff properly and maximizing the potential of opening minds and making them responsible thinkers.

CS: I'd like to pick up on this educational question. You mentioned something about the self selecting nature of your students. Students aren't taking your courses because they want a job at a magic circle firm; they're taking these, quite reasonably, because they're troubled by global poverty, and would like to do something about it. You have that privilege of being at an elite institution, admitting self selecting students who are taking your courses, from cross programs, and all of that is fantastic. What would you say to early career scholars, for example, those who are having to pay their dues in subjects they might not want to teach, but still having a critical disposition, and wanting to achieve global economic justice, wanting to improve and living standards for all. Is there any scope for that type of radical thinking, radical engagement across the law school as a whole?

MS: Yes, there is. I think this turn to decolonizing the curriculum has finally taken hold. I don't say that all colleagues are moved by it, but many are. The freedom to construct your reading list in a way that's diverse, and that is decolonized or reflects the history or the prehistory or the how we got here. When you teach property or when you teach land law, when you teach contracts, there's lots of ways of doing that that can open up a student's mind. We have such a rich TWAIL history; it's almost impossible not to teach our topics in a way that engages more broadly with power, hierarchy, exploitation. It's embedded and we have such brilliant scholars to draw from in that area. And my law school and our institution, as many others, fully endorse that turn now. It's no longer novel, but in fact, to a certain degree, expect it. And I think that opens up a good channel for doing things differently in terms of how we teach it.

CS: Margot, I'm very conscious of the time. And so before I give you the floor for the last word, as you see fit to put it, and also just because of my own selfishness, would you like to tell people where they can find your upcoming and emancipating human rights?

The peasants piece that we've been talking about came out in the London Review of International Law in late 2020; emancipating human rights, capitalism, and the common good is coming out in the Leiden Journal of International Law this summer [2023]. Some of the stuff on the economic culture of peasants emerged from a round table with the Special Rapporteur on

cultural rights. And then I wrote up my intervention and it's on the Third World Approaches International Law Review blog.

And we didn't get to talk about it, but I'm thinking about this piece on emancipating human rights. There's really a turn to a focus on commenting, on alternative ways of doing things, on economic democracy. And it's still niche in a certain sense, but it's not niche in a way it was 10 years ago. There's real movement in that direction. And I think part of this turn, this idea around economic culture, the Peasants Declaration, Indigenous rights as they've been fought for for a very long time, ties beautifully into this growth of law and commoning.

I attended an event in Berlin last week that was really great on that. This move towards de-growth and post-growth, which is really part not just of deconstructing the old order, but of building a new order. And I think that's seminal. And that's my last word: instead of just critically deconstructing what we have now, I think the turn to the rise of rights against global capitalism, and the turn to embedding, commoning within law, the constitutional thinking around the common good, and this whole movement towards post-growth and rethinking what we do fundamentally.

And there's a wonderful book review on *The Future is De-Growth, a Guide to a World Beyond Capitalism*. It really starts making sense of this in very concrete ways, and with great sort of intellectual and multidisciplinary insight. And my point here is merely that as we challenge long-held assumptions, what we see now is not coherent, but it's like-minded and mutually reinforcing entry points to building something new. And I think our turn to emancipating human rights or transformative international human rights law, as I talk about it, is part of that project of making things anew and doing away with the exploitative old.

MA: Excellent. Thanks a lot for coming on the show, Margot.