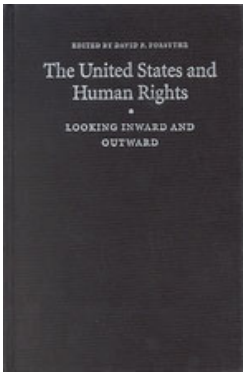
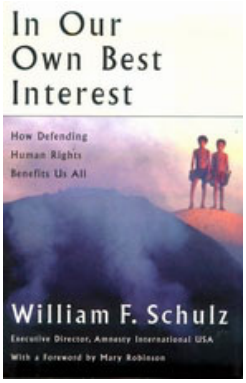
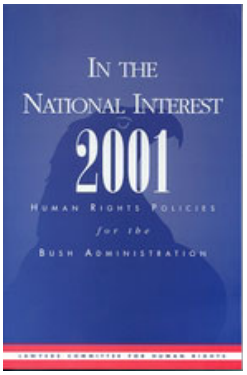




Beyond the Black Heart: The United States and Human Rights

By Daniel J. Whelan



The United States and Human Rights: Looking Inward and Outward edited by David P. Forsythe. Lincoln: University of Nebraska Press, 2000. 404pp.

In Our Own Best Interest: How Defending Human Rights Benefits Us All by William F. Shultz. Boston: Beacon Press, 2001. 235pp.

In the National Interest, 2001: Human Rights Policies for the Bush Administration by the Lawyers Committee for Human Rights. New York: Lawyers Committee for Human Rights, 2001. 157pp.

Foreign policy has suddenly found itself at center stage in American politics in a manner not seen since the end of the Cold War. This stage is brightly lit by the "war on terrorism," the overthrow of Saddam Hussein's regime in Iraq, a fair amount of saber-rattling at Syria, an on-again, off-again nuclear crisis with North Korea, and even diplomatic retribution against France for not going along with the U.S.' war plans in Iraq. From time to time, and depending on the audience, the current administration will rely on important values—such as democracy and freedom—to provide the moral foundations upon which America's new-found engagement with international politics ultimately rest. And it will claim those values as uniquely American. Some surely will maintain that American presidents are allowed—and even expected—to lay it on thick when it comes to "rallying the troops" and garnering public support for military intervention. Otherwise, we should not take such talk seriously. We should treat such appeals to "American" values, morality, and patriotism as so many "little white lies" similar to what parents tell their children. While this account appeals to my plain-clothes, pedestrian, and cynical sides, my scholarly appetite remains wholly unsated. I think we can and should seriously ask the question: will the return of "high international politics" to U.S. foreign policy include with it any kind of focus on human rights? If so, what vision of human rights will be promoted through U.S. policy?

For many human rights activists, practitioners and advocates, developments during the 1990s suggested a renewed commitment by the United States to bring its foreign and domestic policy in line with international human rights standards and practices. In a sense, the relative dominance of

domestic policy agendas during the Clinton administration provided cover for some of the most active American engagement with the international human rights regime since the Carter administration. While no one else was watching (or seemed much to care), the U.S. managed to take a leadership position for the establishment of a U.N. High Commissioner for Human Rights, ratify the International Covenant on Civil and Political Rights (ICCPR), and substantively participate in the drafting of the Treaty of Rome for the establishment of the International Criminal Court. That Washington seemed to have taken on a less dismissive attitude toward international human rights was viewed as a sign of progress in American human rights policy.

The election of George W. Bush in 2000 was accompanied by a rather dramatic shift in the foreign policy orientation of the United States—qualitatively distinct from the Clinton administration's active engagement with both "hot topics" (such as the NATO intervention in Kosovo) and the low politics of market democratization. The initial isolationist attitude adopted by the Bush State Department seemed much stronger than anything witnessed in recent history. It included the outright rejection of some important international regimes and institutions (e.g., the Kyoto Protocol and the ICC), and in particular, U.S. withdrawal from the ABM treaty, a long-standing regime that signified the stability of U.S. foreign policy for decades. Some wondered who was actually running foreign policy. It was the last question of the pre-9/11 world: the 36-point title of the September 10, 2001 issue of *Time* asked, "Where have you gone, Colin Powell?" with the tag line, "The Secretary of State isn't the foreign policy general everyone thought he'd be. What's holding him back?"

The terrorist attacks on New York and Washington, D.C. on September 11, 2001 shifted the Administration's focus toward the international, and recast foreign policy from its initial isolationist bent to a strongly unilateralist one. This turn of events brought international politics again to the forefront of American politics, which is certainly good news for International Relations scholars—including those interested in human rights. However, the Bush administration's particularly aggressive brand of idealistic crusading cloaked within a realist rhetoric—what *The National Interest* editor Adam Garfinkle calls "secular evangelism armed"—has set the tone of this new focus on international politics. Chemical, biological and nuclear weapons experts, retired military officers, and traditional security scholars are featured prominently—not human rights advocates. The topic of human rights, when it does come up, takes on a supporting role for the administration's military adventures—a patina of instrumental rhetoric that once removed hardly suggests that the Bush White House has adopted a human rights intervention policy. While no one is suggesting that the Taliban or Saddam Hussein were great defenders of human rights, do human rights activists, advocates and scholars find the current instrumental use of human rights in U.S. policy to be appealing, constructive, or worthy of praise?

Any thoughtful response to that question requires asking several others—for there is more to consider about the United States and human rights than the quality and character of the current Administration's approach to human rights. There are dozens of examples of human rights policy and practice that we can examine in detail and critique on a case-by-case basis. The question is whether we can find within U.S. domestic and foreign policy on human rights—or practices that influence the protection and promotion of human rights at home or abroad—some uniquely American "component" or aspect that would allow us to more fully understand why the United

States treats human rights the way it does. I believe an investigation into the sources of U.S. human rights policy and practice might allow us to do more than merely criticize the shortcomings or outright contradictions in America's approach to human rights. We will need to explore not only the content of official policy, but also how it is explained, explored, examined and understood by those outside the policy-making arena.

This essay intends to examine these questions within the discursive framework of American "exceptionalism" and its consequences for human rights. The idea that the United States is different, unique, or special when it comes to the promotion of political ideals such as democracy and rights lie at the heart of the many contradictions between international human rights standards and the U.S.' own vision of the meaning of these ideals and how they are best implemented. This essay first will explore the behaviors and actions of the United States vis-à-vis international and regional human rights regimes, as a matter of U.S. foreign and domestic policy. Second it will deal with the manner in which broader U.S. foreign policy practices influence the protection and promotion (or lack thereof) of human rights within other countries and at home.

Underlying both of these elements of U.S. human rights policy is the question of who (or what) constructs and perpetuates the discursive environment surrounding the United States and human rights. Certainly we need to look at how government officials view American human rights policy—as most of the literature does. But we also need to examine what human rights advocates—including scholars, analysts, activists, and practitioners—have to say about U.S. policy, how they describe the problems they identify, and what solutions they offer.

These two discursive environments are worth exploring in some detail. However, I would like to attempt to move beyond mere description, by taking on some of the assumptions—ideological, philosophical, and theoretical—that are embedded within the content of U.S. human rights policy and practice, as well as critical stances taken with regard to the United States and human rights. My intuition is that both policy makers and their critics carry with them certain assumptions about what human rights say about the nature and role of the state and of civil society organizations when it comes to the protection and promotion of human rights, and that these assumptions are the foundation of a uniquely American ideal of human rights. Furthermore, policy makers and their critics may actually share more of the same assumptions and ideological commitments than either of them care to recognize or admit.

Three recent monographs on the United States and human rights guide this essay. Even more surprising than their coincidental appearance in 2001 is the fact that they are written for different audiences, and deliver their contents in distinct formats—from the formal and academic to the streamlined and policy-oriented. The United States and Human Rights: Looking Inward and Outward, edited by David Forsythe of the University of Nebraska, is a compelling and excellent compilation—the first of its kind to explore in tandem the domestic and foreign dimensions of U.S. human rights policy. Among the rich array of topics considered in the volume are attempts at health care reform in the United States, U.S. refugee policy, the ratification of treaties, public opinion on human rights, the human rights dimensions of "democratization" as a pillar of U.S. foreign policy, and the relationship between the U.S. and multilateral institutions with regard to human rights theory and practice. The glue that holds the volume together is the editor's belief that human rights

are intermestic[1] as well as interdisciplinary, and that American exceptionalism contributes to the sharp contrast between American rhetoric and its policy and practice about advancing human rights and democracy abroad.

Complementing this text is a policy blueprint directed at the then-incoming Bush administration in 2001. Emerging out of a set of two-day expert group meetings, the Lawyers Committee for Human Rights issued In the National Interest 2001: Human Rights Policies for the Bush Administration. This was the fourth such document designed for an incoming (or in the case of 1996, returning) administration. It takes a serious and sobering approach to human rights and U.S. foreign and domestic policy. In the National Interest offers sound analysis and policy guidance in six different areas: promoting workers' human rights; protecting the right to seek asylum in the U.S.; U.S. support for the International Criminal Court; protecting refugees globally; enhancing U.S. human rights treaty compliance, and using the Internet to promote human rights. In looking at each comprehensively, In the National Interest does an excellent job of highlighting the necessary foreign and domestic policies necessary for achieving a rational, coherent and comprehensive American human rights policy. This particular text (which at more than 150 pages goes into considerably more depth than one normally gets from a policy piece) begs an intriguing question: whether September 11th is a point of departure when it comes to the U.S. and human rights. We can only imagine whether the Bush administration would be well on its way to implementing the LCHR's ambitious agenda, offered up in a pre-9/11 environment. My inclination would be to answer "no," but the fact that the administration has not met most (if any) of the LCHR's agenda is a matter far more serious than simply ignoring the recommendations. The LCHR guide does not indict the United States or its officials of any human rights violations—it adopts a non-combative approach in the belief that there is the likelihood of a good-faith effort by the Administration toward improving U.S. human rights policy. Given the current climate in Washington—colored as it is by the war on terrorism—one wonders what topics will fill the pages of the next LCHR guidebook.

In his most recent book, Amnesty International's Executive Director William Shultz searches for an approach to human rights that would allow for the emergence of a more vocal and effective constituency among the average American—"a person from Tennessee," as he recounts an interaction with a caller on a radio talk show. In Our Own Best Interest: How Defending Human Rights Benefits Us All offers a compelling approach that Schulz terms "realist," and brings to the table a great deal of experience and insight, fueled by a generous scuttle of frustration about the constellation of contradictions within U.S. foreign and domestic human rights policy. In particular, Shultz seems perplexed about the overall lack of support for human rights among the American public, for whom the protection and promotion of human rights overseas would seem to be a natural extension of their own political values. His answer lies in the belief that they are simply not well enough informed, or that few have taken the time to connect the dots between human rights violations overseas and how they affects American lives and livelihoods "here at home."

Schulz provides a number of very convincing arguments, and in an eminently accessible and sometimes humorous manner. As the title of his book suggests, those who champion the cause of

[1] This term presumably denotes the interplay between foreign and domestic policy.

human rights need to find a "third way" for advocating for human rights—a strategy that moves away from both formal legalistic approaches or the influence of moral suasion alone. Schulz recognizes that Americans seem comfortable with "short-term" foreign policy (re)actions, even though they may contradict or frustrate the realization of equally important long-term foreign policy goals. One only needs to consider how the failure to adopt any number of long-term policies leads to real, negative human consequences (perhaps "disasters" is not too strong a term) over the long run. The events of September 11th cast a particularly harsh light on the case of Afghanistan in this regard. With the benefit of hindsight, one might reasonably argue that had U.S. foreign policy kept the long-term in mind, some of the conditions that turned Afghanistan into a terrorist training camp might have been addressed or even alleviated.

The wide range of content and varying points of view encompassed by these three volumes presents a considerable challenge to anyone attempting to sift through the information and tease out some core elements of an American approach to human rights. Central to this task is a consideration of American exceptionalism and its consequences for U.S. human rights policy and practice.

American Exceptionalism

To be "exceptional" conveys several closely related yet distinct meanings. It first denotes a sense of being unique or rare, or so out of the ordinary to be "extraordinary." Stemming from this definition is a sense of superiority of quality or importance. Being exceptional not only means "better" (or "best"); it also seems to signify a quality that others cannot easily match or surpass. An exceptional bottle of wine would presumably be the result of a unique combination of viniculture, weather and climate, harvesting, fermentation, bottling and storage. But the source of a potentially exceptional wine would come from those qualities that change little over time. The fact that 1999 was a particularly good year for cabernet sauvignon grapes in California simply makes that vintage of the Stags Leap Hillside District Select Cabernet even more exceptional (I am told) than it would otherwise be. Exceptionalism in this sense suggests an inherent or innate quality belonging to the thing we describe as "exceptional," compared to others like it.

We might also think of exceptionalism as meaning "to the exception of other things," "exclusionary," or to be given exceptional treatment than what might ordinarily be the case. In this sense we might separate an exceptional child from other children in order to expose them to more intensive education at an accelerated pace than other children of similar age and experience. When we consider any or all of these qualities, one thing is clear: others apply the adjective of "exceptional." To refer to oneself as exceptional would be, at best, a sign of arrogance. At worst it would be delusional. But we might not have the opportunity to challenge one's self-image as exceptional—to set her straight, as it were. That person may begin to take liberties, because she thinks herself deserving of deferential treatment, bestowed with certain privileges and immunities that are adjunct to the quality of being "special,", "extraordinary," or "best." It is in this way that the term "exceptionalism" is most often applied to U.S. foreign policy. But it is important to consider the sources of an exceptionalist attitude as equally important as the behaviors that result from such an attitude.

David Forsythe in particular has written extensively on the exceptionalist character of U.S. foreign policy as an expression of American nationalism. In this sense, the U.S. is not unique in that its foreign policy is bound up with its collective self-image or informal ideology—this is true of all countries (Forsythe 2000: 142). But the hegemonic influence of the United States in promoting democratic ideals and a particular vision of human rights internationally makes an examination of American exceptionalism a critical undertaking. Forsythe tells us that since the founding of the republic, Americans—both elites and the public—have believed in the exceptional freedom and goodness of the American people, and the intimate relationship that exists between this sense of goodness and the unique "freedoms" that only Americans enjoy. Throughout history, the United States has seen itself as a "great experiment in personal liberty that has implications for the planet" (142). While these "implications" may suggest a proactive foreign policy, historically this has not necessarily been the case. During periods of relative isolationism, staying out of the fray of world politics finds its source in exceptionalism, and the belief that America can share its democratic ideals of freedom and liberty with the rest of the world indirectly by example. However, when the pendulum swings toward engagement in international affairs, the U.S.' sense of exceptionalism "predisposes Washington to talk about freedom and democracy and to assume it can make a difference for the better when and if it gets involved" (142). Official American rhetoric that accompanied the collapse of the Taliban in Afghanistan and Saddam Hussein in Iraq—with the United States proudly and willingly playing the role of "liberator"—provides an excellent example of this belief.

What does this mean in terms of U.S. human rights policy, more specifically? American exceptionalism is the font of the moral superiority it wields in pressuring other states to improve personal freedoms and liberties—as the U.S. defines those ideals. At the same time, it provides the necessary backdrop for the American contention that international human rights were not drafted with the United States in mind as a potential beneficiary. Human rights primarily are for others, not Americans. "The dominant view in Washington is that real human rights come from U.S. experience and are then exported to the rest of the world" (Forsythe 2002: 976). American elites, policy makers, and citizens generally consider the United States to be the exception with regard to the meaning and scope of human rights as a matter of international politics and foreign policy, and the role that international ideals, standards and practices play in domestic law, policy and practice. These consequences of American exceptionalism provide an analytical framework to consider most of the critiques of U.S. human rights policy and practice which appear in these three volumes. After exploring these in some detail, I will turn to some other consequences of American exceptionalism that we might want to consider as indicative of an American ideal of human rights.

Exceptionalism in Human Rights Policy

Exceptionalism in American policy relating to international and regional human rights regimes takes on a number of aspects. One key complaint among human rights advocates is that when it comes to taking more seriously international human rights norms, practices and institutions, the United States refuses to take serious steps toward bringing its policy in line with that of international institutions and other countries. One case in point is official Washington's recalcitrance when it comes to ratifying key human rights treaties—the Women's Convention (1979) and the Convention on the Rights of the Child (1989) being particular points of contention between activists and

Congress and the White House. A main argument against ratification is that federal and state laws already protect several rights enumerated within those treaties, and so ratification is not really necessary. A secondary argument is that human rights treaties are *not* self-executing in the U.S., and the necessary legislative work to bring the U.S. in line with the treaty provisions would be unduly burdensome. A third argument (in case one does not "buy into" the first two) is that the U.S. should not give up its sovereignty by making federal and state practice an object of "intrusive" human rights treaty monitoring bodies, and especially political bodies such as the U.N. Commission on Human Rights.[2]

There are sober challenges to these arguments which reveal that not all human rights advocates wear rose-colored glasses. In the face of policy-makers' objections to human rights treaties, human rights advocates offer policy advice that, in most instances, provides instrumentalist rationales that promote at least the appearance that the U.S. is "playing nice." One such argument goes something like this: the Senate should ratify these treaties and simply attach (even substantial) reservations, understandings, or declarations as it has done in the past.[3] This advice takes for granted that Congress and successive administrations may very well believe that international human rights and their attendant institutions are essentially devoid of meaning, content, and enforcement power. Its advocates will admit that it is highly unlikely the United States would *ever* "take orders" from international organizations (with regard to provisions outlining implementation of treaties into domestic legislation and policy). The point here is that the United States can get a lot more diplomatic mileage out of playing the politically valuable human rights "rhetoric" card more fully. And why not do it *now*, while the United States is on a highly visible public relations campaign to garner international support for the "war on terrorism"—not to mention engaging in a rather intensive public relations campaign to sell the United States and its foreign policy to a highly suspicious Muslim world?[4]

Would policy makers within government be the most vocal critics of this approach to U.S. ratification of human rights treaties? Probably not. It would surely come from other human rights advocates, who likely would argue that adopting such a bald-faced instrumentalist orientation to human rights would be no better than the contempt for human rights shown by a whole host of authoritarian or otherwise illiberal regimes. How can the United States possibly criticize a country for choosing to ignore its obligations to respect religious freedom when the U.S. rejects the prohibition against execution of people under the age of 18? If nothing else, *pacta sunt servanda*[5] must be good for something. If we are going to take human rights seriously, these advocates would

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[2] The U.N. Commission is made up of representatives of 53 member states of the U.N. The committees that oversee the implementation and compliance with the various human rights treaties is made up of independent experts.
[3] See e.g. Cerna in Forsythe, 99. She argues that human rights lawyers have actually impeded the ratification of human rights treaties by quibbling over the scope and meaning of reservations that water down the treaties, giving the Senate Foreign Relations Committee the jitters over the prospects of U.S. law being driven by international law.
[4] On January 21st, 2003, President Bush signed an Executive Order creating the White House Office of Global Communications. One of its functions is to improve America's image abroad, especially in the Arab world. For more information see http://www.pbs.org/newshour/bb/media/jan-june03/diplomacy_1-21.html.
[5] This is the basic tenet of the international law of treaties, namely that any country that accedes to a treaty does so with the good faith intention of complying with its provisions.

protest, we have to do more than just go through the motions of ratification. The letter and the spirit of human rights treaties are equally important.

The U.S. stance toward ratifications seems to be indicative of the overall American attitude toward human rights generally—one that reveals a tension between America's self-image as a champion of human rights and its reluctance to recognize, even rhetorically, the legitimacy of a whole host of internationally recognized and codified human rights. Looking at this topic in depth offers us a chance to look at the symbolic and practical meanings of human rights in terms of both foreign and domestic policy. For example, Barbara Stark's contribution to the Forsythe volume looks into the reasons behind the U.S. failure to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR). As a starting point, Stark finds the source of American opposition to the treaty within the politics of the Cold War. In particular, the Soviet Union's advocacy of the ICESCR over the ICCPR made it nearly impossible—if not politically dangerous—for the domestic human rights community to promote ratification of that treaty. Even though that ideological conflict is a thing of the past, the contemporary difficulties surrounding ratification are artifacts inspired by that conflict: in the liberal vs. conservative discourse centering on "entitlement" versus "individual responsibility," economic and social rights are seen as "welfare magnets" (Stark in Forsythe: 77, 80).

Beyond this, Stark's explanation of the lack of support for the Covenant extends beyond the ideological into the practical. As she sees it, the domestic human rights community lacks ties to other domestic constituencies that could support and make economic rights concrete in the United States. This is due in part to the "abstracted tone" of the discourse on economic rights and the "us and them" divide that pervades the missions of human rights organizations that choose to focus their attentions on human rights issues in other countries, at the expense of focusing their attention on the domestic realm (78). So is the problem purely ideological, or is it that domestic groups that advocate for economic and social justice find little solace within the terms and mechanisms provided by the ICESCR, as compared to policy avenues already available to them now?

What about civil and political rights? After all, the United States did finally ratify the ICCPR in 1992. Can we take the lessons provided by this "success story" and apply it to different treaty regime? This is the approach taken by Christina Cerna in her analysis of the U.S. Senate Foreign Relations Committee's rationale for supporting ratification of the ICCPR. She offers that case to support ratification of the American Convention on Human Rights, which entered into force in 1978. Not surprisingly, Cerna reveals the instrumental rationale for U.S. ratification of the ICCPR. The Committee found great value in the prospect of influencing standard-setting through institutional mechanisms established by the treaty itself—the Human Rights Committee. In her view, the standard setting function of human rights regimes—and the Human Rights Committee in particular—is perhaps "the most important contribution of the intergovernmental organizations in the human rights area over the past fifty years" (Cerna in Forsythe: 99).

Cerna's analysis of the legislative history of ratification of the ICCPR is thorough and worthwhile in and of itself. In her blow-by-blow analysis of the Senate Foreign Relations Committee's rationale for ratification, she points out how the same arguments can and should motivate Senate confirmation of the American Convention. But her analysis fails to consider why

this has not been attempted, or how the two treaties diverge from one another. These are not trivial matters. For one, the American Convention contains a wider array of rights across categories—the principle of indivisibility is somewhat honored by the inclusion of economic and social rights within the body of the treaty. Second, and probably more important, are the far more extensive and comprehensive institutions for implementation, monitoring and compliance that the American Convention brings to bear in comparison with the ICCPR.

In short, the United States does not like human rights treaties—even when their institutional implementation and compliance mechanisms are weak. But, as William A. Schabas goes to great lengths to make clear in his cleverly titled chapter in the Forsythe volume, the United States will still put up a great deal of fuss when it comes to following the rules of even relatively weak regimes: "[t]he United States has come kicking and screaming into the modern world of international human right treaties" (Schabas in Forsythe: 110) Despite early support by the U.S. for the development of human rights law at the United Nations, the American position changed dramatically upon the announcement by Secretary of State John Foster Dulles in 1953 that the U.S. had no intention of ratifying human rights treaties. Schabas contends that the principal reason why ratifications have stopped (especially with regard to the Women's Convention and Convention on the Rights of the Child) is due to Washington's reaction to the position taken by (especially) the Human Rights Committee[6] on the issue of reservations (110). Seeing a proliferation of states parties' reservations to key provisions of human rights treaties generally, the Vienna Declaration that emerged from the World Conference on Human Rights in 1993 urged states to reduce the number and scope of reservations (111). Shortly thereafter, the Human Rights Committee adopted General Comment number 24 on the issue of reservations in November 1994 (111).

While specific reservations to the treaty always have been of major concern to human rights advocates inside and outside the U.N. system, the bottom line is that the U.S. position on what constitutes the "object and intent" of the treaty is markedly at odds with the interpretations and practices of those liberal regimes considered to be allies or friends of the United States. Nevertheless, since 1988 the U.S. has applied two "boilerplate" reservations to all human rights treaties: that they are not self-executing, and that implementation in a federal system is sometimes "outside" the purview of the federal government (112). In particular, the view of the U.S. Senate Foreign Relations Committee in response to the Human Rights Committee's stance on reservations is that "[t]he object and purpose was to protect human rights, with an understanding that there need not be immediate, universal implementation of all terms of the treaty….A primary object and purpose of the Covenant was to secure the widest possible adherence, with a clear understanding that a relatively liberal regime on the permissibility of reservations should therefore be required"(118). Schabas maintains that while reservations can be tolerated in order to promote widespread ratifications, abusive use of reservations undermines the significance of the treaty (118).

These examples remind us that the politics of human rights are indeed complex and need exploration. Recent attempts to reveal the flawed logic of the Bush administration's hostile stance

[6] The Human Rights Committee is the body established under Article 28 of the ICCPR to monitor States-Parties compliance with national implementation of the terms of the treaty (the power for which is enumerated under Article 40).

against the International Criminal Court (ICC) provide perhaps the most poignant expression of how confusing—and sometimes contradictory—the domestic politics of human rights can be. The Lawyers Committee for Human Rights, in its policy advice for the Bush administration, provides ample, sound reasoning why the United States should not reject the ICC regime out of hand, while also acknowledging some legitimate concerns harbored by both Congress and the White House concerning the vulnerability of U.S. policy makers and military officials to prosecution by the Court. As the contributors to the LCHR report see it, the reasons for U.S. opposition to the ICC stem from the tension between the desire for a cooperative international system based on the rule of law, and the wish of U.S. officials to assert the right to use unilateral force in pursuit of its policy goals (LCHR: 75). The Bush administration has advanced a position that seems only to repudiate the policy goals of the Clinton administration (whose diplomats actually rejected the final draft of the Rome Treaty, in opposition to every other NATO country except Turkey). In fact, the LCHR attests that American rejection of the ICC contradicts some of the reasoning offered by the Senate Foreign Relations Committee when it advised ratification of the ICCPR in 1992—that involvement in the treaty regime would certainly advance the U.S. "national interest" (71-74; Cerna in Forsythe 100-103) The Lawyers Committee Report points out that the ICC reaffirms individual rather than collective criminal responsibility for war crimes, and can promote U.S. security interests by contributing to a more stable and peaceful international environment (72-74). In their view, the ICC's reaffirmation that international law matters is nothing short of "hard-nosed realism" (74).

The Lawyers Committee—and others as well (see esp. Forsythe 2002)—note that even though the U.S. has refused to ratify the Rome Statute, it should not foreclose the possibility of future ratification, since this would allow the U.S. to remain engaged in the development of standards, norms and practices of the Court in the future. However, the passage of the American Servicemember's Protection Act (ASPA) [7]—which one ICC advocacy group[8] calls "an odd and tortured piece of legislation"—will do precisely that. While the President presumably has a great deal of latitude in interpreting and executing this law, it nonetheless: prohibits cooperation between any local, state or federal officials and the ICC in any investigation; bars U.S. military personnel from participating in any peacekeeping operations unless the President certifies to Congress that they can do so without risk of prosecution by the ICC; prohibits U.S. military assistance to any country (other than NATO members and other major allies) that is a party to the ICC; and authorizes the President to use all means necessary and appropriate to secure the release from ICC custody of U.S. or allied personnel or officials[9] (87).

The contributors to the LCHR report see this move as ultimately self-defeating. In their view, U.S. engagement with the ICC process, even as a non-party to the treaty, "would reaffirm the standing U.S. commitment to uphold international humanitarian law" (81). Furthermore,

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[7] After being introduced separately in the U.S. House of Representatives and the Senate as a stand-alone piece of legislation, Congress eventually re-packaged the ASPA as part of a supplemental appropriations bill, which President Bush signed into law on August 2, 2002. Public Law 107-206 is called "The 2002 Supplemental Appropriations Act for Further Recovery from and Responses to Terrorist Attacks in the United States." Title II of the act is the ASPA.
[8] The American Non-Governmental Organizations Coalition for the International Criminal Court. See www.amicc.org.
[9] Opponents of the ASPA call this last provision the "Hague Invasion Clause," as it envisions U.S. troops invading the Netherlands to rescue U.S. officials held in custody awaiting a hearing or trial.

> *The United States could adopt such a posture secure in the knowledge that, in the unlikely event that an alleged crime by an American were brought to the court's attention, the ICC Statute would obligate it to defer to the U.S. military justice system to carry out a good-faith investigation. The marginal risk that is involved could then simply be treated as a part of the ordinary calculus of conducting military operations, on a par with the risk of incurring casualties or the restraints imposed by the laws of war. The preparation and conduct of military action inherently involve risk assessment, and the marginal risk of exposure to ICC jurisdiction is far outweighed by the benefits of the court for U.S. foreign policy (81).*

How the United States has treated the ICC is likely the sharpest example of the consequences of American exceptionalism in terms of human rights policy. It is difficult to ascertain, however, whether it is an accurate representation of the continuation of a long-term policy, or part and parcel of a dramatic shift on the part of the Bush administration from prior and perhaps long-standing U.S. policy and practice. If we take other recent shifts in U.S. foreign policy toward international institutions and regimes—the rejection of Kyoto, withdrawal from the ABM treaty regime, and the administration's contentious interpretation of the Geneva Conventions come to mind—the Bush White House's particular brand of exceptionalism seems qualitatively different from what we have become accustomed to—passive neglect rather than outright rejection of international human rights norms and institutions.

Exceptionalism in Human Rights Practice

Yet neither does the Administration fully reject the idea or the language of human rights. The Administration cited human rights violations in support of U.S. military action against the Taliban and Saddam Hussein. These citations have more forcefully cast in stone a distinctly American version of human rights that has been fifty years in the making. While we have looked at some examples of the consequences of exceptionalism regarding human rights regimes and institutions themselves, we can now turn to another element of American exceptionalism in human rights policy—one that also has a foreign and a domestic angle. It stems from the popular perception (even among some human rights advocates themselves) that the thing we call human rights is meant for other people. Like other totalizing concepts such as "development" and "democratization," human rights are something "we" have that "they" do not. And if they get them (human rights), they will be better off (just as we are…at least in theory).

For the most strident critics of U.S. foreign policy, this is simply another example of American chauvinism. Because the making of foreign and domestic policy is not very well linked or coordinated (or does not appear to be so in any case, unless we're talking about American jobs going "overseas"), it is easy to overlook how intimately the two sides of this divide are related to one another.

Given contemporary events, it is serendipitous that two chapters of the Forsythe volume deal with this topic as it relates to the Middle East. Steven Zunes analyzes some of the barriers to the U.S. promotion of democratization in the Middle East, mainly stemming from the double standards within American democratization policy. Contending that the U.S. really does not desire the emergence of strong democratic regimes among our allies in that region (from a policy standpoint it

is much easier to deal with non-elected elites rather than politicians whose fortunes would inevitably rise and fall with potentially volatile public opinion), Zunes points out that there are a number of other, more fundamental barriers to the promotion of democracy and human rights in the Middle East. Among these is a palpably prejudicial attitude toward Arab and Islamic cultures that fosters the belief that democracy is incompatible with Middle Eastern politics. The effect, according to Zunes, is to divert attention away from the real barriers to the development of liberal democratic institutions in the Middle East, namely the legacy of colonialism, extraordinarily high levels of militarization, and uneven economic development (Zunes in Forsythe: 234). Of course, the lack of real U.S. support for democratization in the Middle East has both active and passive elements. In the case of the former, the installation of the Shah of Iran with the help of the U.S., and the Shah's subsequent elimination of all political opposition to his autocratic rule ultimately contributed to the rise of extremism from mosques effectively outside the reach of the state (240-241). Zunes maintains that continued U.S. support for repressive regimes, especially in Saudi Arabia, Morocco, Egypt, and the Gulf monarchies, has fostered ever-powerful reactionary movement that would be inherently hostile to the United States should they ever come to power (241).

Christopher Joyner elaborates on Zunes' analysis by pointing out that the problem in the Islamic world is not one necessarily of culture or religion, but rather the lack of strong and stable democratic examples. While noting the mix of regime types throughout the Islamic world (ranging from traditional autocracies/dynasties, modernizing autocracies, dictatorships, and radical Islamic regimes), Joyner flatly rejects the idea that arbitrary rule is somehow inherent to Islamic religion and culture, because the basic tenets of Islam teach notions of freedom, equality, justice, human dignity, governance by contract, and the rule of law (Joyner in Forsythe: 251-253). The central problem to U.S. foreign policy interests in Joyner's view is the persistence of the belief that American-style democracy can merely be transplanted to the Middle East. This makes U.S. policy appear to be imperialist at the very least: "U.S. advocacy of Western democracy becomes viewed from the Arab perspective as cultural aggression that denies the validity of Islam as a way of life, and which in turn enhances the appeal of extremist Muslim revivalists and weakens the position of Muslim reformers striving to create a more democratic political system." (254)

Another consequence of American exceptionalism in human rights practice emerges when its foreign policy is directly at odds with the realization of human rights. A recent report from Physicians for Human Rights (PHR) offers a contemporary example. After visiting a number of sites in Afghanistan after the fall of the Taliban, PHR representatives believe that several summary executions of Taliban soldiers who surrendered to Northern Alliance fighters occurred in November 2001.[10] It has been suggested that these executions may have been carried out while U.S. troops—who were there to provide security—turned a blind eye. This may seem like an esoteric example given the exhaustive list of U.S. actions that have led directly to severe human rights violations—by its own agents, or (more commonly) as a result of U.S. support to repressive regimes and leaders since at least the 1950s. But the Afghanistan example—along with the dubbing of al-Qa'eda and Taliban captives as "belligerent non-combatants" in order to deny them protections offered to

[10] For a full accounting of PHR's research, visit http://www.physiciansforhumanrights.org/research/afghanistan/report_graves.html.

prisoners of war under the Geneva Conventions—are noteworthy inasmuch as they fidget uncomfortably within a campaign the Bush administration has christened "Operation Enduring Freedom."

At the time of the writing of the volumes under review, however, human rights advocates had begun to focus a great deal more attention on the more subtle ways in which U.S. foreign policy undermined the realization of internationally recognized human rights. This is especially true of the intersection between international development policy and human rights that emerged during the 1990s. Linda Camp Keith and Stephen Poe's empirical research on the human rights consequences of International Monetary Fund (IMF) economic stabilization programs, for example, suggests a relationship between personal integrity abuses and the implementation of such programs in less developed countries. In particular, they cite the outbreak of food riots in Zambia (1986), the Dominican Republic (1984) and Tunisia (1983-4) as a result of IMF-backed subsidy-elimination programs that contributed to sharp increases in food prices (Camp Keith and Poe in Forsythe: 278). Because the United States maintains a substantial amount of leverage in determining to which countries IMF loans will be granted, it has at least some level of responsibility for the (perhaps unintended) consequences of strongly promoting neo-liberal economic adjustment programs. During the Reagan administration, lending decisions were made on largely ideological grounds. However, the authors point out that their seven-year study is insufficient to determine specifically long-term effects of structural adjustment lending on violations of human rights (291).

The consequences of this aspect of exceptionalism—i.e., outright ignorance or apathy on the part of policy makers about the ways in which U.S. foreign policies directly or indirectly diminish the cause of human rights in other parts of the world—is a central theme woven throughout the contents of the Shultz volume. However, its presentation is meant to demonstrate not only how U.S. domestic and foreign policy are inextricably linked, but more pointedly that U.S. foreign policy interests are not served by denying the complex human rights dimensions of ostensibly "realist" policy orientations. Furthermore, Schultz does an excellent job of unveiling how human rights violations abroad directly affect Americans at home. He decries the deep-seated hypocrisy of some American politicians' penchant for separating the foreign and the domestic: "It is a great irony that some of those most vociferous in their calls for tough criminal standards and strict law enforcement in the United States go weak in the knees when it comes to miscreants in business suits and military uniforms" (Schulz: 55).

Given the current political climate within the U.S., especially President Bush's recently proposed package for stimulating the very sluggish American economy (a plan that undoubtedly favors what one writer has dubbed a "mist down" approach by calling for the elimination of taxes on dividends that will favor the wealthy more than the average taxpayer), Schulz' chapter "The Bottom Line: Why Human Rights are Good for Business" is worth exploring in some detail. The light-hearted opening of the chapter sets the stage of understanding phenomena that are "startling but true," such as the idea that protecting human rights abroad is good for business at home. Schulz opens by pointing out that the pantheon of thinkers to whom "free market" conservatives pay constant homage—namely Friedrich Hayek, Ayn Rand, and Milton Friedman—advocated the position that liberty and economic growth go hand in hand. But the profound meaning of this position has been skewed to promote merely negative liberty in the marketplace as the only true engine of growth. When

American companies do business in places where human rights are routinely violated, it goes against the spirit of what those thinkers were expounding (66).

This "commercialist argument" which has been advanced by every administration since Reagan's first term makes the simplistic assumption that U.S. investments to promote "free" and relatively unregulated economic activity will somehow spawn political freedoms. If this were really the case, says Schulz, "Singapore should be a human rights haven. As should Malaysia. Or, in the past, Suharto's Indonesia. Or apartheid-era South Africa…Or Pinochet's Chile. Or Nazi Germany…" (70-71) Even former U.S. Trade Representative Charlene Barshefsky once remarked with regard to China's entry into the World Trade Organization, "I am cautious in making claims that a market-opening agreement leads to anything other than opening the market." (71) In light of Chairman of the Federal Reserve Board Alan Greenspan's contention that the "guiding mechanism of a free market economy…is a bill of rights, enforced by an impartial judiciary," Schulz argues that the commercialist approach is "woefully incomplete and business is far more dependant on respect for human rights than it usually cares to let on." (72)

A central message that Shultz conveys through a variety of high-profile examples (including from Indonesia, China, and the UNOCAL case in Burma) is that when U.S. corporations invest in countries with neo-mercantilist economic systems that supposedly generate "savings" to the bottom lines of foreign corporations, they end up promoting practices that ultimately will be self-defeating. Tax systems that benefit small oligarchies mean that consistently sound property rights can never be assumed. Countries that practice censorship destroy the advertising markets that U.S. companies rely upon for sales, especially through television, radio, magazines and the internet (88). The cost of corruption is high: Schulz cites one economist who estimates that investing in a corrupt country is the equivalent of adding a 20 percent tax on an investment. (82)

Tom Farer, the Dean of the Graduate School of International Studies at the University of Denver, is known to tell new graduate students that they can probably do more to improve human rights in the world from the boardroom of a major corporation than from a human rights NGO. This echoes Schultz' feeling exactly. When American companies are encouraged to practice a form of exceptionalism in order to improve their bottom line, they reveal contempt for real value of protecting rights as a necessity for participation in economic activity. "Businesses can ill afford to render employees sick, angry and impoverished if they expect to receive the benefits of workers' loyalty and most effective work." (90) How can we understand these complexities, however, when the debate over the benefits of the "free market" and the role of the state continues to be dominated by a strong ideological commitment to neo-liberal economic policy? How do U.S. trade and development policies influence the expansion or limitation of human rights?

So far, the books under review have provided a set of roadmaps for exploring the extent to which American exceptionalism shapes U.S. human rights policy at home and elsewhere, and how U.S. foreign policy is practiced in such a way as to sometimes be contradictory to the idea of the United States as a promoter and defender of human rights everywhere. American policy and practice when it comes to human rights has long been a target of criticism especially from human rights advocates and practitioners. In this descriptive approach to understanding American human rights policy lies the belief that disseminating such knowledge can lead to policy change. I do not doubt

that adequate descriptive research is indispensable for bringing U.S. human policy more in line with the letter and spirit of international human rights norms, standards and practices. But it is only a start. If we believe that a pervasive exceptionalist attitude sits at the heart of American human rights policy, and that attitude is embedded within the very identity of the United States, we need to consider how exceptionalism contributes to a uniquely American human rights ideal—an ideal that in some important respects is inimical to some foundational principles of international human rights.

An American Ideal of Human Rights and the Rejection of Indivisibility

Any treatment American human rights policy obviously could simply stop after the catalogue of the transgressions of the United States—especially in its foreign policy—has been presented. I do not mean to suggest that this is a useless exercise. I am interested, however, in digging a little deeper in an attempt to identify a distinctly American "ideal form" or "type" of human rights—one that is sufficiently distinct from the ways in which other modern, liberal-democratic states treat the subject of human rights; attitudes that cluster around some basic agreed-upon norms and standards. I am also searching for some level of explanation of American human rights policy other than the hoary old chestnut that black-hearted "American imperialism" is to blame.

The earliest days of the modern human rights era might offer a clue to an American ideal of what "universal human rights" means. Upon the adoption of the Universal Declaration of Human Rights in December 1948, Eleanor Roosevelt, the Chair of the Commission that drafted the Declaration, made the first interpretive reservation to an international human rights instrument by saying that "the United States Government does not consider that economic, social and cultural rights imply an obligation on governments to assure the enjoyment of these rights by direct government action" (Kunz 1949:322) This statement, and its historical tenacity in American domestic and foreign human rights policy, speaks centrally to American discomfort with the concept of the indivisibility of human rights. I believe this unsettled problem is often times at the core of the other difficulties we face when thinking about the consequences for human rights of American exceptionalism, and what we might think or do about them.

Along with the notion that human rights are universal—that they inhere in the individual, no matter what her particular economic, social, cultural, or political circumstances—the central importance of the indivisibility of human rights was reiterated by the international community most recently in the Vienna Declaration and Programme of Action[11] adopted at the World Conference on Human rights in 1993. The concept of indivisibility seems simple enough: all rights, no matter what their object, classification, "category" or "generation," are equally "rights." In the most often cited formulation, indivisibility means that economic and social rights are just as much "rights" as are civil and political rights. Secondly, indivisible human rights are mutually reinforcing and interdependent. A right to access information, technologies and services for HIV/AIDS prevention is as much a matter of civil rights such as freedom of speech, movement and association, as it is part and parcel of the right to health—which is often classified as a "social" right.

[11] U.N. Doc. A/CONF.157/23, 12 July 1993.

The problem we face with the indivisibility of human rights is that it is a concept loaded with a great deal of rhetoric that is rarely unpacked or interpreted in terms of who holds rights and what institutions instantiate rights in the modern world. Interpretive scholarship on the documentary history and development of instruments guaranteeing economic, social and cultural rights have yielded several formulations in support of the justiciability of these rights on equal par with civil and political rights.[12] In these formulations, what we need to do is simply declare these rights to be an appropriate object of state policy—and treat their contravention or omission within state policy as human rights violations.[13] The need to imbue such rights with meaningful policy, legal or administrative content is important, lest they be considered meaningless altogether. However, the singular focus of attention on imbuing economic, social and cultural rights with the same kind of "legitimacy" as civil and political rights makes us keenly aware of the extent to which "negative" civil and political rights remain at the heart of the discursive environment of international human rights. Nevertheless, bolder and more adventurous human rights advocates wonder what exactly accounts for the widespread belief that "human rights" are only about the worst of government-sponsored abuses, yet when it comes to thinking about "welfare" in human rights terms, we must be talking about something else.

One answer is that we might very well be talking about something else. But we really cannot make that determination until we supply a theory of rights with which to measure the content of different kinds of rights to see if it makes sense to call them rights. In the absence of divining a theory of rights that would make economic, social and cultural rights unproblematic, perhaps we can consider taking another approach to the question. We have some familiarity with the American version of human rights through its policies and practices. If the United States has a unique version of what human rights mean, and we take Eleanor Roosevelt's pronouncement in 1948 and the fact that the U.S. has yet to (and probably will never) ratify the ICESCR as indicative of America's idea of human rights, then the rejection of indivisibility suggests along with it the rejection of the idea of a proactive state as the means by which human rights are realized. No doubt, this contention needs to be elaborated, for such thinking implicates not only the ideological "right" who we might consider to be opposed to any expansive reading of human rights, but also the ideological "left" whose anti-statist credentials are an absolute necessity in the world of human rights advocacy. What does the concept of indivisibility—and its rejection—tell us about the idea of the state and of civil society envisioned by the spirit of international human rights? And is that what American human rights policy is really all about?

We can take the promotion of democracy abroad as an exercise in the protection and promotion of human rights as a case in point. We have already covered the case of the Middle East—which revealed that official U.S. attempts at democracy promotion in that region clearly reveal a divide between rhetoric and practice. But what about the democracy promotion project generally? Jack Donnelly's "Democracy and U.S. Foreign Policy: Concepts and Complexities," which appears in the

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[12] See for example Alston and Quinn 1987, Leckie 1998, Robertson 1994, U.N. Committee on Economic, Social and Cultural Rights 1994, and in particular the texts of the "Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights" (reprinted in *Human Rights Quarterly* 9: 122-135) and the "Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (reprinted in *Human Rights Quarterly* 20(3): 691-704.
[13] For an outline of a violations approach to economic, social and cultural rights, see Chapman (1996) and Alston (1995).

Forsythe volume, provides a cogent expression of the need to explore the discursive underpinnings of how both policy makers and advocates construct a relatively uncontested and under-theorized linkage between human rights and democracy. Donnelly thinks it prudent to ask why this is the case, when the ends of democratic government and human rights are quite distinct. He reminds us that democracy answers the question of who should rule, whereas human rights address how governments should rule (Donnelly in Forsythe: 207). While the realization of the Universal Declaration of Human Rights presumes democratic forms of state (in Article 29, Section 2), the term "liberal democracy" inverts adjective and noun. Liberal democratic states are liberal first, and from liberal rights flows popular sovereignty, and thus, liberal-democratic governance. The tension as Donnelly sees it is that the promotion of "market democracy" in U.S. foreign policy effectively disembeds human rights from the liberal democratic ideal. This element of U.S. foreign (economic) policy—channeled as it is through powerful international institutions such as the World Bank and the International Monetary Fund—leaves out (or attempts to "restructure") the central redistributive role of the welfare state that is demanded by individual human rights (223).

While this is a specific case, the theoretical muddle about "democracy" and "human rights" has larger implications. If we believe that U.S. foreign policy is a reflection of American political values (i.e., the value of democratic governance), then the export of "market democracy" is very much at odds with substantially developed liberal-democratic welfare state that characterizes the United States (regardless of the gaps that currently exist, which Donnelly admits provide "last resort" protection in most circumstances). While I agree that the liberal democratic welfare state is "an essential part of the contemporary American political ideal," clearly twenty years of progressively conservative anti-welfare policy within the United States has eroded that ideal significantly. Conservative fears of "big government" have led to an "excessive preference" that key economic and social rights be realized through civil society and the family, and not the state. But if we are talking about rights, we need to unpack what we mean about "rights" being "realized" within civil society institutions (most importantly, the market). A largely fought-over yet scarcely critically-debated point bears pointing out here: where should the "responsibilities" of the market give way to the "responsibilities" of the state? Contra economic (neo-liberal) conservatives, Donnelly contends that the role of the market is to distribute resources above a certain "minimum" floor (224). But how would a market "know" what this might be, without some guidance from the state, in the form of sound and enforced law regarding, for instance, a minimum wage that allows people to live above the poverty line, safe working conditions, non-discrimination in hiring, promotions, and termination, fair housing standards, and so forth? In a strange way, some liberals as well as many conservatives expect the marketplace itself—a realm of self interest—to operate for the general interest without interference from the state. For the former, the ideal is about the "just" market; for the latter, the ideal is somewhat less charitable—it is about an efficient distribution of resources to the hard-working "good" person.

These topics surrounding theory are central to unpacking the various positions about the United States and human rights in domestic and foreign policy. While we might see a disconnect between ideals held by Americans and the policies pursued by its leaders—in Donnelly's example, as it bears on the unexamined assumptions about the link between democracy promotion and human rights—I believe that at issue is a much larger unexamined and unexplored set of assumptions about rights, the market (or civil society, broadly speaking) and the state. The contributors to these volumes have

looked closely at these assumptions as part and parcel of their extensive examination of American human rights policy and practice. In doing so, they have guided our understanding of the complexities and nuances of how the U.S. treats human rights by taking a critical view of policies and practices. But what about the content or methods of the critiques themselves? Can we understand even more about these complexities by taking a detailed look at the assumptions that human rights advocates hold about rights, the state, and civil society?

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Largely dominated by lawyers for much of the contemporary era of human rights, the community of human rights advocates recently has become populated by a number of new advocates: activists working for social and economic justice, those who work the front-lines of humanitarian relief, and people who work in international development, just to name a few. The tensions here are myriad and diverse: a cacophony of voices and concerns that all ultimately strive for the same goal: the betterment of individuals and communities. However, for the older residents of this circle, the work of human rights is necessarily and inherently *political*, given their more traditional focus on chasing down governments that are complicit in abusing their own citizens: the heady stuff of classic human rights work. The shadows of Hitler, Stalin, Pinochet and Pol Pot are indeed long.

But the interlopers into this neighborhood have found particular normative value to adding a human rights dimension—a "lens" as it is sometimes called—to the work that until recently they considered as "functional." Increasingly throughout the 1990s, this was the case in the field of social and political development, especially among those who engage in research and policy advocacy surrounding population and reproductive health, women-in-development, and democracy and governance among other things. Many of their particular concerns lay on the other side of the "positive/negative rights" divide. Although they had been reluctant to adopt human rights as a policy tool for many years—considering such an endeavor to be outside their expertise—a focus on "positive" rights and their realization through non-legal policy means contributed to the adoption of human rights approaches and frameworks to their own work.

While on the surface human rights traditionalists have welcomed the addition of economic and social rights advocates to their ranks, problems about the practical utility of realizing the indivisibility of human rights is a major source of tension between these two groups. Whereas the foci of the former remains trained on improving legal responses to human rights issues, the latter find solace in somewhat obscure interpretations of Article 2 of the ICESCR, such as that provided by the Committee that oversees the implementation of that treaty. In particular, although legislative avenues toward the realization of the rights enumerated in the ICESCR are the only ones specifically mentioned, the Committee has interpreted the obligation for states to "undertake to take steps" within Article 2 to include judicial, administrative, social, educational, and other methods" (Committee on Economic, Social and Cultural Rights 1994). The thrust of this development is an expansion of the meaning of "justiciability" to include non-legal means for the realization of a right. This is the most poignant challenge to those who categorically reject "positive" economic, social and cultural rights out of hand, for it can be applied to the realization of civil and political rights as well.

After all, without a functioning and independent judiciary (for example), one cannot expect "negative" freedoms to be upheld either.

But this latter feature of the indivisibility argument—namely that the object of human rights is governance whose end is the development in freedom of the individual—often is not recognized as a source of unity between advocates of these separate categories of rights. Whether by functional design or because they were compelled to reproduce what we might think of as respective Foucaultian power/knowledge regimes, these two communities snuggled nicely into the spaces created for them by an artifact of the Cold War—the division in policy and practice between civil and political "negative" rights and economic and social "positive" rights. Nevertheless, both sets of constituents in this circle focus on the rights of people—in the case of the former, to empower individuals to access the law; for the latter, to expanding on the law to extend the umbrella of human rights "protections" to include economic and social rights. They continue to reproduce, through their own work, the false dichotomy of two distinct categories of human rights. This, then, is another source of considerable tension and debate about human rights policy.

The concern I have here stems from the consequences of advocates' (and policy-makers') continuing reliance on the idea that human rights are simply claims against the state…yet at the same time they exist prior to the state. The state becomes an institution that is the enemy of rights, and must be kept at bay. The strong discursive hegemony of negative rights thus becomes central to the manner in which most advocates think and discuss human rights at home and in U.S. foreign policy. By countering the justiciability claim directly, advocates of economic, social and cultural rights, who *contend* their commitment to indivisibility, are in fact reinforcing the division between different categories of rights, rather than considering an alternative discourse that would begin to break down these distinctions between "positive" and "negative" rights, between "civil and political" and "economic and social" rights, or between "first" "second," "third" (and even "fourth") generations of rights. To their detractors, these advocates seek to merely expand the number of things that one might claim from an institution that would not otherwise do so. This attitude belies an idea of the state that sits very uncomfortably alongside the institution envisioned within the Universal Declaration and the Covenants—an institution whose purpose is far beyond the protection of negative liberties. What if the realization of rights—which goes beyond the mere protection of rights—were the *raison d'etre* of the state? That would force us to begin to consider whether or not those actors in the international system that we call "states" are really capable of bringing to fruition the vision of human freedom embedded within human rights institutions. Is there a relationship between the idea of sovereignty and rights, or is sovereignty merely manifest is the form of a seat at a table in a building on the East River in mid-town Manhattan?

If human rights are about good governance, then there must be more to governance than the police and the court system. The second President of the United States, John Adams, recognized this when he drafted the Constitution of the Commonwealth of Massachusetts, the oldest living constitution in the world. In it, he wrote that it is the duty of government to "'countenance and inculcate' the principles of humanity, charity, industry, frugality, honesty, sincerity—virtue, in sum" (McCullough 2001: 224). This idea of the state as an organic, living institution whose end is human freedom—i.e., something more than the "night watchman" who protects property rights—cannot be simply dropped onto a people and be expected to flourish. It requires a lively interplay between

individual autonomy and freedom and the meaning they gain within social, economic and political life. If we are to consider how human rights as an idea is to become a reality in the modern world, we must ask ourselves, as researchers, scholars, and advocates, what kind of work we must do to allow the immanent process of human development—from subjective, individual freedom to objective, human freedom—to unfold. A set of documents and attendant monitoring bodies are merely part of the work. But we must undertake a more critical vision of human freedom and the role that rights play in its advancement through the state.

There are those who are beginning to articulate the need to consider the state as more than an institution that must be restrained. Others may agree but they need to make this point more clearly than they do, because it is not self-evident. Ellen Dorsey's analysis of the human rights movement and how it needs to re-position itself for the human rights challenges of the 21st century provide a case in point. She recognizes that "[a] strong liberal state, guided by imperatives set by its citizenry, is still the most powerful weapon for upholding human rights norms—whether through domestic or foreign policy" (Dorsey in Forsythe: 178). Nevertheless, she wonders how the hegemony of Northern NGOs and their emphasis on civil and political rights and leadership issues—which are necessarily a byproduct of the pervasive "failure of the state" discourse—might be transcended. While she recognizes that there is a need for a strong U.N. and regional systems that develop and uphold norms, these systems must necessarily rely on the financial support and political leadership of national governments (181). Without the political imperative that civil society organizations must necessarily bring to the table in their interactions with policy-makers, the human rights movement is likely to be subsumed under the forces of global markets and "dissatisfaction marked by increasingly parochial identities (193).

Dorsey speaks to a point that bears closer examination. She expresses the need for human rights advocates to do more than point-and-blame. In this she echoes Schultz desire to see the development of a public constituency for the "low politics" of human rights, and stresses the need for human rights advocates to open their ranks and build coalitions with, for example, environmental groups, advocates of sustainable development, and labor rights activists—groups that are more likely to "making issues salient and accessible to people's daily lives" (188). By challenging the anti-statism of traditional human rights work, these groups have the opportunity to bring "the state back into" the discursive environment of human rights by advocating a proper role for the state to play in the protection and promotion of rights. If we take the concept of indivisibility seriously, then we must acknowledge—as Schultz does explicitly and Dorsey does implicitly—that most violations of human rights take place within the family and civil society—not necessarily between the state and the individual.

Conclusion

Guided by the Forsythe, Shultz, and Lawyers Committee volumes, this essay has explored the foreign and domestic human rights policies and practices of the United States. It has done so within the framework of American exceptionalism, and has suggested that one aspect of that exceptionalism is an antagonistic attitude toward the indivisibility of civil, political, economic, social and cultural rights. This aspect of American exceptionalism might provide deeper understanding of

the negative consequences of American human rights policy, as it is described by scholars, activists, practitioners, and other human rights advocates.

Had these volumes been written over the past six months, I think it is fair to say that the content would be dramatically different than what has been presented here. Since late 2001, there has been a dramatic shift in U.S. policy generally from the domestic to the international. American foreign policy has been imbued with a powerful dose of crusading idealism cloaked in what many people consider an aggressive, realist military doctrine. Certainly any volume about the U.S. and human rights published now would have to include a chapter on Donald Rumsfeld's (re)interpretation of the Geneva Conventions to justify the holding of "belligerent non-combatants" for a potentially indefinite period of time in Guantanamo Bay, Cuba—a place far away from the scrutiny of the American public. It would probably feature some research on the conduct and aftermath of "Operation Enduring Freedom" in Afghanistan, featuring extensive research about American complicity with unsavory capture-and-interrogation methods for uncovering terrorist plots, as conducted by Pakistani police officials. As for the human rights situation inside the United States, no volume could be complete without an extensive analysis of the provisions of the USA Patriot Act, and its potential for violating a whole host of constitutionally-guaranteed rights.

All of which creates something of a conundrum for human rights advocates who argue that more attention be paid to "less obvious" human rights problems. Once again, civil and political rights and their violation as a consequence of American foreign and domestic policy are paramount. These events have again given a boost to the hegemony of civil and political rights and the "state-as-enemy" vision embedded within it. All of this presents a major challenge to those who argue for an indivisibility approach to human rights, and a renewed focus on the unity between different kinds of human rights, and the contention that robust, liberal state institutions are ultimately the answer to these problems—but only if we are willing to take a long-term view. These are valid reasons to criticize the short-sightedness of U.S. foreign and domestic policy that is driven more by fear than by any sense of wanting to understand what happens when states fail or give up their responsibilities to civil society institutions—whether they be the mosque or the market.

The extensive topic of "the United States and human rights" is difficult to cover in any case. It requires a framework that allows a level of focused reflection on why the United States acts as it does when it comes to the promotion, protection and realization of international human rights at home and abroad. I chose the consequences of American exceptionalism, which was guided (albeit not intentionally) by the books under review. My first hope is that I have done these volumes justice, for they are worthy of serious consideration by anyone interested in the United States and human rights—even though they do not cover more recent human rights developments. My second hope is that the framework I have used to examine these volumes—however incipient—will provide someone with a ray of inspiration to delve into a more sophisticated examination of the interplay between the American vision or ideal of rights, and the ideals expressed by the international human rights regime. I believe such an investigation will allow the scholarship in this area to move beyond the descriptive work—as valuable is it is—that is most often the object of inquiries into the U.S. and human rights.

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