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# Human Rights in U.S. Foreign Policy: Retrospect and Prospect

DAVID P. FORSYTHE

As Arthur Schlesinger, Jr. wrote, "The United States was founded on the proclamation of 'unalienable' rights, and human rights ever since have had a peculiar resonance in the American tradition."<sup>1</sup> But the American fondness for human rights rhetoric has presented two fundamental problems in foreign policy. As first a reluctant great power and then a more willing superpower, the United States has faced the traditional conflict between commitment to human values and exercise of power for other interests. Equally importantly in an interdependent and nonhegemonic world, the United States has painfully discovered that the American and international versions of human rights are not the same.

This article traces the workings of these twin dialectics (rights rhetoric and national interests, and rights rhetoric and community standards) from 1945 to the present in order to suggest that the United States, despite its dominant power, has not been the major shaper of community standards or international regimes on human rights; the United States in its bilateral diplomacy is still struggling to locate precisely human rights on its foreign policy agenda; the Congress, while it still does not codetermine human rights in foreign policy, is ignored and by-passed only at peril for an administration. Ultimately this article suggests that some painful political socialization is in store for the United States when it deals with human

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<sup>1</sup> Arthur Schlesinger, Jr., "Human Rights and the American Tradition," *Foreign Affairs* 57 (America and the World, 1978): 503-526.

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rights in foreign policy, especially since human rights in its many and complex forms is here to stay on both the U.S. and global agendas.

### MULTILATERAL DIPLOMACY

While the United States pictures itself as the leader of the free world and a city on a hill to be emulated by others,<sup>2</sup> U.S. multilateral diplomacy has been far from the forefront of efforts to create international regimes on human rights. Indeed, if one views U.S. policy on this subject in terms of four periods, three of them have been characterized by various forms of foot-dragging on human rights in multilateral diplomacy.<sup>3</sup>

#### *Limited Support (1945–1952)*

It is true that the United States was sympathetic to some mention of human rights in the UN Charter. But this first era of U.S. foreign policy on human rights should be labeled one of limited support only. The United States was determined to keep charter language limited to vague generalities, resisting most of the efforts of smaller states and private groups that were in favor of more specific and demanding obligations.<sup>4</sup> The United States in professing support for international standards of human rights did not go far enough in that support to guarantee decisive action.

The same orientation held for the Universal Declaration of Human Rights. While Eleanor Roosevelt and her State Department advisers supported strongly the declaration, they were at great pains to emphasize its nonbinding and aspirational character.<sup>5</sup> The declaration is almost certainly more important politically and legally than foreseen in 1948, and those like the United States, which sought to move beyond charter provisions in some way, should be given credit for achievements over time. But that does not change the historical fact that in the 1940s and early 1950s the United States was opposed to precise and binding obligations in the issue area of human rights. Fear of international scrutiny of American domestic civil rights practices in the South and elsewhere loomed large in U.S. calculations.

<sup>2</sup> See esp. Tammi R. Davis and Sean M. Lynn-Jones, "City Upon A Hill," *Foreign Policy* 66 (Spring 1987): 20–38.

<sup>3</sup> A fuller argument can be found in David P. Forsythe, "The United States, the United Nations, and Human Rights" in Margaret P. Karns and Karen A. Mingst, eds., *The United States and Multilateral Institutions: Patterns of Changing Instrumentality and Influence* (Boston: Unwin Hyman, 1990), 261–289.

<sup>4</sup> A. Glenn Mower, Jr., *The United States, The United Nations, and Human Rights* (Westport, Conn.: Greenwood Press, 1979), 5; Paul Gordon Lauren, "First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter," *Human Rights Quarterly* 5 (Winter 1983): 1–26; John P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, N.Y.: Transnational, 1984).

<sup>5</sup> *Ibid.*; also see M. Glen Johnson, "The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection of Human Rights," *Human Rights Quarterly* 9 (February 1987): 19–48.

The United States was not silent on human rights issues at the UN, but there is ample evidence that its support for a core international regime and for other rights regimes was definitely limited. The United States endorsed the self-denying ordinance of the UN Human Rights Commission that ruled out specific review of states' human rights policies; and ironically the United States successfully sought the demise of the UN agency on freedom of information because of budgetary concerns. It did not even support the effort to create an international regime for refugees until later, after the Office of the UN High Commissioner for Refugees had demonstrated its utility in the East-West struggle in the aftermath of the 1956 events in Hungary.<sup>6</sup>

### *Neglect (1953–1974)*

The limited American support for internationally recognized human rights turned to outright neglect given Brickerism at home and Dullesism in foreign policy by 1953. Brickerism — a movement named after an Ohio senator that sought to limit presidential authority under treaties — caused the Eisenhower administration to eschew leadership on and participation in the development of formal human rights regimes.<sup>7</sup> Whatever the merits of arguments for and against adherence to human rights treaties, Brickerism plus the debate on the Genocide Treaty left a lasting impression in the American polity that human rights treaties were so controversial that they were better left alone.<sup>8</sup> Thus the Genocide Treaty — a moral reaction to the outrages of the fascists in the 1930s and 1940s — languished in the Senate until 1986; the UN Covenants on Civil-Political and Social, Economic, and Cultural Rights were not even submitted to the Senate until 1977, where they have languished since. Most other human rights treaties suffered the same neglect, since the United States has become a party to only a half-dozen human rights treaties over the years, none of major importance save the Geneva Conventions of 12 August 1949 pertaining to victims of armed conflict.

Dullesism, the moralistic preoccupation with Soviet-led communism — named after Eisenhower's secretary of state, John Foster Dulles — solidified the notion that by contesting the USSR one was contributing to human rights. While true enough when speaking of U.S. support for constitutional democracy in Western Europe, containment of the Soviet bear did not lead always or even frequently to democratic governments in places like South Korea and Iran, not to mention Nicaragua and Guatemala. When applied strictly to multilateral diplomacy, Dullesism meant that forums like the UN were seen almost exclusively as places

<sup>6</sup> David P. Forsythe, "The Political Economy of UN Refugee Programs," in Forsythe, ed., *The United Nations in the World Political Economy* (London: Macmillan, 1989), 131–144.

<sup>7</sup> One of the best treatments remains Vernon Van Dyke, *Human Rights, the United States, and World Community* (New York: Oxford University Press, 1970).

<sup>8</sup> Natalie Kaufman Hevener and David Whiteman, "Opposition to Human Rights Treaties in the United States Senate: The Legacy of the Bricker Amendment," *Human Rights Quarterly* 10 (August 1988): 309–339.

to score debating points against communist adversaries — for example, on the subject of forced labor in the Soviet Union.

Thus, starting with the Eisenhower administration, which was under intense pressure by Brickerite forces in Congress, one saw the demise of international human rights as a separate issue on the national foreign policy agenda. Human rights was collapsed into strategic policy, which worked well in U.S. foreign policy toward Western Europe. But substituting moralistic anticommunism for attention to internationally recognized human rights did not work in many parts of the Third World. Eventually this shift in rhetoric and action underwent traumatic reevaluation in the wake of the fiasco of U.S. policy in Vietnam.

The Kennedy and Johnson administrations spoke of the need to promote democracy, especially in the Western Hemisphere. The Alliance for Progress, technically not under the Organization of American States (OAS) but billed as the hemisphere's answer to poverty and repression, continued the pattern of giving priority to anticommunism, with only tertiary attention to human rights.<sup>9</sup> Yet this approach, fashioned by U.S. liberal state-capitalism, floundered on the illiberal state-capitalism that dominated Latin America at the time.<sup>10</sup>

In larger perspective, the Kennedy administration was too short-lived to have much of an impact, and the Johnson Administration was consumed by the Vietnam war, which estranged the United States from the UN, where U.S. policies were under attack not only from the majority of states but also from Secretary-General U-Thant. When other nations took the lead to improve the functioning of the UN Human Rights Commission or to get UN action on private petitions about human rights violations, the United States was supportive. But the United States did not play a leadership role in the 1960s on multilateral human rights.<sup>11</sup>

The Nixon-Kissinger team downgraded human rights as a separate issue and multilateral diplomacy still further. Secretary of State Henry Kissinger in particular has left a written record arguing against the intrusion of human rights into the calculus of geostrategy,<sup>12</sup> even though he tried to reformulate his views later in the face of considerable criticism.<sup>13</sup> The record shows, however, that when Kis-

<sup>9</sup> An excellent analysis of the weak U.S. emphasis on democratic values as part of containment in the Third World is provided by Robert A. Packenham, *Liberal America and the Third World* (Princeton, N.J.: Princeton University Press, 1973).

<sup>10</sup> See esp. Richard Fagen, "The Carter Administration and Latin America: Business as Usual?" *Foreign Affairs* 57 (America and the World, 1978): 652–669, for the concept of illiberal state capitalism in Latin America. His argument is that whereas the United States has intervened in markets to enhance human dignity, many Latin states have intervened to solidify inequity and deprive large numbers of economic benefits.

<sup>11</sup> For an overview of change in human rights developments at the UN and an analysis of the several reasons for that change, see David P. Forsythe, "The United Nations and Human Rights, 1945–1985," *Political Science Quarterly* 100 (Summer 1985): 249–270; compare with Jack Donnelly, "Human Rights at the UN, 1955–85: The Question of Bias," *International Studies Quarterly* 32 (September 1988): 275–305.

<sup>12</sup> In Henry Kissinger, *American Foreign Policy: Three Essays* (New York: Norton, 1969), he argued that the traditional approach to foreign policy resisted concepts of power, equilibrium, and stability in favor of debilitating moral and legal principles. Human rights fit under these latter principles.

<sup>13</sup> Henry Kissinger, "Continuity and Change in American Foreign Policy" in Abdul A. Said, ed., *Human Rights and World Order* (New Brunswick, N.J.: Transaction, 1978), 154–67.

singer went through the motions of speaking to an OAS gathering on human rights, he later informed the target country (Chile) that the speech was for U.S. domestic consumption only.<sup>14</sup> The origins of that part of the 1975 Helsinki Accord dealing with human rights—so-called Basket Three—lay not with Kissinger and the United States but with the West European democracies.

Given such views by top U.S. officials and given their private reprimands of State Department officials who broached the subject of human rights violations with foreign officials, it was not by accident that in 1969 Daniel Patrick Moynihan was made ambassador to the UN, which he then characterized as a dangerous place where totalitarian regimes sought to use the language of human rights to delegitimize the West.<sup>15</sup> He and others like Democratic Senator Henry Jackson were clear in their views that the human rights issue should be used at the UN and elsewhere as a weapon in the East-West struggle.

As often noted, the twin impacts of Watergate and Vietnam brought the Nixon-Kissinger team into disrepute, as much for their substantive policies as for their duplicity. The trauma of Vietnam brought home to the American polity the disturbing truth that resisting communism was not always the same as protecting human rights. The tragic war helped produce a decoupling of human rights and security policy in U.S. foreign policy. The collapse of global containment of communism as the cornerstone of U.S. foreign policy had important implications for human rights.

### *Renewed Interest (1974–1980)*

The trauma of Vietnam, when added to Watergate, caused the Congress to assert itself on foreign policy. The result was a renewed interest in internationally recognized human rights as a relatively separate issue. When Congressman Donald M. Fraser, chairman of the obscure Subcommittee of International Organizations and Movements, began his systematic hearings in 1973 on human rights, which were to have major impact on the agenda of U.S. foreign policy, he and his principal assistant, John Salzburg, gave a clear international framework to the concept. Human rights were to be defined by the International Bill of Rights (the Charter provisions, the Universal Declaration, and the two UN Covenants). They argued that both an international definition and multilateral diplomacy were important for an effective U.S. policy on the question.<sup>16</sup>

<sup>14</sup> David P. Forsythe, *Human Rights and World Politics* (Lincoln: University of Nebraska Press, 1983), chap. 3.

<sup>15</sup> Daniel Patrick Moynihan, *A Dangerous Place* (Boston: Little, Brown, 1978). Moynihan is not totally wrong; but there is considerably more to UN human rights activity than a Soviet effort to delegitimize “bourgeois” regimes.

<sup>16</sup> According to a letter from John Salzburg to me, the emphasis on *international* human rights stemmed from the mandate of the subcommittee that Donald Fraser chaired, from the chairman’s “strong belief” in the UN and international law, and from the assistant’s background in UN human rights affairs. See Donald M. Fraser, “Freedom and Foreign Policy,” *Foreign Policy* 26 (Spring 1977): 152; Congressional Research Service, “Human Rights in the International Community and in U.S.”

In the next stage of congressional action, legislation was approved on the subject of human rights, much of it referring to “internationally recognized human rights.” Three general statutes linked human rights to U.S. security assistance, economic assistance, and voting in the international financial institutions. All three acts from the 1970s contained the stipulation that U.S. foreign policy was to be affected by a “consistent pattern of gross violations of internationally recognized human rights” in recipient states. This language was incorporated into other legislative acts as well. By the late 1970s one could see that the Congress had reacted to a perceived amoral or immoral U.S. foreign policy by legislating human rights into foreign policy via general, country-specific, and function-specific statutes.<sup>17</sup> Even though the United States was not a party to most human rights treaties, UN developments on human rights affected Congress as it tried to compel the executive to consider human rights apart from a basically unilateral approach to anticommunism.

Kissinger resisted these congressional pressures to the end of his tenure under President Gerald Ford.<sup>18</sup> The Carter administration, however, did move somewhat in the direction desired by Congress. It gave human rights great rhetorical prominence as a separate issue and supported some multilateral diplomacy on the subject: for example, the administration’s opposition to the Byrd Amendment permitting trade with Rhodesia and the concomitant support for UN mandatory sanctions on the Ian Smith government; its vote in the Security Council for a mandatory arms embargo on South Africa; acceptance in principle of socioeconomic human rights; utilization of the OAS to help rid Nicaragua of Anastasio Somoza; and submission to the Senate of four signed human rights treaties (the two UN Covenants, the American Convention on Human Rights, and the Convention on Racial Discrimination).<sup>19</sup>

This executive attention to human rights apart from what Carter termed an American “inordinate” fear of communism, whether stemming from congressional pressures, personal commitment, or campaign rhetoric, was most assuredly not a simple

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Foreign Policy, 1945–76,” report prepared for the Subcommittee on International Organizations, House Foreign Affairs Committee, 24 July 1977 (Washington, D.C.: U.S. Government Printing Office [GPO], 1977); and “Human Rights in the World Community: A Call for U.S. Leadership,” report of Subcommittee on International Organizations, House Foreign Affairs Committee, 27 March 1974 (Washington, D.C.: GPO, 1974).

<sup>17</sup> A more complete account can be found in David P. Forsythe, *Human Rights and U.S. Foreign Policy: Congress Reconsidered* (Gainesville: University Presses of Florida, 1988), which relies extensively on congressional hearings and reports by private human rights groups. See also the list of U.S. legislation on human rights contained in House Committee on Foreign Affairs, *Human Rights Documents: Compilation of Documents Pertaining to Human Rights* (Washington, D.C.: GPO, 1983).

<sup>18</sup> For example, U.S. law required the State Department to submit reports on human rights conditions in countries receiving U.S. security assistance. Kissinger refused to release these reports to the Congress until just before leaving office, when he released several short and superficial ones.

<sup>19</sup> For one overview see A. Glen Mower, Jr., *Human Rights and American Foreign Policy: The Carter and Reagan Experiences* (Westport, Conn.: Greenwood Press, 1987).

adoption of multilateral standards.<sup>20</sup> It was not as if the Carter administration learned or internalized international standards and then applied them across the board in its foreign policy. It had to be pushed by Congress into economic pressure on Uganda because of human rights violations. Carter allowed executive lawyers to gut his support for the two UN Covenants with extensive reservations and understandings.<sup>21</sup> He resisted congressional efforts to introduce consideration of internationally recognized human rights into the workings of international financial institutions such as the World Bank. Thus much U.S. foreign policy was not at all or only begrudgingly affected by multilateral standards on human rights.

Yet on balance the Carter administration built on the foundations set by Congress and showed, however erratically, renewed attention to internationally recognized human rights. This was less a global crusade based on the International Bill of Rights and more an unsystematic series of piecemeal efforts to help individuals when U.S. strategic and economic interests were not perceived as overwhelming.<sup>22</sup>

### *Exceptionalism Triumphant (1981–1988)*

The Reagan administration's policies on human rights were initially almost a caricature of American exceptionalism *cum* cold war politics. Truth on human rights had been discovered in the enlightenment and implemented primarily through the American revolution. Hence the U.S. commitment to civil and political rights constituted an example to others. That being the case, the United States had no need for international standards, which in any event were so broad as to permit the cover-up of communist violations of civil and political rights—the only true rights. The UN and most other international organizations not under significant U.S. influence were seen at best as unimportant and at worst as under the control of the Second and Third Worlds.<sup>23</sup> (In fact, initial Reagan foreign policies were so unilateralist that they attacked even the international organizations that *were* under significant U.S. influence and *were* important to many U.S. interests—for example, the World Bank and the International Monetary Fund.<sup>24</sup>)

The early Reagan orientation toward rights was personified by Ernest Lefever,

<sup>20</sup> In addition to Jimmy Carter, *Keeping Faith* (New York: Bantam, 1982), esp. at 144, see Elizabeth Drew, "Reporter at Large: Human Rights," *New Yorker*, 18 July 1977, 36.

<sup>21</sup> See Richard B. Lillich, ed., *U.S. Ratification of the Human Rights Treaties* (Charlottesville: University Press of Virginia, 1981).

<sup>22</sup> Compare Joshua Muravchik, *The Uncertain Crusade: Jimmy Carter and the Dilemmas of Human Rights Policy* (Latham, Md.: Hamilton Press, 1986), with David P. Forsythe's review of this book in the *American Political Science Review* 81 (September 1987): 1047–49.

<sup>23</sup> In addition to Muravchik, *Uncertain Crusade*, see "Introduction," *Country Reports On Human Rights Practices For 1981*, report submitted to Committees on Foreign Affairs and Foreign Relations, Joint Committee Print, February 1982 (Washington, D.C.: GPO, 1982), 1–11. Also see Jeane Kirkpatrick, *The Reagan Phenomenon and Other Speeches on Foreign Policy* (Washington, D.C.: American Enterprise Institute, 1983).

<sup>24</sup> See Robert L. Ayres, "Breaking the Bank," *Foreign Policy* 43 (Summer 1981): 104–120; and Richard A. Frank, "Jumping Ship," *ibid.*, 121–138.



nominated to be assistant secretary of state for Human Rights and Humanitarian Affairs. Lefever had criticized Carter for “trivializing” human rights by not seeing the subject as part of the cold war; he had further stated, before recanting during his confirmation hearings, that he was in favor of rolling back human rights legislation passed by Congress because of the same reasoning. He had also accepted money to circulate views favorable to white minority rule in South Africa.<sup>25</sup> The withdrawal of his nomination in the face of bipartisan opposition led to the confirmation of Elliott Abrams, which in turn led to a more polished version of much of what Lefever stood for.

At the UN the Reagan team was outspoken in its attacks on human rights violations by communist nations and in its defense of authoritarian allies like Chile, Argentina, and Guatemala. The Reagan administration engaged in a prolonged “review” of the human rights treaties submitted to the Senate by Carter. It gave similar treatment to human rights developments in the OAS. I have given the detailed evidence in another source in support of the proposition that the Kirkpatrick Doctrine on dictatorships and double standards guided human rights policy at the UN as elsewhere between 1981 and 1985.<sup>26</sup> The Kirkpatrick Doctrine advocated preferential treatment for authoritarian allies over communist adversaries. Unlike the Nixon-Kissinger team, the Reagan forces wanted to raise the human rights issue loudly and clearly when competing with the Soviet Union and its clients, but not when working with anticommunist allies.

There was some measure of change on these policies toward international standards and multilateral diplomacy during the second Reagan Administration, especially after 1985. For example, the United States introduced and lobbied for a resolution in the UN Human Rights Commission critical of the Pinochet regime in Chile. Reagan also came to support ratification of the Genocide Convention. I remain unpersuaded, however, that the second Reagan administration took community standards or international regimes on human rights very seriously.<sup>27</sup> It still manifested at the UN a clear preference for discussing communist violations, notably Cuba’s,<sup>28</sup> and remained largely indifferent to many other international rights developments. For example, it was largely passive in the long struggle to approve a new UN convention on torture.<sup>29</sup>

During this era of pronounced American exceptionalism, a bipartisan majority in Congress frequently challenged administration human rights policies. Through both general and specific legislation the Congress maintained an interest in at least some internationally recognized human rights. It altered some aspects of U.S. foreign policy in places like South Africa, Chile, and Guatemala. And where Con-

<sup>25</sup> “Nomination of Ernest W. Lefever,” *Hearings*, Senate Committee on Foreign Relations, 97th Cong., 1st sess., 18, 19 May, 4, 5 June 1981 (Washington, D.C.: GPO, 1981).

<sup>26</sup> See Forsythe, *Congress Reconsidered*.

<sup>27</sup> The fuller argument is presented in Forsythe, “The United States, the United Nations.”

<sup>28</sup> *New York Times*, 24 March 1987.

<sup>29</sup> Peter R. Baehr, “The General Assembly as Negotiating Forum: The Treaty on Torture” in Forsythe, ed., *The United Nations*.

gress did not control policy, it nevertheless was an important influence on human rights policy in places like El Salvador, the Philippines, and Liberia. The Reagan administration proceeded on the basis of American exceptionalism and cold war politics from 1981 to 1985, but Congress maintained some balanced implementation of international human rights standards, however tenuously, in the face of executive power.

### BILATERAL DIPLOMACY

Close observers of the international human rights scene know well that international regimes beyond Western Europe are weak. As Jack Donnelly has written, most are declaratory or promotional rather than enforcement oriented.<sup>30</sup> Even when speaking of Western European states, the human rights regimes associated with the Council of Europe cannot handle all human rights problems in their foreign policies. Consequently, it is important to inquire into the place of human rights in bilateral policies. This is especially true of the United States, which is not fully a part of most human rights regimes. Space limitations compel a comparison of only the Carter and Reagan administrations.

#### *The Carter Period*

With the advantage of some years distance, the Carter administration's bilateral human rights policies are amazingly easy to summarize. It never developed a central concept or overall strategy to guide its human rights policies, adopting a case-by-case approach with little thought to the overall impression that was being created.<sup>31</sup> It sought to act where major strategic or economic interests were not at stake. It thus wound up focusing on some Latin American authoritarian regimes like Uruguay, Nicaragua, Chile, and others; while it deferred strong action against comparable violators such as El Salvador, the Philippines, Saudi Arabia, and South Korea. Other cases like Iran constituted a melange of human rights and other concerns. If immediate policies seemed to require it, the president appeared to have no difficulty in praising serious rights violators such as the Polish government. The overall impression created was one of great confusion and inconsistency.

The United States intervened frequently on behalf of individuals but was not so clear in its commitment to structural or fundamental change. It often appeared

<sup>30</sup> Jack Donnelly, "International Human Rights: A Regime Approach," *International Organization* 40 (Summer 1986): 599-642.

<sup>31</sup> See especially Caleb Rossiter, "Human Rights: The Carter Record, The Reagan Reaction," (Washington, D.C.: Center for International Policy, September 1984). Also Lincoln P. Bloomfield, "From Ideology to Program to Policy: Tracking the Carter Human Rights Policy," *Journal of Policy Analysis and Management* 2 (Fall 1982): 1-12; see also Sandra Vogelgesang, *American Dream, Global Nightmare: The Dilemma of U.S. Human Rights Policy* (New York: Norton, 1980); and Muravchik, *Uncertain Crusade*.

to emphasize negative approaches such as public condemnation or reduction of foreign assistance, although Carter himself emphasized more positive approaches on occasion.<sup>32</sup> The United States sought to interfere with market forces as little as possible, believing that economic sanctions should not be a major tool of human rights policy.<sup>33</sup>

The overall results of Carter's human rights policies were decidedly mixed—and decidedly difficult to judge with precision. In some situations immediate goals were achieved: Somoza was removed from power in Nicaragua, Jacobo Timerman was released in Argentina, and the military in the Dominican Republic was deterred from seizing power. Perhaps even more importantly, the saliency of human rights issues gave impetus to individuals and groups around the world to push for more attention to their rights. It is impossible to determine, however, the extent to which the Carter administration is responsible for the strengthened rights movements in the Western Hemisphere, the Philippines, and other places.

It is less problematic to assess the extent to which the Carter administration's emphasis on human rights undermined U.S. power vis-à-vis Soviet-led communism, as charged by the Reagan camp. Certainly in places like Iran, Nicaragua, and El Salvador, U.S. ignoring human rights problems contributed to the political instability that erupted during the Carter administration's watch. Thus it was not the Carter emphasis on human rights that undermined these U.S. allies as much as it was the oppressive domestic conditions that had been festering unattended for decades. The prominence of foreign human rights rhetoric does not produce instability unless the domestic conditions are ripe for instability. And it should be noted that Carter, too, contributed to this unfortunate U.S. tendency on occasion: his administration increased foreign assistance to Marcos in the Philippines during the time of martial law and gross violations of human rights.<sup>34</sup>

As might be expected, Carter's policies varied considerably on the question of how to cope with instability once it arose. One searches in vain for the supposed emphasis on human rights which purportedly undermined the shah of Iran.<sup>35</sup> On the other hand, Carter worked extensively to oust Somoza, then tried intermittently and despite congressional complications to coopt his successors with a sizable foreign assistance program. In El Salvador he followed still a third course, providing extensive economic assistance to the shaky government but increasing military assistance only slightly in the quest of pressure for human rights reforms. Whatever the record of Carter policies in the midst of social revolution, it remains true that the neglect of human rights issues by Nixon and Kissinger was ultimately

<sup>32</sup> The Carter Library, Atlanta, has on display a presidential memo directing subordinates to use positive approaches to human rights issues whenever possible. It is not clear to date what further information might be contained in presidential papers on these subjects.

<sup>33</sup> Vogelgesang, *American Dream*.

<sup>34</sup> On the Philippines see Jack Donnelly and Rhoda Howard, *International Handbook of Human Rights* (Westport, Conn.: Greenwood Press, 1987).

<sup>35</sup> The laying to rest of this popular myth is attempted not only by Muravchik, *Uncertain Crusade*, but also by James A. Bill, *The Eagle and the Lion: The Tragedy of American-Iranian Relations* (New Haven: Yale University Press, 1988).

more damaging to U.S. interests in the world than the uneven renewed interest in those rights by the Carter team, especially when one is aware of how difficult it is for a foreign power to impose its will on a nationalistic ruling elite.

Moreover, it is highly likely that U.S. rhetorical emphasis on rights made its communist competitors uneasy, even if the Carter team did not focus on communist violations as much as candidate Reagan and his supporters wanted. Parts of the Carter administration, however, represented by National Security Adviser Zbigniew Brzezinski, did maintain precisely that focus.<sup>36</sup>

### *The Reagan Period*

Attacking the Carter record for the reasons already indicated, the Reagan administration initially intended to collapse human rights policy back into strategic (and moral) anticommunism. Particularly after the demise of the less than eloquent Secretary of State Alexander Haig and after the rise of the intelligent and assertive Elliott Abrams, the Reagan team composed a clear policy on human rights in foreign policy that was nicely elucidated in a little noted essay by David Heaps.<sup>37</sup>

Beyond the usual lip service to an even-handed approach to human rights issues, the Reagan forces did not as a general rule take public or forceful action against authoritarian violations of human rights. They reduced neither military nor economic assistance, regardless of gross and persistent violations of human rights. Nor did they oppose loan applications in the international financial institutions, U.S. law notwithstanding. Indeed, it was Reagan policy to work as closely as possible with governments like Chile and Argentina, and with South Africa, unless prevented from doing so by Congress. While “constructive engagement” was used officially vis-à-vis South Africa, it accurately explained the Reagan approach to all authoritarian allies. The positive approach and reinforcement in the supposed quest of friendly persuasion and change was explicitly argued with reference to a few countries like Guatemala. Most of these friendly approaches were without benefit for the human rights situation. The clearly positive changes that occurred in places like Guatemala were more the result of congressional restrictions on foreign assistance than of friendly persuasion by the administration.

Deteriorating rights situations went unopposed in places like the Philippines, Haiti, and for a time in South Korea, despite congressional attempts to focus on such situations. And in salient trouble-spots like El Salvador and Nicaragua, administration spokesmen as well as the president himself made clear that nothing could be worse than a communist government; noncommunist violations of human rights (whether by the contras in Nicaragua or the military and related death-squads in El Salvador) would be seen in that light.<sup>38</sup>

<sup>36</sup> Zbigniew Brzezinski, *Power and Principle: Memoirs of the National Security Adviser 1977–1981* (New York: Farrar, Straus, Giroux, 1983).

<sup>37</sup> David Heaps, *Human Rights and US Foreign Policy: The First Decade 1973–1983*, paper for the American Association for the International Commission of Jurists, 1984.

<sup>38</sup> The evidence is marshaled in Forsythe, *Congress Reconsidered*.

The Reagan administration preferred to emphasize the power struggle with the Soviet Union—viewed, to be sure, as part of a moral struggle—rather than to implement either international or American standards on human rights. The exceptions to this generalization are three. The administration did intervene with authoritarian allies on behalf of individuals such as Kim Dae Jung in South Korea. It restricted the transfer of crime control equipment to certain authoritarian violators of human rights in a quiet process as required by U.S. law. However, notable exceptions were transfer of electric shock batons to South Africa and South Korea (eventually terminated after negative publicity) and the transfer of equipment that could be used for torture to Turkey. Through the Agency for International Development and as required by U.S. law, the administration redirected some economic assistance away from general economic development projects and toward basic human needs projects, and required special supervision of the distribution of assistance, because of human rights violations in certain countries.<sup>39</sup> In these three aspects the Reagan administration followed precedents set by the Carter team. Otherwise, as David Heaps observed, Reagan human rights policies were clear but exceedingly narrow, focusing as they did on communist violations of human rights.

The Reagan team ran up against the perennial problem of how to exercise influence on communist regimes that did not receive foreign assistance from or trade extensively with the United States. Aside from implementing the Jackson-Vanik Amendment, which denies Most-Favored-Nation status in trade for communist countries with unreasonable emigration procedures, and aside from economic sanctions on Poland, which did not change the legal banning of Solidarity until the late 1980s, the administration fell back on Carter policies of publicly embarrassing communist countries in the Helsinki Follow-up Conferences and in other international meetings.

The Reagan team did differ from the Carter team in at least two further controversial respects. It forcefully raised the question of coercive birth control in the Peoples Republic of China, and for this and other reasons it terminated funding to international agencies active in family planning. Also, the Reagan administration renovated an old idea that had first been aired by Representative Dante Fascell and other congressional Democrats in order to push for the Endowment for Democracy. But then at one point the Reagan team interpreted this positive support for democratic private groups to mean that conservative and perhaps even non-democratic entities in both France and Panama would be the recipients of secret U.S. largesse—at least until Congress and the press forced a change in policy.

Ironically the Reagan administration made the same mistake of earlier U.S. governments in effectively ignoring noncommunist violations of human rights in the name of strategic competition with the Soviet Union. But having elevated this mistake to the level of the Kirkpatrick doctrine, it suddenly found itself during its second term with a series of rebellions on its hands that jeopardized its security arrangements. In the Philippines, Haiti, South Africa, South Korea, and Panama—not to mention the continuing problems in El Salvador—domestic rebellions

<sup>39</sup> Ibid.

erupted or intensified against governmental repression, oppression, and corruption. In places like the Philippines, Haiti, and South Africa, events outpaced a U.S. policy wedded to the status quo. Particularly in the Philippines Reagan tried to explain away the realities of the impending revolution against Marcos, and only at the eleventh hour and under the friendly pressure of Republican Senators Paul Laxalt and Richard Lugar did he shift policies and support the forces for democracy and change. The same outline of policy pertained equally well to Haiti and to the ongoing revolt in South Africa.

Stung by these events, which called into question the fundamental basis of U.S. strategic policy (with human rights policy as an appendage), officials of the administration after 1985 began to exert pressure on friendly authoritarians to try to head off other building revolts. This was the case in both Chile and Paraguay, and more belatedly in South Korea.

Some observers saw these changes as a shift in Reagan human rights policies.<sup>40</sup> From a narrow point of view it was, but more fundamentally it was a shift in strategic thinking that secondarily entailed a shift in human rights policies. What still preoccupied the Reagan administration was communism in places like Chile and Panama and South Korea—or at least a virulent anti-Americanism that could disrupt strategic calculations. U.S. concern about the resurgence of the Left in Chile, the stability of the Panama Canal, and a change in the balance of power on the Korean peninsula chiefly motivated the Reagan administration. This type of concern motivated overall U.S. policy toward these countries, which necessitated some pressure on the strong man to make concessions to democratic forces. In Paraguay, of little strategic significance, a genuine shift in strictly human rights policy seems to have occurred on the part of the United States. In other places like Liberia and Zaire, the traditional policy of sweeping human rights abuses under the diplomatic carpet continued unabated.

A full accounting of the reasons for these shifts in policy has yet to be provided. No doubt the obvious deficiencies of past Reagan policies, particularly in the Philippines and Haiti, played a role. Congressional pressures were also at work. Moreover, there were changes in administration personnel. Jeane Kirkpatrick and some of the other ultra-conservatives departed, and the more moderate Richard Schifter had replaced Abrams in the Human Rights Bureau. In summary, while the outset of the Reagan administration showed clear differences from the Carter approach to human rights, by the end of the second Reagan term there were a number of similarities between the two governments.

#### THE CONGRESS

It is traditional as well as convenient to speak of U.S. foreign policy and human rights strictly in terms of an administration and its multilateral and bilateral policies. Running throughout those pages as a leit motif, however, are references to

<sup>40</sup> Tamar Jacoby, "Reagan's Turnaround on Human Rights," *Foreign Affairs* 64 (Summer 1986): 1066–1086.

the role of Congress. A fuller understanding of U.S. foreign policy necessitates considerable attention to the congressional impact, certainly in the 1980s.<sup>41</sup>

The courts, on the other hand, can still be treated as a marginal consideration when examining human rights in U.S. foreign policy. In the 1980s there have been a few cases impacting on how the political branches approach human rights in foreign policy. Worthy of mention are *Filartiga v. Pena* and *INS v. Cardoza-Fonesca* among others. Still other recent and interesting cases that touch on a question of the international law of human rights have more to do with internal U.S. administrative decisions than with foreign policy – for example, *Rodriguez-Fernandez v. Wilkinson*.<sup>42</sup>

Congress compelled the executive to retreat from a partially supportive position in the development of international human rights regimes during the Truman administration. In this matter Congress did indeed codetermine foreign policy, thus bearing responsibility with the subsequent Eisenhower administration for the debilitating collapse of human rights policy into the strategic policy of anticommunism.

After congressional somnolence and the development of the Imperial Presidency, Congress, not Jimmy Carter, sought to place internationally recognized human rights as a relatively distinct issue back on the foreign policy agenda. And Congress sought to coordinate U.S. bilateral and multilateral diplomacy. Even when the Carter administration sought to take the lead on human rights matters, and even if true that *some* Democratic members of Congress tended to defer to executive leadership on the question, Congress as a whole remained active. It passed Section 701 of the International Financial Institutions (IFI) Act, which required the introduction of human rights considerations into IFI transactions, against the wishes of the Carter team. Congress forced Carter eventually to support an economic embargo on Uganda. It pressured the Carter team to take action to protect human rights in countries like the Philippines and South Korea. Section 502B of the Foreign Assistance Act, supposedly governing provision of security assistance, was made legally clear and binding despite the usual executive pleas for flexibility in diplomacy. Congress voted a number of bans on direct or indirect provision of assistance to particular countries (Cambodia, Vietnam, Laos, Cuba, and Uganda) at one time or another for apparent or partial human rights reasons, despite Carter opposition.

More striking was the continued congressional assertiveness on human rights matters from 1981 until 1987, when the popular Reagan was in the White House and when the Republicans controlled the Senate. I have argued elsewhere that this period can be summarized somewhat unexpectedly as a time when a relatively cos-

<sup>41</sup> For the full argument, see Forsythe, *Congress Reconsidered*.

<sup>42</sup> For a concise summary, see Richard B. Lillich and Hurst Hannum, "Linkages Between International Human Rights and U.S. Constitutional Law," *American Journal of International Law* 79 (January 1985): 158–163; see also Farooq Hassan, "The Doctrine of Incorporation," *Human Rights Quarterly* 5 (Winter 1983): 68–86; and see Howard Tolley, Jr., "International Human Rights Law in US Courts," paper prepared for the annual convention of the American Political Science Association, Chicago, 1987.

mopolitan and internationally aware Congress fought a running series of battles with a parochial and unilateralist administration. Starting with the battle over the Lefever nomination, and continuing in debates over El Salvador, Chile, South Africa, and the Philippines, at least a significant part of the Congress tried to get the Reagan team to focus on internationally recognized human rights, either because it was morally correct or because in the long run it was in the national interest.<sup>43</sup> (It is ironic that this was the same Congress that followed Reagan's lead in bashing the UN on numerous subjects, including debilitating cutbacks in funding UN programs and its regular budget.)

That the Reagan Administration was able to persist in its initial orientations as long as it did with some self-defined success can be attributed not only to the firmness of its convictions, but also to the existence of two stages in the congressional process. In the first stage, various subcommittees on human rights matters, especially in the House where the Democrats were in control and where a human rights subcommittee existed, the administration was badgered more or less constantly. But in the second stage, where voting on the floor occurred, Congress was too fragmented by party and faction to hold the administration's feet to the fire. Thus while earlier Congresses had been able to put human rights legislation on the books, later Congresses had great trouble in maintaining effective oversight because of party and ideological divisions in voting.<sup>44</sup>

However, on some issues there *was* majority sentiment at this second stage of voting, and thus the Reagan administration was restricted in its policies toward such countries as South Africa, Chile, Argentina, Guatemala—and periodically and erratically in El Salvador and Nicaragua. Congress also overwhelmingly censured the Reagan administration for its vote in the World Health Organization against humane standards for the marketing of infant formula.

There is no doubt but that problems arise because of this continuing congressional assertiveness on human rights. Congressional concern is highly personalized rather than institutionalized, especially in the Senate. Congress focuses on some human rights issue not because it is the most egregious situation, or where the United States has the most influence, or where other interests are most adversely affected via human rights problems. Rather, Congress acts because some member or staff person becomes concerned with a situation and successfully builds a coalition to do something about it. Moreover, different parts of Congress frequently ride their human rights horses in different directions, leading to much confusion. This problem was particularly evident in the late 1970s. Additionally, there are the standard problems consisting of slowness in action, necessity for action by compromise, and playing to the gallery.

Whatever the balance sheet concerning congressional action on human rights in foreign policy, Congress still seems determined to play a major role in this as-

<sup>43</sup> Forsythe, *Congress Reconsidered*.

<sup>44</sup> For a detailed examination see David P. Forsythe and Susan Welch, "Human Rights Voting in Congress," *Policy Studies Journal* 15 (September 1986): 173-188.



pect of foreign policy. The general decline in respect for Reagan's foreign policy in the wake of the Oliver North affair and the other information gleaned through the Iran-contra hearings in 1987 certainly reinforced congressional assertiveness on foreign policy matters, including human rights. If true that in the history of the Republic congressional assertiveness on foreign policy ran in cycles of about a generation, the end of this cycle was not yet in sight.

### CONCLUSIONS

It is easier to write analytic description than to compile axioms on human rights and foreign policy that will be accepted as true by a variety of people of different historical experiences and political persuasions. According to Cecil Crabb and Pat Holt, the issue of human rights became "possibly the most tangled web in American foreign policy."<sup>45</sup> According to Lincoln Bloomfield, "What can be doubted is whether the U.S. government will ever be able to express those [human rights] values in its foreign policies in any form that is either coherent or sustained."<sup>46</sup> According to Sandra Vogelgesang, "There is no simple or enduring domestic consensus behind concern for human rights in U.S. foreign policy – by the executive branch, the Congress, or the American people."<sup>47</sup> And according to Elliott Abrams, normally the personification of self-assurance, "The human rights problem is so complex that mistakes will inevitably be made."<sup>48</sup>

Are there no lessons from the history of the past forty years of U.S. foreign policy and human rights? With the bravado of academic innocence, I suggest there are.

First, it is clear that international regimes exist on human rights, will continue to exist, and are in fact and in general growing more effective relative to their own past.<sup>49</sup> Whether they are effective enough, now or in the future, to prevent a consistent pattern of gross violations of rights is another question. If the United States keeps itself apart from these regimes, as it has done on the core human rights regime, it will not be able to exercise much leadership or influence on the multilateral dimension of global human rights. Even other democratic states that normally cooperate with if not defer to U.S. leadership, like Sweden and the Netherlands, will learn to act without the United States as they in fact did with regard to the convention on torture.

Both Brickerism by the Congress and a jingoistic view of American exception-

<sup>45</sup> Cecil V. Crabb, Jr. and Pat M. Holt, *Invitation to Struggle: Congress, the President, and Foreign Policy* (Washington, D.C.: Congressional Quarterly Press, 1984), 187.

<sup>46</sup> Bloomfield, "From Ideology to Program to Policy," 11.

<sup>47</sup> Vogelgesang, *American Dream*, 111–112.

<sup>48</sup> Elliott Abrams, speech at Georgetown University, 12 October 1983, quoted in Forsythe, *Congress Reconsidered*, 152.

<sup>49</sup> See, for example, Donnelly, "International Human Rights"; Forsythe, "The UN and Human Rights," 11; Tom J. Farer, "The United Nations and Human Rights: More Than A Whimper Less Than A Roar," *Human Rights Quarterly* 9 (November 1987): 550–86.

alism by the Reagan administration, to cite two obvious examples, led to the giving up of influence in multilateral affairs on human rights. To use an oft-cited example, the United States cannot shape the functioning of the UN Human Rights Committee if it is not party to the Civil-Political Covenant.

Hence future U.S. administrations will need to struggle to convince the Senate that consent to ratification of human rights treaties is in the broad national interest. This should not be an insurmountable hurdle given existing views in the Senate, the changed position of the American Bar Association, the readiness of other private groups and expert witnesses to support ratification, and if necessary the use of the argument that ratification will provide another channel to use against communist violators of rights. The Reagan administration's support for ratification of the Genocide Treaty may turn out to be a benchmark in this regard. Moreover, where the United States has participated more fully in rights regimes, as on refugees, it is clear that the United States has considerable influence on the functioning of such regimes.

If the United States genuinely desires an international environment conducive to human rights, it should become a full participant in international human rights regimes. This will entail struggle with the more parochial and jingoistic elements in the Senate. But to act otherwise is to abandon at the multilateral level democratic allies and moderates in the Third World and to give extraordinary influence to those who would use the language of rights for their own repressive ends. Since rights regimes are here to stay, which is another way of saying that human rights will remain on the global agenda, and since the United States lacks the power to force its views unilaterally on most parties, to hold the United States apart from these regimes is to throw away both influence and impact. And it can be shown empirically that international rights regimes can be improved, albeit slowly and through struggle.

Second, human rights as a relatively distinct issue is also here to stay on the U.S. foreign policy agenda. The Nixon-Kissinger preference for a policy of pure geostrategy, with human rights either a strictly domestic issue or window dressing, has been repudiated — as much by Republicans as by Democrats. Equally importantly, the attempt by the first Reagan administration to return to cold war politics by collapsing human rights into anticommunism has also been rejected, again as much by Republican members of Congress as by their Democratic colleagues.

Indeed, in the final years of the second Reagan administration, any number of staunch anticommunists discovered that an active and even-handed attention to human rights *contributed* to containment of the Soviet Union. One does not fight communism by ignoring the reasons for growth of the New Peoples Army in the Philippines, or by ignoring the reasons for widespread opposition to Somoza, or by ignoring the reasons for the resurgence of the violent Left in Chile. (There is, admittedly, still the problem of how to encourage an orderly process of change away from repression toward stable protection of rights in different political, cultural, and economic conditions.)

The Reagan administration has made valuable contributions to enhancing the

position of human rights in U.S. foreign policy by first demonstrating the bankruptcy of the effort to erase the subject as a distinct issue, and secondly by showing the importance of human rights to actively containing communist influence. No future government will be in a position to repeat the first Reagan administration's initial desires. In any event, Congress has placed numerous human rights statutes on the books and holds at least the threat of oversight, which it sometimes does indeed exercise, although in somewhat unpredictable ways.

The congressional legislation requiring State Department reports on human rights conditions and later reports on State Department overtures concerning torture have had a political socialization effect within the Foreign Service and larger State Department culture.<sup>50</sup> Compared with the mid-1970s, the community of foreign affairs managers is now much more sensitive to human rights issues. It tends as a group to accept more readily human rights as part of the legitimate agenda. At a minimum, the top echelon of the State Department under both Democrats and Republicans has recognized that if the department does not act on human rights concerns, Congress will proceed without it.

It has been said, at least by theorists, that human rights are trumps, that they override other policy considerations.<sup>51</sup> This may be true in stable domestic polities, where the central government monopolizes legitimate use of force and where independent courts exist to pronounce on conflict of policies and conflict of rights. In the nation-state system, however, human rights can rarely be trumps when pursued in foreign policy. As an empirical matter, national security will be trump. But it does matter to what extent and how human rights considerations are folded in with security policy. In much past U.S. policy, specific human rights have not been folded in but ignored. Recent experience shows that in many situations concern for human rights can be compatible with U.S. security interests. There is likely to remain, however, a good deal of inconsistency on the matter. The subject of economic interests also needs to be addressed.<sup>52</sup>

Third, the Congress for the foreseeable future will remain attentive to human rights. Having contested Kissinger, Carter, and Reagan on the subject, the Congress shows no signs of growing weary of the fray. Human rights is frequently a high visibility issue bringing political rewards to members of Congress. Stephen Solarz and Richard Lugar did not hurt themselves politically by having high profiles on human rights in the Philippines. Christopher Dodd and Nancy Kassebaum have not hurt themselves politically by sponsoring legislation on South Africa or Liberia. And the disarray of Reagan policies in the mid- and late-1980s invites further behavior of a similar nature.

With a statutory basis for attention to human rights having been laid, with a human rights committee on the House side, with publicity to be gained by members

<sup>50</sup> See Judith de Neufville, "Human Rights Reporting as a Policy Tool: An Examination of the State Department Country Reports," *Human Rights Quarterly* 8 (November 1986): 681-99.

<sup>51</sup> Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977).

<sup>52</sup> See Forsythe, *Human Rights and World Politics*, 2nd ed., 1989, chap. 3, for discussion of human rights and economic interests.

of both parties through attention to human rights, with private secular and church groups prepared to work with attentive members, with expanded congressional staff with expertise on the subject, and with an elite press also more attentive to rights issues, it is inconceivable that Congress would turn away from the subject in the near future. Short of an administration that comes up with a near-perfect human rights policy, and especially given the political socialization that has occurred within Congress on human rights since 1973, Congress will remain an important maker of policy (and sometimes taker of influence from international rights regimes).

Finally, the U.S. difficulty in accepting international human rights is part of the difficulty in adjusting to an interdependent, nonhegemonic world in which American exceptionalism is a self-image radically at variance with declining U.S. power and prestige. To be sure, those emerging from gross misbehavior and mismanagement by Stalinist governments look to the democratic West and even the United States for new blueprints. Many are impressed with the West's commitment to civil and political rights.

But most of the human rights movements in Eastern Europe, Asia, and Latin America demand rights that go beyond the American tradition. They demand entitlements to adequate food, clothing, shelter, health care, and education. To argue that these demands on public authorities are not as essential to human dignity and welfare as demands for civil and political rights is to fail to understand and relate to less affluent, less individualistic societies. Such a U.S. posture of denial also creates another split with our democratic allies, all of whom accept a broader conception of rights than the United States. The United States should take socioeconomic rights more seriously and should join with democratic allies and others in striving to make those standards more specific and more important in international diplomacy.<sup>53</sup>

It is even possible to think the unthinkable. If the United States were to move further away from American exceptionalism, it might even learn some important lessons from international standards on human rights and from rights practices of other countries that would improve American society. Whether on the subject of access to higher education, provision of health care to the non-affluent, implementation of the death penalty on juvenile offenders, provision of child care for working citizens, or any number of other subjects, there are not many around the world who look to American society for positive examples.

In some circles of American society it is provocative enough to suggest that international standards on human rights could teach the United States something important on traditional foreign policy subjects pertaining to containment of communism, maintenance of reliable allies, and promotion of economic development

<sup>53</sup> On the importance of socioeconomic rights, in addition to the well-argued book by Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1980), see Cyrus Vance, "The Human Rights Imperative" *Foreign Policy* 63 (Summer 1986): 3-19; see also David P. Forsythe, "Socioeconomic Human Rights: The United Nations, the United States, and Beyond," *Human Rights Quarterly* 4 (Fall 1982): 433-449.

with dignity. But could it be that those community standards might actually teach the United States something important about itself? That is both an international and a domestic issue at the same time.\*

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