



## 16. Human Rights and Civil Society in a New Age of American Exceptionalism

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What does it mean to be a human rights advocate in an age of extreme American exceptionalism? More broadly, what role can civil society play in supporting human rights goals and combating exceptionalist policies? American exceptionalism has a long history,<sup>1</sup> and human rights advocates have continually struggled against it, but three factors have made human rights practice extraordinarily difficult in our post-Cold War, post-September 11 era: (i) American military and economic supremacy and a willingness and ability to use it unilaterally to advance U.S. interests; (ii) American disregard for international institutions and international norms, with unparalleled intensity and consistency, and (iii) the co-option of human rights talk by the government to serve narrow state interests contrary to human rights principles. Advocates for human rights in civil society must address all three of these factors, but this brief essay will focus on efforts to address the third factor, namely, the co-option of human rights discourse by the government and the challenge this poses for human rights advocates.

This discussion is divided into three parts. First, it begins by describing the state of the United States in the immediate aftermath of the election of George W. Bush to a second term as president. This part serves as an introduction to some of the key challenges confronting human rights advocates in light of government intrusions on civil liberties post-September 11th. The second section analyzes the manipulation of human rights discourse by the government and its application of a “bait and switch” in its actual practice. Drawing from the international relations theory of norm diffusion, this section offers

<sup>1</sup> As Michael Hirsch observes, “America’s success in building a continental empire [has] only fed into the certainty that it could act with total freedom of action. Its pride in its values and ideals [has] made Americans certain that they were always right.”

be on this list, employers are then caught in the trap of the governmental stipulations, which mandate that they ask the employees questions that "violate the privacy rights of employees and ask inappropriate questions that trample employees' associational rights" (Romero 2004a). Such blacklists have been found to be "riddled with inaccuracies" according to lawsuits filed against the government by the ACLU. Further, people on the list are systemically unable to correct false information.<sup>6</sup> The pressuring of human rights organizations to comply with these strident CFC regulations threatens their own ability to uphold civil rights at the risk of losing important federal funding.

To some extent, the workings of the imperial presidency are nothing new. In fact, these measures are hallmarks of all U.S. presidencies run on a climate of fear. Matthew Bowles, a field director for the American Civil Liberties Union, explains:

On many levels, what is going on post-9/11 is merely a reformulation of previous policies of state repression with new racial scapegoats and a repackaged discourse of who the 'evil enemy' is. Instead of interning Japanese Americans we are interning Arabs and Muslims, instead of the evil ideology of 'communism' we are denouncing the evil ideology of 'Islamic Extremism', instead of the Alien and Sedition Act we have the USA PATRIOT Act...<sup>7</sup>

There is a sense of *déjà vu* in the latest internal U.S. crackdown on human rights. Just as the campaign against communism gave many countries apparent liberty to abridge the rights of all people labeled "terrorists" or even "terrorist suspects," the campaign against terrorism is giving license to other states to infringe upon international human rights in the name of national security (Roth 2004; Donnelly 2004). The environment in which the abuses are taking place, however, is substantially different than in the McCarthy era or in any other period in U.S. foreign policy dominated by fearmongering and repression of perceived enemies. Today, unlike in earlier periods, the regressive measures are taking place during a time wherein human rights adherents wielded unprecedented influence over the policy agenda and played a role in decision making. By all accounts, however, it appears as if the human rights approach is failing to address the climate of fear choking civil liberties and the policies of the imperial presidency that make this possible.

## II. The Underachieving Human Rights Movement

What's going wrong with human rights? There is nothing wrong with human rights per se. There are good reasons for human rights as the tool of choice

<sup>6</sup> Author interview with Matthew Bowles, December 1, 2004.

<sup>7</sup> Author interview with Matthew Bowles, December 1, 2004.

for framing arguments and making policy choices. The notion of individual dignity and moral equality that lie at the heart of human rights ideology is something worthy of promoting. The disempowered turn to human rights discourse because it so "successfully manages to articulate (evolving) political claims" (Dembour 1996). Rights are not wrong. What is wrong is that human rights remain only an option and has not achieved the status of an imperative. In interplay with other options, human rights are vulnerable to being tossed out by powerful states that use fearmongering to bully their citizens into submission.

**What Is Wrong.** The ability of human rights advocates to impact the human rights policies of their governments should be advanced by the professionalization of the field and the increased mobility of individuals from the government sector to civil society. In the United States today, individuals working on human rights issues are likely to be former members of the Clinton administration and other previous administrations, former State Department employees who quit in protest over U.S. policies, and former ambassadors and military officers, as well as individuals who cut their teeth working on humanitarian projects in Afghanistan, election monitoring in Bosnia, or the founding of the Truth Commission in South Africa. Tapping this expertise, human rights organizations should now have the potential to reach deeper into the foreign policy establishments and their periphery. In contrast to the traditional human rights technique of public shaming, these new insider efforts often involve private meetings and cooperative information sharing, the provision of concrete policy proposals, and the offer of technical assistance. While some advocates have sought to push political leaders to interpret the existing policy agenda through a human rights lens (e.g., to weigh human rights factors into intervention decision making), others seek to add new issues to the agenda (e.g., human trafficking). Because this new generation of human rights advocates has been able to target their advocacy more precisely and work at times *within* (instead of *against*) government structures, they have succeeded in framing issues in human rights terms. For example, it has become routine for the U.S. government to invoke human rights as a rationale for its foreign policy decisions and military ventures (see Lang 2003). When measured by the sheer volume of human rights speak, advocates' efforts appear wildly successful.

Yet the danger to these insider approaches to human rights advocacy are great. Transparency is particularly low, and the danger of morphing from *cooperation* to *co-option* is great. Also at risk is the tendency of social movements to lose their more radical edge once their demands are reshaped in the centrally liberal and seemingly less challenging framework of human rights.

Perhaps even more troubling is the lack of evidence that these insider efforts to frame policy issues in human rights terms have had a great impact on human rights behavior. U.S. policymakers still consistently apply a double standard for human rights norms: one the rest of the world must observe, but that the United States can safely ignore. Human rights advocates have shaped the discourse, without the desired influence on policy options.

The scandal over the U.S. government memoranda attempting to justify the torture of accused terrorists is just one case in point. In August 2002, the Department of Justice Office of Legal Counsel produced a fifty-page memorandum stating the President could authorize torture even though our laws and treaties prohibit it (Mertus 2004). The Justice Department (2002) concluded that “the treaty’s text [the Convention Against Torture] prohibits only the most extreme acts by reserving criminal penalties solely for torture and declining to require such penalties for cruel, inhuman, or degrading treatment or punishment” and that “under the current circumstances, necessity or self-defense may justify interrogation methods that might violate [these prohibitions].” International law, through the Convention Against Torture (CAT), the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, prohibits torture and forms of cruel, inhumane, or degrading punishment and the right to personal integrity. The CAT (to which the United States is a party) specifically requires that state’s parties incorporate the crime of torture in their domestic legal codes and punish accordingly any acts of torture committed by their own citizens. The CAT makes no allowances for any exceptional circumstances, such as a state of war or political unrest, or other times of public emergency. Violations of the right to be free from torture are violations of both domestic legal provisions and international human rights law.

Through a tortured interpretation of international law, the memorandum supported the view that the president of the United States is somehow above international law (Clark & Mertus 2004). This is not so. Under the Constitution, the president and members of the executive branch are bound to faithfully execute the law, which includes treaty law and customary international law. International law is not somehow optional. The law here is clear: The United States is prohibited from invoking national security arguments to justify torture.<sup>8</sup>

One cannot claim to believe in the idea of human rights, and also believe that these rights apply to only *some* individuals, or that only *some* states have

<sup>8</sup> For further analysis, see generally Weiss 2004.

a responsibility to respect human rights (Parekh 1999). Talk of “human rights” has become the political equivalent of a “bait and switch.” Like the car salesman promoting an amazing but bogus deal in order to get people into the showroom, politicians promise human rights in order to induce desired behaviors in others. Then, as soon as the desired behavior happens, a substitute is provided – one human rights standard for the United States and another for the rest of the world. Instead of promoting just solutions to contemporary foreign policy dilemmas, rights talk is becoming just another way to dupe otherwise unwilling citizens to support U.S. foreign policy.

To extend the car dealer analogy: The car is a desired commodity promised by the dealer in an attractive package. Once inside the showroom, the customer finds that the option actually offered is not the same as the advertised special. The car dealer misleads people through his power of influence, created by both the fact that he has something someone else wants and that his wealth gives him a magnified voice. Like the car dealer, the United States can use its wealth and influence to mislead the populace about its commitment to the human rights framework, appearing to support universal human rights standards when actually it is applying double standards.

Recognizing the ethical problems with “bait and switch” car dealers, consumer protection laws seek to set advertising requirements that diminish the possibility for such behavior. Perhaps even more influential is the limited tolerance of the American consumer for such nonsense and trickery. What is needed with respect to human rights is some kind of similar safety guarantee to eliminate or at least highly restrict the possibility that they will be trumped by lesser competing norms. But the problem is that while Americans have very high expectations with respect to their car dealers, they have low expectations with regard to human rights. Especially in a climate of fear, Americans are willing to tolerate surprisingly deep intrusions into their own civil liberties, and even greater intrusions into the rights of others (e.g., foreign nationals), all in the name of fighting terrorism.<sup>9</sup>

**Toward a More Effective Strategy.** This problem of low expectations for human rights policy options strikes at the heart of international relations theory about how norms spread and gain influence. For a long time, the most popular theory of norm diffusion has been the socialization and persuasion approach championed by such international relations thinkers as Thomas Risse and Kathryn Sikkink. According to this perspective, dialogue,

<sup>9</sup> For analysis of government manipulation of the climate of fear, see generally Sterba 2003; Daalder & Lindsay 2003.

communication, and argumentation are essential mechanisms for the socialization of norms (Risse & Sikking 1999). Promoting human rights not only shames states into action in individual instances, but also, as human rights norms are internalized, prompts a transformative shift in identity, interest, and expectations. Rights win out when they promote awareness and genuine openness to the oppression of others. Thus, so the theory goes, successful advocates are those who advance the most convincing or skillful argument to policymakers favoring one norm over another (Risse 2000; Risse & Sikking 1999).

This socialization theory of norm diffusion used to explain the influence of human rights norms does have serious shortcomings. At the outset, there are empirical problems. In the cases in which human rights advocates are deemed successful, have they really persuaded anyone in a broad or transformative sense or have they only managed to convince someone to apply their approach to specific, isolated cases? Given the instrumental and selective manner in which the Bush administration employs human rights, can we really point to a shift in the identity, interests, and expectations of anyone in the White House? Can we ever really tell if someone's sentiments have shifted? More important, does a sentiment shift matter if behavior does not change? Why is it that U.S. foreign policy, regardless of administration, continues to address in a selective and self-serving manner the violation of human rights by other countries while refusing to apply the same international standards to its own behavior?

One interesting response to these shortcomings of the socialization theory of norm diffusion does not require an explicit showing of a philosophical shift, rather, just enough "rhetorical coercion" to compel the endorsement of a normative stance. Under the model of norm diffusion proposed by international relations upstarts Patrick Jackson and Ronald Krebs, claimants deploy arguments less in the hope of naïve persuasion than in the realistic expectation that they can, thorough skillful framing, back their opponents into a "rhetorical corner" (Jackson & Krebs 2003). The goal then is not to persuade but to coerce by limiting policy options.

According to this theory of norm diffusion, human rights advocates who focus on persuasion and primarily target decision makers have it all wrong. Instead of trying to change minds in government, advocates should focus on changing minds in the general public. Only a cultural shift in favor of human rights would create the conditions that compel rights-based policy choices. In a participatory democracy, one good way to limit policy options is through a demanding electorate and active civil society (Belloni 2000; see also Diamond 2001). This approach seeks to leverage public pressure in order to limit policy options to those consistent with human rights principles.

How could this be done? The answer, provided in both new applications of international relations normative theory and suggested as well in emerging U.S.-based human rights practice, lies in creating a human rights culture. To the extent that human rights advocates concentrate on changing perspectives, those that are most relevant belong not to policy-making elites, but to the general public. If we analogize rights-based concerns to consumer protection conditions, the expectations of consumers are elevated and the options for impinging upon consumer protections are sharply reduced by an expectant and demanding public. For human rights advocates, the creation of a human rights culture could serve a similar function by providing an environment in which human rights double standards are not tolerated.

*A human rights culture* is the vehicle through which a particular set of shared beliefs and understandings – human rights norms – take root in and influence a population (Witte 2001).<sup>10</sup> The adoption of human rights language is an essential step in building a human rights culture, but this alone is insufficient. Human rights concepts enter culture slowly as a population develops its own shared (although often contested) understanding of the prominence and importance of the norms. Incrementally, they become part of the identity, interests, and expectations of individuals and groups. In Jack Donnelly's words, "[h]uman rights is the language of the victims and the dispossessed" (1998: 20). As the disempowered shape human rights ideology and use it for their own goals, they exercise their moral agency. Over time, the individuals and groups that adopt human rights language and thinking become a human rights people. The human rights framework becomes a taken-for-granted lens through which to view and understand the world and their role in it (Preis 1996: 315).

Human rights cultures exist when human rights are one of "the forms through which people make sense of their lives" (Rosaldo 1993: 26). In other words, a human rights culture is a way of seeing the world through the lens of human rights and consequently with the principles of human dignity and equality. It is through human rights culture that human rights norms take root in and influence a population (Witte 2001: 707–12; see also Pollis 1996). Tom Malinowski, the Advocacy Director for Human Rights Watch, has recognized that "NGOs 'win' not only when they get international institutions to do something, but when they get people to think in a certain way."<sup>11</sup> Just as one major aspect of the environmental movement is to encourage people to "think green," the human rights movement seeks to encourage people to think human rights.

<sup>10</sup> Write states that human rights norms "need a human rights culture to be effective."

<sup>11</sup> Author interview with Tom Malinowski, June 2003.

### III. Toward Creating a Culture of Human Rights

The prospects for building a more robust foundation for human rights at home in the United States may seem hopelessly naïve at best. Far from encouraging the development of a culture of human rights, the U.S. government has consistently found it advantageous to suppress human rights awareness at home, while invoking human rights abuses abroad as a rationale for imposing sanctions and even invasions. While America may have human rights talk, it does not have a human rights culture. The level of awareness of human rights in the United States is extremely low. According to Amnesty International, 94 percent of American adults and 96 percent of American youth have no awareness of the Universal Declaration of Human Rights.<sup>12</sup> Without a human rights culture, American citizenry cannot be expected to evaluate and criticize U.S. foreign policy decisions on human rights terms.

Until recently, human rights culture-building activities have been undertaken by smaller organizations and by constituency-driven organizations, not by Human Rights Watch. Many of these smaller organizations emphasize human rights education as a tool for building human rights culture; such organizations include Human Rights Advocates and the People's Decade for Human Rights Education, as well as organizations associated with social movements for social justice, such as the National Center for Human Rights Education (NCHRE).<sup>13</sup> Activists trained by NCHRE work on a multitude of issues – combating racism, homophobia, poverty and discrimination against people with disabilities, promoting women's rights, protecting the environment, defending reproductive rights. As the result of these training efforts, many activists who previously identified themselves more narrowly as civil rights activists now identify themselves as part of the global human rights movement.

In the post-September 11th climate, the crackdown on civil liberties has encouraged many mainstream human rights organizations to direct their energies closer to home, going against their traditional practice of focusing on human rights abuses well beyond U.S. borders. These efforts are likely to gain even greater momentum following the re-election of President George W. Bush. "Policies that once seemed like temporary measures, now have the real possibility of becoming permanent," explained Fanny Benedetti-Howell, of Global Rights.<sup>14</sup> "The reorientation of major human rights organizations

<sup>12</sup> See <http://www.hrusa.org/features.shtm>. The survey was commissioned in 1997 by Human Rights USA Partners – Amnesty International USA, National Center for Human Rights Education, Street Law, Inc., and the University of Minnesota Human Rights Center.

<sup>13</sup> National Center for Human Rights Education (NCHRE). See <http://www.nchre.org/>.

<sup>14</sup> Author interview with Fanny Benedetti-Howell, Global Rights, December 1, 2004.

to focus on U.S. activities could be on the horizon," predicted one high-ranking member of a U.S.-based human rights NGO who preferred to remain anonymous. While the shift is not a complete reorientation, it is notable nonetheless. Significantly, several states, as well as more than 360 towns, counties, and cities have adopted resolutions reaffirming their commitment to individual civil liberties in the face of the USA PATRIOT Act and related measures (see ACLU 2004).

On the treaty-monitoring front, groups like Global Rights are now seeking to promote the active engagement of U.S. civil rights and social justice groups in the implementation of treaties ratified by the United States (IHRIG). At the top of its agenda is the Convention on the Elimination of all Forms of Racial Discrimination (CEDAW), the central international treaty prohibiting race discrimination, which the United States ratified in 1994. Among other activities, Global Rights has been instrumental in educating civil rights groups in CERD and in facilitating these groups' involvement in the monitoring of U.S. compliance. According to Global Rights, as a result of these and other efforts to bring human rights home, "today, the anti-racism movement in the United States is linked more closely than ever to the global movement against racial discrimination, and new advocacy strategies offer new opportunities to press the U.S. government for reforms."<sup>15</sup>

On the legislative front, to circumvent the continuing erosion of human rights at a federal level, advocates are increasingly seeking to integrate international human rights norms into the law and policy of state and local communities. For example, under pressure of the advocacy group WILD (Women's Institute for Leadership Development), San Francisco incorporated the principles of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) into city law.<sup>16</sup> The new city law requires city departments to use a gender and human rights analysis to review city policy in employment, funding allocations, and delivery of direct and indirect services.

Other local human rights laws have been directed at taking local action against U.S. corporations committing abuses abroad. For example, the Massachusetts General Assembly passed legislation in 1996 prohibiting its state and any of its agencies from contracting with any person doing business with Myanmar. Twenty-six cities, including Santa Monica, San Francisco, Berkeley, Oakland, Boulder, and Ann Arbor, have passed similar ordinances limiting business with Myanmar (Mililken 1999: 188). Other local ordinances

<sup>15</sup> Global Rights, "Global Rights in the United States," Available at [http://www.globatrights.org/site/PageServer?pagename=www\\_ame\\_index\\_57](http://www.globatrights.org/site/PageServer?pagename=www_ame_index_57).

<sup>16</sup> WILD for Human Rights, [http://www.wildforhumanrights.org/human\\_rights\\_advocacy.html](http://www.wildforhumanrights.org/human_rights_advocacy.html).