

The New U.S. Human Rights Policy: A Radical Departure

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The United States, as the most powerful state and as the self-appointed champion of human rights, has a profound impact on the way human rights norms are interpreted and applied throughout the world. The human rights foreign policy of President George W. Bush can be distinguished from the policies of other administrations in three crucial respects: (1) In identifying the values that Americans can and should promote abroad, it avoids human rights terminology and scorns multilateral institutions, and instead looks to divine inspiration; (2) in place of well-recognized human rights norms, it uses a concept of "dignity" that is narrow and self-serving; and (3) it engages in "exceptional exceptionalism," continually holding others to standards that it does not apply to itself. This essay contends that the new U.S. human rights foreign policy drains human rights of its core meaning and limits its potential impact. Moreover, the United States lacks moral authority to act on human rights grounds as long as it fails to prioritize human rights explicitly and to uphold the same standards to which it holds other nations accountable.

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The United States, as the most powerful state and as the self-appointed champion of human rights, has a profound impact on the way human rights norms are interpreted and applied (Vincent, 1986:31–42; Evans, 1996:113–116, 148). This article examines the nature and impact of the human rights foreign policy of President George W. Bush. Both before and after September 11, 2001, the Bush administration professed an interest in human rights—as long as they are applied in the interests of the United States and the United States itself would not be bound to any international laws or commitments to multilateral institutions. The Bush administration's human rights foreign policy is at first glance the continuation of old themes in American international affairs: selective, instrumental manipulation of human rights. Yes, this essay contends, the Bush administration's human rights policy represents a significant departure from those of earlier administrations and serves to undermine international human rights norms.

This analysis of the Bush administration's human rights foreign policy is divided into three parts. First, the essay outlines President Bush's human rights foreign policy and explains its unique attributes. Second, it underscores the extent to which the unilateral and particularist nature of the policy represents a departure from well-established international human rights norms. Finally, the essay suggests a test for examining the legitimacy of the new White House approach and, applying the test, contends that the new approach is illegitimate and should be rejected. The

essay concludes that to acquire legitimacy, the human rights foreign policy of the Bush administration must shift to a more universalist orientation and must uphold the same standards to which it holds other nations accountable.

The New U.S. Human Rights Foreign Policy

The Bush administration's human rights foreign policy can be distinguished from the policy of other administrations in three crucial respects: (1) It avoids human rights terminology and scorns multilateral institutions and treaty obligations and instead is inspired by providence in identifying the values that shape the American character and that can and should be prompted elsewhere; (2) in place of well-recognized human rights norms, it uses a concept of "dignity" that is narrow and self-serving; and (3) it arguably goes further than any presidential administration has gone before in asserting "exceptional exceptionalism," that is, the view that it need not uphold the same standards it expects of others. Each of these policy developments is discussed in turn below.

"Dignity" and Providence over International Human Rights Obligations

From the very beginning of his presidency, George W. Bush has avoided human rights terminology, especially when it would place any legal obligations on the United States or bind U.S. action in any way. Instead, he has invoked a more amorphous concept of "dignity." His inaugural address was a plea for Americans to remember particular tenets of U.S. history (real and imagined) and culture. America, he says, was born from a "simple dream of dignity," and has long striven to be "a place where personal responsibility is valued and expected" (Bush, 2001). In U.S. foreign policy, this great tradition of responsibility is manifested in a messianic spirit (Sarkisian, Williams, and Cimbala, 2002:27), that is, the notion that American values are the most enlightened and that America has a God-given responsibility to bring "the light" to others. "Where there is suffering, there is duty," President Bush declares. Drawing from scripture, (Bush, 2001) he "pledge[s] to [the] nation ... a goal: When we see that wounded traveler on the road to Jericho, we will not pass to the other side."

The President proclaims in his inaugural address (Bush, 2001) that it is consistent with the American spirit to be "generous and strong and decent, not because we believe in ourselves, but because we hold beliefs beyond ourselves." The source of these beliefs is not international human rights law or American commitment to multilateral institutions, but rather, the President suggests, providence (Bush, 2001); in Bush's words "an angel" who "rides in the whirlwind and directs this storm." Emory University religion professor Steven Tipton observes that in the inaugural address providence is one of the central motifs:

From beginning to end, as the inaugural address concludes, there has been this providential angel riding the whirlwind of history—surprises, reverses, tragedies, catastrophes, calls to war, national emergencies, this providential angel in whom we trust. And beyond, we trust the authorship of the creator and the orderer of the universe and the orderer of history, too. That carries through from the Inaugural to the State of the Union to the National Cathedral and the other addresses that follow more or less immediately on 9-11. (PBS, 2003a)

Whereas the foreign policies of other administrations have been informed by the religious convictions of the president and his close advisors (Wald, 1992), President Bush's is unusual in the extent to which he justifies his policies based on scripture. Elaine Pagels, a professor at Princeton University finds that "in recent memory, [she] cannot think of anyone who has used the language in the way that this man has" (PBS, 2003b). At a National Prayer Breakfast, the President declared: "The

Almighty God is a God to everybody" (Bush, 2003c); in announcing the Columbia space shuttle disaster, he paraphrased Isaiah 40:26: "The same Creator who names the stars also knows the names of the seven souls we mourn today" (Bush, 2003b); and in his 2002 State of the Union address he drew from a popular evangelical hymn in declaring: "There is power—wonder-working power—in the goodness and idealism and faith of the American people" (Bush, 2002a). After the September 11, 2001, tragedy, the Bush administration repeatedly referred to the "war on terrorism" as a "holy war," suggesting that it would be no ordinary war restricted by international norms (Williams, 2001). His vehement apocalyptic rhetoric left even evangelical leaders worried (Lapman, 2003).

Human rights advocates who feared that "the era of human rights has come and gone" (Ignatieff, 2002) could point to substantial evidence in the doctrine's decline in U.S. foreign policy. In the post-September 11 era, strategic interests appeared to outweigh previous concerns over human rights and democratization (Mufson, 2001). The United States became more willing to overlook human rights violations in its attempt to build a broad alliance against terrorism. As Marwan Bishara has pointed out: "[T]he members of the unwritten alliance [—including Pakistan, Saudia Arabia, Turkey, Russia and Uzbekistan—] are undemocratic regimes that grossly violate human rights" (Bishara, 2001:6). Countries with poor human rights records such as China, Indonesia, Malaysia, Russia, and Uzbekistan were thus well positioned to use the U.S.-led war on terrorism to justify oppression and act with impunity (Richardson, 2001:6; Human Rights Watch, 2002a).

Nonetheless, the Bush administration insisted that it had not given up on human rights. In a speech before the Heritage Foundation on October 31, 2001, Lorne W. Craner, Assistant Secretary for the Bureau of Democracy, Human Rights and Labor, told his audience that "maintaining the focus on human rights and democracy worldwide is an integral part of our response to the attack and is even more essential today than before September eleventh." Craner (2001) goes so far as to assert: "We are proud to bear the mantle of leadership in international human rights in this century." The kind of human rights policies promoted by the administration, however, are only those consonant with a narrow set of American values and interests. Craner clarifies: "Our policy in this administration, and it is certainly true after September eleventh, is to focus on U.S. national interests," which includes "concentration on advancing human rights and democracy in countries important to the United States." The goal for U.S. supporters of democracy and human rights, says Craner (2001), is to "protect the values that underpin civil society at home." Thus, although the Bush administration is not discarding human rights in the post-September 11 climate, it is also continuing its practice of U.S. exceptionalism.

In both the 2002 and 2003 State of the Union addresses, the president drew on a notion of "human dignity" as a new policy term, in the place of language about human rights obligations. These "dignity" obligations, he contends in the 2003 address, are at the core of the American character: "The American flag stands for more than our power and our interests. Our founders dedicated this country to the cause of human dignity, the rights of every person, and the possibilities of every life. This conviction leads us to help the afflicted, and defend the peace, and confound the designs of evil men" (Bush, 2003a).

Following the pattern of many earlier addresses, President Bush does not invoke international human rights standards and instead appeals to a religious foundation for the "cause of human dignity." He declares: "As our nation moves troops and builds alliances to make our world safer, we must also remember our calling as a blessed country is to make this world better" (Bush, 2003a). The "liberty" that the America strives to bring to others, he says, is "not America's gift to the world, it is God's gift to humanity." Deploying military troops based on a sense of a "calling" and of being "blessed" with "God's gift to humanity" represents a departure from

appeals to action based on a sense of obligation grounded in international standards and enforced by multilateral institutions.

The National Security Strategy Explanation of "Dignity"

The 2002 *National Security Strategy*, the 31-page report submitted to Congress by President Bush at the end of September 2002, provides the most comprehensive explanation of the Bush administration's attempt to downgrade human rights by replacing it with a peculiar U.S. notion of "human dignity" (White House, 2002). Although different cultures have their own notions as to what constitutes "dignity," President Bush acts on the assumption that it is the American version of dignity that is universal. Yet the invocation of "dignity" instead of "human rights" is deeply regressive and, if accepted and repeated elsewhere, may overturn fifty years of progress in the development of human rights norms.

To be sure, the *National Security Strategy* is peppered with references to human rights, for example, promising to "press governments that deny human rights to move toward a better future" (White House, 2002:4) and predicting that "only nations that share a commitment to protecting basic human rights" (White House, 2002:v) will be assured future prosperity. Yet "human rights" appear as a vague matter of concern for other states; the administration's commitment to the applicability of the norm to the United States itself remains uncertain. In contrast to "human rights," "dignity" is outlined in detail. The *National Security Strategy* defines the "nonnegotiable demands of human dignity" (White House, 2002:4) as consisting of the following elements: "the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal justice; respect for women; religious and ethnic tolerance; and respect for private property" (White House, 2002:3). The eclectic list is remarkable in that it is wholly divorced from any that has ever appeared in international human rights instruments. Through this unilateral reordering, the administration redefines who is on the side of human rights (those on the side of freedom, dignity and capitalism) and who is against human rights (those on the side of tyranny and indignities) (van der Vyver, 2001:775-832).

While the list declares that limits should be placed on the power of the state, little responsibility is conferred on the state to do anything to promote and protect rights, such as reducing the level of structural violence within society (Galtung, 1969). At the same time, under this formulation individuals have very little power to assert any rights claims against the state. The list itself is contradictory; it calls for "equal justice," but women are merely due "respect" and religious and ethnic groups are due "tolerance." Further, despite Bush's call for the "rule of law" and "justice," in the absence of a clearly articulated and recognizable set of norms, these rights are difficult to enforce, and they create passive actors without the agency to make legal and political claims. Without recognizing equality and the value of dialogue, which can lead to acceptance of differences between various components of society, such a policy could further entrench power asymmetries and marginalize groups.

Far from reflecting a universal consensus, the Bush catalogue of rights is a random rendition of the administration's current priorities. The listing omits nearly all of the human rights deemed "non-derogable" in international human rights treaties (and, thus, not subject to any exceptions such as national emergency or necessity) (Buergethal, 1981:78-86; Gross, 1998:437-501), including the right to life, freedom from torture, and freedom from slavery. Also missing is any mention of the many human rights associated with civic participation and democracy, a popular (and nonpartisan) tenet of American assistance abroad, based on the belief that democracy brings with it peace and freedom. The single item that is elevated to a higher status than that recognized in international human rights law is the right to property.

The inclusion of "property rights" in the new template and the exclusion of all other social and economic rights is consistent with the administration's overall policy agenda that makes U.S. trade and investment a key concern. One good illustration of this phenomenon is President Bush's new initiative for Cuba, announced in May 2002. President Bush warns Cuba that it must improve its record on civil and political rights, most notably in the areas of freedom of speech and assembly, treatment of prisoners in detention, and open and fair multiparty elections. When it comes to social and economic rights, however, he focuses narrowly on property rights, framing the issue with the interests of large U.S. corporations in mind. He states:

If Cuba wants to attract badly needed investment from abroad, property rights must be respected. If the government wants to improve the daily lives of its people, goods and services produced in Cuba should be made available to all Cuban citizens. Workers employed by foreign companies should be paid directly by their employers, instead of having the government seize their hard-currency wages and pass on a pittance in the form of pesos. (Bush, 2002b)

The administration's neglect of other social and economic rights issues could be explained by more than just U.S. self-interest. American political culture has been traditionally hostile to framing social and economic issues in terms of rights, while it has been considerably more to rights-based approaches to civil and political issues. Thus, the administration's recognition of human rights is limited to those that square with American values. For a president who recognizes only those human rights that are identifiable as "American values," sidestepping social and economic rights is in order.

Exceptional Exceptionalism

The Bush administration's broad use of "human dignity" creates the space within which the government can act like a human rights universalist when convenient, while retaining a belief in American exceptionalism. Its unique catalogue of rights is particularist, in its privileging of national interests and issues over universal norms, and in overlooking the application of international norms to controversial national practices (Bolton, 2001:168-180). On the surface, this policy appears to be in line with what has become standard American exceptionalism. David Forsythe has explained that U.S. foreign policy has the tradition of being caught between the competing forces of international expectations of cooperation and mutual standard setting on the one hand, and domestic expectations of American exceptionalism on the other hand. "American political culture generates the demand, albeit inconsistently, that U.S. foreign policy should reflect the American self-image of an exceptional people who stand for freedom around the world," explained Forsythe (1995:111-130).

United States policymakers cannot be termed "radical particularists" (Jones, 1999:185) because they accept the notion that some normative principles should guide behavior at least some of the time. Yet they remain particularist insofar as they see their own political and social culture as the morally superior one that should guide the rest of the world, and can envision no complete set of moral principles that would apply to their own behavior as well as others (Jones, 1999:185). Such an outlook perpetuates distinctions of "self" and "other" which can lead to enemy images grounded in misperceptions (Tidwell, 1998:127).

In a *Foreign Affairs* article, Arthur Schlesinger (1978) observed that the question has never been whether America has a moral mission, but *how* it should execute this mission. The range of possibilities for human rights foreign policy is informed by three sets of choices: domestic or international definition of norms; unilateral or

multilateral action; and a focus on application of human rights norms at home or abroad (Forsythe, 2000b).

In applying domestic norms unilaterally to the behavior of certain (enemy) states, the administration of George W. Bush appears to be patterning itself after the second Reagan administration, which made similar choices on human rights policy. Indeed, the language of the new *National Security Strategy* is strikingly similar to statements on human rights made by members of the Reagan administration. For example, in a speech in February 1984, Secretary of State George Shultz (1986:213) explained that Americans, in contrast to other people, define themselves "not by where we come from, but where we are headed; our goals, our values, our principles." Freedom, Shultz said (1986:214), is a central goal for Americans. In response to domestic expectations then, "moral values and a commitment to human dignity have not been an appendage to our foreign policy [in the Reagan administration], but an essential part of it, and a powerful impulse driving it."

Like the current administration, the second Reagan administration articulated the difference between the United States and its enemies in moral terms, as "the difference between tyranny and freedom" (Schultz, 1986:214). Also, like the current administration, the second Reagan administration used international human rights norms strategically, as a tool for furthering its interests rather than as a means for evaluating its own behavior. The Reagan administration was not isolationist; rather, it supported "a commitment to active engagement, confidently working for our values as well as our interests in the real world, acting proudly as the champion of freedom" (Schultz, 1986:215).

Comparing these words to the 2002 *National Security Strategy*, it may at first glance appear as if President Bush's staff took a page right out of the Reagan administration's foreign policy scrapbook. Notably missing, however, is a significant element of the Reagan human rights strategy, namely, the willingness to use, albeit selectively, international human rights treaties and mechanisms. While not fully embracing multilateralism, the second Reagan administration demonstrated at least a pragmatic understanding of the modern human rights regime. In the same speech quoted above, Shultz made clear (1986:217) that the Reagan administration sought to use multilateral institutions as an "instrument of [U.S.] human rights policy."

The second Reagan administration's commitment to multilateral approaches to human rights problems should not be overstated. It invoked treaties selectively, reading in the kinds of civil and political rights most familiar to U.S. constitutional law, and reading out economic, social, and cultural rights that are largely foreign to U.S. legal traditions. Nonetheless, the second Reagan administration still recognized the existence and potential importance of international human rights instruments and organizations. The decision of the administration of George W. Bush to depart from this practice is radically regressive.

From the outset, President Bush has made withdrawing from international treaties a cornerstone of his presidency. He began his first days in office by extricating the United States from the Kyoto Protocol on global warming. The administration then announced that it would build a missile-defense system, and in so doing unilaterally discard the 1972 Antiballistic Missile Treaty (ABM) between the United States and the Soviet Union. At the same time, the administration also called for criminalizing the possession of biological arms and enhancing United Nations (UN) power to investigate suspected violations, calling these "improvements" to the 1972 Biological and Toxin Weapons Convention, which banned germ weapons (International Herald Tribune 2001:3). On the other hand (Slevin, 2002:1), President Bush also denounced President Clinton's last minute signing of the Rome Statute establishing the International Criminal Court (ICC) and notified the UN that he was "unsigned" it. However, as some scenarios still existed where the ICC could try U.S. soldiers without American consent, the Bush administration

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embarked on strong-arming U.S. allies into signing special agreements granting U.S. soldiers immunity and exempting them from extradition to the court. To date (Kelly, 2003:225), over a dozen such agreements have been signed.

The September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon forced the Bush administration to reconsider the importance of engagement with the world, but it did not usher in greater receptiveness to multilateralism. The president's decision to seek UN Security Council resolutions condemning Iraq's defiance of earlier Security Council resolutions and authorizing the U.S.-led intervention may appear to demonstrate the administration's support of multilateralism. However, President Bush repeatedly made clear the U.S. intention of going it alone, without UN Security Council approval. "Nations are either with us or against us in the war on terror," he said (Bush, 2002c), painting the world in black-and-white terms. As Laura Neack (2003:149) observes in her post-September 11 analysis of the foreign policy of the Bush administration, "[u]nilateralism remained the key operating mode, although the United States would fully expect others to fall behind it."

Whether and how to fight the "war on terror" is confined exclusively to U.S. decision making with little legitimacy conferred on the UN or other multinational decision-making fora. In his 2003 State of the Union address, President Bush (2003a) explained that the American approach to terrorism is utilitarian in nature. "America's purpose is more than to follow a process," he says, "it is to achieve a result: the end of terrible threats to the civilized world." As the leader of the "free" world, he contended, the United States has unbridled discretion to make a utilitarian calculus in the name of the American people—and indeed all free people.

All free nations have a stake in preventing sudden and catastrophic attacks. And we're asking them to join us, and many are doing so. Yet the course of this nation does not depend on the decisions of others. Whatever action is required, whenever action is necessary, I will defend the freedom and security of the American people. (Bush, 2003a)

President Bush (2003a) selectively identifies "outlaw regimes" which he says signify the "gravest danger facing America and the world." Outlaws, the president suggests, exist outside any legal framework. In the same address, the president tells his American audience that "we've arrested or otherwise dealt with many key commanders of al Qaeda." Even more ominous for the human rights of those arrested, the president declares: "All told, more than 3,000 suspected terrorists have been arrested in many countries. Many others have met a different fate. Let's put it this way—they are no longer a problem to the United States and our friends and allies" (Bush, 2003a).

This "ends justifies the means" approach to terrorism has led to a crackdown on civil liberties in the United States, prominently in the Domestic Security Enhancement Act of 2003, which authorizes secret arrests, strips Americans of their citizenship for peacefully supporting groups deemed "terrorist," expands the basis for deportation without a hearing, and exempts habeas corpus provisions from the judicial review of certain immigration proceedings (Human Rights Watch, 2003b). It has justified the establishment of secretive military tribunals for what are arguably domestic crimes (Malinowski 2001; Slaughter, 2001:10) and the breaching of the Geneva Conventions in the treatment of Guantanamo Bay detainees (Knowlton, 2002; Press, 2003). The same reasoning has also supported the use of interrogation techniques called "stress and duress"—these same procedures are loudly criticized by the United States as running afoul of human rights standards when they are used by such countries as Afghanistan, Iraq, Burma, Syria, Jordan, and Israel (Human Rights Watch, 2003a). These measures illustrate American exceptionalism at its zenith.

A Departure from International Norms

The new U.S. human rights foreign policy radically departs from contemporary understandings of international human rights by adopting unilateralism over multilateralism and by using a definition of dignity in place of rights. The impact of this policy is not necessarily conservative or liberal, but is decidedly anti-human-rights and hostile to multilateral cooperation.

The modern human rights movement cannot survive unless powerful states like the United States accept multilateralism as an appropriate means for safeguarding and promoting human rights (Dorsey, 2000). Multilateralism serves at least four goals: (1) ensuring that an assertive human rights policy will not be perceived as a cover for alternative U.S. motives; (2) expanding the political leverage that can be brought to bear on any one human rights crisis; (3) strengthening the depth and breadth of consensus around international norms; and (4) reducing the damaging effects of what philosopher Geoffrey Warnock (1971:147-150) calls "limited sympathies," or the natural tendency for individuals and groups with differing loyalties to be responsive to some cases of injustice, and indifferent to others.

The joining of diverse countries and interests in a common effort to address a human rights crisis also provides some additional measure of oversight when self-serving domestic frameworks fail to check coercive state power. Collaborative partnerships such as these also build trust and common bonds, which further efforts for peace and international stability (Mitrany, 1966; Peck, 2001:564; Yost, 2001:587). In short, the idea behind human rights multilateralism is that when one country starts to go off track, the others will pull it back into compliance with previously agreed upon norms and procedures. The Bush administration's decision to reject human rights multilateralism obstructs this purpose by permitting the administration to create—and apply—its own, homegrown definition of human rights.

In contrast to the *National Security Strategy*, multilateral instruments discuss human dignities within the context of broader human rights. The Preamble of the UN Charter (1945) states that one purpose of the organization is to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." The first line of the Universal Declaration of Human Rights states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (United Nations General Assembly, 1948). Similar recognition of the "inherent dignity" and "the equal and inalienable rights of all members of the human family" is reaffirmed in the International Covenant on Economic, Social, and Cultural Rights (United Nations General Assembly, 1966a) and the International Covenant on Civil and Political Rights (United Nations General Assembly, 1966b).

More recently, at the Second World Conference on Human Rights in June 1993, representatives of 171 countries reaffirmed these principles when they adopted a Declaration and Programme of Action, which states in the second preambulatory paragraph:

[A]ll human rights derive from the dignity and worth inherent in the human person, and ... the human person is a central subject of human rights in fundamental freedoms, and consequently should be the principal beneficiary and participate actively in the realization of these rights and freedoms. (United Nations General Assembly, 1993:14-25)

Human rights constitute one way of upholding human dignity, yet dignity alone is not sufficient for human rights (Donnelly, 1999:253). As these international human rights instruments make clear: "dignity" is one core element of human rights, "equality" another, and "worth" a related third (Donnelly, 1989:81). And yet this is

where current U.S. human rights policy has gone awry. The modern idea of human rights requires—indeed is premised upon—the presence of all three concepts. One cannot embrace the idea of human rights and also hold that these rights apply to *some* individuals, or that only *some* states have a responsibility to respect human rights (Paarekh, 1999:128–149, 159). At the same time, one cannot believe in the idea of human rights and also believe that they are earned, or that some individuals may be more worthy of human rights than others. The new foreign policy announced by the Bush administration features championing “aspirations for human dignity” as a primary tenet of American foreign policy (White House, 2002:1), but absent from the document is the recognition of “equality,” “worth,” or equal value.

The Bush administration has reason to prefer “dignity” to “human rights.” While human rights are egalitarian in nature, the degree of dignity enjoyed by an individual is contingent upon his or her place in society. In her comprehensive study of human dignity, Rhoda Howard, a Canadian sociologist and leading thinker on human rights, observes:

In many cultures the social order stratifies “individuals” in ways that may enhance dignity for some categories of people but leave other categories dishonored, without dignity or respect. Although some deserve honor, others do not. Such different conceptions of human dignity are rooted in particular understandings of the inner worth of the human person and his proper relations with society. (Howard, 1995:80)

Perhaps this is why “dignity” is such an appealing concept to the current administration—one can invoke it without fully embracing the notion of moral equality or inherent worth.

The concept of “promoting dignity” also complements the Bush administration’s particularist stance. While both human dignity and human rights involve a moral duty to act, the idea of human rights transcends an attitude of charity and paternalism for victims by offering mechanisms for human agency, and by requiring action in all cases of abuse, not just those affecting “dignified” people. Human rights, unlike human dignities, provide victims with increasingly influential political and legal strategies for articulating their demands. Human rights mechanisms honor the agency of victims by calling into action a system of rights and correlative duties. Under human rights law, victims become claimants who are permitted to bring claims against perpetrators and some bystanders. By utilizing human rights mechanisms for achieving justice and addressing human suffering, victims are able to act nonviolently to improve their position. Without such recourse, violations are likely to perpetuate conflict through cycles of revenge and retaliation.

“Dignity” is also an appealing notion for the Bush administration because one can promote it without committing to anything in particular. While human rights have been criticized for a lack of precision, international human rights instruments offer far more specific guidelines for behavior than the White House’s newly manufactured list of human dignities. A rights-based approach treats everyone equally before the law and values all people on the basis of their inherent worth rather than viewing certain members of society as more dignified, and therefore “more equal” than others. Accordingly, a human rights approach forces states to recognize the worth inherent in others and give them an equal opportunity to state their claim.

Human rights are a standard for all countries, powerful and weak, large and small. Human rights force states to recognize individual (and group) agency by treating *all* as worthy of respect and right treatment. The achievement of human rights is *political* in the sense that human rights translate, reflect, and challenge

claims to power (Baxi, 1999:101-102, 156) and *nonviolent* because it is enforced and diffused through a regime of international norms, ideas, beliefs, and treaties. In Jack Donnelly's words, "[h]uman rights is the language of the victims and the dispossessed" (1998:20). This is especially true today when human rights wield particular currency (Wagonseil, 1999). Today virtually no state leader will acknowledge human rights violations perpetrated by its state but, instead, will cling to the identity of a state as supporting human rights (Forsythe, 2000a).

Even when human rights claims cannot be enforced, the political dimensions of human rights may influence behavior (Lutz and Sikink, 2000:633-659). In addition to placing a check on power, the notions of common humanity and individual worth establish responsibilities for state leaders and citizens to protect and assist all of humanity, regardless of state borders (Wheeler, 2000). This serves the general purpose of challenging the misuse of state power—something that, according to the *National Security Strategy*, the Bush administration is keenly interested in. Yet by relying on "dignity" alone, the United States can establish special relationships with certain strata of the international community, and deny value to those which do not fit its view of the world, thereby seeking peace and security through coercion rather than through collaboration and common ideals.

In sum, the Bush administration's understanding and usage of human rights norms radically departs from mainstream international understandings of human rights which place emphasis not only on the concept of "dignity," but also on "equality" and "worth." While this incomplete understanding of human rights may at times advance U.S. national interests, it does so at a price: the undermining of international human rights norms.

Testing the Legitimacy of American Exceptionalism

The question remains whether U.S. human rights exceptionalism is legitimate. The legitimacy of policymakers' actions is often analyzed in terms of fairness of process ("right process"). The procedural fairness of U.S. human rights policy is of considerable concern, but so is the substantive *content* of human rights norms. What the United States *does* in the name of human rights shapes the content of human rights and, in turn, informs its own identity and that of other states as self-defined human rights promoters. By lowering the bar on human rights through inconsistent enforcement and compliance, U.S. human rights policy negatively impacts the legitimacy of human rights and, as a result, is itself illegitimate. In this case, more pertinent to our inquiry than "right process" is the test normally associated with "rule legitimacy."

Thomas Franck has suggested four key indicators of "rule legitimacy": (1) *determinacy* ("the ability of a text to convey a clear message, to appear transparent in the sense that one can see through the language of the law to its essential meaning") (1995:30); (2) *symbolic validation* (when the rule "signal[s] that authority is being exercised in accordance with right process, that it is institutionally recognized and validated") (1995:34); (3) *coherence* (when "a rule, whatever its content, [is] applied uniformly in every 'similar' or 'applicable' situation") (1995:39); and (4) *adherence* (when the rule relates in a principled fashion to "a pyramid of secondary rules governing the creation, interpretation, and application of such rules by the community," and when the rule is "demonstrably supported by the procedural and institutional framework within which the community organizes itself") (1995:41). While Franck did not design this test for analysis of U.S. foreign *policy* (his focus was on rules), these four criteria are helpful in considering U.S. human rights foreign policy.

Being an adherent to human rights norms accepted within the international community requires more than abstaining from gross violations. As explained in this article, the idea of human rights requires active promotion of three

fundamental principles that work synergistically with one another: the "individual dignity principle," the "equality principle," and the "worth principle." It is in relation to these principles that U.S. human rights policy fails with respect to all four indicators of legitimacy.

First, U.S. human rights policy is not determinative because, due to its inconsistent interpretation of its duties and its sporadic response to gross human rights violations, the United States fails to communicate to other states and individuals what is expected. Even worse, such behavior communicates that not all human rights violations are of equal importance, and that some peoples are more worthy of assistance than others. Franck states plainly: "To be legitimate, a rule must communicate what conduct is permitted and what conduct is out of bounds. These bookends should be close enough together to inhibit incipient violators from offering self-serving exculpatory definitions of the rule" (Franck, 1995:41).

The lack of clarity in U.S. human rights policy invites continued violations. Second, U.S. human rights policy not only fails to communicate its content, but also does not elucidate clear rules of authority. As Oscar Schachter (1968:309) explains, "whether a designated requirement is to be regarded as obligatory will depend in part on whether those who have made that designation are regarded by those to whom the requirement is addressed (the target audience) as endowed with the requisite competence or authority for that role." By eschewing commonly held definitions of human rights, disregarding the "equality" and "worth" components of these norms, and acting on its own interpretation of "American values," the United States appears self-serving and hypocritical. The United States lacks moral authority as long as it fails to prioritize human rights explicitly and to uphold the same standards to which it holds other nations accountable. Accordingly, the desired effect of legitimization may not accrue. Third, a related shortcoming in U.S. human rights policy is its incoherence (Dworkin, 1986). Rules become coherent "when they are applied consistently or, if inconsistently applied, when they make distinctions based on underlying general principles that connect with an ascertainable purpose of the rules and with similar distinctions made throughout the rule system" (Franck, 1995:41). However, the United States champions "aspirations to human dignity," which, in a rule system based on "human rights" reduces its resonance. As explained above, human dignity is only one component of human rights, along with "equality" and "worth." By altering its standards from that of the international community, the United States runs afoul of the "horizontal aspect" of international law—the notion that states equally owe obligations to each other and to their constituencies.

Fourth, U.S. human rights policy also disregards the "vertical aspects" of the international community of states, that is, the obligations states owe to actors "above" and beyond them, including international treaty mechanisms and international courts, and encompassing "transnational norm entrepreneurs, ...transnational issue networks, interpretive communities and law-declaring fora" (Kob, 1999:1397-1408, 1417). United States' exceptionalism advocates for the existence of international mechanisms to monitor other countries while not acknowledging any obligation to submit itself to these mechanisms. The "social contract" that other states make with one another to enjoy the privileges of membership in the international community (Shen, 1999:355, 304), is deemed inapplicable to the United States, apart from some extraordinary special exceptions.

Where the United States acts with disregard to its international rules, it sends the message that what matters is positional power, that is, the ability to use one's position to exercise self-interest and exert control over others. This exercise of power eviscerates the notion that all humans have equal worth and thus calls into question the very core of human rights. Further, it detracts from (and in some cases

even renders impossible) efforts at building peace through increased cooperation and understanding within the international community.

Conclusion

The indeterminate, inconsistent, and incoherent manipulation of human rights by the United States violates all that it is designed to protect—human dignity and worth. By using some human rights norms strategically rather than applying all of them consistently, the United States sends the message that some victims of abuse are more worthy of assistance and equal justice than others, and that human rights can be jettisoned to suit political expediency. This behavior undermines the moral authority of human rights, and renders them susceptible to war-making rather than peace-building. Contrary to what many critics assert, reversing this dangerous course would require the United States to become more universalist, not less, because all human rights claims, when grounded in international norms, conventions, and treaties, would deserve equal consideration, although not necessarily the same treatment. Regardless, the treatment of such claims, to be legitimate, must arise from a sense of value (worth) for the individual—which is equal for all—and treat each with appropriate dignity. Above all, to overcome the crisis of legitimacy in human rights, the United States must more readily and consistently apply international human rights norms to its own behavior. The United States cannot claim to be “right” without grounding their actions and beliefs in an internationally legitimate notion of “rights.”

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