

# *The Future of Human Rights*

PENNSYLVANIA STUDIES IN HUMAN RIGHTS

Bert B. Lockwood, Jr., Series Editor

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*The Future of Human  
Rights*

U.S. Policy for a New Era

EDITED BY WILLIAM F. SCHULZ

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**PENN**

University of Pennsylvania Press  
Philadelphia

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Published by  
University of Pennsylvania Press  
Philadelphia, Pennsylvania 19104-4112

Printed in the United States of America on acid-free paper  
10 9 8 7 6 5 4 3 2 1

A Cataloging-in-Publication record is available for the Library of Congress

ISBN 978-0-8122-4111-2

*with special appreciation  
for the support  
of the  
Center for American Progress*



# Contents

- Introduction 1  
WILLIAM F. SCHULZ
1. Fighting from Strength: Human Rights and the Challenge of  
Terrorism 23  
ELISA MASSIMINO
2. National Security and the Rule of Law: Self-Inflicted Wounds 39  
JOHN SHATTUCK
3. The United States and the Future of Humanitarian  
Intervention 52  
RACHEL KLEINFELD
4. Matching Means with Intentions: Sanctions and Human  
Rights 72  
GEORGE A. LOPEZ
5. Setting the Record Straight: Why Now Is Not the Time to Abandon  
Democracy Promotion 84  
JENNIFER L. WINDSOR
6. A Tale of Two Traditions: International Cooperation and American  
Exceptionalism in U.S. Human Rights Policy 103  
CATHERINE POWELL
7. Putting Economic, Social, and Cultural Rights Back on the Agenda  
of the United States 120  
PHILIP ALSTON
8. Strange Bedfellows: U.S. Corporations and the Pursuit of Human  
Rights 139  
DEBORA L. SPAR

viii Contents

9. Prioritizing Workers' Rights in a Global Economy	156
CAROL PIER AND ELIZABETH DRAKE	
10. Back to the Basics: Making a Commitment to Women's Human Rights	176
REGAN E. RALPH	
11. Echoes of the Future? Religious Repression as a Challenge to U.S. Human Rights Policy	193
FELICE D. GAER	
12. U.S. Asylum and Refugee Policy: The "Culture of No"	215
BILL FRELICK	
13. Building Human Rights into the Government Infrastructure	233
ERIC P. SCHWARTZ	
14. International Human Rights: A Legislative Agenda	251
ALEXANDRA ARRIAGA	
Notes	259
List of Contributors	313
Acknowledgments	315



# Introduction

WILLIAM F. SCHULZ

The great ballet dancer Vaslav Nijinsky was once asked how he managed to leap so high in the air. “The secret,” he said, “is this. Most people, when they leap in the air, come down at once. The secret is to stay in the air a little before you return.” U.S. foreign policy, so buoyant at the end of the Cold War, has returned to earth with a thud over the past few years and among its crash victims has been American leadership in the struggle for human rights.

Time after time has decried the impact of neoconservatism on America’s standing in the world, her capacity to fight terrorism and her reputation for integrity.<sup>1</sup> Far fewer analysts have examined how the neo-conservative moment has done damage, perhaps lasting, to human rights themselves, often in the name of their promotion. Fewer still have described how the presuppositions of the human rights enterprise have aided and abetted that fiasco.

This volume of essays is intended to point the way out of the morass, at least as far as U.S. international human rights policy is concerned. It is intended as a blueprint for a new administration and a prescription for how the United States can reclaim the mantle of leadership in combating human rights abuses.

To trace that future path with confidence requires that we first understand how we got to where we find ourselves; what challenges now confront the human rights prospect; and how we will need to reconceptualize traditional approaches to human rights if we are to overcome those challenges.

That human rights are worth the effort may be a proposition that all but the most unreconstructed foreign policy “realists” would grant. Human rights have become what Michael Ignatieff has called “the lingua franca of global moral thought.”<sup>2</sup> Few world leaders, including the most repressive, fail to dress their regimes in its raiment. The Chinese government, with its hundreds of political prisoners, tens of thousands of people incarcerated without fair trials, persecution of the Falun Gong

religious sect, and exorbitant use of the death penalty, claims that it “highly values the protection and promotion of the political, economic, social and cultural rights of its citizens.”<sup>3</sup> The Sudanese government, authors of the catastrophe in Darfur, tried to cast itself on the side of the angels by pronouncing the UN Human Rights Council “the conscience of humanity.”<sup>4</sup> And even Al Qaeda, according to Thomas Friedman, resists being labeled “genocide perpetrators” because it “affects their street appeal.”<sup>5</sup>

Such widespread endorsement might appear to give human rights the advantage. But paradoxically the absence of a reputable competing vision, of a full-throated defense of benevolent authoritarianism, for example, or an unreconstructed plea for privilege, has left human rights flabby, its meaning open to broad interpretation, a cloak of many colors, the possession of many masters, and hence vulnerable to co-optation. And no one has been more eager to claim its cover the last few years than the government of the United States.

## A Perfect Storm

One would think Robert Kaplan would have learned his lesson. When his 1993 book *Balkan Ghosts*, with its fatalistic view of ethnic strife in the former Yugoslavia, was cited as having contributed to President Bill Clinton’s initial reticence to intervene in the bloody conflict there, Kaplan was taken aback.<sup>6</sup> “This is only a travel book,” he contended, not designed to influence policy.<sup>7</sup>

But in 2002 the *Atlantic Monthly* correspondent was back with another book which, though it may never have been read by the sitting president, captured widespread attention among the reigning foreign policy elite. *Warrior Politics: Why Leadership Demands a Pagan Ethos*, coming quickly upon the heels of *The Coming Anarchy* (2000), which had warned ominously of “the dangers of peace,” was a call to arms for American primacy.<sup>8</sup> Citing with approval the historian E. H. Carr’s observation that “Historically, every approach in the past to a world society has been the product of the ascendancy of a single Power,” Kaplan opined that “*We [the United States] and nobody else will write the terms for international society*” and, just to make sure his readers got the point, put the sentence in italics—a sentence that captured the spirit of the times perfectly.<sup>9</sup>

To be fair, the Bush administration’s vision of American preeminence long predated Robert Kaplan. Indeed, Kaplan, a self-described realist, had never been smitten with undertaking wars in defense of human rights or pursuit of democracy. He had even warned in *Warrior Politics*, published a year before the invasion of Iraq, that “a single war with sig-

nificant loss of American life . . . could ruin the public's appetite for internationalism."<sup>10</sup>

The fact is that the "neoconservative moment" was a perfect storm: the result of a confluence of historic American predilections, an ascendant political philosophy, and a unique historic circumstance, all balanced on the shoulders of an ill-prepared president who saw history in simple terms and the future in millennial ones.<sup>11</sup>

First, the predilections. When John Winthrop sailed off for the New World in March of 1630 with his band of Puritans, he did so well aware of his role as a new Moses leading a New Exodus.<sup>12</sup> What the great historian of Puritanism Perry Miller called an "errand into the wilderness" was not prompted by persecution, however, as had been the case with the Pilgrims ten years earlier. It was instead a proactive attempt to establish "a place of Cohabitation . . . under a due form of Government" based upon biblical polity. Such a "City upon a Hill," to use Winthrop's famous phrase, was to be not only a *City* offering its residents potential escape from corruption if they abided by virtue but, just as important, a *City on a Hill*, that is, a City so placed that it could be seen by others as a model of the New Jerusalem. "The eyes of all people are upon us," Winthrop declared, and, if we succeed, they shall say of later plantations "Lord, make it like that of New England."<sup>13</sup>

The Puritans' mission, therefore, was both particular to themselves but universal as well. Naturally those most close at hand were early recipients of the colonists' ministrations. Several generations later Cotton Mather would conjecture that the Devil had intentionally placed the Indians on a continent uninhabited by Christians so that the Gospel of Jesus Christ could never reach their ears but that the arrival of the Puritans had outfoxed him.<sup>14</sup> It was not the Indians, however, whom these first white settlers hoped most to impress and reform but the continent from which they had arrived. England and the rest of Europe were to be transformed by the new model of righteousness the Puritans embodied.

Fast forward 146 years. The Puritan community has long since been rent into a thousand pieces. No longer are the saints "visible"; no longer does religious passion spill in quite the same volume. John Locke has written his *Two Treatises of Government* and *A Letter Concerning Toleration*. The colonies are ripe for independence and the bonds that hold the community together, the political principles that direct its course, are now derived far less from God than from Nature, *unalienable* rights bestowed by a Creator, to be sure, but grounded now in natural law.

Two things are worth noting, however. First, that the Declaration of Independence was not a mere litany of particular grievances by a particular community against a particular king. It was also a statement of precepts about government and consent and duty applicable to everyone

everywhere and issued out of a “decent respect for the opinions” not of Parliament or of the king or of the English populace but of “*mankind*.” And second, that among the first order natural rights was *liberty*—a conviction hearkening back to the Puritans’ revolt against the Presbyterian system of the Church of England and predicated upon the Christian doctrine of inherent human freedom, the notion that we may *choose* whether we deal falsely or faithfully with God. Winthrop had made it painfully clear that the success of the City on the Hill depended upon his cohort choosing wisely.

The American experience was from its roots characterized by a religious vision to be propagated far and wide and, as the explicitly sectarian nature of that vision diminished with the growth of pluralism and toleration, it transmogrified into a religiously tinged moral mission: to be a model of liberty, a champion of those who had been supplied by Nature with a yearning to be free but cast by political circumstances into chains.

In his recent book *Dangerous Nation*, the neoconservative historian Robert Kagan argues that “the United States has never been a status quo power; it has always been a revolutionary one, consistently expanding its influence in the world in ever-widening arcs,” often by military means.<sup>15</sup> We need not agree with every detail of Kagan’s analysis (and certainly not with his reason for writing the book)<sup>16</sup> to find truth in the claim that America has rarely been shy about proclaiming its values and model of government superior to others and offering a hand, if not a heel, to those in need of “guidance.” The renowned church historian Martin Marty thinks it a telling convenience that Protestantism began to missionize the world, seeking converts and spreading its notions of civilization in the 1790s and years following, just as the new American nation was organizing *itself* and, in tandem with its most popular faith, spreading *its* reach westward and eventually beyond its continental bounds.<sup>17</sup>

Certainly, once America had rid itself of the stain of slavery and entered the industrial age, it found itself well positioned, both ideologically and practically, to indulge its universalizing impulses and fulfill its moral destiny. What it sought, however, was far less physical transformation than moral, less a territorial empire than righteous territory. The best-selling book of 1885 was Congregational minister Josiah Strong’s *Our Country: Its Possible Future and Its Present Crisis*, a plea to impose America’s Christian values on the world.<sup>18</sup> “We are the chosen people,” Strong averred, picking up an echo from the earliest days of European settlement. God was “not only preparing in our Anglo-Saxon civilization the die with which to stamp the people of the earth but . . . also massing behind that die the mighty power with which to press it.”<sup>19</sup>

Two world wars, one fought explicitly to “make the world safe for

democracy,” would reinforce the mightiness of that power. Each would result as well in international institutions designed to modulate the unshackled reach of any one state. But neither war would sidetrack the United States from its fundamental conviction that a desire for liberty beat naturally in every human breast and that this country was uniquely positioned both to model it ourselves and help procure it for others.

These predilections, then, awaited but leaders disposed to exploit them and circumstances that allowed them. They found the former in aficionados of neoconservatism and the latter in a newly acquired enemy both identifiable and ferocious.

The origins of neoconservatism have been described and debated endlessly. I am less interested here in where they came from than what they mean. But in one respect their roots are important: neoconservatism was born out of what Nietzsche called *ressentiment*.

It is not surprising that the lambs should bear a grudge against the great birds of prey, but that is no reason for blaming the great birds of prey for taking the little lambs. And when the lambs say among themselves, “These birds of prey are evil, and he who least resembles a bird of prey, who is rather its opposite, a lamb,—should he not be good?” then there is nothing to carp with in this ideal’s establishment, though the birds of prey may regard it a little mockingly, and maybe say to themselves, “We bear no grudge against them, these good lambs, we even love them: nothing is tastier than a tender lamb.”<sup>20</sup>

For Leo Strauss, a refugee from Nazi Germany long considered the intellectual progenitor of neoconservatism, the original birds of prey were obvious. But for Strauss and most especially for his followers the aviary grew larger and larger: political scientists who thought politics was a science; academic administrators who failed to stand up to radicals; “flat-souled” students, to use Allan Bloom’s phrase from *The Closing of the American Mind*,<sup>21</sup> whose world was “devoid of ideals”; the perpetrators of mass bourgeois culture; political leaders who failed to provide “moral clarity”; secular liberal elites certainly; internationalists of course; and relativists absolutely. Indeed, a special circle of hell was reserved for relativists (or what Strauss called “nihilists”) who believed that nothing could be ultimately and absolutely justified. It was a sorry world we lived in.<sup>22</sup>

But there *was* an antidote: natural right. At the beginning of his classic work, *Natural Right and History*, Strauss threw down the gauntlet: “To reject natural right is tantamount to saying that . . . what is right is determined exclusively by the legislators and the courts of the various countries. . . . [But] if principles are sufficiently justified by the fact that they are accepted by a society, the principles of cannibalism are as defensible and sound as those of civilized life.”<sup>23</sup> Let Nature be our guide. And no

country was more intimately wedded to Nature as a guide to what is right, to natural “unalienable” rights, than America. America, not old, bloodied Europe, was capable of rescuing the world from the scourge of nihilism. But not just any kind of America: only a strong, proud, muscular America, informed by “moral clarity”—that phrase again—and prepared to seek “national greatness.”

And how did a people achieve “greatness”? “Because mankind is intrinsically wicked,” Strauss once wrote, “he has to be governed. Such governance can only be established, however, when men are united—and they can only be united against other people.”<sup>24</sup> In the face of a culture in decline, only a mortal enemy could unify a nation, call it back to its highest ideals, and invest it with transcendent meaning once again. As Robert Kaplan had put it in his 2000 essay “The Dangers of Peace”: “Peace . . . leads to a preoccupation with *presentness*; the loss of the past and a consequent disregard of the future. That is because peace by nature is pleasurable, and pleasure is about momentary satisfaction. . . . [C]onvenience becomes the vital element in society.”<sup>25</sup> No wonder neo-conservatives, far from celebrating the end of the Cold War, found it so dangerous; no wonder Norman Podhoretz, often considered the father of contemporary neoconservatism, bewailed in the collapse of Communism the loss of a “defining foreign demon” and welcomed both the Persian Gulf and Iraq wars as opportunities for the United States to “remoralize” itself again.<sup>26</sup> Faced with the evaporation of one global threat, they found solace, even promise, in the appearance of another. And be it Saddam or terrorism, the only way to defeat a world-historical menace was through the leveraging of a countervailing force of superior power.

The neoconservatives discovered that countervailing force in a faith and a mission, both of which were congruent with the predilections of the American experience. Their faith was, to use the words of their oral amanuensis, George W. Bush, that “freedom is written in our hearts” and that “moral truth is the same in every culture, in every time and in every place,”<sup>27</sup> the latter a universalism breathtaking in its sweep and surely wrong. And their mission was to take the most precious of those moral truths—the inevitable triumph of liberty—and spread it unsparingly, thereby saving both the world and ourselves from the vicious birds of prey: Terror, Tyranny, and Moral Dissipation as well as, not incidentally, the threat to American national sovereignty posed by a growing sense of global community.

This last was just as dangerous in some ways as the first three. As Liah Greenfeld describes in her comprehensive work *Nationalism: Five Roads to Modernity*, *ressentiment* almost inevitably leads to a celebration of sovereign power—the triumph of the lambs, pure, righteous, and newly

robust—and a suspicion of internationalism, a veil behind which lurk the perfidious birds of prey. For after all, if so many elements of *American* society—the media, secular elites, nihilists—are not to be trusted to see the dangers we confront, what possible reason is there to trust world opinion with our very lives? And so, lacking a tragic sense of history—the recognition that life’s limits are real and that, no matter what we do, not everyone will be saved—neoconservatives sought to remake the world in their image. It is a commonplace that the Bush administration had tacked on human rights as a rationale for invading Iraq only after no weapons of mass destructions (WMDs) or terror links were discovered. But it is just as likely that WMDs and terror were the excuses for taking out a regime that offended neoconservative sensibilities and whose forced departure, conveniently accomplished *absent* international endorsement, reinforced the mythical vision of an America singularly disposed and equipped to rid the world of bad guys in the name of democracy and “human rights.”

That neoconservatism with its revolutionary impulses has little in common with conservatism in a classic sense, ill disposed as the latter is to the adventurous, is ironic surely. Like liberals, neoconservatives believe that, in the words of Patrick Moynihan, “politics can change a culture and save it from itself” while traditional conservatives believe that “it is culture, not politics, that determines the success of a society”<sup>28</sup> and that hence change is a slow, evolutionary process that only fools would try to impose or rush.

Whatever the truth, the consequences of the neoconservative venture have been disastrous, not least for the cause of human rights. But here is the worrisome part: in his *mea culpa* for his support of the Iraq War, *America at the Crossroads*, Francis Fukuyama lays out his version of the four bedrock principles of neoconservatism. The first two are “a belief that the internal character of regimes matters and that foreign policy must reflect the deepest values of liberal democratic societies” and “a belief that American power . . . could be used for moral purposes, and that the United States needs to remain engaged in international affairs.”<sup>29</sup> No American human rights advocate could have said it better.

### Cosmic Convergence?

There are only three possible sources for the justification of human rights: God, natural law, or the opinions of “legislatures and courts.” Strauss and the neoconservatives derisively dubbed the latter “positivism” (though it is more neutrally called consensualism) and despised it, as we have seen, because, lacking reference to any immutable standards, it could sanction anything, even cannibalism. The advantage to a natural

law theory of rights, which Strauss and the neoconservatives championed, is not only that it sets rights in Nature's stone but makes it easy to tell the good guys from the bad.

The problem with natural law theory, however, is that it substitutes for the opinions of those legislatures and courts, representative as they presumably are of "the people," the idiosyncratic opinions of one philosopher or, at best, of whatever intellectual elite holds sway at the moment. Hence, when America was founded on principles influenced by John Locke, the great champion of natural law, it adopted his perception that Nature restricted rights to the male propertied class. The popular nineteenth-century philosopher Herbert Spencer was notorious for preaching that natural law dictated a minimalist state and that, therefore, "no government should compel vaccination, require children to be educated, keep small boys from sweeping chimneys, mandate the construction of sewers, set standards for telegraph systems, or . . . relieve poverty."<sup>30</sup> The neoconservatives as well found in natural law exactly what they were looking for: that human rights were coterminous with the customary notions of civil and political rights embodied in the American tradition (though never social and economic rights such as the right to food or housing despite the fact that one would think those needs at least as "natural" as the right to a multiparty system or to a jury of one's peers). Not unsurprisingly, neoconservative natural law prescribed capitalism over socialism too.<sup>31</sup>

But neoconservatism has not been alone in its attraction to a natural law theory of rights. Indeed, the first preambular clause of the Universal Declaration of Human Rights cites natural law as the justification for the rights listed in that document: "Whereas 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 . . . [emphasis added]." Wary of relegating human rights to the whim of "legislators and courts," chastened by the criticism that human rights are a Western phenomenon not applicable to non-Western cultures, and eager to proclaim the *universal* nature of the rights they champion, human rights practitioners, no less than neoconservatives, have been drawn to natural law, eager to derive the principles they cherish—"moral truths . . . the same in every culture, in every time and in every place"—from the apparently unchanging nature of the human beast. And among those natural principles is that "freedom is written in our hearts." The first article of the Universal Declaration tells us so: "All human beings are born free and equal in dignity and rights."

Nor is a predisposition to natural law the only thing prevailing human rights norms share with neoconservative presuppositions. Following on that natural law theory of rights, the human rights community has also



tended to see its task in moral terms and the world in Manichean, divided between the children of light who would respect human rights and all the children of darkness who would savage them, be they in Pyongyang, Harare, or, yes, Baghdad. It has not been reticent, despite the scruples of a few human rights organizations, to endorse the notion that under some circumstances force may be used—indeed, must be used—to tame those children of darkness. It has not hesitated to look to the United States for leadership in the larger human rights struggle, crediting Franklin and Eleanor Roosevelt for inaugurating the modern human rights era; applauding the U.S. State Department for its unvarnished human rights reports; and chastising this country when it failed to use its military power in pursuit of moral ends—to stop genocide in Rwanda, for example, or to supply a military intervention in Darfur. It, too—the traditional human rights community—has lacked a tragic sense of history, convinced that if nations conform their practices to human rights norms, the world would see an end to misery.<sup>32</sup> It, too, is perfectionist in its ideology, convinced that the right politics can change culture and that you can indeed “legislate morality.” It, too, has come to social and economic rights only at a turtle’s pace, far more comfortable with rights widely identified with the American, or at least the Western, political and jurisprudential systems. And it, too, has relished the spread of democracy around the globe even while insisting, rightly, that democracy is not sufficient to guarantee that a regime be human rights pure.

None of this of course is to blame the human rights community for decisions of the Bush administration, both because the former lacked decision-making power and because, as we shall see momentarily, there were, despite the similarities, two profound differences in how neoconservatives and mainstream human rights advocates approach the struggle. But it is to explain part of the reputational damage human rights has sustained the past few years and that that damage is not solely because neoconservatives have misappropriated principles or nomenclature. The journalist David Rieff has been relentless in his contention that the human rights cause has, unwittingly or not, provided rationale and cover for the spread of American hegemony<sup>33</sup> and that suspicion is widely shared not only in the Muslim world but even among traditional allies. As the Nobel Prize-winning Iranian human rights lawyer, Shirin Ebadi, for one, put it, “it is hard not to see the Bush administration’s focus on human rights violations in Iran as a cloak for its larger strategic interests.”<sup>34</sup>

The tragic result is that the United States has been handicapped in providing crucial human rights leadership even where such leadership is desperately needed. Democracy and human rights activists overseas

now spurn U.S. support for fear they will be tainted by association with a larger American agenda.<sup>35</sup> President Bush's appeal in his 2005 State of the Union address for desperately needed reform in Saudi Arabia and Egypt was met with derision even by long-time democracy advocates in those two countries.<sup>36</sup> And American military resources and prowess can ill afford to be put at the disposal of efforts to stop genocide in Darfur, not just because they are so overstretched but because the use of American force against another Muslim regime, even one as discredited as Sudan's, would be widely perceived as counterproductive.

How, then, might the pursuit of human rights by the United States be dissociated from a neoconservative program now largely discredited in the world's eyes? The essays that follow lay out a myriad of specific policy recommendations but two general principles—principles that distinguish a normative approach to human rights from a neoconservative one—need to undergird them all.

The first is that human rights must be understood in *comprehensive* terms, not *selective*. Quite apart from whether social and economic rights need to be incorporated into the U.S. government's understanding of rights, no government that picks and chooses among a set of rights those it is comfortable with and those it is not—"yes" to free elections, "no" to due process for all detainees—can ever possibly be credible. This does not mean that the details of human rights law and practice can never change or that the approach the United States takes to the human rights abuses of different countries needs to be identical. But it does mean that human rights cannot be defined narrowly in terms of one particular aspect of the *American* tradition, as neoconservatives are inclined to do.<sup>37</sup>

The protection of individual liberties or the practice of electoral democracy are precious elements of any respectable human rights agenda but they are not the only ones. To equate human rights as a concept with their evolution in the American experience—and then only with selected aspects of that experience (the right to free speech, for example, but not the right to undiluted habeas corpus)—is to forget that the power of human rights is derived not from their national particularity but from the fact that they are supranational, established by regimens that transcend the bounds of any one nation. Without that, they are good for nothing. Robert Mugabe may claim until he is hoarse from shouting that a president in a stratified developing country like Zimbabwe has the right to throw his politically disruptive opponents in jail on a whim or appropriate businesses without compensation, but until he can get other nations to agree with him, he is merely sputtering in the wind. Like the rules of the World Trade Organization, globally recognized human rights must be respected even if they fly in the face of a particular nation's momentary interests.

Which leads to the second general principle the United States must reaffirm: a commitment to *global cooperation* and *respect for international protocols and institutions*, imperfect as they are. Of Francis Fukuyama's four bedrock characteristics of neoconservatism, it is the final one—"skepticism about the legitimacy and effectiveness of international law and institutions to achieve either security or justice"<sup>38</sup>—that most dramatically divides normative human rights practice from neoconservative.<sup>39</sup>

Sophisticated advocates of human rights are not naïve about the failures of the United Nations, the shortcomings of the UN Human Rights Council, the unproven value of the International Criminal Court, or the weakness of unenforceable international law. But to ignore international regimens, much less undermine them, is to sacrifice the best resource the United States has available for convincing the world that we do not suffer from solipsism, immune to the needs and opinions of others; that our intent is benign; and that the most powerful nation on earth is prepared to use its power fairly and wisely. Mighty as we are, we do not live in a cocoon; we cannot solve our problems by ourselves, be they Iraq or terrorism or global warming.

Respect for human rights and the processes by which they are fashioned is one of the best ways to win global friends and influence the passions of people. And whether we think the source of human rights is God, natural law, or consensualism, an international imprimatur lends legitimacy to our pursuit of them. As a study by the Princeton Project on National Security noted recently, "Liberty under law within nations is inextricably linked with a stable system of liberty under law among them."<sup>40</sup> Surely even Condoleezza Rice who, during the 2000 presidential campaign, wrote that "foreign policy in a Republican administration . . . will proceed from the firm ground of the national interest, not the interests of an *illusory* international community [emphasis added]"<sup>41</sup> has come to rue the day she thought the world community no more than a chimera.

## Repairing the Damage

The damaging effect of neoconservative policies on human rights goes well beyond reinforcement of the suspicion that American advocacy of human rights is a mere cover for an imperialist agenda. Those policies have undermined the notion that spreading human rights and democracy around the globe are viable goals of U.S. foreign policy. They have weakened international institutions upon which human rights depend. And they have increased a certain natural reticence on the part of the American people to commit U.S. troops to humanitarian and peace-

keeping missions, even when they are justified, as they are, for example, in Darfur. Coupled with America's human rights practices as part of its prosecution of the war on terror—secret incommunicado detentions, denial of habeas corpus, winking acceptance of torture—the nation's ability to hold others to account for their own abuses has been severely weakened.

A new administration will certainly have its hands full repairing this damage.

- *It will need to find a variety of ways to signal renewed U.S. support for the international system.* Ratifying one or more international human rights treaties would help do that. Perhaps the Convention on the Rights of the Child, which all countries except the United States and Somalia have ratified, would be a place to start now that the U.S. Supreme Court has removed one of the major objections to the treaty by declaring the execution of juveniles unconstitutional. Or closing Guantánamo Bay. Or removing the reservations to various human rights treaties that declare them nonenforceable in domestic law. Or standing for election to the UN Human Rights Council, flawed though it is, and using that forum to articulate a renewed commitment to a comprehensive human rights agenda. Or revisiting U.S. concerns about the International Criminal Court with an eye toward eventually ratifying the Rome statutes establishing the court, or at least suspending the penalties we have leveraged against those countries that have refused to immunize Americans from prosecution by the court. If Iraq has taught us anything, it ought to have demonstrated that finding ways to deal with tyrants short of military force is to the advantage of all parties.
- *It will need to adopt a more sophisticated, less ham-handed approach to the promotion of democracy around the globe.* It ought to go without saying that human rights are served by an increase in the number of stable democracies in the world. But the key word is “stable,” since we know that newly formed, unstable democratic states lacking robust civil societies and strong democratic institutions are especially prone to be breeding grounds for all sorts of mischief, not least the production of terrorists. The tragedy of the Iraq War will only be compounded if the lesson drawn from it is that, because force-feeding democracy proved so destructive, the only alternative is quiescence. While democracy is no magic bullet, tyranny guarantees bullets aplenty. Not every nation is ready to leap into full-blown democracy on a moment's notice. But if, indeed, as worldwide surveys have found, more than 90 percent of Muslims endorse democ-

racy as the best form of government, what is required of us is neither perfectionism nor passivity.<sup>42</sup> What is required of us is patience.

- *It will need to codify the positive obligations of the United States under the newly minted doctrine of the “responsibility to protect.”* Just as the Iraq War ought not sour us on promoting democracy, so we must not allow it to impose an unfitting shyness upon us about using military power for humanitarian ends. In 2005 the UN General Assembly endorsed the worldwide responsibility to protect civilian populations at risk from mass atrocities.<sup>43</sup> That does not imply that the United States will have to be the proverbial “world’s policeman,” committing its troops willy-nilly to the far corners of the globe. But it does mean that the United States will need to take mass atrocities seriously, adopting an early warning system for populations in danger, shoring up weak and failing states, and providing leadership and support for intervention when necessary, even when it itself stays far away from battle. The American people can distinguish between unwise military posturing and morally justified humanitarian interventions. In January 2007, after more than three years and 3,000 U.S. deaths in Iraq, 63 percent of Americans, quite understandably, said that the world has grown more afraid of U.S. military force and that such fear undermines U.S. security by prompting other nations to seek means to protect themselves.<sup>44</sup> Yet, even so, in a poll taken six months later, a plurality of Americans favored deploying U.S. troops as part of a multinational force in Darfur.<sup>45</sup> If the American people can tell the difference between legitimate and illegitimate use of force, the American government ought to be able to also.
- *It will need to conform U.S. practices to international standards on fundamental human rights issues.* The United States will never reclaim its reputation for human rights leadership as long as its own policies on such issues as due process for prisoners taken into custody in the course of the war on terror remain at such radical odds with international law and practice. There is considerable room for debate as to how cases of terror suspects should be adjudicated, especially when highly classified intelligence is involved—whether, for example, the United States should establish special national security courts or integrate such defendants into the regular criminal justice system<sup>46</sup>—but what is beyond doubt is that the current system in which suspects are cast into legal netherworlds of secret detentions and coercive interrogations cannot continue. And in a broader sense, the United States would do well in the eyes of the world to be less defensive about its own domestic practices that may fall short of international standards. Our credibility in criticizing others waxes and wanes in direct proportion to our willingness to acknowledge

our own shortcomings. We should, for example, welcome to this country any UN special rapporteur who seeks an invitation to investigate; we should encourage the solicitor general of the United States to draw upon international law to buttress the government's arguments before the Supreme Court, thereby lending encouragement to those members of the court who are beginning to look to such law to inform their opinions;<sup>47</sup> and we should issue an annual report on U.S. human rights practices to complement the State Department's reports on other countries. After all, since the Chinese publish such a report on us each year, it could not hurt to publish a more accurate version of our own.

### The Rest of the Story

Important as it is to signal a new beginning in human rights policy, we ought not make the mistake of seeing the human rights context solely through the lens of the neoconservative moment. Several other major developments in the world bear directly on human rights and warrant a rethinking of traditional approaches to the issue. The first of these is terrorism.

Terrorist crimes must be understood as human rights crimes and treated accordingly. Because the Bush administration's war on terror has constituted such an unprecedented assault upon basic human rights and liberties, much of the human rights conversation of the past six or seven years has, quite appropriately, been focused on protecting hard-won first principles—such as the right not to be tortured, the right to know the reasons for incarceration, to gain access to a lawyer, or to be eligible for habeas corpus—from government attack. But the crimes of terrorists are serious human rights crimes as well, violating at their worst one of the most elementary rights in the Universal Declaration: "Article 3: Everyone has the right to life, liberty and security of person." Human rights organizations may be able to survive with a dearth of reports, resources, or campaigning efforts aimed at terrorist groups and their sympathizers but U.S. human rights policy cannot afford such asymmetry. Terrorist crimes must be regarded not just as threats to security but as assaults on fundamental rights. The destruction of Al Qaeda and its affiliates would be an enormous victory for human rights. As the renowned human rights scholar Samantha Power put it recently, "Just because George W. Bush hyped the threat [of terrorism] does not mean that the threat should be played down." And she went on to urge us both to reassert "the moral difference between the United States and Islamic terrorists" and to develop "a 21st century toolbox to minimize actual terrorist threats."<sup>48</sup> A good place to begin is by U.S. human rights

officials, not just those responsible for national security policy, being engaged in drafting and advocating for an international treaty on terrorism that provides a standard definition of the term and outlines state obligations to combat the crime.<sup>49</sup>

Such an approach, far from damaging human rights, provides an opportunity to resolve the long-standing conflict between a criminal justice approach to fighting terrorism and a war approach.<sup>50</sup> As Supreme Court Justice Sandra Day O'Connor wrote in her 2004 opinion in *Hamdi v. Rumsfeld*—in which the majority held that any U.S. citizen designated an “enemy combatant” had to be given a meaningful opportunity to contest the factual basis for that detention before a neutral decision-maker—“If the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, [the Supreme Court’s] understanding of [long-standing law-of-war principles] may unravel.”<sup>51</sup> Better that any changes in those understandings be undertaken at the international level than left to the unilateral interpretations of one nation, one president, or even one Supreme Court.

Terrorism is, however, far from the only threat facing the United States. Nuclear proliferation, counterinsurgency, vast disparities in global wealth, climate change, the worldwide spread of disease—all these and more await the attention of the next administration and all of them have implications for human rights—and vice versa.

The next administration should also adopt an integrative approach to human rights, identifying them with broader global development goals and extending the definition of national security beyond military security alone. If the evolutionary biologist Jared Diamond is to be believed, it is no coincidence that Rwanda recorded the highest population density of any country in Africa at the time of the Rwandan genocide in 1994.<sup>52</sup> Certainly we know that encroaching desertification has played an important role in the conflict between pastoral and nomadic tribes in Darfur.<sup>53</sup> Some experts predict that by 2050, as many as 150 million people could be displaced as a result of global warming, leading, as two Australian scientists warn, to “new migrants [who] . . . impinge on the living space of others [and] widen existing ethnic and religious divides.”<sup>54</sup> And, to take one more example, scholars have found that countries with severe AIDS epidemics have correspondingly higher levels of human rights abuse because, among other reasons, they produce higher numbers of AIDS orphans vulnerable to exploitation or radicalization. Moreover, AIDS has decimated some African armies, making them ill-prepared to take on peacekeeping duties in places like Darfur.<sup>55</sup>

Contrariwise, depriving populations of their human rights has led repeatedly to larger public problems. No doubt the most pressing cur-

rent example is Iraq, in which it has become abundantly evident that successful counterinsurgency war requires gaining the confidence of the Iraqi people. As two distinguished Marine Corps commandants wrote recently,

Victory . . . comes when the enemy loses legitimacy in the society from which it seeks recruits and thus loses its “recuperative power. . . . [U.S. use of] torture methods . . . have nurtured the recuperative power of the enemy. This war will be won or lost not on the battlefield but in the minds of potential supporters who have not yet thrown in their lot with the enemy. If we forfeit our values by signaling that they are negotiable in situations of grave or imminent danger, we drive those undecideds into the arms of the enemy. This way lies defeat, and we are well down the road to it.<sup>56</sup>

Repression (violations of civil and political rights) and deprivation (violations of social and economic rights) almost inevitably lead at some point or another to resentment, instability, and often explosion, none of which are good for security or markets and all of which make for unreliable partners when it comes, for example, to controlling nuclear proliferation or counteracting climate change.<sup>57</sup>

For decades human rights have been understood in narrow terms, isolated from other public policy arenas and pursued, when they have been pursued at all, as an agenda unto themselves. Such an approach is not only foolish; it is dangerous. A new administration must see human rights in far broader terms, as an integral part of our national security strategy and coextensive with a commitment to global development. This means not only that the United States must become comfortable with including social and economic rights in its human rights agenda.<sup>58</sup> It means that human rights advocates, both inside the government and out, must construe such things as population control and climate change, foreign aid and protection against AIDS, as significant elements of our human rights business. And it means that both the government and its counterparts in the NGO community must think in new ways about human rights. They must reach out to nontraditional partners in the military or in business whose decisions and actions have profound implications for human rights. They must understand such issues as the development of nonlethal force or military rules of engagement to have profound human rights implications.<sup>59</sup> They must eschew old debates such as whether economic development alone is sufficient to guarantee improvements in civil and political rights in favor of more sophisticated analyses of the relation between growth and liberty.

Not only does such an approach bear the promise of reducing human suffering more readily; it also expands the circle of those who can support a comprehensive human rights agenda. It was not a political pro-



gressive who argued forcefully at a recent forum at the University of Virginia for a foreign policy that took poverty seriously; it was Francis Fukuyama: “[The United States is] being killed in competition with forces like Chavez, Hezbollah, [the] Muslim Brotherhood, Ahmadi-negjad, and so forth . . . on the . . . social agenda and basically poverty more broadly.” He continued: “What we’ve been offering these people, democracy and free markets, does not get to that constituency [poor people].”<sup>60</sup>

It is also clear that the pursuit of human rights must be undertaken in a manner that is both contextual and nonideological. If human rights are integrated into broader public policy considerations, they will of course play a more capacious role in decision making but, paradoxically, it will also become apparent that they are not and cannot be the singular polestar of U.S. foreign policy. Sometimes other interests will take precedence. The United States quite rightly did not allow pressure on North Korea regarding its atrocious human rights practices, for example, to trump efforts to control its access to nuclear weaponry. “Nonnegotiable demands” on behalf of human rights are rarely either feasible or productive, as the Bush administration has learned to its sorrow. And sometimes human rights norms are simply not as clear-cut as their staunchest advocates would have us believe. What exactly does constitute “proportional use of force”?

Because violations of human rights are often dramatic and psychologically discomfiting, there is an understandable tendency to want to place their eradication at the top of any policy agenda and to be moralistic about those who fail to do so. When it comes to issues like genocide or torture, such moralism is fully justified. But with respect to other human rights abuses, such an approach may in the long run be self-defeating. The achievement of a human rights utopia is a long way off; its realization, if it ever comes, will be slow and evolutionary. A tragic sense of history teaches that, while we may be able to save many individuals, we will simply not be able to save them all and that the rescue of individuals is often more feasible than the transformation of whole societies. Widespread respect for human rights in a society is dependent upon conditions (for example, literacy; a fundamental sense of personal security) and support structures (an independent judiciary; a functioning civil society) that do not develop overnight. The pressure the European Union is currently exerting upon Turkey to improve its human rights practices, for example, is commendable and has borne positive results but, if Turkey’s ongoing human rights failings are used as an excuse to exclude her from membership in the EU, the ultimate consequences for human rights victims may be far more damaging than if it were accepted, blemishes and all.

A new administration would, therefore, do well to make clear from the beginning that

- It will not take a zero-sum approach to human rights but will sometimes settle for the good instead of holding out for the best;
- It will adopt different strategies for different countries, recognizing without apology that the United States has different competing interests in relation to different countries, to say nothing of different degrees and methods of leverage;
- And it will accept the fact that sometimes the best thing the United States can do to advance human rights in a particular situation is to do nothing—at least publicly—either because American involvement will be counterproductive or because the time is not ripe for dramatic gestures.

None of this is to offer an excuse for apathy or indifference. New technologies, new strategic partnerships with business, new uses of laws such as the Alien Torts Claims Act, new networks of international contact at the grassroots—all provide a host of innovative ways to exert pressure on human rights offenders. Satellite photography, for example, has documented the destruction of whole villages in Burma (Myanmar)<sup>61</sup> and uncovered new groundwater resources in Darfur that might contribute to a resolution of the conflict there.<sup>62</sup> And even where few tangible alternatives exist, there is much to be said for symbolism and eloquence. The voice of the U.S. president can still carry great weight when he or she is willing to speak out unequivocally on behalf of human rights victims. Outrage has its place. We have only to imagine how much worse human rights conditions would be in Burma or Russia, Congo or China, than they already are if no one, including the world's most powerful country, monitored or criticized them at all. A contextual approach to human rights will not sanction silence but it will ensure that when we do speak, our voice will be resonant and that when we do act, our actions will be clear.

### Framing the Issue

Human rights have rarely, if ever, played a major role in American politics. One of the remarkable features of the 2006 congressional campaigns was how little human rights imbued campaign discourse despite all the attention paid in the months preceding the election to issues like Guantánamo, the Iraqi government's torture of detainees, and Darfur. This dearth is reflective of the human rights movement's failure to build a grassroots constituency for human rights comparable to those amassed

by the environmental, women's, or gay and lesbian movements. As a result, politicians fear that they will be labeled "soft on terrorism" at worst, or interested in esoteric issues, at best, if they speak of human rights in a political context.

But concern for human rights can readily transcend political differences if it is presented in the right way. After all, the Human Rights Caucus in the U.S. House of Representatives draws serious bipartisan membership. Whether you believe that the principal dynamic at work in the world today is globalization or a clash of civilizations, it is hard not to respond to a person in pain. A 2008 presidential candidate would do well to take three or four key issues—perhaps negotiating a treaty on terrorism, ending the massacres in Darfur, closing Guantánamo, ratifying the Convention on the Rights of the Child, or "resigning" the treaty creating an International Criminal Court in light of our experience in Iraq—as key elements of a human rights platform.

But regardless of what the specific elements may be, human rights need to be framed in positive ways—even emotional ways—to which the American people can respond and, interestingly enough, given their dramatic subject, there are few issues that lend themselves better to such emotional appeals. How, then, ought those issues to be framed to reach as many people as possible and restore bipartisanship to our human rights efforts?

John Winthrop had great hopes for his New Jerusalem. But he knew that their realization turned on just one thing: that the colony would be not just a model for others, a City upon a Hill, but a model of *decency* and *virtue*. If it failed to be that, if it "shall open the mouths of enemies to speak evil of the ways of God," then prayers shall turn into curses and "we shall surely perish out of the good land whither we pass over this vast sea."<sup>63</sup>

America has always thought itself special; always believed itself worthy of imitation; always flirted with hubris. But there is a difference between being a model and being a crusader and a difference between being a model of virtue and a model of zeal. Yes, the United States has far more than once used its military might to impose an unfortunate will on others.<sup>64</sup> But there is more to the American tradition than that. There is also a tradition of generosity and hospitality; of rescue and liberation; of decency and virtue.

That part of the tradition is manifest in a Roger Williams who thought the early colonists ought to pay the Indians for the land they appropriated and in a Judge Samuel Sewall making public apology for his role in the Salem witchcraft trials. It is manifest in the Bill of Rights. It is manifest in a William Lloyd Garrison and a Lydia Maria Child demanding an end to slavery and in an Elizabeth Cady Stanton expressing out-

rage when the World Anti-Slavery Society in London denied delegate status to women; in a Sojourner Truth leading slaves to freedom and a Lincoln offering his adversaries “malice toward none and charity for all.” It is manifest in a nation opening its arms to immigrants and a president dreaming in 1918 of a worldwide consortium of nations dedicated to the preservation of peace. It is manifest in the defeat of fascism; in Roosevelt’s Four Freedoms; in Truman’s support for the United Nations; in Eleanor Roosevelt’s vision of the Universal Declaration; in Eisenhower’s stirring conviction that “the only answer to a regime that wages total cold war is to wage total peace”;<sup>65</sup> in the civil rights movement and in the ongoing efforts—even today—to bring to justice those who tried to thwart it.

To attract the widest support, America’s commitment to universal human rights should be presented as reflecting, indeed embodying, the *best* of the American tradition.

And it should be presented as vital to America’s national interests—because it is. As Paul Collier argues in *The Bottom Billion*, getting development right for the billion of the world’s people at the bottom of the economic barrel is not just the moral thing to do.<sup>66</sup> “The twenty-first century world of material comfort, global travel, and economic interdependence will become increasingly vulnerable to these large islands of chaos.” The 2007 World Health Organization report warns that infectious diseases are emerging at an “unprecedented rate” and can spread around the world far more rapidly than ever before thanks to increased human mobility.<sup>67</sup> Ensuring that new democracies do not fail; retrieving societies from postconflict implosion; reinforcing transparency in trade and business; empowering women (whose economic status is key to growth); stopping genocide before it spreads—all these are not only nice ideas; they are vital to our country’s pragmatic interests. If Goldman Sachs is right and the economies of Brazil, Russia, India, and China will be larger than those of the United States, Japan, the United Kingdom, Germany, France, and Italy by 2050, then we certainly better hope that those countries are well enmeshed by then in a variety of global security networks (legal, diplomatic, financial, even military) that make it in *their* best interests to abide by commonly agreed norms and the rule of (international) law.<sup>68</sup>

Charles Kupchan of Georgetown University has observed that “there is little reason to expect liberal internationalism to become the rallying cry of those jockeying for the White House [in 2008]” and he may be right.<sup>69</sup> But the consequences of having repudiated internationalism in both rhetoric and action, particularly in the arena of human rights, have been so severe—our good name sullied; our capacity to provide leadership dulled; our ability to call other nations to account diminished; what

former national security adviser Zbigniew Brzezinski calls “global shared resentments” exacerbated;<sup>70</sup> the lives of our troops put in jeopardy by our trashing of the Geneva Conventions; mixed messages sent to allies and adversaries alike about our commitment to democracy; Al Qaeda handed a ready tool for recruitment; weaker nations forced to consider coercive means to defend themselves against our unbridled power; and a message sent to the American people themselves that fear sanctions indulgence of our basest passions and that the ensemble of rights we have always taught our children was a proud characteristic of this nation is in fact a frail and flimsy thing that can be dismantled in a heartbeat—these consequences may be so severe that they may, paradoxically, reawaken a commitment to global cooperation among the American people. After all, an overwhelming majority of Americans want the United States to continue to exert strong leadership in the world—84 percent in a December 2006 poll—but they want it to be *shared* leadership.<sup>71</sup>

That is because they know not only that our resources are limited but our vision is too. Every nation’s vision, like every individual’s, is blurred at one time or another by its own limitations, its own short-sightedness and misperception, whether intellectual or moral. The wise government, the wise person, is acutely aware of that. The great theologian Reinhold Niebuhr, a favorite of neoconservatives for his robust advocacy of American power but a vigilant critic of self-deception, put it this way in 1952: the only way to overcome the moral hazards of being the most mighty nation in the world, he said, is to come to terms with “the limits of all human striving, the fragmentariness of all human wisdom, the precariousness of all historic configurations of power, and the mixture of good and evil in all human virtue.”<sup>72</sup> At our best, we Americans know that. President Harry S. Truman knew that in 1945 when he wrote, “We all have to recognize—no matter how great our strength—that we must deny ourselves the license to do always as we please.”<sup>73</sup> And even George W. Bush seemed to know that: “If we’re an arrogant nation, [other countries] will resent us,” he said in the second presidential debate in 2000. “If we’re a humble nation, but strong, they’ll welcome us.”<sup>74</sup>

We await now a president prepared to implement George Bush’s wisdom.

This volume is designed to advise that new president how to do that. First, two caveats. We are focused here on *international* human rights policy, not domestic, important as it is to understand domestic practices such as police brutality as human rights crimes. And second, we cannot hope in one volume to speak in depth to every human rights problem. We only mention in passing, for example, such issues as trading arms

with countries that are responsible for human rights crimes, the impunity that has permitted private military contractors to go unregulated, and the rampant abuses of gay, lesbian, transgendered, and bisexual people (LGBT) around the world. The latter remain largely invisible to government and intergovernmental human rights officials, their rights usually unreferenced in international human rights instruments, despite continuing attacks upon their persons and blatant discrimination.<sup>75</sup> The United States should be far more assertive in raising issues of crimes against LGBT persons in bilateral conversations and at appropriate international fora.<sup>76</sup>

The contributors to this volume are drawn from the worlds of human rights activism and academia, government service and private philanthropy. In these pages they tackle some of the toughest questions facing human rights policymakers. *Rachel Kleinfeld* outlines the circumstances and manner in which the United States ought to intervene militarily to stop crimes that “shock the conscience” of humanity. *John Shattuck* and *Catherine Powell* provide broad context for understanding the ways in which America’s reputation has suffered internationally since September 11, 2001, and *Elisa Massimino* proposes concrete steps to mitigate the human rights violations committed by the Bush administration during the “War on Terror.” *Jennifer Windsor* describes how to rescue democracy promotion from the debacle of Iraq. *Philip Alston* urges us to broaden our understanding of rights to include social and economic. Several authors address evolving issues in key thematic areas, such as women’s rights (*Regan Ralph*), refugee policy (*Bill Frelick*), labor rights (*Carol Pier* and *Elizabeth Drake*) and religious freedom (*Felice Gaer*) and others take on mechanisms by which human rights may be advanced: *Debora Spar* describes ways to engage corporate interests in the struggle to improve human rights; *George Lopez* unscrambles the controversial question of sanctions—when they work and when they don’t—and *Eric Schwartz*, drawing upon his experience at the National Security Council, elucidates how and where to locate responsibility for human rights policy in the structure of a new administration. Finally, *Alexandra Arriaga* outlines a human rights legislative agenda for a new Congress and a new administration.

Many of the questions that we take on here have no easy answers. The essays represent the opinions of their authors and not necessarily the organizations with which they are affiliated. Needless to say, many who care deeply about human rights may demur from some or even many of the recommendations we offer. But that it is worth struggling with these issues no one would dispute. That the United States can do better than it has in promoting human rights almost goes without saying. The burden of this volume is to begin to sketch a better way.