

HUMAN  
RIGHTS  
AND THE  
NEGOTIATION  
OF  
AMERICAN  
POWER

GLENN MITOMA

# Human Rights and the Negotiation of American Power

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## Introduction: Human Rights Hegemony in the American Century

America resembles a huge giant who is just beginning to wake up to the fact that he is not alone nor can be left alone in the world, that he must try to get along with others who have been there all the time and who in fact are now pressing on him, and that in this necessary and sudden association something, perhaps something big, is expected of him. He is just beginning to rub his eyes and wake up to these expectations. In the daze of the moment, he half believes what his eyes are just beginning to see, half wishes it were not true, half hopes things will work out that all will go back to normal, namely to a state of affairs where he is again left alone, without bother, without headache, without responsibility, without danger. . . . The foot is not sure, the heart is not whole: the giant is still in the process of awakening.

—Charles H. Malik, “A Foreigner Looks at the United States” (1951)

Shortly before noon on March 15, 2006, the United Nations General Assembly voted by the overwhelming margin of 170 to 4 to dissolve the storied Commission on Human Rights, once one of the UN’s most prominent and prestigious bodies. The move concluded a long fall from grace for the commission, which, over the past several years had been accused by governments and leading human rights nongovernmental organizations (NGOs) of both coddling repressive regimes and repeatedly singling out one state, Israel, for hyperbolic condemnation.<sup>1</sup> Deemed irreparably compromised in a March 2005 report by the office of secretary-general Kofi Annan,<sup>2</sup> the commission was to be scrapped and replaced by a new Human Rights Council that intended, according to the adopted resolution, to both promote “universal

respect for all human rights and fundamental freedoms” and, going beyond the old commission mandate, “address situations of violations of human rights.” It was, said General Assembly president Jan Eliasson, “a fresh start for human rights,” and perhaps even for the UN itself.<sup>3</sup>

But among the four nations that voted against the formation of the council was the United States of America. Joined by perennial UN pariah Israel and the less than inspiring coalition of former U.S. territories Palau and the Marshall Islands, the United States had argued that the rules governing election to the new council were not stringent enough to prevent gross abusers of human rights—Sudan, Cuba, Iran, Zimbabwe, Belarus, and Burma were all cited—from gaining seats on the council. Warning that the proposed replacement for the Human Rights Commission would likely be no better than its predecessor, U.S. ambassador John Bolton took the high road, proclaiming that the long and exemplary tradition of American support for universal human rights made it impossible to compromise on an issue of such moral import. “The United States,” he said, “has been one of the strongest proponents for . . . meaningful engagement on human rights issues.” A council that was “a compromise and merely the best that we could do” was unacceptable to a nation that had for decades been “at the forefront of human rights and democracy promotion, both in our own nation and around the world.”

The rest of the General Assembly were not impressed with Bolton’s rationale, but the ambassador was correct that the U.S. position on the formation of the Human Rights Council was in keeping with American tradition—just not the way the famously anti-UN neoconservative suggested. Indeed the refusal by the Bush administration to endorse or even take part in the new Council extended the complex and contradictory relationship, first established in the early 1940s, between the United States and international human rights. This relationship, sardonically described as “exceptional” by Michael Ignatieff, is characterized by a central paradox: while American global leadership was the essential condition for the ascendancy of human rights as an international discourse, American policy has consistently both restrained broader interpretations of human rights and held international enforcement mechanisms at arm’s length.<sup>4</sup>

This paradox is often dismissed as simple hypocrisy, evidence of the cynical nature of U.S. foreign policy—that it has a double, or even triple, standard on human rights because, well, it can. Speaking in 2001 as part of Oxford University’s Amnesty Lectures series, Tzvetan Todorov lamented the U.S. refusal to intervene in human rights abuses in states like Israel or Turkey. “Human

rights abuses will be prevented [by the U.S.], but only in countries with which [it is] not allied. . . . The lesson is,” concluded Todorov, “that you do well to side with the mighty.”<sup>5</sup> Others have offered a more nuanced explanation. Andrew Moravcsik argues that the ambivalent U.S. position on human rights is rooted in a domestic political calculus that favors a conservative commitment to absolute national sovereignty.<sup>6</sup> Whatever its good intentions abroad, the American political establishment is structurally predisposed to protecting its national prerogatives. Simple or complex, these explanations emphasize the problem international human rights presents to U.S. policy makers and the extent to which U.S. policy was designed to mitigate that problem. Missing is an account of how this problem emerged in the first place, and why twelve successive U.S. administrations have felt compelled to declare not just their allegiance to, but their leadership of the struggle for, human rights worldwide. Indeed, more puzzling than why the United States fails to live up to its rhetoric on human rights is why it engages in that rhetoric at all.

What follows suggests that part of the answer to this question lies in the period during and immediately after the Second World War, wherein both the current (if precarious) U.S. global predominance and the ongoing “Age of Rights” find their origins. This coincidence is no mere accident, and understanding the link between the rise of the United States as the most important world power and the emergence of human rights as the most compelling discourse of global morality requires an appreciation of the U.S. role in the formation of the UN human rights system. Franklin Roosevelt is routinely credited with propelling human rights to the forefront of American foreign policy, but his “Four Freedoms” speech was less important for the future of U.S. human rights policy than was the work done by a small, long forgotten NGO, the Commission to Study the Organization of Peace (CSOP). Led by a core group of cosmopolitan internationalists dedicated to the rational organization of international society, the CSOP incubated a postwar plan that included the international protection of human rights, an idea that was adopted by the U.S. government in the interests of securing both national and global public support for the Allied cause. Once enshrined as an official Allied war aim, human rights became part of an international conversation in which the American government ambivalently engaged, but which ultimately resulted in a prominent place for human rights in the 1945 UN Charter.

The growing importance of the United States and the emergence of human rights as an organizing principle of the Second World War opened up a space for a new kind of transnational politics aimed at cultivating and

channeling U.S. influence in the world. Two of its earliest and most sophisticated practitioners were Charles H. Malik of Lebanon and Carlos P. Romulo of the Philippines. Both participated in founding the United Nations Organization in 1945, served as charter members of the Commission on Human Rights, and worked for an expansive, explicit, and enforceable international human rights regime. Each man pursued his human rights work as a conscious effort to spread American influence around the globe. At the same time, however, their understandings of how that influence should be manifest were often at odds with the policies pursued by American officials. Romulo insisted that U.S. human rights traditions were essentially anticolonial and included balancing rights and responsibilities. Malik continuously called on the United States to shoulder its responsibility in the field of human rights, framing the stakes in terms of the irreducible worth of the human person and, as the Cold War heated up, the survival of Western civilization. Each made essential contributions to the development of the UN human rights program, and examining this history from their perspectives reveals the way in which international human rights became one of the fields in which post-war American power was contested and negotiated.

Both Romulo and Malik were ultimately frustrated in their efforts to secure American support for international human rights laws, in large part because the U.S. government became increasingly obsessed with containment. Certainly, the precipitous collapse of the Grand Alliance into the Cold War meant that the ideals of human rights would find little place in the new realist orthodoxy. And yet, it was not a foregone conclusion that human rights would be sacrificed rather than enlisted, and the brief U.S.-led crusade to hold the governments of Hungary, Rumania, and Bulgaria accountable for violating the rights of their citizens demonstrated the potential use of human rights as an ideological weapon. But for American officials, containment applied not only to the Soviet Union but to human rights as well, and as with the wartime origins of the U.S. human rights commitment (such as it was), postwar U.S. human rights policies were driven largely by the efforts of domestic civil society organizations. On the one side, U.S. officials began to craft their positions in order to contain a push by the National Association for the Advancement of Colored People (NAACP) to petition the UN in protest of U.S. violations of African American human rights. On the other side, policy makers found themselves accommodating rising criticism from the American Bar Association (ABA) that the UN human rights program was contaminating American legal and political institutions with foreign values and

practices—accommodations that eventually resulted in U.S. abandonment of the International Bill of Rights. In both cases, the impulse was to contain and quarantine the emerging international human rights system to ensure it had no domestic effects.

Among the conclusions to be drawn from this history is that despite recent revisionist claims that the founding of the UN and the drafting of the Universal Declaration of Human Rights are stories of a “catastrophic failure” to inaugurate a new era of universal human rights,<sup>7</sup> in fact, the work done in the 1940s laid the critical foundation on which the later renaissance of human rights could be built. In his important book, *The Last Utopia: Human Rights in History*, Samuel Moyn argues that the mid-1970s, rather than the 1940s, was the critical moment in modern human rights history. Only with the failure of more totalizing ideologies—most significantly communism and Third World nationalism—to deliver on the promise of global liberation did human rights inspire a true social and political movement. Even then, Moyn insists, the human rights movement was not centered in the UN, and was less concerned with international law than with more modest political projects led by NGOs that did not aspire to statehood, such as Amnesty International’s campaigns on behalf of individual political prisoners.<sup>8</sup> Moyn positions his work as a corrective to the “church history” that imagines the history of human rights as a story of a linear “rise and rise” of morality over power from 1945 to the present,<sup>9</sup> and while there’s little doubt that some degree of revisionism is needed, dismissing the 1940s as an irrelevant failure is to toss the baby out with the bathwater. The period surrounding the Second World War remains vitally important to the history of human rights not because it marked the triumph of right over might, nor because that generation of leaders were prophets of a world to come, but because it provides insight into the nature of the U.S. relationship to international human rights, establishes the essential connection between human rights and civil society, and suggests a more complicated intellectual history for the UN human rights program than previously assumed.

## Human Rights and American International Life

Various characterized as ambivalent, paradoxical, ambiguous, reluctant, and hypocritical, the American attitude toward international human rights has long fascinated scholars and frustrated activists. Both Oxford University’s

Rothermere American Institute and Harvard's Carr Center for Human Rights Policy have invited academics from around the globe to discuss this troubled and troubling relationship, with results that reflect many of the trends in scholarship over the past thirty years. At these gatherings as well as in the literature, the most prominent contributions have come from political scientists and legal scholars, who have in the main sought explanations in domestic political culture and legal institutions or in the machinations of realist international diplomacy. Whether the issue is capital punishment or the International Criminal Court, much of this work is critical of U.S. human rights policy, and while it is hardly among the worst offenders, the preponderance of power the United States enjoys makes its abuses and failures particularly lamentable.<sup>10</sup>

Michael Ignatieff, former director of the Carr Center and keynote speaker at the Rothermere conference, has summarized these trends with typical concision. In the introduction to his edited volume, *American Exceptionalism and Human Rights*, Ignatieff describes the three dimensions of this exceptionalism as (1) exempting itself from the provisions of human rights treaties, (2) excusing its allies' abuses while highlighting and condemning those of its enemies, and (3) insulating its domestic legal institutions and practices from contamination by international human rights norms. By way of explaining this behavior, Ignatieff and his contributors explore a number of possibilities, including "realism" (the U.S. doesn't play by the rules because it doesn't have to), "culture" (the U.S. mission in the world is to spread enlightenment, not to be enlightened), and "institutions" (the federal structure of the U.S. government and the "advise and consent" powers of the Senate effectively tie the hands of the executive on treaty law).<sup>11</sup> Ignatieff, political scientist cum politician, concludes, however, that the best explanation lies in the domestic political dynamic: "American commitment to international human rights has always depended on the political fortunes of a liberal political constituency," writes the would-be leader of Canada's Liberal Party, "and as these fortunes have waxed and waned, so has American policy toward international law."<sup>12</sup>

Although most often articulated by legal scholars or political scientists, virtually all discussions of the "paradox" of the American relationship with rights rely on claims about the historical role the United States has played in supporting the development of international human rights standards. And while a few valuable studies have appeared describing the origins and nature of a specifically American culture of rights in the eighteenth century,<sup>13</sup> the consensus among scholars appears to be that the high-water mark for U.S.

leadership in the field of human rights occurred during and immediately following the Second World War, and culminated with the drafting and adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations. Ignatieff is typical then when he notes in his second paragraph that “thanks to Eleanor and Franklin Roosevelt, the United States took a leading role in the creation and drafting of the United Nations and the drafting of the Universal Declaration of Human Rights in 1948,” and nearly all contributors to his volume genuflect before the alter of the Roosevelts.<sup>14</sup>

But if the “political fortunes” of American liberalism have never been higher than they were under Roosevelt and Truman, the histories of that period reveal a surprisingly high degree of ambivalence from policy makers about human rights. Even in her rather Whiggish account of Eleanor Roosevelt’s leadership in the drafting of the Universal Declaration, Harvard University jurist Mary Ann Glendon concedes that Roosevelt was hardly the most enthusiastic member of the UNCHR when it came to creating a robust and effective international human rights system.<sup>15</sup> Elizabeth Borgwardt situates Eleanor Roosevelt’s efforts in the context of the broader Roosevelt legacy of the New Deal, linking the postwar international institutions of the UN, the International Monetary Fund, and the World Bank as expressions of “America’s vision for human rights.” Even so, it was a vision often advanced half-heartedly, at least as it was pursued by the U.S. government. Borgwardt sums up the American predicament with a quote from Roosevelt speechwriter Robert Sherwood: “When you state a moral principle, you are stuck with it, no matter how many fingers you have kept crossed at the moment.”<sup>16</sup> Whether in Eleanor’s stewardship of the Commission on Human Rights or Franklin’s New Deal for the world, the Roosevelts’ human rights sainthood relies on the hagiographic effect of distance and comparison to even more tentative administrations.

Rowland Brucken’s history of the rise and fall of the “uncertain crusade” of American policy makers makes clear some of the sources of the ambivalence of the Roosevelt, Truman, and Eisenhower administrations. Brucken has closely examined the internal foreign policy debates and concludes that the progressive cosmopolitanism of the U.S. State Department was contained by American public opinion, at least as it was represented by the ABA.<sup>17</sup> As Brucken’s study demonstrates, ABA pressure undoubtedly led to diminished U.S. engagement with the UN human rights program—but the enthusiasm for human rights within the State Department is easy to overstate. Even before the ABA began their campaign against international human rights, the

U.S. government began pushing for a weaker system in response to initiatives by another organization that sought more rather than less U.S. accountability under international law. Carol Anderson's history of the NAACP pursuit of redress for racial injustice by invoking international human rights is a damning indictment of U.S. claims to leadership in this field. "Although the United States was willing to use the rhetoric of human rights to bludgeon the Soviet Union and play the politics of moral outrage that the Holocaust engendered," Anderson heretically offers, "the federal government, even the liberals, steadfastly refused to make human rights a viable force in the United States or in international practice."<sup>18</sup> Anderson, and to a lesser extent Brucken, make plain that U.S. leadership on human rights was as much about ensuring an anemic international system as it was about crusading for a new postwar order.

This book approaches the paradox of reluctant American leadership as a function of both the determinative role of American NGOs, including the CSOP, NAACP, and ABA, as well as the revealing work of the two prominent non-American diplomats Malik and Romulo. Decentering the American government reveals the extent to which the UN human rights regime was the result of a simultaneously collaborative and contentious effort on the part of a variety of actors, most of whom were not named Roosevelt. The mantle of leadership was pressed upon rather than willingly embraced by the American government, and if U.S. representatives were often ambivalent about this role, it was because the stakes of these debates were the scope and nature not only of international human rights law, but also of American global leadership itself. This struggle over the meaning of America, far from being constrained by the political boundaries of the United States, spilled out across both the Atlantic and the Pacific oceans as the world attempted to come to terms with the new American ascendancy.<sup>19</sup>

## Human Rights and NGOs

The pivotal role played by the CSOP, NAACP, and ABA in shaping U.S. human rights policy points to another reason why the 1940s remains a critical period for understanding the modern history of human rights. Within the scholarship of human rights, the role of NGOs has hardly been overlooked. With a few exceptions, most studies of human rights NGOs focus on the period beginning in the mid-1970s, when organizations like Amnesty International and Geneva Watch (later Human Rights Watch) gained widespread



notoriety.<sup>20</sup> Without doubt, the last four decades have witnessed a blossoming of human rights NGOs at all levels, but this rich harvest needs to be understood in the context of the seeds sown during the Second World War. Over the course of the late 1940s and early 1950s, the potency of civil society was clearly demonstrated as the NAACP and the ABA—working from different directions and with opposing intentions to be sure—forced changes in the specific provisions of the International Bill of Rights and a diminished American engagement with human rights generally. But even before these interventions, the CSOP turned the slogan of human rights into an instrumental reality. From the outbreak of war in Europe in 1939 through the San Francisco conference in 1945, no group did more to ensure that human rights were a core value of both the Allies' war objectives and any postwar international organization. By lobbying the U.S. government and by cultivating public support, the CSOP placed human rights on the international agenda, pioneering the central role NGOs have played in the postwar development of international human rights.<sup>21</sup>

The importance of the “consultant group” of representatives from American civil society organizations at the UN founding conference has been more widely appreciated than the early efforts of the CSOP.<sup>22</sup> Samuel Moyn is dismissive of the human rights provisions written into the UN Charter at the behest of this consultant group, calling them purely “symbolic,” but this assessment fails to grasp how both the provisions and the process by which they ended up in the charter represented important innovations in international politics—innovations that enabled the future human rights politics he is so keen to highlight.<sup>23</sup> True enough, these provisions were crafted and ultimately endorsed by the U.S. government as a public relations gesture, intended to solidify broad domestic and international support for the new United Nations. But as the influential work of Jürgen Habermas has long contended, the principle of “publicity” and the discursive politics of the “public sphere” are not merely epiphenomena created as either propaganda or a mask for the “real” political power wielded by states.<sup>24</sup> The process of public deliberation, negotiation, and consensus formation—which the CSOP deliberately tried to introduce into international politics through the medium of human rights—constituted a real and important (if hardly dominant or especially effective) component of the UN system.

The history described in this book locates the origins of the UN commitment to human rights in the research, lobbying, and education efforts of the CSOP. This organization exemplified the commitment among a broad swath