WE ARE THE WORLD: THE UNITED STATES AND HUMAN RIGHTS

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A look at the recent campaign for president of the United States would lead a non-resident to believe that human rights were non-existent in America. Even though the Clinton-Gore administration stated early on that human rights would be one of the three pillars supporting its foreign policy, Gore ignored the topic during his campaign for president. In fact, human rights in the United States emerged only in relationship to the death penalty in Texas.[1] As governor of Texas, George W. Bush has presided over more executions than any governor in the country — 140 since January 1995. In 1997, for example, 37 of the 74 persons executed nationally were in Texas. Of those 37, one had the mental age of a seven year old and another was a Mexican national who was denied access to consular assistance. Governor Bush declared during the campaign that he was confident that each of the persons executed during his terms as governor had a fair trial and competent counsel.[2] Since both Gore and Bush support the death penalty and its application to minors and the mentally retarded, only the fairness of its application and not its abolition was challenged.

The absence of domestic human rights issues in the presidential campaign stands in sharp contrast to the promotion of human rights abroad. A week after the Democratic convention, President Clinton traveled to Abuja, the capital of Nigeria, to promote its civilian leadership. Mr. Clinton apparently had a duel mission of encouraging both increased Nigerian oil production and increased cooperation between Nigeria's executive and legislative branches. While he promised to "do my best to help Nigeria succeed economically," poor Nigerians were upset that they had no access to Clinton.[3] As Clinton toured Africa, the man who hoped to replace him gave a major foreign policy speech in Miami. Governor Bush charged that Clinton and Gore had ignored Latin America. Bush said "[m]y administration will strengthen the architecture of democracy in Latin America— the institutions that make democracy real and successful. The basics of democracy should be refreshed with programs that train responsible police and judges. We will encourage professional and civilian-controlled militaries, through contact with our own. The principles of free speech should be advanced through American media exchanges... We will encourage party-building and help monitor elections. These are ways to treat the symptoms of corruption and discord before they turn into violence and abuse of human rights."[4] Although the speech

proposed only a few new modest programs, it stood out in a campaign almost devoid of foreign policy issues and particularly devoid of human rights. Whether the Democrats or Republicans win, it would appear that the new century will begin much as the last half of the 20th century evolved in regard to human rights. That is, the official policy of the United States will give great symbolic importance to human rights but that trade and economic policy will be given substantive priority both at home and abroad.

"We are the world" might be an apt characterization of U.S. views on human rights. At least the slogan helps to explain why the United States has been a key player in the establishment of international institutions and treaties but has refused, in large part, to be guided or judged by these same mechanisms. Of course, the classic case is the leadership role President Woodrow Wilson played in creating the League of Nations following World War I. Despite Wilson's role, the United States not only refused to join the League, but actively worked to obstruct its activities and diminish its effectiveness. Raising the same fears of internationalism that would plague the United Nations a generation later, Senator James Reed on Missouri posed a problem in language that speaks for itself: "[t]hink of submitting questions involving the very life of the United States to a tribunal on which a nigger from Liberia, a nigger from Honduras, a nigger from India...each have votes equal to that of the great United States."[5] The Senate leader of the fight for isolation, Henry Cabot Lodge, declared "[w]e do not want a narrow alley of escape from jurisiction of the League. We want to prevent any jurisdiction whatever."[6]

As the United Nations began to take shape at the Dumbarton Oaks Conference in 1944, the United States, Great Britain, and the Soviet Union blocked Chinese proposals to uphold the principle of equality of all states and all races in the new organization. Any mention of human rights was also buried deep within the text and confined to social and economic cooperation. Fortunately at the UN organizing conference in San Francisco a year later, other delegations were successful in adding amendments to the Dumbarton Oaks proposals that would guarantee freedom from discrimination on account of "race, language, religion, or sex."[7] And, at its first General Assembly meeting, the new United Nations created a Commission of Human Rights which immediately named Eleanor Roosevelt its first chairperson. Eleanor Roosevelt's struggle to draft a Universal Declaration of Human Rights is fairly well-known. Less well-known are the efforts of domestic non-governmental organizations (NGOs) in the U.S. to use the new international organization to attack racism and human rights violations in the United States.

At the Tenth Anniversary Convention of the National Negro Congress (NNC), the delegates voted to address a "Petition to the Economic and Social Council of the United Nations," and to append thereto the accompanying digest of "The Facts" on "The Oppression of the American Negro." The document was prepared by Marxist historian Herbert Aptheker and presented to representatives of the UN meeting at Hunter College in New York on June 6, 1946, by NNC President Max Yergan and Executive Secretary Revels Cayton. The petition was to be supported by a drive to obtain five million signatures endorsing the document. In

addition, supplementary testimony on discrimination was to be collected at an "American People's Tribunal." The NNC placed a great deal of hope in the Soviet Union and small powers to advance the petition.

The petition itself cited the relevant sections of the UN Charter pertaining to equal rights and the responsibilities of the Economic and Social Council (ECOSOC) and its yet to be organized Human Rights Commission to protect minorities from racial oppression. Using statistics supplied by U.S. government documents, the petition summarized the gaps between Black and White Americans in terms of family income, occupations, housing, health, education, and other public services. It pointed out the restrictions on Black voting and civil liberties and noted the violence directed toward African Americans. The petitioners asked on behalf of 13 million Negroes citizens that the UN study the issues presented and make such recommendations as necessary to end racial oppression in the United States. While the NNC petition did not generate any formal action by the UN it did attract a good deal of international attention.

The attention the NNC petition attracted was not lost on W.E.B. DuBois who had been brought back to the National Association for the Advancement of Colored People (NAACP) in 1944 primarily to work on colonial and international issues. DuBois suggested to NAACP Executive Secretary Walter White that the organization consider submitting a more exhaustive petition to the UN noting "that other groups of people, notably the Indians of south Africa, the Jews of Palestine, the Indonesians and others are making similar petitions."[8]

An Appeal to the World, the NAACP's 94 page petition, was endorsed by hundreds of organizations and prominent individuals including the NNC, the Council on African Affairs, the National Baptist Convention, the National Fraternal Council of Negro Churches, the Urban League, the National Association of Colored Women, the Congress of Industrial Organizations, the National Medical Association, the Negro Newspaper Publishers Association, the National Bar Association, the Southern Negro Youth Congress, Black fraternities and sororities, Adam Clayton Powell, Senator Arthur Capper, and Mary McLeod Bethune. International support came from the Trades Union Congress of Jamaica, Jomo Kenyatta, the Caribbean Labor Congress, the Kenyan African Union, Nnamdi Azikwe and the National Council of Nigeria and the Cameroons, Kwame Nkrumah of the West African Naitonal Secretariat, the Nyasland African Congress and Liberia. New of the petition was widely reported in the colonial press and socialist press. Apparently media attention was the primary goal of the petitioners since the action requested was very vague.

Madame Pandit of the Indian delegation vowed to place it before the Assembly or the Economic and Social Council and support came from Pakistan, Poland, Egypt, Ethiopia, Belgium, Haiti, Mexico, Norway, China, the Soviet Union, and the Dominican Republic. The Soviet Union played a leading role in promoting the petition, which drew the ire of U.S. officials. Nonetheless, the "humiliation" of the U.S. government led to an enlarged and strengthened Civil Rights Division of the Justice Department.

Unfortunately, the petition itself faired no better than the NNC petition. The

opposition was led by Eleanor Roosevelt, a U.S. delegate to the commission and an NAACP board member. She believed it would be an embarrassment to the United States to have its racial practices discussed in an international forum and added that it was an affront for any other country to sponsor the petition. Mrs. Roosevelt and commission director John Humphrey also believed the petition might negatively influence passage of the International Bill of Rights being drafted by the commission.

On December 9, 1948, the General Assembly of the UN adopted the Genocide Convention, which defines genocide as any killings on the basis of race, or, in its specific words, as "killing members of the group." When the convention entered into force in 1951 with twenty states ratifying it — the Civil Rights Congress (CRC) submitted a petition under this treaty charging genocide against Black people in the United States by interpretation of article II of the convention.

Protecting the rights of minorities is a theme that runs throughout the three early petitions as a means to maintain peace around the world. The petitions asked for a condemnation of the United States for failure to implement and observe its international obligations and highlighted U.S. hypocrisy at the beginning of the Cold War. While the U.S. was able to prevent any formal action of the petitions, the petitions were not ignored.

The Civil Rights Congress itself was the target of government repression and its leader, William Patterson, had his passport seized by the State Department. The submission of the CRC's petition played a role in prompting the introduction of a constitutional amendment by 55 U.S. senators to bar the constitution from being overridden by treaties and executive agreements such as the Genocide Convention. Senator John Bricker of Ohio led these isolationist efforts and "Brickerism" was only stopped when President Eisenhower agreed not to sign or pursue ratification of any international treaties. Thus it has only been since the end of the Cold War that the U.S. has slowly begun to ratify the key international human rights instruments and always with the reservations that keep domestic law supreme. To date the U.S. has ratified only three – the International Covenant on Political and Civil Rights, the Convention Against Torture, and the Convention on the Elimination of All Forms of Racial Discrimination – of the six major international human rights instruments.

On a more positive note, the petition activity embarrassed the United States in its battle for Cold War supremacy over the Soviet Union and led to action by the federal government. President Truman created a Civil Rights Commission and desegregated the Armed Services. The Supreme Court cited the UN Charter's nondiscrimination provisions in the land ownership case *Oyama v. California* and later struck down restrictive private real estate covenants in *Shelley v. Kraemer.* It is widely thought to have influenced the court's school desegregation decision in *Brown v. Topeka Board of Education* and was cited in the companion case *Bolling v. Sharpe.*

The petition process at the United Nations has undergone a number of revisions. The most substantial occurred in 1970 when ECOSOC, in resolution 1503, set forth a detailed procedure for dealing with complaints about violations of human rights. Under the 1503 procedure, the United States is regularly charged with fundamental human rights

violations. In recent years, the commission has received seventy to eighty petitions a year regarding human rights violations in the United States. The overwhelming majority of these petitions concern three areas—prison conditions, Indian land claims, and the incarceration of political prisoners (especially Puerto Rican nationalists and members of the Black Panther Party). Each year the U.S. State Department coordinates a response to each petition and submits it to the commission that has never formally acted on such a petition.

More successful activity has occurred outside the UN machinery. In October 1998, Amnesty International (AI) launched a worldwide campaign against human rights abuses in the United States of America. Many "third world" nations, who tend to think Northern human rights NGOs like Amnesty give disproportionate attention to their countries, were delighted to have the spotlight on the U.S. After all, the U.S. annually releases a State Department report on human rights abuses in every nation in the world except the U.S. However, longtime friends of Amnesty in the U.S. were not so approving of the U.S. campaign. Longtime Co-Chair of the Congressional Human Rights Caucus, Representative Tom Lantos, was outraged that AI would spend its resources focusing on the U.S. rather than countries like Tunisia or Colombia. Lantos's colleague from Michigan, Representative John Conyers, had a different reaction to the report. He held hearings in the Detroit City Council concerning abuses of human rights in Michigan's state prisons. AI representatives were invited to participate along with prisoner rights advocates, legal experts, and formerly incarcerated women.

The AI report, entitled *Rights for All*, was based on 18 research visits to the U.S. along with numerous reports and data from NGOs as well as government sources. It focuses on the issues of police brutality, prison conditions, the persecution of immigrants, and the death penalty. The report recommends increasing the accountability of the police by setting up effective oversight and monitoring mechanisms; establishing enforceable standards for the treatment of prisoners, including steps to prevent sexual abuse of women, and a ban on the use of remote control electro-shock stun belts; an immediate end to the execution of juvenile offenders and the mentally impaired; and a moratorium on executions as steps towards abolition of the death penalty; an end to the detention of asylum-seekers in jails; ratification of international human rights treaties in full and adopting a code of conduct to prevent U.S. arms and equipment being used to commit abuses elsewhere in the world.[9]

The AI report paints a far different picture of human rights in the United States than *Civil and Political Rights in the United States: Initial Report of the United States: Initial Report of the United States of America to the U.N. Human Rights Committee under the International Covenant on Civil and Political Rights*(ICCPR) published in 1994. This historic report marks the first time the U.S. has reported the government's human rights policy in this country and the first time it had reported on the government's compliance with international human rights obligations under a human rights treaty. Unfortunately most of the 200 page report is devoted to detailing the formal legal framework for the protection of human rights in the U.S. rather than the ac-

tual operation of those laws on the ground. Despite the very cautious tone of the report, its introduction, which admitted to the past injustices visited upon Native Americans, slaves, and women, was roundly criticized by conservatives. An editorial in the *Wall Street Journal* condemned it and former White House official Midge Decter, writing in *Commentary*, accused the introduction's author, Assistant Secretary of State John Shattuck, of "moral greed."

Both the ICCPR report filed by the U.S. government and the Amnesty International report on human rights violations in the U.S. reflect a traditional "Western" approach to human rights. That is, they focus on the denial of civil and political rights to individuals (negative rights). While these rights violations are real, they are limited in scope. They may ignore or obscure more systemic causes or root problems that are economic, social, or cultural in nature (positive rights). For example, the mistreatment of people of color in prison is documented and should be addressed. However, the doubling of the rate of incarceration in the last ten years in the face of declining rates of violent crime is a more fundamental problem.[10] In the early 1990s, 27,707 African American students attended a four-year public university course in California, while 44,792 were in prison.[11] At the same time the state was building more prisons, voters joined the University of California Regents in eliminating affirmative action in college admissions and in employment.

It was only at the UN's 1993 World Conference on Human Rights in Vienna that the U.S. admitted that social, economic, and cultural rights were entitled to equal status with civil and political rights. Until Vienna, the U.S. had explicitly given priority to the latter set of rights. Perhaps acknowledging this change, when UN special rapporteur Maurice Glele-Ahanhanzo of Benin undertook a mission to the U.S., he focused on economic, social, and cultural rights. In preparing his report on contemporary forms of racism, racial discrimination, xenophobia, and related forms of intolerance for the UN Commission on Human Rights, the special rapporteur met government officials and NGO representatives in Washington, DC, New York, Los Angeles, and Atlanta. He concluded that racism and racial discrimination persist in American society even if they are not the result of deliberate governmental policy. The outcome, he says, is that "the fate of the majority of Blacks is one of poverty, sickness, illiteracy, drugs and crime in response to the social cul-de-sac in which they find themselves."[12]

The report provoked an unusually detailed and sharp response from U.S. officials:

While there is much to commend in your report, the emphasis tends to be on economic, cultural and social rights. Recognizing that such rights are co-equal in status with civil and political rights, the report tends to downplay the remarkable progress made by minorities in civil and political rights during the last 50 years.[13]

The government noted that it was paying particular attention to your recommendations but added that "conduct by private actors and social and economic forces (are) not readily subject to government action."[14]

Conduct by private actors and social and economic forces is the major human rights problem in the U.S. today and the unwillingness of the government to address the problem is a moral failure of the

first order as Mr. Glele-Ahanhanzo indicates. In an era that boasts of shrinking government, the promotion of unrestrained trade must be challenged. Political scientist Theodore Lowi states that "the ideology of globalizing capitalism has a remarkably rightward tilt. It is rightward in its rejection of any government policies that have even the slightest tendency to redistribute wealth or status. It is rightward also in its support of government policies that use locally enforced social control to address the spillover effects of extreme inequalities."[15] Thus, in the wealthiest country in the world, during the best of times, one in five adults in the U.S. is functionally illiterate and 17 percent of people are income poor (the highest % of 18 industrialized countries).[16]

These basic human rights violations are generally ignored by better off citizens because of three popular human rights myths. These myths state that human rights are held only by individuals, that they are only political and civil in nature and that they do not apply to private actions.

A recent movement for reparations for the harm done by the enslavement of African Americans challenges all three of these human rights myths. Although the movement for Black reparations has existed since the antebellum period itself, it has recently gained momentum. City councils in Dallas, Cleveland, Detroit, and Chicago have passed resolutions favoring reparations. Legislation has been introduced in the U.S. Congress as well as the state of California asking for a study of the harm done to African Americans. The director of the NGO TransAfrica, Randall Robinson, has written a popular book on reparations entitled *The Debt* while the Organization of African Unity has established an eminent persons group to examine the issue.

Surely growing material inequality between groups and nations as well as a host of truth and reconciliation commissions and gestures have contributed to the new prominence of the reparations movement. In addition, the success of Japanese-Americans and Holocaust survivors in obtaining some measure of social justice has set a precedent for African Americans. The first myth — that rights obtain only to the relationship between the individual and the state — helps to delegitimize group-based claims like those for reparations. Supporters of reparations contend that the injury to the African American community survives the death of individual victims. The injury survives in the well-documented overrepresentation of poverty, and all the pathologies it spawns, within the African American community. These pathologies include self-hate, lack of confidence and lack of self-understanding. If individual dignity and worth are defined largely by multiple social roles and affiliations, then the denial of such roles and affiliations on the basis of race is a violation of both group and individual rights.

Claims such as affirmative action and reparations make no sense unless we recognize that government policy did recognize groups and reward some (corporations, for example) while punishing others (Native American tribes). Perhaps the best example of the legal recognition of groups is the corporation. The recognition of the corporation as a "legal person" bestowed upon them economic benefits that were often given priority over the political and civil claims of individuals.

Supporters of reparations claim that a person should not be permitted unjustly to

enrich himself or themselves at the expense of another without making restitution for property and benefits received, retained, or appropriated, where it is just and equitable that such retribution be made. They claim that ill-gotten gains have continued to accumulate as they have been transferred from generation to generation.[17] The passage of time, however, does not extinguish the legitimacy of African American claims on their ancestors stolen legacy according to this argument.

As mentioned earlier, the U.S. has historically given priority to political and civil rights over economic, social, and cultural rights. For example, in the introduction to the State Department's Country Reports on Human Rights Practices for 1990, Assistant Secretary of State Richard Schifter states that "[w]e have found that the concept of economic, social, and cultural rights is often confused, sometimes willfully, by repressive governments claiming that, in order to promote these "rights," they may deny their citizens the rights to integrity of the person as well as political and civil rights. If these basic rights are not secured, experience has shown, the goals of economic development are not reached either."[18] Yet the right the U.S. has promoted more widely and emphatically than any other is the right to private property. Historically, it has insisted that the right to private property be a part of international human rights instruments. More recently it has been quite active in insisting that the right to private property extends to intellectual property. The right to private property is generally recognized as an economic right.

Perhaps the greatest challenge to this myth occurred in 1857 in the *Dred Scott* decision of the U.S. Supreme Court. Dred Scott, a slave, and been taken by his master to live in Illinois, a free state, and later in the Louisiana territory north of 36 degrees/30 minutes in which slavery had been prohibited by the Missouri Compromise of 1820. After his return to Missouri, Scott sued in Federal Court to obtain his freedom on the ground that he had resided in "free territory" and was thus entitled to his freedom (citing English common law). In its decision, the Supreme Court states that historically Blacks "had no rights which the white man was bound to respect" and therefore Blacks had been denied citizenship.[19] Thus, Dred Scott lacked "legal standing" before the courts. However, the Supreme Court went beyond denying Scott citizenship rights to assert that Congress had no authority to deprive a citizen "from holding and owning property of this kind [slaves] in the territory mentioned in the Compromise or in any place in the United States."[20] In *Dred Scott* the civil and political rights of Blacks in even free states was submerged beneath the economic rights of slave masters to own human property.

Finally, the reparations movement insists that the government bears responsibility and cannot hide behind private actions rhetoric. The government created the context in which slave trading could be carried on as ordinary commerce, slave ownership could be protected by the fundamental law of the land, segregation could be enforce, and White supremacy could thrive. Thus regardless of what private parties may have chosen to do in the exploitative context created by the government, it was the force and application of the law that fundamentally enabled their ability to exercise their choices. Moreover, governmentally supported exclu-

sion and segregation continued from the emancipation to the modern civil rights era. Therefore, the claim for reparations is directed toward the government and not the ancestors of slave owners.

The modern women's movement has provided the best illustration of the moral difficulty of drawing a line between public and private actions that violate human rights. It challenged the practice, for example, of treating "domestic" violence differently than "non-domestic" violence. In making the "private" political, it moved the debate over women's rights into the public sphere. Countering this movement on the right was traditional American "Protestant" culture that asserted that the locus of morality and ethical value is in the individual and not the public realm. On the left, postmodernists, rejecting universals, posit the particular in their stead. The result makes it increasingly difficult to represent ultimate value positions in the public realm. In their place the representation of the ethical is relegated to the particular, the individual, and the private sphere of social life.[21]

In the United States, the individual was invested with an intense moral dimension that was lacking in Europe. There, minority rights were an important part of liberal theory and practice in the 19th century and between the world wars. Concepts such as liberty and equality that were seen as antithetical in Europe were integrated into a novel structure in America. That structure values procedural equality over substantive justice. It can, for example, promote equality of opportunity as a concept but accept radically unequal outcomes in practice. Another contemporary example is the legal notion of "color blindness." This procedural concept prohibits targeted redress to groups that have historically suffered discrimination under the guise of protecting individual rights.

Individualism gives an advantage to members of the dominant group. Historically in the U.S. that group has been composed of White males whose group characteristics permit them to establish rapport most easily with those who already have influence and power. This individualism tends to promote blindness to group differences and a kind of unspoken assumption either that societies are homogeneous or that right-thinking persons will treat them as if they were.[22]

There is ample recognition in the U.S. that the country is polyethnic, but there is difficulty in accepting that the country is multi-national.[23] In a multinational country national minorities may have special claims of cultural rights such as language rights, economic rights such as reparations and affirmative action and social rights such as the right to an abortion. Until the human rights myths we have discussed are openly challenged, the U.S. will increasingly become a society of those with rights and those without.

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[1] Racial profiling emerged briefly as an issue, however, both candidates opposed such practices and it quickly disappeared from view. A number of minor party candidates, such as Ralph Nader, raised significant human rights issues in the U.S. but they were largely ignored by the media.

[2] CNN, August 9, 2000

[3] *New York Times*, August 27, 2000, p. 4.

[4] "In Speech, Bush Sets Goal of Free-Trade Agreements With Latin Nations," *New York Times*,