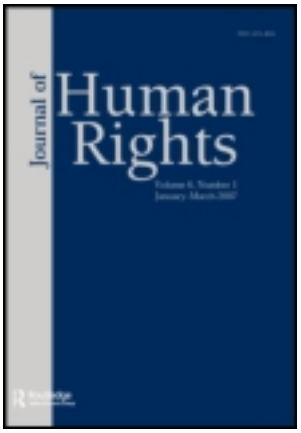


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# "Rhetoric and Reality" Revisited

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# Roundtable

# "Rhetoric and Reality" Revisited

DAVID L. RICHARDS



## Introduction

One need not wade through a boggy foundationalist debate to appreciate that the idea of human rights has a now long-standing relationship with international law. Scholars, policymakers, and activists muse and debate about both what is, and what should be, the nature of this relationship, and David Forsythe's voice has been among the most important to have weighed in on these issues. International law has been not the backdrop but, rather, the oxygen on which his scholarly work about foreign policy and international organizations has flourished since 1971.

This article does not attempt to represent the full arc of David's Forsythe's lifetime of scholarly inquiry in these areas as, indeed, much of his work has been informed in one way or another by international law. Rather, I focus on the political lessons presented in his article "American Foreign Policy and Human Rights: Rhetoric and Reality," published in 1980 in the journal *Universal Human Rights* (now known as *Human Rights Quarterly*). I think this article deserves a second look, as both its framework for examining the relationship between international law and human rights-based US foreign policy and the lessons it uncovered thereby still resonate these many years later. Furthermore, this article carries historical importance of its own as, while qualitative, it helped set the table for a wave of quantitative studies over the next decade and a half that examined the human rights records of US presidents, both alone and in relation to one another (see Stohl, Carleton, and Johnson 1984; Carleton and Stohl 1985; Cingranelli and Pasquarello 1985; McCormick and Mitchell 1988; Poe 1991, 1992; Poe and Sirirangsi 1994).

## That Article and This Article

In "American Foreign Policy and Human Rights: Rhetoric and Reality," Forsythe examined how well Jimmy Carter "blend(ed) public morality with power" (1980: 36) in terms of advocating human rights through US foreign policy. The crux of the article is Forsythe's

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distillation of what he called "four fundamental subjects constituting poles about which policy statements on human rights tend[ed] to cluster" (1980: 36):

1. A rank order must be given to human rights concerns, in which socioeconomic rights figure prominently (1980: 36).
2. Human rights must be linked to self-interest: Ethics and expediency must be combined (1980: 38).
3. A unilateral and purely ethical approach to human rights in world politics is not effective: The American approach must be tied to international law and organization (1980: 39).
4. There are domestic ramifications from the emphasis of the Carter administration on human rights, and Congress has a role to play in this aspect of foreign policy (1980: 40).

The four "poles" above are more than mere dimensions on which the policy statements of a particular administration clustered. These were hard-learned *lessons* for Carter that remained lessons to be learned by subsequent administrations. Further, these lessons continue to provide a framework for analyzing the human rights policies of specific presidential administrations. In this article, I will briefly comment upon these lessons in reference to Presidents Ronald Reagan, George W. Bush, and Barack Obama. I will omit any commentary on lesson one, as every US president's gap between rhetoric and reality on socioeconomic rights is a gaping chasm. As well, at the end of his article, Forsythe invokes two factors he saw as maintaining the rhetoric-reality gap. I will examine one of those in light of recent presidents, and then I will add a third factor of my own to the mix.



## Ronald Reagan

Published at the beginning of the Reagan Presidency, one question begged by Forsythe's 1980 article is "Did subsequent presidents heed the lesson learned by Carter, that a successful human rights-based foreign policy must be rooted in international law?" The answer is "yes and no," even when looking from an intra-administration historical perspective. For example, on March 22, 1982, Ronald Reagan issued a signing statement on House Joint Resolution 373, which expressed "the sense of the Congress that the Government of the Soviet Union should cease its abuses of the basic human rights of its citizens." In this statement, Reagan resisted any tie to international conventions and, instead, based his appeal on "American heritage":

> I wholeheartedly join with the Congress in renewing our call to the Soviet Government to cease its repressive actions against those who seek the freedom to emigrate or to practice their religious or cultural traditions. These freedoms are a fundamental part of our American heritage, and their denial is a matter of the deepest concern to our government and citizenry. (Reagan 1982: para. 2)

This statement fits squarely with a memo drafted in 1981 by then-assistant Secretary of State Eliott Abrams that asserted, "We will never maintain wide public support for our foreign policy unless we can relate it to American ideals and to the defense of freedom" (Jacoby 1986: 1072).

Both of the above statements stand in stark contrast to the lesson Forsythe points out was learned by Carter about the necessity linking human rights to international norms. In

arriving at that lesson, Forsythe (1980: 39) traced Carter's learning curve from making "off the cuff" comments about the Soviet Union in the early stages of his presidency to his "increasing use of international agreements as a framework for his comments on the Soviet Union" (1980: 40). One example given is Carter's use in 1978 of the Helsinki Accord—rather than an abstract moral fabric—as a framework to criticize the Soviets. The distinct advantage of using international law as rhetorical leverage, Forsythe points out, is that it reduces the US's liability to charges of "moral imperialism." Tying countries' behavior to international standards to which they are explicit parties creates the ability to practice—with some legitimacy—what is these days commonly called "naming and shaming." To the degree that the "shaming" component of naming and shaming would be based on a personal moral/ethical code, rather than on an international standard, this human-rights-advocacy device would be significantly weakened.[1]

A little over one year after Reagan's Soviet-related 1982 statement based on American traditions, a refinement of the original Helsinki Accords was concluded in Madrid, Spain. Reagan thereupon issued a statement trumpeting, "The Madrid accord will add important new commitments to the Helsinki process, including provisions dealing with human rights, the trade union freedoms so tragically violated in Poland, terrorism, religious liberties, reunification of families, free flow of information, and more" (Reagan 1983a: para. 4). And it was not long before Reagan used the Madrid accord as leverage to criticize the Soviet Union in a "Statement on Soviet Human Rights Policies":

> Barely a month after attending an international conference in Madrid and joining 34 nations in a commitment to respect human rights, the Soviet Union has gone back on its word . . . . We hold the Soviet Union accountable for its violations of numerous international agreements and accords on human rights to which it is a party. We call upon the Soviets to reverse their inhumane policies and to prove to the world they will back up their words with action and start living up to their agreements. (Reagan 1983b: paras. 1, 4)

For Reagan, the concept of human rights was, from the start, a purely anti-Soviet tool. Thus, Carter's lesson that a human rights-based foreign policy must be based in US self-interest (Forsythe 1980: 38) held utility for Reagan. It is simple physics that a longer crowbar offers more leverage than does a shorter one. The same is true in politics. Like Carter, what the Reagan administration indeed learned quickly (maybe more quickly than Carter) was that, in terms of political leverage, extending the handle of the foreign policy lever beyond traditional American ideals of freedom towards the symbolic vocabulary of international human rights conventions offered even greater leverage with which to both co-opt the Democratic-majority Congress at home and box in the Soviet Union, internationally. Moreover, Reagan's learning curve overlaps with Carter's schooling that Congress has a role that must be acknowledged in the construction of any human-rights-based foreign policy (Forsythe 1980: 40).

## Barack Obama

On December 10, 2008, then-President-Elect Barack Obama released a statement to mark International Human Rights Day:

> The United States was founded on the idea that all people are endowed with inalienable rights. . . . Today, that principle is embodied in agreements Americans

> helped forge—the Universal Declaration of Human Rights, the Geneva Conventions, and treaties against torture and genocide—and it unites us with people from every country and culture . . . . When the United States stands up for human rights . . . we . . . strengthen our security and well being, because the abuse of human rights can feed many of the global dangers that we confront—from armed conflict and humanitarian crises, to corruption and the spread of ideologies that promote hatred and violence. (Obama 2008: paras. 1–2)

This statement mixes the invocation of traditional American ideals with the acknowledgement that they are not only philosophically linked to the goals of international law but also that Americans had an influential hand in creating these international human rights norms. Considering how Carter and Reagan had to find their own way in this area, Obama's approach so early-on in his pre-presidency is quite wily with regards to the logic it attempts to conjure in anticipating forthcoming conservative political opposition to various human rights issues that would certainly arise during the next four years. Essentially, Obama was asking, "How could respecting, or promoting respect for, human rights possibly be against U.S. self-interest if it was the U.S. itself that helped create the international human rights norms mandating such respect?"

As rhetorically capable, and/or logical, as Obama's 2008 statement may have been in linking international norms to traditional American ideals, two things have happened since then. First, he has not persuaded (using rhetoric or any other device) conservative US political forces that international law should be US federal law. If anything, the emergence of the Tea Party movement during the health care debate of 2009/2010, and its subsequent success in the 2010 midterm elections, set back any idea of monism being the dominant school of thought anytime soon regarding incorporation. The mindset of many contemporary US conservatives has indeed no room for international human rights law, whether based in US self-interest or not; whether it overlaps philosophically with American traditions of equality and freedom or not. The lessons of Carter and Reagan be damned in 2010–2012?

Second, the Obama administration's actual human rights record seems not to have corrected what Forsythe observed in 1980 was a "tremendous" gap between US human rights rhetoric and US human rights reality. Forsythe noted in his article that this gap was due to two factors, the first being that despite the fact that the United States claims an "even-handed approach," with regards to human rights policy, "Russia is criticized and penalized while China is not" (1980: 48). Thirty-one years later, US presidents still annually face the charge of hypocrisy for letting China "off the hook" with regard to its epidemic level of human rights abuses despite a great deal of public rhetoric. A line such as the following from an *Associated Press* news story is literally *pro forma* in any report covering US-China "talks": "President Barack Obama pushed China to adopt fundamental freedoms but assured [Chinese President] Hu the U.S. considers the communist nation a friend and vital economic partner" (2011: para. 1). Further, President Obama has faced no small amount of criticism for focusing on removing Libyan leader Muammar Gaddafi while ignoring genocide-stricken Darfur. In 2007, then-candidate Obama offered the following rhetoric:

> The United States has a moral obligation anytime you see humanitarian catastrophes. . . . When you see a genocide in Rwanda, Bosnia or in Darfur, that is a stain on all of us, a stain on our souls . . . . We can't say "never again" and then allow it to happen again, and as a president of the United States I don't intend to abandon people or turn a blind eye to slaughter. (Kessler 2011: para. 11)

In November 2010, however, the Obama administration "decoupled" the Darfur issue in Sudan with the North/South peace process-issue, meaning that "Khartoum could get off the [state sponsors of terrorism] list if it complied with the North-South peace accord, notwithstanding what happened in Darfur" (Kessler 2010: para. 14). This was a massive change from the rhetoric on genocide.

Obama is in no way alone among US presidents with regard to a rhetoric-reality gap on human rights. Jimmy Carter did nothing about Cambodia. Ronald Reagan, who in April 1981 issued a presidential proclamation (#4838) in remembrance of holocaust victims, did nothing about Saddam Hussein's gas attacks against the Kurds. George H. W. Bush waged a "policy of disapproval" in reaction to the killing of unarmed Bosnians (Power 2002: 262). Bill Clinton wished away the Rwandan genocide. And, despite a strong rhetorical commitment to Africa, George W. Bush evidenced the same rhetoric-reality gap on Darfur as has Barack Obama.

## An Addition

To Forsythe's list of factors maintaining the gap between rhetoric and reality I would add a third factor: institutions.[2] The U.S federal system itself—along with its separation of powers—can make it difficult, and sometimes impossible, for a president to exert respect for international law, even should he desire to do so. For example, in 2004, the International Court of Justice ruled that the United States had violated international law by denying foreign inmates consular visits. Despite that, in July 2011, Texas executed a Mexican inmate denied such a visit after the US Supreme Court voted in 2008 that the execution could proceed since Congress had never passed a law implementing the consular visit component of the 1963 Vienna Convention on Consular Relations (*Medellín v. Texas*). President Obama had openly objected to the execution, stating that it was in the self-interest of the United States to proceed, as it may endanger nationals abroad. After the execution, the UN High Commissioner for Human Rights accused the United States of violating international law.

It is worth ruminating on why the person most responsible for US interaction with international law, the President of the United States, could do nothing to stop an offense against international law by his own country. This situation is institutionally derived and is not a direct function of the current hyperpartisan atmosphere in the United States. The same scenario played out in 1998, when Virginia executed a Paraguayan national over the objections of the US State Department and despite a stay issued by the International Court of Justice until the court could make a final ruling on whether Virginia had violated the man's right to a consular visit.[3]

And while not intending to cast a dark cloud at the conclusion of what is intended to be a celebratory article, there may be times when a small gap between human rights rhetoric and human rights reality may be an undesirable thing. For example, while a president cannot force adherence to international law in all cases, it appears that a president can withdraw from adherence at will. In keeping with the current example, in 2005 President George W. Bush withdrew the United States from the Optional Protocol to the Vienna Convention on Consular Relations that "requires signatories to let the International Court of Justice (ICJ) make the final decision when their citizens say they have been illegally denied the right to see a home-country diplomat when jailed abroad" (Lane 2005: A01). The United States itself proposed the Optional Protocol in 1963. Similarly under Bush, the United States did not become party to the Rome Statute creating the International Criminal Court, despite the fact that the United States had a great hand in the statute's creation.

George W. Bush's approach, both rhetorically and policy-wise, of turning the United States away from established international law—especially that which is greatly of US origin and that overlaps philosophically with US constitutional principles—met his reality in many ways, as events in Abu Ghraib, Guantanamo Bay, Kabul, SERE schools, and other places ultimately, and sadly, showed.

## Notes

1. It is interesting to note that this is the opposite of how to sell human rights to individuals, one at a time, as that is typically most effectively accomplished through encouraging moral reciprocity, not appealing to international norms.
2. The second factor concerned socioeconomic rights, which are not included in this article due to length restrictions.
3. See van der Waerden (1999–2000: 1631–1650).



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