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William F. Buckley, Jr.

HUMAN RIGHTS AND FOREIGN POLICY: A PROPOSAL

The Soviets in Geneva [to negotiate SALT II] never even hinted at the Kremlin's resentment of the Carter human rights policy, and the Americans were equally careful not to echo their Government's criticism of Soviet human rights abuses. Unaware of this rule, a newcomer to the U.S. team brought up the dissidents in an informal tête-à-tête with his Russian opposite number. When he reported the exchange later in a 'memcon,' his superiors told him never again to mix business with displeasure.

—*Time Magazine*, May 21, 1979, a Special Report on the history of the negotiation of the SALT II treaty.

A great deal has been written about human rights and foreign policy in the recent past.¹ With much of what I propose to discuss below, before arriving at a policy proposal, I expect there will not be substantial disagreement, with some of it inevitably there will be. We are all agreed that the movement for human rights, politically expressed, is quite new; that U.S. involvement in that movement has been uneven; that the advent of the United Nations Covenant on Human Rights slightly altered the juridical international picture; that the Soviet Union came recently to a policy of manipulating the West's campaign for human rights; that the Vietnam War brought on a general disillusionment with

¹ The curious should prepare to read *American Dream/Global Nightmare: The Dilemma of U.S. Human Rights Policy*, by Sandra Vogelgesang. The book will be published in April 1980 by Norton. I have read the manuscript, courtesy of Ms. Vogelgesang. Daniel Patrick Moynihan and I both wrote books about service with the Third Committee (Human Rights) of the General Assembly of the United Nations, and his book is also an account of his tenure as U.S. Ambassador to the U.N. The books are, respectively, *A Dangerous Place*, Boston: Little Brown & Company, 1978; and *United Nations Journal: A Delegate's Odyssey*, New York: Putnam's, 1974. *Freedom in the World, Political Rights and Civil Liberties 1978* is a Freedom House book edited by Raymond D. Gastil, New York, G.K. Hall and Company. I found four articles particularly helpful. They are, in chronological order of their publication, "A Reporter at Large—Human Rights," by Elizabeth Drew, *The New Yorker*, July 18, 1977; "The Politics of Human Rights," by Daniel Patrick Moynihan, *Commentary*, August 1977; "Human Rights and the American Tradition," by Arthur Schlesinger, Jr., *Foreign Affairs*, "America and the World 1978"; and "Human Rights Muddle," by Irving Kristol, *The Wall Street Journal*, June 27, 1978.

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American idealism; that the Realpolitik of Nixon-Kissinger generated first congressional resistance and then, through candidate and later President Jimmy Carter, executive resistance to adjourning official U.S. concern for human rights. And, of course, everyone knows that Mr. Carter's human rights policy is now in a shambles. This is the case, in my judgment, not because of executive ineptitude, but because of morphological problems that can't be met without an organic division of responsibility.

II

Although the very idea of human "rights" is firmly rooted in biblical injunction, which asserts a metaphysical equality ("Thou shalt love thy neighbor as thyself") and enjoins altruism ("Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me"), biblical insights made little political progress over the centuries in which church and state joined in accepting, and even underwriting, civil class distinctions at the extreme of which were self-assured kings and self-abnegating slaves, never mind that the political phenomenon never challenged, let alone diluted, the theological conviction that both kings and slaves would eventually answer to the same divine tribunal.

Human rights, including a measure of political rights, were asserted and to a degree explicated, in the documents that led to, and flowered from, the American and French Revolutions. The Bill of Rights, and the Declaration of the Rights of Man, enumerated individual rights which the state might not impinge upon, save by due process. The respect paid to these rights by sponsoring governments varied with the vicissitudes of the historical season, an ambivalence by no means outdated. Negro slaves in America coexisted with the Bill of Rights; the Reign of Terror in France with the Declaration of the Rights of Man; Gulag with Helsinki. There are few surviving commentators, let alone historians, who are inclined to defend the proposition that the articulation of a human right leads to its realization.

In short, though inchoately an ancient idea, human rights are a relatively new political objective, and as often as not, only a nominal political objective.

The United States has had cyclical romances with the notion of responsibility for the rights of extranationals, an insight also biblical in origin ("Am I my brother's keeper?" asked Cain, who, having drawn the wrong conclusion, slew Abel), cosmopolitanized

by John Donne's resonant assertion that we are, as individuals, involved in mankind. Professor Schlesinger nicely summarizes the episode involving Louis Kossuth, driven from Hungary by the Austrians during the repression following the convulsions of 1848.² There were those in Congress who came close to advocating a punitive expedition against Austria; others considered lesser sanctions; but, all in all, Congress engaged in a feisty bout of moral indignation. The prevailing voice, however, was Henry Clay's. His argument was in two parts, the first that the United States, with its fitful record, uneasily judged the delinquencies of other nations; the other, that condemning Austria while ignoring such conspicuous transgressors on human rights as Turkey, Spain, Great Britain (yes, Great Britain!) and Russia, was simply . . . eccentric.

Several years before Professor Schlesinger reminded us of it, George Kennan, in his exasperation over the Vietnam War, had called attention to the tranquilization of rambunctious American idealism by Secretary of State John Quincy Adams, delivered, appropriately enough, on the Fourth of July (in 1821). "Wherever the standard of freedom and independence has been or shall be unfurled," Adams said, "there will be America's heart, her benedictions, and her prayers. But she goes not abroad in search of monsters to destroy. She is the well-wisher to the freedom and independence of all. She is the champion and vindicator only of her own."³

The rhetorical exaltation of what is still known as Wilsonianism reached its apogee in the inaugural address of President John F. Kennedy. It is painful to repeat those ingenuous strophes, so dissonant to the ear after the Vietnam War, but a narrative of U.S. attitudes toward human rights abroad is simply incomplete without them. We will, declared the freshly anointed President, "pay any price, bear any burden, meet any hardship, support any friend, oppose any foe, to assure the survival and the success of liberty."

Did Mr. Kennedy, in uttering those words, recognize the *weight* of the responsibility he was assuming on behalf of the United States? The answer is that he *gloried* in that responsibility: "In the long history of the world, only a few generations have been granted the role of defending freedom in its hour of maximum danger. I do not shrink from this responsibility—I welcome it."

² Schlesinger, *op. cit.*

³ George Kennan, Testimony before the Senate Foreign Relations Committee, February 10, 1966. *Supplemental Foreign Assistance Fiscal Year 1966—Vietnam*. Hearings before the Senate Foreign Relations Committee, 89th Cong., 2nd Sess., Washington: GPO, 1966, p. 336.

Was this pure bombast? Or was the listener entitled to assume that the new President had actually given thought to the practical consequences of his words? “The energy, the faith, the devotion which we bring to this endeavor will light our country and all who serve it—and the glow from that fire can truly light the world.” A few months later that glow lit up the Bay of Pigs, but by no means the world, or even the Capitol steps from which these quixotic—potvaliant?—words had been spoken.

In short, U.S. involvement in the movement to universalize human rights has been episodic, but, even early on, it evidenced an inchoate disjunction between the power to affirm, and the power to dispose.

Yet the scaffolding on which President Kennedy had spoken was not insubstantial. There were the Fourteen Points of Woodrow Wilson, which he coupled to his antecedent crusade to make the world “safe for democracy.” There came then, in 1941, Franklin D. Roosevelt’s Four Freedoms. These—in passing—were significant for transmuting human rights into something much more than the negative injunctions on government activity conveyed in the Bill of Rights. FDR did not exactly discover, but he and Winston Churchill gave declamatory voice to positive, but not readily achievable, obligations of government: something called Freedom from Want, which seven years later gave birth to about 30 importunate children (e.g., “Everyone has the right . . . to free choice of employment”) in the Universal Declaration and related documents—children who, for the most part, have lived unhappily ever since.⁴ But while Woodrow Wilson and Franklin Roosevelt and John F. Kennedy were merely American Presidents, giving voice to an erratic, yet progressively universalist, statement of American idealism, the birth of the United Nations and the subscription by member states to its Charter gave near-universal codification to the notion of the obligation of the state to acknowledge the human rights of its own citizens, and hinted at the mutual obligation of states to ensure each other’s fidelity to these obligations. Because the Charter itself—and this before the ensuing elaboration in the Universal Declaration and other comments—committed its members to “reaffirm faith in fundamental human rights.”

⁴ For convenience’s sake I group together the following instruments: the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Convention on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol.

In short, the United Nations transformed human rights into something of an official international paradigm, and began to suggest an obligation by member states to modify their foreign policy accordingly.

The Universal Declaration's International Covenant on Civil and Political Rights, and on Economic, Social and Political Rights, were announced on September 26, 1973 as having been ratified by the Presidium of the Supreme Soviet and thus under the Soviet Constitution became the supreme law of the land. The Soviet ratification aroused little popular notice. To this day there is no universally accepted explanation for Soviet timing. Probably it had to do with the Soviet Union's efforts to ingratiate itself with those European countries with which, two years later, it concluded the Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accords). "Basket Three" of this pact became the most emphatic juridical validation of certain individual rights in Soviet history. The Universal Declaration, after 25 years of desuetude, had become, for most nations, mere liturgy; safe, therefore, to ratify without giving rise to international expectations. Basket Three was widely held to be the indispensable moral quid pro quo by the Soviet Union to the Helsinki Accords that gave the Soviet Union what it had wanted for so long, namely *de jure* recognition of the postwar frontiers.⁵ To have accepted Basket Three while ignoring the Universal Declaration would have posed problems for Soviet negotiators.

As it happened, most of the Soviet citizens who undertook actively to monitor compliance by the Soviet Union with the terms of Basket Three are in jail, psychiatric hospitals, exile; or mute. Their Czechoslovakian counterparts have been tried, convicted, and sent to jail.

In short, the Soviet Union in due course recognized the necessity to cope with, and therefore manipulate, the human rights dimension as an aspect of its own foreign policy.

III

Nobody knows exactly what impelled Jimmy Carter to seize on human rights as the touchstone of U.S. foreign policy. Mr. Carter's

⁵ Two months before the announcement of Soviet ratification of the Universal Declaration, Lord Home had spoken at one of the opening sessions at Helsinki with these words: "If your conference is essentially about people and about trust, then it is essential that we should do something to remove the barriers which inhibit the movement of people, the exchange of information and ideas." And on September 26, addressing the General Assembly of the United Nations as British Foreign Secretary, Lord Home spoke hopefully, "I trust that the Communist countries will be able to prove that they are for the basic freedom of people everywhere."

opposition to the Vietnam war could be classified as ritualistic: i.e., he was not one of its early critics. Now the U.S. venture in Vietnam has been disgraced by most moralists, which is to say less than that it has been disgraced by history. Its relevance here is that Jimmy Carter on several occasions spoke ill of it. In his acceptance speech at Madison Square Garden upon being nominated for President, he spoke of it as an “immoral” war. At Notre Dame University in 1977, he stated that our “inordinate fear of communism” led us to the “intellectual and moral poverty” of the Vietnam War. Senator Daniel Patrick Moynihan’s comment is here relevant not merely for the job it does of effective contention, but in shedding light on the confused provenance of Jimmy Carter’s stated redirection of U.S. foreign policy with emphasis on human rights. Moynihan said, “This causal connection can . . . be challenged. Some of us said at the time that the enterprise was doomed because it was misconceived and mismanaged. Are we to say now—in this, echoing what our enemies say of us—that it was also wrong or immoral to wish to resist the advance of totalitarian communism?”⁶

Carter’s reference to Vietnam, together with Moynihan’s demurrer, catapult us into the awful complication posed by the Vietnam War, coming on the heels of the attempted liberation of Cuba. The *moral* disavowal of the Vietnam War took us a long way toward the Platonization of the spirit of our concern for human rights. Elizabeth Drew reminds us that Jimmy Carter came to the whole subject of human-rights-as-an-integral-part-of-foreign-policy in a haphazard way—not to be compared, say, with the evolution of Lincoln’s structured approach to slavery.⁷ In an address to the Foreign Policy Association in New York in 1976, Carter said that “we . . . can take the lead in . . . promoting basic global standards of human rights,”⁸—a statement that might have been made, and has been, by an orator in the United Nations. But by the time he reached his Inaugural Address he was speaking of his commitment to human rights as “absolute.”

The opposition to the war in Vietnam did more than implicitly to disavow any generic responsibility by the United States to resist totalitarian aggression in such terms as had been advanced by President Kennedy. So bitter was the opposition to the war that it was transmuted in some quarters into a tacit disavowal of the *modus operandi* of American culture, recalling Henry Clay’s arguments against U.S. moral effrontery. The process began by

⁶ Moynihan, *op. cit.*

⁷ Drew, *op. cit.*

⁸ Jimmy Carter, Address to the Foreign Policy Association, New York, June 23, 1976.

stressing the imperfections of our ally Ngo Dinh Diem; went on to the immorality of our military procedures (napalm, bombing); and ended by concluding that the United States was so tainted, that there was nothing really to say about the superiority of our own society over that against which we had set out to defend the South Vietnamese.⁹

The effect of this self-denigration must be supposed to have had a great impact on the perception of the People's Republic of China. Barbara Tuchman, for instance, came back from China to write a paean on Mao Zedong, conceding only perfunctorily that, to be sure, there were certain "negative aspects," which, however, "fade in relative importance" alongside the accomplishments of the regime.¹⁰ John Kenneth Galbraith managed an entire book about the new China in which he could find to criticize only the excessive use of tobacco, though, to be sure, he made it clear that Maoism wouldn't work over here.¹¹ Others—for example, James Reston, Seymour Topping and Ross Terrill—wrote in a similar vein.¹² One must conclude that the hectic enthusiasm for a society that observed not a single provision of the U.S. Bill of Rights must have reflected the low opinion of the United States, its paraphernalia of rights notwithstanding, that prevailed among the most intense critics of the Vietnam War.

In brief: the retreat from Vietnam was not merely a disavowal of Wilsonianism as a foreign policy, but a disavowal of Wilsonianism as metaphor. Who is to say that the society that grants such liberties as we grant, and is nevertheless so rotten, is necessarily to be preferred over such a society as Ho Chi Minh and Mao Zedong created, without human rights, to be sure, but otherwise so wholesome? Surely utopia lies somewhere beyond the rights of Coca Cola to operate—or even of the Bill of Rights to guarantee individual inviolability in the face of social *force majeure*? Although the intellectual community is retreating from its position on Mao Zedong ever so slowly, indeed one might say *pari passu* with the retreat of the present rulers of China from idolization of Mao, it is doing so. The events in Cambodia and the phenomenon of the boat people have likewise injured the perception of North Vietnam as a kind of godfatherly presence in Indochina. The prominence given to Carter's position on human rights was a reaction to the

⁹ There is a vast body of literature to sustain this statement. A heavy concentration of it may be found in *Authors Take Sides on Vietnam*, Cecil Woolf and John Bagguley, eds., New York: Simon and Shuster, 1967. See especially the entry by Herbert Read.

¹⁰ *The New York Times*, September 4, 1972.

¹¹ John Kenneth Galbraith, *A China Passage*, New York: Houghton Mifflin Co., 1973.

¹² James Reston, *The New York Times*, July 8, 1971; Seymour Topping, *The New York Times*, June 25, 1971; Ross Terrill, "The 800,000,000," *The Atlantic*, November 1971.

radical ideological egalitarianism brought on by the Vietnam War—the criticism whose base was, in effect, “Who says we-all are better off than them-all?”

During these years (1969–76) our foreign policy was given over to the balance-of-power politics of Nixon, Kissinger and Ford. Critics of the war became hard investigators of executive military and paramilitary procedures. Of all things, the CIA under Kennedy (leave aside the tangentially relevant question whether at his instructions) apparently expressed a velleity (it cannot have been more than that) to assassinate Cuba’s Fidel Castro; failing which, to make his beard fall off; failing which, to contrive to give him laughing gas or whatever, that would activate in the middle of one of his speeches (one wonders, what would be the resulting difference?). The investigators learned that the U.S. government had intervened, however indirectly, to help those in Chile who resisted President Salvador Allende. And, of course, we continued our alliances with random dictators, in South Korea, in the Philippines, in Iran and Pakistan; all over. President Carter, joining the critics even as he plunged headlong into his crusade for human rights, summed it all up at Notre Dame a few months into his presidency by saying that “our inordinate fear of communism” had driven us (the President at this point was referring to preceding administrations) “to embrace any dictator who joined us in our fear.”

The political Right, meanwhile, staggered from a succession of shocks absorbable only because their longtime attachment to Richard Nixon appeased their strategic misgivings (how could *he* betray the cause?). The first of these was the triumphant opening to Beijing. Whatever its usefulness as strategy, a public that had been brought up to believe that Mao Zedong combined the vices of the theoretician Lenin and the executioner Stalin saw their champion on television toasting the health of Mao in the Great Hall of the People and returning to Washington to give personal testimony to “the total belief” of the Chinese leaders in “their system of government.” A few months later Nixon was off to Moscow where he participated openly, indeed effusively, in the apparent *Gemütlichkeit*, with leaders who were simultaneously provisioning the North Vietnamese who were continuing their workaday slaughter of American soldiers in Vietnam.

Then, in the summer of 1975, Solzhenitsyn came to Washington—and President Gerald Ford, on the advice of Henry Kissin-

ger, declined to receive him.¹³ The impurity of that gesture resonated in the consciousness of those who felt that morality had at least a symbolic role to play in foreign policy.

Two events give historic importance to the second of the three debates between President Gerald Ford and Candidate Jimmy Carter. The subject was foreign policy, and the Carter entourage were anxious that their candidate not give the impression of being too soft to cope with the Soviet Union, too good-natured, too manipulable. It is reported that Zbigniew Brzezinski advised the candidate to revise his position on the Helsinki Accords, which he had theretofore merely criticized as giving the Soviet Union legal standing in Eastern Europe. Why not go soft on the treaty, which was popular in Europe and in much of the United States, and bring up the Soviet Union's failure to live up to its obligations under Basket Three? "According to a number of witnesses, it was in San Francisco that Carter first heard of Basket Three—a term that in the course of the debate he dropped on what must have been a puzzled nation, as if he had been familiar with it for some time."¹⁴ On the same program in which Candidate Carter showed a deft familiarity with an outstanding, if already forlorn, mechanism designed to protect certain rights of citizens living under Soviet domination, the President of the United States announced that Eastern Europe was free of "Soviet domination." The questioner, Max Frankel of *The New York Times*, could no more believe his ears than the millions of listeners, and thought it a slip of the tongue, asking the question one more time: "I'm sorry, could I just follow—did I understand you to say, sir, that the Russians are not using Eastern Europe as their own sphere of influence in occupying most of the countries there and making sure with their troops that it is a communist zone?" President Ford answered emphatically, "I don't believe, Mr. Frankel . . . that the Poles consider themselves dominated by the Soviet Union."¹⁵

¹³ Kissinger acknowledges the mistake (personal conversation).

¹⁴ Drew, *op. cit.*

¹⁵ One viewer (it was I) expressed the general sense of disillusion: "There is a television series running that features someone called a Bionic Man. He is reconstructed from an airplane wreck, or something of the sort, and after umpteen operations by ambitious doctors, runs now faster than a gazelle, lifts weights heavier than a crane could lift, sees further than a telescope—a miracle of scientific reconstruction. It is as if, somewhere along the way, the Bionic Man, sitting by the fireside, discussing poetry with his staff, suddenly reached down, picked up the cocker spaniel, and ate it. "Curses!" the scientists say. "We forgot to program him not to eat dogs!" (Syndicated column, "Mr. Ford's Polish Joke," October 14, 1976.)

In a single broadcast, Jimmy Carter had shown himself sensitive to human rights and to Soviet infidelity to a treaty commitment, while his opponent gave the impression that he was not even aware that a whole people were being routinely deprived of their rights. It is a subjective judgment that Gerald Ford's gaffe, alongside Carter's thrust, affected the outcome of the election. In any event, Carter did win and human rights, as U.S. policy, were back in the saddle, though reconciliations that were to prove impossible lay ahead.

In short, Realpolitik crowded out human rights during the Kissinger years, but the momentum of the criticism of the Vietnam War drove critics to superordinate the right of the sovereign nation (e.g., Chile, Cuba) over any responsibility by the United States to frustrate totalitarianization. Jimmy Carter detected, in his random emphasis on human rights, a popular political response that issued from (a) conservatives affronted by the collapse of the social face of diplomatic anti-communism, and (b) liberals who felt that the denigration of human rights in the tidal wave of anti-Americanism required reconsideration.

IV

Another reason for Executive assertiveness in the matter of human rights was the mounting activity of Congress, motivated once again by the momentum that had been generated against Executive unaccountability during the Vietnam War. Inevitably, a branch of government losing power to other branches of government attempts to redress the balance. The lesion of power to Congress during 1969–76, expressed in such legislation as the Cooper-Church Amendment and the War Powers Act (measures designed to limit the power of the Executive to take the country into protracted military engagements like Vietnam), had the effect on the Executive that daily calisthenics by a contender would have on a prospective competitor. Professor Schlesinger quotes Deputy Secretary of State Robert Ingersoll, warning Kissinger in 1974, "If the Department did not place itself ahead of the curve on this issue [human rights], Congress would take the matter out of the Department's hands."¹⁶

Indeed Congress had been busy. A profusion of human rights legislation began with the passage of the Amendment to the Foreign Assistance Act of 1973,¹⁷ multiplying enormously the scattered bits of law enacted previously.

¹⁶ Schlesinger, *op. cit.*

¹⁷ For convenience, I shall refer to "U.S. human rights legislation" without singling out the relevant act. The acts are in several categories: (1) Economic Assistance—Section 116 of the

The showcase legislation is the amendment passed in 1976 to the Foreign Assistance Act, and for this reason I quote extensively from the language of the Act, to give an indication of the temper of Congress before President Carter was inaugurated.

Section 502B provides flatly that: "The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations [note the obvious effort by Congress to suggest that it is about to do something in no sense different from what every member of the United Nations is implicitly bound to do] and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries." (The operative de-energizer of that sentence is the phrase "a principal goal." There cannot be "a" principal goal. The word principal denotes primacy. Since in foreign policy there can only be the principal goal of securing the safety of the state, other goals are by logical requirement secondary, or even tertiary.)

Foreign Assistance Act of 1961, as amended, (FAA) (22 U.S.C. 2151n) (1975); development assistance—Sections 101 and 102 of the FAA (22 U.S.C. 2151) (1961) and (2151-1) (1978); agricultural assistance—Section 112 of the Agricultural Trade Development and Assistance Act of 1954 as amended—(ATDA) (7 U.S.C. 1711) (1977); International Financial Institutions (the International Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Inter-American Development Bank, African Development Fund, Asian Development Bank)—Title VII of PL 95-118 (22 U.S.C. 262g) (1977) and (262c note) (1977); Overseas Private Investment Corporation (OPIC)—Sections 239 (1) of the FAA (22 U.S.C. 2199) (1969); Section 240 A of the FAA (22 U.S.C. 2200a) (1969); Export—Import Bank—Section 2 (b) (1) (B) of the Export—Import Bank Act, as amended, (12 U.S.C. 635 (b) (1) (B)) (1977); Section 2 (b) (8) as amended (12 U.S.C. 635 (b) (8)) (1978); Section 402 of PL 93-618 (19 U.S.C. 2432) (1975) (the Jackson-Vanik Amendment); Security Assistance—Section 502B of the FAA (22 U.S.C. 2304) (1974); Section 543 (3) of the FAA (22 U.S.C. 2347b) (1976); Country-Specific Restrictions—Section 4 (m) of the Export Administration Act of 1969 as amended, (50 U.S.C. App. 2403) (1969); Section 5 of PL 95-435, 1978 Amendments to the Bretton Woods Agreements Act, (22 U.S.C. 2151 note); Section 602 of PL 95-424, International Development and Food Assistance Act of 1978 (22 U.S.C. 2151 note) (1978); Section 610 of PL 95-426, the Foreign Relations Authorization Act, Fiscal Year 1979, (22 U.S.C. 2151 note); Section 406 of PL 94-329, International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2370 note) (1976); Section 35 of PL 93-189, Foreign Assistance Act of 1973 (22 U.S.C. 2151 note); Section 620B of the FAA (22 U.S.C. 2372) (1977). Anti-Discrimination Provisions—Section 666 of the FAA (22 U.S.C. 2426) (1975); Section 505 (g) of the FAA (22 U.S.C. 2314 (g)) (1976); Section 5 of the Arms Export Control Act as amended (22 U.S.C. 2755) (1976); Section 5 of the Arms Export Control Act as amended (22 U.S.C. 2755) (1976); Section 121 of the Foreign Relations Authorization Act for Fiscal Year 1977 (22 U.S.C. 2661a) (1976); Section 113 of the FAA (22 U.S.C. 2151k) (1973); Miscellaneous—Section 624 (f) of the FAA (22 U.S.C. 2384 (f)) (1976); Section 408 of PL 94-329, International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2291 note) (1976); Section 32 of PL 93-189, Foreign Assistance Act of 1973 (22 U.S.C. 2151 note) (1973).

With respect to security assistance, the President of the United States is, by Section 502B, “directed to formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States, through such programs with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in this section or otherwise.” Security assistance is to go forward only as restricted by this mandate, and crime control and detection equipment cannot be exported, nor can security assistance to the police or any military education and training assistance be provided, to a country “which engages in a consistent pattern of gross violations of internationally recognized human rights”—unless (you guessed it)—the President “certifies in writing that extraordinary circumstances exist.”

Ensuing provisions require the Secretary of State to furnish Congress with a report on U.S. assistance to any country, giving details of that country’s behavior in respect of human rights. Congress may then, if it disagrees with the Executive, by joint resolution suspend further security assistance to the country concerned. The Act also establishes an Assistant Secretary for Human Rights and Humanitarian Affairs. The incumbent, Patricia Derian, has a staff of ten which helps to prepare the annual reports for Congress.

Now all this legislation is at once a comprehensive assertion of U.S. interest in human rights, and an invitation to philosophical and diplomatic chaos. It reflects most of the weaknesses of our public policy in its practical deviousness and in the selective indignation it encourages. Congress has ruled that no economic assistance may be extended to any country engaged in gross violations of “internationally recognized” human rights—“unless such assistance will directly benefit the needy people in such country.” It is difficult to imagine a situation in which economic assistance, particularly in kind, would not in fact help needy people, or fail so to represent itself. The act goes on to require of the State Department a yearly report, one that would take into account the probings of relevant international organizations on the status of human rights within all countries receiving assistance.

The legislation is interesting in that there isn’t (to my knowledge) any record of any congressional review of assistance given to a delinquent country which actually led to the official congressional conclusion that such assistance was illegal on the grounds

that (a) the country was a gross violator of human rights, while (b) U.S. aid did not in fact help needy people. The impact of the yearly reports is, then—assuming the President elects not to act on them—purely psychological: to hold in obloquy those nations that are gross violators of human rights. To let them, so to speak, twist slowly, slowly in the wind of moral displeasure, even if their stomachs are full. All this figures substantially in the conclusions to which I have been drawn, below. A second, and perverse, feature of the annual report is that it tends to highlight the villainies of countries to which we routinely give aid. Since we do not give aid to the communist countries they are officially exempted from the annual pathological examinations—an interesting means of achieving immunity.

Congress, moreover, directs U.S. representatives in the international financial institutions to “seek to channel assistance” toward countries other than those that are gross violators of human rights; but—again—unless such credits serve “basic human needs.”

The Overseas Private Investment Corporation is not supposed to insure (against confiscation) U.S. investments in any country that grossly violates human rights—again, with the standard exception, that the needs of the needy shall be the primary consideration. With respect to the Export-Import Bank, the President is required to determine that favorable consideration by U.S. officials to applicants be conditioned on advancing U.S. policy “in such areas as international terrorism, nuclear proliferation, environmental protection and human rights.” The President hasn’t existed who couldn’t get around that one.

On the other hand, we saw in the legislative season before Carter’s inauguration the beginning of a so-called country-specific procedure. South Africa—by name—may not receive credits except under extraordinary circumstances; and purchasers, in order to qualify for economic advantage, must prove, in South Africa, that fair employment principles are practiced. In addition to South Africa, action has been taken (whether by the Executive or by “country-specific” restrictions set by Congress itself) against Uganda, Vietnam, Cambodia, Cuba, Chile, Argentina and Brazil.

The Jackson-Vanik Amendment—denying most-favored-nation treatment to countries that deny their citizens the right or opportunity to emigrate—is the most celebrated of the congressional human rights enactments. Although clearly aimed at one country (the Soviet Union) for the benefit of one class of aspirant-emigrés (Jews), the language is generically drawn. The amendment, by the way, preserves the usual waiver granted to the

President under specified circumstances. The Soviet Union objected violently to its passage, cancelled a trade negotiation and, after the bill's passage, retaliated by reducing the number of Jews to whom it issued exit visas. Henry Kissinger and Richard Nixon have on more than one occasion cited the Jackson-Vanik Amendment and its consequences as clear evidence that "quiet diplomacy" works better than legislation when the objective is an actual change in policy rather than moral rodomontade.¹⁸

In brief: the encyclopaedic intervention by Congress into the international human rights market has by practical necessity needed to provide for executive waiver. But the residual effect is to encourage specific pressures against (a) countries of less than critical strategic importance; and (b) countries without U.S. constituencies sufficient to exert effective influence on the U.S. government. The resulting mix is ineffective in respect of the enhancement of human rights, and unedifying in respect of a consistent regard for human rights.

v

Although President Carter, as we have seen, had been generally bland on the subject of human rights, he was a tiger by the time of his inaugural address: "Our commitment to human rights must be absolute." The real problem, of course, is where to fix our commitment to human rights on this side of absoluteness.¹⁹ President Carter's inaugural address presaged the ensuing chaos. For a while there was great excitement. However short-lived, it was breathcatching. In a few days Jimmy Carter actually answered a letter addressed to him by Andrei Sakharov. A few weeks after that he contrived to meet and shake hands (no photographs) with the valiant Vladimir Bukovsky, among the most illustrious of Soviet dissidents. The Soviet Union exploded. Within a year, the United States ambassador to the United Nations Human Rights Commission in Geneva was being privately instructed by President Carter's Secretary of State *under no circumstances* even to mention the name of Yuri Orlov, who had just been packed off to jail for the crime of monitoring Soviet non-compliance with the provisions of the Helsinki Accords' Basket Three, which Candidate

¹⁸ Henry Kissinger, *White House Years*, Boston: Little, Brown and Co., 1979, pp. 1271–72. Richard Nixon, *RN: The Memoirs of Richard Nixon*, New York: Grosset and Dunlap, 1978, p. 876.

¹⁹ The President is plagued by verbal imprecision. It does not really mean anything at all to say that one's commitment to human rights "must be absolute." Since it *cannot* be absolute (an absolute commitment would require us to declare war against China and the Soviet Union, just to begin with), then it has to be something less than absolute.

Carter had castigated the Soviet Union for failure to live up to. Jimmy Carter was crestfallen, the great Human Rights Band laid down its instruments, and everyone has been struggling ever since plausibly to give the theme of our policy on human rights.

An attempt to say what is operative U.S. policy in respect of human rights requires a survey of the behavior of the principal Executive of U.S. foreign policy. President Carter's position is best attempted not by reasoning a priori from his general commitment ("absolute") to human rights, but a posteriori from his actions. Almost immediately it transpired that the State Department bureaucracy was apprehensive about the impact of Carter's human rights declarations on concrete questions being negotiated or prospectively in negotiation.²⁰ The military, in pursuit of its own concerns for U.S. security, was similarly troubled. The State Department and the disarmament folk feared that an antagonized Soviet Union would behave more militantly at the bargaining table. The military was quite unwilling to trade Subic Bay in the Philippines for a moral boycott of President Marcos. An opportunity arose for President Carter to begin to make critical distinctions. Fogbound, he did not do so.

In a speech delivered March 25, 1964 in the Senate, Senator William Fulbright, at the time Chairman of the Senate Foreign Relations Committee, made a useful distinction, even if he went too far with it: "Insofar as a nation is content to practice its doctrines within its own frontiers, that nation, however repugnant its ideology, is one with which we have no proper quarrel." That distinction is geopolitically appealing. Thus in 1965, to guard against what President Johnson perceived as the threat of a communization of the Dominican Republic (it is immaterial whether the threat was real or fancied), we landed armed forces in the Dominican Republic. The western half of Hispaniola had been for eight years under the domination of a murderous Haitian doctor who routinely practiced all the conventional barbarities on his people, and not a few unconventional ones. It did not occur to us to send the marines (as once we had done during this century, though our motives were eclectic) to put down Papa Doc—tacit recognition of the intuitive cogency of Fulbright's doctrine. At its most menacing, Franco's Spain threatened nothing more than Gibraltar, which was in any event a nostalgic fantasy in irredentism, and excusable, if you like, under the various anti-colonialist covenants, save for the disconcerting fact that inhabitants of

²⁰ See Drew, *op. cit.*

Gibraltar preferred to remain a crown colony. As it happened, Franco satisfied himself to lay economic siege to Gibraltar, and however persistent the criticism of his regime from its inception at the end of the civil war, no U.S. administration—from Roosevelt's forward—ever proposed collective action against Spain. By contrast, we very nearly went to war to protest the communization of Cuba, less because Castro's doctrines were inherently repugnant than because a Soviet salient deep within the womb of territory putatively protected by the Monroe Doctrine was deemed intolerable.

But President Carter not only failed to remark Fulbright's distinction, he agitated to blur it. "I have never had an inclination to single out the Soviet Union as the only place where human rights are being abridged," he said at his press conference of February 23, 1977. And again on March 24 at a press conference, "I've tried to make sure that the world knows that we're not singling out the Soviet Union for abuse or criticism." By June, he was sounding defensive.²¹ Not only had the phrase become formulaic ("We've not singled out the Soviet Union for criticism"), he went on to say exactly the opposite of what all his rhetoric required: "and I've never tried to inject myself into the internal affairs of the Soviet Union. I've never made the first comment that personally criticized General Secretary Brezhnev."

Human rights everywhere was the President's Theoretical Objective. And so it remained, even if there were to be no more letters to Sakharovs, or visits with Bukovskys. He clung tenaciously to his theoretical position: "I've worked day and night to make sure that a concern for human rights is woven through everything our Government does, both at home and abroad," he said at a press conference at the end of his first year in office (December 15, 1977); and one year later, commemorating the 30th anniversary of the adoption of the Universal Declaration of Human Rights (December 6, 1978), he pronounced, "As long as I am President, the Government of the United States will continue, throughout the world, to enhance human rights. No force on Earth can separate us from that commitment."

It became clear, as time went on, that specific as distinguished from omnidirectional, censorious presidential declarations would become scarce, indeed might end altogether, leaving to the State Department the clerical duties Congress had legislated before Carter came to office. In due course, Chile, Argentina, Brazil and

²¹ Press conference, June 13, 1977.

Paraguay were singled out for criticism, based on the annual reports by the State Department required in the 1976 law: economic credits and military assistance, in varying forms, were withheld. In other countries, notably South Korea and the Philippines, the President invoked the authority given him by Congress to subordinate the concern for human rights to a concern for security interests, and aid continued uninterrupted.

But the President, although he summoned the necessary discipline to restrain himself from criticism, found it difficult to avoid diplomatic hyperbole. Arriving in Warsaw on December 30, 1977, he greeted the communist proconsul Gierek with the astonishing news that Poland was a “partner in a common effort against war and deprivation.” He recalled that at the end of World War I Herbert Hoover (“a great American”) “came to Poland to help you ease the suffering of an independent Poland. Circumstances were different and the struggle was long, but Hoover said, and I quote, ‘If history teaches us anything, it is that from the unquenchable vitality of the Polish race, Poland will rise again from these ashes.’ And,” said Carter—jubilantly?—“his prediction came true.” These words were perfectly congruent with the picture of Poland described during the famous debate by Gerald Ford. They would not have needed changing if it had happened that during the week before Carter’s touchdown in Warsaw, Poland had suddenly wrested its independence from the Soviet Union. The press did not have long to wait. Later in the day:

Q. During the Presidential debates, in a celebrated exchange, President Ford claimed that Eastern Europe was not under Soviet domination. And you replied, ‘Tell it to the Poles.’ Well, now that you’re here, is it your view that this domination will continue almost into perpetuity, or do you see a day when Poland may be actually free?

The President replied that “our nation is committed to the proposition that all countries would be autonomous . . . and . . . free of unwanted interference and entanglements with other nations I think . . . it’s a deep commitment of the vast majority of the Polish people, a desire and a commitment not to be dominated.”²²

Q. You don’t deny that they are dominated here?

A. I think I’ve commented all I wish on that subject.

Four months later, on April 12, 1978, President Carter wel-

²² Press conference, December 30, 1977.

comed President Ceausescu of Romania to the White House. At the ceremony, Carter announced that "the people of the United States are honored by having as our guest a great leader of a great country." And he went on to say, "Our goals are also the same, to have a just system of economics and politics, to let the people of the world share in growth, in peace, in personal freedom." In Civil Liberties, Freedom House gives a rating of six to Romania (seven is the lowest rating). In its Ranking of Nations by Political Rights, it gives Romania a seven.

In greeting Yugoslav President Tito (March 7, 1978), Carter said: "Perhaps as much as any other person, he exemplifies in Yugoslavia the eagerness for freedom, independence, and liberty that exists throughout Eastern Europe and indeed throughout the world." Freedom House on Yugoslavia: Civil Liberties, five; Political Rights, six.

It was not until April 21, 1978 that Carter got around to criticizing Cambodia. When he did, he called it the world's "worst" violator of human rights. "America," he said, "cannot avoid the responsibility to speak out in condemnation of the Cambodian Government, the worst violator of human rights in the world today." America, through its President, precisely *had* avoided the responsibility to speak out in condemnation of the Cambodian government about whose practices as much was known by the end of 1975 as by the spring of 1978.²³

In brief: by his own example as President, and by the letdown that followed his exalted rhetoric on the subject, Mr. Carter, with some help from the 93rd Congress, has reduced the claims of human rights in U.S. foreign policy to an almost unparalleled state of confusion.

VI

My proposal is to separate two questions. The first is: How do human rights fare in a given country? The second: What should the United States do about it? It is the commingling of the two that has brought forth existing confusions and distortions. The question whether we collaborate with the Soviet Union in order to avoid a world war is unrelated to any commitment a civilized nation ought to feel to human rights. Although the avoidance of a world war and the safety of the American state are primary objectives, the ethical imperative requires us as a nation, journey-

²³ Richard C. Holbrooke, Assistant Secretary of State for East Asian and Pacific Affairs, denounced Cambodia on September 5, 1977.

ing through history, regularly to remark the brutality of the Soviet system—even if we make no commitment, thereby, to do anything concrete to mitigate those conditions.

On the whole we are better off stating, at all those international conferences, what it is we believe that sovereign states owe to their citizens in the way of recognizing individual rights—and let it go at that—than to collaborate in rituals of efficacy which we know will be without operative meaning. By the same token a constant encephalophonic reading, uninfluenced by distractions of diplomatic concern, of the condition of human rights in a given country, to the extent that this can be accomplished (the difficulty in ascertaining these conditions obviously varies) gives a gyroscopic steadiness of judgment which is the enemy of hypocrisy, dissimulation, and such other inventions as have disfigured the idealism of the human rights movement.

Congress should repeal existing legislation on the question of human rights (although, because of the loopholes, it would not really need to do so in order to promulgate the Commission described below). It should then establish a Commission on Human Rights composed of a Chairman and four members, with provisions for a staff of a dozen persons (approximately the size of the staff of the Assistant Secretary of State for Human Rights and Humanitarian Affairs). For symbolic reasons primarily, but also for practical reasons, the Commission should not be affiliated with the Department of State. It might plausibly be affiliated with the judiciary, or perhaps even with the Department of Justice. What matters most is that its mandate should be distinctive, unrelated to policymaking, whether by the executive or the legislative branches of government.

The Commissioners should be appointed by the President and confirmed by the Senate. The Act should recommend to the President that the Commissioners be selected from a roster of candidates nominated by existing agencies devoted to the internationalization of human rights including—but not restricted to—the International Commission of Jurists, Freedom House, Amnesty International, the Anti-Defamation League, the several religious committees and the Red Cross.

The mandate would most severely restrict the Commission's public role to the reporting of factual conditions: never to the recommendation of policy. Policy would continue to issue from Congress and the Executive. The Commission would report publicly, once a year, to the President and to Congress—in the nature of the event, to the world—on the condition of human freedom in

every country, using the Universal Declaration of the United Nations as the paradigm. For administrative purposes, much as Freedom House does in its annual report, these freedoms might be grouped together, e.g., in such a way as to distinguish usefully between the right (Number 5) not to be tortured, and the right (Number 24) to "rest and leisure."

The Commission would be available to the Executive, or to Congress, for such questioning as the government chose to direct to it, e.g., on any special knowledge acquired about human rights in any given country; movements within that country to improve conditions; whatever. However, the tradition should vigorously be nurtured that no policy of the Executive, or of Congress, would flow from any initiative of the Commission, even if that policy resulted from legislative or executive reaction to data collected by the Commission.

The Chairman of the Commission, or any other Commissioner designated by him, would represent the United States government in several relevant posts within the United Nations, occupying there the chair in the Third Committee of the General Assembly. The Commission's restrictions would carry over: i.e., the representative would make the case for human rights, answer questions about human rights in the United States, and describe their findings, insofar as they were relevant. He would leave to the representative of the regular U.S. delegation the exercise of the vote (in favor, against, or abstaining) on any concrete proposal concerning, e.g., the treatment of terrorists, hijackers and so forth. This division of duties would not be so difficult as the reader might suppose. Most of the argumentation before the Third Committee is over trivial points, forgotten the day after they engage the delegates' attentions; and in any event, recommendations of the committees are subject to acceptance or rejection by the General Assembly, where the permanent representative of the United States votes on instructions from the Department of State.

By the same token the Commissioner (or his representative) would sit at the Geneva sessions of the standing United Nations Commission on Human Rights. Once again, his role would be to report on the condition of human rights in any country under discussion; once again, he would decline to vote on recommendations that called for policy decisions. A vote condemning, let us say, racial discrimination, or a condemnation of bondage, or of sex discrimination, or religious persecution is not a vote on U.S. policy toward those countries guilty of such misconduct. The Commissioners would, clearly, be permitted to express themselves

in favor of the human rights the very existence of the committee ostensibly seeks to augment.

The Commission would have the right of access to a fixed number of broadcast hours per country per year, for the purpose of factual reporting of its findings. These reports—again, without policy recommendations—would go out over the Voice of America, and affiliated broadcasters in Europe, Asia, Africa and Latin America. Such reports, though unaccompanied by policy recommendations, would not need to go out as dry-as-dust statistics. They could, indeed should, engage the dramatic attention of the listener by, for instance, permitting refugees to tell their own stories. An appropriate term of office for the Commissioners, and for the Chairman, might be seven years.

VII

It should be unnecessary to explain that the existence of a United States Commission on Human Rights could not constitutionally deprive either Congress or the Executive of powers that inhere in those institutions. No one has the power to tell the President he should not make a fool of himself on landing in Warsaw—he would still be free to do so. But the silent, yet omnipresent, countenance of the Commission on Human Rights, with its lapidary findings on the condition of human rights in Poland, would make it less likely that the President, in pursuit of diplomacy, would traduce idealism. Congress can vote to deny arms or soybeans or “Saturday Night Fever” to any country Congress chooses to punish or victimize or bully or wheedle; but the existence of the Commission, with its findings, would provide certain coordinates that might guard against such caprice as nowadays tends to disfigure country-specific legislation.

And—viewed from the other end—for the wretched of the earth, in their prisons, with or without walls, in the torture chambers, in the loneliness they feel as they weigh the distortions of diplomacy, there would be something like: a constant. A Commission mute while the United States collaborates with Stalin in pursuit of Hitler, or Mao in pursuit of Brezhnev, but resolutely unwilling to falsify the record of Josef Stalin or Mao Zedong in their treatment of their own people.

“The great enemy of clear language is insincerity,” Orwell wrote, in the same essay in which he lamented that “in our time, political speech and writing are largely the defense of the indefen-

sible.”²⁴ To say the truth—says Solzhenitsyn—is the single most important thing of all. Politicians cannot always say the truth and pursue policies organic to their profession. But the saying of the truth about human rights, as distinguished from the superordination of human rights over all other concerns, is not incompatible with the mechanics of foreign policy.

Finally the question is asked: Would such a Commission, with its yearly findings, its reports to the nation, its testimony before Congress, its international broadcast of its findings—would it enhance human rights? It is quite impossible to assert that it would do so—or that it would not do so. With the best will in the world, Wilsonianism succeeded in making the world most awfully unsafe for democracy. But, as mentioned earlier, there is an encouraging survival, through it all, of the idea of the inviolable individual, and that idea needs watering, not only by the practice of human rights at home, but by the recognition of their neglect abroad. It is a waste of time to argue the inefficacy of telling the truth, the telling of which is useful for its own sake.

²⁴ George Orwell, “Politics and the English Language,” in *A Collection of Essays*, New York: Harcourt Brace, Jovanovich, Inc., 1953.