

## Review Essay

# Interrogating Torture: Human Rights, the War on Terror, and the Fate of America

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Nils Anderson, Daniel Iagolnitzer, and Diana G. Collier (eds.), *International Justice and Impunity: The Case of the United States* (Atlanta, GA: Clarity Press, 2008, \$21.95). Pp. 293. ISBN 0 932863 57 4.

James P. Pfiffner, *Power Play: The Bush Presidency and the Constitution* (Washington, DC: Brookings Institution Press, 2008, \$36.95). Pp. 245. ISBN 978 81 57 7044 2.

Christopher H. Pyle, *Getting Away with Torture: Secret Government, War Crimes, and the Rule of Law* (Dulles, VA: Potomac Books, 2009, \$29.95). Pp. 266. ISBN 978 1 59797 387 8.

William F. Schulz (ed.), *The Future of Human Rights: U.S. Policy for a New Era* (Philadelphia: University of Pennsylvania Press, 2008, \$26.50). Pp. 257. ISBN 978 0 8122 4111 2).

In considering the legacy of the terrorist attacks of 11 September 2001 for the United States, two facts stand out: first, to date there have been no subsequent terrorist attacks on US soil; second, there is absolutely no agreement as to why. Some assert that it has been the result of concrete US policies, while others claim it is more a matter of luck and that US actions have been irrelevant or counter-productive. The question is in itself unanswerable. Methodologically, it is all notoriously difficult to prove a negative – that is, to explain why something did not happen. Even to pose the question is to posit that a given event ought to have happened, which in turn presupposes a theory of history in which that event (or one very much like it) was teleologically necessary. That assumption in turn robs history of its contingent quality. These problems are exacerbated in the case of terrorism, where, for obvious reasons, the principle agents on all sides have every incentive to secrecy, making reliable evidence exceedingly hard to come by. The debate over why the US was not attacked again after 9/11 is therefore unlikely ever to be fully resolved.

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As a symptom of the American present, though, the debate is highly revealing. The architects and advocates of the Bush administration's "war on terror" have been vocal in defending its efficacy, while critics (largely, but not exclusively, from the Left) have argued that the war on terror has in fact degraded American security, not least in Iraq and Afghanistan, and that the absence of terrorist attacks on the American homeland has been either fortuitous or a tactical decision by al Qaeda unconnected to the war on terror itself. The two sides in this debate interpret the same fact – the lack of a terrorist attack on US soil – in radically different ways, in large part because they start with divergent views about the nature of international politics, the rule of law, and the character of human rights.

Shortly before leaving office, then Vice President Dick Cheney said,

I thought the legal opinions [concerning interrogation techniques] that were rendered were sound. I thought the techniques were reasonable in terms of what [the CIA was] asking to be able to do. And I think it produced the desired result. I think it's directly responsible for the fact that we've been able to avoid or defeat further attacks against the homeland for 7½ years.<sup>1</sup>

Since leaving office, Cheney has remained a vocal defender of the war on terror.<sup>2</sup> Similarly, John Yoo, in many ways the architect of the administration's legal justifications for the war on terror, has argued,

the rules of war provide nations with their most forceful tools to defend their people from attack. We are faced with the difficult task of adapting those rules to the unprecedented appearance on the world stage of an enemy that, while not a nation, can inflict violence at a level once only in the hands of nations. To make wise policy choices, it is essential to understand the difference between, and the appropriate uses of, war as opposed to criminal prosecution.<sup>3</sup>

The war on terror is, according to Yoo, quite literally a war, and therefore cannot be fought according to law-enforcement rules. At the same time, because al Qaeda and its affiliates are not nation-states, the laws of war that were crafted mainly with inter-state warfare in mind likewise do not apply. A new kind of war requires a new interpretation of the laws of war. In this context the seemingly "draconian" measures pursued by the administration were both necessary and successful. By extension, they were also legal since any interpretation of the laws of war that precluded the necessary use of force for national defense would, at best, be a logical nullity, the point of international law being to make people safer. At worst, it would amount to what conservative critics have called "lawfare," the use of legal means for offensive purposes by America's enemies.<sup>4</sup>

<sup>1</sup> Jon Ward, "Exclusive: Cheney Defends War on Terror's Morality," *Washington Times*, 18 Dec. 2008, available at <http://www.washingtontimes.com/news/2008/dec/18/cheney-defends-morality-of-war-on-terror/?page=2>, accessed 6 Aug. 2009.

<sup>2</sup> See e.g. "Cheney Says Results Back US Interrogation Tactics," *Boston Globe*, 26 Aug. 2009, A.6.

<sup>3</sup> John Yoo, *War by Other Means: An Insider's Account of the War on Terror* (New York: Atlantic Monthly Press, 2006), 3.

<sup>4</sup> David B. Rivkin Jr. and Lee A. Casey, "Lawfare," *Wall Street Journal*, 23 Feb. 2008; and Charles J. Dunlap Jr., "Lawfare amid Warfare," *Washington Times*, 3 Aug. 2007. See also Dunlap, "Law and Military Interventions: Preserving Humanitarian Values in 21st-Century

Supporters outside the administration's policies have made similar arguments. Judge Richard A. Posner has contended that the US Constitution's provisions regarding war powers and defendants' rights "do not make a good match with the distinctive characteristics of modern terrorism, which defies conventional constitutional categories such as war and crime."<sup>5</sup> In response, Posner proposes that we make utilitarian calculations of the costs and benefits of various policy responses, including those outside the bounds of traditional law. Although Posner ultimately opposes the systematic legalization of torture, he does support "civil disobedience" by state officials, committing rare but necessary acts of torture. His limited defense of harsh interrogation techniques thus follows from his calculation that the harm done to the individual in question is outweighed by the benefit to the society as a whole in the form of enhanced security. For him, torture is defensible because it works.

Many of the key elements of the war on terror (warrantless wiretaps, seizure and "rendition" of terror suspects, and, above all, the enhanced interrogation of detainees for intelligence purposes) consisted of measures beyond the traditional bounds of domestic and international legality. The proponents of these measures justify them on three grounds.<sup>6</sup> First, they argue that contemporary "terrorism" is a *sui generis* phenomenon without historical precedent. As John Yoo pointed out, non-state actors now have the potential to inflict casualties on a scale previously reserved for states. In the past, nongovernmental actors wishing to inflict harm on others were limited to the relatively small-scale mayhem of assassinations or isolated bombings. Technological transformations have made it possible for terrorists to operate on a larger scale. They can easily transform civilian materials, such as fertilizer or aircraft, into improvised weapons of large-scale destruction. Potentially more dangerous still is the prospect that terrorists might acquire military weapons of mass destruction, either through state sponsors or on the black market. The likely consequences of terrorist acts using these technologies are so extreme, according to this line of reasoning, that they cannot be tolerated and must be prevented at virtually any price. Dick Cheney formulated this as a "one-percent doctrine." The former vice president argued that even a one-percent possibility of such a catastrophic attack must be treated as, in effect, a certainty, which in turn justifies the most extreme responses to thwart or disrupt such "certain" attacks.<sup>7</sup>

The second core assumption of the war on terror's defenders is that using traditional methods (the apprehension and prosecution of terrorists by law enforcement and the courts, multilateral diplomatic pressure on their state sponsors, limited and cautious use of military force) to respond to this novel threat would be

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Conflicts," Carr Center for Human Rights Policy Working Papers, Harvard University (29 Nov. 2001).

<sup>5</sup> Richard A. Posner, *Not a Suicide Pact: The Constitution in a Time of National Emergency* (New York: Oxford University Press, 2006), 18.

<sup>6</sup> For a very useful analysis of the similar arguments deployed to justify the American turn to unilateralism in foreign policy after 9/11 see James E. Cronin, "Review Essay: The United States in, or against, the World," *Government and Opposition* (forthcoming, 2010).

<sup>7</sup> Ron Suskind, *The One-Percent Doctrine: Deep Inside America's Pursuit of Its Enemies since 9/11* (New York: Simon and Schuster, 2007).

bound to fail, with dire consequences. New, more forceful, largely coercive responses were needed. Among these, the most prominent were the turn to unilateral, preemptive warfare, on the one hand, and a renewed emphasis on intelligence operations, often using unprecedented techniques, on the other. As many in the Bush administration said in the aftermath of 9/11, it was time for the “gloves to come off” (Pyle, 7, 49). And off they came: harsh interrogation techniques amounting in many instances to torture, indefinite detention of “enemy combatants” without judicial review, CIA rendition of terror suspects to third-party states where they were likely to be tortured, and warrantless surveillance of domestic communication became the pillars of the war on terror.

Third, even the architects of the war on terror were aware that most of these techniques skirted or openly violated the law as traditionally understood. So they crafted a novel legal and constitutional doctrine – the unitary executive – in order to, in effect, interpret away those elements of domestic and international law that stood in the way of these new coercive methods.<sup>8</sup> This doctrine asserts tremendous authority for the President, based on his exclusive control over the entire executive branch and because of his constitutional powers as commander-in-chief during wartime (Pfiffner, 220). On this theory, most executive measures pursuant to the war on terror were shielded from congressional oversight and judicial review. John Yoo, Jay Bybee, Alberto Gonzales and others argued that the President could interpret the law as he saw fit, particularly if the security of the nation was at stake. So-called signing statements, appended by the President to acts of Congress, articulating the executive’s interpretive reservations concerning the legislation, were only one of the more explicit forms of this (Pfiffner, 194–228). The constraints of international law and treaties were viewed with even greater skepticism. If the Constitution imbued the President with the power to, in effect, amend and interpret law (powers typically thought to reside with Congress and the judiciary), what possible claim to superiority could international law have? The sovereignty of the United States, like the authority of the President, was whole and unitary, unassailable by outside forces, and dedicated overwhelmingly to preserving – by force if necessary – America’s security and prerogatives, irrespective of any standing multilateral obligations.

The architects and chief defenders of the war on terror thus articulated a coherent and at least potentially plausible interpretation of history, power, and law. These claims need to be taken seriously. Any criticism of the war on terror that fails to do so risks missing its mark and devolving into mere moralism. Moreover, the logic of the war on terror has established the starting conditions for the Obama administration’s efforts to remake American policy.<sup>9</sup> Any effort to change course will need to grapple – analytically and politically – with the Bush legacy. Refuting its underlying logic will be a necessary precondition for success in this arena.

<sup>8</sup> David Cole, “The Torture Memos: The Case against the Lawyers,” *New York Review of Books*, 56 (8 Oct. 2009), [www.nybooks.com/articles.23114](http://www.nybooks.com/articles.23114).

<sup>9</sup> For an argument that the main features of President Bush’s foreign policy are likely to persist even under a democratic administration see Timothy Lynch and Robert Singh, *After Bush: The Case for Continuity in American Foreign Policy* (Cambridge: Cambridge University Press, 2008).

The four books under review here are among a wave of publications seeking to do just that. Unfortunately, with the exception of Pfiffner on the unitary executive, none of these books is as good as it could have been at analyzing and critiquing the core logic of the war on terror. Unlike the handful of conservative critics of the war on terror, the authors in these volumes, like most liberal and left-wing critics, see the war on terror as part of a broader pattern of error and malfeasance on the part of the Bush administration.<sup>10</sup> The issue for these authors, in other words, is not (just) the tactical inadvisability or inefficacy of certain aspects of the war on terror. Rather, they view the Bush administration as having pursued a broad-ranging set of interconnected policies that were illegal and immoral, as well as being strategically and tactically unsound. There is certainly good reason to doubt the legality of major elements of the war on terror, as both Pfiffner and Pyle demonstrate quite well. How one views the morality of these measures will depend in large part on the relative weight one accords citizenship as a moral category. And while Pyle offers a considered rebuttal of the general argument for the efficacy of torture (141–44), none of these books adequately addresses, much less refutes, the claims made as to the *sui generis* character of modern terrorism.

The four books can be broken down into three categories. First, *International Justice and Impunity* represents a radical left-wing critique that sees the issue less in terms of specific Bush administration policies than in terms of a long-term project of US imperialism. The war on terror, the use of torture, the invasion of Iraq, the doctrine of unilateralism, and so on are, on this reading, only the latest and most extreme examples of US perfidy in the international arena. For many of these authors, international law and human rights are primarily of interest as an instrument for checking America's long-standing hegemonic pretensions. Second, Pfiffner's *Power Play* and Pyle's *Getting Away with Torture* are written from the vantage point of liberal legalists, who see the problem as lying with Bush's undermining of the US Constitution and to a lesser extent international law. For Pfiffner and Pyle, the Bush administration represents not the culmination, but an aberration, of US history. Finally, *The Future of Human Rights* collects essays by human rights activists and scholars who, like the liberal legalists, see the problem as being specific to the Bush administration (rather than to the entirety of American history), but who stress more strongly the international dimensions, rather than the domestic legal ones. They lament the squandering of American soft power and argue that a more consistent, multilateral, broad-based embrace of a global human rights agenda would set the right course for US foreign policy in the coming years and undo much of the harm done by the Bush administration. In this respect, as the subtitle indicates, the authors in this volume are less concerned with dissecting the errors and crimes of the past than with articulating a viable path for the future.

The radicals are the only ones to go after the core element in the Bush administration's justification of the war on terror, in that they largely deny the novelty and seriousness of the terrorist threat to the US or to the world. Indeed, they by and

<sup>10</sup> For conservative critiques see Jack L. Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: Norton, 2007); and Francis Fukuyama, *America at the Crossroads: Democracy, Power, and the Neoconservative Legacy* (New Haven: Yale University Press, 2007).

large turn this argument on its head and assert that it is the US that is the major threat to global peace, that it is itself a terrorist state. The liberal legalists, Pfiffner more than Pyle, go after the legal underpinnings of Bush policy, arguing that it represents subversion of the Constitution, bordering on a *coup d'état*. For them, the principal threat posed by the Bush administration is to American democracy, rather than to global peace. The human rights scholars and activists (and in this context, one could add elements of Pyle's argument) lament the political and practical inefficacy of torture and other aspects of the war on terror. If the principal justification for the extralegal measures of the war on terror is that they "work," these critics argue that in fact they do not work, and therefore cannot be justified. They grant, in other words, Cheney's major premise, that torture should be evaluated in utilitarian terms, only denying his minor one, that, on these terms, torture works.

*International Justice and Impunity* is a collection of essays drawn from a conference held in France in 2005. More importantly, it is a collective polemic. With over twenty-five authors, it is necessarily difficult to generalize about the contents of the volume, but several key themes emerge. The first and most striking is the blanket assumption in virtually all of the essays that the United States is an empire, a term that is bandied about casually and, needless to say, pejoratively. Since only a handful of the essays in the volume include footnotes, it might be a bit much to expect any consideration of the substantial scholarly debates that have emerged in recent years over whether the US is or is not an empire.<sup>11</sup> Still, too many of the authors in this volume take as given that which needs to be proven.

There is also broad agreement among the authors in this volume concerning the agenda of America's empire. American "criminal aggression against other nations," Michael Parenti writes, has been universally directed against regimes that "all had one thing in common, a desire to reclaim some portion of the land, natural resources, capital, labor, and markets that have been preempted by local plutocrats and giant foreign corporations" (119). Or, as Samir Amin puts it, "the project of the ruling class of the United States: to extend their military control over the whole planet" (34). The goal of America's empire is exploitation, in a crudely Leninist or Hobsonian manner.<sup>12</sup>

Finally, and perhaps most strangely for a book that lays claim to "international justice" in its very title, many of the essays in the volume adopt an implicitly or even explicitly instrumental view of international law. This has two aspects. First, there is a tendency to blame the US for the limitations evident in the application of international law. "The United States," writes Robert Charvin, "is the main power

<sup>11</sup> For various positions see e.g. Andrew Bacevich, *American Empire: The Realities and Consequences of U.S. Diplomacy* (Cambridge, MA: Harvard University Press, 2002); Eric W. Robinson, "American Empire? Ancient Reflections on Modern American Power," *Classical World*, 99, 1 (2005), 35–50; Akira Iriye, "Beyond Imperialism: The New Internationalism," *Daedalus*, 132, 2 (2005), 108–16; Paul Schroeder, "Is the U.S. an Empire?" History News Network, 2 March 2003, available at <http://hnn.us/articles/1237.html>; and Charles S. Maier, "An American Empire? The Problems of Frontiers and Peace in Twenty-First-Century World Politics," *Harvard Magazine* (Nov./Dec. 2002), 28–31.

<sup>12</sup> For what remains the most trenchant critique of Lenin and Hobson see D. K. Fieldhouse, "Imperialism: An Historiographical Revision," *Economic History*, 14, 2 (1961), 187–209.

responsible for the deconstruction of the general international law” (155). In particular, he highlights US hostility to the United Nations and international treaties. “This practice corresponds to a will to hegemony in the framework of the accelerated process of globalization presently underway. In particular, it permits the reversal of one of the core principles of international law, the principle of the equal sovereignty of states” (155). This last remark is a particularly telling misreading of the challenges to international law, where it has been precisely the claims made on behalf of national sovereignty, whether by the United States or by developmentalist dictatorships in the Third World, that have been the biggest obstacles to the development of international law.

The second aspect of the legal instrumentalism evident in the book is more explicit. Amy Bartholomew asks, rhetorically, “do legal strategies aimed at ‘constraining’ America’s ‘global freedom of action’ have the potential to be *political* strategies that ought to worry American Empire?” For her, the answer is clearly yes. “Contesting American empire’s impunity through politically astute and inspired litigation” offers the promise, she argues, of “binding ... Gulliver with a thousand legal strings” (214–15, original emphasis). By politicizing and instrumentalizing law in this way, Bartholomew undermines the universality of law that is the key to its efficacy. Her counterargument is that it is the United States that has been undermining the universality of international law by laying claim to special status. Challenging American impunity can be done by appealing to universal legal norms, since it is the US that most egregiously violates them and thereby undermines “‘law’s empire’, that is, the post-World War II development of human rights and international law that foreshadowed ... a future order of democratic cosmopolitan law” (217). This argument would work better if it were not contradicted by Bartholomew’s claim that “international law and international humanitarian law, as well as human rights more generally, *are* strategies of ‘the weak’. What the American Empire fears, and I think rightly, is that such strategies may contribute to our capacities to become ‘the strong’” (228, added emphasis). Can one really accuse Dick Cheney of paranoia when he fears the intentions of international lawyers if at least some of them openly admit to seeking to weaken the United States? Can Bartholomew really be surprised at the hostility of the Bush administration to international law when it is explicitly mobilized as a weapon against them? Both positions eschew the old claim that international law and human rights ought to protect “humanity,” the weak and the strong alike. Surrendering that claim for short-term political advantage seems like a dubious proposition, since it is surely “the strong” who will ultimately benefit from an instrumentalized international law.

The problem with these left-wing positions is that they fail to take seriously the analysis put forth by the conservatives. Instead, they merely invert it. There is no unprecedented threat to US security manifested in the attacks of 11 September; instead, it is the US that poses an unprecedented threat to global security. Such an analysis is a dead end. Politically, it is untenable. It is inconceivable that such blanket assertions of American evil would mobilize large-scale political support within the US and, therefore, it is unlikely they will have any actual impact on American policy. Equally important, this analysis boxes the “steely radicals” (228) themselves into a corner. Because they deny there is a real threat to the US, they cannot even begin to articulate a serious or credible response to the challenges of counterterrorism or

American security concerns. The result is a laughably absurd set of policy prescriptions for fighting terrorism. William Blum promises to protect the US by means of public apology for American malfeasance, renunciation of Israel, a 90 percent reduction in military spending, and global reparations for American aggression (109). Roland Weyl, meanwhile, advocates expanding the definition of humanitarian law to the point where America's refusal to ratify the Kyoto Protocol would constitute a criminal violation (209).

Moreover, their instinctive hostility to the US leads some of the authors in this collection into politically and morally dubious alliances. Former Attorney General Ramsey Clark, now famous for having loudly advocated the impeachment of George W. Bush and notorious for his roster of clients among the world's deposed dictators and indicted war criminals, embraces what can only be described as genocide-denial regarding Rwanda ("more Hutus were killed than Tutsis") while espousing Hutu power propaganda (13). Samir Amin asserts that "Afghanistan reached its peak in modern history during the so-called 'communist' Republic" (45–46), insisting it enjoyed majority support. (Why, in that instance, Soviet tanks would have been necessary to sustain the regime is left unexplained).

*International Justice and Impunity* is a book that is difficult to take seriously. Its analysis of American foreign policy is paranoid and its policy prescriptions are ludicrous. The vision of international law it advances is hyperpoliticized and counterproductive. This is a book that is best read neither as analysis nor even as polemic, but as symptomatic of a certain hysterical style of left-wing politics, a mirror for the paranoid style of the Right.<sup>13</sup> Neither appears to offer much hope for genuine progress in the world.

While neither James Pfiffner nor Christopher Pyle are entirely immune to a certain level of hyperbole, both provide what are ultimately thoughtful, sober, well-researched, and disturbing accounts of the war on terror and the expansive vision of executive power articulated by the Bush administration. Interestingly, neither is an attorney, though both put constitutional arguments at the center of their books. Both eschew the language of human rights found in the other two volumes, in favor of arguments about US domestic law and politics. The advantage of this is that it avoids using rhetoric similar to that mobilized by so-called neoconservatives to legitimate the war in Iraq. The disadvantage is that these two books are ultimately more parochial and inward-looking than the others, as if it were somehow mainly Americans who had been hurt by the war on terror. The principle difference between the two volumes is what they consider the relevant context for their investigation of the war on terror. Pfiffner embeds his analysis of Bush policies in a consideration of the nature of executive power and the rule of law in the Anglo-American tradition. The point of this is to highlight the radicalism of the Bush administration, the degree to which it departed from long-established principles. Unfortunately, Pfiffner's history is sometimes a bit potted (from the Magna Carta to the US Constitution by way of the usual suspects of Hobbes, Locke, and Montesquieu).

<sup>13</sup> Richard Hofstadter, *The Paranoid Style in American Politics, and Other Essays* (New York: Knopf, 1965).



Pfiffner is surely right that historical context is crucial to understanding and evaluating the Bush administration's response to 9/11. It is less clear, however, that the seventeenth century is the place to look for the relevant context. Much more compelling, for example, is his account of habeas corpus, which is fairly strong on the nineteenth- and twentieth-century Supreme Court jurisprudence. Even more interesting are his reflections on Richard Nixon's attempts to evade the will of Congress by refusing to fund mandated programs (223–25) or the deployment of signing statements to enhance executive privilege by the Reagan administration (199–202). One cannot help but think that the twentieth century provides a more relevant context for understanding the Bush administration than the seventeenth. Without doubt, the main value of Pfiffner's book lies in its impeccably researched accounts of key aspects of Bush policy (the imprisonment of "enemy combatants," the use of torture, the use of warrantless wiretaps, and the use of signing statements). Here he demonstrates time and again the willful distortion of existing law by administration officials in pursuit of an extremely expansive vision of executive authority.

Pyle's book focusses more narrowly on the war on terror and reads a bit more like an exposé. Though not a work of investigative journalism (Pyle, like Pfiffner, relies on publicly available sources), it shares with that genre a sense of exposing hidden truths. Pyle's core argument is that, since the war on terror was from the start intended to be global and perpetual, the wartime expansion of presidential powers, typically temporary, would become permanent and thus destroy American democracy. As he says at the outset, "the United States is no longer a constitutional government under the rule of law ... its president is now an elected monarch who can, if he chooses, commit criminal acts with impunity" (xii). The great value of Pyle's book is that he demonstrates with acute clarity a wide range of actors involved in crafting, approving, and legitimating expansion and abuse of executive authority under the Bush administration. The courts and Congress come in for nearly as much criticism as the executive branch in this account, which is a welcome expansion of the scope of analysis.

The hyperbole of Pyle's thesis reveals the weakness of the book. By largely eschewing historical context, he ends up taking the Bush administration's rhetoric about a permanent state of war at face value. Much like Hitler's Thousand-Year Reich, reports of the perpetuity of the war on terror may yet prove to be greatly exaggerated. While many on the Left are deeply frustrated by the Obama administration's caution in overturning Bush-era policies or pursuing criminal accountability for the agents (much less the architects) of the war on terror, it would be ideological blindness to claim there have been no significant changes.<sup>14</sup> As both Pyle and Pfiffner demonstrate so well, the Bush administration marked an unprecedented effort to radically alter the balance of power between the separate branches of government. If such efforts at radical constitutional change are possible, it is also possible to change in a different direction as well.

The authors in *The Future of Human Rights* are, by contrast, relatively optimistic. In part, this may be because many of them are mainstream human rights activists with

<sup>14</sup> See e.g., among many others, Mark Benjamin, "Is Torture Really Over?," *Salon*, 17 April 2009 (<http://www.salon.com/opinion/feature/2009/04/17/torture/index.html>).

extensive NGO experience. As such, the essays in this volume are mostly pragmatic and policy-oriented, asking what can be done now. Most of the authors in the volume are critical of the Bush administration's human rights record, but they typically see this as a short-term failing, one that resulted more from poor tactics than from bad intentions. "The distinction between the United States and its terrorist enemies has narrowed over the course of this conflict," writes Elisa Massimo,

in part because of lapses in U.S. compliance with human rights norms, but also because U.S. counterterrorism policy has unwittingly elevated Al Qaeda by treating it as a military adversary contending with the United States on a global battlefield. We can – we must – reverse this course if we are to prevail. (38)<sup>15</sup>

It would be difficult for human rights activists to reject the Bush administration's goals entirely, since most of those goals were cast in at least the rhetoric of human rights. They have little choice but to argue tactics, rather than strategy.

Contrary to the "steely radicals," the moderate humanitarians in *The Future of Human Rights* believe that America has largely been a force for good in the twentieth century and can be again. They note that much of the opposition to the United States is exceedingly cynical and opportunistic. "Nondemocratic governments ... have been using the bully pulpit at the United Nations and other international forums to conflate the promotion of democracy with colonization or cultural imperialism, arguing that it is an unlawful infringement on sovereignty" (86). If the United States sometimes overreaches and often fails to live up to its own high standards, that does not mean that its opponents are necessarily in a better position with respect to human rights. The essays in *The Future of Human Rights* take seriously the universality of human rights claims, using them to criticize both the US and its opponents.

The crucial point for many of the authors in this volume is that the war on terror and other Bush-era policies have eroded what Joseph Nye famously dubbed America's "soft power."<sup>16</sup> The policy prescriptions that emerge are consequently modest, marking not so much a revolution in American foreign policy as a return to the policies of the 1990s: humanitarian intervention as (truly) a last resort (59), democracy promotion through the development of civil society (86), taking economic rights seriously in the context of extensive development aid (137), more proactive support for women's rights (191–92), even making use of corporations as "strange bedfellows" in the promotion of human rights (139). Many of the essays in the volume read like position papers for the Obama administration, which was presumably the intent.

For all the virtues of this kind of pragmatic, future-oriented approach, which at least avoids the pitfalls of hyperbole and paranoia so characteristic of the other volumes under review, the result is a curiously deracinated quality to much of the

<sup>15</sup> There are interesting parallels in this regard with Peter Beinart, *The Good Fight: Why Liberals – and Only Liberals – Can Win the War on Terror and Make America Great Again* (New York: HarperCollins, 2006).

<sup>16</sup> He first coined the term in Joseph S. Nye Jr., *Bound to Lead: The Changing Nature of American Power* (New York: Basic Books, 1991).

analysis. While there is certainly a lot of rhetoric about America's special leadership role in global human rights, the America in question seems to be a rather abstract entity with no institutional memory, political partisanship, or adversaries whose own actions and strategies need to be taken into account. There is certainly no reason to assume that the United States cannot become a leader on human rights issues globally or that it cannot make more effective use of soft power. That clearly is one of the guiding principles of the Obama administration, not to mention the logic guiding the Nobel Prize Committee in awarding the President his arguably premature peace prize.<sup>17</sup> But there is also no reason to assume that the Obama administration can proceed as if the eight years of the Bush administration had never happened either, as has quickly become apparent in his efforts to shut down the detention facility at Guantánamo Bay or to retool American strategy in Afghanistan.

The last time an administration really tried to put human rights at the center of its foreign-policy agenda was under Jimmy Carter. In that case, the endeavor faltered in the face of the Soviet invasion of Afghanistan on the one hand and the Iran hostage crisis on the other. In Obama's case, he starts his term in office with an American war in Afghanistan and a growing confrontation with an even more recalcitrant Iran. It is hard to be optimistic that an Obama human rights agenda would succeed where Carter failed, given those circumstances. While the authors in *The Future of Human Rights* do not deny the terrorist threat as those in *International Justice and Impunity* do, it is not at all clear that after 9/11 one truly can simply return to a ramped-up version of Bill Clinton's foreign policy.

We will likely never know why the United States has remained safe from terrorist attacks for the past eight years. What we do learn from the books under review is that, while it is quite easy to criticize the Bush administration's policies for all their blatant cruelty, stupidity, and dubious legality, it is exceedingly difficult to craft plausible alternatives. In different ways, all of these books fail to fully appreciate the historicity of the problems posed by terrorism and counterterrorism. It is entirely possible that modern terrorism is unlike any previous security challenge. Certainly, the Obama administration has made it clear that, for all it seeks to repudiate the Bush legacy, it intends to continue several major elements of the war on terror. Even if modern terrorism is not quite so *sui generis* and "game-changing" as the conservatives would have it, the ongoing geostrategic challenges of Afghanistan and Iraq almost certainly are. Even more importantly, what none of the books under review recognize is that the fundamental transformations in world politics wrought by the collapse of the Soviet Union, the end of bipolarity, and the subsequent exponential increase in "globalization" created a radically different strategic situation. It was this situation, as much as technology, that made 9/11 possible. That has not changed. The new world order promised by the first President Bush remains unconstructed. Whether President Obama will be able to build it remains to be seen.

<sup>17</sup> Andrew Ward, "Nobel Committee Defends Obama Choice," *Financial Times*, 14 Oct. 2009, available at <http://www.ft.com/cms/s/0/762f7ae6-b667-11de-8a28-00144feab49a.html>.