Truth Commissions, Nation-Building, and International Human Rights: The South African Experie and Reflections on the Politics of Human Rights Post 9/11

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One of the key features of transitions to democracy over the past 15 years or so is the "truth commission." Designed to construct a record of the human rights abuses that took place during the prior period of state authoritarianism and internal violent conflict, the truth commission in an important respect represents the triumph of the human rights movement that began in the aftermath of World War II with the Nuremberg trials and the 1948 Universal Declaration of Human Rights. Truth commissions bring into the orbit of the nation-state a set of standards of human rights that, in their expansive version, claim to be rooted in universal values of human life and the inherent dignity of the individual, or in their more modest guise, call upon the concept of "negative liberty" of protection of human agents against abuse and oppression, as found in the Universal Declaration of Human Rights (United Nations General Assembly 1948; Berlin 1970; Ignatieff 2001). Versions of truth commissions have accompanied the transition from authoritarianism to democracy in more than 20 countries, primarily in Latin America and Africa, and it seems more are announced monthly, most recently in Asia. These commissions have been dedicated – differentially, to be sure – to uncovering the hidden history of violence, rape, torture, and murder perpetrated primarily by the old regime and its military, but also, in recognition of the implicit universalism of human rights principles and/or the political necessity of the appearance of even-handedness, toward those violations of human rights perpetrated by the political opposition/liberation movement, as well.

But while the pedigree of truth commissions in the historic human rights movement is unimpeachable, and the very formation of truth commissions is testament to the growing moral authority of human rights principles, the commissions in fact may not represent the victory of the human rights agenda in contemporary global politics. Rather, the proliferation of truth commissions underscores two sets of weakness. First, at the international level, the need for such commissions in so many countries is indicative of the weakness of the international human rights agenda in the face of Realpolitik and the doctrine of non-intervention in the domestic affairs of other countries that followed from the 1648 Treaty of Westphalia. After all, the states now instituting truth commissions were earlier engulfed in internal conflict and years, if not decades, of human rights violations, and the international community did little or nothing to stop them. Under the Westphalian doctrine of state sovereignty, rights-abusing regimes correctly claimed that international organizations and concerned states had no jurisdiction over their domestic affairs. And even if other states raised an occasional admonition about human rights abuses, many states sided with rights-violating regimes because of those

regimes' strategic position in Cold War conflicts. Second, at the domestic level, the establishment of truth commissions reflects a weakness in a newly democratic government's ability to bring to justice the authoritarian violators of human rights through the normal channels of the judicial system. Because truth commissions often operate with incomplete or no publicness, have no judicial function, and/or are bound to predetermined amnesty agreements, they may institutionally abet the escape from justice (see Hayner 1994; Truth Commissions: A Comparative Assessment 1996). The Guatemalan Truth Commission, for instance, failed to promise any sort of reparations for victims and, as mandated, lacked the authority to name, much less punish, perpetrators.

Because of this possible paradoxical role of truth commissions in thwarting the punishment of perpetrators, many participants in truth commissions and the many scholars who have studied them have wondered whether the commissions present a juxtaposition of "truth versus justice" (see, among others, Minow 1998; Tutu 1999; Jeffery 1999; Rotberg and Thompson 2000; Boraine 2000; Hayner 2001). In this paper I suggest that the specific way truth commissions are organized and how they go about their business largely determine whether truth is seen to compromise justice or, rather, implement it. In this regard, a key factor is the communicative function of truth commissions. I explore this through some observations about the Truth and Reconciliation Commission, the South African variation of the truth commission. The second orientation of the paper follows from the weakness identified above in terms of when and whether the international community is willing to intervene in a human rights crisis internal to a sovereign state. In this, the paper briefly follows the new politics of human rights and begins to explore how September 11th may have altered the way the international community, and especially the United States, approaches the question of human rights.

I

Truth commissions are clearly focused on the violation of human rights, but the human rights focus in no way exhausts their role. Truth commissions are rather complicated political bodies charged, implicitly or explicitly, with multiple, often contradictory agendas and expectations, from uncovering previously hidden crimes to facilitating catharsis to achieving justice and retribution to fostering nation-building. Their mandates inevitably reflect the relative political strength of the parties-in-conflict that create them. In South Africa, the Truth and Reconciliation Commission was born of the agreement between the National Party, the white party of apartheid, and the African National Congress, the primary anti-apartheid liberation organization, that there would be no Nuremberg-type tribunal and that some kind of amnesty must prevail in the post-apartheid dispensation. In the remarkable South African transition from

apartheid authoritarianism to non-racial democracy, amnesty was one of the key conditions of the transition that the National Party was able to impose on the ANC, along with the protection of property rights and the security of tenure in posts for civil servants (including the payment of pensions), and the near-complete independence of the central bank. Whereas in many respects the transition to democracy in South Africa was distinguished by an unusual profusion of open participatory structures oriented toward recasting all manner of social, economic, political, and cultural institutions to divest them of their apartheid lineage and make them accountable to the new democratic polity, the key issues mentioned above – property rights, civil service, central bank, and amnesty – were off-limits to negotiation outside the closed confines of the elite pact between the leaderships of the ANC and the National Party (see Record of Understanding 1992; Shubane and Madiba 1992; Shubane and Shaw 1993; Horwitz 2001). The final clauses of the Interim Constitution of 1993, the document that encoded the essential agreements of the transition, stated that:

> The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred fear, guilt and revenge.
>
> These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for <u>ubuntu</u> but not for victimization.
>
> In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past.
>
> To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date which shall be a date after 8 October 1990 and before 6 December 1993 and providing for mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed (Republic of South Africa 1993).

The TRC was thus born of the reality of political stalemate between two powerful, opposed parties, and amnesty was necessary to move beyond the violent deadlock. In this regard, South Africa fits the pattern of the many transitions from authoritarianism in which the political and military strength of the outgoing regime is able to counter strong public demand for justice in the form of criminal trials. According to this pattern, the new democratic government, worried about a military coup or sabotage by ancien regime security forces, opts for the establishment of a truth commission as a compromise position (see O'Donnell and Schmitter 1986; Kritz 1995). In South Africa's case, the decision to institute a truth commission rather than a "war crimes" tribunal was couched by the ANC not in the terms of the reality of power politics, but rather in the quasi-spiritual language of the concept of "ubuntu." Ubuntu is a word in the Nguni languages (the linguistic root of Xhosa and Zulu, among others) that is said to express the high

value on human worth found within traditional African societies. Ubuntu conveys a humanism rooted not in western individualism but in a communal context; a concept expressive of a culture that places emphasis on communality and on the interdependence of the members of a community; a concept which conveys the belief that each individual's humanity is ideally expressed through his/her relationship with others and theirs in turn through a recognition of his/her humanity. In Xhosa, ubuntu means humanity; in Zulu it means human nature. Ubuntu expresses the quality of being human, manifested in sharing, charitableness, and cooperation (Sparks 1990). Archbishop Desmond Tutu, the chairman of the TRC, regularly invoked the concept of ubuntu as fostering an African form of restorative justice in contrast to a retributive western one (Tutu 1999). It should be noted that the ANC had earlier instituted a truth commission process with respect to its own human rights violations in its training camps in Tanzania and other parts of southern Africa (see African National Congress 1996).

The TRC began operating in December 1995 under the leadership of Archbishop Tutu. A national body created by an act of parliament (as opposed to some truth commissions, like El Salvador's, which were supranational bodies under the aegis of the United Nations), South Africa's TRC was charged with uncovering human rights violations, providing a process for the identification of victims eligible for reparations, and determining the conditions of amnesty for perpetrators. The TRC was also charged with fostering reconciliation generally. The Commission was independent of government and political parties. What was different about the TRC from prior truth commissions was that it would take testimony publicly, and amnesty would be determined on an individualized basis. Unlike many other truth commissions, there would be no blanket amnesty under the TRC. Individual perpetrators of human rights violations would be granted immunity from criminal and civil penalties only if they came clean and made full public confession of their offenses. If they did not make full confession, or if the crimes were deemed not to be political in motivation (one could not claim amnesty for ordinary criminal acts), perpetrators could be subject to prosecution before the courts. The TRC was able to function in this manner because it was better supported than previous truth commissions, and was given quasi-judicial powers, including subpoena and search-and-seizure powers. In other words, unlike many, perhaps most truth commissions, the South African TRC was strong and well-resourced.

A central feature, perhaps the most important feature, of the TRC was its communicative purpose and function. The TRC gave victims voice. The stories of people who had been injured by the apartheid state apparatuses, whose husbands, brothers, wives, sons and daughters were tortured and killed, were heard by the Commission in a process that can only be described as one of public bearing of witness. The TRC took more than 21,000 statements from survivors and families of political violence and held more than 50 public hearings, which took place all around the country. The geographical decentralization of the hearings made it possible for poor and disabled people to appear

and give evidence. Openness also applied to the amnesty hearings. An early provision of the National Unity and Reconciliation Bill, the legislation that officially established the TRC, had amnesty hearings to be conducted in camera. This was of great concern to many organizations in civil society, and their opposition prompted the principles of openness and transparency to apply to all TRC hearings (Boraine 2000, 64-70). Of critical importance, the hearings were amplified by being broadcast to the public on the radio and television outlets of the South African Broadcast Corporation. The SABC, having for decades served as essentially a state broadcaster, the mouthpiece of the apartheid government, was earlier recast as a public service broadcaster in one of the many participatory reform processes that were part and parcel of the South African transition to democracy. The reform of the SABC represented another aspect of giving the previously disenfranchised voice and of establishing broadcasting as a key institution of the newly constituted democratic public sphere (Horwitz 2001; also see Garnham 1986). The extraordinary scope of media coverage of the TRC may have been a means for the South African media, especially the SABC, to display their own transformation and ideological commitment to a new South Africa. The relationship between the SABC and the TRC, described as symbiotic by some observers (see Krabill 2001), transformed the Commission into a long-running media event (Katz and Dayan 1992). The pain and catharsis of the victims, predominantly but hardly exclusively black, were on vivid media display day after day, week after week, month after month, for 224 days. Approximately 90 percent of the statements came from black people, mostly from women (Truth and Reconciliation Commission South Africa 1998, Vol. 1, Ch. 6, para. 29). Their accounts of apartheid abuses saturated the media and public consciousness. Those amplified stories served both to authenticate the victims' trauma and suffering (–as opposed to rather simplistic notions of the therapeutic), and to flood a skeptical white public with irrefutable evidence of apartheid crimes. As the South African journalist Antjie Krog (1998) shows in her extraordinary account of the TRC and its reception, Country of My Skull, even as the white and especially Afrikaner public criticized the TRC for bias or unfair treatment, it had to acknowledge critical facts. The virtually inescapable descriptions of apartheid crimes facilitated a public discussion of recent South African history.

In this act of displaying and amplifying victim testimony publicly, the TRC was perhaps more akin to successful war crimes tribunals than to other truth commissions, which sometimes were not public, or did not allow widespread and extensive victim testimony, or kept the publication of a final report rather quiet (Hayner 1994). Gary Jonathan Bass (2000) has argued in Stay the Hand of Vengeance, a history of international war crimes tribunals, that the consequentialist claims for the liberal legalism of war crimes tribunals are often oversold. Supporters of international war crimes tribunals argue that they build up a sturdy peace by: purging threatening enemy leaders; deterring future war criminals; rehabilitating former enemy countries; placing the blame for atrocities on individuals rather than on whole

ethnic groups; and establishing the truth about wartime atrocities. Bass argues that but for the last, evidence for the claims is equivocal – apparent enough in some cases, but not in others. The most successful war crimes tribunal in history, Nuremberg, clearly has not had much deterring effect. As for rehabilitation, the Nuremberg trials may have played an important element in the rehabilitation of Germany, but the Tokyo war crimes trials surely did not have such an outcome in Japan, which is only now, more than 50 years later, beginning to reckon with its horrific wartime behavior (see Dower 1999). The one unambiguous benefit of war crimes tribunals in Bass' view is that tribunals document the history of abuse and set the record straight. This is in fact the hallmark of the strong truth commissions such as the TRC. Like war crimes tribunals, the consequences of truth commissions may also be oversold, especially their purported function in fostering reconciliation. Like war crimes tribunals, it is the communicative function of truth commissions in establishing a record that is crucial – perhaps more for negative reasons than positive ones. That is to say, the <u>failure</u> to bring out the truth of official widespread human rights abuses makes it much easier for countries or groups to avoid the difficult task of confronting that history. The failure of the Constantinople war crimes process after World War I, for example, beset by weak evidence-gathering and a flagging of political will on the part of the Allied powers, made it possible for the Turks to avoid confronting the reality of the 1915 Armenian holocaust, a denial that continues to this day (Bass 2000, 284-310). Likewise, the failure of some Latin American truth commissions to document and communicate human rights abuses publicly has permitted the perpetrators (and groups that indirectly benefited from the abuses) to ignore or disavow those crimes (Hayner 1994).

This is not to say that South Africa's TRC process was unproblematic, that truth unambiguously served justice. We need not be postmodernists to acknowledge the disputatious category of "truth," the constructed nature of personal narrative, and the difficulty determining objective facts. The TRC in fact employed four different kinds of truth – "factual or forensic," "personal and narrative," "social," and "healing or restorative" (Truth and Reconciliation Commission South Africa 1998, Vol. 1, Ch. 2, paras. 30-44). Yet it was the focus of the TRC's attention that raised the most questions about whether truth was serving justice. The TRC concentrated primarily on individual violent <u>acts</u>, and hence seriously downplayed the historical ongoing <u>state</u> of violence inherent to the apartheid system. The TRC's focus on illegal acts such as detention, torture, and murder excluded as beyond the Commission's mandate the range of violent and unjust <u>policies</u> that were legal under apartheid. Indeed, the TRC's effective mandate was not to determine the legality of apartheid itself, but rather of actions that were illegal even under the laws of the apartheid system. The Commission did address aspects of the institutional context in which apartheid operated by holding hearings on various institutions, including business and labor, the media, the religious community, the legal community, prisons, and healthcare. But these "institutional" hearings felt disembodied to many of the TRC's detractors. In the

view of critics such as Mahmood Mamdani (1996), the TRC's narrow, individualistic, and legalistic orientation meant the Commission refused to see apartheid as a system dedicated to the dispossession of Africans of their land and exploitation of their labor. It meant that apartheid's victims were only those thousands who were physically abused, rather than the millions who suffered economically as a result of the day-to-day workings of the exploitative system. The orientation also meant that the TRC's final report was bereft of a coherent historical context or overview.

Notwithstanding this criticism, the TRC did largely succeed in presenting a national history lesson, albeit without an overriding principal narrative – a grievous lacuna for some commentators (e.g., Wilson 2001), the intelligent avoidance of a hegemonic reading for others (e.g., Jeffery 1999). The dramaturgical thrust of the TRC's public hearings, whether intentional or not, had some of the impact of what Mark Osiel (1997) has urged as "liberal show trials," in which a spectacularly public process of storytelling displaces the typically dry, procedure-bound nature of legal trials (features that make trials largely impenetrable to popular consciousness). The public history lesson is of no small moment, because acknowledgment, or the moral reckoning with atrocities, not only validates the suffering and the humanity of the victims, it also forms the basis for a process of moral reconstruction and the possibility of laying the foundations for a reconstructed political order and political culture (see Truth Commissions: A Comparative Assessment 1996; Allen 1999). Truth commissions have evolved to secure three essential functions or goals: knowledge, acknowledgment, and transformation. In the case of South Africa, reconciliation is the nub of transformation. That is to say, the TRC wasn't simply a truth commission; it was a body whose name and mandate required it to seek reconciliation.

Was the TRC successful in the latter? Is reconciliation even a legitimate goal of a truth commission? The TRC was divided into three committees: the Human Rights Violations Committee, the Reparations and Rehabilitation Committee, and the Amnesty Committee. The Amnesty Committee received over 7000 amnesty applications, but most came from prisoners, who had a built-in interest in confessing to their crimes. Fewer than 600 were granted. Despite Archbishop Tutu's appeals, whites did not come forward to testify in significant numbers. A large number of white generals and Inkatha Freedom Party warlords, as well as some ANC politicians, did not come forward. Those that did provided some extraordinary testimony, but many observers and black victims objected to the fact that these violators of human rights (such as the notorious apartheid-era defense minister, Magnus Malan) received amnesty rather than justice (see James and Vijver 2000; Wilson 2001). The public confession that secured amnesty felt hollow to these observers, perhaps because, unlike in Catholic countries where confession is a meaningful part of religious life, the practice does not resonate among the predominantly Calvinist Afrikaners (MacDonald 1996). In a non-Catholic milieu, confession may be an ineffective cultural tool, an empty sign. After all, one could receive amnesty just by the

act of confession; one did not have to express contrition or remorse. Addressing the question of how successful was the TRC, Antjie Krog reflects that while the TRC established factual truth of what happened and bore witness to the suffering of victims, it was less successful in convincing South Africans of the moral truth, in answering the question "who was responsible?" In this vein, few believe the TRC process achieved reconciliation in a deep moral sense. Indeed, some critics, like Richard Wilson (2001, 21), whose <u>The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State</u> offers a trenchant critique of the TRC, argue that the invocation of human rights embodied in the TRC process and its calculated, even duplicitous, incantation of the African concept of ubuntu sacrificed even a moderate notion of justice as retribution to the ANC's goal of nation-building and state-formation. Wilson argues that the truth commission was part of a general and long-term orientation within state institutions that asserted the state's ability to rein in and control the informal adjudicative and policing structures in civil society.

But these criticisms might be too harsh. The TRC process in principle permitted South Africa to address its horrific past without, in Archbishop Tutu's (1999, 63) phrase, being "held ransom to it." This "third way" (Tutu's phrase) between the extreme of the Nuremberg trials and the national amnesia associated with the blanket amnesty found in several of the Latin American truth commission processes, brings to mind Ernest Renan's famous 1882 essay, "What is a Nation?" A country with South Africa's dreadful history must bear witness, but it needs to forget a little bit as well, so that the past does not utterly tie the hands of the future. Renan writes:

> Forgetting, I would even go so far as to say historical error, is a crucial factor in the creation of a nation, which is why progress in historical studies often constitutes a danger for [the principle of] nationality. Indeed, historical enquiry brings to light deeds of violence which took place at the origin of all political formations, even of those whose consequences have been altogether beneficial…[T]he essence of a nation is that all individuals have many things in common, and also that they have forgotten many things…It is good for everyone to know how to forget (Renan 1990; see also Kundera 1980).

Antjie Krog suggests that the TRC was/is an important part of the consolidation of democracy as the new South Africa engages in the incremental, day-to-day processes of negotiation that ensure the survival of the society. Reconciliation isn't people of different races hanging out sharing confidences and laughing together as in the attractive and ubiquitous Castle Beer advertisements. Reconciliation is rather both less grand and more profound; it is the setting in motion of a set of expectations and processes for negotiating day-to-day existence without the resort to violence.

Even though the ANC almost refused to endorse the final TRC report (because in its even-handedness, the TRC condemned some of the actions of the ANC in addition to its rebuke of apartheid crimes), the TRC must be understood as part of the broader ANC nation-building move to transform South Africa's race and ethnic-based nationalisms for a more broadly based civic nationalism in a post-apartheid human rights constitutionalism. In this

regard, I largely agree with Richard Wilson's evaluation but do not share his condemnation of the sacrifice of individual victims' retributive justice for the country's future. Wilson's argument that the absence of retributive justice is responsible for the high levels of criminality in post-apartheid South Africa is suggestive, but in view of the complex sources of crime, including the historic damage of apartheid and continued high levels of poverty and unemployment, such a suggestion is highly speculative. It is also telling that, for all of the crime and violence in post-apartheid South Africa, there have been virtually no political vengeance killings. As for the criticism that the TRC sacrificed justice in the name of a pseudo reconciliation and a hidden nation-building program, it is instructive to turn again to the historical example of war crimes trials. Presumably the alternative to a truth commission was a Nuremberg-style process of criminal justice. (No one in South Africa credibly offered the solution of summary executions and/or forcible confiscation of property of National Party leaders and apartheid's beneficiaries, the other alternative to war crimes trials.) Yet the justice secured even by war crimes trials is primarily symbolic. Such trials go after the big fish and some particularly ghastly underlings, but pursue only a fraction of the alleged perpetrators (Bass 2000, 295-96). Apart from reparations to victims (an act of real, tangible benefit to victims and not to be devalued), the actual retributive justice that war crimes trials achieve is itself primarily symbolic. With this in mind, when assessing the success or failure of the TRC, perhaps it is better to separate the truth function from the reconciliation function and not assume they are inextricably linked, or, at least, inextricably linked in time. Whether in terms of war crimes tribunals or truth commissions, justice cannot be simply <u>performed</u>; justice is not a one-off event. Rather, achieving justice – or reconciliation – must be seen as a long <u>project</u>, which can only be set in motion by the process of publicly communicating the truth of human rights abuses. In this sense, the rhetorical construction is not simply one of truth <u>versus</u> justice, but truth as reasonable prelude to justice and, perhaps, reconciliation. Just as the Nuremberg war crimes tribunal was not a quick fix for the rehabilitation of Nazi Germany but rather part of a much more ambitious and time-consuming project of education and social engineering, so too should the South African TRC be understood as a process of establishing the truth and of setting in motion the process of reconciliation within a project of nation-building. It might even be argued that reconciliation is a synonym for nation-building (Tepperman 2002, 142).

II

It is to the problem of nations, human rights, and nation-building that I now turn. I suggested at the beginning of the paper that the ascendance of human rights on the international agenda may signal a shift from the traditional doctrine of state sovereignty, of non-intervention in the domestic affairs of other countries. As Henry Kissinger (2001, 237), of all people, reminds us, the doctrine of state sovereignty and its corollary, domestic jurisdiction, was the human

rights slogan of the 17th century. In the aftermath of the horrendous Thirty Years War in Europe between Protestant and Catholic principalities, the doctrine sought to prevent rulers of one faith from inciting uprisings of their co-religionists ruled by a prince of a different faith. The international system based on the Treaty of Westphalia had an answer for the problem of violence <u>between</u> states – that is, recourse to war – but it offered no solution to violence <u>within</u> states arising from civil wars and ethnic conflicts. It dealt with the problem of peace and left justice to the domestic institutions. International law became defined as that law governing relations between nation-states alone; individual human beings within nation-states had no standing in international law. The doctrine of state sovereignty has meant that the state is subject to no other state, and has full and exclusive powers within its jurisdiction (Hoffmann 1966). The contemporary human rights agenda argues the opposite. Peace flows from justice, and the nation-state cannot be relied on to deliver justice; the state must be put under some kind of supranational authority entitled to use force to make its writ run.

Although most historians date the international human rights initiative to the 19th century opposition to the slave trade, and root the idea of individual human rights in the philosophy of the European Enlightenment, the <u>politics</u> of human rights as we know it today could be said to be the legacy of Woodrow Wilson (see Lauren 1998). I should say Wilson in theory, not Wilson in deed. In the realm of theory, Wilson justified American intervention in the international arena not on the traditional basis of the pursuance of national interest (the core of Realpolitik, or realism), rather on the basis of universal values, of self-determination, democracy, and international law and organizations. Those who support and rely on international law and international organizations are known as liberal legalists. Realists, in contrast, argue that international relations differ from domestic politics in the lack of a common ruler among self-interested states. To survive in such conditions of anarchy, states must rely on self-help for their own security. If, nationally, the force of a government is exercised in the name of right and justice, writes neo-realist Kenneth Waltz (1979, 112-13), internationally the force of a state is employed for the sake of its own protection and advantage. Realists insist that international norms and institutions are mere veils over state power. Most of the 20th century witnessed a see-saw battle in American foreign policy between the liberal legalists (the Wilsonians) and the realists (labeled by Kissinger "Jacksonians," after the policies of President Andrew Jackson), who would essentially ignore international affairs unless the security of the United States were threatened. This Kissingerian account is, of course, grossly tendentious. Andrew Jackson's isolationism did have a "foreign policy": Indian removal; Woodrow Wilson's invasion of Russia in 1918 was just one example of the imperialism that gave lie to his sponsorship of the doctrine of self-determination and democracy. Any discussion of American foreign policy that fails to take into account the history

of US imperialism both internally and internationally is flawed. Nonetheless, there were and are real differences within the American foreign policy elite, and American foreign policy cannot be reduced to some imperialist essence. American foreign policy reflects many tendencies: realism and liberal legalism, imperialism and support for others' self-determination. For example, at the peak of its power as the lone major nation not devastated by World War II, the United States helped launch the international organizations of the post-war world, establishing the United Nations and a myriad of measures that institutionalized international cooperation on a variety of global issues. Yet, contrary to a common assumption that the ascendance of international human rights principles is inseparable from the rise of American global hegemony, American policy-makers in fact were deeply wary about human rights. Like the other major powers at the end of World War II, the United States worried that the international recognition of human rights would weaken the doctrine of state sovereignty, and pushed for the inclusion of Article 2 (7) of the United Nations Charter to safeguard the traditional doctrine.[1] In Paul Gordon Lauren's (1998) history of the evolution of human rights, it was the tireless efforts of the non-governmental organizations and the small nations that overcame the major powers' reticence in establishing the Universal Declaration of Human Rights. Moreover, the European Convention on Human Rights, which came into force in 1953, was put together largely without the help of the United States.[2]

Wilsonian liberal legalists and Jacksonian realists made common cause against the Axis powers in World War II and against Communism. With the end of the Cold War they again parted company. Kissinger argues that the Clinton administration represented the triumph of extreme Wilsonianism. Clinton did little when Iraq evicted UN weapons inspectors in 1998 – which realists saw as a classic threat to American interests – while, in contrast, his administration deployed the military in Somalia, Haiti, Bosnia, and Kosovo, conflicts that reflected a commitment to international human rights but no traditional notion of American national interest (Kissinger 2001, 255). We should note, of course, that this is Henry Kissinger, master of Realpolitik, possible war criminal in the eyes of some, speaking. In sharp contrast to his analysis, many in the human rights community are deeply critical of the United States and the European democracies, in spite of those states' professed commitment to human rights. The critics find the commitment rather shallow, hardly Wilsonian; the equivalent of an inversion of Theodore Roosevelt's old maxim, that is, "Speak loudly and carry a small stick." After all, the great democratic powers did nothing to halt the Rwandan genocide, or Iraq's slaughter of its Kurds, or, earlier, Pol Pot's reign of terror in Cambodia. During the Cold War, much of the time the United States found it rather easy to condone the dismal human rights records of its anti-Communist puppet regimes. Many of the Latin American military officers whom truth commissions found responsible for human rights abuses had received their training in the United States. Samantha Power (2002), Executive Director of the Carr Center for

Human Rights Policy at Harvard's Kennedy School of Government, and fairly representative of the critics of the United States' commitment to human rights, argues that the United States did not do what it could and should have done to stop genocide because it wanted to avoid engagement in conflicts that posed little threat to American interests. At the same time, policy-makers hoped to contain the political costs and avoid the moral stigma associated with allowing genocide. In other words, in the critics' view, the United States may give lip-service to human rights, but it will commit to action only when its traditional national interests are threatened.

Still, the Clinton administration did ultimately intervene in Somalia, Haiti, Bosnia, and Kosovo, for no clear purpose of national interest, however desultorily. In this respect, Kissinger is correct. Part of what underlay these reluctant interventions is the growing inability of democratic states to resist a human rights agenda pushed by an effective transnational human rights advocacy network. As Margaret E. Keck and Kathryn Sikkink (1998) argue, particularly in the human rights arena a transnational network consisting of the UN Commission on Human Rights, Amnesty International, Human Rights Watch, Freedom House, and scores of other often well-funded transnational and local groups is helping to transform the practice of national sovereignty by creating new issues and pressuring more powerful actors to take positions. In Keck and Sikkink's view, the currency of the advocacy network is information, strategically mobilized for use as leverage and to hold governments accountable. But what is the basis for such leverage? In a word, norms, the conflicts over which are played out in an increasingly international public sphere. The transnational human rights advocacy network both reflects a broad, if sometimes amorphous public commitment to human rights and in turn has influenced key portions of democratic publics in many countries to adopt the conception of individual human rights as part of their core beliefs (see Anheier, Glasius, and Kaldor 2001; Laber 2002; Khagram, Riker, and Sikkink 2002). Those human rights norms have been been institutionalized in the establishment of UN and regional organizations dedicated to them. Indeed, an international social structure of human rights norms and institutions developed between 1973 and 1985 (see Risse, Ropp, and Sikkink 1999). Here, it seems reasonable to assume that media, particularly visual media, play some significant role in rendering human rights information symbolically meaningful to distant democratic polities. This is not an argument about the unmediated influence of global news on public opinion; it is to suggest rather that global media and the transnational human rights advocacy network work in tandem to lessen the psychological distance between peoples, at least in the particular register of human rights. The historian Thomas Laqueur (2001) has noted what Adam Smith and other 18th century moralists discerned as the natural sense of immediate local sympathy with suffering. In our age of global media, rights talk, and transnational advocacy networks, all of humanity potentially and at certain moments has been brought within the fold of

our compassion. This compassion needs to be directed to have consequences, and the existence of international organizations, including UN agencies and the international court, and, increasingly, national courts willing to assert jurisdiction over lawsuits that have international dimensions, are the settings wherein that compassion – and hard-nosed coercion – are mobilized. The recent successful effort at securing reparations from European corporations and banks for their use of slave and forced laborers during World War II is the latest manifestation of the human rights agenda. Stuart Eizenstat (2002), who guided the class-action lawsuits on behalf of the Clinton administration, calls this development the "civil version of Nuremberg," and points to the possibility of its precedential value for further efforts at obtaining historical apology and reparations, for example, to Korean comfort women and the descendents of African-American slaves. These developments would indicate that the human rights agenda has begun to nibble away at the doctrine of state sovereignty. It is worth noting that this emerging system of human rights institutions, mass media publics, and organized advocacy networks also suggests the fragile success of a new international regime of communicative rationality over, or at least in complex conjunction with, the power politics of state sovereignty (see Habermas 1996). Not only does the international social structure of human rights norms and institutions sometimes goad western government to act, but, as Thomas Risse and Kathryn Sikkink (1999) suggest, a repressive state can enter into a spiral of human rights socialization that moves from external coercion on and tactical concessions from it, to a stage where the state may engage in moral discourse and accepts the international norm.

Kissinger, representing hard-nosed Realpolitik, attacked Clinton's interventions as foolish, misconceived, and counterproductive, not simply because they had no foundation in American national interest, but because they occurred without reference to their historical contexts. The crux of this latter criticism is that these interventions were undertaken in places and contexts essentially characterized by "failed states." Failed states is the new term for those countries so wracked by internal violent conflicts that they are without functioning governmental institutions, and seemingly without prospects of any national accommodation. Somalia was an anarchic cauldron of vicious warlords, "not a country but a collection of warring tribes" (Kissinger 2001, 265); Haiti, ruled by a series autocratic and deeply corrupt leaders, has been dysfunctional for a century; Bosnia, a "bottomless pit of Balkan passions" (Kissinger 2001, 267), was an impossible multi-ethnic state, as was, in different ways, Kosovo. Because these involve failed states, or, in Samuel Huntington's (1996) parallel realist view, conflicts that involve "clashes of civilization" and are hence intractable, intervention in their affairs has no so-called exit strategy. After stopping the killing, the interveners must remain in these countries indefinitely, engaging in peacekeeping and in "nation-building." The debate about exit strategy, a practical concern, may in fact be a stand-in for a theoretical debate about defining the limits of the universality of interventions on behalf of human rights.

This nation-building role, this unworkable "overextension" of American power in the name of protecting human rights, is what the new Bush administration denounced – at least prior to September 11th. Bush's unilateralism on almost all fronts signaled a fervent return to realist principles and a rejection of international organizations. The litany by now is well-rehearsed: backing out of the Kyoto global climate protocols, the expressed intention to skirt the ABM treaty; calling a halt to negotiations with North Korea; the go-ahead for deployment of a missile defense system; the adamant refusal to sign on to the International Criminal Court. Then came the attacks of September 11th. The attacks were understood by the Bush administration to show that "failed states," which are found mostly in postcolonial border zones, because they foster and harbor long-suffering and enraged people whose resentments of the prosperous west can eventuate in terrorist assaults against it, can no longer be seen outside the prism of human rights and American national interest (The National Security Strategy of the United States of America 2002). In the eyes of nearly all policy-makers and commentators, Afghanistan demonstrated the price of neglect of failed and failing states. After earlier denouncing Clinton's efforts at nation-building, following September 11th the Bush administration pledged to stay the course in rebuilding a stable state in Afghanistan and shoring up a weak, deficient Pakistan.

But, as Michael Ignatieff (2002a) has written, while a new international order is emerging, it is a different picture of the world from the one entertained by liberal international lawyers and human rights activists, who had hoped to see American power integrated into a transnational legal and economic order, organized around the UN, the WTO, the International Criminal Court. The emerging international order is being crafted to suit American imperial objectives. September 11th seems to have made visible a new divide in American foreign policy circles, illustrated most clearly by the fall 2002 debate over whether to go to war against Iraq. Those winning the debates inside the Bush administration are <u>not</u> the realists; the realists (including prominent scholars Kenneth Waltz, John Mearsheimer, Barry Posen, Stephen Walt, and 29 others who signed a <u>New York Times</u> editorial advertisement in September) have largely counseled against war with Iraq as not meeting the standard of advancing US national interests (see Scowcroft 2002; War With Iraq is <u>Not</u> in America's National Interest 2002). Rather, those winning the debate – led by Vice-President Dick Cheney, Secretary of Defense Donald Rumsfeld, and the coterie of former students of Albert Wohlstetter, many of whom populate the influential national security advisory group known as the Defense Policy Board – are a new breed of hawkish interventionists who hold a deep-seated mistrust of international treaties and organizations and who advocate as the national security policy of the United States the suppression of any potential adversary that would pursue a military build-up and unilateral preemptive military action against such adversaries (The National Security Strategy of the United States of America 2002; FitzGerald 2002; Lemann 2002). They constitute a third position in

foreign policy analysis, neither realist nor liberal legalist. The rhetoric of the new American hegemony, as seen in the National Security Strategy document, is in part the traditional language of American exceptionalism and the United States as the city on the hill, but it is also in part reflects the rhetoric of international human rights. In parallel, the language of the new interventionism implicitly recognizes the inadequacy of the old Westphalian doctrine of state sovereignty. Paradoxically, human rights and nation-building now matter, but only because not paying attention to them is seen to threaten American security. As the essayist Hendrik Hertzberg (2002) has observed, the contradiction at the heart of the Bush administration's foreign policy is that it recognizes that state sovereignty is in many ways an outdated doctrine, but it essentially rejects international law and organizations in favor of presumably benevolent American dictatorship.

III

Historically, the human rights movement was built to challenge tyranny by strong states and to defend the civil and political rights of dissidents within them. The movement has been very successful at the level of establishing a rights-oriented political and discursive agenda, if less successful in actually protecting human rights. Institutions dedicated to human rights have been established; human rights talk is everywhere; rights-oriented NGOs seem to be found everywhere. This international social structure of human rights norms and institutions is in part what lies behind the phenomenon of truth commissions. Truth commissions grew as a compromise mechanism to address human rights and justice in states that had made a transition from authoritarianism to democracy. The human rights agenda has begun to challenge the old doctrine of state sovereignty, augmenting, if not replacing, power politics with international organizations, norms, and even, perhaps, a communicative process of moral discourse. But the strong state orientation of the historic human rights movement may now be anachronistic. If scholars like Michael Ignatieff (2002b) are correct, the human rights movement now faces a world where many of the most urgent human rights challenges come not from strong states, but from disintegrating, "failed" states. The main problem now is often not the civil and political repression of individuals, but the genocide, ethnic cleansing, and massacre of entire communities. To the extent that the mechanisms of diffusion of international norms in the human rights arena have been successful, it is with established, if authoritarian and repressive, states. That diffusion does not work in the context of failed states. In this world, especially post-9/11, stability seems to be increasingly understood as a prerequisite to human rights, and the lack of stability as legitimate pretext for outside military intervention. It is probably true that some degree of stability is a prerequisite for human rights. In their own way the truth commissions reflected a balance between rights and stability. Their "compromised" nature reflected the fact that individual retributive justice was traded for the public revelation of

misdeeds, some abstract notion of reconciliation, and the pragmatic need for nation-building in the face of the threat of reversal of the democratic political transition. But the new geopolitical situation and the post-9/11 interventionism seem quite distant from the vision of the world championed by human rights activists. It is a world where the sole remaining superpower, having experienced terrorism on its turf and whose foreign policy is now controlled by hawkish interventionists, deploys the language of human rights to announce its own right to ignore international organizations and norms in favor of unilateral intervention.

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[1] "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement." See Lauren (1998, 172-204).

[2] Indeed, the dawning of American attention to human rights in the 1950s and 60s was intimately bound up with the attention that policy-makers were forced to pay to the links between foreign and domestic policy. The propaganda value of attacking the Soviet bloc for its unfreedoms was rather diminished when the United States was confronted with the abysmal treatment and status of its own African-American citizens. Some policy-makers legitimated the efforts of the black civil rights movement because of foreign policy concerns. See, among others, Lauren (1996).