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BOOK REVIEW

LAWRENCE M. FRIEDMAN*

THE INTERNATIONALIZATION OF HUMAN RIGHTS. By DAVID P. FORSYTHE. Lexington, Mass.: Lexington Books. 1991. Pp. 211.

Before World War II, international law provided little recourse to citizens mistreated by their own state governments. Humanitarian intervention by other countries was rare, and was often motivated by economic or political concerns, rather than an interest in human rights. The end of the Second World War, however, signalled a change in the face of international human rights law.¹ The extent of Nazi atrocities startled the world, creating a desire to prevent such crimes against humanity in the future.² Toward this end, new international structures and standards for the promotion and protection of human rights were developed, primarily through the United Nations, the U.N. Charter and the Universal Declaration of Human Rights.

Today, the promotion and protection of international human rights appear to be at an important juncture. On the one hand, the dissolution of the Soviet Union and Soviet bloc spells an end to some of the worst human rights offenses, and a recognition that rights violations can no longer be rationalized away by citing Marxist ideology.³ There remains, however, great frustration with international law and its perceived inability to protect effectively basic human rights in many countries. The horrible abuses still being committed in Central and South America, in many Asian countries and in South Africa, attest to the fact that while progress has been made since World War II, there is still much that can—and should—be done.

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¹ Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 AM. U. L. REV. 1, 9–10 (1982).

² *Id.* In addition to creating international standards of human rights, many nations engaged in efforts to bring Nazi persecutors to justice. See Ronnie Edelman et al., *Prosecuting World War II Persecutors: Efforts at an Era's End*, 12 B.C. THIRD WORLD L.J. 199, 199–230 (1992).

³ David P. Forsythe, *Human Rights in a Post-Cold War World*, 15 FLETCHER FORUM OF WORLD AFFAIRS 55, 56 (1991).

Attempting to make sense of all that has transpired in the human rights field in recent years, and what is likely to happen in the future, is David P. Forsythe's *The Internationalization of Human Rights*.⁴ Forsythe gives substantive meaning to the issues, and surveys recent interpretive literature.⁵ He shows through several in-depth treatments that the subject of international human rights can be explored from "several different angles: the global, the regional, the national, the private transnational, and the individual."⁶ Finally, the author speculates about the different ways the movement for international human rights may be understood.⁷

The book is thus divided into sections which encompass "civil, political, economic, social, cultural, legal, historical, philosophical, and other phenomena in an untidy mix."⁸ Forsythe wisely creates no illusions about providing a thorough and complete treatise on the subject of human rights. Instead, he hopes to offer "some advance in understanding, however imperfect."⁹ The first section of the book provides essential background for the ensuing discussion, as Forsythe addresses the basic definition and standards of human rights.¹⁰ Here, he considers how human rights have been defined in the past, and how today's definition and standards struggle with the argument that they represent cultural imperialism by the Western powers.¹¹

In the second section, Forsythe moves to the international political arena, looking at the role of international law and intergovernmental organizations such as the United Nations.¹² Next, he focuses on regimes and hegemonic influences on human rights development, using the Organization of American States as a case study.¹³ The fourth section explores human rights from a national perspective, using the United States as an example, and focusing especially on the Carter and Reagan presidencies.¹⁴ The fifth section

⁴ DAVID P. FORSYTHE, *THE INTERNATIONALIZATION OF HUMAN RIGHTS* (1991) [hereinafter *INTERNATIONALIZATION*]. Forsythe, a professor of political science at the University of Nebraska-Lincoln, is also the author of *HUMAN RIGHTS AND U.S. FOREIGN POLICY: CONGRESS RECONSIDERED* (1988), and *HUMAN RIGHTS AND WORLD POLITICS* (2d ed. 1989).

⁵ *INTERNATIONALIZATION*, *supra* note 4, at vii.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 181.

⁹ *Id.* at vii.

¹⁰ *Id.* at 1-32.

¹¹ *Id.*

¹² *Id.* at 33-86.

¹³ *Id.* at 87-118.

¹⁴ *Id.* at 119-42.

examines the role of nongovernmental organizations, such as the International Red Cross, and their role in advancing international human rights.¹⁵

In addition to his broad overview of human rights developments of the past fifty years, the value of *The Internationalization of Human Rights* lies in the new spin Forsythe gives to traditional arguments over human rights. He provides an intriguing and substantive examination of cultural imperialism, as well as discussing the global developments toward recognizing individual standing to bring human rights cases. In addition, Forsythe offers trenchant criticism of the United States and its failure to take a leadership role in the field of international human rights.

I. INTERNATIONAL HUMAN RIGHTS AND CULTURAL IMPERIALISM

The discussion of cultural imperialism begins with Kenya in 1990, where the one-party government consistently arrested and sometimes mistreated those demanding the creation of new parties.¹⁶ Kenyan President Daniel Arap Moi argued that the imposition of international standards of human rights was a form of cultural imperialism inappropriate for application to African states.¹⁷ Africa is not alone in rejecting an international standard of human rights; many East and Southwest Asian nations also reject the notion.¹⁸

Because the international standard of human rights contradicts their cultural and religious heritage, states like Kenya and Saudi Arabia may never adopt internationally recognized human rights.¹⁹ Commentators who embrace this position espouse cultural relativism. The cultural relativists assert that judgments are based on experience, and each society's experience is intimately linked to its particular culture.²⁰ Individual rights, they say, "are a Western invention inappropriate to nonindividualistic cultures."²¹

Forsythe counters these arguments with what he calls the "politico-legal record."²² This record consists of many elements, including the positive law of the world's nation-states, combined with the

¹⁵ *Id.* at 143–70.

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ *See id.*

¹⁹ *Id.* at 3.

²⁰ Abdullahi A. An-Na'im, *Religious Minorities Under Islamic Law and the Limits of Cultural Relativism*, 9 HUM. RTS. Q. 1, 4 (1987).

²¹ INTERNATIONALIZATION, *supra* note 4, at 4.

²² *Id.*

empirical proof of political scientists.²³ On the legal side, he notes the existence in international law of *jus cogens*, those human rights that are nonderogable and trump all other state action, including positive law.²⁴ Forsythe also takes account of the actual practices of states. His empirical argument covers much of the same ground, examining universal human rights according to evidence in international instruments, like the International Bill of Rights,²⁵ as well as public policy.

The core, nonderogable rights that Forsythe lists are basically no different from those rights recognized under customary international law as binding all nations.²⁶ Forsythe's list includes freedom from:

violent attacks on persons for money or sex (derived from piracy), slavery and related practices, torture, summary execution, mistreatment, starvation, hostage taking (derived from aerial hijacking and the laws of war), racism, and major war crimes.²⁷

He acknowledges that other human rights, such as freedom of religion, may be no less important, but that evidence of such rights in the "politico-legal record" is somewhat weaker than evidence of the core rights.²⁸

²³ See *id.*

²⁴ *Id.* at 17. *Jus cogens* are peremptory norms, principles of international law so compelling that they "are recognized by the international community for the purpose of invalidating or forcing revision in norms of treaty or custom in conflict with them. For example . . . states ought not be able to agree to enslave a minority people, to liquidate a race, [or] to brutalize dissidents . . ." Gordon A. Christenson, *Jus Cogens: Guarding Interests Fundamental to International Society*, 28 VA. J. INT'L L. 585, 586 (1988).

²⁵ The International Bill of Rights consists of the Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), *reprinted in* BASIC DOCUMENTS IN INTERNATIONAL LAW AND WORLD ORDER 298 (Burns H. Weston et al. eds., 1990) [hereinafter BASIC DOCUMENTS]; International Covenant on Civil and Political Rights, G.A. Res. 2200A(XXI), U.N. GAOR, 21st Sess., Supp. No. 16 at 52, U.N. Doc. A/6316 (1966), *reprinted in* BASIC DOCUMENTS, *supra*, at 376; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200(XXI), U.N. GAOR, 21st Sess., Supp. No. 16 at 49, U.N. Doc. A/6316 (1966), *reprinted in* BASIC DOCUMENTS, *supra*, at 371.

²⁶ Customary international law binds all nations, regardless of whether a state is a party to a particular human rights agreement. THEODOR MERON, *HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW* 3 (1989).

²⁷ INTERNATIONALIZATION, *supra* note 4, at 12. Compare RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1987), § 702, which states that a country violates customary international law if it practices, encourages or condones: genocide; slavery or slave trade; the murder or causing the disappearance of individuals; torture or other cruel, inhuman or degrading treatment or punishment; prolonged arbitrary detention; systematic racial discrimination; or a consistent pattern of gross violations of internationally recognized human rights.

²⁸ INTERNATIONALIZATION, *supra* note 4, at 12.

Forsythe offers a final argument against cultural imperialism, citing the appeal of the idea of human rights in non-Western polities like the People's Republic of China.²⁹ There, people desire basic human rights, as evidenced recently by the 1989 pro-democracy demonstrations in Beijing's Tiananmen Square.³⁰ Chinese citizens demanded fundamental civil and political rights, even though they had not been educated in the Western tradition. Nor were their demands the result of any Western compulsion.³¹ Forsythe concludes that the worldwide acceptance of the core fundamental human rights makes their Western origins basically irrelevant.³²

The author is careful, however, not to be too optimistic about the status of international human rights standards. He does not embrace the view shared by some commentators, who believe that all of the rights enumerated in the Universal Declaration of Human Rights have become a part of customary international law.³³ And he points out that there is still much work to be done at the international level.

II. INDIVIDUAL STANDING

Along the lines of increased attention to human rights at the international level, Forsythe explores the developing role of the individual with respect to modern international law. Increasingly, he says, "states are restricted by the role of the individual as an entity recognized by international law and possessing rights, with a

²⁹ *Id.* at 13. John Lewis Gaddis has similarly observed that after educating their populations in order to "compete in a global economy," authoritarian governments discovered that "the act of educating them exposed their minds to the realm of ideas and ultimately worked to undermine the legitimacy of authoritarianism itself." John L. Gaddis, *Toward the Post-Cold War World*, FOREIGN AFFAIRS, Spring 1991, at 104.

³⁰ See Jeffrey A. McCredie, *Human Rights in the People's Republic of China: An Appraisal of Recent Events*, 3 TEMP. INT'L & COMP. L.J. 217, 217-18 (1989).

³¹ INTERNATIONALIZATION, *supra* note 4, at 13.

³² *Id.* at 14. As historian Arthur Schlesinger Jr. has written, the "great liberating ideas of individual dignity, political democracy, equality before the law, religious toleration, cultural pluralism, [and] artistic freedom" evolved from the Western tradition, but "empower people of every continent, color, and creed" and are ideas "to which most of the world today aspires." Arthur Schlesinger Jr., *Was America A Mistake?* THE ATLANTIC, Sept. 1992, at 27-30.

³³ See, e.g., Richard B. Bilder, *The Status of International Human Rights Law: An Overview*, in INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE 1, 8 (James C. Tuttle ed., 1978) (standards set by the Universal Declaration of Human Rights, although initially only declaratory and non-binding, have by now . . . become binding customary law); Sohn, *supra* note 1, at 16-17 (the Declaration "has become a basic component of international customary law, binding all states . . .").

corresponding duty by states to respect them.”³⁴ Forsythe points to the example of the Council of Europe, and the parties to the European Convention on Human Rights.³⁵ Individuals living in states party to the Convention have direct standing in front of the European Human Rights Commission, and indirect standing, through the Commission in front of the European Court of Human Rights.³⁶

A similar arrangement exists with the Organization of American States. There, individuals have standing with the Inter-American Commission on Human Rights.³⁷ The Commission is empowered to take individual cases to the Inter-American Court of Human Rights, provided the state involved has submitted itself to the Court’s jurisdiction.³⁸

In the United Nations, the U.N. Human Rights Committee is authorized, under an optional protocol to the International Covenant on Human Rights, to hear individual petitions about human rights abuses.³⁹ At least one domestic court has also granted individuals a legal right of action where injuries under customary international law are involved.⁴⁰ Governments are, as Forsythe notes, “increasingly obligated to respect human rights, and individual procedural capacity is widespread even if individuals lack the full subjectivity or legal personality accorded to other actors.”⁴¹ Simply put, human rights are no longer exclusively a matter of domestic jurisdiction.⁴²

The situation remains, however, that only states have standing in front of international tribunals such as the International Court of Justice (ICJ).⁴³ And because of jurisdiction problems (only a handful of nations have submitted to compulsory jurisdiction of the court), the ICJ has heard few cases concerning human rights. Forsythe claims that certain human rights “remain inviolable even in times of a national emergency threatening the life of a nation, and

³⁴ INTERNATIONALIZATION, *supra* note 4, at 37.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 38.

³⁸ *Id.*

³⁹ Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200(XXI), U.N. GAOR, 21st Sess., Supp. No. 16 at 59, U.N. Doc. A/6316 (1967), *reprinted in* BASIC DOCUMENTS, *supra* note 25, at 386.

⁴⁰ *See* *Filartiga v. Pena-Irala*, 630 F.2d 876, 877–90 (2d Cir. 1980).

⁴¹ INTERNATIONALIZATION, *supra* note 4, at 47.

⁴² *See id.*

⁴³ Statute of the International Court of Justice, Art. 34(1), *reprinted in* BASIC DOCUMENTS, *supra* note 25, at 33.

the claim to national emergency is subject to an international review process"⁴⁴ One questions whether this claim is a bit too optimistic; while it is theoretically true that most states recognize the core, nonderogable rights, in practice the international review process has had little impact.

The regional system in Europe works well because the European countries share common interests. At the international level, however, the International Covenant on Civil and Political Rights has yet to be ratified by a majority of states, and even fewer states have ratified the optional protocol.⁴⁵ The Political and Civil Rights Covenant has been ratified by states from across the geo-political-cultural spectrum; hope remains that it will one day become applicable to all nations.

III. THE ROLE OF THE UNITED STATES IN THE DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS

If more serious attention to international human rights is to be given, the effort must inevitably be led by state actors. To this end, Forsythe serves appropriate criticism upon the United States for its failure in recent years to become a leader in international human rights. The United States has acted in "the contemporary area to block or retard some international measures designed to improve implementation of human rights."⁴⁶ For example, lack of United States leadership in the Organization of American States has primarily been the result of a Cold War preoccupation with the potential spread of communism.⁴⁷ Though often asserting its power in security and economic matters, the United States has been unwilling to play a larger role in shaping a human rights agenda.⁴⁸

When the United States has acted, it has often been unilaterally. With its decision not to ratify the International Covenant on Civil and Political Rights, the United States has placed itself outside of the United Nations core regime.⁴⁹ Forsythe notes that as the Covenant gains greater acceptance in the future, the United States may

⁴⁴ INTERNATIONALIZATION, *supra* note 4, at 47.

⁴⁵ By 1990, 86 states, or 54% of those eligible, had become parties to the International Covenant on Civil and Political Rights; 38 states, or 23% of those eligible, have become parties to the optional protocol. Forsythe, *supra* note 3, at 58.

⁴⁶ INTERNATIONALIZATION, *supra* note 4, at 109.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 134-35.

remain outside still, but not by its own choice.⁵⁰ And the United States cannot hope to “shape the functioning of the U.N. Human Rights Committee if it is not a party to the Civil and Political Rights Covenant.”⁵¹

If the International Covenant on Civil and Political Rights was ratified by the United States, it would be obligated to make at least some changes in federal and state law, a troubling notion to some.⁵² Interest groups, such as the American Bar Association, see international human rights instruments as a threat to the legal culture in the United States, and to “the foundational principles of federalism and constitutionalism.”⁵³ Opponents to ratification also contend that human rights are a matter of domestic jurisdiction, and that many of the rights protected by the Covenant on Civil and Political Rights are regulated in the United States by the states and not by the federal government.⁵⁴ Finally, opponents argue that some provisions of the Covenant would conflict with the United States Constitution.⁵⁵

Refusal by the United States to ratify the Covenant on Civil and Political Rights has several effects. First, refusal to ratify has been seen as another example of United States arrogance.⁵⁶ Second, the United States cannot use the document to bring a complaint against a state in violation of the Covenant.⁵⁷ Third, refusal to ratify the Covenant deprives United States citizens the ability to invoke its provisions.⁵⁸

Like many other state actors, the United States is often motivated more by domestic economic and political factors than by human rights concerns. The events in China's Tiananmen Square offer an illustration. In its violent reaction to the student protests, the People's Republic of China violated the United Nations Charter and customary international law. The Chinese assertion of national

⁵⁰ *Id.* at 135.

⁵¹ *Id.*

⁵² See Richard B. Lillich, *United States Ratification of the United Nations Covenants*, 20 GA. J. INT'L & COMP. L. 279, 281 (1990).

⁵³ Winston P. Nagan, *The Politics of Ratification: The Potential for United States Adoption and Enforcement of the Convention Against Torture, The Covenants on Civil and Political Rights and Economic, Social and Cultural Rights*, 20 GA. J. INT'L & COMP. L. 311, 313 (1990).

⁵⁴ Thomas Buergenthal, *The U.S. and International Human Rights*, 9 HUM. RTS. L.J. 141, 147-48 (1988).

⁵⁵ *Id.* at 148-49.

⁵⁶ Lillich, *supra* note 52, at 284.

⁵⁷ *Id.*

⁵⁸ *Id.* at 284-85.

emergency was questioned abroad, but little action was taken on an international level.⁵⁹

The United States, after an initial, measured response to the events in Beijing,⁶⁰ soon moved away from sanctions for economic and political reasons. In 1991, for example, President George Bush vetoed congressional efforts to add human rights conditions to China's Most-Favored-Nation Status.⁶¹ In other words, Chinese leaders quietly hoped for the events of Tiananmen to become a short-lived memory, and for all intents and purposes, their wish was granted.

IV. CONCLUSION

Ultimately, Forsythe offers optimism for increased attention to international human rights. The growing recognition and promotion of human rights through the United Nations and non-governmental actors, as well as model regime plans like the Council of Europe, are among the significant accomplishments of the past half-century. Forsythe shows that there is reason to be hopeful, and echoes Zbigniew Brzezinski, President Jimmy Carter's national security advisor, who said that the idea of human rights is "the single most magnetic political idea of the contemporary time."⁶²

Forsythe advises more study of international human rights in United States colleges and universities. He believes law schools in the United States should adopt a curriculum similar to that of their European counterparts, where the role of law in society is studied as part of general education requirements.⁶³ To this end, *The Internationalization of Human Rights* is an excellent starting point for the

⁵⁹ Many countries imposed economic sanctions upon China. See W. Gary Vause, *Tibet to Tiananmen: Chinese Human Rights and United States Foreign Policy*, 42 VAND. L. REV. 1575, 1605-06 (1989). But some nations, like Japan, quickly resumed a "business-as-usual approach" to China following the incident at Tiananmen. INTERNATIONALIZATION, *supra* note 4, at 120.

⁶⁰ See McCredie, *supra* note 30, at 240-43; see also William McGurn, *The U.S. and China: Sanctioning Tiananmen Square*, in THE BROKEN MIRROR: CHINA AFTER TIANANMEN 233, 233-36 (George Hicks ed., 1990).

⁶¹ See Keith Bradsher, *Bush Vetoes Conditions on Trade Status of China*, N.Y. TIMES, Mar. 3, 1992, at A7. After vetoing "The United States-China Act of 1991," President Bush said that limiting China's trade status would not encourage human rights reform, which he believed would best be accomplished through diplomatic pressure. *Id.*

⁶² ZBIGNIEW BRZEZINSKI, THE GRAND FAILURE: THE BIRTH AND DEATH OF COMMUNISM IN THE TWENTIETH CENTURY 256 (1989).

⁶³ INTERNATIONALIZATION, *supra* note 4, at 182. Forsythe characterizes U.S. law schools as "essentially vocational schools and hence not designed for the general study of law in society." *Id.*

student of human rights. Well-documented and incorporating a cross-disciplinary perspective, Forsythe's book surveys developments of the past fifty years with clarity and thoughtfulness. While the book may not address all of the questions currently posed by international human rights law, it does provide a path toward discovering some of the answers.