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## Ronald Reagan on Human Rights: The Gulag vs. the Death Squads

### Cover Page Footnote

The author wishes to express his appreciation to Mr. Andrew Embury, University of Dayton School of Law, class of 1986, for his assistance in the preparation of this article.

# RONALD REAGAN ON HUMAN RIGHTS: THE GULAG VS. THE DEATH SQUADS

*Allen Sultan\**

*Americans [are] unwilling to witness or permit the slow undoing of those human rights to which this nation has always been committed, and to which we are committed today at home and around the world.*

—John F. Kennedy\*\*

## I. INTRODUCTION

In late November, 1983, President Reagan exercised a most controversial veto, killing legislation that would have continued to make United States military aid to the government of El Salvador contingent upon the president's semiannual assurances to Congress that the human rights situation in that ill-fated nation had improved.<sup>1</sup> A few days later, the president explained the rationale for this action to a group of Washington, D.C., school children. Reagan claimed that the human rights requirement encouraged terrorist activity by the extreme left and right, both of which would engage in human rights abuses in order to prevent El Salvador's elected government from getting U.S. aid.<sup>2</sup>

Although this justification may have appeared plausible to the uninformed, it simply fell apart under any factual inspection. The grisly, prodigal work of El Salvador's nefarious "death squads" was already a matter of common knowledge. According to the Lawyer's Commission for International Human Rights, the death squads have murdered approximately 40,000 people between 1980 and 1983.<sup>3</sup>

Common knowledge also indicates that most, if not all, of the individuals perpetrating this ongoing international crime of genocide

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\*\*T. SORENSON, KENNEDY 245 (1965) (Inaugural address, January 20, 1961).

1. N.Y. Times, Dec. 1, 1983, at A1, col. 5.

2. *Id.*, Dec. 3, 1983, § 1, at 6, col. 1. An editorialist commented that in explaining his actions, "Mr. Reagan resorted to his practice of inventing facts when the real ones do not fit his policies." Lewis, *On the Side of Death, id.*, Dec. 5, 1983, at A19, col. 5.

3. *Id.*, Dec. 6, 1983, at A31, col. 1.

against their own people were members of the military and quasi-military forces of El Salvador. Indeed, the U.S. Department of State had compiled two lists of the suspected leadership of the death squads, including both their hierarchy of authority and their ties to Salvadoran officials.<sup>4</sup> According to our own news media, one of the two documents specifically named the suspected murderers, among whom were officers in El Salvador's national guard and treasury police. Moreover, one top suspect was the security chief of that nation's legislative body, the Constituent Assembly.<sup>5</sup>

Nor does President Reagan's justification pass logical—as distinct from factual—evaluation. Both recent history and contemporary events dictate that, in almost all instances, United States support for repressive governments thrusts those who seek progressive social change into the embrace of the enemies of democracy—in Moscow, in Havana, and in Teheran.<sup>6</sup> Unfortunately, the Reagan administration does not seem to distinguish between those nonaligned Third World leaders who merely seek human rights through liberal democracy and those who would make their nations operative arms of the Soviet Union.

Although previous administrations also suffered from similar forms of ideological inflexibility, this disease has reached a crescendo under our present leadership. Official U.S. policy has taken on a new posture, one that has made Marxism the dispositive element in our treatment of Third World political movements.<sup>7</sup> The reasons behind this new policy deserve careful inspection. Only then will its consequences be fully appreciated.

## II. ON "DICTATORSHIPS AND DOUBLE STANDARDS"

In 1979, the November issue of *Commentary* magazine contained an article by a Georgetown University professor of international relations who was also a member of the American Enterprise Institute, a conservative "think tank" located in Washington, D.C. Entitled *Dictatorships and Double Standards*,<sup>8</sup> the essay so impressed the new Reagan administration that its author, Jeane J. Kirkpatrick, a Democrat, was named the new U.S. representative to the United Nations. In her article, after citing Iran, Nicaragua, China, Cuba, Vietnam, and Angola, Kirkpatrick made the following salient points:

In each of these countries, the American effort to impose liberalization

4. *Id.*, Jan. 5, 1984, at A1, col. 1.

5. *Id.*

6. *See id.*, Nov. 15, 1981, at E21, col. 1.

7. *Id.*, Jan. 11, 1984, at A10, col. 1.

8. Kirkpatrick, *Dictatorships and Double Standards*, COMMENTARY, Nov. 1979, at 34. The

and democratization on a government confronted with violent internal opposition not only failed, but actually assisted the coming to power of new regimes in which ordinary people enjoy fewer freedoms and less personal security than under the previous autocracy—regimes, moreover, hostile to American interests and politics.

. . . .  
 Although there is no instance of a revolutionary “socialist” or Communist society being democratized, right-wing autocracies do sometimes evolve into democracies. . . .

. . . .  
 Since many traditional autocracies permit limited contestation and participation, it is not impossible that U.S. policy could effectively encourage this process of liberalization and democratization, provided that the effort is not made at a time when the incumbent government is fighting for its life against violent adversaries, and that proposed reforms are aimed at producing gradual change rather than perfect democracy overnight. . . .

A realistic policy which aims at protecting our own interest and assisting the capacities for self-determination of less developed nations will need to face the unpleasant fact that, if victorious, violent insurgency headed by Marxist revolutionaries is unlikely to lead to anything but totalitarian tyranny. . . . Marxist revolutionaries are not contemporary embodiments of the Americans who wrote the Declaration of Independence, and they will not be content with establishing a broad-based coalition in which they have only one voice among many.<sup>9</sup>

These propositions have become the foundation of the Reagan administration policy on human rights. Announced shortly after President Reagan assumed power, this policy draws a sharp distinction between “totalitarian” (or communist) and “authoritarian” (or noncommunist) despotism, holding the latter to be tolerated and, whenever possible, subject to “benign neglect.”<sup>10</sup> In sharp contrast, communist or “totalitarian” human rights violations are to be immediately focused upon and condemned. True to this scenario, in December, 1983, President Reagan, when speaking at a human rights ceremony, “cited the Soviet Union, Iran, South Africa, Poland, and Nicaragua for specific human rights violations, but did not name El Salvador.”<sup>11</sup> Rather, it was left to his White House press spokesman, Larry Speakes, to declare in response to a question that the president’s general criticism of death squads was a reference to El Salvador.<sup>12</sup>

On that same day at the United Nations, Ambassador Kirkpatrick

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9. *Id.* at 35, 37, 44–45.

10. *N.Y. Times*, Mar. 22, 1981, at E19, col. 5.

11. *Id.*, Dec. 10, 1983, at A3, col. 4.

12. *Id.*

voted against three resolutions dealing with human rights.<sup>13</sup> On the thirty-fifth anniversary of the UN's Universal Declaration of Human Rights, the world body had overwhelmingly supported resolutions directed at human rights violations in Chile, El Salvador, and Guatemala.<sup>14</sup> Kirkpatrick, however, had refused to support the resolutions and criticized the scrutiny of the human rights situations in the three noncommunist countries while violations committed in communist states, in particular Cuba, had been ignored.<sup>15</sup>

A true commitment to human rights would require both Kirkpatrick's statement and a vote *for* the three resolutions, thereby expressing condemnation of all inhuman acts of officialdom wherever and whenever such violations occur. By rejecting this approach and looking to the colors of political banners, the Reagan administration relegated this most humanistic of contemporary problems to the status of just another weapon of cold war rhetoric.<sup>16</sup> One consequence is the inevitable charge of insincerity and hypocrisy. Even more important considerations are the significance and effect of this policy on traditional American values and on our ongoing role in world affairs. These latter dimensions of Reagan's human rights policy compel our immediate attention.

### III. HUMAN RIGHTS IN THE AMERICAN TRADITION

When the Founding Fathers proclaimed in the Declaration of Independence, "let Facts be submitted to a candid world,"<sup>17</sup> they demonstrated their confidence in both the values and the sense of justice prevailing among well-meaning people. They believed that fair-minded, sensitive individuals would agree with their decision to revolt against legal authority—a decision based upon England's denial of what in those days were referred to as "the rights of man." Today, we characterize them as "human rights." These rights were at the roots of our American Revolution; in the deepest sense, they were the very reason for its having occurred. In the set of values embraced by the Framers, the "rights of man flow from the law of nature itself, and as such are natural, unalienable, and essential to meaningful existence."<sup>18</sup>

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13. *Id.*

14. *Id.*

15. *Id.* Another example of this voting policy in the United Nations can be seen in Kirkpatrick's vote of October 23, 1984, when the UN Security Council voted 14 to 0, with the United States abstaining, to urge South Africa to end its "politics of exclusion." Kirkpatrick stated that the United States "abhorred apartheid," but did not support the resolution because it contained "excesses of language." *Id.*, Oct. 28, 1984, at A16, col. 1.

16. *See id.*, June 7, 1981, § 1, at 20, col. 1.

17. The Declaration of Independence para. 2 (U.S. 1776).

18. C. ROSSITER, 1787—THE GRAND CONVENTION 61 (1966). "The law of nature . . . is a set of moral standards governing private conduct, a system of abstract justice to which the laws of

As a matter of our political or constitutional history, the term "human rights" refers to the values that are derived from two fundamental sources: our common law system and our American constitutional tradition.<sup>19</sup> Since that tradition is the outgrowth of our English and colonial experience, many areas of overlap exist. Nevertheless, the common law and the Constitution constitute two distinct sources of rights—a fact consistently recognized by American courts when they are called upon to define and apply them.

Although cataloging all the rights we enjoy from either source would be virtually impossible, specific classifications are possible. Thus, we can determine that the rights obtained from the common law<sup>20</sup> include the right to acquire, possess, and dispose of property;<sup>21</sup> the right to marry;<sup>22</sup> the right to have children;<sup>23</sup> as well as the general right to pursue happiness and security.

The host of rights that grew out of our constitutional tradition are those identified with the two basic documents of American society: the Declaration of Independence and the Constitution, including the Bill of Rights and subsequent amendments. As is commonly known, these documents contain numerous specific rights—ones that are written down in so many words. Primary among these is freedom of expression, which includes freedom of speech,<sup>24</sup> freedom of the press,<sup>25</sup> and freedom to

men should conform, a line of demarcation around the permissible sphere of political authority, and the grand source of natural rights." *Id.*

19. Given the nature of this discussion, this article will focus on that category of human rights known as "political and civil rights," and will deal only peripherally with the other category, that of "economic, social, and cultural rights." Each category has been the subject of a separate UN covenant, an international multilateral treaty open for signature to all the nations of the world. These covenants are designed to represent the legal implementation of the Universal Declaration of Human Rights, unanimously adopted by the UN General Assembly in December, 1948, which contains both categories of rights. L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, *INTERNATIONAL LAW: CASES AND MATERIALS* 807-12 (1980). For the view held by numerous international lawyers that the provisions of the declaration have become general principles of international law, see *id.* at 809 (citing the Proclamation of Teheran and the Montreal Statement of the Assembly for Human Rights).

20. See T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 156 (1956). For a discussion of the relationship between common law and natural law, see L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 427-31 (1978).

21. See *Jones v. Alfred H. Mayer, Co.*, 392 U.S. 409 (1968); M. RADIN, *HANDBOOK OF ANGLO-AMERICAN LEGAL HISTORY* 440 (1936); W. WALSH, *A HISTORY OF ANGLO-AMERICAN LAW* 100-24 (1932).

22. M. RADIN, *supra* note 21, at 507-09; see also *Loving v. Virginia*, 388 U.S. 1 (1967).

23. *Skinner v. Oklahoma*, 316 U.S. 535, 536, 541 (1942) (referring to the right of procreation as "a sensitive and important area of human rights" and "one of the basic civil rights of man"). *But see* *Buck v. Bell*, 274 U.S. 200 (1927).

24. U.S. CONST. amend. I. See, e.g., *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

25. U.S. CONST. amend. I. See, e.g., *New York Times Co. v. United States*, 403 U.S. 713 (1971) (the Pentagon Papers case); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). In *Sullivan*, the Court stated "[W]e consider this case against the background of a profound national  
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communicate ideas through other forms.<sup>26</sup> Other specifically enumerated rights include freedom of religion or conscience,<sup>27</sup> freedom to petition,<sup>28</sup> freedom from self-incrimination,<sup>29</sup> freedom from cruel and unusual punishment,<sup>30</sup> and the right to equal treatment in the public and quasi-public domain.<sup>31</sup>

In addition to numerous written rights, Americans also benefit from an abundance of unwritten rights that have been interpreted to be implicit in the Declaration of Independence and the Constitution. Although these protections do not appear in so many words, they nevertheless exist, and are implemented as if they were a written part of our organic law. Among these implied rights are freedom of thought,<sup>32</sup> freedom of association,<sup>33</sup> the right to travel,<sup>34</sup> the right to privacy,<sup>35</sup> and the right to free choice in an election.<sup>36</sup>

No matter what the specific source of these rights may have been, cumulatively they have one fundamental, vital objective: human dignity. There should be no debate on this point. This truth has been recognized even on the international level. For example, the 1975 Helsinki agreement declared that human rights "derive from the inherent dignity of the human person" and that they are "essential for his free and full development."<sup>37</sup>

Clear statements of this nature hold a special significance for Americans because human dignity constituted the one ultimate goal of American society as well as the *idée fixe* of the English and colonial American experiences that preceded the revolution. That is why the

commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id.* at 270.

26. See, e.g., *Cohen v. California*, 403 U.S. 15 (1971).

27. U.S. CONST. amend. I. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963); *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

28. U.S. CONST. amend. I. See, e.g., *Hague v. CIO*, 307 U.S. 496 (1939); *Twining v. New Jersey*, 211 U.S. 78 (1908).

29. U.S. CONST. amend. V. See, e.g., *Malloy v. Hogan*, 378 U.S. 1 (1964).

30. U.S. CONST. amend. VIII. See, e.g., *Robinson v. California*, 370 U.S. 660 (1962).

31. U.S. CONST. amend. XIV. See, e.g., *Reitman v. Mulkey*, 387 U.S. 369 (1967); *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961). See also Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (codified as amended at 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a-2000h-6).

32. See, e.g., *Wooley v. Maynard*, 430 U.S. 705 (1977); *Brandenburg*, 395 U.S. 444.

33. See, e.g., *NAACP v. Alabama*, 357 U.S. 449 (1958).

34. See, e.g., *Shapiro v. Thompson*, 394 U.S. 618 (1969); *United States v. Guest*, 383 U.S. 745 (1966).

35. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

36. See, e.g., *United States v. Classic*, 313 U.S. 299 (1941).

37. Conference on Security and Co-operation in Europe: Final Act, Aug. 1, 1975, reprinted in 14 INT'L LEGAL MATERIALS 1292, 1295 (1975).



denial of that dignity, then deemed to be a part of English citizenship, caused the upheaval that led to both the Declaration of Independence and the Constitution. Americans, therefore, possess special credentials—and special responsibilities—in the present efforts to foster human rights around the world.

#### IV. CONTRASTING HUMAN RIGHTS POSTURES OF THE PAST DECADE

Contemporary public concern and discussion of the human rights policy of the United States was fueled by President Carter. Articulated in the strongest of terms in his inaugural address,<sup>38</sup> and consistently reaffirmed both personally<sup>39</sup> and by leading members of his administration,<sup>40</sup> Carter's commitment to human rights may well prove to be

38. *The Inaugural Address of President Carter*, 76 DEP'T ST. BULL. 121 (1977). President Carter stated that "[o]ur commitment to human rights must be absolute . . . . Because we are free we can never be indifferent to the fate of freedom elsewhere. Our moral sense dictates a clear-cut preference for those societies who share with us an abiding respect for individual human rights." *Id.* at 121-22.

39. Perhaps President Carter's most comprehensive statement was contained in his March 17, 1977 speech to the UN:

The search for peace and justice means also respect for human dignity. All the signatories of the UN Charter have pledged themselves to observe and to respect human rights. . . .

The basic thrust of human affairs points toward a more universal demand for fundamental human rights. The United States has a historic birthright to be associated with this process.

We in the United States accept this responsibility in the fullest and the most constructive sense. Ours is a commitment and not just a political posture. I know perhaps as well as anyone that our own ideals in the area of human rights have not always been attained in the United States. But the American people have an abiding commitment to the full realization of these ideals. And we are determined, therefore, to deal with our deficiencies quickly and openly. We have nothing to conceal.

*Peace, Arms Control, World Economic Progress, Human Rights: Basic Priorities of U.S. Policy*, 76 DEP'T ST. BULL. 329, 332 (1977).

40. Carter's chief spokesman on foreign affairs, Secretary of State Cyrus Vance, made the following statement:

I speak today about the resolve of this Administration to make the advancement of human rights a central part of our foreign policy. . . .

Our concern for human rights is built upon ancient values. It looks with hope to a world in which liberty is not just a great cause but the common condition.

. . . .

We seek these goals because they are right—and because we, too, will benefit. Our own well-being, and even our security, are enhanced in a world that shares common freedoms and in which prosperity and economic justice create the conditions for peace. And let us remember that we always risk paying a serious price when we become identified with repression.

. . . .

Our encouragement and inspiration to other nations and other peoples have never been limited to the power of our military or the bounty of our economy. They have been lifted up by the message of our Revolution, the message of individual human freedom. That message has been our great national asset in times past. So it should be again.

*Human Rights and Foreign Policy*, 76 DEP'T ST. BULL. 505, 505, 508 (1977) (speech by Secretary of State Cyrus Vance, 1977).  
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(along with Camp David accords) the most valuable contribution of his administration and, in absolute terms, the most enduring.<sup>41</sup>

Since this reaffirmation of human rights by the executive branch followed eight years of a foreign policy of *realpolitik* under the stewardship of Henry Kissinger, President Carter's pronouncement was initially greeted with considerable skepticism and criticism, including that of then-presidential hopeful Ronald Reagan.<sup>42</sup> Undeterred, President Carter did not permit any doubts over the permanent nature of his commitment. Thus he declared:

[W]e have reaffirmed America's commitment to human rights as a fundamental tenet of our foreign policy. In ancestry, religion, color, place of origin, and cultural background, we Americans are as diverse a nation as the world has ever seen. No common mystique of blood or soil unites us. What draws us together, perhaps more than anything else, is a belief in human freedom. We want the world to know that our Nation stands for more than financial prosperity.<sup>43</sup>

Not only did President Carter clearly point out the permanent nature of our commitment to human rights, but Congress, our second foreign policy-making branch of government, has also demonstrated its concern for human rights. For example, the amended Foreign Assistance Act of 1961 states that "a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries."<sup>44</sup> In addition, sup-

tary of State Cyrus Vance at the University of Georgia, Apr. 30, 1977).

41. As a former president, Jimmy Carter has clearly attempted to continually reemphasize the importance of human rights in the American tradition. In his speech at the 1984 Democratic National Convention, Carter stated:

Ours is the only country on earth with the strength, the moral commitment, the influence, and the economic independence to be the chief spokesman for those who suffer from oppression or torture or murder by their own governments. If we fail or refuse to speak, there is a deafening silence. Silence from the civilized world is what the dictators most want to hear. Silence from the civilized world is what the persecuted most fear.

N.Y. Times, July 17, 1984, at A14, col. 1.

42. *Id.*, June 10, 1977, at A5, col. 1.

43. *A Foreign Policy Based on America's Essential Character*, 76 DEP'T ST. BULL. 621, 622-23 (1977) (address by President Carter at the University of Notre Dame, May 22, 1977). Carter also stated that:

[W]e can already see dramatic worldwide advances in the protection of the individual from the arbitrary power of the state. For us to ignore that trend would be to lose influence and moral authority in the world. To lead it will be to regain the moral stature we once had.

The great democracies are not free because we are strong and prosperous. I believe we are strong and influential and prosperous because we are free.

*Id.* at 623.

44. 22 U.S.C. § 2304(a)(1) (1982). A 1975 amendment to the act provides that:

No assistance may be provided . . . to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged deten-

port for human rights is contained in congressional legislation dealing with the African Development Fund and the Inter-American Development Fund.<sup>45</sup> Congressional action is also demonstrated in the Jackson-Vanik amendment, which conditions U.S. trade relations with nonmarket-economy nations upon those nations granting emigration rights to their citizens.<sup>46</sup>

Even more significant in light of the Reagan administration's human rights posture is the promulgation by the Congress on October 4, 1984, of a joint resolution which reaffirms the United States' condemnation of the practice of torture and establishes specific guidelines for the implementation of that policy.<sup>47</sup> The resolution adopts the principle that opposition to human rights abuses must be universal by stating that the "United States Government opposes acts of torture wherever they occur, without regard to ideological or regional considerations."<sup>48</sup> For example, the resolution urges the president to instruct U.S. State Department personnel abroad to investigate and report allegations of torture.<sup>49</sup> In light of Kirkpatrick's UN vote and Reagan's "pocket veto" of the Salvadoran aid bill<sup>50</sup> (which was unsuccessfully challenged by congressmen in the courts<sup>51</sup>), it is clear that an ongoing clash regarding human rights policy is increasingly dividing the two political branches of our national government. Moreover, given the Reagan administration's volte-face from Carter's human rights stand, one must conclude that it is Congress that has been the proponent of a human rights posture that is both consistent with the recent past and reflects our traditional national values.

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tion without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of the person, unless such assistance will directly benefit the needy people of such country.

*Id.* § 2151n(a). To implement this provision the president is required to prepare for Congress annual country reports regarding each nation's human rights practices. *Id.* § 2151n(d).

45. See D. KOMMERS & G. LOESCHER, HUMAN RIGHTS AND AMERICAN FOREIGN POLICY 286 (1979).

46. 19 U.S.C. § 2432(a) (1982). See also J. JACKSON, INTERNATIONAL ECONOMIC RELATIONS 22-24, 159, 1058-65 (1977).

47. Torture by Foreign Governments, Pub. L. No. 98-447, 1984 U.S. CODE CONG. & AD. NEWS (98 Stat.) 1721.

48. *Id.*

49. *Id.* at 1722.

50. See *supra* text accompanying notes 1 & 13-15.

51. *Barnes v. Carmen*, 582 F. Supp. 163 (D.D.C. 1984). Thirty-three members of the House of Representatives challenged the longstanding "pocket veto" practice whereby the president can veto a bill that has been passed by both houses by holding a bill without signing it, or returning it, for more than ten days while the Congress is out of session. *Id.* at 164-65. The district court followed what it believed was the only case on point, *The Pocket Veto Case*, 279 U.S. 655 (1929), in upholding the pocket veto procedure. *Barnes*, 582 F. Supp. at 168-69.

## V. HUMAN RIGHTS IMPACT ON THE INTERNATIONAL SCENE

President Reagan's human rights policy, in particular its distinction between "totalitarian" (or communist) and "authoritarian" (or noncommunist) despotism, has been charged with sanctioning four years of continuing torture and murder in other lands. Sadly, Reagan's policy can also be accused of effecting new military hostilities, the first international bitter fruit of its poisoned tree. The recent war over the Falkland Islands offers an excellent example of the international (as distinguished from the internal) consequences of the Reagan administration's rejection of our traditional human rights policies.

At the time of its eruption, the conflict between Great Britain and Argentina represented only one of numerous territorial disputes between nations, a dispute, moreover, which had festered for at least 150 years.<sup>52</sup> The highly professional British foreign service was caught completely by surprise when Argentina chose to invade a pastoral, miniscule, island population that had just wanted to be left alone. Why did Argentina choose this particular point in time to undertake its precipitous military action? Consider the following distinctive scenario:

Rich in natural and human resources, Argentina nonetheless was on the brink of economic collapse, mismanaged by a military dictatorship with an abominable human rights record.<sup>53</sup> Faced with the problem of how to hold on to power in the face of tumultuous popular unrest, the generals in Buenos Aires turned to the age-old political tactic of creating a foreign enemy and making the failing leaders popular heroes by victory in a military adventure.<sup>54</sup> And what better object than the Falklands, that vestige of British colonialism that the Argentines had long claimed to be a part of their fatherland?<sup>55</sup>

The traditional obstacle to a movement against the Falklands had been the attitude of the United States, whose military and diplomatic influence, usually allied to England, had consistently stood in the way. With the Reagan administration, however, the Argentinian junta enjoyed a distinct advantage: the United States was asking a large favor. Its new president suffered from cold war tunnel vision. In the years preceding his election, Ronald Reagan had repeatedly called for the use of American troops to resolve sporadic international crises, a response he believed was necessary to prevent further communist encroachment. Once in office, Reagan focused upon specific "danger zones" in Central America. But because of America's preoccupation

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52. See 1982 PROC. AM. SOC'Y INT'L L. 269, 280-81.

53. N.Y. Times, Mar. 5, 1981, at A22, col. 1.

54. *Id.*, May 22, 1982, at A8, col. 4.

55. See *id.*, Apr. 5, 1982, at A8, col. 2.

with the Vietnam syndrome, Reagan was precluded from sending American troops abroad. Rather than reexamine the wisdom of military action, Reagan turned to the use of foreign troops.<sup>56</sup> Having rejected his predecessor's human rights principles, Reagan had no qualms in approaching Argentina's "authoritarian" ruling military junta for the necessary manpower to resolve conflicts in Central America.<sup>57</sup>

To the Argentinian generals, this new American president was a despot's dream.<sup>58</sup> President Reagan's cold war mentality did not permit him to appreciate any concomitant considerations in the framing of this aspect of his Latin American policy, such as the fact that his request for troops could have an effect on Argentina's claim to the Falklands. In this manner, Reagan provided the junta an opportune occasion to invade the Falklands as the United States was looking to Argentina as its anticommunist ally.<sup>59</sup>

The result, of course, is a sad chapter in recent history. The dispute over the Falkland Islands became a dirty little war, one of the most unnecessary conflicts ever recorded. After approximately 465 men were dead and far more were injured, as was officially reported, nothing much had changed.<sup>60</sup> The status quo ante bellum held fast. One military dictator replaced another in Buenos Aires, and the military junta continued to violate the human rights of the Argentinian people.<sup>61</sup> That state of affairs continued for almost two years before democracy finally returned to Argentina on December 10, 1983.<sup>62</sup> But the Reagan administration's indirect contribution to the cause, and thus the cost, of that conflict remains improperly appreciated.<sup>63</sup>

Criticizing Reagan's rejection of Carter's more evenhanded human rights policy does not mean that the practice of *realpolitik* could ever be completely avoided in the conduct of foreign relations. Throughout its history, America has maintained alliances with rulers who kept their subjects in a perpetual state of serfdom and to whom individual liberty was anathema. And one only has to mention the names of some of our more recent "friends"—such as Stalin, Franco, the Shah of Iran, and General Zia of Pakistan—to verify the inevitability of *realpolitik* in the American diplomatic experience.

Clearly, we have entertained our share of tyrants. We have also

56. *Id.*, Apr. 8, 1983, at A10, col. 3.

57. *Id.*

58. *Id.*, Apr. 19, 1982, at A1, col. 4.

59. *Id.*, Apr. 27, 1982, at A22, col. 1.

60. *Id.*, July 3, 1982, at A2, col. 2; *id.*, July 7, 1982, at A2, col. 1.

61. *Id.*, June 18, 1982, at A1, col. 5.

62. *Id.*, Dec. 11, 1983, at A1, col. 6.

63. *Id.*, May 23, 1982, at E23, col. 3.

paid the price by being charged with hypocrisy from the founding of our republic down to the present. There is, however, one fundamental difference between that involvement in *realpolitik* and the policies of the Reagan administration: At no time until Ronald Reagan took office has any president specifically rejected the proposition that one of our principal overall objectives is the protection and expansion of human rights whenever and wherever possible.<sup>64</sup>

Although Elliott Abrams, Reagan's spokesman on human rights, attempted to justify Reagan's emphasis on violations by communist regimes as part of a preexisting broader commitment,<sup>65</sup> both Democrats<sup>66</sup>

64. The Reagan administration's policy towards, and relationship with, South Africa has been a rich source for critics. South African Bishop Desmond Tutu, who was awarded the 1984 Nobel Peace Prize, has assailed the United States for supporting a "system as vicious, as evil and as immoral as Communism and Nazism." *Journal Herald* (Dayton), Oct. 17, 1984, at 1, col. 1. Bishop Tutu noted that the Reagan administration supports South Africa because it is anticommunist, which "is the most important declaration you can make to this Administration—human rights don't matter." *N.Y. Times*, Oct. 28, 1984, § 1, at 19, col. 1. The administration's assertion that its policy of "constructive engagement" with South Africa will achieve more good in the end has, at the end of Reagan's first term in office, proved untrue. *The Nightsticks of South Africa*, *id.*, Nov. 18, 1984, at 24E, col. 1.

65. Abrams, *Human Rights and the Reagan Administration: Four Perspectives—A View from the Department of State*, 31 *FED. B. NEWS & J.* 202 (1984). Abrams stated, "I take the comment that this Administration puts human rights policy in an East-West framework to be descriptive rather than critical." *Id.* at 203. Abrams added that the administration was committed to the effort to further human rights "as the President has made clear time after time. Human rights policy has always been, and remains, a central element of American foreign policy." *Id.* at 203.

With respect to Reagan's emphasis on human rights violations in communist or "totalitarian" regimes, Abrams stated:

To prevent virtually any country from being taken over by a communist regime tied to the Soviet Union is in our view a very real victory for the cause of human rights. Of course, it is very difficult to demonstrate to a large number of people that we are committed to the cause of liberty when we have good relations with a repressive regime which we seldom criticize publicly. I don't deny the seriousness of this problem, but I want to make clear why I think it exists. It exists because so many people in the West will no longer grant the moral imperative of resisting the advance of communism.

*Id.* at 204.

66. See Dodd, *Human Rights and the Reagan Administration: Four Perspectives—A View from the Senate*, *id.* at 204. Senator Dodd contended that the major deficiency in the Reagan administration's human rights policies is its

sacrifice of an evenhanded, principled human rights policy to the exigencies of the President's anti-Communist crusade. The requirement of evenhandedness. . . . comes from the hard-nosed realization that the strength of a human rights policy depends on its credibility. A human rights initiative is powerful if it is credible. It is credible if it projects convincingly that it is rooted in an objective dedication to the idea of human rights, that is, to the idea that *all* governments are under obligation to respect and protect certain fundamental rights of their citizens and others similarly under their sovereign power. Any indication that a human rights intervention is a political tool to annoy one's adversaries destroys its credibility and, therefore, its impact.

*Id.* at 205 (emphasis in original)

and Republicans<sup>67</sup> have recognized the serious consequences of this departure from a commitment to human rights that does not make distinctions on the basis of political ideologies. Critics of the administration have also recognized that Reagan's misguided approach to human rights hinders rather than advances the administration's foreign policy goals, including those relating to the Soviet Union.<sup>68</sup>

We should not be surprised then that President Reagan's special commission on Central America, under the chairmanship of Henry Kissinger, had as one of its key proposals in its January, 1983, report that the United States should not continue military aid to El Salvador unless that nation's death squads are brought under control.<sup>69</sup> That condition, supported by the conservative as well as the liberal members of the commission, also called for the criminal prosecution of death squad members, and for legislation requiring periodic reports of human rights progress—the very type of legislation that Reagan had vetoed one month earlier.<sup>70</sup> True to the Reagan ideology, the immediate reaction of the White House was that the president would ignore these proposals.<sup>71</sup> Once again, Reagan permitted his crusade against the Gulag to rationalize the continued existence of the death squads.

## VI. CONCLUSION

Proper appraisal of President Reagan's human rights policies requires an awareness of our historic traditions. Clearly, our Founding

67. See Leach, *Human Rights and the Reagan Administration: Four Perspectives—A View from the House*, *id.* at 207. Congressman Leach, a Republican member of the U.S. House of Representatives, stated that:

The President's human rights approach in South Africa distorts the traditions of our country. In 1801, in his first inaugural address, Thomas Jefferson enunciated what he considered to be the "essential principles of our government," the first of which was "equal and exact justice to all men, of whatever state or persuasion, religious or political."

*Id.* at 208. Leach also observed that "The Reagan human rights policy is simply not working in most parts of the world. While a case may be made for lowering human rights rhetoric in certain circumstances . . . any downgrading of human rights concerns in practice is tantamount to rejecting the American tradition." *Id.*

68. Senator Dodd commented that:

The Administration's myopic position gives strong support to the very charge the Soviets hurl at our human rights initiatives; namely, that under the sheepskin of humanitarian concerns, we are really seeking gains in terms of pure power politics, that human rights are just a pretext to try to undermine and destroy the Soviet Union and its allies.

. . . It is totally unreasonable and counterproductive to send the message to the East that those who promote human rights are really fighting Communism. . . . The chief of the KGB ought to be jubilant at this confirmation of his worst suspicions, and this is the saddest comment I can make on the Reagan view of human rights.

Dodd, *supra* note 66, at 206–07.

69. N.Y. Times, Jan. 10, 1984, at A1, col. 2.

70. *Id.*

71. *Id.*

Fathers viewed national security as the means by which the dignity of the individual was protected. Interchanging means and ends, the Reagan administration views the protection of that dignity as a mere expedient in maintaining our national security.<sup>72</sup> A better example of the convoluted thinking that results from cold war tunnel vision would be difficult to imagine. This subjugation to the "tyranny of labels" suggests the insupportable proposition that writhing pain and wretched death in the noncommunist dungeon possess a milieu of propriety or enjoy the luxury of expendability.<sup>73</sup> This is not a proposition that conforms to the political traditions of the United States.<sup>74</sup>

We Americans pay a heavy price when our foreign policy lacks imagination, and when it fails to adopt a valid, comprehensive plan. Without these attributes, the complex web of interwoven, and often volatile forces elementary to contemporary international politics virtually guarantees drastic consequences.<sup>75</sup> Moreover, when our foreign policy specifically rejects our traditional commitment to both human rights and the principle of democracy,<sup>76</sup> we are likely to end up sponsoring wars by foreign governments against their own citizens or neighboring populations.<sup>77</sup>

Historically, we have always been a distinctly antimilitary society, until events in 1948 thrust us into the reluctant role of a world superpower. Thus, the militaristic image projected by the Reagan administration, one that is untempered by an evenhanded, simultaneous call for human compassion, does little to further our long-range security inter-

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72. See *id.*, Aug. 25, 1981, at A9, col. 1.

73. See Lewis, *War is Peace*, *id.*, Mar. 26, 1981, at A23, col. 1.

74. *Id.*

75. Rather than the predicted domino reaction to the United States' departure from Vietnam, communist Vietnam fought both communist Cambodia and communist China. This result was unexpected because we had failed to consider nationalism, as well as the cold war dimension, in formulating our policies in southeast Asia.

76. *Id.*, Nov. 12, 1981, at A31, col. 1.

77. The Reagan administration's disregard for human rights in its preoccupation with communism is nowhere better demonstrated than in the CIA's warfare manual distributed to the Nicaraguan *contras*. See *id.*, Oct. 17, 1984, at A1, col. 4. The booklet, entitled *Psychological Operations in Guerrilla Warfare* contained, among others, the following instructions:

It is possible to neutralize carefully selected and planned targets, such as court judges, police and state security officials, etc. For psychological purposes, it is necessary to take extreme precautions, and it is absolutely necessary to gather together the population affected, so that they will be present, take part in the act, and formulate accusations against the oppressor. . . .

Our psychological war team should prepare in advance a hostile mental attitude among the target groups, so that at the decisive moment they can turn their furor into violence, demanding their rights that have been trampled upon by the regime.

*Id.* at A12, col. 4. After intense criticism from Congress and the media, the CIA announced that it would reverse its position and attempt to recall all of the distributed copies. *Journal Herald* (Dayton) Oct. 24, 1984, at 2, col. 1.



ests abroad.<sup>78</sup> Our present policymakers lack the perception that an unflinching and viable commitment to human rights, one that is true to our national heritage, would be a weighty counterbalance to this other distinctive characteristic that we increasingly represent, namely, our readiness to utilize military force.<sup>79</sup>

Although the Reagan administration does not seem to be properly aware of the fact, the political leadership of the United States shoulders a special responsibility in the field of human rights.<sup>80</sup> One could easily characterize that responsibility as implementing America's special mission in history. As we have seen, our purposeful commitment to human rights, the *raison d'être* of our basic political documents, resulted from the Framers' knowledge that civilization would never be free from the arbitrary threat of the torture chamber, the hangman's noose, or worse. That is why our Declaration of Independence proclaimed democracy and human rights as two of the basic reasons for our national existence, while our Constitution established the polity for the effective implementation of those rights. Indeed, the principles embodied in these documents have since been recognized as universal political values, having been adopted in the United Nations Charter as *the* ideals and political objectives of the international society of nations.<sup>81</sup>

A basic knowledge of history also indicates that human rights were not only the fuel of our revolution, but that they also were the stated objectives of the largest of the "hot" wars in our national experience—World War II. How, then, can they be expendable in an effort to win a cold war? In spite of the obvious insensitivity of the Reagan administration, both our national traditions and our recent experiences in places such as Iran demand that President Reagan rethink his policies.<sup>82</sup> Our success against the Soviet threat is best assured by maintaining our historic commitment to human rights as the enduring symbol of America and its most important contribution to the human experience.<sup>83</sup>

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78. N.Y. Times, Nov. 30, 1981, at A18, col. 1.

79. *Id.*, Oct. 1, 1982, at A31, col. 2.

80. *Id.*, Jan. 4, 1982, at A23, col. 1.

81. U.N. CHARTER art. 1, para. 2, 3.

82. N.Y. Times, Nov. 22, 1981, at E25, col. 1.

83. The reason for our national commitment to human rights was perhaps best stated by Abraham Lincoln. In a speech at Independence Hall, made just before he assumed the presidency, Lincoln concentrated on the then current great problem, the impending dismemberment of the Union. He reflected on why our nation had been created and why it had survived, and concluded that our nation's existence was not due to the "mere matter of separation of the colonies from the motherland." That was not enough, he felt, to explain this unique political phenomenon known as the United States of America. To properly understand it, Lincoln declared, we must look to some-

In a world where symbols have both extensive and unanticipated consequences, this commitment will continue to be no small achievement. For these compelling reasons we must reject differences based upon labels, and recognize that on a practical level the black flag and the red flag possess far more similarities destructive of human rights than they do conflicts in ideology.

These same vital considerations also demand that we categorically reject any policy that converts our historic protection of human dignity into a mere expedient of international politics, even one the president determines as necessary to further our national interests. We must realize that the more our national policies resemble those of the Soviet Union,<sup>84</sup> the less we are justified in maintaining the risk of nuclear war to protect the differences that may remain between our respective social systems.<sup>85</sup>

By standing up for the "rights of man," we are not only benefiting

thing in the Declaration of Independence giving "liberty, not alone to the people of this country, but, I hope, to the world," something "which promises that in due time the weights should be lifted from the shoulders" of mankind. R. BASLER, ABRAHAM LINCOLN: HIS SPEECHES AND WRITINGS 577-78 (1962).

84. *Id.*, Dec. 10, 1981, at A17, col. 1. The Reagan administration's support of regimes with infamous records of human rights abuses is well demonstrated in its relationship with Chile. Congress has suspended military aid to Chile, to be resumed only when the Reagan administration can verify Chile's improved human rights performance, which the administration has not yet done. *Id.*, Dec. 8, 1984, at A22, col. 1. Nonetheless,

[d]espite the official US policy favoring the restoration of democracy to Chile, the State Department has announced several measures of accommodation with the Pinochet regime. These include lifting the suspension on financing by the Export-Import Bank, re-inviting the Chilean navy to participate in joint maneuvers, [and] voting against continuing the mandate of a special investigator in the UN Human Rights Commission.

Boston Globe, Nov. 14, 1984, at 27, col. 1. *See also* N.Y. Times, Feb. 24, 1985, at E2, col. 1.

85. For a clear expression of the foreign policy postures the United States should maintain, see Barber, *The Soul of Foreign Policy: Rights*, N.Y. Times, Oct. 29, 1984, at A23, col. 3. Barber maintained:

Any debate about foreign policy has to address what our nation is striving to achieve. In that light, human rights ought to be the soul of United States foreign policy.

We seek international peace and economic stability for one reason: to establish liberty, which lets the spirit flourish. Our foreign policy . . . moves forward when our fundamental ethic—the freedom and security of every individual—is married to the practical pursuit of policy in the real world. A well-designed, hard-headed campaign for human rights would link those two features of progress.

. . . .  
 . . . American foreign policy should put our influence to work, whenever we have the leverage, to get governments off the track of brutality and thought control and onto the track of human decency and free thinking. We should use our clout to advance the cause we believe in. . . .

. . . .  
 Nothing would do more to raise our reputation in the world than the practical demonstration that we mean what we say and thus will act with strength and realism to rescue the victims of injustice and cruelty.

ourselves, but we are also expressing confidence in two principles of our national heritage: that freedom is dilative and that the human rights of each individual are not really fully protected until everyone's human rights are finally secure. Perhaps the famous statement by Benjamin Franklin best expresses the views of both his time and ours: "God grant that not only the love of liberty but a thorough knowledge of the rights of man may pervade all the nations of the earth so that a philosopher may set his foot anywhere on its surface and say, 'this is my country.'"<sup>86</sup>

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86. FRANKLIN—THE AUTOBIOGRAPHICAL WRITINGS 778 (C. Van Dorn ed. 1945).  
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