

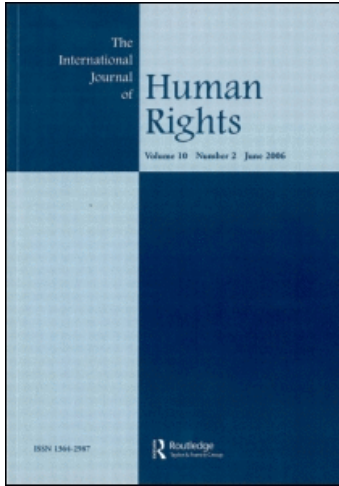
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Democracy promotion and human rights in US foreign policy

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INTRODUCTION

Democracy promotion and human rights in US foreign policy

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The origins of this special issue are found in the theme of the fifth annual meeting of the British International Studies Association (BISA) Working Group on US Foreign Policy, which took place at the University of Leeds, September 2010. At that time President Obama was approaching the mid-point of his first term in office. The obvious question to ask was whether his presidency had changed anything at all, or had the Bush administration's approach to foreign relations persisted. All but one of the articles in this special issue were presented at that conference and all of them address this question, either by providing background to our understanding, or specifically addressing the question of Obama's impact. The conference theme of democracy promotion and human rights in foreign policy was designed to isolate the kind of evidence that helps us to address the question of continuity or change. These concepts and their place in foreign policy have, after all, been the subject of fierce debate since the founding fathers based the United States on principles that they believed to be universal and therefore exportable. It is generally assumed that liberals like Obama advocate policies designed to advance the democratic cause worldwide. They reject narrow definitions of the national interest based exclusively on America's material wellbeing; and indeed Obama seemingly reinforced this on the campaign trail with his promise to restore America's moral standing, so that it 'is once again that last, best hope for all who are called to the cause of freedom'.¹

If this assumption about liberal presidents is correct then delegates at our conference should have been able to report that the election of Obama had restored democracy promotion and human rights protection to the centre of US foreign policy after years of neglect under the conservative Bush administration. The Obama administration was, as noted, approaching the midterm elections. It surely had been in office long enough to make its mark and shift policy in a liberal direction. The reality, however, is – and always has been – much more complex than this starting hypothesis suggests. To fully understand the place of democracy promotion and human rights in America's foreign affairs, and to assess whether it has a role in contemporary policy, we need background that is both historically and theoretically informed, as well as a detailed empirical analysis of the new administration's policy in that context. Each of the articles in this special issue addresses that need.

There is no doubt that America is founded as a democracy committed to fundamental rights protected by the rule of law. It is wrong to assume, however, that all the founding fathers were committed to an activist foreign policy designed to promote these values

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beyond America's shores. Of course, the United States at that time was not the superpower it is today. The reluctance to spread democratic revolution, however, was not simply a consequence of America's relative lack of power. The realists among the founding fathers questioned the universal applicability of the American system. In a letter to Lafayette (the French aristocrat who became an honorary American citizen for his participation in the war against the British) written on 6 January 1799, for instance, Alexander Hamilton cast doubt on the ability of republicanism to succeed in revolutionary France. He did not doubt the French right to establish internal liberty, he simply did not think the French spirit or ethos could sustain such a government. 'I shall only say', he concluded, 'that I hold with Montesquieu that a government must be fitted to such a nation as much as a Coat to the Individual, and consequently that what may be good at Philadelphia may be bad at Paris and ridiculous at Petersburg'.² All the US could be expected to do in such a world was to take care of its national interests. Not all American realists accept the risk of moral relativism inherent in an argument such as this. They do, however, urge caution about using American power to advance a liberal agenda. George Kennan is perhaps the most articulate of policymaker / intellectuals in this regard, although Reinhold Niebuhr, Hans Morgenthau and Henry Kissinger could easily lay claim to that particular mantle.³ For Kennan, US foreign policy consistently failed to grasp the limitations of American power. At its worse it suffered from:

... a failure to appreciate the limitations of war in general – any war – as a vehicle for the achievement of the objectives of the democratic state. This is the question of the proper relationship of such things as force and coercion to the purposes of democracy. That they have a place in the international as well as the domestic functioning of democracy I would be the last to deny. . . . But I would submit that we will continue to harm our own interests almost as much as we benefit them if we continue to employ the instruments of coercion in the international field without a better national understanding of their significance and possibilities. It is essential to recognize that the maiming and killing of men and the destruction of human shelters and other installations, however necessary they may be for other reasons, cannot in itself make a positive contribution to any democratic purpose. . . . [T]he actual prospering occurs only when something happens in a man's mind that increases his enlightenment and the consciousness of his real relation to other people.⁴

From this perspective, US foreign policymakers could not afford to be influenced by the youthful exuberance of a nation that believed it was the vanguard of a global democratic revolution. When policymakers were influenced by that narrative, or when they were influenced by a democratic system that gave rise to irresponsible populism, the US not only damaged its interests it also failed to advance the democratic cause. The best that the US could achieve in foreign policy, these realists argued, was an international order that sustained the peace and allowed Americans to prosper. This might not vindicate the American Revolution in the ways liberals might demand, but it would provide a platform for America to be an example of good governance; and that, ultimately had a greater political power than America's armed forces.⁵

If realists were satisfied with an order that secured American interests, Jeffersonian republicans were more ambitious. An order that allowed the US to prosper would itself have revolutionary implications. It would in other words provide an example of good governance that other states would seek to emulate. The 'exemplarist' tradition in American foreign policy is often traced back to John Quincy Adams's speech, which took place against the background of the Greek revolution of the 1820s. Of course, American power to influence these events was limited, but that did not stop Adams' and the United States taking sides. The United States would 'not go in search of monsters to destroy' it

would instead be a 'well wisher to the freedom and independence of all'. Adams' passive moralism, in other words, did not signal the end of the republican commitment to the cause of global democratic revolution.⁶ It would instead confine its interventions to the Western hemisphere, where the competition for influence was less pressing, and to the frontier, where Jefferson's 'Empire of Liberty' would extend civilisation. This was not simply a realist policy dictated by the relative lack of material assistance available and by America's limited influence. From the republican perspective it was dangerous even to seek the power that was necessary to influence events far afield. This was because international interventionism could threaten regime change in *Washington*. War, in particular was to be avoided. This was because, as Madison put it:

...war is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to dispense them. In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow they are to encircle. The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honourable or venial love of fame, are all in conspiracy against the desire and duty of peace. Hence it has grown into an axiom that the executive is the department of power most distinguished by its propensity to war: hence it is the practice of all states, in proportion as they are free, to disarm this propensity of its influence.⁷

The founding fathers, in other words, were acutely aware of the threat that foreign affairs and war posed to the American republic, based as it was on the separation of powers. Internationalism tended to lead to the centralisation of power around the president, the foreign policy aristocracy and the armed forces. Isolationism was therefore persuasive for ideological as well as material reasons.

Isolation from great power politics characterised US policy up until 1898 and the Spanish–American War. In this war the US fought not simply to liberate the Cuban people from the grip of a European empire, but to spread 'civilisation' beyond the frontier demarcated by the continent's geographic boundaries. Victory over Spain delivered an 'imperial conundrum'. The Treaty of Paris passed control of Puerto Rico, Guam and the Philippine islands from Spain to the United States, leaving the United States and President McKinley in particular, troubled over what to do with its annexations. His well-known statement that the US would 'Christianize' Filipinos fits the imperial narrative of the age, as well as Kennan's analysis that the US simply 'liked the smell of empire'.⁸ Imperialists such as William McKinley and Teddy Roosevelt, in other words, simply took it for granted that the great power had Empires. This also helps to explain the brutal treatment of the Filipino people by the occupying American forces. Led by Emilio Aguinaldo, Filipinos refused to accept the annexation and proclaimed a Philippine republic. In their attempt to subjugate the uprising, the United States 'killed outright 15,000 rebels, and estimates run as high as 200,000 Filipinos dying from gunfire, starvation, and the effects of concentration camps into which the United States crowded civilians so they could not help Aguinaldo's troops.'⁹

American forces also used the 'water cure' or what we know today as waterboarding, a tactic that was in fact opposed by politicians in Washington, including Teddy Roosevelt.¹⁰ To be sure, this European-style imperialism did not go unopposed in the United States. An anti-imperialist movement emerged:

[T]o impose our sway upon them [the Filipinos] against their will, to conquer a nation of Asiatics [sic] by fire and swords, was', it argued, 'the abandonment of every principle for which this country has stood.'¹¹

It was only after World War II that the Filipinos gained their independence from the American empire but the anti-imperial movement had made its mark and this would influence post-war foreign policy, not least in Indo-China where Presidents Truman and Eisenhower had difficulty backing the restoration of French colonial power.

It would be a mistake to conclude from this that the move from isolationism to internationalism led inevitably to an abandonment of a republican foreign policy and the establishment of empire. Republican security theory certainly advocates the promotion of democracy at the state level but it also insists that such a process takes place gradually and in the context of an international order governed by the rule of law, which is based on the principle of state sovereignty and non-intervention. For authors like Dan Deudney and Robert Tucker, this theory not only underpinned the United States itself – what Deudney calls ‘the Philadelphian system’ – it also inspired American liberal internationalism, which we associate most obviously with the presidency of Woodrow Wilson.¹² Wilson did of course advocate national self-determination and democracy promotion, but he also advocated a new form of international relations, one that was guided by the principle of collective decision making and implemented through international organisation. ‘Making the world safe for democracy’ in this sense did not mean intervening militarily in another state on behalf of pro-democracy groups. In fact the opposite was the case. It meant creating a peaceful international system so that authoritarian regimes would not use the threat of foreign invasion to repress opposition movements. A stable international system based on these principles created the political space in which pro-democracy forces could emerge and *gradually* take power. There is an assumption in this theory of course that history *is* moving in a democratic direction and in that respect it shares the kind of moral certainties of imperialist ideologies; and yet there is a fundamental difference. The moral certainties of the imperialist, even the liberal imperialist, reject the republican argument that foreign policy should be constrained by international law and by a categorical commitment to human rights.

To the extent that Wilsonianism is embedded within the republican tradition of the founding fathers it is more than just a policy of democracy promotion. As Lloyd Ambrosius tells us, Woodrow Wilson’s legacy is far from simple. He proposed collective action but he also engaged in controversial unilateral interventions and was for democracy and self-determination but refused to use US power to protect Armenians from autocratic Turks.¹³ Yet as an *idea* embedded within the republican tradition, Wilsonianism includes a commitment to democracy, to human rights *and* to the rule of law, including international law. It would have been wrong, in this respect, to describe the 2003 invasion of Iraq as a Wilsonian policy, even if one could accept the dubious assumption that use of military force was linked to the Bush administration’s freedom agenda. This is because the Bush administration openly rejected the Wilsonian principle of ‘common counsel’ at the United Nations, and, as we shall see below, it rejected certain international human rights norms in the process.¹⁴ The fact that such policies *are* described as Wilsonian (or at least neo-liberal) stems from a reading of American internationalism that is very different to Deudney’s. Tony Smith, for instance, locates the origins of the Wilsonian emphasis on democracy promotion in the compromise between imperialists and anti-imperialists at the turn of the twentieth century. ‘Democracy promotion’ appealed to the anti-imperialist principle while pandering to the imperialist’s sense of moral hierarchy and historical mission:

Imperialists could ... tout the superiority of the Anglo-Saxon race, while anti-imperialists could reassure themselves that the ideals of self-government would not be endangered ... the democratisation of the Philippines came to be the principle reason the Americans were

there; now the United States had a moral purpose to its imperialism and could rest more easily ... democracy would become [in the Philippines] the moving faith of the forty-eight years of American control.¹⁵

There is then a significant split in liberal approaches to democracy promotion and the only reason the Wilsonian label transcends that split is because historians have traced the 28th president's policies back to different starting points. Both imperialist and republican versions of Wilsonianism support the promotion of democracy but both have very different views on the means used to achieve that end. It would be wrong to assume, however, that at the other end of the American political spectrum conservatives oppose democracy promotion. Although President Reagan's foreign policy was inconsistent in its approach to authoritarian regimes he did realign conservative foreign policy, shifting it from Nixon and Kissinger's emphasis on international order and committing the US, at least rhetorically, to 'a crusade for democracy'. This new emphasis on democracy promotion was also found in the creation of the bi-partisan National Endowment for Democracy in 1983. Supporting this shift, of course, were the neoconservatives. For them, America's willingness to compromise with the Soviet Union under Nixon and Kissinger was seen, ironically, as an extension of domestic liberalism, in particular its tolerance of difference. This view, they complained, had led to an attack on the social institutions that held American society together: religion, the family, the nation; and in foreign policy it led to the appeasement of morally repugnant and dangerous regimes, most obviously the Soviet Union.¹⁶ Neoconservatives would take an aggressive line toward non-democratic regimes for two reasons: because it was morally the right thing to do; and because it would restore a sense of mission to American foreign policy that would in turn rally an otherwise wayward American citizenry. Whether Reagan and his foreign policies were inspired by this agenda is disputed.¹⁷ Nevertheless, neoconservatives claim Reagan as one of their own. In the mid-1990s, for instance, William Kristol and Robert Kagan called for a neo-Reaganite foreign policy. For them, an ideological foreign policy backed by massive increases in defence spending creates 'an elevated patriotism' and serves the task of 'preparing and inspiring the nation to embrace the role of global leadership'. The 'remoralization of America at home', they write, 'requires the remoralization of American foreign policy.'¹⁸ Mirroring the imperialist and republican split in liberal approaches to democracy promotion then, we have a realist and neoconservative split on the other side of the political spectrum. Ironically, on this issue the liberal imperialist may have more in common with the neoconservative than they do the liberal republican, which is why we can find the thoughts of Tony Blair, for example, contained in a neoconservative reader.¹⁹

The articles in this special issue can be located in this historical and conceptual framework. For instance, Mark McClelland's article 'Exporting Virtue', speaks directly to the relationship between realism and democracy promotion in neoconservative thought. It is generally accepted that between the neoconservative inspired Reagan and Bush Jnr administrations there was a time when democracy promotion either took a back seat to the realism of the Bush administration or was constrained by the multilateral and cautious (at least after Somalia) approach of the Clinton administration. One might assume that in this period the neoconservatives were silently waiting for their moment to return to government. For McClelland, however, key figures in the second generation neoconservative movement went on their own intellectual journey after the Cold War; first adopting, and then ditching, the cautious realist approach to foreign relations in favour a bold and aggressive policy of democracy promotion. McClelland identifies three key influences that assisted this conversion. Firstly, the decline of bipolarity gave one-time realists a new confidence that American

material power could (contra Kennan) translate into political influence and be used to bring about ideological change. Secondly, the liberal democratic peace theory that influenced the Clinton administration also influenced neoconservatives keen to find a way of squaring a moralistic foreign policy with the national interest. As McClelland notes, Francis Fukuyama's *End of History* thesis added a specific aspect to this conversion. His assessment that liberal democracy had ultimately triumphed in the world of ideas reaffirmed the sense in which the US was on the right side of history when it backed pro-democracy forces. But it also contained a warning. The liberal triumph was to be celebrated, yet 'it simultaneously produced societies that are hallmarked by dullness, with little outlet for virtue, moral excellence or a just cause'. A republican approach to the gradual nurturing of global democracy within the framework of international law was thus insufficient for neoconservatives inspired by Fukuyama. They would adopt a more assertive form of democracy promotion because it restored a sense of virtue to American society. The sense was, McClelland writes, that 'liberal democracies that fight occasional wars are far healthier and robust societies than those that live in Kant's perpetual peace.'²⁰ The third reason democracy promotion began to occupy a central role in conservative foreign policy was the religious turn in US politics. The Christian right's platform on issues such as religious freedom, Christian solidarity, Israel and social issues like abortion, lent itself to a criticism of various non-democratic regimes around the world. Crucially, McClelland concludes, leading evangelicals:

...endorsed the democratic peace thesis and wholeheartedly supported efforts by the United States to promote democracy overseas, on the basis that it leads to a more peaceful world, improves the conditions of persecuted Christians in authoritarian states, as well as instrumentally opening up countries that are currently 'closed' to evangelical efforts.²¹

A democracy promotion agenda inspired by neoconservative thinking was therefore politically significant at the time the Bush Jnr administration took office. This does not mean, however, that foreign policy after 9/11 would inevitably be put at the service of this ideological agenda. As Oz Hassan and Mark Hammond note in their article 'The rise and fall of America's freedom agenda in Afghanistan', democracy promotion initially took second place to a focus on counter-terrorism. The reluctance to engage in nation-building, as expressed most clearly by Condoleezza Rice in her 2000 *Foreign Affairs* article was not changed by 9/11. Regime change in Afghanistan was not synonymous with democracy promotion. In fact, the more ambitious goal of reconstructing the Afghan state and its society originated at the United Nations rather than in Washington, and the early post-Taliban period was characterised by the tension between nation-building at the heart of the 'New York Consensus' and counter-terrorism. The US became more closely aligned with the New York Consensus in the context of its operation against Iraq. This may seem contradictory given the dismissive attitude toward the UN Security Council on Iraq, but Hassan and Hammond argue something different. Because the US was searching for reasons to justify its invasion of Iraq, and because the democratization of the Middle East was offered as one such reason, it cast a new light on US actions in Afghanistan. The Afghan campaign, they write:

...became increasingly understood in terms of America's global and regional "security governance" and democracy promotion became seen as a "technology" to meet perceived American national interests.²²

Given this rather haphazard approach to democracy promotion in Afghanistan, it is not surprising that America's goals quickly outstripped resources. The consequences, Hassan and Hammond conclude, have been 'disastrous'. Rather than being defeated, the Taliban

insurgency strengthened and the general lack of security has meant elections are reduced to symbolism rather than anything meaningful. Of course, the Obama administration re-committed US resources to Afghanistan while withdrawing troops from Iraq. In Hassan and Hammond's analysis, however, this should not be interpreted as a redoubling of America's commitment to democracy promotion. These are stabilisation measures that have been decoupled from the longer term expansive aim of democracy promotion and nation-building.

The Bush administration's response to 9/11 was littered with controversial actions. Perhaps the most controversial of all was the decision to invade Iraq notionally to disarm Saddam's regime and dismantle his weapons of mass destruction. When the coalition failed to find WMD the chorus of oppositional voices grew louder and even more sceptical. One fear, of course, was that the United States had invaded Iraq simply to advance its economic interests – or more accurately the interests of the transnational capitalist elite – and that 'democracy promotion' offered an additional layer to the veil covering these selfish interests. Jeff Bridoux's article "It's the political, stupid": national versus transnational perspectives on democratisation in Iraq' critically examines this kind of argument. In particular he focuses on William Robinson's claim that US-led nation-building in Iraq follows a familiar pattern: it seeks to promote 'polyarchy', or a system that guarantees the capitalist order by inevitably electing elites sympathetic to it. For Bridoux, this argument is overstated. Through in-depth analysis of the democracy assistance programmes in Iraq, Bridoux argues that political goals were at the forefront on American concerns and that the national particularities of Iraq, rather than the influences of a transnational elite, impacted more on the success, or otherwise, of that assistance. Based on this analysis, Bridoux concludes that those of us researching US foreign policy 'need to remain aware of the fact that democracy promotion is not necessarily merely an instrument in the hands of neoliberal transnational elites seeking to insert capitalism in every single country.'

As noted, Barack Obama entered the White House promising to end the US military commitment to Iraq. It might also be argued that his priority is to stabilise rather than democratise Afghanistan. Nicolas Bouchet's assessment of Obama's broader foreign policy, however, demonstrates that the president and his administration has not rejected the idea of promoting democracy through its foreign policy. It is instead reinterpreting what it means to promote democracy in light of its own strategic priorities, shifting policy away from the Bush administration's 'hard Wilsonian' approach and emphasising the diplomatic engagement of illiberal regimes. There was, Bouchet notes, a need to 'detoxify' the idea of democracy promotion after the Bush years. As part of this strategy, the Obama administration would expand the conception of democracy to 'go beyond elections and narrowly conceived political institutions towards a broader range of rights of a more economic and social nature'.²³ Development assistance would play a greater role in US policy both rhetorically and in terms of funding through USAID. The policy, however, is not without its contradictions. Crucially, Bouchet warns that the:

...strengthening of state capacity and promoting 'country ownership' of programmes, risks empowering autocratic governments and weakening independent civil society. This has been especially worrying where US assistance to civil society has been restricted to state-registered and effectively government-approved groups, as in Egypt and Russia.²⁴

This criticism was given added salience by the events in February 2011, when civil society in Egypt eventually forced the President Mubarak from office. Commentators noted a cut in democracy promotion to Egypt under Obama as well as a hesitation about siding with the protestor's demands.²⁵ The cautious approach led others to unequivocally label Obama a

realist. According to Ross Douthat for instance Obama's foreign policy 'has owed far more to conservative *realpolitik* than to any left-wing vision of international affairs'.²⁶ In a post-script to his article, Bouchet offers an additional nuance to this kind of argument. The Obama administration may have found itself caught between a strategy of engagement and the appearance of turning its back on pro-democracy movements, but its enthusiasm the transformational impact new information and communication technologies, which once seemed voguish and superficial now seems farsighted given the role *Facebook* and other social networks played in mobilising the protestors.

The split in the Wilsonian tradition between republican and imperialist inspired liberal internationalism also impacts upon human rights policy. More specifically, it influences attitudes toward the level of restraint that international human rights law has on the use of American power either in self-defence or to promote democracy. Neoconservatives and 'hard Wilsonians' combine notionally liberal ends with realist means. The categorical commitment to human rights law within the republican tradition is dismissed as naive. Rule-consistent (or exemplarist) behaviour, according to this view, will not defend or promote a liberal world order because it fails to acknowledge the political ruthlessness of illiberal enemies. Democracy can only be protected when the United States clearly defines its enemies and when it makes those enemies understand that they cannot achieve political advantage by acting in illiberal ways. This requires freeing the US and its friends from self-imposed normative and legal restraint. Liberals have to accept, neoconservatives insist, that promises need to be broken before treaties will be kept, authoritarian regimes have to be supported in order to promote democracy, multilateral processes need to be circumvented to advance the common good and civilised norms need to be ignored in order to protect civilisation.²⁷ It is because this narrative fits so neatly with heroic images from the American frontier, something Walter Russell Mead captures in his portrayal of the 'Jacksonian tradition', that the promotion of liberalism through illiberal means perfectly suits the neoconservative's nationalist agenda.²⁸

As noted above, the neoconservative agenda of democracy promotion did not interest all parts of the Bush administration. But neoconservatives and realists were united in their approach to international human rights law. Dick Cheney's admission shortly after 9/11 that the US would work 'the dark side' and use any means necessary to achieve its objectives articulates this. The war on terror was like the 'just wars' of old. The just warriors fighting for civilisation would have license to use uncivilised methods against unjust (or unlawful) enemy combatants. By focusing on the US use of aggressive interrogation methods, including the practice of extraordinary rendition, the last three articles in this special issue address this paradox. In his article, 'What's so extraordinary about rendition', James Boys reminds us that the tension between counter-terrorism and human rights predated 9-11. The Clinton administration had after all cooperated with Egypt's repressive government in the rendition of Talaat Fouad Qassem, a key leader and spokesman of al-Gamaa al-Islamiya, an armed Islamist group. Qassem had been sentenced in absentia for his role in the assassination of President Sadat. He was arrested in 1995 by Croatian police in Zagreb and handed over to American officials, who then questioned him before turning him over to the Egyptian authorities without going through the due process of extradition proceedings. Despite its questionable nature under human rights law, the US continued this practice under Clinton. To be clear, there is a qualitative difference between the Clinton and Bush administration's approach to rendition. Under Bush US would send suspected terrorists to countries with dubious human rights regimes not for the purpose of trial but for the purpose of interrogation. The assumption was that the US would be able to lawfully gather information using practices that would otherwise be

unlawful if they were practiced by Americans or on American soil. From the perspective of international human rights law that assumption was of course wrong. Torture is unlawful in all circumstances. The 'extraordinary' rendition programme therefore created additional reasons to be concerned about US counter-terrorist policy. The main point of Boys's article, however, is that the public and academic attention on the Bush administration's practices should not lead us to lose sight of the fact that rendition to justice is considered 'normal' despite its challenge to the norms that regulate law enforcement.

Rebecca Sanders's article '(Im)plausible legality. The rationalisation of human rights abuses in the American Global War on Terror' explores further the theme of the norm versus the extraordinary. More specifically, she explores the argument that the post-9/11 period was 'a state of exception' that could rationalise American human rights abuses. Unrestrained executive force might be justified in the state of exception 'if it is directed at re-establishing or defending the existing [liberal] order'.²⁹ Sanders finds, however, that there was little sense in the Bush administration's legal reasoning that existing human rights and humanitarian laws were merely suspended. The Bush administration, she concludes, did not see the war on terror as a state of exception. She then considers whether the human rights abuses that emerged during and after the Abu Ghraib scandal were a consequence of a plausibly deniable intelligence operation gone wrong. The concept of plausible deniability is of course familiar to the world of covert operations. Sanders writes:

Unlike a state of exception practices conducted under the cover of plausible denial do not suspend the law or openly transgress norms, but violate them stealthily. The demand for denial evinces awareness of the distinction between legality and illegality and the risk of sanction, embarrassment, and blowback.³⁰

This too fails to adequately describe the US response to 9/11 because the Bush administration had, as noted, openly admitted it was using tactics that would have been denied had this paradigm been dominant. Sanders settles instead on the phrase (im)plausible legality to describe the Bush administration's counter-terrorist policy. This recognises that the Bush administration propagated legal justifications for human rights abuses that were immanent within the liberal order that the US was seeking to defend. This may seem paradoxical and implausible; and from the liberal republican perspective that does not draw normative lines to discriminate between the rights of liberal friends and illiberal enemies it is. But Sanders illustrates how, from the lawyers supporting the Bush administration's neoconservative perspective, legal arguments such as this were plausible and just.

Maureen Ramsay's article 'Dirty hands or dirty decisions' addresses the question of investigating, prosecuting and punishing those responsible for the abuses of detainees in American counter-terrorism operations. She focuses on Cheney's argument that 'tough, mean, nasty, tactics', including enhanced interrogation techniques or torture, might be justified if they take place in a ticking bomb-type scenario and if they prevent terrorist atrocities. Ramsay's attack on Cheney's logic is three-pronged. The first questions whether the torture of Abu Zubaydah, Khaled Sheik Mohamed and Mohammed al Qahatani was triggered by intelligence that an imminent attack was about to take place. She argues it was not and was not therefore justified. The second questions the Bush administration's insistence that the information derived from the use of torture prevented attacks. She argues that this was not the case. New intelligence may have led to the detention of others in the al Qaeda network, but this is not the same as preventing attacks and certainly not the same as stopping the imminent attack or ticking-bomb that might otherwise justify the use of torture. The third prong recalls that aspect of Michael Walzer's argument on

torture that is often forgotten. This insists that the torturer be punished even if the circumstances in which he acted justified his actions. This is necessary, in Ramsay's opinion, to make certain that society focuses on the abiding wrong of the necessary evil and for society to acknowledge that a wrong had been done. Without prosecutions and punishment the exception (torture) risks becoming the norm and liberal societies risk sliding down a slippery moral slope toward illiberalism. For this reason, Ramsay concludes, that those in the Bush administration 'who authorised, designed and applied the torture policy should be investigated, prosecuted and punished.'³¹ The fact that the Obama administration has not, as yet, vigorously pursued this kind of strategy is therefore regrettable. It is not entirely surprising if one considers the broader political and historical landscape. American public opinion is against the prosecution of Bush officials and other liberal democracies, notably France and the UK, have not pursued such a strategy when coming to terms with their own counter-terrorism strategies.

Acknowledgements

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Notes

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13. Lloyd E. Ambrosius, *Woodrow Wilson and the American Diplomatic Tradition: The Treaty Fight in Perspective* (Cambridge : Cambridge University Press, 1987).
14. It might be argued that through Resolution 1441 (2002), the US and UK did have a UN mandate for the war against Iraq. For reasons why this is not a convincing argument see Jason Ralph,

- 'After Chilcot: The "Doctrine of International Community" and the UK Decision to Invade Iraq', *British Journal of Politics and International Relations*, February 2011, [http://onlinelibrary.wiley.com/journal/10.1111/\(ISSN\)1467-856x/earlyview](http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1467-856x/earlyview).
15. Tony Smith, *America's Mission. The United States and the Worldwide Struggle for Democracy in the Twentieth Century* (Princeton: Princeton University Press, 1994), 43. For his view that neoliberals were partially responsible for the war against Iraq, see Tony Smith, *A Pact With the Devil: Washington's Bid for World Supremacy and the Betrayal of the American Promise* (New York and London: Routledge, 2007).
 16. Irving Kristol, *Neoconservatism: The Autobiography of an Idea* (New York, 1995).
 17. Stefan Halper and Jonathan Clarke, *America Alone: The Neo-conservatives and the Global Order* (Cambridge: Cambridge University Press, 2004).
 18. William Kristol and Robert Kagan, 'Towards a Neo-Reaganite Foreign Policy', *Foreign Affairs* 75, no. 4, (1996), 18–32.
 19. Irwin Stelzer (ed.) *The Neocon Reader* Perseus, 2004.
 20. Mark J. L. McClelland, 'Exporting virtue: neoconservatism, democracy promotion and the end of history', *The International Journal of Human Rights* 15, no. 4 (2011), 520–531.
 21. Ibid.
 22. Oz Hassan and Andrew Hammond, 'The rise and fall of America's freedom agenda in Afghanistan: counter-terrorism, nation-building and democracy', *The International Journal of Human Rights* 15, no. 4 (2011), 532–551.
 23. Nicolas Bouchet, 'Barak Obama's democracy promotion at midterm', *The International Journal of Human Rights* 15, no. 4 (2011) 572–588.
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 25. Anne Applebaum, 'US deeds don't follow US words on Egypt', *Washington Post*, 8 February 2011.
 26. Ross Douthat, 'Obama the Realist', *New York Times*, 6 February 2011.
 27. The most obvious and influential statement of this kind of argument is Jeanne Kirkpatrick, 'Dictatorships and Double Standards', *Commentary* (1979), <http://www.hoover.org/publications/policy-review/article/5799>. On US alliances with authoritarian regimes as 'tactical deviations from a broad strategy of promoting liberal democratic governance throughout the world', see William Kristol and Robert Kagan, 'National Interest and Global Responsibility', *The Neocon Reader*, ed. Irwin Stelzer (New York: Grove Press, 2004), 68.
 28. Walter Russell Mead, *Special Providence. American Foreign Policy and How it Changed the World* (New York: Alfred Knopf, 2001). For other examples of the contemporary neoconservative message resonated with the frontier politics of American history see Henry Nau, 'Conservative Internationalism', *Policy Review* (2008), 150.
 29. Oren Gross, 'The Normless and Exceptionless Exception: Carl Schmitt's Theory of Emergency Powers and the "Norm-Exception" Dichotomy', *Cardozo Law Review* 21 (1999–2000), 1825.
 30. Rebecca Sanders, '(Im)plausible legality': the rationalisation of human rights abuses in the American 'Global War on Terror', *The International Journal of Human Rights* 15, no. 4 (2011), 605–626.
 31. Maureen Ramsay, 'Dirty hands or dirty decisions? Investigating, prosecuting and punishing those responsible for abuses of detainees in counter terrorism operations', *The International Journal of Human Rights* 15, no. 4 (2011), 625–641.

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