



Jenna Reinbold. *Seeing the Myth in Human Rights*. Philadelphia: University of Pennsylvania Press, 2016. 208 pp. \$45.00 (cloth), ISBN 978-0-8122-4881-4.

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## Rolling Back Rights

On May 3, 2017, Rex Tillerson, US secretary of state, briefed staff at the US State Department on how the new “America First” policy of the Donald Trump administration should be interpreted for the planning and implementation of foreign policy.[1] He declared that there should be a decoupling of policies from values, where interventions carried out under the auspices of “America First” would not necessarily be done so on the basis of an appeal to American values such as democracy, freedom, and human rights. He claimed that even though values remain constant, policies change and the pursuit of American interests during the Trump administration will supersede American values. In other words, he was articulating a realist and pragmatic approach to foreign policy that concedes the importance of American values at home, but does not insist on those values being at the heart of its policies abroad, nor should such values be seen as a *sine qua non* of US foreign relations with other countries around the world.

Such a position represents a significant break from the past, where at least ostensibly, the United States has always sought to align its foreign policy to such values. Even though there is a long history of the United States ignoring human rights abroad, including recent revelations in the CIA torture report, the Abu Ghraib torture photos, and the use of extraordinary rendition, the United States has long been seen as a defender of freedom and a supporter of democracy. Indeed, the Millennium Challenge Account as part of USAID has human rights and other governance conditions that need to be met before third countries receive overseas development

assistance (ODA).

In the debates during the recent general election in the United Kingdom, Prime Minister Theresa May led moves to abandon the UK’s 1998 Human Rights Act, which since coming into force in 2000 brought the full protection of fundamental rights set out in the European Convention of Human Rights into UK law. The result of the June 23, 2016, referendum for the United Kingdom to leave the European Union provided additional leverage to the prime minister’s argument; however, her official position is to wait until after Brexit is complete before looking at the protection of human rights in the UK. These anti-human rights sentiments stand in stark contrast to the United Kingdom’s history of rights that not only reaches back to the Magna Carta of 1215, but also includes British leadership in the forging of the European human rights regime.[2]

The Tillerson and May positions on human rights come at a time of rising criticism in which human rights are seen as impediments to strong government, economic efficiency, and national and international security. The “War on Terror” since 9/11, the consolidation of anti-terror legislation across many Western democracies, the rise of “illiberal” democracies, and the return to authoritarianism in countries such as the Philippines under President Rodrigo Duterte have seen significant efforts to roll back human rights protections and to undermine what has been a gradual, consensual, and increasingly inclusive promulgation, legalization, and proliferation of human rights.[3]

Ever since the 1948 Universal Declaration of Human Rights (UDHR), the world has seen the establishment and subsequent growth in the international law of human rights, which includes major international and regional treaties, institutions, and organizations. Many now describe this collection of bodies and law as an international “regime” of human rights, which has grown in depth and breadth, where an increasing number of human rights have been given express legal protection (i.e., civil, political, economic, social, and cultural rights) and an increasing number of countries have ratified human rights treaties.[4] More countries in the world have formally committed themselves to the human rights norms and values originally set out in the UDHR, and such formal participation in the de jure protection of human rights has been shown empirically to lead to an improvement in their de facto protection and realization.[5]

Over the last year and a half, I have been talking to human rights scholars and practitioners as part of the Rights Track podcast series (<http://www.rightstrack.org>) in which we have been discussing how systematic research on human rights has developed and how human rights organizations carry out their work to advance human rights. Our discussions have revealed two very important and common themes: (1) trends in the perception and protection of certain human rights are actually much more positive than we had assumed or believed before starting the podcast series; and (2) human rights are fluid, contested and “made” by collective struggles from groups at the domestic and international levels. Demands for rights create opportunities to extend rights protections that have already been promulgated in principle or to promulgate new rights protection and expand the law of human rights. The gap between “rights in principle” and “rights in practice” becomes a space for contestation that is often used by human rights NGOs and other collective actors to seek redress from states and international actors.[6]

In the face of such positive developments and importance of human rights, the Tillerson and May approach finds significant traction in mass publics and represents a more nationalistic and isolationist turn in international relations and politics. Nativist and populist elements in the United States propelled Donald Trump to power in part due to a deep skepticism about “globalist” ideas such as human rights and fears that international governance curbs the sovereignty of America. Theresa May famously declared that “to be a citizen of the world is to be a citizen of nowhere,” and Brexit campaigners traded on a similar set of discourses evident in the US that created fear of the

other, suspicion of supranational governance, and strong dislike of human rights.

Beyond the rise of May and Tillerson, academic work has also seen recent books such as *The End of Human Rights* by Costas Douzinas (2000) and *The Endtimes of Human Rights* by Stephen Hopgood (2013), which are critical of the ways in which human rights have been colonized by particular sets of elites who have taken away the power of human rights from those who most need their protection. These critiques see a yawning gap between the practice and discourses of the elite international human rights lawyers in New York and Geneva (what Hopgood refers to as “Human Rights,” with large capital letters) and the day-to-day struggles of ordinary people who demand rights and basic protections (what Hopgood refers to as “human rights,” with lowercase letters). Douzinas claims that the struggle for human rights has moved from the barricades to the barristers, while Hopgood argues that human rights language has become sacralized (and is guilty of its own form of social magic) and even dedicates a chapter of his book to a critique of the architecture of human rights buildings in New York, The Hague, and Geneva.[7] Skepticism and critique of human rights such as these are not new; many people have doubted the foundations of human rights and have seen them as serving the interests of particular segments of society, but the return of strong critique and recent political developments suggest that once again human rights are under threat.

In this current climate, Jenna Reinbold’s *Seeing the Myth in Human Rights* is a welcome defense of human rights. In the absence of agreed philosophical foundations for human rights and despite the many positive advances that have been made in their promotion and protection, there is still a need for strong arguments about why we have human rights, why they are important, and how they have come about. Her argument reaches far beyond consideration of the pragmatism of a human rights approach that only focuses on the law, or concerns over administration or enforcement, and delves into the deeper sense of what “we mean when we speak of human rights” (p. 7). She grounds her argument in the idea of “political myth”; that unifying set of narratives that have parallels with religious beliefs and discourses, but that also encompass secular, modern, postmodern, and post-traditional notions of a binding set of ideas that become legitimized and reified. For Reinbold, myth is not fantasy or fiction as it has been traditionally understood, but it is a “dense, evocative narrative designed to generate meaning, solidarity, and order for a particular audience” (p. 8).

To be effective, such myths must carry “indisputable authority” and “unequivocal assertions.”

She argues that the UDHR, the primary focus of the book, had both of these attributes of myth, and she deploys the idea of the mythopoeic quality of the UDHR: “the deliberate, often painstaking work that Commission members undertook to produce an ethico-political narrative capable of commanding a uniquely realistic status” (p. 8). In this way, Reinbold joins other scholars in examining how human rights are socially constructed, crafted and made through language and action wrapped in a powerful narrative. Her focus on the UDHR is correct in that it begins the modern process of articulating a set of universal rights drawn from historical struggles and the history of thought, and it is not a legally binding document, but a global foundational document that would shape law, politics, and practice in the decades that followed its promulgation. Reinbold’s use of the term “mythopoeic” is very much in the vein of the sociologist and social theorist Emile Durkheim, for whom myth is not valuable itself, but has a larger “sociofunctionalist” purpose. The UDHR, as Reinbold sees it, gave human rights “their capacity to command a particular moral weight within the blossoming international landscape of the twentieth century” (p. 9).

There is a strong “sacralization” logic running through this book, which sees the evolution of a secularized defense of human dignity. While Hopgood sees such sacralization as problematic, Reinbold, in keeping with other sacred arguments about humanity and the person, sees it as crucial for understanding the foundation and enduring appeal of human rights. Her mythopoeic analysis is rooted in religious beliefs and discourses, but in human rights she sees a similar function for “authoritative secular” or “quasi-secular” narratives. Indeed, she argues that the UDHR is an “avowedly secular document” designed to encapsulate a prescription for “human meaning, morality, and solidarity within an evocative, highly authoritative narrative” (p. 11). While she insists on the secular nature of the UDHR, she nevertheless concedes that the document itself is “a true spiritual guide for humanity” (citing Chilean delegate to the Commission Hernan Santa Cruz, p. 11). There is thus for me an ongoing and some ways unresolved tension in this book between the insistence on secularity and the appeal to myth, the sacred, and the spiritual.

Her evidence base for this particular reading of the modern origins and articulation of human rights is an extensive record of the negotiations of the UDHR, the pub-

lic broadcasts of the framers, their speeches, and many of their essays. The success of her argument rests on three main things, in my view. First, she claims that the framers of the UDHR had effectively narrated into existence the moral and legal landscape that centered on the sacredness of the human being. Second, she deploys a flexible and fluid understanding of myth that breaks from more formulaic uses of myth found in religious studies. And finally, she is keen to demonstrate how this narrative construction of human rights has sought to move the world from one of “barbarous acts” to one of “freedom, justice and peace in the world” (p. 13).

The structure of Reinbold’s argument starts with a deeper understanding of myth, both in its sacred and political dimensions, a theoretical framework which allows her to understand the construction of human rights as mythopoeic and to bring in a fuller and more salient consideration of religion. She moves on to consider the sacred elements of human rights or the appeal to the sacred in human rights. Here, we see the powerful role of the notion of “inherent human dignity,” which can come from philosophical foundations that appeal to God (e.g., Thomas Aquinas), nature (e.g., John Locke), or reason (e.g., Immanuel Kant).[8]

While we often think the notion of the sacred transcends time and space, the particular critical juncture of the immediate post-World War II period during which the UDHR was drafted pits the notion of the sacred against the “barbarous acts” the world had just witnessed across Europe. In this way, the sacred in human rights is socially constructed, as the ideas about human rights interact with the social world in which the UDHR was being framed and crafted. Human rights so conceived do not become “empty signifiers,” but of a time and a place that can be their empirical referents and that can provide them with meaning.[9] The challenge, however, remains in making the appeal of human rights travel beyond these particular conditions in ways that appeal to a global audience.

The mechanism through which human rights have become universalized has primarily been international law, which developed through consultation, iteration, and different forms of social construction over time. The sacredness of human rights articulated in the early sections of the book is then seen through the eyes of the legal world, and the language of the UDHR, while not legally binding, sets out minimal conditions for human dignity that can be articulated through law. For Reinbold, law makes the language of the UDHR “actionable,” but even

the law has evolved through further iterations, ongoing jurisprudence, and proliferation over time.

Reinbold culminates her argument through a consideration of the precarity of myth. Indeed, in 1999, *New York Times* author David Reiff claimed that human rights should be seen as a “precarious triumph,” which has advanced considerably since the UDHR, but which remains continually under threat and never fully realized. Reinbold has given us much to contemplate in this beautifully written account of the mythopoeic origins of human rights. Seeing the myth of human rights is not to dismiss them as nonexistent or fragile, but to show us the genealogy of an idea that has moved from the conceptual to the practical, a journey that requires us to acknowledge the role of religion, society, politics, and law. In the current period, the force of her argument and the power of human rights is now more important than ever.

#### Notes

[1]. Rex W. Tillerson, “Remarks to U.S. Department of State Employees,” May 3, 2017, US Department of State website, <https://www.state.gov/secretary/remarks/2017/05/270620.htm> (last accessed June 19, 2017).

[2]. A. W. B. Simpson, *Human Rights and the End of Empire* (Oxford: Oxford University Press, 2004).

[3]. Todd Landman, *Protecting Human Rights: A Global Comparative Study* (Washington DC: Georgetown University Press, 2005), *Human Rights and Democracy: The Precarious Triumph of Ideals* (London: Bloomsbury, 2013), “Rigorous Morality: Norms, Values and the Com-

parative Politics of Human Rights,” *Human Rights Quarterly* 38, no. 1 (2016): 1-20; and Salidin Meckled-Garcia, *The Legalization of Human Rights: Multidisciplinary Approaches* (London: Routledge, 2005).

[4]. Landman, *Protecting Human Rights*, 1.

[5]. Landman, *Protecting Human Rights*; Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009); Christopher J. Fariss, “The Changing Standard of Accountability and the Positive Relationship between Human Rights Treaty Ratification and Compliance,” *British Journal of Political Science* (2016): 1-33, doi:10.1017/S000712341500054X.

[6]. Joe Foweraker and Todd Landman, *Citizenship Rights and Social Movements: A Comparative and Statistical Analysis* (Oxford: Oxford University Press, 1997); Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

[7]. Todd Landman, “Social Magic and the Temple of Human Rights: Critical Reflections on Stephen Hopgood’s Endtimes of Human Rights,” in *Debating the Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World*, ed. Doukje Lettinga and Lars van Troost (The Hague: Amnesty International, 2014), 25-32.

[8]. Attracta Ingram, *A Political Theory of Rights* (Oxford: Oxford University Press, 1995).

[9]. Ernesto Laclau, *On Populist Reason* (London: Verso Books, 2007).

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