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MICHAEL BLAKE

Professor of Philosophy, Public Policy, and Governance

University of Washington

Seattle, Washington

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How the Trump Administration Has Buried the Human Rights Agenda

Michael Blake

The United States announced in June of 2018 that it would be withdrawing from the United Nations Human Rights Council (UNHRC) – joining Iran, North Korea, and Eritrea as the only countries currently refusing to participate in the Council’s deliberations.¹ Donald Trump’s administration had, prior to this announcement, signaled a broad hostility to the norms and practices of international human rights. Donald Trump himself had lavished praise on authoritarian rulers such as Rodrigo Duterte and Vladimir Putin, both of whose administrations have engaged in numerous human rights violations; Trump has gone so far as to boast of his “great relationship” with Duterte, and has seemingly rejected American intelligence warning of Russian interference with American democracy.² As a candidate, Trump announced his willingness to abandon international humanitarian law, by bringing back both waterboarding and “a hell of a lot worse than waterboarding.”³ The Administration’s withdrawal from the HRC, though, represents the most extreme rejection of the institutional framework defining and protecting international human rights; the UNHRC is the most significant global body

¹ Gardiner Harris, “Trump Administration Withdraws U.S. from U.N. Human Rights Council,” June 19, 2018, *The New York Times*. Available at <https://www.nytimes.com/2018/06/19/us/politics/trump-israel-palestinians-human-rights.html>

² David Nakamura and Emily Rauhala, “Trump boasts of ‘great relationship’ with Philippines’ Duterte at first formal meeting,” November 13, 2017, *Washington Post*; Jeremy Diamond, “Trump sides with Putin over US intelligence,” July 16, 2018, *cnn.com*. Available at <https://www.cnn.com/2018/07/16/politics/donald-trump-putin-helsinki-summit/index.html>.

³ Tom McCarthy, “Donald Trump: I’d bring back ‘a hell of a lot worse than waterboarding,” February 7, 2016, *The Guardian*. Available at <https://www.theguardian.com/us-news/2016/feb/06/donald-trump-waterboarding-republican-debate-torture>

charged with the defense of human rights. The United States is the first country to have withdrawn its participation from that body, after earlier deciding to participate.

There are any number of reasons, of course, to believe that the UNHRC was doing an imperfect job of defending human rights. As the Trump administration noted, the HRC devoted a disproportionate share of its attention to human rights abuses occurring in Israel and in the Occupied Territories.⁴ The current membership of the UNHRC, moreover, includes such repressive regimes as Venezuela, the Democratic Republic of the Congo, and Saudi Arabia.⁵ The past history of the United States, further, does not indicate a wholehearted support for the norms and practices of international human rights; its centrality to the project of international human rights should not be overstated.⁶ The decision to withdraw from the UNHRC, though, is a bad one for the world's most marginal and vulnerable people; it is only the most overt act of an administration that has consistently refused to regard human rights as a legitimate constraint on the pursuit of national self-interest. The abandonment of the UNHRC will reduce the power of human rights to make a difference in those lives, in at least three ways. The administration's decision will, most obviously, reduce its power to act effectively within the UNHRC; it will reduce the power of multilateral organizations such as the UNHRC; and it will undermine respect for the moral ideals that made organizations such as the UNHRC worth building.

EXIT OR VOICE? THE LOSS OF US INFLUENCE

We can begin by examining the first of these effects. The United States, by leaving the UNHRC, has forfeited its right to speak in that organization's deliberations. The Trump Administration has indicated that they do not find this to be a significant loss, given the extent to which American concerns have gone unheard within the UNHCR. It is worth noting, though, that exit

⁴ See the remarks of Nikki Haley, available at <https://www.state.gov/secretary/remarks/2018/06/283341.htm>

⁵ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx>

⁶ See generally Samantha Power, *A Problem from Hell: America in the Age of Genocide* (New York: Basic Books, 2002).

from the UNHRC removes American influence over that organization entirely. Albert O. Hirschman's analysis of institutional dissent seems relevant here. When we are faced with an institution that fails to reflect our values, we can choose to exit that organization – or to remain within that organization, and speak about how it ought to be reformed. The causes and effects of either choice are complex, but it is generally true that those who choose exit tend to undermine the power of their voice. Having left the organization, they are no longer taken by those who remain to have any entitlement to continued power over its direction.⁷ Those who remain within an organization are often skeptical – at best – about the moral claims of those who refuse to remain. We can expect something similar to happen within the UNHRC. If the United States offers criticisms of that body's pronouncements, as we can predict it will continue to do, it will now offer them as an outsider, rather than as an insider. Even those member countries that might have been expected to be sympathetic to the concerns of the United States may now regard those concerns with a more skeptical eye. More broadly, we can expect those tendencies condemned by the United States – the bias and hypocrisy in the UNHRC's administration of international human rights law – to continue unabated in a UNHRC unburdened by American influence.

THE UNHCR WILL BECOME LESS EFFECTIVE

This, of course, may not be entirely displeasing to the Trump Administration, given that administration's broader hostility to the human rights agenda. This leads us to the second worry about the administration's decision to withdraw from the UNHRC: the withdrawal of the United States from that organization is likely to make that body, and multilateral bodies more broadly, less effective in the pursuit of human rights. If we look solely at the UNHRC, we must notice that this organization will become less effective simply in virtue of how American absence from that organization will affect its ability to speak in an authoritative voice about human rights. The United States, to put it bluntly, is both powerful and relatively democratic; its absence from an organization devoted to human rights practice cannot help but make that

⁷ Albert O. Hirschman, *Voice, Exit, and Loyalty* (Cambridge: Harvard University Press, 1970).

organization's pronouncements somewhat less authoritative. The legal practice of human rights, after all, still works largely by means of informal practices of moral suasion; there is no global legislature to pass law, nor any global police force to enforce that law. Human rights, to follow the ideas of Charles Taylor, only work when the rights asserted reflect a global "overlapping consensus" on what sorts of acts are rightly regarded as morally shameful.⁸ To the extent that the deliberations of the UNHRC can be rejected as reflections of partiality and politics, they *will* be so rejected – which is a problem, when those deliberations might have endorsed the sorts of moral rights we ought to regard as worthy of respect.

DOES TRUMP'S "TRANSACTIONALISM" UNDERMINE MULTILATERALISM?

More broadly, of course, the administration's abandonment of the UNHRC will make it more difficult for multilateral bodies to work effectively on behalf of human rights. Donald Trump himself is frequently described as a transactional leader; he sees no need for standing relationships, firm allies, or even moral ideals – only the pursuit, in the present exchange, of maximal self-interest.⁹ The problem with this form of politics, though, is that institutions can serve as a bulwark against the most malignant forms of transactions – and the Trump administration's abandonment of multilateralism might undermine the ability of global institutions to do this job. The American political system begins with the insight that a free society will not remain free for very long, unless it has institutions that place standing roadblocks in the way of the tyrant. Jason Mayerfeld, though, has recently demonstrated that multilateral treaty bodies might serve a similar function, by making any one country's descent into political evil more difficult. Europe, on Mayerfeld's analysis, resisted the urge to deploy torture as part of its response to terrorism, precisely because European societies are enmeshed in multilateral bodies that made torture more difficult to hide or to justify; the United States,

⁸ Charles Taylor, "Conditions of an Unforced Consensus on Human Rights," in his *Dilemmas and Connections* (Cambridge: Harvard University Press, 2014).

⁹ See Debra Saunders, "Transactional President," April 16, 2017, *Real Clear Politics*. Available at https://www.realclearpolitics.com/articles/2017/04/16/transactional_president_133618.html

with its greater hostility to multilateralism, descended into torture more quickly.¹⁰ We can see the Trump Administration's rejection of the UNHRC, on this analysis, as both a refusal to support existing forms of multilateral institutions, and a continuation of a broader hostility to the thought that such institutions might rightly constrain the national pursuit of self-interest – with similarly bad effects, in both cases, for the world's most vulnerable people.

AGAINST THE AMERICAN HUMAN RIGHTS TRADITION

The most damaging consequence of the Trump Administration's decision, though, reflects what that decision tells us about the relationship between human rights and American political power going forward. The institutions built in defense of human rights after the Second World War were built to defend a moral proposition – namely, that human beings had rights even against their own states, and that states could not rightly do certain things against people even when those states might find it convenient to do those things.¹¹ The fact that these human rights were inconvenient for states was, in fact, part of the point of those rights. Presidents from Jimmy Carter to Barack Obama – including Republicans such as Ronald Reagan and George W. Bush – took the defense of human rights to be a valid purpose for American foreign policy. That they sometimes do so in a hypocritical manner – as when George W. Bush sought to demonstrate that waterboarding was not really torture – does not diminish the fact that these Presidents wanted to be *seen* as defending human rights.¹² These Presidents, and their administrations, maintained the moral proposition that violating human rights was rightly understood as shameful, and if they sometimes cared more about appearances than reality, at least those appearances reflected the continuing moral importance of human rights themselves.

¹⁰ Jasom Mayerfeld, *The Promise of Human Rights: Constitutional Government, Democratic Legitimacy, and International Law* (Philadelphia: University of Pennsylvania Press, 2016).

¹¹ See Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010).

¹² Andrew Cohen, "The Torture Memos, Ten Years Later," February 6, 2012, *The Atlantic*. Available at <https://www.theatlantic.com/national/archive/2012/02/the-torture-memos-10-years-later/252439/>.

The Trump Administration, though, has refused to even maintain an appearance of belief in the moral importance of human rights. Trump's own rhetoric on the campaign trail openly celebrated torture; once elected, his Administration began lower funding for those parts of the State Department tasked with defending human rights – including the Office of Global Criminal Justice, which it sought to close entirely.¹³ Donald Trump's vision of foreign policy, of course, begins with the thought of America First; this vision has little room for human rights, since those rights necessarily involve both constraints on state power and the possibility of being held to account by foreign states and multilateral bodies. Hence, the Trump Administration's withdrawal even from the hypocritical and inconsistent support given by previous administrations to the morality of human rights.¹⁴

CONSEQUENCES OF THE TRUMP ADMINISTRATION'S STANCE ON HUMAN RIGHTS

The refusal to pay lip service to human rights, though, has significant consequences. When Donald Trump visited Egypt, and refused to offer even half-hearted criticism of Egypt's human rights record, the result was a significant increase in extra-judicial killings.¹⁵ More recently, Saudi Arabia reacted strongly to being criticized for its human rights record by Canada, expelling the Canadian ambassador and threatening to cut off trade. The Canadian complaint was exactly the sort of anodyne criticism that would have once been made by the United States. The Trump Administration, however, has largely refrained from making this sort of complaint – with the result that the Saudi government has sensed a new willingness to assert

¹³ Benjamin Kentish, "Donald Trump's administration 'closes State Department office that investigates war crimes,'" July 18, 2017, *The Independent*. Available at <https://www.independent.co.uk/news/world/americas/us-politics/donald-trump-state-department-war-crimes-office-genocide-investigate-and-prevent-rex-tillerson-todd-a7846756.html>.

¹⁴ John Feffer, "Donald Trump Has Been True to His Word on Human Rights," March 26, 2018, *The Nation*. Available at <https://www.thenation.com/article/donald-trump-has-been-true-to-his-word-on-human-rights/>

¹⁵ Sudarsan Raghavan, "Since Trump's Mideast visit, extrajudicial killings have spiked in Egypt," August 30, 2017, *The Washington Post*. Available at https://www.washingtonpost.com/world/middle-east/since-trumps-mideast-visit-extrajudicial-killings-have-spiked-in-egypt/2017/08/30/62bf48c0-8200-11e7-9e7a-20fa8d7a0db6_story.html?utm_term=.e5e09de13617

immunity from external pressure in favor of human rights.¹⁶ This shift in rhetoric will have complex effects upon how states work together in defense of human rights; given the United States' refusal to offer rhetorical support for Canada, the Canadian government has recently pressed Germany to take the lead in defending global human rights.¹⁷ The most damaging effects of this shift, though, will be felt by those whose human rights are most at risk. The American history of hypocritical invocation of human rights was never sufficient to guarantee the human rights of the world's most marginal people. The refusal to play the game of human rights, however, is likely to make their plight that much worse. Hypocrisy, after all, is the tribute paid by vice to virtue, and the refusal to regard human rights abuse as shameful is likely to make that abuse more widespread and more overt.

The Trump Administration's decisions, in short, have the potential to make a very bad world that much worse. One need not think that the existing human rights regime is sufficient – or that the UNHRC did an adequate job of defending those rights – to regard that administration's decision-making in abandoning the UNHRC as dangerous indeed. The world stands in need of leadership, and of leaders in particular who will defend the possibility of multilateral defense of the moral ideals undergirding international human rights. If the United States continues to abdicate this role, the need for that leadership will only increase.

¹⁶ Ben Hubbard, "Saudi Arabia Assails Canada Over Rights Criticism, Sending Message to the West," August 6, 2018, *The New York Times*. Available at <https://www.nytimes.com/2018/08/06/world/middleeast/saudi-arabia-canada-rights-ambassador.html>

¹⁷ "Canada appeals for German backing among Saudi rights row," August 27, 2018, *Reuters*. Available at <https://www.reuters.com/article/us-germany-canada/canada-appeals-for-german-backing-amid-saudi-rights-row-idUSKCN1LC0Z5>

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Founded in 1992 at the signing of the Maastricht Treaty

Hondertmarck 45D

6211 MB MAASTRICHT

The Netherlands

Tel. +31 43 32 60 828

Tel. +33 1 41 29 09 30

Fax: +33 1 41 29 09 31

Email: info@cicerofoundation.org

Website: www.cicerofoundation.org

Registration No. Chamber of Commerce Maastricht 41078444