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978-1-107-00846-5 - Human Rights in the United States: Beyond Exceptionalism

Edited by Shareen Hertel and Kathryn Libal

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## HUMAN RIGHTS IN THE UNITED STATES

This book brings to light emerging evidence of a shift toward a fuller engagement with international human rights norms and their application to domestic policy dilemmas in the United States. The volume offers a rich history, spanning close to three centuries, of the marginalization of human rights discourse in the United States. Contributors analyze particular cases of U.S. human rights advocacy aimed at addressing persistent inequalities within the United States, including advocacy for the rights of persons with disabilities; indigenous peoples; lone-mother-headed families; incarcerated persons; lesbian, gay, bisexual, and transgendered people; and those displaced by natural disasters, most notably Hurricane Katrina. This book also explores key arenas in which legal scholars, policy practitioners, and grassroots activists are challenging multiple divides between “public” and “private” spheres (e.g., in connection with children’s rights and domestic violence) and between “public” and “private” sectors (e.g., in relation to health care and business and human rights).

Shareen Hertel is Associate Professor of Political Science at the University of Connecticut, jointly appointed with the Human Rights Institute at the University. She is the author of *Unexpected Power: Conflict and Change Among Transnational Activists* (2006) and coeditor with Lanse P. Minkler of *Economic Rights: Conceptual, Measurement and Policy Issues* (2007). She has published in, among others, *Political Science Quarterly*, *Polity*, *International Studies Review*, *Global Governance*, *Human Rights Review*, and *Journal of Latin American Studies*. Hertel has served as a consultant to foundations, nongovernmental organizations (NGOs), and United Nations agencies in the United States, Latin America, and South Asia.

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*In memory of Peggy  
And for Scott*

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# Human Rights in the United States

BEYOND EXCEPTIONALISM

*Edited by*

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University of Connecticut

**Kathryn Libal**

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CAMBRIDGE UNIVERSITY PRESS  
Cambridge, New York, Melbourne, Madrid, Cape Town,  
Singapore, São Paulo, Delhi, Tokyo, Mexico City  
Cambridge University Press  
32 Avenue of the Americas, New York, NY 10013-2473, USA  
[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781107400870](http://www.cambridge.org/9781107400870)

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First published 2011

Printed in the United States of America

*A catalog record for this publication is available from the British Library.*

*Library of Congress Cataloging in Publication data*

Human rights in the United States : beyond exceptionalism / [edited by] Shareen Hertel,  
Kathryn Libal.

p. cm.  
Includes bibliographical references and index.

ISBN 978-1-107-00846-5 (hardback) – ISBN 978-1-107-40087-0 (paperback)  
I. Human rights – United States. I. Hertel, Shareen. II. Libal, Kathryn, 1968–  
III. Title.

JC599.U5H754 2011  
323.0973 – dc22 2010048058

ISBN 978-1-107-00846-5 Hardback  
ISBN 978-1-107-40087-0 Paperback

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“human rights book of the year” by the American Political Science Association) and, most recently, *Human Rights Matters: Local Politics and National Human Rights Institutions* (Stanford University Press 2009) and *The United Nations and Human Rights* (2005). She has been the recipient of several fellowships and grants from the MacArthur Foundation, United States Institute of Peace, Ford Foundation, Soros Foundation, and the Open Society Institute.

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## Acknowledgments

We are indebted to many people for the development of this edited volume. Richard Ashby Wilson (Director, University of Connecticut Human Rights Institute) and Jeremy Paul (Dean, University of Connecticut Law School) marshaled the institutional support to host a conference on “Human Rights in the USA” in October 2009. The event was cosponsored by the Thomas J. Dodd Research Center, the University of Connecticut Humanities Institute, the Institute of Puerto Rican and Latino Studies, the Center for Latin American and Caribbean Studies, and the James L. and Shirley A. Draper Chair of Early American History.

The chapters in this volume were among the many rich and varied contributions initially presented at that event. Rachel Jackson has provided invaluable logistical support throughout the process. Aviva L. Ron has offered excellent copyediting and research support, and Kathy Birnie has graciously provided technical support at key junctures in the project. We are grateful to our contributors for their commitment to completing detailed and timely revisions. We are also grateful to our colleagues in the Economic and Social Rights Group at the University of Connecticut for their critical insights on the issues that undergird this volume. We appreciate the confidence and support of John Berger at Cambridge University Press and the comments of anonymous reviewers who read earlier versions of material included in the book.

Finally, we are encouraged by the efforts of thousands of grassroots activists, policy makers, and people in local communities throughout the United States who are already working tirelessly for the realization of human rights on multiple levels. We hope this book is useful in their efforts.



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## Foreword

### Are Americans Human? Reflections on the Future of Progressive Politics in the United States

*Dorothy Q. Thomas*

It is not easy being progressive in the United States today. Conservatives attack us as anathema to American values, and we portray them as a threat to progressive ones. President Barack Obama, the first avowedly progressive president since Franklin D. Roosevelt, is denounced by critics on the right as a “socialist” and decried by ones on the left as a “sell-out.” Progressive Americans find ourselves caught between a political rock and a hard place: either we swallow our pride and use the opportunity of Obama’s presidency to try to restore at least some semblance of progressivism to our country’s policies, or we stick to our principles and risk losing the chance to govern it completely. What are we to do? Should U.S. progressives stand up for a country that continuously disappoints and even disavows us, or should we turn our back on one that still attracts our hope?

Obviously, no single answer to these questions exists, and the many underlying assumptions are open to debate. But rather than pitting one analysis of today’s progressive American dilemmas against another, this volume takes a different approach: it suggests that we reconsider the state and fate of American progressivism altogether by placing it within the framework of human rights.

This is not an academic exercise. It has taken me all of my twenty-five years as a U.S. social justice activist, for example, to recast my own politics in terms of human rights, a shift that required me – as I hope this book will inspire you – to reexamine my sense of self, my connection to the various social justice movements of which I am a part, their relationship to one another and to the United States government, and the link between all of these things and what it means, in very practical terms, to be a progressive and an American in the world today.

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*Foreword*

As this volume attests, reframing progressive Americanism in human rights terms offers us fresh insights into some of the most intractable social and political problems confronting the United States – and the world. We are living in an unusually unstable and precarious period, not only for our politics but also for our planet. A great deal depends on what we choose to do. Yet, at such a decisive moment, how can we determine what it means to be progressive or what it will take to progress unless we are *very aware* of the larger historical context in which we operate, of the ways in which our past is encapsulated and our future enacted by what we choose to do? Adopting a human rights lens offers us this broader perspective. It gives us an overarching framework with which to review our past politics, envision our future objectives, and, ultimately, so the contributors to this volume hope, develop new ideas about what steps progressives can take today that will help us address the challenges we face now and will face in the future.

## THE LESSONS OF HISTORY

One thing I have learned from applying a human rights lens to my own past experience as an activist is how divided I was from both America and other activists. At one level, this makes perfect sense. The United States was often the target of my activism (usually as a foreign policy matter), and my early work in the anti-apartheid, women's, and even human rights movements was often focused on specific groups. Upon reflection I find that something more worrisome was also at work. My antagonism toward the United States in the late 1970s and 1980s, like that of most of my fellow progressives, reflected a legitimate disappointment with its domestic and foreign policies. Unfortunately, it also coincided with the rise of the neoconservatives. Their determination to “take back America” was matched only by our inclination to move away from it. As a result, by the 1990s, it had become nearly unthinkable in almost any political circle to be both a progressive and a patriot. And by the time President Obama was elected in 2008, it was common for conservative pundits to question his loyalty, disparage his patrimony, and wonder aloud, as did one right-wing blogger, “if anyone had noticed that these minorities who hate this country are now running it?” (Applebome 2009).

As I reviewed this history, I discovered that progressive disaffection with the United States government, however justified, had morphed into a more profound alienation with another embittering side effect: when progressives began to turn off to America, we started to turn against one

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another. By some perverse political twist, we transmuted our loss of faith in the progressive ideals that America (at least arguably) represented into an inverse obsession with our own political legitimacy. To put it another way, the double whammy of our alienation from the United States and the conservatives' corresponding (and clever) denunciation of us as "un-American" led us, to varying degrees and for many different reasons, to locate our "true" identity in ever more narrow definitions of what it meant to be *authentically* progressive. Many American progressives who came of age during this period not only disavowed our country and denigrated some of our fellow activists, but also denied suspect dimensions of our own selves.

I take myself as a case in point. For almost as long as I have been a publicly recognized U.S. social justice activist, I have kept a patriotic skeleton in my progressive closet: I am also a descendant of Dorothy Quincy Hancock, one of America's founding mothers and the wife of John Hancock, the president of the Continental Congress and the boldface signer of the Declaration of Independence. What is significant to me now is not so much that I am indirectly descended from a signer of the American Declaration of Independence, but that, to retain my credibility as a leading progressive activist, I chose until this time in my life to hide it. In fact, I got into the not-unrelated habit of cloaking (or privileging) almost any aspect of my identity – be it my ancestry, my race, my class, my sexuality, my love of Terminator movies, or any other characteristic that might undermine (or advance) my credibility as a progressive activist.

From a human rights perspective, which assumes the dignity and equality of *all* people, these condemnatory and exclusionary undercurrents in progressive American politics now appear deeply reactive. I have consistently observed conservatives and progressives alike using exclusionary concepts of identity to defend rather than defeat more narrow interests – by, for example, selling out the so-called bad immigrants in order to secure legalization for the "good" ones, or by downplaying gay rights to advance equality for more "mainstream" groups, or by trading off race for gender or gender for race or both for something else, or by doubting the wisdom of youth to promote our own sage point of view. Human rights have helped me see that insofar as I participated in these dynamics – and I often did – I allowed a profound hypocrisy to infest my politics.

Every time progressives defend our legitimacy by denying the complexity of personal and/or political identity – whether our own, anyone else's, or even our country's – we compromise the principle and the power of progressivism itself, and we are complicit in the very structural inequities

Cambridge University Press

978-1-107-00846-5 - Human Rights in the United States: Beyond Exceptionalism

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we seek to depose. If we are to have any meaningful chance to take advantage of Obama's presidency and what it represents in the interest of exerting a truly progressive influence on national policy, we will first have to stop squabbling over the scattered remnants of our deeply fractured identity and come together to create a much more affirmative, inclusive, and aspirational relationship not only to one another but also to the country as a whole.

## ENVISIONING THE FUTURE

By looking through a human rights lens at my own past history, I've had to face my own complicity in a distorted form of progressive identity politics; these politics were intensified by years of conservative flag-baiting and often served to cut me off from my country, from many of my fellow activists, and even from myself. I do not say this to be condemnatory. Defensive progressivism, however internally contradictory, was necessary at a certain point in American history. But Obama had to overcome these divided politics to get elected, and now we activists, academics, policy makers, and philanthropists need to get our own act together. President Obama has put it this way:

That is the story of America: of ordinary citizens organizing, agitating and advocating for change; of hope stronger than hate; of love more powerful than any insult or injury; of Americans fighting to build for themselves and their families a nation in which no one is a second-class citizen, in which no one is denied their basic rights; in which all of us are free to live and love as we see fit. . . . For while there will be setbacks and bumps along the road, the truth is that our common ideals are a force stronger than any division that some might sow. These ideals, when voiced by generations of citizens, are what made it possible for me to stand here today. These ideals are what make it possible for the people in this room to live freely and openly when for most of history that would have been inconceivable. That is the promise of America . . . That is the promise that we are called to fulfill.

(Obama 2009)

These remarks were made by a sitting president of the United States and they underscore the enormous opportunity we have, should we choose to take it, to broaden our perspective on what it means to be progressive *and* American, and to expand our influence on both national and global politics, even if it will not always turn out exactly as we envision it.

But are progressive Americans going to rise to the occasion? Can we envision a more unified and positive progressive American politics, even in

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the face of our own limitations, those of our national leadership, and the seeming intractability of our opponents? The broad perspective of human rights gives me a framework for such an alternative and affirmative brand of progressive American politics. Its emphasis on our common humanity mandates a profound degree of humility with respect to our own fallibility (never mind anyone else's), and as such it offers a powerful basis on which to assert and sustain a future of progressive unanimity, inclusiveness, and empathy that extends to those with whom we profoundly disagree.

Yet even if human rights offer progressive Americans a way to realign our politics with the values of connection, participation, and imagination on which social change inherently rests, I find myself wondering if we are really up for this level of inclusiveness. Can we ever find a way to connect to such a broad and expansive framework without fearing that it comes at the expense of the integrity of our own particular experience – a reasonable fear, given the lessons of American history?

**Can human rights really help?** Obviously, this is a question that each of us needs to answer for ourselves. Critics argue that the framework of human rights is too “foreign,” too “abstract,” and too “controversial” in the United States for it to be of much real use. The title of this Foreword, “Are Americans Human?” tries to address some of the assumptions behind these views. If we accept, for example, that human rights are foreign or abstract, it's almost as if we're saying the idea of human rights had nothing at all to do with the idea of the United States or that Americans are not actually part of the human race. The fact that Americans themselves as well as people in the rest of the world are asking this question (even if only by implication) suggests the precise loss of connection to ourselves, to one another, to our country, and to our fellow human beings that I feel bedevils all politics in the United States today and threatens our progress as a people and as a nation.

That human rights are controversial in the United States almost goes without saying, but we need to explore (in more detail than I have space for here) why and for whom this is the case. Suffice it to say that the controversy surrounding the realization of human rights in the United States is widespread and arises across the political spectrum with respect to a wide range of domestic and foreign policy issues including sovereignty, accountability, transparency, equality, unity, dignity, and liberty – all of which human rights aim to address. So perhaps the extent of the controversy makes sense.

Cambridge University Press

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What has been interesting for me to discover, however, is that there is an inverse relationship between the age of progressives and their willingness to risk such a systemic backlash to take up human rights in the United States. The younger the activists, the more willing they are to take such risks. This gives me great hope for the future of progressive American activism and of the United States, but I do not think it is fair to rely solely on the younger generation to make this shift. Progressive people of all ages and across the political spectrum need to adopt an alternative to the disaffection and disunity of our previous practice. We must do so, if for no other reason, than because it is obviously limiting our ability to progress, along with the ability of those who come after us. We need an alternative framework that challenges our country's and even our own inclination toward habits of superiority and exclusion but does not involve, as the progressive historian Sheila Rowbotham recently cautioned, "becoming trapped in a prescriptive construct" (Rowbotham as cited in Miller 2010).

I believe the human rights framework offers progressive Americans just such an alternative construct for our politics. As some of its potential practical innovations are discussed in detail in the following essays, I will reflect here on two of its more conceptual benefits.

**Human rights respect national and other identities, but defy supremacy.** If we choose to reconnect the principles of human rights to the ideals America at least arguably represents, it may help us recapture an affirmative relationship to the United States and therefore to its people without acceding to the exceptionalism, nationalism, and structural inequality alienating us in the first place. Nobody died and left the conservatives in charge of what it means to be an American. The primary progressive "value-added" of human rights is that as a framework for U.S. law, policy, and social mobilization, it provides a viable alternative to the ideology of supremacy *no matter who may practice human rights*. Nor does the form of human rights protection matter, whether focused around safeguarding people based on national identity, gender, race, class, sexuality, party, religion, or any other status. If we begin to promote a commitment to fundamental human rights as central to the progressive identity of the United States, we may be able to reclaim an affirmative relationship to our country as core to our own progressive identity. Patriotism would then be a way to uphold rather than usurp our shared commitment to fundamental equality.

**Human rights recognize all peoples' equality and dignity but decry uniformity.** If we choose to use human rights to frame our alternative vision of progressive American politics, it will provide us with a desperately

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needed corrective to the narrow and divisive character of much of our past practice, wherein many progressives cloaked our differences to fit into particular groups or downplayed our commonalities to protect our turf or got eaten up by some combination of both. Human rights offer American progressives an inclusive and affirmative antidote to the exclusionary side effects of our previous politics: one that recognizes we are different in virtually every respect and that those differences are usually compounded – and that we also have a lot in common. Human rights neither deny us our sense of individuality nor absolve us of our relationship to the broader community. Instead human rights offer American progressives a vastly more equitable and dynamic conception of personal and political identity, which simultaneously affirms that we are inherently different and that, in being born equal in dignity and rights, we all are also inalienably alike. This approach allows us to come together as progressive Americans based on both our identities and our values.

WHAT DOES IT MEAN TO BE A PROGRESSIVE AMERICAN  
IN THE UNITED STATES TODAY?

I recognize that as progressives our relationship to the United States as a country has been and probably always will be ambivalent. This ambivalence will be heightened or lessened by the nature of our own specific identities and experiences, by our race, our class, our culture, our past, our differences, our relative privilege. “Let America be America again,” as Langston Hughes once put it. “(It never was America to me)” (Hughes [1936] 1994). But unless we intend to allow the “Birther Movement” or the “Tea Party Patriots” to bring down Obama’s presidency and the entire agenda of progressive reform for the United States along with it, we are going to have to find a way to respect our relative ambivalence toward our country and perhaps even toward our fellow progressives without sacrificing our connection to it and to one another. As President Obama so eloquently put it, “that is the promise we are called to fulfill” (Obama 2009).

But, as I noted at the outset, it is difficult in such pressing and complex circumstances for progressive Americans to get perspective on the larger historical context we find ourselves in and then determine what we should do – both as individuals and as a movement. I had to move to England to figure out who I am as an American progressive, which the original Dorothy Quincy (who was present in Lexington, Massachusetts, when the shot “heard round the world” was fired) might find a bit ironic, to

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say the least. I now pay taxes both to Her Majesty Queen Elizabeth and to President Obama. This divided state of loyalty, however costly, perfectly encapsulates the unresolved question about my own identity and that of today's progressive Americans that lies at the heart of this book: Are we traitors or are we patriots? Are we Americans or are we humans? Or, might it not be possible, as it was at this country's founding, for us all to be both? As of this writing, I have decided to come home and find out.

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