

Foreward

Speaking Law to Power: The Legal and Political Implications of the United States As the World's Lone Superpower

On Friday, January 23, 2004, *Law & Inequality* hosted a Symposium which explored the legal and political implications of the United States as the world's lone superpower, and the impact the United States' "war on terror" has had on human rights here and abroad. This issue presents articles and essays stemming from this discussion. It will be apparent that within these pages some authors have presented harsh criticism directed at U.S. foreign policy and the collateral consequences of such actions, while other articles have fashioned a more impartial and optimistic view. This structure was meant to provide a basis for a well-reasoned dialogue, but often underrepresented, viewpoints, and its success has exceeded our highest expectations. Thus, by giving audience to these voices through the medium of an established legal forum they are given the ability to speak to and challenge the powerful—a practice reflected in the title of this Symposium.

The phrase "speaking law to power" was borne from "speaking truth to power" a phrase used by civil rights activists and Eli Wiesel, who, after receiving the Congressional Gold Medal of Achievement at the White House in 1985, reminded President Reagan that "our tradition commands us to *speaking truth to power*."¹ "Speaking law to power" arose from that, employed by many writers who sought to apply the rule of law to the acts of the powerful, whether they may be nation states, corporations or governmental entities. Joan Fitzpatrick, an internationally renowned scholar and passionate advocate who made innumerable contributions to the advancement of human rights, made most notable use of this phrase in her recent article: *Speaking Law to Power: The War Against Terrorism and Human Rights*.² With this

1. Transcript of Remarks by Reagan and Wiesel at White House Ceremony, N.Y. TIMES, Apr. 20, 1985, at A4.

2. Joan Fitzpatrick, *Speaking Law to Power: The War Against Terrorism and*

Symposium, *Law & Inequality* sought to address the ramifications for the international legal system of the United States acting as the sole leading superpower. Or, more precisely, we sought to speak law to power.

Law & Inequality was founded nearly a quarter century ago by then University of Minnesota Professor of Law Catherine McKinnon and a group of dedicated students who shared a belief that the vast majority of traditional legal scholarship failed to address “people’s experience of systematic oppression.”³ In its first years, the Journal focused almost exclusively on issues pertaining to gender.⁴ As its founders intended,⁵ *Law & Inequality* has expanded to become more than a forum that publishes articles relating to discrimination; rather it has strived to give voice to persons who may best understand and speak for those groups.

As this Symposium reflects, speaking out is not alone sufficient to challenge power. Rather, speech must couple with forces that carry their own independent legitimacy. The rule of law is one of these forces. Importantly, speaking law is integral to placing restraints on those whose power it is we seek to cap. The narratives of those affected by State power dramatically enhance our understanding of that power and allow legal rules to more carefully and justly respond to conflicts that arise.

It is precisely this belief that has inspired *Law & Inequality* to commit an issue to the legal implications of U.S. hegemony. Many of the participants have direct, and in some cases, personal experience in dealing with human rights violations which have been either a direct result or an ancillary consequence of U.S. action. In one article, Professor Liz Boyle presents a concerning picture of immigrant life in the United States through the words of naturalized and non-citizens. These stories humanize the dialogue, taking to task popular governmental narratives used to further particular policies. In other articles, the focus is more proactive. For example, Professor Juan Mendez and Javier Mariecurrena confront directly the desperation of the international human rights movement in the face of U.S. unilateralism which is rhetorically based on human rights, but offers “no hope whatsoever.”

Human Rights, 14 EUR. J. INT’L L. 241 (2003).

3. Mission Statement of Law & Inequality, 6 LAW & INEQ. Inside Cover (1988) (adopted by Editors of Volume VI).

4. See 1 LAW & INEQ. 1 (1983); 2 LAW & INEQ. 1 (1984).

5. See Catherine A. MacKinnon & Robert A. Stein, Introduction, 1 LAW & INEQ. i (1983).

The first panel addressed the historical and global implications. The panel provided a recent background to U.S. foreign policy, addressing the Reagan Doctrine as a justification for U.S. intervention in foreign states to an expansion of that doctrine with the U.S.-led invasion of Iraq in 2003. The panel also discussed the influence, or “soft power,” of a superpower’s ideas and reputation, and that a superpower must take legal norms into account because the failure to do so will undermine its legitimacy.

The second panel considered the implications for international law. The panel discussed the possible need for the international legal system to adjust to accommodate the emergence of transnational actors not based in State entities. The panel also addressed the pattern of exceptionalism exhibited by the U.S. government over the past decade regarding international norms, with a focus on the establishment of the International Criminal Court and the United Nations Conference on Small Arms and Light Weapons. The panel concluded with a discussion on the absolute prohibition on torture, and the possibility that in the case of the ticking-bomb scenario, public officials may step outside the legal framework while accepting the legal ramifications of their actions.

The third panel engaged in a discussion on the impact on human rights here and abroad. This panel provided a human face to the impact the United States “war on terror” has had on human rights within the United States and the world at large. The panel addressed India’s Patriot Act, a measure that enhanced the Indian state’s ability to crackdown on possible terrorist threats while potentially affecting the civil liberties of people within the developing world’s largest democracy. It also examined the USA PATRIOT Act, the proposed PATRIOT Act II, and the effects on civil and human rights in the context of immigration. Finally, the panel discussed how the immediate and profound effects of U.S. immigration law and policy have affected the lives of recent East African immigrants living in Minnesota.

It is the hope of *Law & Inequality* that this Symposium will aid in the debate over the United States’ role in protecting and adhering to international human rights norms. We are well aware of the immense challenge this poses, but by providing a forum to speak law to power we move closer to achieving a more just and equitable world.

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