

Book Review

Lawrence M. Friedman, *The Human Rights Culture: A Study in History and Context*, New Orleans: Quid Pro Books, 2011, pp. 218, \$36.40 (cloth), \$27.99 (paper).

Reviewed by Mónica Pinto

Lawrence M. Friedman has written a book about “the concepts and practices of fundamental rights as social facts” because even though there is “an impressive body of scholarship,” something is missing, the sociological dimension. The Stanford legal historian is of course, well known for his scholarship in the area of law and society.

He asserts that “the human rights movement depends on a culture that is strongly individualistic”(15). Human rights transcend national borders and this is “a revolutionary idea”(17); countries are different and so are their cultures. Human rights are then “the rights that people think one ought to have, that everybody ought to have. But in fact, as is well known, they are violated all the time in some countries, and from time to time in almost every country”(4).

In his search for human rights as social facts, Friedman goes beyond constitutions and bills of rights, to international human rights law. His assessment is that “in general, there is no way to enforce international law”(4); it is, for the most part, “powerless rhetoric in the face of national interests”(4). Accordingly, “human rights is little more than empty promises”(4).

In ten chapters, Friedman analyzes social facts, relying on the main elements of the law and society approach, namely individualism, constitutionalization of human rights, judicial review of such rights, and modernity.

He begins with a study on the rule of law and on consciousness of rights, then moves on to the history of human rights legal instruments. He later takes up the influence that religion exercises in human societies and the existence of a human rights culture.

Afterwards Friedman discusses the special features of human rights with chapters on the universal and particular (Chapter 6), privacy and dignity

Mónica Pinto is Professor of International Law and Human Rights Law at the University of Buenos Aires Law School where she currently serves as Dean. She held mandates from the United Nations for the examination of the human rights situation in Guatemala (1993–97) and Chad (2004–05); and advised on technical cooperation in the matter of human rights (2006–11). She sits on the international boards of the Association for the Prevention of Torture and the International Commission of Jurists.

(Chapter 8), and the problematic economic, social and cultural rights (Chapter 9), giving special consideration for sovereignty and rights (Chapter 10).

Friedman restricts his research and conclusions to

the rich, industrial, developed countries; and to a certain degree, also to the educated and worldly elites in less-developed countries. It is among these people that one can speak about a culture of human rights. People in very traditional societies, or very traditional communities, may have a different consciousness of human rights. Or such a consciousness may be altogether lacking (74-5).

Any review of the book should take into account two of Friedman's methodological decisions that condition his conclusions. On the one side, he used a selective sample qualifying the scope of his assertions and, on the other, absent field work, his analysis relies only on documents and secondary writings.

There is great skepticism in Friedman's writing about future human rights progress. He argues that the human rights movement is unthinkable without the rise of expressive individualism. This movement taps into social norms that are, in some sense, quite fundamental. They are the norms of Western elites and they rest on even more basic norms of individual autonomy. These norms are spreading and global mass culture has helped prepare the way. It is a slow process and a genuinely popular one, certainly in the developed world. However, the human rights ethos might face serious problems. The mentality that underlies the movement is strong now but may weaken in the future; dangers such as terrorism may erode human rights progress. He ends the book with a riddle that can be solved only with the passage of time (161, 163). The age of human rights can end as rapidly as it began. I hope not; but one cannot be sure" (23).

The constitutionalization of rights is another particularly important element in law and society doctrine. In this sense, Friedman ranges beyond domestic law into an examination of international human rights law, a place he does not seem comfortable. Furthermore, because he has restricted himself to western developed countries, his viewpoint is very much that of the United States regarding international law. Yet whether one agrees or not with U.S. policy in this regard, it does not easily fit globally.

Friedman's treatment of human rights bodies is a good example. He calls the Universal Declaration of Human Rights "a remarkable document." But, Friedman continues, "it was bold and remarkable, in part, because nobody was required to take it seriously. There was (and is) no real enforcement mechanism" (30) ... "basically, little or no implementation of the various treaties and documents" (34). This is a rather surprising statement in view of the thousands of printed and electronic pages dealing with the implementation of both universal and regional human rights treaties. There are specific legal mechanisms—the periodical reporting system—as well as political ones, like the Universal Periodical Review at the Human Rights Council. Of course, there is

also a petition system available for nearly all universal human rights treaties—and for regional ones too—even when the United States has not accepted the competence of the bodies with which petitions are lodged. Furthermore, Friedman fails to take into account that at least four of the contentious human rights proceedings before the International Court of Justice included the United States. With respect to international criminal tribunals, he notes, “there is a United Nations declaration against genocide; but it does not seem to act as much of a deterrent”(45). Yet, the Convention on the Prevention and Punishment of the Crime of Genocide (1948), in force in 142 countries including the U.S., is the authority for the 1998 conviction of Jean-Paul Akayesu for genocide by the International Criminal Tribunal for Rwanda.

This reviewer is most in accord with Friedman’s conclusions in Chapter 6, on the universal and particular. He submits that

the basic cluster of human rights is not “western” at all; rather, it is modern; it is an aspect of contemporary (developed) society. To be sure, there is a strong correlation between ‘the West’ and the human rights movement; the movement began in the West, and its ideas flow, in the main, from Western thinkers. But this is not crucial(71).

Of course, human rights are an expression of modernity.

Again, the western genesis of human rights does not preclude the worldwide expansion of the phenomenon mainly through de-colonization. Most every individual is aware of a human rights violation when he or she is victimized. Vocabulary may be lacking, but the sense of being wronged, and especially the damage to one’s dignity, is evident.

Women and minorities are the objects studied in Chapter 7. Friedman is sensitive to women’s rights. However, the way in which he deals with both women and minorities, the so-called plural equality, means that all the different components of this plural group look alike and there are no more differences among them. There is no more feminism just as there is no more racism. The point is that thousands of pages dealing with legal rules, international mechanisms, social patterns and best practices become completely useless and the differences and nuances built up throughout the last decades vanish. Unfortunately, the time has not yet come to ignore our specificities.

The chapters focusing on religion, privacy and dignity, economic, social and cultural rights, and sovereignty and rights (Chapters 4, 8, 9 & 10) adopt a western-centric perspective which inhibits the possibility of universalizing the conclusions of this book. He writes, “Islamic radicalism would not worry the West, if the radicals stayed put in Islamic countries. But they sometimes leave these countries, to inflict the pains of jihad on the West” (56). Actually, putting aside moral issues, the same could be said of poverty or hunger: to the extent they plague just the countries where they are, no problem, but poor or hungry people who come to the West pose a problem.

Based on survey data, Friedman also concludes that “Americans care very little about civil liberties” (64). He also points out that “people who feel threatened are often willing to sacrifice some civil liberty at the altar of security” (66).

The author seems to have in mind scenarios like the 9/11 attacks and, accordingly, is suggesting that many Americans are not disturbed when Arab or indigenous-looking people are detained for security reasons. The same may happen and has happened to white, Anglo-Saxon, Protestant, Catholic, or Jewish people. It is true that sometimes human rights violations are so serious, so systematic and so widespread—as were the “disappearances” in Argentina in the 1970s—that certain human rights become more important than others. Life and integrity will prevail over fair wages or over the right to take part in cultural life.

Friedman’s chapter on privacy and dignity includes discussions of the 14th Amendment to the U.S. Constitution, Monaco Princess Caroline’s private life and the ruling in *New York Times vs. Sullivan*. His argument for cultural diversity, which with I agree, plays a role here in order to illustrate different perceptions of what dignity is and has been throughout human civilizations.

He begins his discussion of economic, social and cultural rights with a positive comment on the non existence of “negative” rights. However, those rights seem to have no future because Friedman links the ability to enjoy human rights with money. My perception is that the crucial issue is to make choices, democratic and strategic choices, to define priorities; governments should define their strategies to facing these rights! This approach is not unknown in the rich, industrialized American society which has not yet implemented a universal public health system.

Friedman wisely starts his chapter, “Sovereignty and Rights,” by noting that “sovereignty may be decaying, but is certainly far from dead” (139), and that “[o]f course, it makes a difference whether a country is big or small, rich or poor.” However, he concludes that “when the Court [the International Court of Justice] ruled in favor of Nicaragua [in 1986], the United States simply refused to comply with the decision. And nobody could call it to account” (140). Of course, he does not mention that when the Islamic Republic of Iran held Americans as hostages in Tehran and in Consulates in Tabris and Shiraz, the United States seized the International Court of Justice, seemingly expecting a judgment binding for Iran.

In any case, Friedman goes on to say that “the human rights movement contributes to the decay of sovereignty—such as it is. But the decay of sovereignty also, in turn, has an impact on the human rights movement” (143). He focuses on universal jurisdiction, specifically the case of Chilean dictator Augusto Pinochet, who “instituted a rather brutal and bloody dictatorship” (151–2). The “rather” can be challenged by many people, however what Friedman does not tell us is that although Pinochet was not delivered in extradition to Spanish Judge Baltazar Garzón, once back in his country, he

was charged with serious crimes and stripped of his immunity¹ in a decision confirmed by the Supreme Court.² He died, ironically, on December 10, 2006, Human Rights Day.

The ultimate aim of *The Human Rights Culture* is to provide us with a different approach. Friedman succeeds but with such a small sample that the great majority of the countries in the world are not dealt with in this book. We await Lawrence Friedman's next book.

1. Corte de Apelaciones de Santiago, Fallo que declara el desafuero del gral Augusto Pinochet Ugarte, 5 de junio de 2000 [Court of Appeals of Santiago, Decision that declares the lack (stripping?) of immunity of General Augusto Pinochet Ugarte, June 5, 2000].
2. Corte suprema de justicia, Santiago, Chile, Fallo que confirma el procesamiento del General Augusto Pinochet Ugarte, 4 de enero de 2005 [Supreme Judicial Court, Santiago, Chile, Decision that confirms the proceeding against General Augusto Pinochet Ugarte, January 4, 2005].