

UMass/Boston
**Colleges of Liberal Arts, Science and Math, and Nursing and Health
Sciences**

Writing Proficiency Evaluation

Portfolio Reading Set: American Exceptionalism

Question:

American Exceptionalism is an idea that has been used to describe the unique nature of the USA. Koh argues that "American exceptionalism has both good and bad faces" (12). However, Bromund argues that "the USA exemplifies [particular] virtues in their purest form. That is why it is exceptional. And that is a fact that has been recognized by Europeans for centuries" (17). Your essay should briefly summarize the debate between Koh and Bromund, and then, referring to at least two other authors in the reading set, take a position on the debate whether or not American Exceptionalism is a set of "pure" virtues, or if it is "both good and bad."

NOTE: Your portfolio must contain an essay **that is at least five full pages** (double spaced in 10 or 12 point type) that answers the question above, 15 pages of supporting papers- each one should be attached to a completed Certification Form- and a completed Portfolio Submission form. If you are currently a **first** semester transfer student, you can submit 10 pages of supporting papers, but you must indicate when you transferred to UMB on your Portfolio submission form. You must place all of the required items in an envelope that has your name and UMS number on it, and submit it to the **Writing Proficiency Office (CC-2/2100) by 4:00 p.m. on Monday, October 26, 2009.**

Readings:

- De Tocqueville, Alexis. From *Democracy in America* (1835).
- Phillips, Dennis. "Is America an Exceptional Nation?" 26 November 2008.
<http://www.abc.net.au/unleashed/stories/s2427919.htm>
- Jacobs, Ron. "American Exceptionalism: A Disease of Conceit." July 21, 2004.
<http://www.counterpunch.org/jacobs07212004.html>
- Sellevoid, Martin. "A Look at American Exceptionalism." *Australian Rationalist* Number 65: 45-48.
- Koh, Harold Hongju. "America's Jekyll-and-Hyde Exceptionalism." Ed. Michael Ignatieff. *American Exceptionalism and Human Rights*. 111 -143.
- Bromund, Ted. "American Exceptionalism and its Enemies." *The New Ledger* Features – Politics Monday, May 25th, 2009

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- From *Democracy in America* (1831), by Alexis de Tocqueville

The position of the Americans is therefore quite exceptional, and it may be believed that no democratic people will ever be placed in a similar one. Their strictly Puritanical origin, their exclusively commercial habits, even the country they inhabit, which seems to divert their minds from the pursuit of science, literature, and the arts, the proximity of Europe, which allows them to neglect these pursuits without relapsing into barbarism, a thousand special causes, of which I have only been able to point out the most important, have singularly concurred to fix the mind of the American upon purely practical objects. His passions, his wants, his education, and everything about him seem to unite in drawing the native of the United States earthward; his religion alone bids him turn, from time to time, a transient and distracted glance to heaven. Let us cease, then, to view all democratic nations under the example of the American people.

- Is America an Exceptional Nation? By Dennis Phillips

[Dennis Phillips teaches foreign policy at the United States Studies Centre, at the University of Sydney. Born in Colorado, he taught American history and politics at Macquarie University for nearly 30 years.]

From the Puritan fathers of the 17th century to presidential and vice-presidential candidates in 2008, Americans have proclaimed an exceptionalist destiny for their country. In a debate “fraught with passion on all sides,” few topics have generated more enthusiasm - and more heat - than the question of American exceptionalism. To what extent, if any, is the United States an ‘exceptional’ nation?

In *American Exceptionalism* (1998) Deborah Madsen argues, “American exceptionalism permeates every period of American history and is the single most powerful agent in a series of arguments that have been fought down the centuries concerning the identity of America and Americans.”

The idea of American exceptionalism has been traced to the first Puritan migrants who arrived in Massachusetts Bay in the 1630s. Perry Miller, the brilliant historian of American Puritanism, has documented the influence of Puritan ideas and ideals in the shaping of America, particularly the belief that God had given this hardy band an “errand into the wilderness” - a special mission to create what their leader John Winthrop called “a citty [sic] upon a hill” as an example for all the world to follow.

The idea of America as an example, or as a “redeemer nation,” followed right through to the American Revolution (1776) and the writing of the US Constitution (1787). In his *Autobiography* (1791) Benjamin Franklin adapted the Puritans’ spiritual errand to “the creation of a secular state that is purified of the corruption of European politics.” The adoption of the Constitution and the creation of a working system of government based (in theory, and with notable exceptions) on fundamental principles of democracy, liberty, individualism and economic opportunity greatly accelerated America’s claim to be an exceptional nation.

During the next 200 years the exceptionalist argument was used, abused and augmented to justify expansionist notions of ‘manifest destiny,’ ‘mission’ and so-called ‘imperial anti-colonialism’ or ‘informal empire.’ As a consequence, especially during and after the Vietnam War, the very idea of the US as an exceptional nation came in for a severe beating. In 1975, after the fall of Saigon, the American sociologist Daniel Bell proclaimed, “Today, the belief in American exceptionalism has vanished with the end of empire.” Bell was wrong on both counts. The end of the Vietnam War did not mean the end of

American empire and the idea of American exceptionalism enjoyed a notable revival, especially during the assertive presidency of Ronald Reagan.

The argument certainly has not waned in recent times. On November 4 this year, the night of his historic victory, president-elect Barack Obama declared, "to all those who have wondered if America's beacon still burns as bright - tonight we proved once more that the true strength of our nation comes not from the might of our arms or the scale of our wealth, but from the enduring power of our ideals: democracy, liberty, opportunity, and unyielding hope."

Not to be outdone, except fortunately in the election result, Republican vice-presidential candidate Sarah Palin was even more explicit when she explained in October the "world view" she shares with John McCain: the "world view that says that America is a nation of exceptionalism. And we are to be that shining city on a hill, as President Reagan so beautifully said, that we are a beacon of hope and that we are unapologetic here. We are not perfect as a nation. But together, we represent a perfect ideal. And that is democracy and tolerance and freedom and equal rights."

Part of the problem here is that a balanced approach to the study of American exceptionalism is easily distorted by assumptions of superiority. The very mention of the term 'American exceptionalism' brings with it a whole baggage load of moral judgements. Is America exceptionally good, or is it exceptionally bad? For every American who rejoices with Governor Palin, there is one who reflexively denies any claim to American exceptionalism because they don't want to appear to have a 'superiority complex.'

The fact is, of course, that 'exceptionalism' - be it American or any other - can be good, bad or neither. For example, the duration, cost and result of the 2008 US presidential election is surely exceptional, but none of these factors carries a clear or decisive moral meaning. At a somewhat more controversial level, the United States is clearly 'exceptional' in its defence spending: the US Government spends more on defence than the next highest spending 15 or 20 nations combined. That is surely exceptional. Many international observers also find it objectionable. Others, noting the extent to which their own nation's security depends on the United States, are exceptionally thankful.

This is not to argue that the study of American exceptionalism should be devoid of moral content. Depending on how rigorously the word 'exceptional' is defined, a strong moral case can be made against many aspects of American life: capital punishment, the use and abuse of the Second Amendment (individual gun ownership), Guantanamo Bay, poverty, the health insurance void, etc. However, 'exceptionalism' need not be always a loaded word. The closer we examine any society, the more likely we are to discover the exceptional. Many aspects of Australian life, for example, are exceptional - some good, some bad, some, like the beloved platypus, just dramatically different.

Arguments for American exceptionalism venture onto treacherous ground when they suggest that the United States is somehow 'above history.' In the late 1980s Paul Kennedy argued in *The Rise and Fall of the Great Powers* that America's global empire would gradually decline relative to other, rising centres of power. Critics countered by declaring (a) the United States *had* no empire and (b) the nation's global influence was experiencing renewal and not relative decline.

Twenty years on, events certainly seem to be trending in Kennedy's favour. Last week the US National Intelligence Council released its forecast of global trends for the next 20 years. "The international system will be almost unrecognisable by 2025," it concluded. Due in part to "the rise of emerging powers, a globalising economy, a transfer of wealth from West to East, and the influence of non-state actors," America's "relative strength - even in the military realm - will decline."

The US may be an exceptional nation, but it is not exceptionally immune to the historical forces that have shaped other nations and empires.

- “American Exceptionalism: A Disease of Conceit,” by Ron Jacobs

[Ron Jacobs is author of *The Way the Wind Blew: A History of the Weather Underground*, which is just republished by Verso.]

Any person who is honestly opposed to the US presence in Iraq and Afghanistan has got to wonder why the movement that developed against the US war on Iraq before the March 2003 invasion has faltered so badly. [...]

When it comes to the bottom line, though, the underlying cause for the US antiwar movement's current stasis is that most of its adherents believe in one of this country's basic tenets- a tenet that is ultimately religious in nature. For lack of a more descriptive phrase, we'll call this phenomenon American exceptionalism. On a basic political level, this phenomenon is the belief that, for some reason (America's system of democracy, or maybe its economic superiority), the United States system is not subject to the same contradictions and influences as those of the rest of the world. This belief in American superiority finds its foundation in some of our culture's basic religious and cultural constructs. It's there in the first settlers' belief that they were conducting a special errand into the wilderness to construct a city on a hill in the name of their heavenly father and every single president and wannabe always implores this same heavenly father to "bless America" at the end of every one of his speeches. This is no accident.

It is this belief that gave the Pilgrims their heavenly go-ahead to murder Pequot women and children and it was this belief that gave General Custer his approval to kill as many Sioux as he could. It made the mass murder of Korean and Vietnamese civilians acceptable to the soldiers at No Gun Ri and My Lai and exonerated the officers who tried to hide those and many other war crimes from the world. It gives George Bush the only rationale he needs to continue his crusade against the part of the world that stands in the way of the more mercenary men and women behind his throne as they pursue their project for a new American century. And, most importantly for us, it informs a goodly number of decent Americans in their tentative opposition to those men and women. Consequently, while they may oppose George Bush's approach to Washington's war on the world, they do not necessarily disagree with its goals.

Therefore, they find themselves making the argument that somehow some way, the United States must repair what it has so ruthlessly destroyed in Iraq. If our friends in the movement did not believe in America's essential goodness, its exception to the rules that govern power and the desire for power, [then] how could they believe that the very same agents that destroyed the country of Iraq would be able to repair it? Indeed, why would such a good country have destroyed another in the first place? These questions raise two of the most obvious contradictions governing the major part of the US antiwar forces. In fact, the antiwar movement is only one of the many places in the US cultural and political arena where such exceptionalism occurs.

It can be found in the struggle for equal rights for women, gays and lesbians; and it can be found in the struggle against racism. It is present in the mindset that refuses to support the right to armed struggle by oppressed peoples and it is present in the mindset that perceives other cultures less advanced than that which we have in the United States. It's even present in the approach progressives take towards our national elections - it's as if our electoral system is beyond reproach, fair beyond criticism and impossible to taint. Because of this misconception, we allow our government to force its version of democracy on people around the world. Then, when these folks either reject our high-minded

attempts to enlighten them or, even worse, actually use the electoral processes foisted upon them to elect someone who they want but who opposes US designs, the progressives find themselves as offended by this slight as the neo-cons[servatives].

How to change the movement to a movement that is capable of continuing its pursuit of justice once its right flank is co-opted by the system? At the risk of sounding redundant, study the world, not just the US. Develop an understanding of how capital works and forget the idea that capital ever has good intentions. Capitalism is an economic and political system that has no morals. It is not immoral, nor is it moral. It is amoral. In order to survive, it must expand, either by moving its operations into new regions or by taking over other capitalist ventures and their markets. Usually, the most successful capitalists employ both means. In recent history, the most successful capitalists have been mostly American. The fact that the US spends more money on weaponry and war is directly related to that phenomenon.

America is not a better country than any other. Its citizens and residents are as venal and as great as any others in any other part of the world. The only thing that sets us apart is our wealth. The only reason we have that wealth is because we stole it. God didn't give it to us, nor did any greater American intelligence or know-how. Robbery is what our foreign policy is based on, just like our racial policies. It's not the policies that need to change, but the foundation upon which those policies flourish. Until US activists accept this and give up their conscious and unconscious acceptance of the myth of American exceptionalism, any movement against war, racism, and other ills of our world is bound to fail. Not because it doesn't have the right motivation, but because it doesn't have a radical enough conception of itself and the world it exists in.

- A Look at American Exceptionalism, by Martin Sellevold

[Martin Sellevold is a Norwegian citizen; he has lived in Australia before for a little over one year. He writes fiction as well as nonfiction. He is currently Editorial Assistant of the *Australian Rationalist*.]

"We are Americans; we have a unique responsibility to do the hard work of freedom. And when we do, freedom works." George Bush Sr. 29 January 1991

In 1904, President Theodore Roosevelt stated that the US assumed the right to intervene as necessary to control and correct the "wrongdoings of uncivilised nations." Nearly a hundred years on, it seems that this is still very much the position of US foreign policy makers. Teddy Roosevelt was also the man who popularised the phrase 'Speak softly and carry a big stick.' Over the past century that stick has grown considerably in size, and the words, perhaps, have become less soft.

There seems, in the general American mentality, to be a notion of 'moral right' when it comes to dealing with the rest of the world that has no equal in any other Western nation today. Wherever American interests are involved, the US assumes the right to take whatever action it considers necessary to protect those interests, even in the face of broad international opposition. This was, of course, seen most recently in Iraq, when the US ignored the United Nations as it became clear that this organisation would not sanction a war based only on the slimmest of evidence of weapons of mass destruction.

But of course this was far from the first time the US has used military force to protect its own interests. Starting as early as the 1890s with old-fashioned European-style imperialistic conquests, including the annexation of Hawaii and the overthrow of the independent Hawaiian kingdom in 1893, the US proceeded to invade virtually every Caribbean and Central American country between 1904 and 1934. Since World War II, the US has engaged both militarily and economically, directly and indirectly, in the affairs of sovereign nations in Europe, Latin America, Asia and Africa. It has consistently supported

totalitarian and undemocratic regimes all over the world in countries where American interests have been threatened. And yet, despite all this, the average American still considers her country to be “the greatest democracy in the world.” How is this possible?

The United States of America was founded on principles of freedom, equality and democracy. In 1831, a young Frenchman by the name of Alexis de Tocqueville went to the US, ostensibly to study its penal system. But what de Tocqueville really wanted to explore was the essence of the American spirit. The America this French aristocrat encountered was an infant nation, less than fifty years old. It is fair to say that de Tocqueville was swept away by what he saw. Upon his return to Paris, he wrote a book, *De la démocratie en Amérique* (*Democracy In America*), the first part of which was published in 1835. In his introduction, de Tocqueville writes:

Among the novel objects that attracted my attention during my stay in the United States, nothing struck me more forcibly than the general equality of condition among the people. I readily discovered the prodigious influence that this primary fact exercises on the whole course of society; it gives a peculiar direction to public opinion and a peculiar tenor to the laws; it imparts new maxims to the governing authorities and peculiar habits to the governed.

I soon perceived that the influence of this fact extends far beyond the political character and the laws of the country, and that it has no less effect on civil society than on the government; it creates opinions, gives birth to new sentiments, founds novel customs, and modifies whatever it does not produce. The more I advanced in the study of American society, the more I perceived that this equality of condition is the fundamental fact from which all others seem to be derived and the central point at which all my observations constantly terminated.

The book became an instant success. It seems de Tocqueville’s writings captured and expressed something that must have been felt by a lot of people at the time. It was with this book that the idea of ‘American exceptionalism’ rooted itself in the Western consciousness, not least in America’s own. Although the expression is to be found nowhere in his book, de Tocqueville is still credited for having coined the phrase.

But whether he said it or not, the feeling that the US is something special and set apart from everything else has been a long-term constant in American culture, dating back virtually to the founding of the nation as an independent entity. [...]

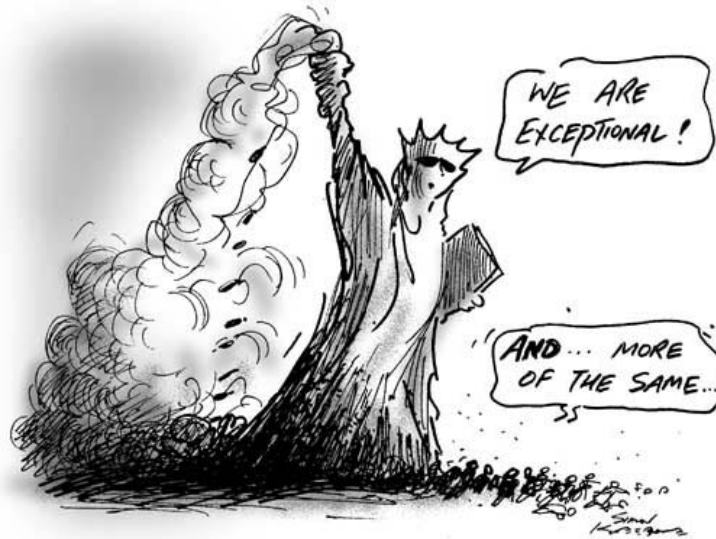
So what is, in fact, this ‘American exceptionalism’? In the relevant literature, it has been defined as Americans’ deprecation of power politics and old-fashioned diplomacy, mistrust of powerful standing armies and entangling peacetime commitments, their supposedly moralistic judgements about other people’s domestic systems, and belief that liberal values transfer readily to foreign affairs.

In the 1995 autumn issue of *Political Science Quarterly*, Joseph Lepgold and Timothy McKeown attempted to make an empirical analysis of whether there indeed was such a thing as American exceptionalism in US foreign policy. In their article, “Is American Foreign Policy Exceptional? An Empirical Analysis,” Lepgold and McKeown proceeded to demonstrate that there is little or no basis to the claims that US foreign policy has differed greatly from that of other large nations in the period 1871 to 1914. But the researchers do speculate [...] that the ‘exceptionalism’ in foreign policy might not be found abroad at all, but in the way American leaders justify their overseas actions to the American public. [...]

The US’s latest war was sold to its public in very much the same way as Vietnam and other

conflicts: as something necessary in order that 'the American way of life' be preserved. It is fairly well known that the heavyweights of the current US administration, including Donald Rumsfeld et. al., had a strong interest in expanding US influence in the Middle East long before attaining their present positions of power. Their proposed link between Al Qaeda and Saddam Hussein was, to say the least, dubious. Still, they were able to sell a war on Iraq to the American public relatively easily by playing on the new fears instilled by September 11, and once again US military forces went overseas to preserve 'the American way of life.' Sceptics were branded 'unpatriotic,' 'un-American.'

So what is this 'American way of life'? Is it the "equality of condition among the people" that de Tocqueville was talking about? Or, is it free enterprise, or that hazy concept of 'the American Dream'? Equality of condition is something we in Australia experience to at least as great an extent as US citizens do. This is true also of Canada and most European countries. The same goes for free enterprise and even 'the American Dream,' if this means the possibility of working oneself up from nothing to something. These are all *Western ideals*, and not exclusive to the United States. But ask an American and eight times out of ten they will say these are American attributes. [...]



It seems the idea of American exceptionalism is not so much manifested in an actual difference between the US and other countries in terms of outward behaviour, but more in terms of a 'truth' about the mental and moral superiority of Americans being actively reiterated by American culture to the American public via movies, television and political rhetoric. To generalise, all Americans are told every day in the media that only *they* know how the world really works, and only they know how it *should* be worked. In this way, the myth is kept alive.

It has been said that the US does not have an ideology, it *is* an ideology. One needs only to look at the ubiquitous American flag to realise that there might be some truth in this. US culture is riddled with patriotism, and too often it is not a 'clean' patriotism, in that pride is felt about the United States in and of itself, but rather a 'dirty' patriotism wherein everything that is not American is actively put down, 'dumbified' or ridiculed.

If one accepts this as being the case, then the question arises: Why? What is the basis for this American need to constantly glorify itself, to make itself out to be special, set apart, almost holy, in relation to all other nations? At first glance, it might seem like something of a paradox. If we disregard the comparatively minute number of Native Americans, the US is entirely made up of the historically recent descendants of European and Asian immigrants, the descendants of African slaves, and, even

more recent, immigrants from Central America and the Caribbean. One would think, then, that if there were one nation on the planet devoid of national prejudice, the United States would be it. Clearly, this is not the case.

But the paradox is only apparent, for it is indeed from this very multicultural nature that the aggressive American patriotism arises. This kind of patriotism has no place in more homogenous democracies for the simple reason that it isn't needed. Only in totalitarian states does one find similar tendencies. In those states its purpose is obvious: it knits the people together around a ruling party or despot, using threats from the outside or a righteous holy war as ways to divert attention from internal problems. Nazi Germany is the prime example of this process. But in the allegedly free societies of modern democracies, internal problems are addressed and, although not always solved, are at least usually recognised. Most modern democracies work reasonably well because a majority of citizens are in reasonable agreement about what kind of society they would like to have. This unity of majority is the direct result of shared values, which in turn is the result of similar backgrounds and shared culture.

It is in this that the United States of America truly *is* unique and set apart from other Western nations. In Australia, we have a majority of white European descent. Asian minorities are growing, but it is still white European culture that sets the agenda. But in the US there are no real majorities. White European-descended Americans still dominate US politics, but unlike Australia, the US has, ever since the days of the American Revolution, wished to distance itself from the Old World. This is a very important point. It created a unique starting position, from which a nation was to be created by incorporating elements from a multitude of cultures into something that was all of these different cultures at once, and yet at the same time not really any of them.

In other places in the world, such a mix of cultures, religions and races have time and time again proved to be potentially explosive. One needs only to look at the Balkans to get the general idea. But unlike the different peoples of that crossroads of continents, the immigrants to the New World had one important thing in common: the *idea* of the United States, of a new world in which to start again. For all their differences, they shared that one brave idea, and that idea became the point around which they gathered. After two hundred years this is still the glue that keeps the nation together. It's a fragile construct. And the constant American need for reaffirmation of America's greatness — their exceptionalism — affirms its fragility.

To what extent American exceptionalism is responsible for the country's neo-imperialistic foreign policy is difficult to judge, but as no man or woman exists outside his or her culture, it seems likely that the people making US foreign policy do so with the inherent belief of the American: that they know best. And as long as they have the power, they will, in all likelihood, continue 'to know best.'

Understanding this American need to feel special, unappealing as it may be to the outsider, might nonetheless prompt one to be less judgemental about their floundering self-glorification. They are, after all, for better or for worse, exceptional.

- “America’s Jekyll-and-Hyde Exceptionalism,” by Harold Hongju Koh

[Harold Hongju Koh was a Justice Dept. lawyer in Regan’s administration, and assistant secretary of state for democracy, human rights, and labor in Clinton’s administration. He is currently Dean and the Smith Professor of International Law at Yale University. A version of this essay previously appeared as *On American Exceptionalism* in the *Stanford Law Review* (2003). The paper was originally presented in April 2002 to Michael Ignatieff’s American Exceptionalism Seminar at the Carr Center for Human Rights Policy at

Since September 11, "American exceptionalism" has emerged as a dominant leitmotif in the daily headlines. But the very phrase raises three questions: First, precisely what we do mean by American exceptionalism? Second, how do we distinguish among the negative and overlooked positive faces of what I call "America's Jekyll-and-Hyde exceptionalism"? And third, how should we, as Americans, respond to the most negative aspects of American exceptionalism after September 11?

During the last fifteen years, I have had a special opportunity to look at American exceptionalism from both sides now: not just from the perspective of the academy and the human rights world, but from two distinct vantage points *within* the human rights arena: from one angle, as a human rights scholar and nongovernmental advocate; from another, as a US government official. From these twin perspectives, I now see, the term "American exceptionalism" has been used far too loosely and without meaningful nuance. When we talk about American exceptionalism, what, precisely, do we mean?

The Faces of American Exceptionalism

Over the centuries, the very concept of "American exceptionalism" has sparked fierce debate in both the academic and political realms. The term, usually attributed to Alexis de Tocqueville, has historically referred to the perception that the United States differs qualitatively from other developed nations, because of its unique origins, national credo, historical evolution, and distinctive political and religious institutions. The phrase sometimes also connotes the idea that America's canonical commitments to liberty, equality, individualism, populism, and laissez-faire exempt it from the historical forces that have led to the corruption of other societies. In American political life, the concept flows through the rhetoric of nearly every American president, from Washington's Farewell Address, to Lincoln's Gettysburg Address, to Reagan's image of a "shining city on the hill," to nearly every post-September 11 speech of George W. Bush.

In the academic realm, the phrase has been variously used to explain America's distinctive cultural traditions, the evolution of the American labor movement, America's differences from Europe, America's peculiar approach to social welfare policy, and America's "frontier anxiety." [In their article, "Is American Foreign Policy Exceptional? An Empirical Analysis," Joseph Lepgold and Timothy McKeown, state, the notion of American exceptionalism generally "holds that Americans deprecate power politics and old-fashioned diplomacy, mistrust powerful standing armies and entangling peacetime commitments, make moralistic judgments about other people's domestic systems, and believe that liberal values transfer readily to foreign affairs."

[...] Michael Ignatieff has approached the matter more systematically. He catalogs various kinds of American exceptionalism, in the process distinguishing at least three different faces of American engagement with the world. The first face Ignatieff calls "American exemptionalism" - ways in which the United States actually *exempts itself* from certain international law rules and agreements, even ones that it may have played a critical role in framing, through such techniques as noncompliance; nonratification; ratification with reservations, understandings, and declarations; the non-self-executing treaty doctrine; or the latest US gambit, unsigned the Rome Statute of the International Criminal Court (ICC). Second, he notes America's *legal self-sufficiency*, typified by Justice Scalia's statement in *Stanford v. Kentucky* that the practices of foreign countries are irrelevant to US constitutional interpretation, because, in the construing of open-ended provisions of the Bill of Rights, "it is *American* conceptions of decency that are dispositive." Third, he points to *double standards*, whereby the United States judges itself by different standards from those it uses to judge other states, and judges its friends and its enemies by different standards.

This helpful trichotomy nevertheless lumps together certain forms of exceptionalism and misses others. I prefer to distinguish among four somewhat different faces of American exceptionalism, which I call, in order of ascending opprobrium: distinctive rights, different labels, the “flying buttress” mentality, and double standards. In my view, it is the fourth face -double standards- that presents the most dangerous and destructive form of American exceptionalism.

America undoubtedly has a *distinctive rights culture*, growing out of its peculiar social, political, and economic history. Because of that history, some human rights, such as the norm of nondiscrimination based on race or First Amendment protections for speech and religion, have received far greater emphasis and judicial protection in America than in Europe or Asia. So, for example, the USA First Amendment is far more protective than other countries’ laws of hate speech, libel, commercial speech, and publication of national security information. But is this distinctive rights culture, rooted in our American tradition, really inconsistent with universal human rights values? On examination, I do not find this distinctiveness too deeply unsettling to world order. The judicial doctrine of “margin of appreciation,” familiar in European Union law, permits sufficient national variance in protection of the same rights as to promote some tolerance of this kind of rights distinctiveness.

Similarly, America’s tendency to use *different labels* to describe synonymous concepts turns out to be more of an annoyance than a philosophical attack upon the rest of the world. When I appeared before the Committee Against Torture in Geneva to defend the first American report on USA compliance with the Torture Convention, I was asked a reasonable question: why the United States does not “maintain a single, comprehensive collation of statistics regarding incidents of torture and cruel, inhuman or degrading treatment or punishment,” a universally understood concept. My answer, in effect, was that the myriad bureaucracies of the federal government, the fifty states, and the territories *did* gather statistics regarding torture and cruel, inhuman, or degrading treatment, but we called that practice by different labels, including “cruel and unusual punishment,” “police brutality,” “section 1983 actions,” applications of the exclusionary rule, violations of civil rights under color of state law, and the like. Refusing to accept the internationally accepted human rights standard as the American legal term thus reflects a quirky, non-integrationist feature of our cultural distinctiveness (akin to our continuing use of feet and inches, rather than the metric system). But different labels don’t necessarily mean different rules. Except for some troubling post-September 11 backsliding, which the Bush administration has now renounced, the United States generally accepts the prohibition against torture, even if it calls that prohibition by a different name.

Third, I believe that lumping all of America’s exclusionary treaty practices - e.g., non-ratification, ratification with reservations, and the non-self-executing treaty doctrine - under the general heading of “American exemptionalism” misses an important point: that not all the ways in which the United States exempts itself from global treaty obligations are equally problematic. For example, although the United States has a notoriously embarrassing record for the late ratification, non-ratification, or “Swiss cheese ratification” of various human rights treaties, as my colleague Oona Hathaway has empirically demonstrated, the relevant question is not non-ratification but *noncompliance* with the underlying norms, a problem from which the rest of the world tends to suffer more than does the United States. Many countries adopt a strategy of ratification without compliance; in contrast, the United States has adopted the perverse practice of human rights *compliance without ratification*. So, for example, during the thirty-seven years after the United States signed, but before it ratified, the Genocide Convention, no one plausibly claimed that USA officials were committing genocide. This was simply another glaring example of American compliance without ratification.

This third face of American exceptionalism Louis Henkin long ago dubbed “America’s *flying buttress* mentality.” Why is it, he asked, that in the cathedral of international human rights, the United

States is so often seen as a flying buttress, rather than a pillar, willing to stand outside the structure supporting it, but unwilling to subject itself to the critical examination and rules of that structure? The short answer is that compliance without ratification gives a false sense of freedom. By supporting and following the rules of the international realm most of the time, but always out of a sense of political prudence rather than legal obligation, the United States enjoys the appearance of compliance, while maintaining the illusion of unfettered sovereignty.

Like “distinctive rights” and “different labels,” the flying buttress mentality is ultimately more America’s problem than the world’s. For example, it is a huge embarrassment that only two nations in the world—the United States and Somalia, which until recently did not have an organized government—have not ratified the Convention on the Rights of the Child. Nevertheless, this ultimately is more America’s loss than that of the world. Why? Because the United States rarely gets enough credit for the large-scale moral and financial support that it actually gives to children’s rights around the world, in no small part because of its promiscuous failure to ratify a convention with which it actually complies in most respects. But once one weighs in the currently unfavorable alignment of pro-ratification votes in the Republican-controlled Senate, and considers the amount of political capital that USA activists would expend to obtain the sixty-seven votes needed for ratification any time soon, one soon concludes that children’s rights advocates are probably better off directing their limited energies not toward ratification, but rather toward real strategies to reduce the exploitation of child labor on the ground or to expand the prohibitions in the child-soldiers protocol.

This brings me to the fourth and most problematic face of American exceptionalism: when the United States actually uses its exceptional power and wealth to promote a *double standard*. The most problematic exceptionalism is not distinctive American rights culture, a taste for different labels, or a flying buttress mentality, but rather instances when the United States proposes that a different rule should apply to itself and its allies from the one that should apply to the rest of the world. Recent well known examples include such diverse issues as the International Criminal Court, the Kyoto Protocol on Climate Change, executing juvenile offenders or persons with mental disabilities, declining to implement orders of the International Court of Justice with regard to the death penalty, or claiming a Second Amendment exclusion from a proposed global ban on the illicit transfer of small arms and light weapons. In the post-9/11 environment, further examples have proliferated: particularly, America’s attitudes toward the global justice system, and holding Taliban detainees on Guantanamo without Geneva Convention hearings, about which I will say more later.

For now, we should recognize at least four problems with double standards. The first is that when the United States promotes double standards, it invariably ends up not on the higher rung, but on the lower rung with horrid bedfellows—for example, with such countries as Iran, Nigeria, and Saudi Arabia, the only other countries that have not in practice either abolished or declared a moratorium upon the imposition of the death penalty on juvenile offenders. This appearance of hypocrisy undercuts America’s ability to pursue an affirmative human rights agenda. Worse yet, by espousing the double standard, the United States often finds itself co-opted into either condoning or defending other countries’ human rights abuses, even when it previously criticized them (as has happened, for example, with the USA critique of military tribunals in Peru, Russia’s war on Chechen “terrorists,” or China’s crackdown on Uighur Muslims).

Third, the perception that the United States applies one standard to the world and another to itself sharply weakens America’s claim to lead globally through moral authority. This diminishes USA power to persuade through principle, a critical element of American “soft power.” Fourth, and perhaps most important, by opposing the global rules with the aim of modifying them to suit America’s purposes, the United States can end up undermining the legitimacy of the rules themselves. The irony,

of course, is that, by doing so, the United States dis-empowers itself from invoking those rules, at precisely the moment when it needs those rules to serve its own national purposes.

Having focused until now on the four negative faces of American exceptionalism, I must address a fifth, much-overlooked dimension in which the United States is genuinely exceptional in international affairs. Looking only at the half-empty part of the glass, I would argue, obscures the most important respect in which the United States has been genuinely exceptional, with regard to international affairs, international law, and promotion of human rights: namely, in its *exceptional global leadership* and activism. To this day, the United States remains the only superpower capable, and at times willing, to commit real resources and make real sacrifices to build, sustain, and drive an international system committed to international law, democracy, and the promotion of human rights. Experience teaches that when the United States leads on human rights, from Nuremberg to Kosovo, other countries follow. When the United States does not lead, often nothing happens, or worse yet, as in Rwanda and Bosnia, disasters occur because the United States does not get involved.²⁵

Let me illustrate with two anecdotes from my own experience. The first comes from my time as assistant secretary of state. A young British diplomat I knew came from the British Foreign and Commonwealth Office to work “on detail” at the State Department’s Bureau of European Affairs. As he was returning to the British Embassy, I asked him, “So what was the major difference between your two jobs?” His immediate answer: “When something happens in the world, the Americans ask, ‘What should we do?’ The British ask, ‘What will the Americans do?’ “

This explains in part the Bush administration’s cynicism about the French. Can you remember the last major human rights campaign led by the French? If you cannot remember, it is because in fact they have led very few, even while notoriously fraternizing with abusive regimes in such countries as China, Iraq, and Burma.

My second, bittersweet anecdote comes from my childhood. My late father, Dr. Kwang Lim Koh, served as minister to the United States for the first democratically elected government in South Korea. In 1961, a military coup overthrew the democratic government of Prime Minister Chang Myon, who was placed under house arrest amid rumors that he would shortly be executed. To plead for Chang’s life, my parents brought Chang’s teenage son to see Walt W. Rostow, then the deputy national security adviser to the president. Rostow turned to the boy and said simply, “We know where your father is. Let me assure you, he will not be harmed.” Rostow’s words stunned my father, who simply could not believe that any country could have such global power, reach, and interest. The story so impressed my father that he repeated it on countless occasions as I grew up, as proof of the exceptional goodness of American power.

But after I entered the State Department, I came to realize that what I had understood to be exceptional behavior is in fact America’s diplomatic rule: every day in virtually every embassy and consulate around the world, American diplomats make similar interventions for and inquiries about political prisoners, opposition politicians, and labor leaders, even in countries that most Americans could not locate on any map. Without question, no other country takes a comparable interest or has comparable influence worldwide. Both America’s global interest and its global influence are genuinely exceptional.

Ironically, as I grew older, I came to realize that this canonical story was inherently double-edged. On the one hand, it showed that America both has and exercises exceptional power, every day and in every country on the planet. But the real problem in the Korean case was not that the United States did too much, but that it probably did too little. The United States was ready to intervene to save Prime Minister Chang’s life, but not to take the additional steps necessary to restore democracy in South

Korea. Instead of doing more to effectuate its human rights commitment, for several decades during the Cold War, the United States instead supported a military government committed to authoritarian rule and economic growth.

What this taught me is that human rights problems as often arise when the United States does not exercise its exceptional leadership in human rights as when it does. If critics of American exceptionalism too often repeat, "America is the problem, America is the problem," they will overlook the occasions where America is not the problem but the solution, and if America is not the solution, there will simply be no solution. [...]

American exceptionalism has both good and bad faces. On the Korean Peninsula, in Afghanistan, and in the Middle East, the United States cannot disengage, and the world simply cannot afford to let the United States disengage. Rather, the United States must reengage in each of these areas, not with hard power-which has limited resolving effect in these delicate diplomatic situations - but with "soft" diplomatic power backed by carrots and sticks. In each of these cases, American passivity has demonstrably made matters worse. By constantly stressing the ways in which America is the problem, single-minded critics of American exceptionalism may perversely encourage dangerous passivity in places where the United States presents the only viable solution to a festering global problem.

As important, in all three cases, the best face of American exceptionalism proves to be the face that promotes the rule of law. In each case, the broader goal of American power should be not the blunt use of force but the creation of new, constraining and facilitating legal orders-a democratic constitutional government in Afghanistan; a new domestic and international order among Israel and the Palestinians; and a new set of international legal norms to govern North Korea's behavior. In the end, American exceptionalism succeeds best when it seeks not simply to coerce but, rather, to promote sustainable solutions through the generation of legal process and internalizable legal rules.

Entrenching Exceptionalism

The second Gulf War with Iraq in March 2003 brought with it the inescapable sense that the phenomenon of American exceptionalism and the debate over it had reached a new watershed. Under the Bush administration, an exceptionalist strategy seems to have become America's dominant response to the horrendous terrorist attacks of September 11. [...]

The Bush administration's response to this startling challenge has been not interstitial but architectural. The emerging Bush Doctrine now has five identifiable elements:

- First, *Achilles and his heel*. September 11 brought upon the United States, like Achilles, a schizophrenic sense of its exceptional power coupled with its exceptional vulnerability. Never has a superpower seemed so powerful and vulnerable at the same time. Given that we have already suffered some three thousand civilian casualties in the war against terrorism, the question fundamentally posed by the Bush Doctrine is how best to use our superpower resources to protect our vulnerability.

- The answer given has been *Homeland Security*, in both the defensive and preemptive senses of that term. In the name of preserving American power and forestalling future attack, the United States government has instituted sweeping strategies of domestic security, law enforcement, immigration control, security detention, governmental secrecy, and information awareness at home, even while asserting a novel right under international law to forced disarmament of any country that poses a gathering threat, through strategies of preemptive

self-defense if necessary.

•Third, the administration has justified this claimed sovereign right under international law by a shift in emphasis in human rights. In 1941, when Franklin Delano Roosevelt summoned the Allies to arms against an earlier “Axis of Evil,” he did not simply call America to war. Instead, he painted a positive vision of the world we were trying to make: a postwar world of four fundamental freedoms: freedom of speech, freedom of religion, freedom from want, freedom from fear. Since 1941, USAhuman rights policy in both Democratic and Republican administrations has followed the broad contours of the “Four Freedoms” speech. This framework foreshadowed a postwar human rights construct-eventually embedded in Eleanor Roosevelt’s Universal Declaration of Human Rights and subsequent international covenants-that would emphasize comprehensive protection of civil and political rights (freedom of speech and religion), economic, social, and cultural rights (freedom from want), and freedom from gross violations and persecution (e.g., the Refugee Convention, the Genocide Convention, and the Torture Convention). But after September 11, administration officials have reprioritized “*freedom from fear*” as the number one freedom the American people need to preserve. Instead of declaring a state of emergency, however, or announcing broad-scale changes in the rules by which the United States had previously accepted and internalized international human rights standards, the administration has opted instead for a two-pronged strategy of creating *extralegal zones*, most prominently the USAnaval base at Guantanamo Bay, Cuba, where scores of security detainees are held without legal recourse, and *extralegal* persons-particularly those detainees labeled “enemy combatants,” who, even if American citizens on American soil, are effectively accorded no recognized legal avenue to assert either substantive or procedural rights.

•Fourth, beginning with Afghanistan and now continuing with Iraq, the administration has asserted a new strategy toward democracy promotion. From Ronald Reagan’s famous 1982 Westminster speech until September 11, successive administrations had supported the promotion of democracy as a fundamental goal of USAforeign policy. President Reagan’s address to the Houses of Parliament called for a broad public-private effort “to foster the infrastructure of democracy - the system of a free press, unions, political parties, universities- which allows a people to choose their own way, their own culture, to reconcile their own differences through peaceful means. During the Bush-Clinton years, the democracy-promotion strategy developed into a broader aspiration, captured by President George H. W. Bush’s January 29, 1991, State of the Union message, for “a new world order-where diverse nations are drawn together in common cause, to achieve the universal aspirations of mankind: peace and security, freedom and the rule of law.” But the consistent theme during these years was “democracy promotion from the bottom up,” not imposed from the top down. Since the USAinvasion of Afghanistan, democracy-promotion efforts have shifted toward *militarily imposed democracy*, characterized by USA-led military attack, prolonged occupation, restored opposition leaders, and the creation of resource-needy post-conflict protectorates. At this writing, a new, four-pronged strategy seems to be emerging: “hard,” militarily imposed democracy promotion in Iraq and Afghanistan; “soft,” diplomatic democracy promotion in Palestine; optimistic predictions of “domino democratization” elsewhere in the Middle East; and reduced democracy-promotion efforts elsewhere. But if extended globally, as was done during the Cold War, such a USAstrategy of making “the world safe through imposed democracy” could soon transform into an unsustainable strategy requiring near-unilateral military interventionism, extended support for client governments, and imperial overstretch.

•Fifth and finally, as Strobe Talbott has observed, to implement the various elements of this emerging doctrine, the Bush administration has opted for “*strategic unilateralism and tactical multilateralism*.” By its nature, such a strategy resists enforced obedience to international treaties and institutions as dangerously constraining on USAnational sovereignty. But as with the “flying buttress” mentality described above, to win the illusion of unfettered sovereignty, the United States surrenders its reputation for being law-abiding. This loss of rectitude diminishes America’s moral authority and reduces the soft power American needs to mobilize multilateral responses in a post-September 11 world.

If these are the elements of the emerging Bush Doctrine, why is it so troubling? *Because such a doctrine makes double standards --the most virulent strain of American exceptionalism - not just the exception but the rule.* Each element of the emerging Bush Doctrine places the United States in the position of promoting genuine double standards, one for itself and another for the rest of the world. The exclusive focus on American vulnerability ignores the far greater vulnerability of such countries as, for example, Israel and Turkey (which, being a neighbor of Iraq, surely had more to fear from Saddam Hussein than did the United States, yet still denied American soldiers the right to stage ground operations from Turkish bases). Even while asserting its own right of preemptive self-defense, the United States has properly hesitated to recognize any other country’s claim to engage in forced disarmament or preemptive self-defense in the name of homeland security. The technique of creating extralegal “rights-free” zones and individuals under USAjurisdiction necessarily erects a double standard *within* American jurisprudence, by separating those places and people to whom America must accord rights from those it may treat effectively as human beings without human rights.

Similarly, the oxymoronic concept of “imposed democracy” authorizes top-down regime change in the name of democracy. Yet the United States has always argued that genuine democracy must flow from the will of the people, not from military occupation. Finally, a policy of strategic unilateralism seems unsustainable in an interdependent world. Because the United States is party to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions, unilateral administration decisions to break or bend one treaty commitment usually trigger vicious cycles of treaty violation. In an interdependent world, the United States simply cannot afford to ignore its treaty obligations while at the same time expecting its treaty partners to help it solve the myriad global problems that extend far beyond any one nation’s control: the global AIDS and SARS crises, climate change, international debt, drug smuggling, trade imbalances, currency coordination, and trafficking in human beings, to name just a few. Strategic unilateralism undermines American soft power at the exact moment when the United States is trying to use that soft power to mobilize those same partners to help it solve problems it simply cannot solve alone: most obviously, the war against global terrorism, but also the postwar reconstruction of Iraq, the Middle East crisis, and the renewed nuclear militarization of North Korea.

If the emerging Bush Doctrine takes hold, the United States may well emerge from the post-9/11 era still powerful, but deeply committed to double standards as a means of preserving USAhegemony. Promoting standards that apply to others but not to us represents the very antithesis of America’s claim, since the end of World War II, to apply *universal* legal and human rights standards. The real danger of the Bush Doctrine is thus that it will turn the United States, which since 1945 has been the major architect and buttress of the global system of international law and human rights, into its major outlier, weakening that system and reducing its capacity to promote universal values and protect American interests.

Responding to American Exceptionalism

Given this analysis, how should we respond to American exceptionalism? In recent months, four distinct approaches have emerged: triumphalism; criticizing the critics; blaming American culture; and my preferred solution, triggering transnational legal process. What does each entail?

First, triumphalism, or “getting used to it.” A speechwriter for a prominent conservative senator once said to me, “American exceptionalism is a reality. The rest of the world should get used to it. The world should accept it and the USA should trumpet it. In a one-superpower world, American exceptionalism is not just inevitable, it is good.” To me, such a blindered response ignores the dark side of American exceptionalism. Triumphalism alone does nothing to address the most negative aspects of American exceptionalism, particularly the growing problem of promoting double standards.

A second counterproductive course is to criticize the critics of American overreaching, and to lay the blame on “the human rights discourse. Under this view, the human rights era is ending, but human rights advocates fail to recognize that the way they talk about human rights is dated. The solution, these critics suggest, is to change our rhetoric. Yet I see no need to change America’s human rights rhetoric, which has been remarkably consistent from Wilson to Bush; rather we must change the way we *act upon* our rhetoric. Over the decades, America’s rhetoric has consistently been human rights-oriented and progressive; what has varied is its willingness to act on this rhetoric in a consistent way that promotes universal values without sacrificing American national interests.

A third possible response, often expressed by European critics, is to locate the causes of American exceptionalism within a deeply rooted American culture of unilateralism and parochialism. But the problem with this response is that it does not acknowledge that every American is not equally well positioned to provoke an incident of American exceptionalism. It should be self-evident that some people are better placed than others. For example, in recent years, secretary of defense Donald Rumsfeld, former chair of the Senate Foreign Relations Committee Jesse Helms, and Supreme Court justice Antonin Scalia have each, in his own way, prevailed over other participants within their respective institutional environments who were pressing for less exceptionalist outcomes. But the American discourse of opposition to the International Criminal Court has arisen less from broadly entrenched American cultural beliefs than from the skill and maneuvering of particular well-positioned individuals, who, by serving as key institutional choke points, have successfully promoted particular well-publicized acts of American exceptionalism.

That brings me to a fourth possible response: trigger transnational legal process. Under my argument, the real cost of American exceptionalism comes when USA insistence upon double standards (in crude terms, “bad exceptionalism”) diminishes or inhibits its capacity to display exceptional leadership in a post-Cold War world (“good exceptionalism”). To reduce that cost, we, as American lawyers, scholars, and activists, should make better use of transnational legal process to press our own government to avoid the most negative and damaging features of American exceptionalism.

What is transnational legal process? While most legal scholars agree that most nations obey most rules of international law most of the time, they disagree dramatically as to why they do so. As I have explained elsewhere, I believe that nations obey international law for a variety of reasons: power, self-interest, liberal theories, communitarian theories, and what I call “legal process” theories. While all of these approaches contribute to compliance with international law, the most overlooked determinant of compliance is what I call “vertical process”: when international law norms are internalized into domestic legal systems through a variety of legal, political, and social channels and obeyed as domestic law. In the international realm, as in the domestic realm, most compliance with law comes from *obedience*, or norm internalization, the process by which domestic legal systems incorporate international rules into domestic law or norms.

Under this view, the key to understanding whether nations will obey international law, I have argued, is *transnational legal process*: the process by which public and private actors- namely, nation-states, corporations, international organizations, and nongovernmental organizations- interact in a variety of *fora* to make, interpret, enforce, and ultimately internalize rules of international law. The key elements of this approach are interaction, interpretation, and internalization. Those seeking to create and embed certain human rights principles into international and domestic law should trigger transnational *interactions* that generate legal *interpretations*, and that can in turn be *internalized* into the domestic law of even resistant nation-states.

In my view, “transnational legal process” is not simply an academic explanation as to why nations do or do not comply with international law; it is, more fundamentally, a bridging exercise between the worlds of international legal theory and practice. My time in government confirmed what I had suspected as a professor - that too often, in the world of policy making, those with ideas have no influence, while those with influence have no ideas. Decision makers promote policy without theory; activists implement tactics without strategy; and scholars generate ideas without influence. If transnational legal process is to bridge this triangle, how can we use that concept to press our government to preserve its capacity for positive exceptionalism by avoiding the most negative features of American exceptionalism?

Conclusion

In short, the question is not how do we feel about American exceptionalism, but do we have a strategy to encourage the right kinds of exceptionalism, namely, exceptional American leadership, while discouraging double standards? I have argued that there are many faces of American exceptionalism, and that our goal should be to reduce double standards while expanding our capacity for global leadership. My preferred channel to pursue both goals is transnational legal process.

As this war on terror wears on, a transcendent issue in the debate over USAforeign policy will be what kind of world order is emerging, and what America’s role in it will be. After September 11, the United States does not have the option of isolationism. Like it or not, Americans must be internationalists, but we do have a choice. America’s choice is not isolationism versus internationalism; rather, what version of internationalism will we pursue? Will it be power-based internationalism, in which the United States gets its way because of its willingness to exercise power whatever the rules? Or will it be norm-based internationalism, in which American power derives not just from hard power but from perceived fidelity to universal values of democracy, human rights, and the rule of law?

As a nation conceived in liberty and dedicated to certain inalienable rights, the United States has strong primal impulses to respond to crisis not just with power alone, but with power coupled with principle. After September 11, our challenge, as American Lawyers, academics, and activists, is not to condone double standards or to declare the human rights era over, but to use process to prod the country we love to follow the better angels of its national nature.

- **American Exceptionalism and its Enemies, by Ted Bromund**

[Ted R. Bromund is the Senior Research Fellow at the Margaret Thatcher Center for Freedom and a frequent contributor to Commentary.]

The United States is an exceptional nation. Most Americans would not regard that as a controversial statement. And there is a good reason for that: it is true. The USA is the world’s oldest and most stable capitalist liberal democracy, older even than Great Britain, which did not become a mass democracy until the late nineteenth century.

It was the first nation founded in an act of rebellion against a colonial power. It was the first nation founded on the belief that the rights of man are inherent and God-given, and that the powers of the government derive from the consent of the people. It was, therefore, the first nation to recognize that the state must be limited to the powers granted by the people, and to recognize explicitly that the state was founded to secure their rights. It was the first nation to be based on a separation of powers, and on the clear subordination of the military to civilian rule. And it was the first nation to state all of this in a constitution that was publicly debated and democratically accepted.

Other nations – Britain, most notably – share in some of these traditions, and that is not surprisingly, because the United States was deeply influenced by ideas born in England in the 17th century. But precisely because the USA was founded – whereas Britain evolved – the USA exemplifies these virtues in their purest form. That is why it is exceptional. And that is a fact that has been recognized by Europeans for centuries. [...]

By and large, the conservatives disliked the U.S., and the liberals liked it. There was a good reason for that: the USA was founded on liberal values, and in its acceptance of modernity, its everyday equality of manners, the freedom of movement within it, its mix of immigrants, and the protections and praise it gave to property-holding by all classes, it was, in the terms of the nineteenth century, a profoundly liberal country. Of course, as European observers realized, it was also deeply conservative in its attachment to the order established in 1776 and 1787. But that core of conservatism, the more perceptive among them concluded, was precisely what made it possible for it to sustain its liberalism, what prevented it from breaking down as the traditionalist European conservatives hoped it would.

American scholars agreed with the liberal Europeans. Much of American scholarship was devoted, in one way or another, to explaining why the United States was exceptional. The effort reached a peak with Frederick Jackson Turner's theory of the frontier, but it continued well into the 20th century. After World War II, indeed, it led to the creation of American Studies, an entirely new academic discipline founded on the argument that, now that the USA was a world power, we needed to understand ourselves, and explain our unusual ways to others, with greater clarity.

Those ways were, indeed, unusual. Most Americans believe the USA is exceptional, but we often forget just how unusual a country this is. The USA has a remarkable free speech tradition, which given tremendous protections to the press and to those accused of libel. It separates church and state in a way that is still rare, even in Europe. It gives rights to those accused of crimes that are unparalleled in history, or elsewhere in the world. It has a more open government than any other nation, one that gives citizens unprecedented access to its doings.

And, while like all nations it controls its borders, it has welcomed more immigrants from more places than any other nation in the world. Indeed, the popularity of the [USA] as a destination for immigrants is the ultimate proof that it is, indeed, exceptional. Emigration is the greatest and most democratic election in the world, because it is based on the individual decisions of millions. The USA has been winning that great election since it was founded.

In some ways, such as its very liberal abortion laws, the [USA] is exceptional in ways that conservatives dislike. But by and large, conservatives today celebrate American exceptionalism. That is curious, in a way, because so much of what makes the US exceptional is liberal in origin. But that simply goes to make Tocqueville's point: the [USA] has a liberal tradition and a conservative attachment to it.

Now, wipe all that from your mind. Forget the history, forget Tocqueville, forget generations of scholarship, forget the existence of the Constitution and the Bill of Rights, forget the heroes like Lincoln, Martin Luther King Jr., and John F. Kennedy who testified to it, forget the fact that we are all the children of immigrants, and forget the evidence of your own eyes. In the American academy today, and in the

upper reaches of the Democratic Party, the claim that the USA is exceptional is viewed with skepticism, or with scorn.

This is a difficult fact for most Americans to accept, or to believe, but for these elites, the word 'exceptionalism' is criticism, not praise. In the academy, where I spent more than twenty years, 'American exceptionalism' is treated, at best, as a myth born of self-righteous national chauvinism. At worst, it is a badly-disguised code word for knuckle-dragging reactionaries and closet fascists. Nothing pinpoints you as a conservative in the American academy faster than referring to American exceptionalism without a sneer, and nothing ingratiates you faster than dismissing anyone who believes in it as a dangerous right-winger and an historical ignoramus.

President Obama was educated in this academy – BA from Columbia University, JD from Harvard Law – so it is no surprise that he shares its dismissive attitude towards 'American exceptionalism.' When asked by a reporter in France if he believed in it, his response was characteristic: "I believe in American exceptionalism, just as I suspect that the Brits believe in British exceptionalism and the Greeks believe in Greek exceptionalism."

It is one thing – and it is quite right – for an American president to recognize that other nations have their own patriotisms. Americans are not shocked by this: in fact, they are only shocked when citizens of other countries are not proud of their homelands. But it is quite another thing for an American president to make American exceptionalism into a statement of personal opinion, into something that is as valid, or invalid, as any other opinion.

All nations may be special to their citizens, but the [USA], historically, is unique. If the President of the [USA] cannot bring himself to make this claim, which is both true and a basic part of fulfilling his duty as the leader of the nation, then he has aligned himself with the claim's opponents, albeit it with the gentler ones. That is something that no previous president, from either party, has done.

And that pattern has carried through in the President's nominations. The foremost example is Harold Koh, the former Dean of the Yale Law School, nominated as Legal Adviser to the State Department. Koh recognizes that the USA is an exceptional nation. For him, this is a serious problem, one the American judiciary needs to redress. For example, in a 2003 article "On American Exceptionalism," published in the *Stanford Law Review*, Koh acknowledges that the USA affords far greater protection than most countries to speech and the press. For Koh, this is cause for a measure of concern:

On examination, I do not find this distinctiveness too deeply unsettling to world order. The judicial doctrine of "margin of appreciation," familiar in European Union law, permits sufficient national variance as to promote tolerance of some measure of this kind of rights distinctiveness.

So, the USA's differences from the rest of the world are not "too deeply unsettling" and, thanks to EU law, can be tolerated to "some measure." But how far, exactly, should they be tolerated? In a footnote, Koh gives his answer: the courts should reinterpret the USA's free speech tradition so it does not cause problems abroad:

in a globalizing world, our exceptional free speech tradition can cause problems abroad, as, for example, may occur when hate speech is disseminated over the Internet. In my view, however, our Supreme Court can moderate these conflicts by applying more consistently the transnationalist approach to judicial interpretation.

And that is not an isolated example. For Koh, all American exceptionalism is bad: the only relevant question is which part of the tradition is the worst. Koh concludes that:

I prefer to distinguish among four somewhat different faces of American exceptionalism, which I call, in order of ascending opprobrium: distinctive rights, different labels, the 'flying buttress' mentality, and double standards. In my view, the fourth face- double standards- presents the most dangerous and destructive form of American exceptionalism.

The least dangerous are America's distinctive rights, such as free speech: these can be tolerated to some extent, though they should be reinterpreted if they pose problems. The 'different labels' problem is Koh's attack on the American refusal- as he sees it -to use internationally-recognized terms to describe practices that the USA rejects. According to Koh, this is a perverse relic of history, "a quirky, non-integrationist feature of our cultural distinctiveness (akin to our continuing use of feet and inches, rather than the metric system)."

More accurately, it is a result of the fact that the USA is a federal nation, and the various states have the power and the right to report statistics using terms of their own choice. Similarly, the national government is ultimately responsible to the American people, not the preferences of international organization- though Koh would not accept that point. What matters is that the government is following its own laws, which prescribe certain terms.

The other facet of the 'labels' problem, as Koh sees it, are America's "exclusionary treaty practices - e.g., non-ratification, ratification with reservations, and the non-self-executing treaty doctrine." In other words, if the USA decides not to ratify a treaty or to ratify it partially, or if it argues that treaties must be backed up by Congressional passage of supporting legislation, this too is exceptionalist, and a problem. It is not as serious a problem as the ones higher on his list, but, yes: the simple fact that the Senate has exercised its constitutional right not to ratify a treaty is, according to Koh, a worrying piece of American exceptionalism.

The third aspect of American exceptionalism- and this is where Koh's anger begins to mount- is its "flying buttress mentality." In other words, the USA claims to be a pillar of human rights, but it is really a flying buttress: it is "willing to stand outside the structure supporting it, but unwilling to subject itself to the critical examination and rules of that structure." Koh refers here explicitly to the Convention on the Rights of the Child, a thoroughly destructive but widely-ratified treaty, though he could easily adduce others, such as the Convention on the Elimination of All Forms of Discrimination Against Women, that fall into the same pattern.

Koh is making the claim not that the USA is a serial abuser of children, but that failing to ratify treaties that other nations have signed, regardless of how good or bad the treaty is, or how serious or frivolous the signatures of the others are, is an example of a "promiscuous failure." Indeed, in a May 8, 2001 op-ed in the *Washington Post*, Koh attacked the USA for failing to ratify treaties that "far less law-abiding countries" have signed.

This is a startlingly naïve claim. It does not appear to have occurred to Koh that the fact that many "far less-law abiding" countries have signed a treaty might be a valid reason for the USA to refuse to sign on: if the other signatories are not law-abiding, the treaty is worthless, because the signatories will not obey it. More broadly, Koh ignores the fact that the reason why the USA has refused to ratify many treaties is because he, and his supporters, have driven the train of international treaty-making so fast that the wheels have come off: treaties have become unenforceable expressions of aspirations, not serious national commitments. In those circumstances, the USA is being responsible, not irresponsible, by refusing to ratify.

Finally, there is Koh's fourth area, "double standards," when "the United States actually uses its exceptional power and wealth to promote a double standard." By "double standard," Koh does not

mean what most people do by that term: that the USA does one thing but encourages or forces other to do another. He criticizes the USA for declining to ratify the Kyoto Protocol or the Rome Statute that established the International Criminal Court, but this is not a double standard: it is simply an example of the USA not ratifying a treaty of which Koh approves. Other nations remain entirely free to ratify, or not to do so.

For Koh, in short, “double standard” means that the USA is doing something different, and something he dislikes, from other nations. But that is inherent in the right of self-government, which is the fundamental part of the American exceptionalist tradition. Even for those who want the USA to ratify all the treaties to which it is not currently party, it should be infinitely more important for the USA to retain the right of self-government, which includes the right to accept or reject treaties. Those treaties, important though they are— and as bad as conservatives correctly believe them to be— are ultimately unimportant compared to the right of self-government that Koh is denigrating with his attack on the hypocrisy of the USA for exercising it.

The problem that liberal elites today have with American exceptionalism is simple to sum up. Before the mid-1960s, most liberals believed in it. But then 1968 happened, and the New Left took over the academy and the intellectual leadership of the Democratic Party. The New Left was not rebelling against American conservatism, which in the mid-1960s was still nascent. It was rebelling against American liberalism, and— among much else— against its belief in the basic goodness and exceptionalness of America. American conservatism is, really, a rebellion against that rebellion, fortified by the neo-conservatives who split away from American liberalism when they realized it was being taken over by the radicals.

The more moderate Democratic leaders – Bill Clinton, preeminently – have resisted the New Left, but the tendencies of the party’s activists and elite are fundamentally opposed to American exceptionalism. It is in their hearts, and they can do no other. For the post-war liberals, the USA was liberal and modern. For the New Left, it is Europe that holds that crown: to believe in American exceptionalism is to believe that the USA should not be Europeanized.

And it is from those activists and from that elite that Barack Obama springs. His dismissive treatment of American exceptionalism places him more quickly and accurately than anything else he has said. Bill Clinton was heralded as the first Baby Boomer President, but if the Baby Boomers were the Generation of 1968, that title more accurately belongs to Obama. The realities of governing, as he is painfully discovering, will pull Obama one way, but his instincts— as reflected in his nominations, and his public remarks— will pull him the other, in a direction that Truman and Kennedy would have scorned.

This will be— indeed, it is being— hailed as the triumph of liberalism. But in reality it is an attack on it, and on the tradition of American exceptionalism that embodies it. It is equally an assault on the conservative belief that the United States must uphold the source of that exceptionalism, the legacies of 1776 and 1787. For the first time in its history, the United States has a president who has broken with the bipartisan tradition of his predecessors by refusing to state, proudly, that the nation he leads is exceptional. He has nothing to gain from refusing to state this, so he must believe it. And that is a somber reflection for Memorial Day.