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Robert S. Chang

Loyola Law School, Loyola Marymount University

Peter Kwan

Golden Gate University School of Law

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WHEN INTERESTS DIVERGE

Robert S. Chang*

Peter Kwan**

COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY. By *Mary L. Dudziak*. Princeton: Princeton University Press. 2000. Pp. xii, 330. \$29.95.

In her recent book *Cold War Civil Rights*, Professor Mary L. Dudziak,¹ sets forth “to explore the impact of Cold War foreign affairs on U.S. civil rights reform” (p. 14). Tracing “the emergence, the development, and the decline of Cold War foreign affairs as a factor in influencing civil rights policy” (p. 17), she draws “together Cold War history and civil rights history” (pp. 14-15), two areas that are usually treated as distinct subjects of inquiry. In mixing the two together, she shows that “the borders of U.S. history are not easily maintained.”² Perhaps it is fitting that the field of American history is not delimited neatly by its geographic borders, especially when those same borders have not contained the reach of the United States.³ She closes the introductory section of her book by “suggest[ing] that an international perspective does not simply ‘fill in’ the story of American history, but changes its terms” (p. 17).

* Professor of Law and J. Rex Dibble Fellow, Loyola Law School, Loyola Marymount University. A.B. 1988, Princeton; J.D., M.A. 1992, Duke. — Ed. I would like to thank Windy Watson for her research assistance.

** Visiting Professor of Law, Golden Gate University School of Law. B.A. 1987, LL.B. 1986, LL.M. 1999, University of Sydney; LL.M. 1993, Columbia. — Ed.

1. Judge Edward J. and Ruey L. Guirado Professor of Law and History, University of Southern California Law School.

2. P. 17. In doing this, Dudziak places her work among those historians seeking to internationalize the study of American history. P. 252; cf. Michael Kammen, *The Problem of American Exceptionalism: A Reconsideration*, 45 AM. Q. 1, 2 (1993) (noting the call for an internationalized historiography).

We found the claim that the terms of American history itself change provocative but not fully or explicitly developed. When Dudziak returns to this in her conclusion, she suggests that “the terms — domestic/foreign, internal/external — seem to collapse.” P. 253. We would have liked to see further discussion of a transnational historical methodology and what the payoff is when the distinctions between domestic and foreign collapse. Are there consequences for the way we think about law?

3. The emergence of the United States as a colonial power in the traditional sense with extraterritorial possessions began in the late nineteenth century with the acquisition of Hawaii, Puerto Rico, and the Philippines.

Dudziak is not the first, as she herself admits, to draw a connection between foreign policy and domestic civil rights.⁴ She does, however, present the most thorough and compelling case for this connection. She draws from a remarkable array of documentary evidence to construct a fascinating narrative that frames the local within the transnational.⁵ For instance, Dudziak opens her book with the story of Jimmy Wilson. She tells us that Mr. Wilson's "name has not been remembered in the annals of Cold War history" (p. 3). But as a historian, she is about to help us remember.⁶ The notion of "remembering" seems to serve two important functions for Dudziak. First, it helps us know who we are (pp. 17, 252-53). Second, it reminds us that we are not alone and cannot act with impunity (*passim*).

The second value of remembering is revealed through Dudziak's stressing the important role played by international actors in effecting domestic civil rights reform. To Dudziak, the international gaze serves as a panopticon.⁷ She examines how local actors reacted to interna-

4. "The question of the role of the Cold War and foreign affairs in domestic civil rights reform has been noted consistently by some scholars but until recently has been at the margins of civil rights historiography." P. 258 n.26 (citing Gerald Horne, Brenda Gayle Plummer and Derrick Bell); see also Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61, 64 (1988).

5. Her notes reflect a prodigious amount of archival research into State Department records and those of the United States Information Agency. Her focus on documentary evidence avoids what might be described as a great men's approach to understanding history. A year after Dudziak's book was published, Thomas Borstelmann published a book that examined similar themes. One feature of his book is the background biographical information he provides of various presidents and other important figures. THOMAS BORSTELMANN, *THE COLD WAR AND THE COLOR LINE: AMERICAN RACE RELATIONS IN THE GLOBAL ARENA* (2001). Dudziak and Borstelmann share a focus on the role that elites played. Their historical methodologies differ though in an important regard. Dudziak relies on what the elites expressed. Borstelmann attempts to get into their heads through their biographies. Dudziak, however, does a better job of showing how international affairs become part of the narrative of domestic civil rights history and how this affects the trajectory of civil rights reforms.

6. For Dudziak, history is not just what happened. She constructs what might be described as a "usable past." Michael Kammen notes that the idea of a "usable past" had become a cliché by 1969 and that the emphasis among historians had been to shift toward a respect for the "'pastness of the past,' which means to accept the past on its own terms rather than to transmogrify it into our own contemporary frame of reference." MICHAEL KAMMEN, *SELVAGES AND BIASES: THE FABRIC OF HISTORY IN AMERICAN CULTURE* 116-17 (1987). Kammen notes, though, that "we ought [not] to discard entirely a judicious concern for usable pasts." *Id.* at 61. His answer to the question, "what is the good of history," reflects one way to think about a usable past:

First, history helps us to achieve self-knowledge and thereby a clearer sense of identity. Second, it helps us to acquire moral knowledge and thereby enables us to make sensibly informed value judgments. Third, it improves our understanding of the actual relationship between past and present, as well as the potential relationship between present and future.

Id. at 55.

7. JEREMY BENTHAM, *THE PANOPTICON WRITINGS* (Miran Bozovic ed., 1995) (1787); MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (Alan Sheridan trans., 1977).

tional criticisms of civil rights violations, and how pressure was brought to bear on local actors by federal officials. In this way, the international gaze operated to constrain or contain this country's racist majoritarian excesses. She posits what might be described as an extra-legal theory of local and national restraint, based on some notion of national prestige and national interest.⁸ We shall return to this extra-legal theory of restraint at the end of this Review.

But, what is it that we should remember? What have we forgotten? What have we repressed? Professor Dudziak tells us that Jimmy Wilson was an African-American handyman "sentenced to death in Alabama for stealing less than two dollars in change."⁹ She tells us about the international uproar that ensued: newspapers worldwide decried Alabama's imposition of a death sentence for what was essentially petty theft,¹⁰ and letters and petitions from around America and the world poured in to both federal and state governmental officials (pp. 4-6). The uproar led to the involvement of Secretary of State John Foster Dulles, who sent a telegram to James Folsom, the governor of Alabama, "informing him of the great international interest in the Jimmy Wilson case" (p. 7). Governor Folsom himself had been receiving an average of a thousand letters per day, and he already knew about the great international interest. Thus, when the Alabama Supreme Court upheld Wilson's conviction and sentence, Governor Folsom quickly granted Wilson clemency.

As the opening narrative to her book, Jimmy Wilson creates the frame for Dudziak's analysis. "[D]omestic civil rights crises would quickly become international crises. As presidents and secretaries of state from 1946 to the mid-1960s worried about the impact of race discrimination on U.S. prestige abroad, civil rights reform came to be seen as crucial to U.S. foreign relations" (p. 6). Professor Dudziak organizes her book chronologically, with civil rights crises and government responses serving as episodes that repeat the basic arc of the Jimmy Wilson story. The ad hoc nature of the governmental response to each crisis demonstrates that there was no sustained or coherent positive federal policy with regard to civil rights other than crisis man-

8. This is a variation on Derrick Bell's interest-convergence hypothesis. See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

9. P. 3. Although the death sentence was permissible for robbery, it is unlikely that the robbery was the "real" basis for his being sentenced to death. His employer, a white woman, told the police that "he forced her onto the bed and unsuccessfully attempted to rape her." P. 4. Although Wilson was "prosecuted only for robbery," his employer was permitted to testify "at trial about the alleged sexual assault." P. 4.

10. P. 4. The sexual aspect of the case seems to have been overlooked by the international papers, and Dudziak does not address further the way the death sentence was a quasi-legal lynching in response to the alleged sexual transgression of the color line, or how that story did or did not make it into the international understanding of the case.

agement or image maintenance.¹¹ The concern of presidents and secretaries of state during the period she examines is not so much about racial justice but rather the harm to U.S. prestige abroad and the concomitant effect on U.S. foreign policy objectives.

The themes of crisis management and image maintenance are developed in Chapters One and Two of the book. The crisis that begins Chapter One is the ritualized killing of George and Mae Murray Dorsey and Roger and Dorothy Malcolm. Dudziak tells us: "One shot could have killed George Dorsey, but when he and three companions were found along the banks of the Appalachee River in Georgia on July 25, 1946, their bodies were riddled with at least sixty bullets" (p. 18). The four were lined up by a group of white men who fired three volleys, leaving "the upper parts of the bodies . . . scarcely recognizable because of the mass of bullet holes" (p. 19). As horrific as the killings were, Dudziak tells us that the crime was unremarkable, the pattern, familiar: "African American man detained by police, then released, then killed with companions by a white mob" (p. 19). What made these killings different "was not their brutality," but the attention that was paid to the deaths (p. 19). One factor that may have led to the heightened attention was that George Dorsey had just served five years in the United States Army.¹²

In addition to domestic uproar, including protests in front of the White House, overseas papers covered the murders and the ensuing investigation (pp. 20-24). The domestic and international attention placed pressure upon the administration to take action (p. 25). The action to be taken was understood as part of the nation's Cold War imperatives and the role the United States was to play. In an important speech to a joint session of Congress, Truman stated: "The free peoples of the world look to us for support in maintaining their freedoms. If we falter in our leadership, we endanger the peace of the world

11. See *infra* text accompanying notes 13-14.

12. P. 18. Another violent incident from that same summer also involved a former U.S. serviceman, Sergeant Isaac Woodard, an African American who was blinded in both eyes by the chief of police of Aiken, South Carolina. The white police chief was indicted but was ultimately acquitted "to the cheers of a crowded courtroom." P. 23. This incident in particular seems to have left its mark on Truman. In private correspondence, when an old friend urged "him to moderate his position on civil rights," Truman responded:

When a Mayor and a City Marshall can take a Negro Sergeant off a bus in South Carolina, beat him up and put out one of his eyes, and nothing is done about it by the State Authorities, something is radically wrong with the system . . . I can't approve of such goings on and I shall never approve of it, as long as I am here . . . I am going to try to remedy it and if that ends up in my failure to be reelected, that failure will be in a good cause.

P. 24. While not questioning Truman's commitment to civil rights for racial minorities, Dudziak does note that "Truman's sensibilities on race were mixed . . . [and he would] use racist language in private when referring to African Americans." P. 24.

— and we shall surely endanger the welfare of the Nation.”¹³ Part of the leadership thought to be required was addressing the racial injustices in the United States that jeopardized its foreign policy objectives.

As a stopgap measure, recognizing that meaningful racial reform would take time, the administration resolved to take greater efforts at controlling America’s image abroad. Dudziak, in her second chapter, tells a fascinating account about the United States Information Agency’s (“USIA”) efforts to contextualize the nation’s race problems. The USIA created a pamphlet, *The Negro in American Life*, that revealed, rather than concealed the nation’s past failings, and it did so for the purpose of presenting American history as a story of redemption. “In this story, democracy as a system of government was the vehicle for national reconciliation . . . Democracy, not totalitarian forms of government, it argued, provided a context that made reconciliation and redemption possible” (p. 49).

This chapter also recounts the length to which the U.S. government went to control the voices of those it thought were hurting its image. Critics of U.S. race relations, including Paul Robeson, W.E.B. Du Bois and Josephine Baker “found that their ability to travel overseas was curtailed in the early 1950s” (p. 61). In addition, the U.S. State Department sponsored African Americans to travel abroad who would speak favorably about U.S. race relations to foster a favorable image of American democracy (p. 56).

One problem with trying to construct a positive image of U.S. race relations is that it will only have limited efficacy if it does not bear some reasonable relation to reality. Dudziak, in Chapter Three, discusses some positive efforts at civil rights reform undertaken by the administration in part to give the State Department and its overseas American embassies more to work with (p. 79). The battle over school desegregation is the focal point of this chapter and the next.

The civil rights victories that Dudziak describes in these two chapters, while important substantively and symbolically, end up falling short of achieving actual desegregation. This failure is reflective of the relatively shallow commitment the administration had toward real civil rights reform. Instead, once it had achieved the pronouncement in *Brown v. Board of Education* and publicly demonstrated its commitment to desegregation by sending in federal troops to Little Rock, Arkansas,

[Eisenhower] and his administration withdrew their presence from the continuing struggle . . . At this juncture, the Cold War imperative could be addressed largely through formal pronouncements about the law. More substantive social change would await another day. (p. 159)

13. P. 27 (quoting Harry S. Truman, *Special Message to the Congress on Greece and Turkey: The Truman Doctrine, Mar. 12, 1947*, in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES, HARRY S. TRUMAN, 1947 (1963).

Once the primary interests of the federal government were satisfied, the dream of African Americans to achieve substantive educational equality and opportunity would be deferred.

Mary Dudziak's work provides a wonderful complement to Derrick Bell's. In a series of law review articles, Bell articulated what he called the interest-convergence principle — the idea that:

[The] interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites Racial remedies may instead be the outward manifestations of unspoken and perhaps subconscious judicial conclusions that the remedies, if granted, will secure, advance, or at least not harm societal interests deemed important by middle and upper class whites.¹⁴

The implications of this principle, if true, are far-reaching since the corollary of the principle is that where the judiciary perceives that interests of the white middle and upper class diverge from those of African Americans, they will not be willing to grant racial remedies to African Americans. Subsequent legal scholars have extended this principle from the judiciary to the white power elites, and from African-American interests to the interests of other minority and disempowered groups.¹⁵ Taken to its logical conclusion, Bell's Interest Convergence principle is a call to action on the part of those who desire progressive social change to raise awareness among white elites that their interests and the interests of minorities converge, and perhaps even to undertake action to create the conditions where the white elites must act to preserve peace as well as their position in the status quo.

Dudziak does a remarkable job of demonstrating through historical evidence a story that runs counter to the standard narrative of racial sin followed by racial redemption. This history that Dudziak recounts is critical in the sense used by Robert Gordon:

any approach to the past that produces disturbances in the field — that inverts or scrambles familiar narratives of stasis, recovery or progress; anything that advances rival perspectives (such of those as the losers rather than the winners) for surveying developments, or that posits alternative trajectories that might have produced a very different present —

14. Bell, *supra* note 8, at 523.

15. See, e.g., Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273 (1996); Neil Gotanda, *Towards Repeal of Asian Exclusion*, in *ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY* 309 (Hyung-chan Kim ed., 1995); John Hayakawa Torok, "Interest Convergence" and the Liberalization of Discriminatory Immigration and Naturalization Laws Affecting Asians, 1943-65, in *CHINESE AMERICA: HISTORY AND PERSPECTIVES* 1 (1995).

in short any approach that unsettles the familiar strategies that we use to tame the past in order to normalize the present.¹⁶

Dudziak's critical history requires us to reassess who we are. A belief that racial redemption has been achieved allows us to feel good about ourselves and to believe that we have achieved our colorblind destiny. Her history requires us to confront the material and structural inequality that has persisted and reminds us that much work remains to be done.

But what is the work to be done? And how do we go about doing it?

The last chapter documents the declining influence of Cold War foreign affairs on domestic civil rights. This chapter could have been developed further. She argues that the Vietnam War shifted the terms of the foreign policy debate. This seems right, and Dudziak identifies two possible pathways for this shift. The first is that elites may have concluded that discriminatory treatment of African Americans no longer had a negative impact on U.S. foreign policy objectives.

The second is that the Vietnam War simply shifted the international gaze away from U.S. domestic race relations to U.S. overseas military actions. Dudziak notes a 1966 USIA report stating that: "*Awareness of and disapproval of treatment of the Negro seem to have comparatively little effect on general opinion of the U.S.*"¹⁷ This raised the question: "*Does the racial issue as a propaganda problem preoccupy us more than the facts warrant?*" The answer seems to be, probably Yes" (p. 241). If advocating for domestic racial reform was perceived as no longer having a payoff in foreign affairs, then there is interest-divergence, which might explain the shift in the State Department's role with regard to domestic civil rights.

The Vietnam War, however, seems to be an example of interest-distraction. It shifted the international gaze to overseas U.S. military action — it also seems to have shifted some of the energy of domestic protest groups to the peace movement. All of this, though, feeds back into interest divergence.

Professor Dudziak's conclusions are not quite as sweeping or forceful as Professor Bell's. This is probably because she is writing as a historian. Bell makes the argument for causation. Dudziak, as a historian, writes about causes and influences. As one reviewer noted, "[o]f course, to say that Cold War foreign affairs played a role in U.S. civil rights reform does not tell us much about its *relative* influence as compared with other influences, a difficult if not impossible empirical

16. Robert W. Gordon, *Foreword: The Arrival of Critical Historicism*, 49 STAN. L. REV. 1023, 1024 (1997).

17. P. 240 (quoting OFFICE OF RESEARCH, UNITED STATES INFORMATION AGENCY, RACIAL ISSUES IN THE U.S.: SOME POLICY AND PROGRAM INDICATIONS OF RESEARCH, Special "S" Reports, 1964-82, S-3-66 (Mar. 14, 1966)).

question.”¹⁸ And Dudziak, in writing about causes and influences, has done an excellent job of culling sources and weaving a coherent narrative that does exactly what she set out to do. The book “traces the emergence, the development, and the decline of Cold War foreign affairs as a factor in influencing civil rights policy” (p. 17).

We should be careful, though, to note the normative dimension to her work. Dudziak constructs a narrative about the past that is surely meant to have present day implications. Earlier, we suggested that she was positing an extralegal theory of restraint whereby the actions of local and federal officials are limited by the international gaze. Dudziak opens the concluding paragraph of her book with the following: “The international critique has been persistent. What has changed is the perception of whether it has strategic importance. In the absence of immediate strategic advantages there remains, however, the ever-present international gaze, and the questions of new generations about the nature of American democracy” (p. 254). On the previous page, she states:

But under an international gaze, government power itself is subject to restraint. Internationalizing American history, then, helps us reconfigure our understanding of the boundaries of state power. State power is affected by the mirror of international criticism. Its autonomy over “domestic” matters is limited by its role in the world. (p. 253)

This normative dimension is suggested but not developed fully. It suggests further avenues of inquiry for other scholars who will build on her work: why should the United States care about the international gaze? In what way does it limit state power? If the international critique has been persistent, why aren't things better for America's racial minorities? Is the international critique impotent if the power elite do not believe that it serves the national self-interest to be responsive to international concerns? Will this depend on the “new generations” that she refers to? If we want to influence the “new generations” to care about national prestige, but we do not give it a moral grounding, how do we articulate it as being in their self-interest? And what happens when the old generations are slow to relinquish power to the new generations?

These questions are especially important now as we enter into what some have termed a new kind of cold war, where the enemy is terror. Some commentators have written about a new ideological or cultural or religious iron curtain.¹⁹ It's possible that the Cold War's in-

18. Curtis A. Bradley, *Foreign Affairs and Domestic Reform*, 87 VA. L. REV. 1475, 1476 (2001) (reviewing *Cold War Civil Rights*).

19. See, e.g., Thomas L. Friedman, *U.S. Truth is not Universal*, TIMES UNION (Albany), Jan. 23, 2002, at A11, available at 2002 WL 8886776; Key U.S. Senator Calls for Reassessment of U.S. Policy Toward Islamic World, AGENCE-FRANCE PRESS, Jan. 15, 2002, available at 2002 WL 2316799.

fluence on domestic race relations was an accident of history. But even accidents can teach us. For those who would work to protect human rights, how can the international and domestic gaze be directed to limit the exercise of state power? One example comes from Japanese-American communities who have called on the collective memory of World War II internment to check this nation's behavior with regard to persons of Middle Eastern and South Asian ancestry. We must use our imagination to think of other ways to remind elites that we are watching.

We have Professor Mary Dudziak to thank for narrating to us her vision of a past that may be used today and in the future. This is an important book that has and will continue to receive much attention.