



# The Power of Justice

Applying international human rights standards  
to American domestic practices

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William F. Schulz June 2009



Center for American Progress



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Front Cover Image: In this Jan. 28, 2009, file photo after an overnight snowfall, Neil Floyd starts a fire to keep warm outside his tent in the small tent city, where he lives with other homeless people in Camden, N.J. More than 37 million Americans live in poverty.



# Introduction and summary

At the heart of the American experiment lies a paradox. A country founded upon a conception of its own uniqueness—an exceptional nation—sought to be a model for other countries to emulate. To the extent those countries did emulate it, however, the perception of America as unique began to dissipate. The more countries began to copy the values and virtues of the American tradition, the more they began to compare America to her own ideals. The measurer became the measured. And to the extent she fell short of those ideals, she tended to defend herself through a renewed claim to her own uniqueness. In no small degree it is the tension between these two characteristics—monotype and template—that accounts for the United States’ ambivalence toward the rest of the world and the world’s toward it.

In terms of human rights, that ambivalence has manifested itself in the coupling of unparalleled leadership with frequent resistance to the implications of that leadership for the United States itself. Since the end of World War II, no country has been more influential in the development of the international human rights regimen than the United States, beginning with Franklin Roosevelt’s “Four Freedoms” speech, the Atlantic Charter, and Eleanor Roosevelt’s guiding role in the creation of the Universal Declaration of Human Rights, or UDHR. At the same time no democratic country has been more reticent to acknowledge the application of that regimen’s standards to its own domestic performance.

That is in part because the United States has fallen short of those standards in significant ways. The Bush administration’s unapologetic use of torture, secret prisons, and extraordinary rendition, which clearly violated international legal norms, is but among the most visible of those shortfalls. But there are many others: The United States is, for example, the only country in the world that regularly sentences children under 18 years-old to life incarceration without the possibility of parole and the only country other than Somalia not to have ratified the Convention on the Rights of the Child, or CRC.<sup>1</sup>

The United States’ disregard for the international human rights regimen, at the simplest level, looks like little more than hypocrisy. But, hypocritical though it may be, it reflects the vagaries of American history, ignorance about the relationship between the country’s domestic practices and its foreign policy goals, and uncertainty—even among human rights advocates—about the advantages of framing domestic justice struggles in international human rights terms.

*“... our power alone cannot protect us... our security emanates from the force of our example...”*

– President Barack Obama’s 2009 Inaugural Address

Now is the time to sort through that confusion.

The United States is, in the first place, emerging from a period that witnessed an unprecedented plunge in its worldwide popularity and credibility caused in good part by its own human rights violations connected to the so-called “war on terror.” Today, many Americans are eager to see the United States restore its international standing and they recognize that will entail pursuing security through diplomacy and international institutions and not just military force.<sup>2</sup>

Second, Americans strongly support the concept of human rights, including such social and economic rights as those to food, education, and health care. Seventy-seven percent of Americans, for example, say the government has an obligation to meet the basic human need for health care.<sup>3</sup>

Third, international human rights standards and mechanisms—despite some of those mechanisms’ shortcomings—hold more promise today than at any time since the passage of the UDHR in 1948. This is the case thanks to the development of a system of U.N. bodies and special procedures as well as regional human rights courts charged with addressing human rights violations; the agreement by the member states of the European Union to submit themselves to common human rights standards; the successes of the War Crimes Tribunals for the former Yugoslavia and Rwanda; the trials of Alberto Fujimori in Peru and former Khmer Rouge operatives in Cambodia; the growing recognition of the principle of universal jurisdiction; the adoption by the United Nations in 2005 of the “responsibility to protect;” and the establishment of a functioning International Criminal Court that has recently brought its first indictment against a sitting head of state.

Finally, domestic activists in the United States are finding international human rights laws and standards more and more useful resources with which to frame and advance their causes. Organizations as influential as Oxfam International, the American Civil Liberties Union, and the National Association for the Advancement of Colored People have adopted human rights language and concepts. And these groups display, in the words of the Leadership Conference on Civil Rights Education Fund, “increasing awareness of the importance of connecting the struggle for social justice in the United States to a broader movement for human rights around the world.”<sup>4</sup> The U.S. Human Rights Network was formed in 2003 and serves as a coordinating body for the work of more than 200 groups that focus on domestic human rights.<sup>5</sup>

Moreover, all this is coming at a time when there is at least some reason to believe a new American administration may be more open to understanding some of its domestic policy goals in human rights terms. In the second presidential debate, candidate Barack Obama said that health care “should be a right for every American” and cited as “fundamentally wrong” his mother’s experience of being denied payment for her treatments as she lay dying of cancer.<sup>6</sup> In his statement on Human Rights Day 2008, the president-elect called upon the United States to “stand up for human rights, by example at home and by effort abroad.”<sup>7</sup>



This is not to say for a moment, however, that the use of language and principles derived from international human rights instrumentalities is no longer controversial in this country. Supreme Court Justice Antonin Scalia has described reference to non-U.S. law by the Court as “meaningless” but “dangerous” dicta.<sup>8</sup> When he was House Majority Leader, Rep. Tom DeLay (R-TX) called Justice Anthony Kennedy’s nods to international law in several of his opinions for the majority “outrageous.”<sup>9</sup> In the recent tumult over the appointment of distinguished human rights scholar Harold Hongju Koh to the position of legal advisor at the U.S. Department of State, opponents have referred to international law as “international imperialism” and a “euphemism for left-wing extremism.”<sup>10</sup>

Clearly, then, there remains considerable discomfort about submitting American practices to international review—discomfort that is fueled by America’s self-identity, fears for its sovereignty, and suspicion—which is in some cases justifiable—of the limits and implications of international jurisprudence, such as in its permitted restrictions on free speech.

This paper is designed to address that resistance not from the standpoint of legal strategy but from that of policy formation and political action. It will argue that, when done well, the utilizing of international human rights standards can add significant value to domestic social justice agendas and it will encourage activists, opinion leaders, policymakers, legislators, and administration officials to think in those terms.

It begins by briefly describing the historical roots of the concept of the United States as an “exceptional nation” and how that has led to a suspicion of submitting American practices to international scrutiny (Section I). It then traces how, from the Civil War onward, resistance to the application of international norms to U. S. domestic issues has proven harmful to the achievement of U.S. foreign policy goals (Section II).

If that is the case, why—other than an historical predilection to exceptionalism—has the United States traditionally balked at understanding its own domestic problems in human rights terms? The paper explains the basis upon which civil rights activists themselves shunned a “human rights” framework and cites other sources of reticence to embrace international law and standards, such as fears about sovereignty, criticisms of the undemocratic nature of such norms, and conflation of social and economic rights with “socialism” (Section III).

The paper argues, however, that international law and standards can be an invaluable resource in bringing about human rights change—change which comes about through a dynamic combination of social movements with their grassroots advocacy and legal mandates recognizing “rights” as *rights*. It then goes on to cite numerous ways in which the use of an international human rights framework can be advantageous for both advocates and public officials in pursuit of their respective responsibilities to address domestic social problems. For advocates, for example, such a framework can provide common standards against which to measure the shortcoming of domestic policies, provide a common

language, and introduce new ways of thinking about old problems. For policymakers, it can increase American security, reinforce the United States' credibility as a critic, and help avoid litigation (Section IV).

The paper concludes with a series of recommendations to advocates, policy analysts, legislators, and policymakers that will advance the application of international human rights standards and principles to domestic issues. These include, for advocates, focusing major attention on local- and state-level change; framing standards as guiding norms and not obligations; and making health care reform a “rights” issues. For legislators and policymakers, recommendations include conforming U. S. law to treaty obligations, ratifying additional key human rights treaties, adopting requirements for human rights impact assessments of appropriate legislation and policies, and becoming educated about implementation of social and economic rights (Section V).

The United States has since 1948 ratified only a handful of human rights treaties and conventions—in addition to humanitarian treaties, such as the Geneva Conventions. Those it *has* ratified it has declared to not be self executing (meaning they cannot be legally enforceable without enabling legislation) and it has attached a variety of reservations to them, many designed to insure the subordination of the instrument to the U.S. Constitution.<sup>11</sup> Under the Supremacy Clause of the Constitution, however, upon ratification these treaties become the “supreme Law of the Land” to which “the Judges in every State” are bound.<sup>12</sup> There are of course many other treaties that have not been ratified and are therefore not legally binding on the United States. And there are also many other sources of international law, including international custom, decisions of international judicial bodies, and resolutions of the U.N. Security Council.

In addition to international law, however, there are also “international human rights standards” that do not necessarily have force of law—for example, recommendations of U.N. treaty bodies—but reflect international interpretation of “best practices.” Because the focus of this paper is not a legal one, we will in general refer to “standards” as incorporating both international law and wisdom. It is not, of course, that the international community can never be “wrong” about an issue. But, when an authoritative international body has arrived at a position, it is at least worth considering whether we might not have something to learn from it.



# Major international human rights treaties and protocols ratified by the United States

The United States has only ratified four key international human rights treaties and two optional protocols

## Key treaties and protocols ratified by the United States

- Convention on the Prevention and Punishment of the Crime of Genocide
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) *with reservations*
- International Covenant on Civil and Political Rights (CCPR) *with reservations*
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) *with notification*
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRCOPAC) *with declaration and understanding*
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRCOPSC) *with reservation*

## Key human rights treaties ratified or acceded to by G20 nations

The United States has ratified or acceded to fewer key human rights treaties\* than all other countries in the G20 group.

1. Argentina: 10
2. Mexico: 10
3. Australia: 8
4. Brazil: 8
5. France: 8
6. Germany: 8
7. Italy: 8
8. South Korea: 8
9. Turkey: 8
10. Canada: 7
11. China: 7
12. India: 7
13. Russia: 7
14. South Africa: 7
15. United Kingdom: 7
16. Indonesia: 6
17. Japan: 6
18. Saudi Arabia: 6
19. United States of America: 4

## Key treaties and protocols not ratified or accepted by the United States

- Amendment to Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- International Covenant on Economic, Social and Cultural Rights (CESCR) *signed but not ratified*
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (CESCR)
- Optional Protocol to the International Covenant on Civil and Political Rights (CCPR)
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
- International Convention on the Suppression and Punishment of the Crime of Apartheid
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) *signed but not ratified*
- Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Amendments to articles 17(7) and 18(5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- International Convention against Apartheid in Sports
- Convention on the Rights of the Child (CRC) *signed but not ratified*
- Amendment to article 43(2) of the Convention on the Rights of the Child (CRC)
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (CCPR)
- International Convention on the Protection of the Rights of All Migrant Workers and members of their Families (CMW)
- Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean
- Convention on the Rights of Persons with Disabilities
- Optional Protocol to the Convention on the Rights of Persons with Disabilities
- International Convention for the Protection of All Persons from Enforced Disappearance

\* Key human rights treaties: Convention on the Prevention and Punishment of the Crime of Genocide, 1948; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1966; International Covenant on Economic, Social and Cultural Rights (CESCR), 1966; International Covenant on Civil and Political Rights (CCPR), 1966; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984; Convention on the Rights of the Child (CRC), 1989; International Convention on the Protection of the Rights of All Migrant Workers and members of their Families, 1990; Convention on the Rights of Persons with Disabilities, 2006; International Convention for the Protection of All Persons from Enforced Disappearance, 2006

Source: United Nations Treaty Body Database, Status by Country: <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet;StatusofRatificationsofthePrincipleInternationalHumanRightsTreaties>: <http://www.unhchr.ch/pdf/report.pdf>

# I. The roots of exceptionalism

*I suspect that with time, we will rely increasingly on international and foreign law in resolving what now appear to be domestic issues, as we both appreciate more fully the ways in which domestic issues have international dimensions, and recognize the rich resources available to us in the decisions of foreign courts.*

– Supreme Court Justice Sandra Day O’Connor<sup>13</sup>

Above all, the Puritans were *separatists*. When Governor John Winthrop led his company of more than 1,000 men, women, and children to their new home in Massachusetts Bay in 1630, he did so not only because his religious community had come under pressure from both King Charles I and his high-church Bishop William Laud to conform their practices to Anglo-Catholic order and discipline. He did so also because he and his community wished to found a more “pure” church, an “unspotted” society, a New Jerusalem, what Winthrop famously called “a city on a hill,” distinct and separate from all others.

For our purposes the “hill” part of the formula was as important as the city part. The city was indeed intended to distinguish itself for its saintliness. It was to stand as living proof that a community could succeed by taking God’s unmediated Word as its sole guide. But it was not to be a light unto itself. The city had to be set not in a valley but “on a hill” where others could see it, the eyes of all people to be upon it that, as Winthrop so pointedly put it, “men shall say of succeeding plantations, ‘The Lord make it like that of New England.’”<sup>14</sup>

Founded for such a purpose and dedicated to such a mission, the United States—at least the majority white population of the United States—could hardly help but see itself as exceptional. The New World was *not* the Old; it did not want to be. It was unencumbered by the stains of the Old; it was a fresh lamp unto the nations. And throughout American history that sense of blessedness, of separateness—coupled with the conviction that America was an estimable model for others to imitate—has rarely been far from the minds of both leaders and citizens. The Declaration of Independence, for example, invoked the protection of Divine Providence on a course of action that was being announced not solely for the king’s ears or those of the British Parliament but out of “a decent respect to the opinions of *mankind*.”

Repeatedly Americans had reason to see themselves as touched by God’s special grace. The nation’s survival of a blood-wrenching Civil War. The successful implementation of a Manifest Destiny to conquer the continent. The fact that the continent was populated by a “nation of immigrants” fleeing what were by definition less desirable realms for the American Promised Land. The extension of the *imperium* across the seas to Cuba, the Philippines, Hawaii, Guam, and Puerto Rico. The completion of the greatest technological achievement of the age, the Panama Canal, a challenge that the French had notably flunked. Or, more recently, the twice-told rescue of Europe from two great wars, the first man on the moon, and the defeat of Communism.

Americans found, in all this, evidence of the exceptional nature of their country and, indeed, there is an element of truth in the telling. The U.S. Constitution and political system *have* been models for dozens of other countries; the United States *has* maintained for well more than two centuries a stable democracy that is the envy of millions of the world's inhabitants; and the United States remains the globe's preeminent military, economic, and diplomatic power.

But, paradoxically, as the rest of the world has more and more readily adopted norms associated with American values—representative democracy, an array of freedoms, and respect for due process and the rule of law—and institutionalized those norms in law and practice, the United States has grown increasingly resistant to allowing scrutiny of its own behavior by others.

The truth is that many of the major human rights developments of the last 65 years—from the Nuremberg and Tokyo trials to the founding of the United Nations, to the adoption of the UDHR to the creation of the original U.N. Human Rights Commission, to the War Crimes Tribunals for the Former Yugoslavia and Rwanda—would not have occurred without the support, explicit or tacit, of the United States. American representatives even played a crucial role in the origin and shaping of the statutes for the International Criminal Court right up until the moment the United States declined to endorse the final version. It is as if the country, having helped usher in the international human rights regimen, threw up its hands and bewailed what it hath wrought—at least as far as that regimen might be applicable to itself.

That resistance has not always been as draconian as Senator John Bricker's attempts in the early 1950s to circumscribe the president's ability to sign all human rights treaties or the George W. Bush administration's nose-thumbing at the Geneva Conventions. More frequently it has taken the form of such things as foot-dragging with regard to the ratification of treaties (the first one ratified, the Genocide Convention, for example, was signed by President Harry Truman in 1948, entered into force in 1951, but not ratified by the Senate until 1988.) Or the inclusion of reservations to the treaties and insistence that they are not self-executing, as already noted. Or infrequency of citation by American courts of international law even when international law would bolster arguments being made on other grounds. Or lack of cooperation with U.N. special rapporteurs who are appointed to investigate allegations of human rights abuses. Or tardiness in submitting reports to U.N. treaty bodies. Or attempts to undermine the International Criminal Court. Or a general skepticism about the legitimacy of social and economic rights despite their prominent inclusion in the UDHR for which the United States voted in 1948.

Whether such resistance to recognize human rights standards domestically is a bad case of "creator's prerogative;" an instinct to protect the uniqueness of the American "brand;" the conviction—as foreign policy realists would have it—that the responsibilities of the "world's sole remaining superpower" cannot be squared with any compromise of sovereignty; or simple neoconservative pridefulness in American superiority, this resistance

has often been damaging to the country's own foreign policy goals, not to mention to American citizens and residents who live without recognition of some rights.

America's disregard for international human rights standards within its own borders has, for example, put us at odds with allies, often attracting contempt from European governments. It has handed fodder to adversaries, allowing Al Qaeda to claim that the United States is conducting a "war on Islam" or Sudanese politicians to assert that their defiance of a warrant from the International Criminal Court for the arrest of Sudan's president merely follows the lead of the United States, which is not a signatory to the court.<sup>15</sup> And it has deprived the United States of invaluable resources with which to address issues of injustice and inequity in its own house.

Among the most serious results have been the threats it has engendered to our security interests and foreign policy goals. When the United States has failed to live up to its highest values at home, it has invited jeopardy abroad. And that, as we shall see in a moment, has been true going back at least to the Civil War.

## II. The security consequences of domestic injustice

The modern human rights era may be dated from the adoption of the Universal Declaration of Human Rights in 1948. But long before that the “international community” began to coalesce around certain values that today would go by the name of “human rights.” Sometimes the adoption of those standards was formal and identified with one moment in time as with the First Geneva Convention, known officially as the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, instituted by common agreement in 1864. Other times the emergence of values was more gradual but steady nonetheless. The abolition of slavery is an example.

By the time of the American Civil War, slavery had acquired the status of a broadly prohibited practice and abolition was the equivalent of a widely accepted international norm. Slavery and/or the slave trade was abolished in Lithuania and Japan in 1588; in Russia in 1723; followed by Portugal (1761); Denmark/Norway (1803); Lower Canada (1803); Haiti (1804); Prussia (1807); Argentina (1813); The Netherlands (1814); France (1818); Greece (1822); Mexico (1829); and the British Empire (1834), to name a few. Even the United States forbade the importation of slaves—though not of course the institution of slavery itself—after 1808.

Both Great Britain and France, despite themselves having abolished slavery years before, were far more kindly disposed to the Confederacy than they were to the federal government for the first year and a half of the Civil War. Both countries were dependent upon the trade in cotton with the South and the Confederate government had done a skillful job of wooing Europe’s two greatest powers into seriously considering offering military assistance against the North. The conflict had been presented by President Abraham Lincoln as a war to preserve the union, fearful as he was that border states would side with the Confederacy if the goal of Union victory was to free the slaves. Many Europeans saw the Confederate cause as a battle for self-determination—a cause that had far more appeal than a fight to maintain a union that represented a potentially competitive empire.

On January 1, 1863, however, all that changed with Lincoln’s issuing of the Emancipation Proclamation. Now any possibility of a European alliance with slaveholders became unthinkable because the war ceased to be just an internal domestic squabble pitting one section of the United States against another. Now it was about a fundamental moral issue that had long been resolved in Europe. No European government that had to pay the least

*... United States ratification of the Covenant on Civil and Political Rights at this moment in history would underscore our natural commitment to fostering democratic values through international law... U.S. ratification would also strengthen our ability to influence the development of appropriate human rights principles in the international community....*

– President George H. W. Bush<sup>16</sup>

attention to the sentiment of its own people could take sides against an American government that was trying to destroy slavery. The only practical course for Britain and France was to stay militarily neutral—a decision that contributed to the South's ultimate demise. By acting in ways consistent with prevailing international rights standards, Lincoln had taken a giant step toward the saving of the union.<sup>17</sup>

That is perhaps the most dramatic example of how domestic human rights practices have influenced the United States' international standing and relations with the rest of the world, but it is far from the only one. Fear of the so-called “Yellow Peril” and the vicious attacks, both verbal and physical, on Asian immigrants that resulted—first on the Chinese in the late 19th century and then the Japanese in the early 20th—colored the perception of the United States in Asia for generations. When President Rutherford Hayes vetoed a bill in 1879 that forbade any ship to import more than 15 Chinese on any one trip, *The New York Tribune* described his actions as having “saved the character of the country from humiliation among the family of nations.”<sup>18</sup> But Hayes' restraint was soon overshadowed by anti-Chinese riots and the cold-blooded massacre of 28 Chinese coal miners in Rock Spring, Wyoming, in 1885—developments that infuriated the Chinese government and ultimately forced the payment of indemnities by the United States.

The inspiration Adolf Hitler derived from American treatment of Native Americans was referenced by acclaimed historian John Toland in his 1976 biography of Hitler. “Hitler's concept of concentration camps as well as the practicality of genocide,” Toland wrote, “owed much, so he claimed, to his studies of ... United States history. He admired the camps ... for the Indians in the Wild West; and often praised to his inner circle the efficiency of America's extermination ... of the red savages.”<sup>19</sup>

American eugenics laws provided another connection with the genocidal policies of the Third Reich. In the first part of the 20th century, laws designed to preserve a Nordic stereotype and eliminate humans deemed “unfit” through forced sterilization and restrictions on marriage were enacted in some 27 states. Ultimately as many as 60,000 Americans were subjected to such laws. German scientists had been fascinated by eugenics since the late 19th century, but it was the United States' translation of eugenics into law—coupled with close collaboration between German and American researchers and major funding by American foundations, notably the Rockefeller Foundation—that accelerated the enforcement of “race science” by the Nazis.<sup>20</sup> As law professor Paul Lombardo has put it recently, “It's pretty clear that the German scientists who stood at Hitler's elbow knew all about eugenics ... but looked to America for precedents that they could rely on and justify some of their own activities.”<sup>21</sup>

Since 1945, and the explicit articulation of human rights principles in the U.N. charter and the UDHR, the line between violations of those principles and damage to the United States' interests has been even easier to draw. Joseph McCarthy's indifference to due process rights, for example, famously prompted President Truman to call the senator “the

best asset the Kremlin has” for attempting to “sabotage the foreign policy of the United States” during the Cold War. What McCarthy was doing, Truman said, was like shooting American soldiers in the back.<sup>22</sup>

In 1957, the world watched a white mob prevent African-American parents from enrolling their children in Little Rock High School. President Dwight Eisenhower went on television to explain his decision to send troops to Little Rock: “Our enemies are gloating over this incident and using it everywhere to misrepresent our whole nation,” he said. “We are portrayed as a violator of those standards of conduct which the peoples of the world united to proclaim in the Charter of the United Nations. [Enforcing the law] will restore the image of America and of all its parts as one nation, indivisible, with liberty and justice for all.”<sup>23</sup>

Indeed, since the end of the Second World War, the Soviets had cleverly used the existence of racial segregation and inequality in the United States to taint all American values. Mary Dudziak, a scholar of the civil rights movement, argues that one of the major motives for the federal government’s eventual passage and enforcement of civil rights legislation was to counter such damaging Soviet propaganda.<sup>24</sup> As Dean Rusk, John Kennedy’s secretary of state, lamented, “The U.S. is widely regarded as... the leader of the struggle for freedom, for human rights, for human dignity. We are expected to be the model. So our failures to live up to our proclaimed ideals are noted and magnified...”<sup>25</sup>

More recently, the former U.S. ambassador to France, Felix Rohatyn, wrote in the *New York Times* in 2006, “... no single issue [is viewed in Europe] with as much hostility as our support for the death penalty... When we require European support on security issues... our job is made more difficult.”<sup>26</sup> In fact, the European Parliament voted not to extradite suspects to the United States who are accused of crimes for which they might be executed without assurances that they would not be.<sup>27</sup>

But the death penalty is hardly the only arena in which domestic politics and practices result in the United States being isolated and subject to international derision. The world looked on in horror in 2005 as the federal government failed to respond adequately to the fundamental needs of the people of New Orleans in the aftermath of Hurricane Katrina. In 2006, as a result of pressure from the American gun lobby, the United States was the only country to vote against a U.N. treaty to curb the trade in small guns and light weapons.<sup>28</sup> Also in 2006 the United States attracted opprobrium from the U.N. Human Rights Committee, a body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights, or ICCPR, for failing to uphold the standards set forth in the ICCPR—from the use of torture to the treatment of racial minorities, the impoverished, and those of minority sexual orientations.<sup>29</sup> The United States again drew criticism from the U.N. Committee on the Elimination of Racial Discrimination in 2008, which derided it for sentencing over 2,500 youth offenders—a disproportionate number of whom are persons of color—to life sentences without parole, and for racial disparities in sentencing for offenses involving crack cocaine.<sup>30</sup>



## U.S. human rights violations as cited by international bodies

In 2006 the U.N. Human Rights Committee, monitoring compliance with the International Covenant on Civil and Political Rights, or ICCPR, cited the following violations, among others, by the United States:

- Detaining people secretly and in secret places for months and years on end.
- Employing enhanced interrogation techniques, such as prolonged stress positions and isolation, sensory deprivation, hooding, exposure to cold or heat, sleep and dietary adjustments, 20-hour interrogations, removal of clothing and deprivation of all comfort and religious items, forced grooming, and exploitation of detainees' individual phobias.
- Torture and cruel, inhuman, or degrading treatment or punishment.
- De facto racial segregation in public schools that is reportedly caused by discrepancies between the racial and ethnic composition of large urban districts and their surrounding suburbs, and the manner in which schools districts are created, funded, and regulated.
- A widespread incidence of violent crime perpetrated against gay, lesbian, bisexual, and transgender groups.
- Poor Americans, and in particular African Americans, were disadvantaged by the rescue and evacuation plans implemented when Hurricane Katrina hit the United States.
- A persistence of employment discrimination against women.
- A disproportionate imposition of the death penalty on ethnic minorities and low-income groups.
- Conditions in some maximum security prisons wherein detainees are not treated humanely and with respect, including being held in prolonged cellular confinement and allowed out-of-cell recreation only five hours per week.
- Shackling of detained women during childbirth.
- Incarceration of children under the age of 18 for life sentences without parole.
- Disenfranchisement of 5 million citizens due to a felony conviction.
- Extinguishing of tribal property rights without due process and fair compensation.

Source: U.N. Human Rights Committee Concluding Observations, United States of America (2006), available at [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/0d83f7fe89d83ed6c12571fb00411eb5/\\$FILE/G0644318.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/0d83f7fe89d83ed6c12571fb00411eb5/$FILE/G0644318.pdf).

In 2008 the Concluding Observations of the U.N. Committee on the Elimination of Racial Discrimination, monitoring compliance with the Convention on the Elimination of Racial Discrimination, or CERD, cited the following violations, among others, by the United States:

- Widespread racial profiling practices.
- Increase in racial profiling against Arabs, Muslims, and South Asians in the wake of the September 11, 2001 attacks.
- A disproportionate concentration of racial, ethnic, and national minorities, especially Latino and African-American persons, in poor residential areas characterized by sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, underresourced schools, and high exposure to crime and violence.
- Persistent racial disparities in the criminal justice system, including the disproportionate number of persons belonging to racial, ethnic, and national minorities in the prison population.
- Excessive or deadly use of force by law enforcement officials against persons belonging to racial, ethnic, or national minorities, in particular Latino and African-American persons and undocumented migrants crossing the U.S.-Mexico border.
- Incidences of rape and sexual violence against women belonging to racial, ethnic, and national minority groups, particularly American Indian and Alaska Native women and female migrant workers, especially domestic workers.
- Nuclear testing, toxic, and dangerous waste storage, mining, or logging, carried out or planned in areas of spiritual and cultural significance to Native Americans that negatively affect the lives and activities of indigenous peoples.
- Large numbers of persons belonging to racial, ethnic, and national minorities still remain without health insurance and face numerous obstacles to adequate health care and services.
- Wide racial disparities continue to exist in the field of sexual and reproductive health, particularly the high maternal and infant mortality rates among women and children belonging to racial, ethnic, and national minorities, especially African Americans.

Source: U.N. Committee on the Elimination of Racial Discrimination Concluding Observations, United States of America (2008), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/419/82/PDF/G0841982.pdf?OpenElement>

International development goals have also been adversely affected by domestic politics. There is a direct correlation between the empowerment of women and the successful economic development of societies.<sup>31</sup> Yet the Bush administration's "gag rule," which was instituted at the behest of anti-choice advocates and denied U.S. assistance to women's health service providers overseas who offered information about abortions, along with the administration's insistence on funding abstinence-only policies to combat AIDS in Africa, had a disproportionate effect on women. Those policies thereby undermined the Millennium Development Goals and the United States' capacity to combat poverty in developing countries.

It almost goes without saying at this point that the many violations of international law and standards carried out in the name of combating terrorism have done enormous damage to America's reputation. In 1998, 59 percent of citizens in Great Britain and 61 percent in Germany—two of the United States' staunchest allies—said America was doing a "good job" in advancing human rights around the world. By 2006, due to Guantanamo Bay, Abu Ghraib, and other markers of disdain for human rights, those numbers had fallen to 22 percent and 24 percent respectively.<sup>32</sup>

When Muslims are subjected to racial profiling, such discriminatory treatment makes it easier for Al Qaeda to characterize the United States' response to terrorism as a "war on Islam." In 2002, for example, the Immigration and Naturalization Service required male visitors to the United States from 25 countries—all of them Arab and Muslim except North Korea—to be fingerprinted, photographed, and questioned by authorities. And in 2005 the FBI conducted radiation testing of large numbers of American mosques in the absence of evidence of criminal activity.<sup>33</sup>

Similarly, just as the Soviet Union once reaped benefits from exploiting the existence of racial discrimination in the United States, so the Chinese have a field day every year responding to the State Department's criticisms of Chinese human rights abuses by citing American failings. These include the practice of sentencing children to life in prison without parole or the fact that the number of people living in poverty in the United States increased from 36.5 million in 2006 to 37.3 million in 2007.

The latter citation indicates that shortcomings in the area of social and economic rights can also have implications for U.S. foreign policy goals. If the United States, for example, recognized a human right to health, it is likely that its approach to the drug wars would focus far more on prevention and treatment than punishment and prison time. That, in turn, would diminish the market for illegal drugs that fuels narcotrafficking, violence on the southern border, and instability in Mexico.

Joseph Nye, the renowned coiner of the phrase "soft power," has described how an open attitude toward immigration can enhance America's strategic interests:

*The fact that people want to come to the United States enhances our appeal... America is a magnet, and many people can envision themselves as Americans. Many successful Americans “look like” people in other countries. Moreover, connections between immigrants and their families and friends back home help to convey accurate and positive information about the United States. In addition, the presence of multiple cultures creates avenues of connection with other countries and helps create a necessary broadening of American attitudes in an era of globalization... it would be a mistake for Americans to reject immigration. Rather than diluting our hard and soft power, it enhances both.*<sup>34</sup>

Conversely, every time an immigrant is treated shabbily—when, for example, immigrant children or asylum seekers are incarcerated in punitive conditions or when immigrants in detention are manhandled, held with the general prison population, or denied adequate medical care—the stories of their suffering work their way back to their native lands and diminish the United States in the population’s eyes.<sup>35</sup>

Moreover, as Nye, Thomas Friedman, Leslie Gelb, and many other respected foreign policy analysts have repeatedly pointed out, to stay competitive in a globalized world the United States must rectify shortcomings in its educational system, the exorbitant cost of its health care, and the failure to provide what Friedman has called “lifetime employability,” which he characterizes not as the guarantee of a lifetime job but “the chance to make [oneself] more employable.”<sup>36</sup>

This means that addressing social and economic rights to close the achievement gap between well-off children and others—a gap that is above the average for the Organisation for Economic Cooperation and Development’s 29 industrialized nations—is not just a nice idea. It is a matter of national security, as is the need to make health care more affordable or job retraining more accessible in order for dollars and productivity not to be wasted.<sup>37</sup> Among other things, failure to improve such conditions makes it harder to find healthy, educationally qualified recruits for an all-volunteer army that often draws from the lower economic strata of the society. It also leaves the United States vulnerable to international economic pressures as President Obama has discovered when he has tried to convince European nations—which have far stronger safety nets than the United States—to join in stimulus spending to end the recession.<sup>38</sup>

In all these ways and more international human rights standards point the way to a safer, stronger America that is more respected and more economically resilient—to say nothing of more just. As President-elect Obama put it in his Human Rights Day statement on December 10, 2008, standing up for human rights “strengthen[s] our security and well-being, because the abuse of human rights can feed many of the global dangers that we confront.”<sup>39</sup> But if that is the case, then why have Americans and their leaders been at best indifferent and at times downright hostile to the application of international standards to our domestic practices?

### III. The reasons for resistance

On one level it is not surprising that the United States would be reticent to submit itself to the standards and scrutiny of others given the history of American self pride and exceptionalism that we have recounted earlier. Nobody likes to be told what to do about their own affairs, least of all the most powerful country on earth. And nobody likes to think they fall short of other people's expectations, especially if they think of themselves as a leader.

The easiest response to such scrutiny and censure is to question both the standards themselves and the actors who are applying them. These dual tactics have been frequently employed by the United States. By attaching reservations to international human rights treaties it has ratified; declaring that they were not self executing; and failing even to consider a wide variety of other treaties, particularly those dealing with economic, social, and cultural rights, the United States has asserted that international human rights law is only as good as one nation's legislature and constitution say it is. These actions have served to effectively emasculate those standards, at least in the eyes of U.S. courts and policymakers, if not the public.

At the same time American leaders have often denigrated those who sought to hold them accountable. John Bolton, the former U.S. Ambassador to the United Nations, has called the recent American decision to rejoin the U.N. Human Rights Council, "like getting on the Titanic after it's hit the iceberg."<sup>40</sup> This is not to say that the council and other international human rights institutions have not sometimes provided ammunition for their adversaries. The shortcomings of the United Nations and its human rights bodies—their ineffectiveness, excessive bureaucracy, and perceived bias against Israel, for example—have reinforced the message that flawed institutions are trying to foist superfluous norms on a country which is doing pretty well without them.

Underlying all these efforts to discredit the application of human rights standards to U.S. behavior has been a conviction in the United States that human rights violations—to the extent that they should be taken seriously at all—occur only in other countries. That conviction arose in part because of the inadequate response of human rights institutions to the American civil rights movement.

The U.S. civil rights movement's goals were completely congruent with the principles of the Universal Declaration of Human Rights, but it received little active support from the United Nations and its human rights bodies. In large part that was because from its

*Yet this peace we seek  
cannot be born of fear  
alone: it must be rooted in  
the lives of nations. There  
must be justice, sensed and  
shared by all peoples, for,  
without justice the world  
can know only a tense and  
unstable truce. There must  
be law, steadily invoked and  
respected by all nations,  
for without law, the world  
promises only such meager  
justice as the pity of the  
strong upon the weak. But  
the law of which we speak,  
comprehending the values  
of freedom, affirms the  
equality of all nations, great  
and small.*

– President Dwight  
D. Eisenhower<sup>41</sup>

creation in 1946 until the emergence of African colonial movements in the late 1960s, the U.N. Human Rights Commission declined to investigate or critique the practices of member states under the theory that such criticism would be a breach of their sovereignty. In December of 1951, for example, the Civil Rights Congress submitted a petition to the United Nations decrying lynching but the organization took no action.<sup>42</sup>

Moreover, the pursuit of social and economic rights came to be associated with the agenda of the Soviet Union during the cold war years. The leaders of the early struggle for equitable treatment of African Americans saw little value in appeals to international law or bodies and feared that framing a domestic rights struggle in terms of human rights might smack too much of communism. They therefore adopted the terminology of “civil rights” rather than “human rights” since the former seemed more resonant with an appeal to the highest values of the American tradition.

At the same time, long-term international human rights organizations—such as the International Federation of Human Rights founded in 1922—and emergent ones—most notably Amnesty International, formed in 1961—were focusing their energies solely on violations of traditional political rights, such as the right to freedom of belief. They had little to say about the U.S. civil rights struggle and nothing at all to say about social and economic rights. The fact that international human rights organizations have historically been predominantly run by whites from highly developed countries in Europe and North America only underscored the problem.

These developments contributed to a perception among Americans, including activists, that “human rights” referred to problems overseas and “civil rights” to issues at home. Since the United States—unlike communist states—was perceived to welcome political dissent, it had no “human rights” problem itself—only a “civil rights” problem that it was thought to be steadily and successfully addressing. The absence of a “culture” of acquaintance with human rights among Americans can be in large measure attributed to this dynamic.

A new situation presented itself with the end of the Cold War. First, since member states of the international community were no longer forced to choose between the United States and the Soviet Union, they began to critically examine the practices of the sole remaining hegemonic power, often in the name of “human rights.” Second, American policymakers’ lack of understanding of the notion of “progressive realization” as applied to social and economic rights led to an assumption that the fulfillment of rights would require a whole new set of entitlement claims that could end up being very costly. Policymakers conflated social and economic rights with “socialism” and the European welfare state.<sup>43</sup> Third and perhaps most importantly, the suspicion with which such treaties as the Convention on the Rights of the Child or on the Elimination of All Forms of Discrimination against Women were met by conservative commentators and political leaders reflected a fear that foreign entities were trying to expand the circle of rights at the expense of the sovereignty and prerogatives of the world’s most powerful nation.

Congressman Ron Paul (R-TX), erstwhile candidate for the Republican nomination for president, captured that fear perfectly in a 2003 speech on the floor of the House of Representatives:

*If we do not [reassert our national sovereignty], rest assured that the U.N. will continue to interfere not only in our nation's foreign policy matters, but in our domestic policies as well. U.N. globalists are not satisfied by meddling only in international disputes. They increasingly want to influence our domestic environmental, trade, labor, tax, and gun laws... The choice is very clear: We either follow the Constitution or submit to U.N. global governance. American national sovereignty cannot survive if we allow our domestic laws to be crafted or even influenced by an international body.<sup>44</sup>*

The United States' veto on the Security Council, which precludes the United Nations' "meddling" in U.S. affairs, and the fact that—short of genocide or ethnic cleansing—the United Nations is by charter indisposed to interfere in matters of domestic sovereignty, both mean that Paul would be hard pressed to back up his fears with concrete examples.

Related to this sovereignty argument, however, is the criticism by conservative theorists that international law is not determined by majority vote of elected representatives of the people and hence is less valid, credible, or "democratic" than domestic law. This criticism is propagated despite the fact that (1) under the Supremacy Clause of the Constitution (as we have noted), treaties ratified by the Senate become the law of the land and (2) critics of applying international law domestically rarely have any problem endorsing its use against adversaries of the United States such as Saddam Hussein or Mahmoud Ahmadinejad.<sup>45</sup>

For all these reasons, the application of human rights law and standards to American policies and practices is controversial—so controversial in fact that resolutions have repeatedly been introduced in Congress in recent years that would prohibit judges from citing international law in their decisions and in some cases impeach them if they do.<sup>46</sup> Nonetheless, more and more U.S. courts, particularly at the state level, are citing international human rights laws. Even Supreme Court justices—most notably moderate justices such as Anthony Kennedy and former Justice Sandra Day O'Connor—have incorporated references to international law and practice in their opinions to bolster some of their decisions. Despite these developments, international human rights law remains fundamentally unenforceable because judges at all levels of government do not generally recognize its applicability—at least in any consistent way—in U.S. courts.<sup>47</sup>

The use of a human rights lexicon in the United States is often politically unpalatable as well. "If we want a piece of proposed legislation to pass the California Assembly," one water rights activist said, "we avoid inserting the word 'rights' into the draft at all costs."<sup>48</sup> Furthermore, even those politicians and policy analysts who are potential "friends" of international human rights standards are frequently unaware of the ways in which the standards' use can expand horizons and clarify options for getting their rights-based public policies adopted and enforced.

## State court rulings drawing on international human rights law

A number of state courts have drawn on key international treaties to mandate human rights protections

- California courts cited the Universal Declaration to support interpretations of the right to practice one's trade, the right to privacy, the meaning of "physical handicap," the right to freedom of movement, and the scope of welfare provisions.
  - *Simmons v. Roper* (2005): Missouri Supreme Court cited the Convention on the Rights of the Child in striking down the juvenile death penalty.
  - *State v. Robert H.* (1978): New Hampshire Supreme Court relied on the International Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights in its interpretation of parental rights under the state constitution.
  - New York courts invoked the Universal Declaration in cases involving the rights to work and to strike, a transnational discovery dispute, and the Act of State doctrine.
  - *Sterling v. Cupp* (1981): Oregon Supreme Court looked to the Universal Declaration, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights to interpret the meaning of the state constitution's provision on the treatment of prisoners.
  - *Commonwealth v. Sadler* (1979): Pennsylvania trial court reviewed the state's failure to provide a 15-year-old defendant with schooling while in custody in light of the Universal Declaration.
  - *Bott v. DeLand* (1996): Utah Supreme Court used the International Covenant on Civil and Political Rights to help define constitutional standards for the treatment of prisoners.
  - *Eggert v. Seattle* (1973): Washington Supreme Court looked to the Universal Declaration to reject Seattle's residency requirements for civil service position applicants.
  - *Pauley v. Kelly* (1979): West Virginia Supreme Court invoked the Universal Declaration to review the financing scheme for public schools and to define the right to education.
- Drawn from:** Opportunity Agenda, "Human Rights in State Courts: An Overview and Recommendations for Legal Advocacy" (2008).

So what use are international human rights standards to the struggle for a more just America, given these hard facts? Some activists argue that it is best to avoid citing international law, treaties, and obligations when making appeals to public officials and policymakers because they tend to make listeners' eyes glaze over, and can provoke outright hostility. Others insist that reference to those obligations adds considerable power to their arguments. Deciding how best to use international human rights standards depends upon one's theory of human rights change and the audience to which one is appealing.



## IV. International standards and human rights change

Yale Law School Dean Harold Hongju Koh, in his oft-cited essay, “How is International Human Rights Law Enforced?” asks why we buckle our seatbelts today when we didn’t 25 years ago—even though we know we are unlikely to get arrested for failing to do so. The answer, he says, is that a mutually reinforcing combination of self interest, legal coercion, community pressure, and ultimately a shift in personal identity has brought about a change in norms. The last of those factors is the most important. “As always,” Koh goes on, “the best way to enforce legal norms is not to coerce action, not to impose sanctions, but to change the way people think about themselves ... to bring rules home, to internalize rules inside themselves ...”<sup>49</sup>

If this is true, then the fact that international human rights law is not regularly cited by Congress or the Supreme Court is less important than that the *principles* it embodies be gradually incorporated—acculturated, as it were—into our thinking, our nomenclature, and our identity as a people. Cynthia Soohoo has noted in her essay “Bringing Theories of Human Right Change Home” in the *Fordham Law Review* that how that happens depends largely upon the action of grassroots social movements, which often have their initial impact at the local or state level. Those grassroots movements are particularly important in bringing about human rights change because if the United States insists when it ratifies international human rights treaties that those treaties are not self executing and require legislation to put rights into effect, popular pressure for such legislation will be invaluable if rights are to mean anything in an American context.

The seatbelt illustration is an enlightening one for understanding how norms change, even though it hardly involves human rights. In 1954 the American Medical Association, or AMA, first called for the installation of lap belts in all automobiles and that call was magnified by advocates petitioning legislatures to require cars sold in their states to feature lap belts. In 1961 New York State became the first state to do so. Over the next two years, 22 states followed suit and by 1965 all U.S. auto manufacturers had complied, recognizing that a huge swath of their market would be off limits if they failed to install lap belts.<sup>50</sup> The automakers did not comply without stiff resistance, however, as Ralph Nader’s groundbreaking work, *Unsafe At Any Speed*, also published in 1965, made clear.<sup>51</sup>

But featuring seat belts in cars and getting people to wear them were two different things. The first mandatory seatbelt law was not adopted until New York State did so in 1984— almost two decades after manufacturers had begun to carry the device as a mat-

*The overwhelming weight of international opinion against the juvenile death penalty... provides respected and significant confirmation for the Court’s determination that the penalty is disproportionate punishment for offenders under 18.*

– Supreme Court Justice Anthony Kennedy<sup>52</sup>

ter of course. Did Americans really fail to understand for 19 years that wearing a seatbelt increased their odds of surviving an auto accident unscathed?

The truth is that it took almost two decades for the norms about seatbelt use to change sufficiently to overcome the resistance offered by the image of seatbelt wearers as “sisies,” by plain old bad habits, and by a misplaced defense of personal liberty.<sup>53</sup> That change came about through a combination of dramatic advertisements and educational campaigns sponsored by citizens’ groups, the Ad Council, and others about the ghastly consequences of failing to use seat belts; a growing chorus of advice offered by opinion leaders, health professionals, drivers’ education teachers, insurance companies, and parents that using seat belts was the wise thing to do; and legislation pushed by advocacy groups that both reinforced that wisdom and made seat belt use a mark of a law-abiding citizen.

The result today is that a majority of Americans use their seat belts not because they fear the long arm of the law but because they don’t want to be thought of either as stupid or as scofflaws. This point is reinforced by the fact that even though 68 percent of Americans actually wear their belts, 80 percent *say* that they do.<sup>54</sup>

What is the lesson to be drawn for the struggle for human rights from this brief case study in social change? That to bring about changes in norms requires two things: First, social movements must be engaged in strong advocacy for recognition of “rights,” often first at

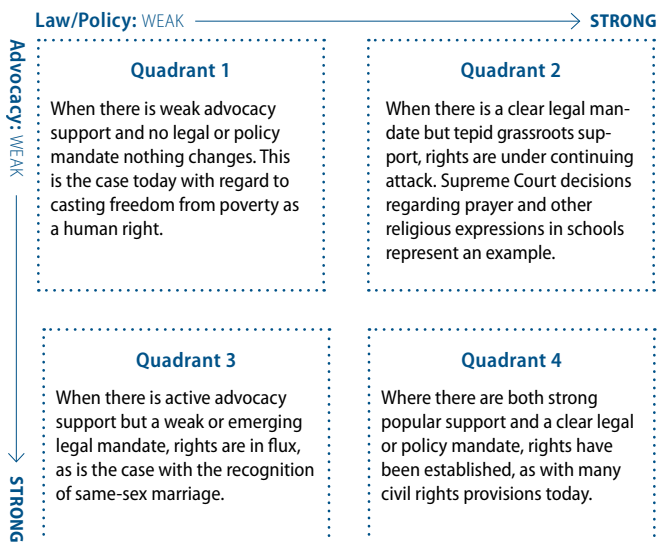
a subfederal level; and second, legal mandates (or changes in policy) must codify or recognize those “rights” as *rights*. Those norm changes will usually be initiated at the advocacy level—sometimes they may be initiated by a ruling of a court—but if they remain uninstantiated in law or policy, they are all but useless.

But the establishment of legal mandates and polices is not the end of the story. By their very existence, those laws and policies will change the behavior and attitudes of a certain number of people who will conform to those mandates because they see themselves as law-abiding citizens. But if a significant percentage of the public remains unconvinced and resists implementation, those changes risk being denied legitimacy and rolled back. Advocates therefore need to remain ever vigilant.

For all the reasons outlined in the previous section, the struggle to incorporate international human rights standards into domestic law and practice is

## How successful change happens

Norm changes in society begin at the advocacy level and are then instantiated in law or policy



still in its infancy and largely at the initial acculturation stage. Social movements themselves are only now beginning to appreciate the standards' usefulness, and politicians, policymakers, and jurists are often unaware, indifferent, or even hostile to their application. This means that to incorporate those standards into U.S. law and practice will require different strategies for different audiences. The appeal of international human rights standards to social movements may differ from the way the principles embodied in those standards can be made appealing to lawmakers, public officials, and policy analysts—to say nothing of judges.

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## Making human rights standards appealing to advocates

The first challenge to applying human rights standards to domestic policies is to convince social justice activists and organizers at the grassroots and NGO levels that utilizing an international human rights framework will in fact add value to their efforts.

**International human rights standards can provide common measurements against which to compare domestic policies and expose shortcomings.** One of the characteristics of almost all social justice movements is their fragmentation. There are often dozens of NGOs, small and large, working on human rights change from a variety of different perspectives. Such fragmentation often diminishes effectiveness and offers adversaries an entry point to exploit weaknesses. International standards provide a common plumb line that all can use to hold public officials and policymakers accountable.

**They can provide a common language.** “Human rights” refer to concepts that cut across race, ethnicity, and culture. They describe universal problems and promises and claims to justice that transcend any one nation but have the imprimatur of the global community. When problems are framed in human rights terms, all affected groups can identify with the issue and feel solidarity with one another, thus reducing competition for attention and remediation. The human rights frame is especially important to some immigrant populations who come from countries where international standards offer the most protection—sometimes the only protection—to individuals against human rights abuses.

**They can provide a common vision and help build a “movement.”** Social movements do not emerge by magic. They require intentional organizing and entail frequent frustration, not least regarding the agendas and priorities of putative allies. By offering common standards and language, as well as a common framework for understanding issues and potential solutions, human rights standards provide a vision around which disparate groups can rally, network, create coalitions, and eventually build movements for change.

**They can expand the circle of allies and help domestic struggles “go global.”** Human rights standards and language appeal to a wide variety of groups by the very fact that they emerge from the global community. A message framed in human rights terms often

resonates in particular with potential allies across borders. And the impact of foreign governments raising concerns with U.S. authorities about American practices, as they did so frequently regarding Guantanamo Bay, for example, ought not to be underestimated.

**They can underscore the seriousness of a violation.** U.S. Senator Robert Menendez (D-NJ) said of mistreatment of immigrants in U.S. detention facilities, “At some point this becomes more than a legal issue; it becomes a human rights issue.”<sup>55</sup> Human rights violations carry a connotation in the United States (derived in part from the erroneous assumptions we described earlier) that they apply only to the most brutal foreign regimes and not ourselves. This is particularly true of beatings, torture, slavery, and disappearances—the most profound insults to human dignity. For an abuse to be elevated to the level of a human rights violation, therefore, implies that it is *very* serious, deserving of international censure, and certainly not worthy of the United States. If the violence and discrimination against lesbian, gay, bisexual, and transgendered children in schools, for example, is understood to be a violation not just of school rules or even U.S. laws but an infringement upon those children’s *human rights*, the issue suddenly takes on a far different cast.<sup>56</sup> If not invoked so frequently that they lose their impact (and advocates must judge carefully when such rhetoric really provides a “value-added” dimension to a strategy), human rights standards and terminology can often be effective in making clear to the media and the public that a community or the United States as a whole really has a problem on its hands.

**They can put flesh on the concept of “the common good.”** It is popular in progressive circles to refer to “the common good,” “social goods,” or “public goods.” But it is not always clear what that means or what should be included in those categories. Consultation with international human rights law and standards can shed some light on these terms. By definition, human rights describe the boundaries beyond which a nation may not go in its treatment of its residents and still claim the mantle of a “civilized society.” These are sometimes referred to as “negative liberties.” At the same time human rights delineate the positive obligations a nation must fulfill in order for its residents to live fully human lives. Collectively, these liberties and obligations define “the common good” and implicate government to be proactive in the establishment and maintenance of that good.

**They can introduce new ways of thinking about old problems.** To reorient our thinking to “public goods” derived from recognized human rights forces us to consider social problems in new ways. If, for example, efforts to provide a decent living environment in New Orleans or assure access to adequate health care for all are no longer understood to be matters of charity or choice but common public goods that human beings have a right to expect, then our thinking about the obligations of government changes.<sup>57</sup> If human rights are not something to be earned but something that automatically accompany humanness—whether one is a citizen or an undocumented worker—all the debate about whether undocumented workers and their children should be denied access to schools or to anything beyond emergency health care melts away.

A society that wants to affirm the public good of avoiding cruel and inhuman treatment of prisoners will reconsider the use of long-term solitary confinement to which at least 25,000 prisoners are currently being subjected in U.S. super-maximum prisons and which has been shown to lead to severe forms of mental illness.<sup>58</sup> Such reconceptualization of issues can be particularly effective at the local level. A few years ago, the Atlanta Transportation Board proposed to raise bus and commuter train fares and eliminate routes that were serving poorer communities. Activists posed their objections in terms of damage to rights, such as the right to work or access to health care, since jobs and hospitals would be harder for the poor to reach. Startled by this reframing, the board backed down from its proposals.<sup>59</sup>

**They can provide new language that helps reframe an issue.** Sometimes merely the use of language derived from international human rights instruments can prompt new thinking. Northwestern University Law Professor Bernardine Dohrn has described how discourse informed by the Convention on the Rights of the Child—referring to the “child” rather than the “juvenile” or the “delinquent” in describing those under the age of 18 who are accused and convicted of criminal offenses, for example, or “children deprived of their liberty” rather than “incarcerated minors”—encourages authorities to understand the responsibility of the criminal justice system toward children in creative new terms.<sup>60</sup>

**They can discourage the “blame game” and encourage a focus on problem-solving.** How international human rights instrumentalities determine whether violations exist or their degree of severity is sometimes different from traditional American standards and those different measurements provide a resource for encouraging review of current conditions. The United States, for example, is accustomed to judging the existence of racial discrimination by whether the accused party *intended* to discriminate, i.e., by whether discrimination was the purpose of the act or condition. But the Convention on the Elimination of All Forms of Racial Discrimination, or CERD, to which the United States is a states party, defines discrimination not only in terms of “purpose” but “effect.”

“In seeking to determine whether an action has an effect contrary to the Convention,” the CERD general recommendations say, “[the Committee on Racial Discrimination] will look to see whether that action has an unjustifiable disparate *impact* upon a group distinguished by race, colour, descent, or national or ethnic origin.”<sup>61</sup> This means, for example, that the existence of a higher percentage of people of color in U.S. prisons proportionate to their representation in the total population is worthy of inquiry whether or not it results from intentional discrimination.

Similarly, after the City of San Francisco committed in 1998 to standards derived from the Convention on the Elimination of All Forms of Discrimination Against Women, local officials began examining whether conditions existed that implicitly prevented women from accessing work—for instance, lack of available child care—even though those conditions were not the result of intentional discrimination. One of the advantages of approaching social justice issues through an international human rights lens is that it shifts the conver-

sation from one seeking to blame people for intentional acts to one that asks, “Do we have a systemic problem here, and if so, what can we collectively do about it?”

**They give voice to the victims of violations.** One of the features of many international human rights instrumentalities is that they require sensitivity to the cultural contexts in which government authorities act—to the social, religious, and linguistic needs of people affected—and that, when people experience discrimination, mistreatment, or a failure by government to help meet basic human needs, they be consulted about the redress of their grievances. In this way a human rights lens empowers victims of violations to be heard and to participate in the repair of conditions.

**They expand accountability from government to other power structures.** While governments are the focus of international human rights law and standards, they are not the only ones to whom these standards apply. Increasingly, human rights expectations are being extended to corporations and international financial institutions. John Ruggie, the U.N. secretary general’s special representative on human rights and transnational corporations, for example, has described in considerable detail the obligations corporations have to respect human rights and remedy their violation.<sup>62</sup> These emerging norms provide activists additional ways to hold power structures other than governments to account for their performances.

**They can provide alternative channels for review of cases beyond the U.S. justice or political systems.** Despite a restraining order against him, Jessica Lenahan Gonzalez’s husband abducted and killed their three children. When her domestic violence protection claims against Colorado police for failing to enforce the restraining order were denied by the U.S. Supreme Court, Gonzalez took her case to the Inter-American Commission on Human Rights, which heard it in October 2008 and where a decision is pending.<sup>63</sup> In 2006, local activists conveyed their frustration to the U.N. Committee on Torture about a lack of action on torture by the Chicago Police. The committee subsequently noted its concerns about the impunity that exists within the Chicago Police Department and called on the United States to “promptly, thoroughly, and impartially” investigate the allegations.<sup>64</sup> The U.S. Human Rights Network, the American Civil Liberties Union, the Leadership Conference on Civil Rights, and others have submitted “shadow reports” on U.S. compliance with CERD to the U.N. Committee on Racial Discrimination, which in turn has highlighted a host of areas of concern that require government attention.<sup>65</sup> These are but three examples of ways in which international human rights mechanisms can be used to keep attention focused on a case and pressure focused on American authorities.

**They can help protect against rollback.** Once a public good has been established as a “right,” it is far easier for that good to be sustained and far more difficult, though not impossible, for opponents to foster regression. It is almost inconceivable, for example, that the right not to be subjected to discrimination in the workplace could ever be formally vitiated (which is not to say of course that discrimination does not still occur). The right to

same-sex marriage, on the other hand, has not yet been widely established and therefore, as Proposition 8 in California attests, is still vulnerable to rollback. Framing issues in terms of “rights” congruent with international standards, where that is appropriate and defensible, lends them a degree of protection when they are ultimately recognized as rights that they would not otherwise have.

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## Making human rights standards appealing to public officials, policy analysts, and policymakers

Convincing grassroots activists to use international human rights standards in the pursuit of domestic social justice is, however, the easier part of the struggle since these activists are often already committed to and familiar with human rights concepts. The more difficult task is to introduce those standards and their principles to public officials and policymakers at both the federal and subfederal levels. Many are unaware that international human rights standards apply in their own states or districts. Others are reticent or even outright hostile to adopting the international human rights frame for many of the reasons outlined in Section III above, including a misplaced concern for protection of American sovereignty.

Occasionally the federal government has responded positively to international human rights obligations. It did so, for example, when the State Department advised states with capital punishment that, under the Vienna Convention on Consular Relations, they had to inform foreign nationals accused of crimes of their right to consult their consulates. Rights language can also be useful when federal officials are in conversation with their international counterparts dealing with issues such as extradition or migration. But invoking obligations the United States has incurred as a result of its treaty obligations or citing international law to bolster a political argument with public officials is rarely an effective tactic for all the reasons outlined earlier. Far better is to stress the ways in which a commitment to the *principles* of international human rights can advance interests and solve practical problems.

**A commitment to international human rights principles increases American security.** Section II above describes the multitude of ways in which guaranteeing justice at home contributes to American security abroad: by increasing respect for the United States, its political system, and its ideals; by removing taints on our reputation that our adversaries can exploit to their advantage; by positioning the United States as a model for others to emulate; by making it easier for our allies to cooperate with us; and by contributing to our capacity to compete economically. In these and other ways, abiding by human rights standards is good for American interests.

**It boosts our credibility as a critic and a generous leader.** The United States has long taken pride in its willingness—through the annual State Department Human Rights Reports, for example, or various diplomatic demarches—to speak out on behalf of dis-



sidents or victims of human rights abuse. It often boasts of its generosity to those who are suffering. How can we maintain those claims without risking charges of hypocrisy if our own record is checkered—if we are failing to supply humane treatment to those in our custody or to meet our own people’s basic needs? When we are radically out of step with the rest of the world—for example, by being the only nation to sentence children to life imprisonment without parole—we handicap our capacity to call others to account. Senator Robert Menendez, expanding on his criticism of mistreatment of immigrants in detention that was quoted above, said, “We must hold onto our moral ground as a beacon of democracy and a leader in human rights around the world.”<sup>66</sup>

**It is a fulfillment of our heritage.** The sense of exceptionalism that has characterized the American experience, as described in Section I, has positive elements as well as negative. The United States as a nation was founded on a doctrine of natural rights and the conviction that everyone has the right to life, liberty, and the pursuit of happiness. It has long seen itself as a haven for the oppressed, a land of unlimited opportunity, and, especially since the triumphs of the civil rights movement, a place where people are judged “on the contents of their character, not the color of their skins.” Even modern conceptions of economic and social rights—as much as the country has shied away from embracing them—emerged out of an American president’s vision: Franklin Roosevelt’s commitment to “freedom from want,” as articulated in his Four Freedom’s speech, and the Atlantic Charter’s call for nations to cooperate in order to secure for all people “improved labor standards, economic advancement, and social security.”<sup>67</sup> Far from being of foreign origin, therefore, contemporary notions of human rights have American roots and values and their fulfillment is a fulfillment of our own heritage.

**It benefits American society.** Human rights are about meeting basic human needs. The role of democratic government is to make it as easy as possible for people to be their best, most productive selves. When people feel they are being treated fairly by those in authority and when people’s basic needs are met—for food, education, and health care—they can support themselves, achieve economic independence, and contribute to the welfare of society. In this way, respect for human rights is not only a mark of good government—it is a benefit to the community as a whole.

**It can help solve problems and avoid litigation.** If, indeed, the point of a human rights analysis is to identify basic human needs and how to meet them—needs that may at the moment be going unfulfilled—then such an analysis can be a valuable tool for public officials. When we frame questions in terms of human needs, the focus shifts from “Why aren’t we providing universal access to health care?” or “Who is to blame for inequities in the educational system?” to “Are our health care and educational systems meeting our needs in a globalized world?” Such a pragmatic approach reduces defensiveness and poses a common problem for us all to help solve.

Moreover, as we have noted in the section above on “advocates,” human rights treaties and principles often contain within them the seeds of solutions to those common problems. The fact that CERD, for example, defines racial discrimination in terms of impact requires impact analyses based on disaggregated data regarding who is and is not being served by a particular policy or set of programs. Such an analysis can anticipate ways to resolve issues proactively before they reach the level of litigation. It focuses attention not on who the “bad guys” are, but on whether the system is working properly and, if not, whether we can devise a win-win solution for all. This type of approach may be particularly appealing to authorities at the local and state level.

## V. Recommendations

*The right the petitioners seek in this case [decriminalization of same-sex conduct] has been accepted as an integral part of human freedom in many other countries. There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent*

– Supreme Court Justice Anthony Kennedy<sup>68</sup>

We conclude this paper by offering a sample of recommendations for advocates, policy analysts, legislators, and policymakers that will advance the application of international human rights standards and principles to domestic issues within the United States.

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### Advocates

**Focus major, though not exclusive, attention on the local and state level.** Paradoxically, local and state officials may be even less aware than federal officials of international human rights instruments. But once educated, these officials can be more receptive to their application. Research conducted by Human Rights Watch, for example, revealed that many state attorneys general were not aware that some of their state’s incarceration practices violated the Convention on the Elimination of Racial Discrimination, or CERD standards. While some of the attorneys general claimed (erroneously, given the U.S. Constitution’s Supremacy Clause) that they were not bound by CERD because it was ratified by the federal government rather than the state governments, others were conciliatory and open to incorporating the standards.<sup>69</sup>

The Chicago City Council recently passed a resolution that committed the city to conform its policies and practices to the principles of the Convention on the Rights of the Child, or CRC, in all city agencies and organizations that address issues directly affecting children.<sup>70</sup> (It joins at least 12 state legislatures that have called for ratification of the CRC.) The Health Board of Lewis and Clark County in Montana affirmed in December 2008 that “health and health care are basic human rights, such that everyone has a right to access to a universal healthcare system.”<sup>71</sup> And San Francisco has been committed for many years to applying gender analyses derived from the Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW, directly to its policies and programs.<sup>72</sup> Los Angeles and Berkeley have taken on a similar commitment and New York City, Pennsylvania, and California have considered it as well. Many other cities and states have taken or considered taking action in relation to CEDAW, with most of them calling for the United States to ratify the treaty.<sup>73</sup>

Similarly, when concerns about local and state officials or conditions are elevated to an international level—when, for example, complaints about a local prison or sheriff are registered with a U.N. treaty body—it tends to draw more attention from the hometown press and political leaders than it might at the federal level. It is not just that local activists often have more direct influence over subfederal officials. It is that given the system of federalism in our government, the implementation of human rights principles requires state cooperation as well as that of the national government. And once practices are shown to have worked at the local level, federal officials are often more open to trying them in a broader field.

## San Francisco commits to women’s rights

San Francisco has become a model for proactive human rights policy by implementing CEDAW at the local level

In April of 1998, the board of supervisors of the City and County of San Francisco voted unanimously to pass municipal ordinance 128-98, which called on all local government agencies in San Francisco to implement the standards of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW.\*

At the time CEDAW had been ratified by 165 countries, leaving the United States as a notable outlier. The ordinance required the city to take concrete steps toward “integrating gender equity and human rights principles into all of its operations.” It committed San Francisco to a broad human rights agenda that extended beyond simply reacting to explicit gender-based discrimination. The city was also to identify the ways in which seemingly gender-neutral practices and policies inadvertently reinforced historic patterns of inequality.

The city established a CEDAW task force in response to the ordinance and developed a gender analysis tool which city departments and commissions used to identify unanticipated effects their policies and practices had on female employees. The departments—the Arts Commission, the Department of the Environment, the Department of Public Works, the Adult Probation Department, and the Residential Rent Stabilization and Arbitration Board, among others—discovered that many female employees—especially minority women and those who had limited earning power—experienced a disproportionate caretaking burden that inhibited their ability to equally participate in the work force.

The departments implemented a variety of simple changes to their work day policies based on these findings, including telecommuting, alternative work schedules, emergency ride home programs, and making day care providers available during nontraditional hours. These simple solutions drastically reduced unintended gender-based employment discrimination, alleviated some race-based discrimination, and ultimately had a positive impact on both male and female employees.

San Francisco initiated a large-scale survey on work-life policies and practices in addition to these departmental changes, and it passed new laws requiring flexible work standards and paid parental leave requirements. In 2003, when city departments faced large-scale budget cuts, they evaluated the impacts of these budget cuts according to race and gender and found that, in a handful of cases, their budget cut approaches would have inadvertently but severely affected women, especially women of color. The initiative helped educate and sensitize decision makers about the unintended discriminatory effects of their budget choices.

San Francisco encountered several issues and roadblocks to eliminating gender-based discrimination, including limited resources and concerns about susceptibility to litigation. But despite its commitment to CEDAW standards, the biggest challenge the city faced—and continues to face—in applying these nondiscriminatory standards is understanding that a city’s responsibility to human rights extends far beyond having antidiscrimination laws and that a true human rights agenda requires a proactive, ongoing commitment to identify and ameliorate inequities.

Source: Adapted from Women’s Institute for Leadership Development for Human Rights, “Respect, Protect, Fulfill: Raising the Bar on Women’s Rights in San Francisco” (2008), available at <http://www.wildforhumanrights.org/documents/resources/respectprotect.pdf>.

\* “San Francisco Releases the First U.S. City Human Rights Report on Women,” San Francisco Commission on the Status of Women, November 5, 1999, available at [http://www.sfgov.org/site/cosw\\_page.asp?id=10877](http://www.sfgov.org/site/cosw_page.asp?id=10877).

**Frame standards derived from human rights treaties not yet ratified by the United States as guiding norms, not obligations.** Those human rights principles and approaches that do not have force of law in the United States can still be useful, as we have described earlier. But public officials will be far more receptive to them if they are presented as internationally recognized guidelines (norms/values) and resources (“best practices of a just and democratic society”) which can help solve problems rather than obligations or imperatives.

**Translate standards into plain English.** Very few public officials will be convinced to do something because it is mandated by international law. But presenting human rights principles in plain English—in terms, for example, of “fairness” or “meeting basic human needs”—helps transcend political divisions and avoid highly technical debate.

**Remind officials of the American heritage.** As we have described earlier, international human rights standards were derived in large measure from the American tradition, from American values and Constitutional norms. They are not foreign concepts but reflect the best of what the United States stands for. Educating officials about this congruency can help dissipate suspicion about those standards’ applicability to American society.

**Become proficient in using the U.N. Universal Periodic Review, or UPR process and other international mechanisms.** Every four years, every country in the world undergoes review of its human rights practices by the U.N. Human Rights Council. Many U.N. treaty bodies also review the records of countries that have ratified the treaties. NGOs are invited to participate in these processes and governments are obligated to respond to the UPR and treaty body reviews. These are therefore invaluable contexts in which to raise critical questions and expose abuses. But in order to take advantage of them, NGOs need to educate themselves about how to use them. The United Nations itself and several international organizations—such as the International Service for Human Rights and the Canadian group, Rights & Democracy—provide such training.

**Link the use of international mechanisms to specific campaigns in the United States.** Scatter-shot indictments of U.S. practices will rarely result in measurable change. By integrating the use of international mechanisms into larger strategies designed to accomplish specific policy changes—by inviting a special rapporteur, for example, to investigate an issue around which significant organizing is already taking place—those mechanisms can yield added value to the strategies.

**Make health care reform a “rights” issue.** The new administration is committed to health care reform. The president has declared health care a right. The American public overwhelmingly supports health care reform and understands health care to be a right. The Opportunity Agenda—an NGO that, among other things, tests communication tools on social issues—has gathered data on how best to convince legislators that health care is a right.<sup>74</sup> What better issue to select than this one to introduce the country to the notion that some fundamental human needs are a matter of human rights?<sup>75</sup>

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## Policy analysts, legislators, and policymakers

**Policy analysts: Frame issues in human rights terms.** Policy analysts at influential “think tanks” such as the Center for American Progress, the Brookings Institution, or others are not used to employing human rights language in presenting proposals for changes in domestic policy. Such analysts are highly influential in determining how opinion leaders and policymakers will understand issues, and they should be encouraged, wherever possible, to consider whether a human rights analysis might add value to their work.

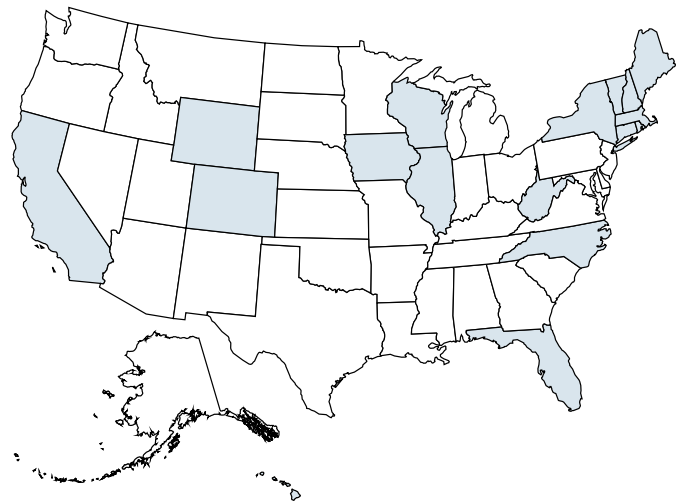
**Legislators: Introduce reference to international human rights instrumentalities into legislation and conform U.S. law to treaty obligations.** Referencing human rights treaties in relevant legislation is one way to begin acquainting policymakers with the norms and values such treaties contain—whether the United States has or has not ratified the international human rights instrumentality. Moreover, given the non-self-executing nature of the treaties the United States *has* ratified, it becomes more important than ever that legislators meet their responsibility to see that American law and policy conform to the country’s international obligations (To do otherwise is to cede congressional authority entirely to the executive). In 2008, for example, Congress passed the Child Soldiers Accountability Act which gives the United States the power to deny admission to or deport individuals involved in recruiting, enlisting, or conscripting child soldiers in accordance with American obligations under the Optional Protocol on the Involvement of Children in Armed Conflict, ratified in 2002.<sup>76</sup>

**Legislators: Ratify key human rights treaties.** The fact that the United States, along with Somalia, remains one of only two countries in the world not to have ratified the Convention on the Rights of the Child, or CRC, reinforces the notion that the United States is badly out of step with the rest of the globe. Now that the Supreme Court has removed one of the main obstacles to ratification by ruling unconstitutional the execution of juveniles, there is even less reason not to ratify the treaty. Congress should make ratification of CRC and CEDAW—another treaty with wide international support—a priority.

**Legislators: Consider requiring human rights impact assessments of appropriate legislation and policies.** Just as Congress regularly requires environmental impact assessments, so Congress and state legislatures should include human rights impact assessments in appropriate legislation and

### States across the country call for U.S. ratification of CEDAW

Seventeen states (shaded below), 19 counties, and 47 cities in the United States have passed resolutions urging on the U.S. government to ratify CEDAW.



Source: “CEDAW: Treaty for the Rights of Women,” available at [http://www.womenstreaty.org/facts\\_history.htm#chron](http://www.womenstreaty.org/facts_history.htm#chron).

See also: Judith Resnik, “Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry,” *Yale Law Journal* 115 (May 2006), available at <http://www.yalelawjournal.org/pdf/115-7/Resnik.pdf>.

for appropriate proposed changes in policy. Florida State University Law Professor Lesley Wexler has outlined how this might take place.<sup>77</sup>

**Legislators and policymakers: Respond promptly to reporting requirements.** U.S. treaty obligations include supplying regular reports on compliance with treaty provisions and responding promptly and thoroughly to treaty bodies' questions and concerns. The United States has often lagged in meeting both these requirements. The Obama administration should establish a clear locus of responsibility for meeting these obligations and Congress should monitor implementation in a consistent fashion.

**Policymakers: Create more effective human rights enforcement and monitoring mechanisms by reforming the U.S. Civil Rights Commission.** A coalition of groups known as the Campaign for a New Human Rights Agenda has called for reconstitution of the U.S. Commission on Civil Rights as a Commission on Civil and Human Rights in order to expand its authority and reach as well as offer greater support to local and state human rights commissions.<sup>78</sup>

**Policymakers: Seek opportunities to conform policy to treaty obligations.** Beyond reporting requirements, treaty bodies often make substantive recommendations to governments as to how to meet their treaty obligations. The ACLU has urged the secretary of education, for example, to use stimulus funds to fulfill recommendations of the Committee on Racial Discrimination regarding equitable education and affirmative action as well as broader education about human rights. Policymakers in all relevant departments should consult recommendations of treaty bodies to determine if they provide useful guidance for policy formation. The president, to see that this happens more systematically, should reestablish an Interagency Working Group on Human Rights that, among other things, would track implementation of treaty obligations.

**Legislators and policymakers: Become educated about implementing social and economic rights.** Public officials are often under the impression that to affirm a human need as a social or economic “right” is to automatically take on significant financial burdens—something which at a time of economic distress may discourage even the most sympathetic from adopting a rights framework. But it is commonly understood that to affirm a basic need as a right is (1) not to dictate the specific systems or policies by which that need/right is to be met and (2) to allow for the meeting of that need/right over a reasonable period of time, i.e., so-called “progressive realization.”

Governments that respect social and economic rights are not required to hand out willy-nilly free housing and medical care to everyone. Those who have the capacity to work to attain those goods may of course be expected to do so. But governments *are* required to structure access to basic human needs—food, clothing, housing, work, and health care—in ways that make them readily available to everyone, regardless of their economic capacity. Legislators and other public officials would be well served to educate themselves about implementing social and economic rights in order to reduce confusion about and resistance to adopting a rights framework.



# Conclusion

If advocates adopted a more robust human rights framework for their work, it would enhance the kind of grassroots movements for social change that are so essential to shifting norms regarding domestic policy, as we previously described in Section IV. And if legislators and policymakers responded to such appeals in the ways we have recommended, it would not only solidify those norms in law and practice but advance fundamental American interests both at home and abroad.

At heart human rights are about fairness. Not just procedural fairness—fair trials, fair treatment by authorities, a fair chance to practice one’s faith—but fair breaks. As John F. Kennedy so famously put it, “Life is not fair.” But government and other wielders of power have it within their reach to make it fairer than it might otherwise be.

No government or corporation, for example, can guarantee that a person will not get cancer. But they can certainly reduce the odds of a person getting it or dying from it by insuring access to such things as decent food, clean water, a toxic-free environment, and access to quality health care. Those public goods designed to meet basic human needs are human rights that help make life as fair as it can possibly be.

For all the reasons described earlier in this paper, the United States has resisted recognizing those public goods as rights to which human beings are entitled by virtue of their being human. The American emphasis upon rugged individualism has come at the expense of a full appreciation of how we need to support one another. Formal recognition of some rights, such as that articulated in Article 25 of the Universal Declaration of Human Rights, which states that, “Everyone has a right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing, and medical care”—a right, in other words, to be free from poverty (or, in Franklin Roosevelt’s words, from “want”)—still seems like only a remote possibility.

But as Americans grow more aware of their interdependence with the rest of the world and begin to see the world as others see it, and as they begin to understand that how we treat our neighbors at home has a direct impact on how we are perceived abroad, as well as on our security and economic health, appreciation for the full range of human rights will grow.

President Obama has said, “our power alone cannot protect us ... our security emanates from the force of our example ...” The question is of course, “example of what?” And the answer is “a just society.” The explanation of what that means goes by the name “human rights.”

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