

A Moral Example: The United States and International Human Rights Treaties

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Introduction

As the self-proclaimed leader of the free world, the United States has been a prominent defender of human rights on both the international and national level. American leaders were active in the drafting of the Universal Declaration of Human Rights (UDHR),¹⁵⁷ a significant event in the international human rights regime. The US has continued in its multilateral efforts to support human rights, but has become more reserved in ratifying human rights conventions. The decades following the establishment of the UDHR served to show the various policy approaches by US presidents and Congress to enforce its values that eventually remove emphasis on ratification of conventions. Today, while preserving its title as defender of human rights, the United States has failed to ratify seven international human rights conventions.

This situation of human rights policy in the US raises a number of questions that will guide this analysis. The first is basic: Why has the US refused to ratify these treaties? This requires understanding of the US moral leadership, which proves a principled defiance to international law. The reasons based on the substance of treaties will be demonstrated through three case studies. After examining these reasons, the next question to be asked is whether the US should ratify these treaties. Support for treaties is based in their content, as the case studies will show instances in which the US must improve an area of human rights. However, it will most strongly refer to the discussion of moral leadership. Treaties will prove to be rather invaluable in promoting human rights, except for in democratic states. Since US democracy proves to be more valuable in human rights policy, the purpose for ratifying treaties then is to provide legitimacy for both the treaty on the human rights stage and for the US on the world stage.

The answers to these questions show the need for solution: How can the US ratify international human rights treaties given the principled and substantive reasons against them? A solution will be shown in the study of the process by which human rights policies are formed and treaties are ratified in the US. The tools of review available to the legislature and the executive will provide the pressure and discussion needed to gain support for ratification. Though the US failure to ratify international human rights conventions contests with its perceived moral leadership, review of human rights performance through an annual report by the State Department and the Universal Periodic Review would be more effective in meeting those conventions' demands than perfunctory ratification.

A Brief History of US Human Rights and Foreign Policy

Domestic and foreign policy that put less value in the ratification of human rights conventions became present particularly in the Cold War era. Foreign policy of the Cold War was shaped by view that communism was a vehicle for human rights violations. However, the removal of communist leaders in defense of human rights, such as the case of the CIA instigated

¹⁵⁷Julian Zelizer, *Arsenal of Democracy: The Politics of National Security from World War II to the War on Terrorism* (New York: Basic Books, 2010), 276.

coup against Chilean President Salvador Allende in 1973¹⁵⁸, sometimes proved to foster more violations in those states. The Carter administration then shifted the focus of human rights to social values, making their promotion a foreign policy priority. Though significant domestic progress was made through the establishment of the Bureau of Human Rights and Humanitarian Affairs,¹⁵⁹ Carter's term highlighted the challenge of prioritizing both human rights and national security. Human rights were not a priority in foreign policy in the subsequent years, and the US accrued a list of international conventions that it has failed to ratify.

The Cold War captured the majority of the United States' attention in the 1980s, and its support for the international human rights regime became passive during these years.¹⁶⁰ Foreign policy on human rights was mostly sought through bilateral agreements, which promoted security rights protecting citizens from physical abuse. Less attention was given to multilateral agreements, which emphasize more subsistence- social, political, or economic- rights¹⁶¹. Country-specific legislation, such as that used in El Salvador and Nicaragua, encouraged other countries to amend human rights violations through foreign aid limitations¹⁶². Multilateral agreement catalyzed in the 1990s, perhaps due to the end of the Cold War that fed the push for security rights instead of "communist aligned" subsistence rights, and as a result, the US signed onto international conventions covering social, political, and physical rights.¹⁶³ This phase was short-lived. Since its leadership in the UDHR, the US has built an opposition to the international human rights regime that was not to be weakened with ratification of treaties throughout one decade.

The twenty-first century has witnessed, to put it in dramatic terms, a "hegemonic assault" by the US on the international human rights regime.¹⁶⁴ Failure to ratify human rights treaties that were established over thirty years ago is no longer justified by the need to meet the more pressing security demands of the Cold War. There are presently seven international human rights conventions that the United States has yet to ratify including: the Convention Against the Elimination of Discrimination of All Forms Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Enforced Disappearance, the Mine Ban Treaty, the Convention on Cluster Munitions, the Convention on the Rights of Persons with Disabilities, and the Optional Protocol to the Convention Against Torture.¹⁶⁵

United States Moral Leadership

The US is reputedly proud of its foundation on fundamental rights and since its Declaration of Independence has sought moral leadership within the international community. These ambitions set US diplomatic record up for "contradictions between promise and fulfillment,"¹⁶⁶ which is evident through the failed ratification of seven human rights

¹⁵⁸Ibid., 276.

¹⁵⁹Ibid., 277.

¹⁶⁰Rhonda Callaway and Julie Harelson-Stephens, "The Empire Strikes Back: The US Assault on the International Human Rights Regime," *Human Rights Review* 10, (2009): 441.

¹⁶¹ Ibid., 442.

¹⁶²David Forsythe, "Country-Specific Legislation: Central America," *Human Rights and U.S. Foreign Policy* (Gainesville: University of Florida, 1988): 501-502.

¹⁶³ Callaway and Harelson-Stephens, "The Empire Strikes Back," 442.

¹⁶⁴ Ibid., 443.

¹⁶⁵"United States Ratification of International Human Rights Treaties," *Human Rights Watch*, accessed April 3, 2013, <http://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.

¹⁶⁶Christopher T. Jespersen, "Human Rights" in *Encyclopedia of American Foreign Policy* (New York: Charles Scribner's Sons, 2002): 173.

conventions since 1981.¹⁶⁷ Contradiction is present on the face value of treaties that include protection of women and children's rights or prohibit torture and enforced disappearance. These are rights and protections that are widely regarded as successful in the US. Thus, the promise and fulfillment is not a social contradiction, but an institutional contradiction in which the US is not party to international treaties that appear to support its domestic policies.

American moral leadership is a concept that is fueled by government officials and willingly received by the public. It is partially derived from exceptionalism in foreign policy that either deems the US a "city on a hill" outside of international standards or a missionary that goes into the world with the purpose of enlightenment.¹⁶⁸ Regardless of which role is preferred, the resulting conception is that the US is obligated to be a moral leader for other states. The idea has permeated the language of American leaders who then engrave it into the public's expectations of US policies. President Eisenhower called this leadership "America's destiny" and President Kennedy claimed that America's "fire can truly light the world."¹⁶⁹ Former Secretary of State Hilary Clinton captured the idea of moral leadership in the human rights regime in her preface to the 2011 Annual Human Rights Report: "The US stands with all those who seek to advance human dignity, and we will continue to shine the light of international attention on their efforts."¹⁷⁰

The notion of moral leadership has shaped the United States' position on international law. Understanding of that position provides a general explanation for the failure to ratify a number of international human rights treaties. Exceptionalism in the United States builds the perception that international law is either an area to lead or an area to benefit.¹⁷¹ The strength of US domestic policy has brought its position as world power. The resulting belief is that law outside of the US is not needed to improve domestic policy, and instead can be used to improve foreign relations. International human rights law in particular is not perceived as an area in the US that requires development. Thus, the US has been more likely to discredit international human rights institutions instead of support them. Public opinion polls show that while the majority of Americans believe that the UN has a necessary role in leadership, only 31% believe that it is doing a good job in that role.¹⁷² This was illustrated in 2001 when the US was refused a seat on the United Nations Human Rights Commission. Countries such as Sudan, China, and Libya, which have governments that the US-and most other states- recognizes as abusers of human rights, were given seats. The consensus over this event was that the US was wronged and that the Commission, through its actions, ridiculed the notion of human rights.¹⁷³

The actions of the US on the world stage have brought it to the position of a world power, arguably a hegemon, and there is a general consensus on how that position should be used. According to a poll by World Public Opinion in 2011, the least percentage of respondents in fifteen countries believed that "the United States should continue to be the preeminent world

¹⁶⁷"United States Ratification of International Human Rights Treaties."

¹⁶⁸T. Davis and S. Lynn-Jones, "City Upon a Hill," *Foreign Policy* 66, (1987): 112.

¹⁶⁹Trevor McCrickson, "Exceptionalism," in *Encyclopedia of American Foreign Policy* (New York: Charles Scribner's Sons, 2002).

¹⁷⁰Hilary Clinton, US State Department, "Country Reports on Human Rights Reports for 2011," (2011).

¹⁷¹Christopher Joyner, "International Law" in *Encyclopedia of American Foreign Policy* (New York: Charles Scribner's Sons, 2002).

¹⁷²Jeffrey Jones and Nathan Wendt, "Americans Say UN is Needed, But Doubt its Effectiveness," *Gallup Politics* (2013): Accessed April 25, 2013, <http://www.gallup.com/poll/161549/americans-say-needed-doubt-effectiveness.aspx>.

¹⁷³Jespersion, "Human Rights," 174.

leader in solving international problems” or that it should “withdraw from most efforts to solve international problems.” The majority believed that “the United States should do its share in efforts to solve international problems together with other countries,” and a greater majority of Americans agreed. These feelings, when compared to polls on the role of the UN, show that there is greater public support for international law than may be reflected through state actions within the UN. A majority of respondents in fourteen of sixteen countries polled believed international law and treaties created obligations that should be endorsed by domestic law, even if they are not in alignment. The majority in these countries also believed that the UN should have expanded powers, including the ability to investigate countries allegedly violating human rights.¹⁷⁴

The United States’ perception of its international role, particularly in law, allows a simple explanation for its progress in human rights treaty ratification. As a global moral leader, it is either above or beside the laws that are multilaterally decided upon to improve the treatment of human rights in states. The US position on treaty ratification, however, is a more complex topic. The reasons given in opposition to ratifying specific treaties must be studied to fully grasp such complexity.

The Convention on the Elimination and Discrimination of All Forms Against Women

The Convention on the Elimination of Discrimination of All Forms Against Women (CEDAW) was adopted in 1979 by the United Nations General Assembly, following over thirty years of work by the UN Commission on the Status of Women.¹⁷⁵ Discrimination against women is defined as:

[...]any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁷⁶

The sixteen articles that follow specify the broad terms of that definition to ensure that rights are not denied in education, healthcare, employment, and marriage. CEDAW was made an international treaty in 1981 after it had been ratified by twenty states.¹⁷⁷ Today, the treaty has 99 signatories, including the US.¹⁷⁸ The signing of CEDAW in 1980 under the Jimmy Carter administration, however, has not yet resulted in its ratification. Ratification has been brought to the Senate as a floor action twice in 1994 and 2002 and both times received a majority vote.¹⁷⁹ Ratification of CEDAW has been stated as a priority by both President Obama¹⁸⁰ and

¹⁷⁴“Review of Polling Finds International and American Support for World Order Based on International Law, Stronger UN,” *World Public Opinion* (2011): Accessed April 25, 2013, http://www.worldpublicopinion.org/pipa/articles/international_security_bt/703.php.

¹⁷⁵“Text of the Convention,” *CEDAW*, accessed March 15, 2013, <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

¹⁷⁶*Ibid.*

¹⁷⁷*Ibid.*

¹⁷⁸“Treaty Collection,” *United Nations*, accessed April 5, 2013,

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

¹⁷⁹“Treaties,” *US Senate Committee on Foreign Relations*, accessed March 15, 2013,

<http://www.foreign.senate.gov/treaties/>.

¹⁸⁰“Thirtieth Anniversary of the United Nations’ Adoption of CEDAW. U.S. Department of State,” *US Department of State*, accessed April 3, 2013, <http://www.state.gov/r/pa/prs/ps/2009/dec/133893.htm>.

recently confirmed Secretary of State John Kerry.¹⁸¹ Despite the apparent support among US officials and the relevance of included rights to its domestic issues, there has been no further move to ratify CEDAW.

The provisions in CEDAW address three important issues in the United States, one of which proves to be the main point of tension among approval for its ratification. First, ratifying states are to make efforts to end trafficking of women.¹⁸² Reports published by the State Department in recent years acknowledge that the US is a destination for trafficking and must be making more efforts in its prevention.¹⁸³ Second, included in employment rights is the responsibility to ensure an equal wage among men and women.¹⁸⁴ President Obama acknowledged in 2012 that the wage gap still exists in America, with women earning on average 70 cents for every dollar that a man earns.¹⁸⁵ While the wage gap is acknowledged, the US has a reservation concerning Article 11 of the Convention due to the “comparable worth” doctrine that it establishes. This acknowledges that jobs traditionally filled by men, such as a construction worker, are often higher paying than jobs traditionally filled by women, such as a secretary. Comparable worth requires that wages for these jobs be reevaluated based on the worth to their employer. The US made a legal effort to establish equal pay between men and women through the Equal Pay Act of 1963. However, it excludes the principle that some jobs are segregated by sex and so does not remedy the wage difference it presents.¹⁸⁶ Another job equity reservation had been made by the US in combat roles¹⁸⁷, but the recent change that allows women to serve in combat removes this discrepancy.

The third issue that CEDAW addresses is reproductive rights, which is the point of debate that is the main obstacle to ratification. Article 12(1) requires that states provide family planning services in health care to ensure the right to “decide freely and responsibly on the number and spacing of their children.”¹⁸⁸ These rights contradict established US laws concerning abortion, contraception, and maternity leave. The right to contraception was an issue brought before the Supreme Court in 1964, in which it was concluded that states could not restrict a married couple’s access to contraceptives.¹⁸⁹ The issue of abortion was also brought before the Supreme Court in 1971, resulting in the decision that abortion is legal in all states through the first trimester, but is subject to regulation as determined by the state in the second and third trimesters.¹⁹⁰ The Family and Medical Leave Act allows employees to take leave for certain emergencies or events, which includes having a child.¹⁹¹ While all of these laws allow contraception, abortion, and maternity leave, they still do not meet the requirements of CEDAW. Though contraception cannot be restricted, there is no requirement in the US for its provision by

¹⁸¹Fred Lucas, “John Kerry Wants US Involved in UN Pro-Abortion Treaty,” *CNS News*, accessed April 3, 2013, <http://cnsnews.com/news/article/kerry-backs-us-entry-pro-abortion-un-treaty>.

¹⁸²“Text of the Convention.”

¹⁸³“Trafficking in Persons Report 2012,” *US Department of State*, accessed April 5, 2013, <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm>.

¹⁸⁴“Text of the Convention.”

¹⁸⁵“Remarks by the President on Equal Pay for Equal Work via Conference Call,” *The White House*, accessed April 5, 2013, <http://www.whitehouse.gov/the-press-office/2012/06/04/remarks-president-equal-pay-equal-work-conference-call>.

¹⁸⁶ S. Rep. No. 107-09, at 8.

¹⁸⁷ *Ibid.*

¹⁸⁸“Text of the Convention.”

¹⁸⁹ *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678 (1965).

¹⁹⁰ *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705 (1973).

¹⁹¹ S. Rep. No. 107-09, at 8.

all health care services. The regulation of abortion in the second and third trimesters is limiting to a woman's right to choice according to Article 16. Finally, the US does not require that maternity leave be paid, as stated Article 11 (2)(b).

The formal reservations to CEDAW ratification made by the Senate are based upon those existing laws that the US has put in place to protect women in employment and extend reproductive rights. This has not removed the debate over changing these laws to extend rights as described in the convention. The debate is noticeably partisan and influenced by differences related to religious values. The interest groups openly opposed to CEDAW are mostly Christian-based or education organizations. These groups claim that CEDAW oversteps the line of privacy to legalize the traditional roles of men and women. Abortion, and in some cases contraception, are contrary to Christian teachings, and federal requirement to their provision would not be easily accepted by those communities.

There has been many dimensions to the discussion of CEDAW since it was first signed under the Carter administration. There are legal technicalities concerning state rights to make abortion legislation that stand as reservations to the convention and are supported regardless of political parties or religious values. The partisan divided over abortion and contraception will remain the obstacle in ratifying CEDAW. These are important discussions that the US should not be forced to conclude based on treaty provisions, as abortion is itself a human rights debate. There are, however, many points that the US is agreement upon in the text of CEDAW. Most of the convention focuses on political rights and the legal status of women,¹⁹² which the US already confronted in the Nineteenth Amendment. Human trafficking and economic inequality are issues that still need amendment in the US, but the convention's goals to eliminate them may be found in agreement with US policies. Because the US is in agreement with these rights, it can benefit from CEDAW.

Optional Protocol to the Convention Against Torture

The Convention Against Torture and Other Cruel, Inhumane, and Degrading Acts (CAT) was created in 1984 and went into force in 1987. The convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for information gain, punishment, or discrimination.¹⁹³ States are to make these acts offences under their criminal laws¹⁹⁴ and cases extraditable.¹⁹⁵ The convention requires that states systematically review their detainment and interrogation procedures.¹⁹⁶ The CAT creates the Committee Against Torture, to which signatories are to submit reports on their state practices in regards to torture.¹⁹⁷ The US ratified the Convention Against Torture in 1994.

The Optional Protocol to the Convention Against Torture (OPCAT) was created in 2002 and entered force in 2004. OPCAT created the Subcommittee on Prevention of Torture (SPT) as a monitoring body of the Committee Against Torture.¹⁹⁸ The SPT is made of twenty-five

¹⁹²“Text of the Convention.”

¹⁹³“Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” *United Nations*, accessed March 15, 2013, <http://www.hrweb.org/legal/cat.html>.

¹⁹⁴*Ibid.*

¹⁹⁵*Ibid.*

¹⁹⁶*Ibid.*

¹⁹⁷*Ibid.*

¹⁹⁸“Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” *United Nations*, accessed March 15, 2013, <http://treaties.un.org/doc/publication/CN2010/CN.25.2010-Eng.pdf>.

members from different states¹⁹⁹ The mandate of the SPT is to evaluate detention facilities and advise them in the protection against torture.²⁰⁰ In order to fulfill this mandate, the SPT is to be given unrestricted access to detention facilities in states party to the convention.²⁰¹

While the US ratified the CAT in 1994, there has been no submission to OPCAT that would provide an enforcement mechanism for the provisions of the CAT. Torture has proved to be a topic of vulnerability and perhaps shame to the US. Sensitivity surrounds the subject as, unlike most social, political, or economic human rights that are violated through government inaction, torture is the result of a direct government action. Protection from torture is a protection from direct state action, rather than a protection that the government provides from a societal issue. The widely known practices of the US government in dealing with military detainees call attention to the failure to ratify this Optional Protocol, and no credit is given for ratification of the original convention. There has also been little evidence of discussion on OPCAT among the Senate.

The War on Terror has proved to be a key setting for discussion on the definition and the necessary means of torture. The US has taken certain measures to acquire information in following an agenda to dismantle terrorist threats around the world. In 2005, the revelation of the US holding detainees in foreign prisons where US laws were not applied spread throughout the news. Gallup polls during that year focused on the public opinion of US treatment of detainees and interrogation techniques. According to these polls, 56% of Americans thought that this newly revealed unlawful detainment was acceptable.²⁰² When asked about the torture of suspect terrorists, the same polls revealed that 32% of Americans thought it unacceptable. These public opinions grew from media attention to the military actions in Afghanistan and the progress of the pursuit of terrorists. This spotlight made transparent the strategies of some operatives, but mostly showed that many areas of interrogation and detainment were not transparent.

Opposition for ratification starts with the narrow definition that the US government would like to provide for torture. Certain techniques are still being questioned, and the threat of terrorists to national security leads the US to employ such techniques. Aside from the controversies in the US surrounding torture, the US has a greater concern regarding the Optional Protocol in that it believes serious violations of sovereignty would occur if it is ratified. The Bush administration had objected to ratification in 2002, explaining that the enforcement under OPCAT opposes the federalist structure that allows governments to run their own detention facilities within their jurisdiction. The power for the SPT to monitor facilities at their own discretion impedes that jurisdiction. Bush gave further reasoning claims that opportunities for detainees to complain about abuse are already provided in the US legal system.²⁰³

¹⁹⁹Ibid.

²⁰⁰Ibid.

²⁰¹Ibid.

²⁰²Alec Gallup and Frank Newport, "The Gallup Poll: Public Opinion 2005," *Washington Post*, accessed March 14, 2013,

http://books.google.com/books?id=WOug0pzW6_IC&pg=PA226&lpg=PA226&dq=gallup+on+us+treatment+of+detainees+and+interrogation+techniques&source=bl&ots=b4YmBasf6N&sig=VF3qC4PXf_NNx2vnO2UY-IZl9M4&hl=en&sa=X&ei=_QN9VMabKLSPsQTmn4DoBQ&ved=0CCAQ6AEwAA#v=onepage&q=gallup%20on%20us%20treatment%20of%20detainees%20and%20interrogation%20techniques&f=false

²⁰³"United States Ratification of International Human Rights Treaties."

Though the Detainee Treatment Act of 2005 had banned the use of cruel, inhumane, and degrading acts on detainees²⁰⁴ in accordance with the CAT, the undefined terms in the Act left many techniques available for use. The Senate approved a bill in 2008 that banned interrogation techniques simulating drowning and use of temperature extremes. The bill was vetoed by President Bush as he claimed that such interrogation techniques were necessary to fighting the War on Terror.²⁰⁵ During this time, the *Boumediene v. Bush* case was brought before the Supreme Court in which enemy combatants held in Guantanamo Bay did not receive habeas corpus, and thus denied Constitutional rights to trial.²⁰⁶ These clear violations of human rights give the US an unfavorable reputation in regards to following the provision of the CAT. Both issues were eventually resolved as President Obama ordered in 2009 that the CIA only use nineteen limited interrogation techniques²⁰⁷ and the Supreme Court ruled in favor of the detainees' habeas corpus rights.

The support for ratification of OPCAT relies on that unfavorable reputation that the US has earned for torture and treatment of enemy combatants. The justification for objection to OPCAT may be warily accepted and seen as taking advantage of a structural loophole to avoid stating the real reasons. Regardless of the degree to which the reservations for ratifying OPCAT are believed valid, one conclusion can be drawn based on providing these reasons and the present debate over torture. The US was dedicated to eliminating torture, as indicated through the ratification of the Convention Against Torture. However, it is dedicated to doing so by the application of its own definitions and through its own mechanisms. While it is not willing to submit to the SPT, the US has made its own sort of reporting mechanism within the international community. Under Executive Order 13491, all federal detainees are to be reported to the International Committee of the Red Cross.²⁰⁸ The actions that the US has taken in addressing torture outside of these treaties prove that the root of reservation in regards to their demands is the sovereignty of the US government to maintain its own standards.

Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was created by the General Assembly in 1989. Its fifty-four articles intend to protect the rights of children which are defined as anyone under the age of eighteen.²⁰⁹ The convention sets forth many of the political, social, and security rights that are granted through the UDHR with the assurance that these are also the rights of children. Several articles refer to the responsibilities of parents or guardians to protect these rights, and articles 43 through 54 refer to the responsibility of the state. Two Optional Protocols were added to the Convention in 2000 to highlight articles that provide freedom from trafficking, exploitation, and involvement in conflict. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict prohibits compulsory recruitment

²⁰⁴“Detainee Treatment Act of 2005 H.R. 2863, Title X,” *Council on Foreign Relations*, accessed March 15, 2014, <http://www.cfr.org/terrorism-and-the-law/detainee-treatment-act-2005-hr-2863-title-x/p9865>.

²⁰⁵Dan Eggen, “Bush Announces Veto of Waterboarding Ban,” *The Washington Post* (2008): accessed May 1, 2013, http://articles.washingtonpost.com/2008-03-07/news/36857091_1_cia-employees-interrogation-harsh-methods.

²⁰⁶*Boumediene v. Bush*, 553 U.S. 723 (2008).

²⁰⁷Exec. Order No. 13491 (2009).

²⁰⁸*Ibid.*

²⁰⁹“Convention on the Rights of the Child,” *UN General Assembly*, accessed March 15, 2013, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

of children under the age of eighteen to fight in conflict.²¹⁰ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography prohibits trafficking and sale of material exploiting children under the age of eighteen.²¹¹

The US signed the two Optional Protocols in 2000 and ratified them in 2002.²¹²²¹³ Despite this progress, the US still remains one of two states that has not ratified the full CRC, the other being Somalia.²¹⁴ The scenario around the CRC in the US is quite different from that of other human rights treaties that have not been ratified. It is clear from the immediate support of the Optional Protocols that highlight particular articles of the original Convention that the US finds no debate over certain security rights of children. However, Congress has not approached the CRC in the same way it approaches CEDAW, with visible support that shows it may one day soon be ratified. Nor has it been approached as OPCAT has, with little discussion as it rejects the enforcement mechanism but supports the overall purpose to eliminate torture. The CRC has instead been actively opposed through a Senatorial resolution for rejection in May 2010, which states as follows:

Expressing the sense of the Senate that the primary safeguard for the well-being and protection of children is the family, and that the primary safeguards for the legal rights of children in the United States are the Constitutions of the United States and the several states, and that, because the use of international treaties to govern policy in the United States on families and children is contrary to principles of self-government and federalism and that, because the United Nations Convention on the Rights of the Child undermines traditional Principles of law in the United State regarding parents and children, the president should not transmit the convention to the Senate for its advice and consent.²¹⁵

The reasons against the provisions of the CRC in Resolution 519 are the same as those made by the civil society groups actively opposing the Convention. Parental rights groups lead the opposition under the charge that ratification will extend the government's ability to monitor parental discipline. The interpretation of the Convention's text is important to understanding this concern. While Article 18 states that parents are the ones to make decisions in the child's best interest, Article 3 provides that "best interest" is to be defined by the state. American family law only allows the state to make decisions for a child in cases where parents are determined to be "unfit" to do so. Parental rights groups cite Supreme Court cases such as *Reno v Flores* (1993)

²¹⁰“Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,” *United Nations Office of the High Commissioner for Human Rights*, accessed March 15, 2013, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>.

²¹¹“Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Trafficking,” *United Nations Office of the High Commissioner for Human Rights*, accessed March 15, 2013, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.

²¹² *Ibid.*

²¹³“Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.”

²¹⁴“United States Ratification of International Human Rights Treaties.”

²¹⁵S. Res. 519.

and *Troxel v Granville* (2000) for their rejection that policymakers determine the “best interest” of a child over parents or guardians.²¹⁶

The statements of Resolution 519 include the larger issue that United Nations conventions breach state sovereignty and oppose US federalism. Just as parental rights groups are concerned with the extent of US governmental policies over their decisions, the US is concerned with the UN Committee on the CRC ability to make policies over US government decisions. The Senate cites cases where the Committee has found states party to the CRC in violation of its provisions:

Whereas the Government of the United Kingdom was found to be in violation of the Convention by the United Nations Committee on the Rights of the Child for allowing parents to exercise a right to opt their children out of sex education courses in the public schools without a prior government review of the wishes of the child;

[...] Governments of Indonesia and Egypt were out of compliance with the Convention because military expenditures were given inappropriate priority over children’s programs²¹⁷

There is a sense in the Resolution that the US is offended by UN attempts to govern American family law. Whether these feelings trace back to exceptionalism of international law or reside solely in the value of sovereignty, the attempts are found “tantamount to proclaiming that the Congress of the United States and the legislatures of the several States are incompetent to draft domestic laws.”²¹⁸

Promotion of the CRC, therefore, must answer this strongly supported interpretation of its text that sees potential for breach of state sovereignty and parental rights. In response, the supporters of the CRC that it “repeatedly emphasizes the importance, role, and authority of parents in providing direction and guidance to their children.”²¹⁹ As all but two states in the international community have ratified the treaty, the improvements of children’s rights in general around the world are accredited to the CRC. Supporters cite the decrease in under-five deaths and the increase in the testing of infants for HIV as successes of the CRC. There are also examples of states using the CRC as a tool to enact legislation to limit child marriage and female genital mutilation.²²⁰ This is empirical evidence of the success of the CRC, stronger than a speculative argument made by those who fear the extent international law in state affairs.

The Extent of Treaty Effectiveness

The fact that the US is, in each of these cases, one of the few states that has failed to ratify the treaties could lead to a presumption that its human rights performance is behind that of ratifying states. This conclusion would be based on too broad a view of the meaning of human rights treaty ratification that excludes examination of their effectiveness. The question of treaty effectiveness is not new to the human rights regime. Analysis points strongly towards the limited, and in some cases negative, impact that treaties may have on human rights in a state.

²¹⁶“The Threat From International Treaty Law,” *Parental Rights*, accessed April 3, 2013, http://www.parentalrights.org/index.asp?Type=B_BASIC&SEC={53D4DCA7-5899-4242-B244-54A253AFC137}.

²¹⁷S. Res. 519.

²¹⁸S. Res. 519.

²¹⁹“United States Ratification of International Human Rights Treaties.”

²²⁰“How Does the CRC Impacts Children,” *Child Convention on the Rights of the Child*, accessed March 15, 2013, <http://www.childrightscampaign.org/the-facts/how-does-crc-impact-children>.

A phenomenon known as “radical decoupling” has been recognized in states where the levels of abuse increased after ratification of human rights treaties. Several cross-national data analyses have provided empirical evidence to support this finding and accredit it to the lack of enforcement mechanisms in the human rights regime.²²¹ Human rights law is not founded on material incentive for compliance, but rather moral incentive.²²² States do not receive a benefit for ratifying treaties, nor do they receive a penalty for any failures within treaties’ demands. Thus, states may ratify these treaties without serious dedication to their purpose, as there are no distinct consequences for either a positive or negative performance. The act of ratifying itself provides legitimacy for the state, which seems to be a treaty’s only benefit.²²³

The lack of enforcement mechanisms in treaties is the point for most criticism of international human rights treaties. The assurance that a law will be obeyed is a general concern, which is why enforcement mechanisms, such as police or courts, exist. Treaties that use enforcement mechanisms are found to be the most effective,²²⁴ but these are difficult to implement in international human rights treaties, particularly if they are compulsory. State sovereignty must always be respected by international law, even with regards human rights. Therefore, enforcement cannot encroach upon a state’s ability to make and enforce its own policies. It has become standard to establish a committee to reside over a convention, as done in Article 17 of CEDAW and Article 43 of the CRC. However, these committees are only able to make statements on state performance based on submitted reports and cannot take action against violators of the treaty. The establishment of a monitoring body by OPCAT proved that the Committee established in Article 17 of the CAT was not capable of providing the necessary enforcement for its demands.

More recent studies investigate the relationship between treaties and state practice by accounting for certain factors such as a state’s level of democracy, wealth, interdependence, present conflict, size, and regional differentiation. With the impact of these factors accounted for, international law is found to have a limited effect on a state’s practices. Improvement among the international community in human rights practices is therefore accredited to socioeconomic developments, rather than a change in law.²²⁵ This validates the ability for domestic factors to have a greater influence on practice than international law. Many studies recognize that levels of democracy and judicial effectiveness in a state are vital to mediating the influence of a treaty.

The conclusion from all of these findings is that democratic states are best at defending human rights. Democracies are more likely to accept the standards of the international human rights regime, making them more likely to ratify treaties.²²⁶ Case studies have shown that treaty ratification is most beneficial in democratic states with a stronger civil society. Civil society, a main component of democracy, “increase[s] the amount of information available to domestic and external actors, thereby making governments more vulnerable to public criticism from human

²²¹Emilie Hafner-Burton and Kiyoteru Tsutsi, “Justice Lost! The Failure of International Human Rights Law to Matter Where It’s Needed Most,” *Journal of Peace Research* 72, no. 4 (2007): 407-435.

²²²Ibid.

²²³Ibid.

²²⁴Wade M. Cole, “Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981-2007,” *American Journal of Sociology* 117, no. 4 (2012): 1131-1171, accessed April 3, 2013, SocINDEX, EBSCOhost.

²²⁵Todd Landman, *Protecting Human Rights: A Comparative Study* (Washington D.C.: Georgetown University Press, 2005).

²²⁶Ibid.

rights activists.”²²⁷ Even when states such as the US have not ratified treaties, their practices are less associated with human rights violations according to international human rights conventions.²²⁸

Though many of these studies conclude that international human rights treaties are not effective without certain measures, there are arguments for specific treaties that have positive impacts. CEDAW has been found to have a positive impact on women’s political rights, as its text intends.²²⁹ The benefits of the CRC were earlier described, as children’s rights, HIV rates, and cases of child marriage and FGM have globally improved since its implementation.²³⁰ Though the ratification of the Convention Against Torture has been correlated with more cases of torture, the creation of OPCAT has sought to establish the enforcement mechanism that will amend this statistic.

Following the evidence from these findings, it can be concluded that the US, as a democracy with an effective judiciary by institution, is capable of defending human rights. The argument has become whether the US should ratify treaties, as its domestic characteristics can most effectively implement their demands, or if it should depend on those domestic characteristics alone to defend human rights in its own country. Support for the latter would appear to require discrediting the entire international human rights regime, while the former would require discrediting the domestic opposition to ratification that was found in the US. When moral leadership is taken into consideration, both of these undesirable arguments can be avoided. In ratifying the conventions, the US is adding its weight as a strong democracy with policies proven to support human rights. This provides legitimacy for the efforts of human rights conventions. The US also would disassociate itself with the short list of non-party states, strengthening the reputation of its domestic human rights policies.

This is a political reason for ratification, but there is also a need to assert the democracy that is supportive of human rights in the domestically and internationally based decisions of the US. This begins with understanding the approaches to defining human rights, which has been best explained by Carl Wellman in his recent book *The Moral Dimensions of Human Rights*. A political definition of human rights relies on legal documentation to provide legitimacy for a right.²³¹ This is an easy way to attain a definition of a right as it is clearly laid out and allows rights to be more practically secured through law. Its disadvantages, however, prove the need for a moral approach to human rights. If rights were to be approached solely by their provisions in law, then there would be no basis for reform. Laws that have been proven to institute inequality, such as the Jim Crow laws or the Apartheid rule, could not have been reformed on the basis that they are violations of human rights. A critic of human rights law requires another source for defining human rights than the law itself, introducing the moral dimension.

This moral dimension, Wellman explains, is satisfied by a traditional approach to human rights. A traditional approach promotes fundamental rights that are given to human simply by the fact that they are human.²³² Whether they are derived from a greater authority or by humans themselves, it is agreed that rights are inherent. The US has taken this approach to defining rights

²²⁷Daniel W. Hill Jr., “Estimating the Effects of Human Rights Treaties on State Behavior,” *Journal of Politics* 72, no. 4 (2010): 1167, accessed April 3, 2013, Academic Search Premier, EBSCOhost.

²²⁸Eric Neumayer, “Do International Human Rights Treaties Improve Respect for Human Rights?” *Journal of Conflict Resolution* 49 (2005): 925-53, accessed March 15, 2013, JSTOR.

²²⁹Hill, “Estimating the Effects of Human Rights Treaties on State Behavior,” 1167.

²³⁰“How Does the CRC Impacts Children.”

²³¹Carl Wellman, *The Moral Dimensions of Human Rights* (New York: Oxford University Press, 2011), 5.

²³²Ibid.

since its Declaration of Independence in 1776 that claimed all men “are endowed by their Creator with certain unalienable Rights.” While it may be argued today who that Creator is and whether He exists, America is still grounded in the belief that certain rights are given to all human beings.

As the US takes a traditional approach to human rights, it already seeks to implement those rights into its practices. This is not to say that human rights are entirely protected by its institutions, as is evidenced by the previously referred example torture. However, the use of a political approach would require that treaties be ratified to acknowledge the provided rights. The case studies showed that the US did agree on the rights outlined in particular treaties such as the CAT and most provisions of CEDAW and the CRC. But, the rights which the US does agree upon as human rights have already been implemented into state practice. Ratification of the treaties that promote rights which the US is debating, such as abortion, are arguably not in accordance with the traditional approach to human rights.

It is not only the US that takes a traditional approach to human rights. The United Nations in its Charter “reaffirm[s] the faith in fundamental human rights.” As the source of these human rights treaties, the UN’s use of the traditional approach should support the US adherence to the approach. As the US has committed itself to an agenda through democracy to provide a voice for its people that may enhance its human rights performance, the UN should acknowledge that this practice is in accordance with the measures that are sought through treaties. Similarly, the greater ability for democracy to affect human rights practices demands that the US rely on its democratic processes to improve its human rights policies.

Forming Human Rights Policy

The domestic characteristics that prepare the US to defend human rights begin in the division of power in the federal government. Each branch has a role in shaping human rights policies, both foreign and domestic. The President is given powers as the Chief Executive that may directly human rights practice through specific actions. Presidential powers shape the “no-routine” or “crisis” policy of the US.²³³ The President must respond to the actions of other states or the events within the United States. Thus, the decisions made are specific to a particular circumstance, and though made in accordance with (or opposition to) human rights norms already established, they do not in themselves establish a routine, as will be seen in the legislative branch. Examples of this role were demonstrated by the Reagan administration in 1986 through the support of the contra rebels in Nicaragua against their oppressive authoritarian government²³⁴, or the Clinton administration’s forceful intervention in Kosovo in 1999 to end an ongoing genocide.²³⁵ Whether these actions promoted human rights or caused further abuses, the executive branch was proven to directly affect human rights through foreign policy. The judicial branch plays the smallest role in shaping human rights policies with power limited to either upholding or overturning the legality or Constitutionality of legislative or executive actions. The Supreme Court role was seen in the cases of *Roe v Wade* and *Boumediene v Bush* described in the case studies.

The legislature, being the most expansive branch of US government, has the most influence over human rights policies. The tools available to Congress may either counter or complement other branches in the system of checks and balances are relied on for human rights

²³³David Forsythe, “US Foreign Policy and Human Rights,” *Journal of Human Rights* 1.4 (2002), accessed May 1, 2013, Academic Search Premier.

²³⁴“The Reagan Legacy,” *Nation*, accessed May 1, 2013, Academic Search Premier.

²³⁵Forsythe, “US Foreign Policy and Human Rights.”

policies. As the US lawmaking body, Congress writes the “routine” or “non-crisis policies” that cannot be written by the executive.²³⁶ This is a direct influence over both domestic and foreign practices in human rights, and is found to take four particular forms. Hortatory statements are made as a non-binding part of a law and are presented only as a “sense of the Congress.”²³⁷ An example is seen in the Bretton Woods Agreement Act stating that the US should disassociate with any governments engaged in genocide. General legislation allows Congress to enforce human rights values as norms in the US by prohibiting particular actions or establishing an organization that promotes rights through development. Specific legislation may be focused on an individual country or a particular function. These examples often reflect the Congressional role of limiting executive power, as seen during Reagan administration. Congress required that the Reagan verify every 180 days that economic and security assistance to El Salvador was making progress in human rights matters.²³⁸ Function-specific legislation provides a specific action towards human rights policy, such as the creation of the Bureau of Human Rights and Humanitarian Affairs in the Department of State in 1977.²³⁹

The power to ratify international human rights treaties is primarily in the hands of Congress. The President may sign a treaty, as Jimmy Carter did with CEDAW in 1989, but Congress may choose to withhold ratification of the treaty. This role may either be a catalyst or a block in forming human rights policy. The case studies proved that the latter is often the case, as Congress is full of members with opposing views, making a consensus difficult to reach. Blocking ratification of human rights treaties has, in most cases, been shown as a result of conflict with the extent of international law and a disagreement on the fundamental rights provided rather than a preference for policies that abuse human rights. The actions taken by all three branches that stitch policies are shown to pursue fundamental rights and Congress takes these into account when considering treaties. While international human rights treaties have not proved effective, the potential for the US to strengthen them shows that Congressional discussion over their ratification should continue. The tools already discussed are the ones most commonly used, yet a review by the State Department and submission to the Universal Periodic Review are two tools that are nearly untouched. The legislative and executive branch may be a part of both these instruments to enforce federalism and democracy throughout their processes.

The Annual Report on Human Rights and the Universal Periodic Review

Since the establishment of the Bureau of Human Rights and Humanitarian Affairs, the US has released the Annual Human Rights Report. There is a chapter included on every country in the world, except for the United States. This is evidence of exceptionalism shaping human rights policy and the US taking moral leadership as the reporter on global human rights. The Report provides a description of the conditions of the security, political, social and economic rights of the people in a country. Factors measuring security rights include: arbitrary killings, detention, or disappearances; torture, human trafficking, and sexual violence (notice that no basic welfare rights are covered, such as access to shelter or food). Political rights are reported based on the equality of opportunity for people to change their government and the corruption in the government. Social rights included in the report are freedom of religion, assembly, speech, and the press. Economic rights are reported as worker’s rights to organization and reasonable work

²³⁶Ibid.

²³⁷David Forsythe, *Human Rights and U.S. Foreign Policy* (Gainesville: University of Florida Press, 1988), 8.

²³⁸Ibid., 14.

²³⁹Ibid., 15.

conditions.²⁴⁰ The progress that a state has made in certain treaties is reported, including the status of CEDAW and the CRC, and is the only section that includes the US.²⁴¹

The Annual Human Rights Report should be recognized as an opportunity for the State Department to participate in a domestic review of US human rights performance. This domestic review supports the sovereignty of the US to monitor its own practices and more importantly, may restore credibility for the US as a moral leader in the international community. If the US is active in reviewing human rights around the world, it should hold its own practices accountable to the standards of that review. Inclusion of the US in the report will help to expunge the idea currently presented that the all standards for human rights are already being met by the US, and therefore do not require review. The Annual Report is currently a vehicle for criticism of foreign states, but by simply including a chapter on the US, its standards could be further validated. Furthermore, the US could promote an image of honesty and a desire for progress if it finds no shame in reporting on its own human rights practices.

Though no chapter has ever accounted for the entirety of US human rights practices, there is an example of how its inclusion would affect the report. In 2012, the first chapter on the US was included in the Report for Human Trafficking. The report acknowledged the US as “a source, transit, and destination country for men, women, and children – both U.S. citizens and foreign nationals – subjected to forced labor, debt bondage, involuntary servitude, and sex trafficking.”²⁴² The current practices were evaluated and recommendations on their development were given. Since the release of the report in 2012, there has been increased attention on the problem of human trafficking in the US. On September 25, 2012 an executive order targeted federal contractors prohibited practices that mislead employee recruits and bring them into trafficking circles. Contractors operating outside the US are to provide awareness programs to employees on reporting trafficking.²⁴³

The US has a zero-tolerance policy for trafficking, but it is important to realize that progress must still be made in fighting the illegal actions that make it an ongoing issue. The Human Trafficking Report of 2012 proves that reporting on the conditions of human trafficking in the US created more pressure for the government to strengthen its policy against it. Similarly, the US does not implement policies that violate fundamental human rights defined by the report, but, there are societal failures, such as the wage gap or sexual violence, that need to be addressed. The goal of including a chapter on the US in the Annual Report on Human Rights is to provide pressure that requires the government to respond with action in the way that it responded to human trafficking in 2012.

As the report is compiled and published by the State Department, it becomes a tool of the executive branch in which the legislative branch does not have a direct role. Congress may, however, offer an important role in both preparing and utilizing the report through Congressional

²⁴⁰“Country Reports on Human Rights Practices for 2012,” *US Department of State*, accessed March 9, 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

²⁴¹Ibid.

²⁴²Ibid., 359.

²⁴³“Executive Order – Strengthening Protections Against Trafficking In Persons In Federal Courts,” *The White House Office of the Press Secretary*, accessed March 13, 2013, <http://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>.

hearings on human rights. In 2009, the “Law of the Land: US Implementation on Human Rights Hearing was held as the first Congressional hearing on the status of human rights in the US by the Subcommittee on Human Rights and the Committee on the Judiciary. The hearing allowed heads of the committees to question Senators on current human rights policies and their effectiveness.

The discussion moved quickly at the hearing in 2009 so that a range of topics were discussed by a range of people. In most cases where an issue was presented, the resolution was to promise further investigation of what a committee may do in response. Some of the issues presented had already been identified by the US or by the United Nations in a report. For example, the lack of data on child prostitution victims in the US according to the implementation of the Option Protocol on Child Prostitution was addressed. The implementation of the treaty was further discussed as Senator Richard Durbin, Chairman of the hearing, recognized the efforts of a New York state law that shield child trafficking victims from prosecution. He was able to draw attention to the law, which Assistant Attorney General of the Civil Rights Division, Thomas Perez did not know existed, as a solution that could be implemented throughout the country.²⁴⁴ This sort of conversation on meeting treaty requirements opens the US to the same critique on human rights performance as does the Annual Report. Congressional conversation supplements the report with the potential to reach a conclusion on how to address the issue.

The example above discusses a treaty to which the US is already party. The hearing also included discussion on treaties that have yet to be ratified. The progress of CEDAW, for example, was shortly discussed by Senator Al Franken and Perez. It was noted as a priority in the State Department and recognized that the challenge was gaining the approval of 67 senators for ratification.²⁴⁵ Later, Elisa Massimo of Human Rights First brought the conversation to general treaty ratification. She described the executive approach to examining treaties that keeps them “behind a fence” as foreign policy matters, making them uninfluenced and inaccessible to domestic policymakers.²⁴⁶ In holding Congressional hearings, treaties may be discussed not only by Congress, but also by other interest groups who may submit statements to the board. Use of the hearing as a supplement to the Annual Report meets Massimo’s request for “Congress and the executive branch to work together to bring these obligations into the mainstream.”²⁴⁷

Throughout the Law of the Land hearing, there was reference to another tool that the US should use to progress in its human rights performance: the Universal Periodic Review (UPR). The UPR was established along with the Human Rights Council (HRC) in 2006 with the purpose of “remind[ing] States of their responsibility to fully respect and implement all human rights and fundamental freedoms.”²⁴⁸ The review commissions each UN member state to use its own methodology to compile a report on the actions it has taken to improve human rights, supporting the ideals of state sovereignty. The HRC then compiles its own report based on the state’s submission and the provisions of international human rights charters with recommendations for further improvement. The review also allows foreign states to present inquiries to the submitting

²⁴⁴The Law of the Land: Hearing before the Congressional Subcommittee on Human Rights and the Law on U.S. Implementation of Human Rights Treaties, 111th Cong. 1(2009), 7-10.

²⁴⁵Ibid., 14.

²⁴⁶Ibid., 19.

²⁴⁷Ibid., 19.

²⁴⁸“Advanced Questions to the United States of America,” *Universal Periodic Review, Office for the High Commissioner of Human Rights*, accessed March 7, 2013, <http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/UnitedStatesAmerica.pdf>.

state, which it may answer in its report.²⁴⁹ The elements of the UPR are a step beyond a domestic review, and should be used to gain an international perspective on the US performance of human rights.

The US submitted its first report to the UPR in 2010 and should continue to do so as required every four years. The US has exhibited a low opinion of UN human rights' bodies in the past. Decisions such as choosing to place Sudan and Libya on the Human Rights Commission in 2001 instead of the US have been grounds for discrediting UN processes and values in the human rights regime.²⁵⁰ This initial submission, however, proves that the Human Rights Council has gained at least some credibility from the US. There is more to be accomplished in continuing submission to the UPR than gaining an outside perspective on US human rights performance. It is a chance for the US to restore, first, its moral leadership in the international human rights regime, and second, the capacity of that regime.

The UPR promotes an image in the same way as the Annual Report that the US is concerned with improvement of its human rights performance. While the Annual Report supports the image according to the US standards of human rights, the UPR would support that image according to international human rights standards. As the US takes into account the improvements that can be made in its human rights policies, it may set a stronger example for other states that are submitting to the Review, or that have yet to submit. This is an important step that the US can take to restore moral leadership without pursuing exceptionalism.

As the US takes an initiative to strengthen its own human rights policies through both a domestic and international review, it provides a source of strength for the human rights efforts of the UN. If a democratic state with a reputation for strong domestic human rights policies is considering the recommendations of the Human Rights Council, then the review is shown to have great potential. Furthermore, the US may become a more active participant in the multilateral efforts of the international human rights regime. In the years that the US was reluctant to cooperate with the human rights efforts of the UN, it lost the ability to influence those efforts. This was seen when the US was denied a seat on the 2001 council, and could easily be traced back to the UN recognizing that the US had not ratified important treaties a decade after their establishment. Submission to the UPR exemplifies that the US is willing to cooperate with the HRC to pursue the same fundamental rights and increases its influence in international human rights.

Conclusion

If these two tools for review are implemented, the US will should progress towards ratification of international human rights treaties. Congress has blocked ratification with technical concerns over the treaties' provisions, but there is an overall agreement that goals of the treaties are fundamentally beneficial to the US. The divide on ratification is often bipartisan based, with conservatives typically taking the opposition. Their reasoning is rooted in a real fear of internationalism in which treaties would extend into federal and state policy making power. This fear, though understandable and real, is hindering the greater goals of the treaties. This is the general opposition to treaties, while specific provisions, such as abortion, are still at debate within the country as a whole. The need for two-thirds of the Senate to agree on ratification will be difficult to obtain without taking prior actions.

²⁴⁹Ibid.

²⁵⁰Jespersion, "Human Rights."

The opposition must be shown the reasons why ratification of the treaties is necessary for human rights progress in the US and the world. Approval for the treaties could be gained if presented only as a symbolic gesture. The US could easily ratify treaties with no intention of implementing their demands or submitting to their committees for review, but this would not provide the moral example necessary through taking steps towards dedicated ratification. If treaties were to be ratified now, the discussion on their implementation would reach the same divide that is seen currently in Congress, with the only difference being that the US is a party to the convention. Progress may even be slowed as pressure to ratify the treaties would be relieved.

The US needs to consider its influence over international human rights and the progress that is still necessary within its own domestic policies. Its image among foreign states is still one of a strong democracy that protects its people, but not one that seeks to cooperate with the efforts of other states and the international community as a whole. This image could be restored with perfunctory ratification of treaties that would either have no impact or even less impact than refusing to ratify them would. A more progressive solution would be to continue strengthening human rights policies within the US while at the same time strengthening the cooperation with the UN. The opposition that has prevented treaty ratification may then dissolve, and the US can become a dedicated party to their conventions. This will not affect the fundamental freedoms in which America is grounded, nor will it diminish the power that the state has in providing policies that protect those freedoms. It will instead allow the US to set a moral example that will strengthen the capacity for the international human rights regime to move forward making these fundamental freedoms a reality for the rest of the world.

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