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The United States' Engagement with International Law: An Analysis of the Social Complexities that Crystallized its Stance on Racial and Gender Rights

Abstract

The United States ratified the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) but has yet to sanction the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). This article investigates what social costs drove the state to pass only one of the two anti-discrimination treaties. It finds that the state perceives the race convention to be less socially costly than the gender statute's objective mandates in regards to content about social and cultural patterns, family planning resources, and in tensions about the proposed reservations, understandings, and declarations.

Keywords: discrimination, equality, gender, social and cultural patterns

Introduction

Throughout the globe gender and racist based discrimination is rampant. In order to combat the normative practices, the United Nations (UN) produced two binding anti-discrimination human rights treaties, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), otherwise known as the International Bill of Rights for Women, and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). These are the only two binding UN treaties, which are designed, in dominance, to address anti-discrimination. All state parties to the United Nations have either ratified or acceded to CEDAW, except for seven countries, which include Iran, Sudan, South Sudan, Somalia, Palau, Tonga, and the United States (US). Although the US has not sanctioned the treaty, the government entered into ICERD in

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1994. This manuscript investigates what social costs drove the United States to pass only one of the two multilateral agreements. It finds that the gender statute's objective mandates are more controversial than how the state perceives the racial treaty's articles regarding content about social and cultural patterns, the introduction of information and advice about family planning, and in tensions about reservations, understandings, and declarations.

An Analysis of the Social Costs Associated with Sanctioning CEDAW and ICERD

Although racial and gender discrimination have been prevalent throughout the nation's history, anti-racism and women's rights movements worked against such practices. The movements produced activist driven political changes, for instance, the 1964 Civil Rights Act passed. It protects, by law, women and people of color from being discriminated against in voting rights, public accommodations, and employment (Sanborn, 1995, p. 147-8) "However, Congress did not include 'sex' as a protected category in the original bill.... Congress [members] feared that including sex in the Civil Rights Act would make the Act too controversial, threatening the entire cause" (Robinson, 1979, p. 416). Regardless of this standpoint, eventually due to women's rights activism, the term was included and the government approved the bill because it "already had enough support to withstand the incorporation of gender protections" (Sanborn, 1995, p. 148). In addition to the Act, throughout the twentieth century women's rights supporters lobbied to pass the Equal Rights Amendment. The Amendment reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex" (Mansbridge, 1986, p. 1). The Senate failed to approve the Act despite it simply obligating the government to provide all people, regardless of their sex, to equality before the law (Mansbridge, 1986, p. 1).

There have also been frequent attempts to pass CEDAW. For instance, in 1980 Jimmy Carter signed the pact and sent it to the Senate for advice and consent to pass, but hearings were not held until 1988 and 1990 when it failed to be sanctioned (Powell, 2005, p. 354; Kington, 2009, p. 17). In 1999, ten female members of the House of Representatives delivered a letter to the Senate Foreign Relations Committee. The letter, which was signed by one hundred Congress members, requested that the treaty be sanctioned, but still it was not ratified (Kington, 2009, p. 23). Later, under Senator Joseph Biden's leadership in 2002, the Committee held multiple hearings in attempt to ratify the Convention, but again the efforts failed (Merry, 2006, p. 79; Powell, 2005, p. 354-5). This history signifies that extensive political actors in the US support entering into the multilateral agreement, however there are barriers that prevent it from passing. Far reaching opposition to the gender statute continues because it imposes "liberal doctrines about family discipline" (Ignatieff, 2005, p. 19).

In comparison, from 1945 to 1970 conservative opposition to racial rights was readily apparent and aimed to defend segregation and discrimination (Moravcsik, 2005, p. 196). However, "in the wake of the success of US federal civil rights legislation" the state

believes that international norms on racial equality largely coincide with its domestic norms (Ignatieff, 2005, p. 19). ICERD was sanctioned in 1994 once the state assumed overt forms of racism were no longer prevalent in American politics (Sniderman & Tetlock, 1986, p. 129). Contrary to this viewpoint, racism has been readily apparent. This can be observed when recalling the longstanding perspective “that racial discrimination is no longer a serious obstacle to [people of color’s] prospects for a good life; that [people of color’s] continuing disadvantages are due to their own unwillingness to take responsibility for their lives; and that, as a result... their demands for better treatment, and the various kinds of special attention given to them are not truly justified” (Henry & Sears, 2002, p. 254). Clearly these assertions are fallible when one examines the differences in social, political, economic, and educational opportunities people have experienced due to their race and place of residence. Regardless of this reality, the state distinguishes that its anti-racism legislation is compatible with ICERD because of how it interprets the treaty.

Social and Cultural Patterns

CEDAW’s stance on the modification of social and cultural patterns renders it problematic for the current US climate. The multilateral agreement’s preamble straight forwardly asserts “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women.” In the body of the document members are required to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (Article 5.a). In the same light, Article 2.f informs that members to the treaty must “without delay... take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” Many United States residents do not support destabilizing gender norms, which they consider the primary element of family roles and as the moral core of society. Large populations of nationals expect gender norms to be fulfilled, cherished, and preserved, and naturalize gender as an inherent part of their own and other’s identities. Feminist advances in women’s autonomy from their appropriated familial and feminine roles have encountered wide reaching backlashes (Balchin, 2011, p. 12). For instance, powerful religious minorities adamantly protest progressive changes in the areas of family law and women’s rights (Ignatieff, 2005, p. 17). Correspondingly, a powerful domestic political constituency in the nation is opposed to the gender pact because of its objective requirements about the reconstruction of traditional family morality, and about combatting stereotyped gender roles (Ignatieff, 2005, p. 20). Thereupon, it is certain that ratification of CEDAW would attract many disputes among US nationals.

ICERD’s content about combatting cultural prejudices is controversial as well. However, upon ratification the state found the multilateral agreement to be minimally controversial. ICERD’s members are required to take measures to combat prejudices that

lead to racial discrimination in the fields of teaching, education, culture, and information (Article 7). The government found that its domestic policies complied with the Article and thus it would generate minimal social tension once ratification occurred. Yet, there is much disagreement about whether the government's anti-racism policies comprehensively address racial inequalities in the fields. For example, the public is divided about what constitutes discrimination. While a large portion of the public support the state's current policy, that in order to be found guilty of discrimination plaintiffs must prove the defendants *intent* to discriminate, there is a large body of nationals that determine that the *effect* of the act should be the primary consideration since "discrimination can be the product of facially race neutral policies and practices as well as unintentional action and inaction of individuals" (Menendian et al., 2008, p.1). Supporters of the second view argue that the current legislation conflicts with the state's obligation under the Article, thus ratification of the treaty generated increased disputes about US policies (Menendian et al., 2008, p. 4).

The pact's Article 2.1.a further aims to modify discriminatory social and cultural patterns. It informs that no states shall engage in or practice racial discrimination and that all state parties must ensure that public authorities follow the same standard. Since the US only recognizes the intent to discriminate to determine whether a violation has occurred, and discerns that none of its policies intend to discriminate against people of color, it perceived that it was in compliance with the Article. Therefore, it assumed that entering into the pact would generate minimal social tension. However, ratification permeated the debate about the "war on drugs" (Fellner, 2009, p. 257). "Relative to their numbers in the general population and among drug offenders, [people of color] are disproportionately arrested, convicted, and incarcerated on drug charges" (Fellner, 2009, p. 257). There is much controversy over whether this "war" is an act of structural racism or an attempt to protect "minority communities from addiction, harassment, and violence" (Fellner, 2009, p. 257). Ratification provided US nationals who protest the unequal criminalization of people of color with a binding legal document to mobilize around (Fellner, 2009, p. 260). Thus ratification generated yet another resource for supporters and critics of the drug war to dispute over.

Family Planning Resources

The gender pact straightforwardly requires state parties to engage with an issue that is extremely contentious in the United States. The multilateral agreement objectively mandates the introduction of information and advice about family planning (Article 10.h). Likewise, rural women are expected to have access to "adequate health care facilities, including information, counseling and services in family planning" (Article 14.2.b). Tensions about what the information, advice, counseling, and services should contain are already an area of great social and political feuding. "Clearly the domestic application of international standards would favor some ideologies, and thus some political parties, over

others” (Moravcsik, 2005, p. 181). However, currently, there is much national disagreement about proper ways to plan for families, leaving abortion, underage rights to planning resources, birth control, other contraceptives, single parenthood, sterilization, and engaging in intercourse in general controversial issues. At the same time there is controversy about what family planning initiatives should resemble, the nation cannot predict or reverse how “highly independent” judiciaries in states will interpret the articles, thus “governments cannot be sure about the broader social and political consequences” that ratification may generate (Simmons, 2009, p. 71, 73-4, 77-8). Sanctioning the gender pact would only fuel the civil and political feuds about proper modes of government engagement with family planning resources and would generate protest against interpretations of the Article that counter the belief systems of individuals and groups. In comparison, ICERD does not address governmental engagement with family planning resources.

Proposed Reservations, Understandings, and Declarations

Finally, the state perceives that the overall content of the racial statute is significantly more aligned with the United States’ ideologies than CEDAW’s mandates objectively are. This is clear when comparing the number and content of reservations, understandings, and declarations (RUDs) that accompanied ratification of ICERD with those submitted with the women’s treaty when it was considered before the Senate in the same year. RUDs that accompanied both the racial and gender conventions strived to protect federalism, sovereignty, freedom of speech, and privacy. In addition, the women’s pact was proposed with RUDs that addressed gender roles in the military, equal remuneration for paid labor, family related leaves, family planning, and family related services.

Modifications were made to the racial convention when it passed in 1994 and in the same year proposed modifications were made to the gender pact when it was considered for ratification (Piccard, 2010, p. 135). The gender multilateral agreement shared every modification submitted with the racial pact. For each treaty the state protected its normative practices relating to free speech, expression, and association (Piccard, 2010, p. 137). A reservation was also designed to limit governmental interference in private conduct and another rejected the International Criminal Court’s ability to monitor US operations without the state’s consent (Piccard, 2010, p. 136-7). An understanding determined that the federal government could only implement the treaty to the extent that its jurisdiction reaches (Piccard, 2010, p. 137). Finally, each pact was declared non-self-executing. During the ICERD hearing there was general approval of the modifications among Senators (*International*, 1994, p.3, 11-3, 18, 22-3, 28-32).

In addition to the RUDs listed above, the gender pact was considered with three other reservations and another understanding. The reservations inform that the country will not assign women to all military units and positions that require engagement in direct combat, will not enact the doctrine of equal pay for equal work, and refuses to introduce maternity leave with pay or with comparable social benefits without loss of former employment,

seniority or social allowances (Piccard, 2010, p. 137). The understanding asserts that the nation “will not allow CEDAW to dictate when or how free health-care services will be provided in relation to ‘family planning, pregnancy, confinement, and the postnatal period’” (Piccard, 2010, p.137). Passing the treaty with the proposed RUDs would provide the feminist movement with a source to lobby for domestic legislative change while illustrating, by referring to the RUDs, how the nation does not meet international women’s human rights standards. The mobilization would be met with backlash by influential conservatives who are a political minority that are “favored by a biased set of political institutions...” (Moravcsik, 2005, p. 151). Therefore, the state is deterred from ratifying the convention because its content is not considered compatible with the current socio-political climate.

Final Thoughts

To summarize, the United States perceives the race convention to be less socially divisive than the gender statute’s objective mandates in regards to the pact’s content about social and cultural patterns, family planning resources, and in tensions about the proposed reservations, understandings, and declarations. This manuscript was written to reveal the shortcomings of the state’s interpretation of ICERD in order to highlight strategies that the government can adopt to more comprehensively address racial discrimination. The article was not written to discourage the nation from passing the gender statute. US nationals must conduct a profound and sincere analysis of the state’s policies and practices that fall short of international anti-discrimination norms. Implementing policies that advance gender and racial equality would generate immense social and political disputes, but the outcome can improve the lives of many women and people of color. Therefore, US nationals must ask ourselves, is the United States really the *land of the free*, as it so pridefully deems itself to be, or is it a nation that provides its nationals with unequal freedoms because of their race and/or sex? What changes must the nation make in order to better reflect the image it has painted for itself, and can full compliance with CEDAW and ICERD initiate these needed changes? United States’ residents must ask ourselves, at what cost are we willing to forfeit our freedom?

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