

Chapter 19

The United States and Human Rights: Paradoxes and Challenges

Leila Nadya Sadat

19.1 The United States Constitution and Human Rights

During the eighteenth century, even prior to the elaboration of the U.S. Declaration of Independence and the Revolutionary War, America's Founders and other intellectuals clearly thought about liberty in "human rights" terms, referring often to the "rights of man," "rights of mankind," and "human rights."¹ The well-known language of the Declaration of Independence provides:

We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable Rights; that among these are life, liberty, and the pursuit of happiness.

These words undoubtedly inspired the authors of the French *Déclaration des droits de l'homme et du citoyen* as well. Subsequently, however, as references to the divine origin of human rights faded from legal and political discourse, the French and American Revolutions took "natural rights" and made them "secular, rational, universal, individual, democratic and radical."² The American rights tradition drew heavily on the writing of John Locke and other English antecedents, and emphasized civil and political rights. Moreover, although we now think of the Federal Constitution as being of central importance in the protection of individual human rights, at the founding of the Republic it was primarily the states, not the federal government, which were the guarantors of the individual rights found in their charters and constitutions. The "Constitution, as conceived, was not essentially a charter of rights and liberties, but a blueprint of government."³ Thus, a fundamental reason for the adoption of the

¹ Paust, Jordan J. 1996. *International Law as Law of the United States*, 169. Durham: Carolina Academic Press.

² Henkin, Louis. 1978. *The Rights of Man Today*, 3–13. Boulder: Westview Press.

³ *Id.*

L. N. Sadat (✉)
School of Law, Washington University, One Brookings Drive,
Campus Box 1120, St. Louis, Missouri 63130-4899, USA
e-mail: sadat@wulaw.wustl.edu

federal Bill of Rights, which was ratified in 1791,⁴ was worry about federal intrusion into state affairs and into the lives of America's citizens.

The federal Bill of Rights includes many human rights found in modern international conventions, including fair trial rights (5th, 6th and 7th Amendments); rights of due process (5th Amendment); a right to religious freedom and the separation of church and state (1st Amendment); a right to free speech, freedom of assembly and to petition the government and to a free press (1st Amendment); a right to be free from cruel and unusual punishment (8th Amendment); property rights (5th and 8th Amendments), and a right to privacy (to be free from unreasonable searches and seizures, 4th Amendment). Through the practice of judicial review, many of these rights have been expanded and elaborated upon; and they have been applied not only to federal government action, which is specific in the text ("Congress shall make no law respecting . . ."), but to the states as well, through their selective incorporation into the fourteenth Amendment.⁵

The modern observer will quickly note an absence of economic, social and cultural rights in this list of U.S. "human" (constitutional) rights. In addition, certain rights enumerated in the Bill of Rights are peculiar to the United States, such as the Second Amendment's "Right to Bear Arms," which, according to a recent study, has been copied by only two percent of Constitutions worldwide.⁶ Additionally, the words of the Declaration of Independence notwithstanding, at the time of the Constitution's adoption and the ratification of the Bill of Rights, slavery was legal in many U.S. states, and only property-owning white men (not women) could vote and fully exercise their political and civil rights. Following the Civil War (1861–1865), the federal Constitution was amended by a "second Bill of Rights," which added the 13th, 14th and 15th Amendments outlawing slavery, guaranteeing the equal protection of the laws, and assuring the right to vote to members of racial minorities.⁷ Women did not receive the vote until the twentieth century with the adoption of the 19th Amendment, and youth (age 18 and over) received it in 1970 with the adoption of the 25th Amendment.

The United States is a federal system. The federal government and all fifty states have their own Constitutions and rights provisions. State courts hear cases involving state law—including questions of rights under state constitutions—while federal courts hear cases involving questions of federal law, including allegations of unconstitutional actions by state government officials, questions of international law

⁴ Farnsworth, E. Allen. 2010. *An Introduction to the Legal System of the United States*, ed. Steve Sheppard, 4th edition, 7. New York: Oxford University Press.

⁵ Initially, the Supreme Court took the position that the first ten Amendments to the U.S. Constitution were not applicable to the states, but subsequently held, following the adoption of the Fourteenth Amendment, that selective provisions of the Bill of Rights were incorporated into the Fourteenth Amendment and thus made applicable to the states. *See* Nowak, John E. & Rotunda, Ronald D. 1995. *Constitutional Law*, 340–41 (5th edition). Eagan: West Publishing.

⁶ Law, David S. & Veerstig, Mila. 2012. *The Declining Influence of the U.S. Constitution*, New York University Law Review 87:3.

⁷ Neuberne, Burt. 1996. *An Overview of the Bill of Rights*. In *Fundamentals of American Law*, ed. Alan B. Morrison, 83. New York: Oxford University Press.

(although this a somewhat complex issue as outlined below), and questions of state law arising between citizens of different states. For simplicity's sake, this National Report will focus largely upon federal law and the jurisprudence of federal courts, but it should be noted that particularly as regards criminal procedure, most prosecutions take place in state courts, and state constitutional rights are very important. Another area driven more by state than federal action relates to the question of same-sex marriage, with state supreme courts sometimes interpreting state constitutions to prohibit discrimination against individuals based upon sexual orientation. For areas governed more by state than federal law, the federal constitution imposes a floor or minimum protective standard below which state constitutional protections cannot fall. Additionally, recent scholarship has noted the critical importance of state and local government in human rights implementation, either through direct implementation of treaty norms, or through the activity of local human rights commissions.⁸

19.2 International Law as Part of U.S. Law and U.S. Participation in and Leadership of International Human Rights Regimes

19.2.1 International Law as U.S. Law

In the United States, the rules governing the intersection between U.S. and international law appertain to a branch of law somewhat idiosyncratically termed “foreign affairs law.” For many decades, foreign affairs law was not a particularly vibrant area of specialization for U.S. lawyers, but in recent decades, it has emerged as one of the most difficult and contested areas of U.S. Constitutional law. The framers of the 1787 Constitution devoted some attention to the issue of international law and its relationship to U.S. law, but references to the law of nations (customary international law) and treaties are sparse in the text itself. Article I, Sect. 8 grants Congress the power to “define and punish. . . Offenses against the Law of Nations,” and Article VI provides that “Treaties made, or which shall be made, under the Authority of the United States [are] the supreme law of the Land,” binding upon state courts “any Thing in the Constitution or Laws of any State to the contrary notwithstanding.”⁹ The federal courts were granted jurisdiction over questions of treaty interpretation, cases involving ambassadors and other questions of international law, but the Constitution was mostly silent on the relationship between U.S. and international law. There is little doubt, however, that in the early days of the Republic, at a time when the United States was a small and relatively weak nation, international law was seen as generally helpful to the new nation both in establishing its *bona fides* as a new sovereign,

⁸ See e.g., Kaufman, Risa E. 2011. State and Local Commissions as Sites for Domestic Human Rights Implementation. In *Human Rights in the United States: Beyond Exceptionalism*, ed. Shareen Hertel & Kathryn Libal. Cambridge: Cambridge University Press.

⁹ Although the President “makes” treaties, they must be ratified by two-thirds of the Senate. “He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur;” U.S. Const. art. II, § 2, cl. 2.

and in terms of protecting its rights.¹⁰ In the first part of the twentieth century, the supremacy of treaties as against conflicting state policies was upheld in important cases such as *Missouri v. Holland*,¹¹ and the Supreme Court famously articulated, in *The Paquete Habana* that “international law is part of our [U.S.] law” and justiciable in U.S. federal courts.¹² Subsequently, as one commentator has noted, the period between 1946 and 2000 seems “at times internationalist and at times nationalistic.”¹³

Recent decisions of the U.S. Supreme Court have called into question the supremacy of international law and its direct applicability as federal law. While the short space of this Report does not permit a full treatment of this subject, recent decisions of the United States Supreme Court have surprised many observers by explicitly rejecting—or extensively constraining—prewar understandings about the relationship between international and U.S. law. For example, in *Sosa v. Alvarez-Machain*,¹⁴ the United States Supreme Court addressed the question whether the federal courts could assess claims involving breaches of “the law of nations” (customary international law) in the context of U.S. Alien Tort Statute litigation. Although it responded in the affirmative, the decision suggests that within the U.S. legal system, customary international law must take on a decidedly positivist cast.¹⁵ From a human rights perspective, *Sosa* is particularly disappointing, as it held that an individual unlawfully abducted from Mexico to stand trial in the United States had no claim in U.S. courts under international law norms prohibiting arbitrary arrest and detention.¹⁶

Similarly, in *Medellin v. Texas*,¹⁷ the U.S. Supreme Court ruled that a decision of the International Court of Justice in the *Avena* case regarding individual rights granted by the Vienna Convention of Consular Relations had no binding effect in U.S. Courts. The rationale of the majority was that the UN Charter provision requiring U.S. compliance with *Avena* was non-self executing, meaning it could not be relied upon by individuals before the federal courts, but could only be enforced through Congressional legislation. The decision was surprising not only from a jurisprudential perspective, given its apparent reversal of two centuries of precedent,¹⁸ but was contrary to a Presidential memorandum indicating that the United States

¹⁰ Flaherty, Martin S. 2008. Global Power in an Age of Rights: Historical Commentary, 1946–2000. In *International Law in the U.S. Supreme Court: Continuity and Change*, ed. David L. Sloss, et al, 416 [hereinafter *International Law in the U.S. Supreme Court*]. Cambridge: Cambridge University Press.

¹¹ *Missouri v. Holland*, 252 U.S. 416 (1920).

¹² *The Paquete Habana*, 175 U.S. 677, 700 (1900).

¹³ Flaherty, *supra* note 10, at 416.

¹⁴ *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).

¹⁵ McGinnis, John O. 2008. *Sosa* and the Derivation of Customary International Law. In *International Law in the U.S. Supreme Court*, *supra* note 10, at 482.

¹⁶ *Alvarez-Machain* was tried and acquitted of all charges.

¹⁷ *Medellin v. Texas*, 552 U.S. 491 (2008).

¹⁸ Damrosch, Lori F. 2008. *Medellin* and *Sanchez-Llamas*: Treaties from John Jay to John Roberts. In *International Law in the U.S. Supreme Court: Continuity and Change*, ed. David L. Sloss, et al, 452, 456. Cambridge: Cambridge University Press.

would comply with the ICJ's decision in *Avena*. As an aside, the *Medellin* case and the *Avena* decision involved litigation relating to one of the most contested U.S. practices in terms of human rights issues: the continued use of capital punishment, objected to by most U.S. allies and abolished in most western nations.

19.3 U.S. Participation in and Leadership of International Human Rights Regimes

In terms of adherence to Post-World War II international human rights instruments, although Eleanor Roosevelt was one of the four primary drafters of the *Universal Declaration of Human Rights*, U.S. participation in international human rights treaties and treaty systems and leadership in the area of international human rights has been sporadic and inconsistent. As a formal matter, the United States ratified the United Nations Charter, and voted in favor of the *Universal Declaration of Human Rights* when it was presented to the General Assembly in 1948. It is also a party to several major human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Genocide Convention and the Convention Against Torture. The United States has adopted legislation implementing the Genocide Convention and the Convention Against Torture.¹⁹ At the same time, the United States is not a party to many major international human rights treaties including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention for the Elimination of Discrimination Against Women, the Rome Statute of the International Criminal Court, the Convention on Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, and several weapons conventions banning cluster munitions and land mines.²⁰ Even when the United States Senate ratifies human rights conventions, it often attaches “RUDs”—reservations, understandings and declarations—that often limit the applicability of the treaty in question either generally or as to specific provisions. This is the case, for example, with respect to the ICCPR, to which the Senate attached a proviso that the treaty was “non-self executing,” meaning unenforceable in U.S. courts. This pattern is repeated elsewhere, meaning that international human rights norms—as opposed to constitutional rights—typically have little or no salience to U.S. litigants. As Martin Flaherty has observed, “where international agreements and constitutional rights cross paths most famously, they do so as antagonists.”²¹

In terms of international human rights regimes, although the United States is a party to the ICCPR, it has not ratified the Optional Protocol permitting individual complaints to be brought to the Human Rights Committee. Thus it files periodic reports with the Human Rights Committee, but does not respond to individual petitions. It also submits periodic reports to the Committee Against Torture as a party to

¹⁹ See Genocide, 18 U.S.C. §§ 1091–93; Implementation of Torture Convention in Extradition Cases, 22 C.F.R. Part 95.

²⁰ See Human Rights Watch. 2009. U.S. Ratification of Human Rights Treaties. <http://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.

²¹ Flaherty, *supra* note 10, at 426.

that treaty, as well. The United States is a member of the Organization of American States (OAS) and has ratified the OAS Charter, but not the American Convention, which was signed by President Carter in 1977 but never ratified by the Senate. This means that it is subject to the (non-binding) supervision of the Inter-American Commission on Human Rights, but not the jurisdiction of the Inter-American Court of Human Rights. Some interesting cases have arisen involving the United States and human rights issues before the Commission, including challenges to the juvenile death penalty,²² and to detention of prisoners captured following the 9/11 attacks at Guantanamo Bay.²³ Indeed, on March 31st, 2012, the Commission decided for the first time to hear a case involving the situation of an Algerian national held at Guantanamo, Djamel Ameziane, who has argued that his forcible repatriation to Algeria would subject him to persecution.²⁴

In spite of its hesitancy to ratify international human rights treaties and participate in binding regional human rights adjudication, the United States Department of State prepares, each year, a report on the performance of other countries as regards human rights practices, and a second report on international religious freedom.²⁵ The State Department's official website notes that the reports will be used "as a resource for shaping policy, conducting diplomacy and making assistance, training and other resource allocations."²⁶ Internationally, the United States has been at the forefront of efforts to eliminate trafficking in persons, and many states have been active in this area as well.²⁷

19.4 Human Rights and the "War on Terror": Treatment of Citizens and non-Citizens

Perhaps one of the most contested areas regarding the human rights practices of the United States in recent times has been the conduct of the U.S. "war on terror," which was launched in October 2001 in response to the attacks of September 11,

²² The Miguel Domingues Case: Report of the Inter-American Commission on Human Rights, Report No. 62/02, Merits, Case 12.285 (Oct. 22, 2002).

²³ See Organization of American States, Resolution No. 2/11, *Regarding the Situation of the Detainees at Guantanamo Bay, United States*, MC 259-02 (July 22, 2011).

²⁴ 2012. International Human Rights Body Issues Landmark Admissibility Ruling. Center for Constitutional Rights. <http://ccrjustice.org/newsroom/press-releases/international-human-rights-body-admits-first-guant%C3%A1namo-case%3A-rights-groups-urge-end-indefinite-dete>.

²⁵ See Bureau of Democracy, Human Rights and Labor, 2010 Country Reports on Human Rights Practices.

<http://www.state.gov/j/drl/rls/hrrpt/2010/frontmatter/154328.htm>. Other countries have been critical of the U.S. practice of issuing reports on human rights practices abroad, given what they perceive to be a certain hypocrisy in the United States evaluating other countries, but refusing to ratify most international human rights instruments.

²⁶ *Id.*

²⁷ The United States established an office of monitor and combat trafficking in persons, and has adopted legislation to enforce prohibitions on trafficking and provide assistance to victims. See United States Dept. of State, *Trafficking in Persons Report*. www.state.gov.

2001. These terrorist attacks, in which four civilian aircraft were hijacked and used to target and destroy important U.S. buildings and locales, were identified as the work of the al Qaeda terrorist organization which was, at the time, operating from bases in Afghanistan. The attacks resulted in the deaths of more than 3500 individuals, and were horrific both in terms of human carnage and the extensive destruction of property. Additionally, they had an extraordinarily strong psychological effect on Americans, creating an atmosphere of fear as Americans anticipated the possibility of more attacks to come, as well as feeding calls for revenge against the ostensible authors of the attacks and their supporters.

Domestically, the attacks were followed in short order by the adoption of legislation known as “The Patriot Act,” which permitted the government broad powers of investigation and surveillance hitherto forbidden.²⁸ As a matter of international law, the decision to treat the September 11th attacks as acts of war, rather than international crimes,²⁹ as well as the decision of the United States to wage that war without the constraining influence of the Geneva Conventions or the application of international human rights law, has led to the adoption of practices for which the United States has been heavily criticized: The establishment of a prison camp at Guantanamo Bay; the use of torture and cruel, inhuman and degrading treatment by U.S. investigators and prison guards; the use of extraordinary rendition as a technique to interrogate and subsequently eliminate terror suspects; and, more recently, the use of drone attacks and other military methods alleged to result in civilian deaths, sometimes arguably, other times certainly, in violation of international humanitarian or international human rights law. U.S. actions have been the subject of extensive criticism by the European Parliament, the Committee Against Torture and the UN Human Rights Committee, as well as UN Special Rapporteurs. Of particular relevance to this Report, the United States argued to both the Human Rights Committee and the Committee Against Torture (CAT) that the war time and extraterritorial nature of U.S. activities meant that neither the ICCPR nor CAT applied to U.S. action in the “war on terror,” assertions rejected by both Committees.³⁰ The human rights problems in Guantanamo translated to U.S. detention facilities in Iraq after the invasion of 2003, in particular the prison camp at Abu Ghraib.³¹

Although President Barack Obama pledged to close the prison at Guantanamo Bay during the 2008 election,³² strong resistance from Congressional and local

²⁸ The Patriot Act contained provisions enhancing the ability of U.S. officials to obtain wiretaps, and criminalized “material support” to groups designated as terrorists.

²⁹ Sadat, Leila Nadya. 2004. Terrorism and the Rule of Law. *Washington University Global Studies Law Review* 3:135.

³⁰ See Sadat, Leila. 2007. Extraordinary Rendition, Torture, and other Nightmares from the War on Terror. *George Washington University Law Review* 75:1200, 1216–26.

³¹ Sadat, Leila. 2004. International Legal Issues Surrounding the Mistreatment of Iraqi Detainees by American Forces, ASIL Insight. www.asil.org/insights_2004.cfm.

³² The President signed Executive orders to close the prison at Guantanamo Bay as well as banning the use of torture on January 22, 2009, soon after he took office. More recently, however, the administration announced that because Congress had blocked efforts to try several “most wanted” September 11th defendants in federal court, they would be tried by military commissions at

officials to trials in federal courts, as well as the difficulty of repatriating individuals held at Guantanamo, made this campaign pledge impossible to keep. Much to the consternation of human rights organizations, the Obama administration therefore decided to press ahead with the use of military commissions, constituted and held in Guantanamo Bay, for the trial of prisoners captured during military operations in Afghanistan and elsewhere, and has intimated that some prisoners may be indefinitely detained there, with no formal charges being brought.

While the brevity of this Report prevents a complete discussion of this issue, one question relevant to the themes under discussion is the nationality of the accused in this “war” or struggle against international terrorism.³³ President Bush made it clear in his November 13, 2001 order justifying the establishment of the prison at Guantanamo, that U.S. citizens could not be imprisoned there.³⁴ Subsequent counter-terrorism actions of the United States have, in general, targeted aliens and, in particular, many have targeted individuals of Arab or Muslim ethnicity or heritage. From a human rights perspective, this is problematic, and from a law enforcement perspective, many experts have argued that it has also been counterproductive, resulting in alienation of otherwise law abiding individuals.

Many observers believe that one reason so little outcry has resulted over the Abu Ghraib or Guantanamo Bay detention facilities and the widespread abuses there was the ethnic origin and/or religious affiliation of those imprisoned there. Recent debates in the United States governing the treatment of non-citizens more generally have been equally contested, and a vigorous debate has ensued between individuals promoting equality of treatment for non-U.S. citizens and those advocating for the expulsion and deportation of all individuals—including children—present in the United States without proper visas or a right to citizenship or permanent residence. In 2007–08, the UN Special Rapporteur on the Human Rights of Migrants concluded in his report on a mission to the United States of America that:

The Special Rapporteur notes with dismay that xenophobia and racism towards migrants in the United States has worsened since 9/11. The current xenophobic climate adversely affects many sections of the migrant population, and has a particularly discriminatory and devastating impact on many of the most vulnerable groups in the migrant population, including children, unaccompanied minors, Haitian and other Afro-Caribbean migrants, and migrants who are, or are perceived to be, Muslim or of South Asian or Middle Eastern descent.³⁵

Guantanamo Bay. See Greene, Brian William, *Khalid Sheikh Mohammed to be Tried in Military Court*, U.S. News and World Report, April 5, 2012. http://articles.chicagotribune.com/2012-04-05/news/sns-201204051128usnewsusnr201204040404ksmapr05_1_mohammed-and-four-ali-abdul-aziz-ali-civilian-court.

³³ The administration of President Bush took the legal position that the United States was engaged in an armed conflict against al Qaeda and its allies, a position contested by the International Committee of the Red Cross, and ultimately abandoned as a formal matter by the Obama administration. At the same time, the Obama administration, while abandoning the “war on terror” designation as a formal matter, continues to assert that the United States is engaged in armed conflict against members of al Qaeda and their allies, which gives the United States a right to use military strikes against al Qaeda members whether or not located in Afghanistan.

³⁴ *Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism*, Military Order of November 13, 2001, 66 Fed. Reg. 57831 (Nov. 16, 2001).

³⁵ Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Addendum, Mission to the United States of America, UN Doc. A/HRC/7/12/Add.2 (Mar. 5, 2008), at p. 2.

Although President Obama (who himself has been the object of untrue attacks on national and religious grounds on many occasions both during the Presidential elections and subsequently) has committed himself to immigration reform,³⁶ recently there have been efforts by states to “crack down” on undocumented immigrants by giving law enforcement officials sweeping powers and criminalizing illegal immigration status at the state level. The state of Arizona, for example, adopted a particularly harsh law.³⁷ The federal government has contested these laws on many grounds, including their intrusion into the lawmaking authority of the federal government, but public opinion polls suggest that at least a significant percentage of the U.S. population supports these measures, no matter the pernicious effect they may have on the human rights of non-U.S. citizens (or any individuals believed to fall into that category by law enforcement officials).

19.5 Conclusion: Human Rights and the Obama Administration

With a strong constitutional framework and commitment to democratic values, the United States of America generally has a positive human rights record.³⁸ Particularly as regards property rights, religious freedom and freedom of expression, the U.S. rights tradition remains strong. At the same time, as this Report has noted, there is room for improvement. Capital punishment, high rates of incarceration for members of racial minorities, economic and social rights and treatment of non-citizens, particularly in the area of U.S. counterterrorism policy, are a few examples. The Obama administration took office promising to rectify what many Americans believed to have been the human-rights-unfriendly policies of his predecessor. Certainly, he has engaged on the world stage in a much more multilateral manner by supporting U.S. election to the Human Rights Council, participating in meetings of the International Criminal Court’s governing body, attending other major international conferences including conferences on climate change and sustainability, entering into a nuclear weapons reduction treaty with Russia (and obtaining Senate ratification of the treaty),

³⁶ On June 15, 2012, President Obama announced a new policy of declining to prosecute undocumented immigrants that entered the country under the age of sixteen, are not yet thirty, have completed high school or served in the armed forces, and are not considered to pose “a threat to national security or public safety.” See Napolitano, Janet. Memo on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children, June 15, 2012. <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

³⁷ In 2010, Arizona adopted an anti-illegal immigration measure that was the broadest and most restrictive in recent U.S. history. The federal government obtained an injunction blocking the law’s most controversial provisions as impinging upon federal prerogatives, a decision that was upheld on appeal. The United States Supreme Court invalidated much of the law on June 25, 2012, but upheld the provision requiring law enforcement officers to verify individuals’ immigration status during the course of a stop, detention, or arrest if the officer suspected the individual was in the country unlawfully. *Arizona v. United States*, 132 S.Ct. 2492 (2012).

³⁸ The United States receives a rating of “free” and top scores on political rights and civil liberties in the annual report published by the human rights NGO *Freedom House*, for example. See Freedom House. *Freedom in the World 2012*. <http://www.freedomhouse.org>.

and pledging to push for ratification of important treaties such as Committee on the Elimination of Discrimination Against Women (CEDAW).³⁹ He has also pledged not to use torture, to close the prison at Guantanamo Bay, and to address economic, social and cultural rights, including a right to health care. He also has committed himself to immigration reform, and his appointees to the Supreme Court included two women and the Court's first Hispanic member.

Yet a reluctant Congress and a conservative Supreme Court have made it difficult to fully achieve these objectives. President Obama has not been able to close the prison at Guantanamo Bay, and continues to use military commissions to try those accused there, commissions that many experts believe do not comply with international standards. He has also increased the use of drone attacks against individuals living in Afghanistan, Pakistan and even Yemen,⁴⁰ and has deployed missiles not only against foreign individuals but, in one case, a U.S. citizen, actions that have been criticized by the United Nations, many other democracies and human rights group in the United States.⁴¹ The absence of effective and binding international human rights law norms on U.S. actions as well as the imperviousness of the U.S. Constitution to the incorporation of international norms means that there is little external control or moderating influence that these norms can exercise directly upon U.S. action. For the most part, national and local politics drive U.S. human rights practices and policies, not international legal norms.

References

Articles

- Law, David S. & Mila. 2012. The Declining Influence of the U.S. Constitution, *New York University Law Review* 87:3.
- Michael Posner, U.S. Assistant Secretary for Democracy, Rights and Labor, *The Four Freedoms Turn 70*, American Society of International Law, March 24, 2011.
- Organization of American States, Resolution No. 2/11, *Regarding the Situation of the Detainees at Guantanamo Bay, United States*, MC 259-02 (July 22, 2011).
- Sadat, Leila Nadya. 2004. Terrorism and the Rule of Law. *Washington University Global Studies Law Review* 3.
- Sadat, Leila. 2007. Extraordinary Rendition, Torture, and other Nightmares from the War on Terror. *George Washington University Law Review* 75.

³⁹ Remarks of Michael Posner, U.S. Assistant Secretary for Democracy, Rights and Labor, *The Four Freedoms Turn 70*, American Society of International Law, March 24, 2011.

⁴⁰ See, e.g., Bergen, Peter L., *Warrior in Chief*, N.Y. Times at SR1 (April 29, 2012), available at <http://www.nytimes.com/2012/04/29/opinion/sunday/president-obama-warrior-in-chief.html?pagewanted=all>.

⁴¹ See, e.g., Heyns, Christof. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Follow-up to country recommendations: United States of America*, U.N. Doc. A/HRC/20/22/Add.3 (March 30, 2012).

Books

- Farnsworth, E. Allen. 2010. *An Introduction to the Legal System of the United States*, ed. Steve Sheppard, 4th edition, 7. New York: Oxford University Press.
- Henkin, Louis. 1978. *The Rights of Man Today*, 3–13. Boulder: Westview Press.
- Human Rights in the United States: Beyond Exceptionalism, ed. Shareen Hertel & Kathryn Libal. Cambridge: Cambridge University Press.
- International Law in the U.S. Supreme Court: Continuity and Change, ed. David L. Sloss, et al, Cambridge: Cambridge University Press.
- Neuborne, Burt. 1996. An Overview of the Bill of Rights. In *Fundamentals of American Law*, ed. Alan B. Morrison, 83. New York: Oxford University Press.
- Nowak, John E. & Rotunda, Ronald D. 1995. *Constitutional Law*, 340–41 (5th edition). Eagan: West Publishing.
- Paust, Jordan J. 1996. *International Law as Law of the United States*, 169. Durham: Carolina Academic Press.

Cases

- Medellin v. Texas, 552 U.S. 491 (2008).
- Sosa v. Alvarez-Machain, 542 U.S. 692 (2004).
- Arizona v. United States, 132 S.Ct. 2492 (2012).
- Missouri v. Holland, 252 U.S. 416 (1920).
- The Paquete Habana, 175 U.S. 677, 700 (1900).

Statute

- Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, Military Order of November 13, 2001, 66 Fed. Reg. 57831 (Nov. 16, 2001).
- Genocide, 18 U.S.C. §§ 1091-93; Implementation of Torture Convention in Extradition Cases, 22 C.F.R. Part 95.

U.N. Documents

- Heyns, Christof. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Follow-up to country recommendations*: United States of America, U.N. Doc. A/HRC/20/22/Add.3 (March 30, 2012).
- Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Addendum, Mission to the United States of America, UN Doc. A/HRC/7/12/Add.2 (Mar. 5, 2008), at p. 2.

Internet and Other Sources

- Bergen, Peter L., *Warrior in Chief*, N.Y. TIMES at SR1, available at <http://www.nytimes.com/2012/04/29/opinion/sunday/president-obama-warrior-in-chief.html?pagewanted=all>.
- Bureau of Democracy, Human Rights and Labor, 2010 Country Reports on Human Rights Practices. <http://www.state.gov/j/drl/rls/hrrpt/2010/frontmatter/154328.htm>.
- Freedom House. *Freedom in the World 2012*, available at <http://www.freedomhouse.org>.

- Greene, Brian William, *Khalid Sheikh Mohammed to be Tried in Military Court*, U.S. NEWS AND WORLD REPORT, April 5, 2012. http://articles.chicagotribune.com/2012-04-05/news/sns-201204051128usnewsusnwr201204040404ksmapr05_1_mohammed-and-four-ali-abdul-aziz-ali-civilian-court.
- Human Rights Watch. 2009. U.S. Ratification of Human Rights Treaties. <http://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.
- International Human Rights Body Issues Landmark Admissibility Ruling. Center for Constitutional Rights. <http://ccrjustice.org/newsroom/press-releases/international-human-rights-body-admits-first-guant%C3%A1namo-case%3A-rights-groups-urge-end-indefinite-dete>.
- Napolitano, Janet. Memo on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children, available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.
- Sadat, Leila. 2004. International Legal Issues Surrounding the Mistreatment of Iraqi Detainees by American Forces, ASIL Insight. www.asil.org/insights_2004.cfm.
- The Miguel Domingues Case: Report of the Inter-American Commission on Human Rights, Report No. 62/02, Merits, Case 12.285 (Oct. 22, 2002).
- United States Dept. of State, Trafficking in Persons Report. www.state.gov.