

BOOK REVIEW

HUMAN RIGHTS IN THE UNITED STATES: RECLAIMING THE HISTORY AND ENSURING THE FUTURE

Bringing Human Rights Home. Edited by Cynthia Soohoo, Catherine Albisa, & Martha Davis. Westport, Conn.: Praeger Publishers, 2007. Pp. 920 (three volumes). \$275.00.

Reviewed by Risa E. Kaufman*

I. INTRODUCTION

Providing a powerful arsenal of crosscutting strategies and honoring the interdependence and indivisibility of economic, social, cultural, civil, and political rights, a human rights paradigm has the potential to revolutionize and reframe social justice advocacy in the United States. Indeed, domestic lawyers are increasingly adopting human rights strategies. These include appeals to international human rights bodies, use of international human rights and comparative law in U.S. courts, and broader activism such as documentation, organizing, and education. Such strategies have

* Executive Director, Human Rights Institute, Columbia Law School. I would like to thank Sarah Cleveland, Peter Rosenblum, Eric Tars, Jonathan Todres, Caroline Bettinger-López, Martha Davis, and Daniel Belasco for the helpful comments and conversations that informed this essay, and Aaron Chait and the staff of the *Columbia Human Rights Law Review*. Conversations with the books' co-editors and members of the Bringing Human Rights Home Lawyers' Network also helped to deepen my understanding of the context for this book and its implications.

shaped domestic lawyers' evolution from civil rights to human rights lawyers.¹ This U.S. human rights movement is supported by a solid and growing body of scholarship that provides the theoretical underpinnings for the incorporation of international human rights and foreign law in domestic litigation.²

It is a developing movement with deep roots; human rights work in the United States has a rich, albeit difficult, legacy. A strong theoretical basis for incorporating international human rights law is crucial to the success of a human rights strategy. So, too, is a solid understanding of this history. *Bringing Human Rights Home* tells this complicated story of human rights work in the United States and the critical role of individuals and organizations in the effort.³

This impressive, comprehensive three-volume set enriches our understanding of the United States' role in shaping international human rights, as well as the country's own deep ambivalence toward

1. See also Scott Cummings, *The Internationalization of Public Interest Law*, 57 Duke L.J. 891 (2008) (tracing evolution of public interest advocacy efforts to engage in transnational advocacy and promote domestic human rights); The Ford Foundation, *Close to Home: Case Studies of Human Rights Work in the United States* (2004), available at http://www.fordfound.org/pdfs/impact/close_to_home.pdf (examining thirteen case studies of domestic social justice organizations incorporating a human rights framework into their solutions).

2. See generally, Steven Calabresi & Stephani Dotson Zimdahl, *The Supreme Court and Foreign Sources of Law: Two Hundred Years of Practice and the Juvenile Death Penalty Decision*, 47 Wm. & Mary L. Rev. 743 (2005) (surveying and analyzing Court's practice of citing foreign law); Sarah H. Cleveland, *Our International Constitution*, 31 Yale J. Int'l L. 1 (2006) (tracing jurisprudential tradition of using international law in constitutional interpretation); Martha F. Davis, *The Spirit of our Times: State Constitutions and International Human Rights*, 30 N.Y.U. Rev. of L. & Soc. Change 359 (2006) (exploring role of international law in state court constitutional interpretation); Louis Henkin, *International Law as Law in the United States*, 82 Mich. L. Rev. 1555 (1984) (explicating status and role of international law in federal law); Vicki Jackson, *Constitutional Comparisons: Convergence, Resistance, Engagement*, 119 Harv. L. Rev. 109 (2005) (supporting consideration of transnational law in constitutional interpretation and suggesting standards to guide such interpretation); Harold Hongju Koh, *The United States Constitution and International Law: International Law as Part of Our Law*, 98 Am. J. Int'l L. 43 (2004) (tracing U.S. courts' use of international and foreign law in interpreting federal law); Gerald L. Newman, *The Uses of International Law in Constitutional Interpretation*, 98 Am. J. Int'l L. 82 (2004) (exploring relevance and appropriate use of international law in constitutional interpretation).

3. *Bringing Human Rights Home* (Cynthia Soohoo, Catherine Albisa, & Martha Davis eds., 2007).

upholding the norms that it helped to establish. It also places into context the current efforts to incorporate international human rights strategies in domestic advocacy, enabling the reader to understand the forces that have shaped the contemporary domestic human rights movement, as well as the promise and limitations of the domestication of human rights strategies.

Conceived, developed, and edited by Cynthia Soohoo, Catherine Albisa, and Martha F. Davis, each of whom has strong grounding in the United States human rights movement, *Bringing Human Rights Home* is a valuable resource for both lawyers and non-lawyers. With a forward by Louise Arbour, the former U.N. High Commissioner for Human Rights, each volume is prefaced with a thematic introduction written by one of the co-editors. Each of the editors also contributes at least one chapter to the project, with the authors of the remaining chapters constituting advocates and academics from diverse disciplines who have a wide range of substantive expertise. By providing multiple perspectives on the history of the U.S. human rights movement, as well as diverse first person accounts detailing current domestic human rights strategies, *Bringing Human Rights Home* provides an important complement to the growing literature on human rights in the United States.

In Part II of this Review, I draw out some of the broader themes that the editors and authors develop over the course of the three volumes. I then suggest that, through its case study approach, *Bringing Human Rights Home* illuminates the critical need for a comprehensive and coordinated approach to the implementation of human rights treaties in the United States. Part III accepts the editors' implicit invitation to engage in a conversation about what such an approach might look like.

II. RECLAIMING THE HISTORY OF HUMAN RIGHTS IN THE UNITED STATES

The United States has a complicated relationship with human rights. Volume I of *Bringing Human Rights Home* reclaims the early history of human rights in the United States, bringing to the foreground the ways in which human rights discourse and activism have been present since the nation's founding. It also examines the disparity between the rhetoric and reality of the United States' early human rights involvement. Drawing on the work of historians and other scholars, it provides context for the American

human rights movement, beginning with the seventeenth-century natural law and natural rights philosophers so influential to the early republic's founders.

The opening chapter to Volume One, written by historian Paul Gorden Lauren, tells the story of human rights in a young and ambivalent United States. Lauren reveals the intellectual origins of the American human rights movement, describing how the language of human rights infused the country's founding, including the creation of the U.S. Constitution and Bill of Rights—all while the slave trade flourished.⁴ He recounts, too, how abolitionists and early women's rights activists, among others, sought to incorporate human rights strategies into their advocacy work. Lauren also discusses how early American activists were instrumental in articulating economic and social rights as human rights.⁵

In *FDR's Four Freedoms and Wartime Transformations in America's Discourse of Rights*, historian Elizabeth Borgwardt explores how, during the 1940s, human rights language was instrumental in shaping political and policy objectives, including public acceptance of diplomatic aims.⁶ As Borgwardt writes, "The human rights ideas embedded in the Four Freedoms and the Atlantic Charter . . . had reshaped the concept of the national interest by injecting an explicitly moral calculus."⁷

Later essays in Volume I detail how forces in play during the post-war era thwarted advocates' ability to enforce human rights obligations in the United States. For example, in *A 'Hollow Mockery': African Americans, White Supremacy, and the Development of Human Rights in the United States*, Carol Anderson describes how the United States abandoned human rights during the Cold War era out of fear of exposing its Jim Crow policies in the South, resulting in a weakened civil rights legacy.⁸ Taking seriously Roosevelt's

4. Paul Gorden Lauren, *A Human Rights Lens on U.S. History: Human Rights at Home and Human Rights Abroad*, in 1 *Bringing Human Rights Home* 1, *supra* note 3, at 3–5.

5. *Id.* at 13–16.

6. Elizabeth Borgwardt, *FDR's Four Freedoms and Wartime Transformations in America's Discourse of Rights* 31, in 1 *Bringing Human Rights Home*, *supra* note 3, at 31.

7. *Id.* at 43.

8. Carol Anderson, *A 'Hollow Mockery': African Americans, White Supremacy, and the Development of Human Rights in the United States*, in 1 *Bringing Human Rights Home* 75, *supra* note 3.

articulation of the Four Freedoms, including the recognition and promise of social and economic rights, African American leaders framed their own battle against poverty and economic inequality at home in terms of a vision for a “new world order” that denounced all oppression and supremacy, particularly inequities in health care, education, housing, and employment.⁹ In 1947, the NAACP sought to file a petition with the U.N. Commission on Human Rights challenging racial inequities, including educational inequities, in the United States, but the organization faced stiff opposition, even from its own allies.¹⁰

Anderson recounts how Southern whites, threatened by the impact that human rights would have on Jim Crow and its progeny, lobbied hard to restrict the U.N. Charter’s ability to limit the government’s sovereignty in any meaningful way. As part of this legacy, the State Department agreed to separate the political and civil rights contained in proposed U.N. treaties from economic and social rights, which were at the time seen both as communistic and capable of dramatically altering the racist caste system firmly in place in the South.¹¹

This separation of rights notwithstanding, in reaction to Ohio Republican Senator John W. Bricker’s proposed constitutional amendment to alter the treaty approval process, the Eisenhower Administration abandoned many human rights treaties, including both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹²

Indeed, as various essays in *Bringing Human Rights Home* vividly illustrate, while upholding the banner of human rights on the

9. *Id.* at 76–83.

10. The leadership of the NAACP sought Eleanor Roosevelt’s assistance in introducing this petition, in her capacity as both the chair of the U.N. Human Rights Commission and an NAACP board member, but she refused. *Id.* at 90. *See also* Carol Anderson, *Eyes Off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955* (2003) (detailing history of African American leadership’s efforts to challenge racial segregation and inequality using a human rights framework).

11. Anderson, *supra* note 8, at 87.

12. *Id.* at 90–93. *See also* Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 *Am. J. Int’l L.* 341, 348–50 (1995) (describing the Bricker Amendment and its threatened impact on the United States’ treaty ratification process).

international stage, the United States has repeatedly asserted its sovereignty regarding human rights within its own borders. Key to understanding this ambivalence is the notion of American exceptionalism, or the belief that the United States is somehow exempt from the law that applies to other nations. The United States insists on other nations fulfilling their treaty obligations, while often neglecting or denying its own, or claiming that it fulfills these obligations without the need for international scrutiny.¹³ As evidence of its exceptionalism, Hope Lewis, in Volume One's *'New' Human Rights: U.S. Ambivalence Toward the International Economic and Social Rights Framework*, points to the United States' failure to ratify several U.N. treaties widely embraced by other nations, and its attachment of reservations, understandings, and declarations (RUDs) to those that it has ratified.¹⁴ Likewise, Lewis asserts, the United States attempts to avoid accountability by not publicizing both its reports to the U.N. treaty bodies and the recommendations from those bodies, as well as by failing to educate the public about its treaty obligations.¹⁵

After establishing the historical grounding in Volume One, Volume Two of *Bringing Human Rights Home* turns to the modern human rights movement in the United States. It explores the history of the movement from the end of the Cold War through the aftermath of the terrorist attacks on September 11, 2001, and the current administration's "War on Terror," detailing contemporary efforts to build a human rights culture in the United States. In *Human Rights*

13. For discussion of both the negative and positive aspects of American exceptionalism and the various ways in which the term can be defined, see Harold Hongju Koh, *On American Exceptionalism*, 55 *Stan. L. Rev.* 1479, 1480–95 (2003).

14. Hope Lewis, *'New' Human Rights: U.S. Ambivalence Toward the International Economic and Social Rights Framework*, in 1 *Bringing Human Rights Home* 103, *supra* note 3, at 120. For example, the United States has failed to ratify the Convention on the Rights of the Child, which every other signatory country, with the exception of Somalia, has ratified. Office of the U.N. High Commissioner for Human Rights, Ratifications & Reservations: Convention on the Rights of the Child, *available at* <http://www2.ohchr.org/english/bodies/ratification/11.htm>. And the United States is the only industrialized country that has failed to ratify the Convention on the Elimination of All Forms of Discrimination Against Women. Office of the U.N. High Commissioner for Human Rights, Ratifications & Reservations: Convention on the Elimination of All Forms of Discrimination Against Women, *available at* <http://www2.ohchr.org/english/bodies/ratification/8.htm>.

15. Lewis, *supra* note 14, at 120.

and the Transformation of the 'Civil Rights' and 'Civil Liberties' Lawyer, Cynthia Soohoo tells the history of the lawyers in the U.S. human rights movement, weaving together multiple themes discussed elsewhere in the project, including advocates' early use of human rights, the Cold War backlash, and the reemergence of human rights strategies in the 1970s and 1980s.¹⁶ She brings this history up to date, describing how, in the late 1990s and early 2000s, international human rights work began to cross over into the domestic arena, helping to transform the efforts of traditional civil rights lawyers. Contributing to these efforts were changing attitudes toward international law emerging in the courts and law schools. And in *Economic and Social Rights in the United States: Six Rights, One Promise*, Cathy Albisa details domestic human rights advocates' efforts to revive economic and social rights, in part by reasserting their interconnectedness with civil and political rights.¹⁷

Integrated throughout Volumes One and Two are historical essays, theoretical explorations, and portraits of individuals, including scholars and activists, who were instrumental in building the present human rights movement. Catherine Powell's oral history of Professor Louis Henkin, Cathy Albisa's interviews with Ajamu Baraka, Larry Cox, Loretta Ross, and Lisa Crooms, and Vanita Gupta's discussion with Gay McDougall together explore the motivations, aspirations, and frustrations of those who have conceptualized and are currently actualizing the domestic incorporation of human rights.

Volume Three brings to life examples of the domestic use of human rights strategies. The authors of the eleven chapters in this volume detail the history, use, and effectiveness of human rights norms in diverse contexts, including capital punishment, environmental degradation, racism, social security, incarcerated persons, Native Americans, and individuals displaced by Hurricane Katrina. The profiles contained in Volume Three explore the multiple ways in which human rights strategies can be and have been successful in providing litigation hooks both in U.S. courts and in other fora, providing a language and framework for addressing the

16. Cynthia Soohoo, *Human Rights and the Transformation of the "Civil Rights" and "Civil Liberties" Lawyer*, in 2 *Bringing Human Rights Home* 71, *supra* note 3.

17. Catherine Albisa, *Economic and Social Rights in the United States: Six Rights, One Promise*, in 2 *Bringing Human Rights Home* 25, *supra* note 3.

interconnected nature of rights, as well as arming activists with a new toolkit of non-litigation advocacy strategies.

The crosscutting nature of a human rights approach is particularly well illustrated in Volume Three's *Housing Rights and Wrongs: The United States and the Right to Housing*, in which Maria Foscarinis and Eric Tars describe the utility of a human rights strategy to secure the right to housing.¹⁸ The authors detail how housing advocates are urging a human right to housing, unrecognized in American law, by asserting claims of discrimination in economic and social rights in regional and international fora, while incorporating human rights advocacy tools such as documenting, reporting, and monitoring.

Take, for example, claims of racial discrimination in housing. Such discrimination is widespread and historic in the United States, arising out of a history of housing segregation that has left as its legacy a disproportionately African American homeless population.¹⁹ Tars and Foscarinis describe advocates' efforts to challenge such racial discrimination in housing by asserting violations of the United States' treaty obligations under the ICCPR and the Convention on the Elimination of all Forms of Racial Discrimination (CERD). These instruments, unlike the U.S. Constitution, define discrimination broadly, so as to include any act with discriminatory effects or impact, and require the government to provide a remedy, including measures to rectify past discrimination.²⁰ Housing rights advocates have engaged in advocacy before the U.N. Human Rights Committee, which is charged with overseeing implementation of the ICCPR, by testifying in front of the Committee and submitting shadow reports

18. Maria Foscarinis & Eric Tars, *Housing Rights and Wrongs: The United States and the Right to Housing*, in 3 *Bringing Human Rights Home* 105, *supra* note 3.

19. *Id.* at 160. See also The United States Conference of Mayors, *Hunger and Homelessness Survey 2004*, available at http://www.usmayors.org/hunger_survey/2004/onlinereport/HungerAndHomelessnessReport2004.pdf (finding that the homeless population is 49% African-American, 35% white, 13% Hispanic, 2% Native American, and 1% Asian). Though they make up about 50 percent of the homeless population, African-Americans only comprise 12% of the general population.

20. Foscarinis & Tars, *supra* note 18, at 160 (noting that, although federal housing law allows for the consideration of discriminatory impact as proof of racial discrimination, the government fails to meet its obligations under this law, as well).

highlighting issues of inadequate housing and homelessness.²¹ Advocates were successful in getting the Committee to recognize this discrimination. In its Concluding Observations issued in December 2006, the Committee expressed concern over the dramatically disproportionate rate of homelessness among African Americans, and required the United States to take “adequate and adequately implemented” steps to remedy it.²² Similarly, the CERD Committee recently voiced concern over the effects of racial segregation in housing and urged the United States to “intensify its efforts” to reduce such segregation and its negative impact.²³

As this and other “portraits from the movement” reveal, however, the current use of human rights strategies in the United States, though promising, is limited by the ad hoc nature of domestic human rights treaty implementation: there is no discrete, structural home or comprehensive formal mechanism for implementing the United States’ treaty obligations within its own borders. To illustrate, Tars and Foscarinis describe how, in working with the federal government to implement the findings of the U.N. Human Rights Committee regarding housing discrimination, advocates had to “bridge the gap” between the Department of State, which is charged with handling the treaty-reporting process, and the domestic agencies, including the Department of Housing and Urban Development and the Department of Justice, that would be charged with implementing the Concluding Observations.²⁴ As the authors lament, “The chief obstacle is that most of the domestic agencies are not aware of their role in implementation.”²⁵

Read in their entirety, the three volumes of *Bringing Human Rights Home* make the compelling case for an inclusive and holistic rights-based strategy, providing strong historical underpinning for respecting the indivisible nature of human rights in the United States. They show that, just as these rights are interconnected, so too should be the advocacy strategies that seek to advance them, including documentation, reporting, monitoring, litigation, and using different fora. And, while not doing so explicitly, the essays in these

21. *Id.* at 160–61.

22. U.N. Human Rights Committee, *Concluding Observations: United States of America*, ¶ 22, U.N. Doc. CCPR/C/USA/CO/3/rev.1 (Dec. 18, 2006).

23. U.N. CERD Committee, *Concluding Observations: United States of America*, ¶ 16, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008).

24. Foscarinis & Tars, *supra* note 18, at 161.

25. *Id.*

three volumes also suggest that, for human rights to be fully operationalized in the United States, there must be a comprehensive, coordinated, and institutionalized approach to implementing the United States' obligations under international human rights treaties.

III. THE NEED FOR COMPREHENSIVE TREATY IMPLEMENTATION TO TRULY BRING HUMAN RIGHTS HOME

The United States has undertaken significant treaty obligations covering a wide swath of economic, social, cultural, political, and civil rights,²⁶ notwithstanding its failure to ratify several critical treaties²⁷ and its attachment of RUDs to those that it has ratified.²⁸ Yet it has failed to ensure that these treaties are given their full, proper effect.

26. See Tara J. Melish, *From Paradox to Subsidiary: The United States and Human Rights Treaty Bodies*, in *The Sword and the Scales: The United States and International Courts and Tribunals* 17 n.46 (C. Romano ed., forthcoming 2008) (noting that "there is indeed wide overlap in the rights protected in distinct human rights treaties"). The U.S. has ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), and the Genocide Convention. The United States has also ratified a number of ILO treaties on labor rights as well as Optional Protocols to the Convention on the Rights of the Child.

Moreover, U.S. presidents have signed a number of treaties not yet ratified by Congress, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the American Convention. According to the basic mode of treaty interpretation, the signing of these treaties indicates the United States' intention to be bound by these treaty commitments and requires the United States to act consistently with their purposes. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 18, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force Jan. 27, 1980).

27. Included in this list are the CRC, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the ICESCR, the American Convention on Human Rights, the International Convention on the Rights of Persons with Disabilities, the International Convention on the Rights of Migrant Workers and their Families, and the International Criminal Court.

28. The United States attaches a package of reservations, understandings, and declarations (RUDs) to the human rights treaties it ratifies in an effort to qualify the scope of the treaties and limit their impact—for example, declaring that such treaties are not "self-executing." See Henkin, *supra* note 12, at 341–48.

This failure stems, in part, from the lack of a coordinated treaty implementation system in the U.S.²⁹ In a report submitted to the U.N. Committee on the Elimination of Racial Discrimination, which in February 2008 considered the United States government's compliance with CERD, the United States Human Rights Network's CERD Working Group on Local Implementation and Treaty Obligations traced the failure of the United States to fully implement its obligations under CERD to the fact that it has no comprehensive human rights coordination, including no federal or state body with the necessary authority to monitor treaty compliance and implementation, issue recommendations, "collect and assess statistics, hold thematic hearings, and undertake promotional and education initiatives."³⁰ The Report also noted that the United States has failed to oversee, coordinate, and facilitate complaint initiatives at the state and local levels, and has failed to raise awareness of the Conventions' guarantees.³¹ As the Report suggests, a comprehensive approach to treaty implementation in the United States would include widespread public education, systemic monitoring of governmental compliance, including oversight of federal, state, and local authorities, and a process for reviewing current and new legislation, policies, and practices at the federal, state, and local levels to determine human rights compliance.

The U.S. has made previous efforts to coordinate its compliance with human rights treaties. In 1998, President Clinton

29. As Tara Melish describes it:

[T]here is currently no institutional mechanism in place to systematically gather and process information from domestic actors on how the U.S. could improve its human rights protections. Likewise, while the U.S. prepares reports for submission to treaty bodies with a high degree of comprehension and detail, complying strictly with the technical aspects of its reporting requirements, it lacks any formal institutional mechanism to systematically receive the inputs of civil society into that process, to circulate inputs, to debrief the nation on its findings, or to encourage national reflection on how identified deficiencies might be remedied.

Melish, *supra* note 26, at 84.

30. United States Human Rights Network's CERD Working Groups on Local Implementation and Treaty Obligations, *A Report to the Committee on the Elimination of Racial Discrimination on U.S. CERD Obligations and Domestic Implementation* (Feb. 2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN7.doc> [hereinafter CERD Working Groups Report].

31. *Id.*

signed Executive Order 13107, creating the Interagency Working Group on the Implementation of Human Rights Treaties.³² That group's mission was to undertake a range of functions to oversee domestic implementation of the various U.N. treaties ratified by the United States. Among its functions were (1) coordinating the preparation of treaty compliance reports to international organizations, including the United Nations and Organization of American States (OAS), and the responses to contentious complaints that were lodged with these bodies; (2) overseeing a review of all proposed legislation to ensure conformity with international human rights obligations; (3) ensuring annual review of the RUDs the United States attached to human rights treaties; and (4) considering complaints and allegations of inconsistency with or breach of international human rights obligations.³³ In addition, the group had a public education function: it was responsible for ensuring public outreach and education on human rights provisions in both domestic law and treaties.³⁴

The Interagency Working Group lasted only two years, until 2001, when President George W. Bush issued a National Security Presidential Directive establishing a Policy Coordination Committee (PCC) on Democracy, Human Rights, and International Operations, directed by the Assistant to the President for National Security Affairs.³⁵ The Directive transferred the duties of the Interagency Working Group to that Committee. As Margaret Huang describes in Volume Two's *'Going Global': Appeals to International and Regional Human Rights Bodies*, this Committee by all accounts was never fully operationalized.³⁶

Under the Bush administration, the United States submitted reports to relevant U.N. and OAS bodies on an ad hoc basis, with the Office of Legal Advisor of the U.S. State Department, in consultation with the National Security Counsel and the Departments of Homeland Security, Justice, Interior, Defense, Health and Human Services, and Labor, coordinating the U.S. response to international

32. Exec. Order No. 13,107, 63 Fed. Reg. 68,991 (Dec. 10, 1998).

33. *Id.* at § 4(c).

34. *Id.*

35. National Security Presidential Directive, *Organization of the National Security Council System*, available at <http://www.fas.org/irp/offdocs/nspd/nspd-1.htm> (Feb. 13, 2001).

36. Margaret Huang, *'Going Global': Appeals to International and Regional Human Rights Bodies*, in 2 *Bringing Human Rights Home* 105, *supra* note 3.

human rights treaty bodies.³⁷ The PCC had no dedicated staff and no resources for human rights treaty monitoring; instead, it dedicated its available resources to periodic reporting and other external presentations of the United States with international bodies.³⁸ In a move revealing this lack of dedicated resources, the United States, during its 2008 CERD Committee Review, engaged outside consultants, primarily former state department employees, to coordinate its periodic reports.³⁹

In addition to the executive branch, the legislative branch is also underutilized in the United States' approach to treaty compliance. There is no congressional committee currently assigned to monitor treaty implementation. The Senate Judiciary Committee recently created the Subcommittee on Human Rights, however, which could potentially take on that role⁴⁰ and coordinate actions with the bipartisan Congressional Human Rights Caucus. That caucus traditionally focuses its efforts on human rights situations in other countries.⁴¹

Although not an explicit focus of *Bringing Human Rights Home*, the lack of comprehensive and institutionalized mechanisms to implement the United States' human rights treaty obligations underlies many of the essays and profiles contained in the three volumes. This absence of formal implementation stands in the way of progress. As Huang describes, a significant symptom of the United States' failure to coordinate implementation of its treaty obligations is that there is no widespread understanding of its obligations under the various treaties. Even key public officials within the federal government, including those in the Departments of Justice and Homeland Security, are often unaware of their international legal obligations.⁴²

37. *Id.* at 120.

38. Melish, *supra* note 26, at 24–25.

39. E-mail from Eric Tars to author (June 9, 2008) (on file with author).

40. *See* Melish, *supra* note 26, at 26.

41. *See* Huang, *supra* note 36, at 121.

42. *Id.* at 120–21. So, too, is the general public. In 2007, a national opinion survey found that eight in ten Americans agree that “we should strive to uphold human rights in the U.S. because there are people being denied their human rights in our country.” The Opportunity Agenda, Human Rights in the U.S.: Opinion Research with Advocates, Journalists, and the General Public 3–4 (2007), available at <http://www.opportunityagenda.org/atf/cf/%7B2ACB2581-1559-47D6-8973-70CD23C286CB%7D/HUMAN%20RIGHTS%20REPORT.PDF>.

A full exploration of the institutional mechanisms necessary for achieving systemic human rights treaty implementation within and throughout the United States is beyond the scope of *Bringing Human Rights Home*; none of the books' chapters focus squarely on this issue, although a few offer targeted suggestions, and one, Volume Two's *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights*, explores creative and promising local approaches to the issue.⁴³ Yet the treaty implementation shortcomings highlighted in several of the books' chapters suggest the need for more focused consideration of potential implementation mechanisms. Indeed, with the election of a new presidential administration, concrete suggestions for human rights implementation are now percolating.⁴⁴ It is to these mechanisms that this Review now turns.

The Interagency Working Group established by President Clinton is one mechanism for coordinating human rights treaty implementation. Another potential means of achieving institutionalized treaty compliance would be through the creation of a national human rights commission. National Human Rights Institutions (NHRIs) around the globe promote and monitor implementation of and compliance with human rights obligations. These bodies, found in over 100 countries, vary in form and function,⁴⁵ but share certain attributes, such as being permanent,

Yet, a 1997 national survey found that only 8% of the public could name the Universal Declaration of Human Rights as "an official document that sets forth human rights for everyone worldwide." WorldPublicOpinion.org, Human Rights in General (1997), http://www.americans-world.org/digest/global_issues/human_rights/HRinGen.cfm. Margaret Huang urges a dedication of resources to general education of the public and of government officials in an effort to support the work of advocates using international human rights strategies to impact domestic policy. Huang, *supra* note 36, at 122.

43. Martha Davis, *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights*, in 2 *Bringing Human Rights Home* 127, *supra* note 3.

44. See, e.g., Catherine Powell, American Constitution Society for Law and Policy, Human Rights at Home: A Domestic Policy Blueprint for the New Administration (Oct. 2008), available at <http://www.acslaw.org/files/C%20Powell%20Blueprint.pdf> (recommending that the new administration "reconstitute and revitalize" the Interagency Working Group on Human Rights as a focal point for implementing human rights domestically, as well as create a monitoring body in the form of a national human rights commission).

45. See Shubhankar Dam, *Lessons from National Human Rights Institutions Around the World for State and Local Human Rights Commissions in*

official, and independent authorities entrusted with addressing the human rights concerns that arise from international human rights law.⁴⁶ Though not legally binding, the Principles Relating to the Status of National Institutions (Paris Principles) establish minimum standards for NHRIs.⁴⁷ As a general matter, the Paris Principles call for NHRIs to have broad mandates: to take on advisory, educational, and internationally participatory roles; be politically independent; and be composed of pluralistic memberships.⁴⁸ A number of scholars and practitioners have suggested additional and alternative criteria necessary for NHRIs to be effective in promoting and protecting human rights.⁴⁹

the United States, Executive Sessions Papers, Human Rights Commissions and Criminal Justice, Kennedy School of Government (August 2007), at 2–6, available at <http://www.hrcej.org/hrcej/pdfs/nhri.pdf> (describing the different models that NHRIs follow). See also National Human Rights Institutions Forum, *National Human Rights Institutions*, available at <http://www.nhri.net/NationalData.asp?ID=107> (containing database of NHRIs around the world).

46. Dam, *supra* note 44, at 2.

47. Principles Relating to the Status of National Institutions (The Paris Principles), G.A. Res. 48/134, ¶ 2–3, U.N. Doc. A/RES/48/134 (Dec. 20, 1993).

48. Dam, *supra* note 44, at 3–4 (describing the Paris Principles). See generally U.N. High Commissioner for Human Rights, *Fact Sheet No. 19, National Institutions for the Promotion and Protection of Human Rights* (Apr. 1993), available at <http://www.ohchr.org/Documents/Publications/FactSheet19en.pdf> (describing national human rights institutions and proposed guidelines for effectiveness); Brice Dickson, *The Contribution of Human Rights Commissions to the Protection of Human Rights*, 47 *Pub. L.* 272, 272–74 (U.K.) (describing essential characteristics of national human rights institutions and their potential value in promoting human rights); Stephen Livingstone & Rachel Murray, *The Effectiveness of National Human Rights Institutions*, in *Human Rights Brought Home: Socio-Legal Perspectives on Human Rights in the National Context* 137, 138 (Simon Halliday & Patrick Schmidt eds., 2004). In their recommendations to the CERD commission, the CERD Working Groups on Local Implementation and Treaty Obligations raised the need for a national human rights monitoring body, commission, or other supervisory body with a congressional mandate to collect statistics on national, state, and local progress, and to issue reports and recommendations. CERD Working Groups Report, *supra* note 30, at 10.

49. See generally Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 *Harv. Hum. Rts. J.* 1 (2000); Rachel Murray, *National Human Rights Institutions: Criteria and Factors for Assessing their Effectiveness*, 25 *Neth. Q. Hum. Rts.* 189 (2007); Obiora Chinedu Okafor & Shedrack C. Agbakwa, *On Legalism, Popular Agency and “Voices of Suffering”: The Nigerian Human Rights Commission in Context*, 24 *Hum. Rts. Q.* 662 (2002).

Unlike countries around the world, however, the United States does not have a national human rights commission. In March 2008, the UN Committee on the Elimination of Racial Discrimination recognized this failure in its concluding observations regarding the United States' compliance with its CERD obligations.⁵⁰ The CERD Committee also voiced concern over the United States' "lack of appropriate and effective mechanisms to ensure a co-ordinated approach towards the implementation of the Convention at the federal, state and local levels," and recommended establishing such mechanisms.⁵¹

The United States does have an obligation to ensure that state and local governments implement their treaty obligations. While the federal government may delegate to state and local authorities the responsibility for implementing human rights treaties in areas where those governments exercise jurisdiction,⁵² the federal government nevertheless retains its international legal responsibility to oversee and facilitate state and local compliance.⁵³

50. The Committee observed that the United States has "no independent national human rights institution established in accordance with the Paris Principles," leading it to recommend that the United States consider establishing such an independent human rights institution. International Convention on the Elimination of All Forms of Racial Discrimination, Feb. 18–Mar. 7, 2008, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶ 12, CERD/C/USA/CO/6 (Feb. 2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-USA-CO-6.pdf>.

51. *Id.* at ¶ 13. Another potential mechanism for achieving such institutionalized treaty implementation is through human rights impact statements. These statements would require that proposed legislation and administrative actions undergo some type of review to determine the human rights impact of policies on affected groups. See Lesley Wexler, *Human Rights Impact Statements: An Immigration Case Study*, 22 *Geo. Immigr. L.J.* 285, 294–95 (2008).

52. See Davis, *The Spirit of Our Times*, *supra* note 2, at 363–64.

53. The federal government has assumed this responsibility. For example, it included in the "federalism understanding" that it added to the CERD the recognition that it assumes the obligation to "as necessary, take appropriate measures to ensure the fulfillment of this Convention" by state and local authorities. 140 Cong. Rec. S7634-02 (daily ed. June 24, 1994). Article 2(1) of the CERD obligates the United States to "ensure that all public authorities and public institutions, national and local, shall act in conformity" with the convention and to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it

The United States Supreme Court's recent decision in *Medellin v. Texas*⁵⁴ may somewhat complicate efforts to enforce human rights treaty obligations at the state level. In that case, the Court held that a judgment by the International Court of Justice (ICJ) is not enforceable in United States courts and that the President can not direct states to comply with a United States treaty obligation under the Vienna Convention on Consular Relations by enforcing a decision of the ICJ.⁵⁵ The full impact of the decision, and its applicability to other human rights treaty obligations, will be determined as it is interpreted by future courts.

Nevertheless, the United States has an affirmative international legal duty to monitor state and local laws, practices, and policies to ensure that they are in full compliance with the federal government's treaty obligations.⁵⁶ The U.N. Human Rights Committee, however, recently expressed regret that the United States' 2006 Report on its compliance with ICCPR provided "only limited information . . . on the implementation of the Covenant at the

exists." International Convention on the Elimination of All Forms of Racial Discrimination art. 2(1)(a), (c), Dec. 21, 1965, 660 U.N.T.S. 195.

54. 552 US ___, 128 S.Ct. 1346 (2008).

55. Specifically, in *Medellin*, the Court held that a judgment by the International Court of Justice pertaining to the right to consular notification under the Vienna Convention on Consular Relations was not enforceable in United States state courts, and that the President has no power to direct states to comply with a U.S. treaty obligation under the Vienna Convention by enforcing a decision of the ICJ. *Medellin* was a Mexican national on Texas's death row who challenged his conviction on the basis that he was not afforded his right to consular notification under the Vienna Convention. *Id.* at 1367–69.

56. In its General Comments, the U.N. Human Rights Committee, which oversees compliance with the ICCPR, has stated:

The obligations of the Covenant . . . are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility.

U.N. Hum. Rts. Comm., *General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 4, U.N. Doc. CCPR/C/21/Rev. 1/Add. 13 (May 26, 2004).

state level.”⁵⁷ And, in response to Freedom of Information Act requests sent in 2005, officials at the U.S. Departments of Justice and State were unable to produce communications between the states and federal officials addressing state compliance with the CERD.⁵⁸

State and local human rights or civil rights commissions may facilitate state and local implementation of human rights norms and serve as a useful conduit for the federal government to communicate effectively with states and municipalities regarding their human rights treaty obligations. All but three states have a human rights or human relations commission, and they operate in many cities and counties around the country, as well.⁵⁹ Although these commissions go by different names and have varying missions, they all generally operate to combat discrimination through a variety of means, including enforcing anti-discrimination laws and engaging in community education and training.⁶⁰

These commissions may be an effective means of implementing human rights treaty obligations and norms at the local level. For example, they may issue recommendations and guidance encouraging, allowing, or requiring governmental agencies to take international human rights standards into account; hold hearings on state policy in light of Concluding Observations issued by U.N. treaty bodies; and work to educate the public and state and local agencies about international human rights standards. Key to the commissions’ success is ensuring that the public and state and local actors are educated about and take seriously human rights treaty obligations. There currently is no national standard setting out a framework for

57. U.N. Hum. Rts. Comm., Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant, ¶ 4, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006). See also U.N. Hum. Rts. Comm. *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant, Concluding Observations, United States of America*, ¶ 39, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006) (requesting additional information from the United States regarding treaty implementation at the state level).

58. See Davis, *supra* note 2, at 388 n.144.

59. Executive Session on Human Rights Comm’ns & Criminal Justice, *Executive Session Papers: A Historical Perspective on U.S. Human Rights Commissions* 11 (prepared by Kenneth L. Saunders & Hyo Eun (April) Bang, Marea L. Beeman, ed., 2007), available at http://www.hrcej.org/hrcej/pdfs/history_of_hrc.pdf.

60. *Id.* at 4, 13.

the commissions' effectiveness.⁶¹ When the Department of Justice most recently revised its *Guidelines for Human Relations Commissions* in 2003, it failed to mention an obligation to monitor compliance with any human rights treaty,⁶² although the guidelines do suggest the possibility of a broad jurisdictional mandate.⁶³ State and local human rights commissions do have the potential, therefore, to bring human rights treaty implementation to the local level and serve as a bridge between federal, state, and local governments in this regard.⁶⁴ The federal government may play a supportive role in the commissions' efforts.

State and local governments may experiment with other means of treaty implementation, as well. Professor Martha Davis characterizes the role of states and localities as "laboratories of foreign affairs, testing policies before initiating full-blown national programs," with the hope that these programs may eventually "trickle up" to the national level.⁶⁵ Indeed, some of the more creative and systemic approaches to domestic human rights advocacy profiled in *Bringing Human Rights Home* are explored in Volume Two's *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights*. In this chapter, Davis details advocates' efforts at the state and local level to engage in some sort of coordinated approach to treaty implementation. These local efforts look to international human rights law for inspiration in addressing local human rights issues. They may involve implementation of treaty obligations undertaken by the United States, as well as efforts

61. *Id.* at 13, 13 n.39 (comparing the lack of standards for state and local human rights commissions in the United States to the standards that are in place for National Human Rights Institutes around the world according to the Paris Principles, and adopted by the U.N. Commission on Human Rights).

62. See Community Relations Service, U.S. Dep't of Justice, *Guidelines for Effective Human Relations Commissions* (2003), available at <http://www.justice.gov/crs/pubs/gehrc.pdf>.

63. See Dam, *supra* note 44, at 11–12 (noting that, similarly to the jurisdiction of human rights commissions contemplated by the Paris Principles, the Guidelines recommend that local commissions engage in work in the areas of criminal justice, hate crimes, education, business, and economic development, and that they engage in communication, research, and data collection).

64. See, e.g., Davis, *supra* note 43, at 145 (noting that the Massachusetts Commission on the Status of Women is mandated to engage in a study of "all matters pertaining to women," guided by (but not explicitly mentioning) the tenants of the Beijing Platform for Action resulting from the Fourth World Conference on Women).

65. *Id.* at 127.

to integrate treaty norms that have not been ratified by the federal government.⁶⁶

Davis describes efforts in San Francisco that resulted in the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and CERD as municipal law. Spearheaded by the Women's Institute for Leadership Development for Human Rights (WILD for Human Rights), the San Francisco Board of Supervisors passed a local CEDAW ordinance in 1998, defining discrimination against women and girls more broadly than the federal and most state constitutions. The ordinance requires certain city departments to undergo extensive gender-based analysis to identify where gender discrimination might arise in the implementation of official policies and practices, and mandates that the City affirmatively assess compliance with human rights standards and proactively address problems that may arise.⁶⁷ In 2000, the city amended the ordinance to incorporate principles contained in the CERD.

Although the implementation "has at times been rocky," in part because of underfunding and resistance of local agencies, Davis shows how local implementation of the United States' treaty obligations can result in significant differences, primarily by raising awareness of deficiencies through collecting and analyzing data in a systemic way.⁶⁸ For example, when required to undergo a gender-based analysis, the Juvenile Probation Department discovered that it failed to provide needed services to young women, including sexual assault counseling and pregnancy prevention services.⁶⁹ The city's Department of Public Works became more attuned to the needs of workers with family caregiving responsibilities—who are overwhelmingly women—and determined that some of its own policies discouraged their participation in nontraditional, and often

66. See also Catherine Powell, *Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. Pa. L. Rev. 245 (2001) (discussing means and value of local implementation efforts); Lesley Wexler, *Take The Long Way Home: Sub-Federal Integration of Unratified and Non-self-executing Treaty Law*, 28 Mich. J. Int'l L. 1, 3–5, 16–28 (2006) (describing ways in which states and cities may implement and integrate treaty obligations that have not been explicitly undertaken by the federal government).

67. See Davis, *supra* note 43, at 137.

68. *Id.* at 127.

69. *Id.* at 138.

more lucrative, positions. As a result, the agency created more flexible schedules and increased job training courses.⁷⁰

Davis notes that human rights activists do not rest on these successes, and seek broader, more systemic change, including local adoption and implementation of the principles of the ICCPR and the ICESCR.⁷¹ Recognizing and describing ways in which local efforts to implement U.S. treaty obligations can be complicated by unresolved questions over federal preemption,⁷² Davis nevertheless notes that the movement for local implementation is growing.

Similar efforts are, indeed, underway in cities and states throughout the United States.⁷³ For example, advocates in New York City are currently engaged in efforts to enact a local law incorporating the principles of non-discrimination, participation, accountability, and transparency from CERD and CEDAW into the New York City Human Rights Law. A citywide coalition has proposed the Human Rights in Government Operations Audit Law (NYC Human Rights GOAL), which was re-introduced to the New York City Council in March 2008.⁷⁴

Although not a substitute for federal mechanisms, state and local implementation efforts may thus serve as an important complement and supplement to federal efforts at human rights treaty implementation. They may also facilitate federal public education and oversight efforts undertaken by a national Human Rights Commission or some other federal human rights institution.

70. *Id.*

71. *Id.* at 147.

72. See also Gaylynn Burroughs, *More Than an Incidental Effect on Foreign Affairs: Implementation of Human Rights by State and Local Governments, Part I*, 30 N.Y.U. Rev. L. & Soc. Change 411, 425–36 (2006) (discussing preemption doctrines in relation to state and local treaty implementation); Wexler, *supra* note 66, at 41–48 (discussing constitutional constraints on state and local treaty implementation).

73. See Harold Hongju Koh, *Why America Should Ratify the Women's Rights Treaty (CEDAW)*, 34 Case W. Res. J. Int'l L. 263, 274 n.48–50 (2002); Melish, *supra* note 26, at 60–61; Powell, *supra* note 65, at 274–83; Wexler, *supra* note 66, at 23–28.

74. New York City Council, N.Y.C., N.Y., Int. 0731-2008 (introduced Mar. 12, 2008), available at <http://webdocs.nycouncil.info/textfiles/Int%200731-2008.htm>.

IV. CONCLUSION

By providing the essential historical context and present-day examples of domestic human rights work, *Bringing Human Rights Home* reveals the rich legacy of the American human rights movement as well as the promise the movement holds for social justice advocacy in the United States. The project reveals, too, the critical need for an institutionalized approach to domestic treaty implementation.

Just as human rights strategies must be adapted to an American advocacy context, so too must comprehensive implementation of treaties within the United States be responsive to and respectful of its federal system, with dual federal and state roles and a strong system of checks and balances at the federal level. Construction of a thoughtful system would consider the executive's role in monitoring and reporting, Congress' role in overseeing the human rights impact of existing and proposed legislation, and the judiciary's role in enforcing the United States' various treaty obligations.⁷⁵ It would also include state and local governments in the effort, educating the public and all levels of government about human rights treaty obligations, monitoring and reporting on treaty compliance, and facilitating strong communication with the federal government regarding such compliance.

Bringing Human Rights Home offers strong historical grounding and important context for the current U.S. human rights movement. It also reveals that there is still much work to be done to systematize and strengthen efforts currently underway. Although a full explication of potential treaty implementation mechanisms is outside the scope and purpose of the project, the need for such mechanisms is revealed throughout. The most promising examples of advocacy that can meaningfully contribute to this effort are offered in the books' chapters detailing local efforts at institutionalizing human rights treaty implementation.

75. See Melish, *supra* note 26, at 91 n.11 (suggesting characteristics of a model, comprehensive mechanism as follows: institutionalized and permanent; based on the principle of subsidiarity, such that interventions are intended to support local decision-making and implementation; and serving as the focal point for the collection of information and a conduit for receiving and processing results of localized discussions around the country).

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Yet the success of any implementation effort will be limited without a significant change in the United States' current ambivalent approach to human rights treaties, including its failure to ratify treaties that are accepted by nations around the world, and its insistence on limiting the scope and impact of those treaties that it does ratify by attaching RUDs and by failing to enact implementing legislation. A comprehensive approach to human rights implementation, including the country's full embrace of human rights treaties, would go a long way towards fulfilling the United States' early promise to commit itself, as a nation, to the proliferation of human rights, both around the world and at home.