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Defender or Offender: America's Role in the Protection of International Human Rights?

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NOTES

DEFENDER OR OFFENDER: AMERICA'S ROLE IN THE PROTECTION OF INTERNATIONAL HUMAN RIGHTS?

> *When Americans talk about human rights, we speak about the condition of civil liberty in other countries. We don't even use the term when discussing the quality of rights in this nation, satisfied as we are with the status of freedom in the United States.*[1]

I. INTRODUCTION

The recent caning of an eighteen year old American student by officials in Singapore sparked much debate over the appropriateness of corporal punishment in criminal cases. Many Americans question the humaneness of criminal penalties imposed in foreign lands. While quick to identify human rights violations around the world, the United States government has been reluctant to concede that abuses occur within the American criminal justice system.

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1. James C. Harrington, *The Two Sides of Humanity*, LOS ANGELES TIMES, Feb. 28, 1993, at M6.

Harrington adds that despite most Americans' perception of the United States as the great protector of human rights:

> [T]his is the country in which the highest court of the land permits execution of possibly innocent people and individuals with mental retardation, allows police to search vehicles on a neighbor's word of suspicion, upholds the kidnapping of foreigners for trial in this country and pardons police brutality in the name of "good faith." . . . Nor do we submit to international tribunals, like other Western democracies, except on a self-selected case-by-case basis.

Id.

The level of scrutiny directed toward the United States' record on human rights violations may be increasing slightly. The United States Department of State recently issued a report which, according to the introduction, is the "first report submitted by the United States in accordance with its obligations under an international human rights treaty."[2] John Shattuck, Assistant Secretary of State for Democracy, Human Rights, and Labor, concedes in his introduction to the report that "[w]hile the state of human rights protection in the United States has advanced significantly over the years, many challenges and problems remain."[3] Yet while the report may be intended to expose violations of civil rights in the United States, it does not address areas of international concern discussed in this paper such as the execution of juveniles and the conditions on death row in the United States.

Tribunals outside this country have not hesitated to apply international standards when examining the American system. In 1987, the Inter-American Commission on Human Rights found that the United States failed to meet its international obligations when two American men were executed for crimes they committed before their eighteenth birthdays.[4] In addition, the European Court of Human Rights blocked the extradition of an accused murderer to the United States on the ground that conditions on death row in American prisons constituted "inhuman and degrading" treatment.[5] Finally, the death penalty, perhaps the most controversial aspect of the American criminal justice system, has been attacked by Amnesty International as well as other groups committed to the protection of international human rights.[6]

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2. U.S. DEP'T OF STATE, CIVIL AND POLITICAL RIGHTS IN THE UNITED STATES: REPORT OF THE UNITED STATES OF AMERICA UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1994).

3. *Id.* at vi.

4. Case 9647, Inter-Am. C.H.R. 61, OEA/ser.L./V./II.71, doc. 9 rev. 1 (1987) [hereinafter INTER-AMERICAN COMMISSION RULING].

5. *Panel Debates Soering Extradition*, UPI, Apr. 25, 1989.

6. *See* Dudley Althaus, *Mexican Official Visits Death Row*, HOUS. CHRON., Apr. 28, 1993, at A11 ("Amnesty International and other non-governmental human rights groups have also condemned capital punishment, which was reinstated in the United States in 1976.").

For the most part, international inquiry has not impacted conditions in this country. The international perspective should not be ignored, however. The United States loses credibility when it campaigns against human rights violations in other countries, and then fails to comply with the norms accepted around the world. As Justice Frankfurter wrote, "a State may be found to deny a person due process by treating even one guilty of crime in a manner that violates standards of decency more or less universally accepted . . . ."[7]

This Note discusses the United States' performance in regulating prisons and addresses the issue of capital punishment. More specifically, Part II-A of this Note details the international standards regulating prison conditions around the world.[8] Part II-B considers the impact of these standards on prisoner rights litigation in American courts,[9] while Part II-C examines the response of the international community to the American prison system.[10] Part III-A explores the use of the death penalty worldwide.[11] Finally, Part III-B focuses on the reaction of international tribunals to the special problem of the execution of juveniles.[12]

II. CONDITIONS IN UNITED STATES PRISONS

A. *International Guidelines for Prisons*

Conditions in U.S. prisons frequently fall below those of prisons in other countries. Describing such conditions as inexcusable, Justice Blackmun wrote in his dissent in *United States v. Bailey*:[13]

> There can be little question that our prisons are badly overcrowded and understaffed and that this in large part is the cause of many of the shortcomings of our penal systems.

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7. Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459, 469 (1947) (Frankfurter, J., concurring).
8. *See infra* notes 13-20 and accompanying text.
9. *See infra* notes 21-34 and accompanying text.
10. *See infra* notes 35-49 and accompanying text.
11. *See infra* notes 50-57 and accompanying text.
12. *See infra* notes 58-77 and accompanying text.
13. 444 U.S. 394 (1980) (Blackmun, J., dissenting).

> This, however, does not excuse the failure to provide a place of confinement that meets minimal standards of safety and decency.
>
> Penal systems in other parts of the world demonstrate that vast improvement surely is not beyond our reach. "The contrast between our indifference and the programs in some countries of Europe—Holland and the Scandinavian countries in particular—is not a happy one for us." "It has been many years since Swedish prisoners were concerned with such problems as 'adequate food, water, shelter'; 'true religious freedom'; and 'adequate medical treatment.'"[14]

In 1955, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the *Standard Minimum Rules for the Treatment of Prisoners*.[15] In 1957, the United Nations Economic and Social Council approved the standards, with amendments following in 1977.[16] The introduction to the Rules states:

> The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.[17]

These standards regulate specific aspects of penal institutions such as cell size and prisoner clothing.

Despite the fact that the drafters of these standards intended to reflect an international consensus, the rules are not necessarily controlling in American courts. The United States District Court of Connecticut addressed the weight of U.N. Standards in *Lareau v. Manson*:[18]

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14. *Id.* at 424 (citations omitted).

15. United Nations Economic and Social Council, STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS, *reprinted in* NIGEL S. RODLEY, THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW 327 (1987) [hereinafter U.N. Standards].

16. *Id.*

17. *Id.*

18. 507 F. Supp. 1177 (D. Conn. 1952).

> The adoption of the Standard Minimum Rules by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders and its subsequent approval by the Economic and Social Council does not necessarily render them applicable here. However, these actions constitute an authoritative international statement of basic norms of human dignity and of certain practices which are repugnant to the conscience of mankind. The standards in this statement are relevant to the "canons of decency and fairness which express the notions of justice" embodied in the Due Process Clause.[19]

As discussed below, American prisons do not always comply with the U.N. Standards despite the fact that the standards embody universally accepted minimum requirements for the humane treatment of prisoners.[20] While these rules may not be binding, "the Supreme Court has recognized the legitimacy of considering international opinion as an indicator of contemporary standards of decency."[21] These international norms should serve as guidelines for courts interpreting the Due Process Clause.

B. *The Role of International Standards in American Courts*

1. *Bell v. Wolfish*[22]

Despite the universal acceptance of the U.N. Standards, American courts have been reluctant to impose international rules on domestic correctional systems. In *Bell v. Wolfish*, the Supreme Court ruled that "double-bunking" pre-trial detainees, housing two inmates in a cell designed for one, was not per se unconstitutional.[23] This ruling was contrary to the provisions in Article 86 of the U.N. Standards, which states that "[u]ntried

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19. *Id.* at 1188 n.9 (citing Rochin v. California, 342 U.S. 165, 169 (1952) and quoting Malinski v. New York, 324 U.S. 401, 417 (1945) (Frankfurter, J., concurring)).

20. *See infra* part II.B.

21. Lisa K. Arnett, Comment, *Death at an Early Age: International Law Arguments Against the Death Penalty for Juveniles*, 57 U. CIN. L. REV. 245, 261 (1988).

22. 441 U.S. 520 (1979).

23. *Id.* at 536-37; *see also* Steven L. Winter, *Domestic Compliance with the Helsinki Accords: United States Prison Conditions and Human Rights*, 8 NEW ENG. J. ON PRISON L. 65, 68 (1982).

prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate."[24] As one commentator noted:

> Several courts, and in particular the Supreme Court in *Bell v. Wolfish* and *Rhodes v. Chapman*, have indicated an increased and unexamined deference to the concerns and presumed expertise of jail and prison administrators. In *Wolfish*, the Supreme Court took several stands which violate the *United Nations Standard Minimum Rules for Treatment of Prisoners (U.N. Standards)*, and which indicate a basic hostility to the protection of the human rights of the incarcerated.[25]

While *Wolfish* did not involve a particularly egregious human rights violation, it does illustrate the Supreme Court's casual disregard for clearly defined international standards. "The *Wolfish* and *Chapman* decisions do not indicate the scope nor the severity of human rights violations in United States jails and prisons; they only mark a newfound reluctance to correct such abuses."[26] The Court in *Wolfish* expressed concern regarding certain outrageous conditions in American prisons, yet it continued to emphasize the need for the judiciary to stay removed from the operation of prisons:

> The deplorable conditions and Draconian restrictions of some of our Nation's prisons are too well known to require recounting here, and the federal courts rightly have condemned these sordid aspects of our prison systems. But many of these same courts have, in the name of the Constitution, become increasingly enmeshed in the minutiae of prison operations.[27]

Unless the courts become more involved in the so-called "minutiae" of the penal system, it is unlikely that the U.N. Standards will positively affect prison conditions in this country.

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24. U.N. STANDARDS, Article 86, *supra* note 15.
25. Winter, *supra* note 23, at 67 (citations omitted).
26. *Id.* at 69.
27. *Bell v. Wolfish*, 441 U.S. 520, 562 (1979) (Marshall, J., dissenting).

2. *Lareau v. Manson*[28]

On the heels of *Wolfish*, the United States District Court of Connecticut decided *Lareau v. Manson*. As in *Wolfish*, the plaintiffs in *Lareau* were inmates who challenged the constitutionality of prison conditions. Specifically, the inmates challenged the "double-bunking" practice that had been upheld in *Wolfish*.[29]

This time, the court followed the U.N. Standards and ruled that housing more than one inmate at night in a cell designed for one was unconstitutional.[30] In referring to the U.N. Standards among other regulations, the court noted:

> Many of the pretrial detainees in the plaintiff class are forced to live in cells and dormitory accommodations which leave them with approximately one-half as much space as is prescribed, as minimally acceptable, by experts (including administrators of correctional facilities) concerned with the architecture of jails and prisons and the establishment of generally recognized correctional standards.[31]

The court found it significant that other federal courts had invoked the U.N. Standards for guidance.[32] Although the court followed the U.N. Standards in this matter, it held that the U.N. Standards were not binding in all instances.[33] In *Lareau*, the court carefully scrutinized the U.N. Standards because they had been adopted by the Connecticut legislature.[34] As in *Wolfish*, the court found that the rules promulgated by members of

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28. 507 F. Supp. 1177 (D. Conn. 1980).

29. *Id.* at 1183.

> The Court in Wolfish, eschewing any "attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention," held that on the facts of that case placing two inmates in a cell designed to house only one was not a form of impermissible "punishment."

Id. (quoting *Bell v. Wolfish*, 441 U.S. at 540-42).

30. *Id.* at 1190.

31. *Id.* at 1187 (citations omitted).

32. *Id.* at 1188-89 n.9.

33. *See supra* note 18 and accompanying text.

34. *Lareau*, 507 F. Supp. at 1187 n.9 (citing CONN. GEN. STAT. § 18-81 (West Cum. Supp. 1994)).

the United Nations were not controlling in American courts without some action from state or federal legislators.[35]

C. *Response from the International Community*

In 1989, the European Court of Human Rights considered whether death row conditions in the United States violated internationally accepted human rights.[36] University of Virginia honor student, Jens Soering, was accused of killing his girlfriend's parents in their Virginia home.[37] Soering, a German national and the son of a West German diplomat, fled the country after the murder and was arrested in London on other charges.[38] Upon the United States' request for Soering's extradition, Great Britain asked for assurances that Soering would not be subject to the death penalty if convicted or, if such a guarantee was prohibited by the United States Constitution, Great Britain requested that the government recommend to the proper authorities that the death penalty not be imposed.[39] Great Britain consented to the extradition after the prosecuting attorney in Virginia agreed to inform the judge of Great Britain's objection to the death penalty at Soering's sentencing.[40]

Soering appealed to the European Commission on Human Rights, alleging that Great Britain's decision to extradite him violated several Articles of the European Convention on Human Rights.[41] Specifically, Soering claimed that if extradited he could receive the death penalty and face inhuman and degrading treatment in violation of Article 3.[42] The Commission did not agree with Soering on the Article 3 claim, but referred the

35. *Id.* at 1187 n.9.
36. Soering v. United Kingdom, 11 Eur. Ct. H.R. (ser. A) 439 (1989).
37. *Id.* at 443.
38. *Id.*
39. *Id.* at 443-44.
40. *Id.* at 445-48.
41. *Id* at 463.
42. *Id.* Article 3 provides that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment." *Id.* (quoting Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 3, 213 U.N.T.S. 221).

case to the European Court of Human Rights on other grounds.[43]

The European Court of Human Rights held unanimously that extraditing Soering to the United States would violate Article 3.[44] The court found that, if returned to the United States, Soering risked exposure to the "death row phenomenon."[45] The court also expressed concern about the length of time inmates spend on death row awaiting execution:

> However well-intentioned and even potentially beneficial is the provision of the complex of post-sentence procedures in Virginia, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death.[46]

The court concluded that Great Britain could not extradite Soering to face capital murder charges without subjecting him to inhuman treatment in violation of Article 3.[47]

The European Court of Human Rights' decision was unusual because it involved an anticipated violation of rights rather than a violation that had already occurred. The court found, however, that "[t]he serious and irreparable nature of the alleged suffering risked warranted a departure from the rule, usually followed by the Convention institutions, not to pronounce on the existence of potential violations of the Convention."[48] The following month, Great Britain again agreed to extradite Soering, but this time only after an exchange of diplo-

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43. *Id.* at 464.

44. *Id.* at 470.

45. *Id.* "This phenomenon may be described as consisting in a combination of circumstances to which the applicant would be exposed if, after having been extradited to Virginia to face a capital murder charge, he were sentenced to death." *Id.* at 464.

46. *Id.* at 475-76.

47. *Id.* at 478.

> Article 3 not only prohibits the Contracting States from causing inhuman or degrading treatment or punishment to occur within their jurisdiction but also embodies an associated obligation not to put a person in a position where he will or may suffer such treatment or punishment at the hand of other States.

Id. at 464.

48. *Id.* at 468.

matic notes which guaranteed that Soering would only face "non-capital murder charges."[49]

III. THE DEATH PENALTY

A. *International Response to Capital Punishment*

"While some areas of the world, such as Africa and the Middle East, still enforce the death penalty regularly, most of the industrialized Western nations have abandoned the practice or are moving towards that goal."[50] Despite this trend, the United States still defends capital punishment vehemently.

Amnesty International has stepped in to block executions in this country on numerous occasions.[51] For example, the non-governmental organization filed a petition before the Inter-American Commission on Human Rights after two men were executed for crimes committed before their eighteenth birthdays.[52] The group also drafted an amicus brief in the United States Supreme Court in which it urged the Supreme Court to stay the execution of a juvenile under age sixteen.[53]

The Mexican government has also taken an active role in the attempt to prevent executions in this country. In April 1993, a delegation of Mexican officials visited Mexicans on death row in the United States in an effort to publicize the country's disagreement with capital punishment.[54] Jorge Madrazo, the spokesperson for the delegation, told reporters that "the Mexican rights commission will continue pushing for the abolishment of capital punishment."[55] Madrazo described the death penalty as a "'cruel and inhuman' penalty that falls most heavily upon the poor."[56]

International disapproval of capital punishment should have some bearing on judicial decisions regarding the imposition of

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49. *Britain Willing to Return Soering to Face Trial*, UPI, Aug. 1, 1989.
50. Arnett, *supra* note 21 at 254.
51. *See* Althaus, *supra* note 6.
52. *See* INTER-AMERICAN COMMISSION RULING, *supra* note 4.
53. Thompson v. Oklahoma, 487 U.S. 815 (1988).
54. *See* Althaus, *supra* note 6.
55. *Id.*
56. *Id.*

the death penalty in the United States. The *Soering* case illustrates the influence that international tribunals can have over decisions in American courts. Even if the text of the Constitution does not prohibit the death penalty, judges can look to international law for guidance when deciding whether to bar or restrict the imposition of death sentences.[57]

B. *The Special Problem of Juvenile Offenders*

International law treats the execution of juvenile offenders specially. Of the countries that still enforce the death penalty, more than forty have outlawed the execution of juveniles.[58] Both the International Covenant on Civil and Political Rights and the American Convention on Human Rights "prohibit the imposition of the death penalty on individuals who were under the age of eighteen when they committed their crimes."[59] Most members of the United Nations report that no juvenile executions occurred within their borders during recent times.[60]

Despite the international outcry, federal legislators have refused to outlaw the execution of offenders under the age of

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57. Joan F. Hartman, *"Unusual" Punishment: The Domestic Effects of International Norms Restricting the Application of the Death Penalty*, 52 U. CIN. L. REV. 655, 657 (1983).

> Deciding whether states are limited in imposing the death penalty requires careful exploration of the conceptual and methodological gaps and weaknesses that plague the formation of customary international law, particularly in a human rights context. Domestic enforceability of customary norms has become the promising new frontier for human rights proponents in the United States, as a result of recent instances of successful litigation, the unlikelihood of Senate ratification of the major human rights treaties and the domestic insignificance of treaties that are non-self-executing.

Id. (citations omitted).

58. *See* Arnett, *supra* note 21, at 254.

59. *Id.* at 252.

> The International Covenant on Civil and Political Rights (ICCPR) provides in pertinent part that a "[s]entence of death shall not be imposed for crimes committed by persons below eighteen years of age." Similarly, the American Convention on Human Rights (ACHR) provides that "[c]apital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age."

Id. (citations omitted).

60. *Id.* at 254.

eighteen. Amnesty International verified that of the eight juvenile executions that occurred worldwide between January 1980 and May 1986, three took place in the United States.[61] A plurality of the United States Supreme Court ruled in *Thompson v. Oklahoma*[62] that the Eighth Amendment's ban of cruel and unusual punishment prohibits the execution of offenders who were under the age of sixteen when they committed the offense.[63] Beyond that limitation, states are free to regulate other aspects of the punishment.[64] While some states have passed legislation prohibiting the execution of offenders who were under age eighteen at the time of the crime, other states have refused to draft legislation establishing a minimum age.[65]

International tribunals and non-governmental organizations have criticized the United States extensively for its policy on executing juveniles. In 1987 the Inter-American Commission on Human Rights ruled that the United States violated its international obligations by refusing to outlaw the execution of juveniles.[66] Specifically, the Commission convened to decide whether "the absence of a federal prohibition on the execution of juveniles [sic] offenders within U.S. domestic law violates the human rights standards applicable to the United States under the inter-American system."[67]

The Inter-American Commission became involved after James Terry Roach and Jay Pinkerton were executed in South Carolina and Texas, respectively.[68] Both men were sentenced to

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61. *Id.* at 254-55.

62. 487 U.S. 815 (1988).

63. *Id.* at 838; *see* Arnett, *supra* note 21, at 254. "While no state supreme court has found the juvenile death penalty unconstitutional per se, some state courts have overturned death sentences due to the defendant's youth at the time of the crime." *Id.* at 257.

64. This practice alone has been the subject of international criticism:

> The United States is the only federated country in the world with divided jurisdictions regarding the death penalty. As the Inter-American Commission on Human Rights noted, this system allows "a hodge-podge of legislation," which causes "a pattern of legislative arbitrariness throughout the United States which results in the arbitrary deprivation of life."

Arnett, *supra* note 21, at 262.

65. *Id.* at 249.

66. INTER-AMERICAN COMMISSION RULING, *supra* note 4.

67. *Id.*

68. *Id.*

death for crimes they committed before their eighteenth birthdays.[69] The American Civil Liberties Union, the International Human Rights Law Group, and Amnesty International all filed petitions with the Commission.[70]

The Commission concluded that the executions of Pinkerton and Roach violated Articles I and II of the American Declaration of the Rights and Duties of Man.[71] Article I of the Declaration states "[e]very human being has the right to life, liberty and the security of his person." While the declaration does not expressly prohibit the execution of juveniles, the Commission found that such a prohibition was implicit:

> The Commission finds that in the member States of the OAS there is recognized a norm of *jus cogens* which prohibits the State execution of children. This norm is accepted by all the States of the inter-American system, including the United States. The response of the U.S. Government to the petition in this case affirms that "[A]ll states, moreover, have juvenile justice systems; none permits its juvenile courts to impose the death penalty."[72]

The ruling of the Commission may have had limited impact on the Supreme Court. In June 1988, more than a year after the Commission's ruling, the Court decided *Thompson v. Oklahoma*.[73] Four justices joined in a plurality opinion and held that the:

> conclusion that it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense is consistent with the views that have been expressed by respected professional organizations, by other nations that share our Anglo-American heritage, and by the leading members of the Western European community.[74]

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69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* at 81 (citation omitted).
73. 487 U.S. 815 (1988).
74. *Id.* at 830.

The Court's conclusion that it was conforming with international standards was somewhat inaccurate. The Inter-American Commission ruled that the United States violated international law when it executed offenders under age eighteen. Prohibiting the execution of offenders under age sixteen does not put the United States in compliance with international norms.

One commentator suggests that "[c]learly, the practice of executing juveniles is disfavored by the international community. International law, practice, and opinion all militate against the use of this most extreme punishment for youthful offenders."[75] She argues that "these international standards should influence United States law regarding the juvenile death penalty through their incorporation into federal common law or as an aid to interpreting the Constitution."[76]

IV. CONCLUSION

Ostensibly, the United States leads the world in the protection of human rights by example. John Shattuck characterized the State Department's report on Civil and Political Rights in the United States as "meant to offer to the international community a sweeping picture of human rights observance in the United States and the legal and political system within which those rights have evolved and are protected."[77] The United States cannot eliminate human rights violations around the world, however, when violations occur frequently in its own penal system.

It may be impossible for courts alone to remedy this problem. One commentator writes that the "problems of United States prisons are substantial, extensive, and to some extent impervious to judicial reform."[78] Recognizing that "courts sometimes have been reluctant to find international law dispositive," another author suggests that "a shift in the presumption about

75. Arnett, *supra* note 21, at 255.
76. *Id.*
77. CIVIL AND POLITICAL RIGHTS IN THE UNITED STATES, *supra* note 2, at i.
78. Winter, *supra* note 23, at 65.

whether a court will enforce an internationally created right is necessary."[79]

Arguably, the judicial system has more power than it assumes when it comes to enforcing international norms domestically. As part of the branch of government charged with interpreting the law, the Supreme Court could examine international law more closely when deciding domestic questions. "By using international law to inform, or aid in the interpretation of a constitutional right, the right attains greater credence as one that has universal recognition."[80]

Even if the courts are unable, or unwilling, to further international human rights law in this country, the legislative branch has the power to make these universal norms binding rather than just persuasive. "Action by the Senate on the human rights treaties that have been pending before it for more than a decade would give aggrieved persons a surer remedy than now exists in the current state of uncertainty about customary law."[81] Legislators are responsible for passing laws which reflect the values and conscience of the country. Many commentators are puzzled by Congress' reluctance to ratify treaties which attack human rights violations on a universal scale.[82] International norms should be reflected in binding domestic legislation.

The United States Constitution extends the power to interpret laws of this country, including Treaty law, to the judicial branch of government.[83] It is clear that the framers intended

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79. Note, *Judicial Enforcement of International Law Against the Federal and State Governments*, 104 HARV. L. REV. 1269, 1288 (1991).

> If elected representatives are unhappy with courts' interpretation of or compliance with a particular international law, they can easily negate its domestic effect. In the absence of word from the elected branches, however, the courts should enforce the law—both domestically and internationally created law. It simply no longer makes sense to maintain that, until they hear otherwise, judges should continue to overlook remediable violations of the law that courts are well-equipped—and obligated—to address.

Id.

80. Arnett, *supra* note 21, at 260.

81. Lori F. Damrosch, *International Human Rights Law in Soviet and American Courts*, 100 YALE L.J. 2315, 2333-34 (1991).

82. *See* William D. Auman, *International Human Rights Law: A Development Overview and Domestic Application within the U.S. Criminal Justice System*, 20 N.C. CENT. L.J. 1, 26 (1992).

83. U.S. CONST. art. III, § 2 ("The Judicial Power shall extend to all Cases, in

for international law to play a role in the domestic system. To disregard the international perspective when deciding issues of human rights is to ignore a vital source of law.

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Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority . . . .").