Title
The United States' Engagement with International Law: An Analysis of the Economic Complexities that Crystallized the Nation's Stance on Racial and Gender Rights

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THE UNITED STATES’ ENGAGEMENT WITH INTERNATIONAL LAW: AN ANALYSIS OF THE ECONOMIC COMPLEXITIES THAT CRYSTALLIZED THE NATION’S STANCE ON RACIAL AND GENDER RIGHTS

Keywords: CEDAW; ICERD; gender equality; racial equality; human rights
This publication is forthcoming:


*Kindly note the title change
ABSTRACT

The United States became a member of the United Nations’ core anti-racism treaty, ICERD, but has not passed its core gender equality treaty, CEDAW. This publication explores why the US passed only one of the multilateral agreements. It interrogates power, misinterpretation, and compliance theories that developed to explain the nation’s behavior. The publication also examines the economic costs associated with ratifying each treaty.

CONCLUSIONS

CEDAW’s objective mandates, compared to how the US government perceives ICERD’s articles, are more financially costly in regards to content about public services, educational resources and cultural prejudices, and paid leave including remunerated maternity leave. The publication proves this difference was a driving factor for the nation to enter into the race convention and not the women’s pact. Although full compliance with both treaties would demand allocations of the nation’s economic resources, the allocations are critical to meet international human rights standards. Thus, this publication reveals numerous strategies the US should adopt to further realize gender and racial equality.
METHODOLOGIES

• Qualitative feminist and legal analysis
• Examining statements made by US political figures
• Examining US policies and transnational treaties

CONTRIBUTIONS

• Contributes to legal, human rights, and feminist scholarship
• Provides insight about the United States’ misinterpretation of ICERD
• Provides insight about why the US fails to sanction CEDAW even though it frames itself as a support of women’s rights
• Provides insight about why the US portrays itself as valuing anti-racism norms over gender equality norms through ratification of the UN’s core anti-racism treaty and not its core gender equality treaty
THE VALUE OF THIS RESEARCH

• This research draws attention to why the nation privileges anti-racism norms over women’s rights norms in international legislation. The conventions are the only binding United Nations treaties that are designed to primarily address anti-discrimination, yet the government validated the racial equality statute through its ratification while it fails to validate the gender equality treaty. This projects to nations throughout the world that the US values anti-racism norms over gender equality norms. It also conflicts with the state’s efforts to improve women’s rights abroad through advocacy and through its minimized economic exchanges related to aid, foreign investment, and trade relations with countries that grossly violate women’s rights.

• Moreover, residents in the US can lobby their government to fulfill its duties to ICERD where they believe it has not done so. However, the nation is not bound to CEDAW, therefore when its nationals lobby the state to adopt the treaty’s norms they have less force behind their efforts.

• Overall, this publication underscores domestic discrimination against women that continues to exist in US politics, economics, public policy, and in the nation’s private sphere. It also finds the nation’s interpretation of the racial pact falls short of the treaty’s mandates.

• This publication identifies strategies the US must adopt to further realize gender and racial equality in order to meet international human rights standards.
COMMON THEORIES TO EXPLAIN WHY THE US RATIFIED ICERD AND NOT CEDAW

1. POWER THEORY
2. COMPLIANCE THEORY
3. MISINTERPRETATION THEORY

The power theory determines the US sanctioned ICERD over CEDAW in order to maximize its power in the international sphere while preserving its sovereignty. In comparison, the compliance theory assumes the nation met all obligations of the racial equality treaty prior to its ratification and the misinterpretation theory informs conservative proponents of traditional gender roles misinterpret CEDAW to conflict with what they determine as core morals in the United States.
POWER THEORY

• Theorists assert the US could maximize its power by strategically maintaining engagement with the UN (a transnational norm setter) through ratification of ICERD and at the same time the treaty would minimally interfere with the nation’s sovereignty

• CEDAW opponents believe sanctioning the gender pact will limit US domestic power by interfering with the nation’s sovereignty because there are significant gaps between the nation’s jurisprudence and the pact’s mandates

• Theorists summarize that the gender statute is less powerful because, one, it provides rights to women only while the racial pact’s mandates are applicable to all people, two, anti-racism norms are more transnationally valued than anti-sexism norms, three, the ICERD committee has greater capabilities than CEDAW’s monitoring body, and four, members of the racial convention have greater ability to regulate reservations than members to the gender treaty
MISINTERPRETATION THEORY

- Determines CEDAW opponents perceive the gender treaty to be more demanding than what it in reality mandates
- CEDAW opponents object the treaty due to their misperception that it mandates the permanent legalization of abortion, same sex marriages, and prostitution
- The US fails to pass CEDAW because conservatives who are also influential policy makers argue the statute combats traditional family values which they believe are the moral basis of society
- Conservative policy makers argue that CEDAW is negotiated by radical feminists who are anti-family, and that the convention denigrates the role of female homemakers, works to eliminate national policies and cultural norms that support female homemakers, threatens traditional motherhood roles that are considered necessary to pass on cultural values, undermines nuclear family structures, and forces women into paid employment and children into daycare
The theory contends that the United States government found it was in full compliance with ICERD prior to sanctioning the anti-racism pact and reserved upon articles it found conflict with its domestic operations. The theory deems the nation entered into the racial equality multilateral agreement because the state’s policies are predominantly compliant with the treaty’s objective mandates, including in regards to mandates about social, economic, and cultural rights, which are types of rights the nation generally does not recognize as legally enforceable. The United States had no intention of changing its domestic practices upon ratification of ICERD and has made little effort to implement the treaty after ratification.
The United States perceives ICERD’s mandates to be less financially demanding than CEDAW’s objective mandates. Although the racial statute contains articles that should be economically burdensome on member states, the nation interprets it in a manner that produces minimal economic costs. However, the women’s treaty contains a number of articles that specify costly measures its members are required to implement in order to be in compliance with the convention. The nation perceives the race convention to be less economically costly than the gender statute’s objective mandates in regards to content about:

1. PUBLIC SERVICES
2. EDUCATIONAL RESOURCES AND CULTURAL PREJUDICES
3. PAID LEAVE INCLUDING REMUNERATED MATERNITY
SOCIAL, ECONOMIC, AND CULTURAL RIGHTS

- ICERD’s Article 2.2 informs its members “shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms (emphasis added)”

- ICERD’s Article 5.e informs its member states must “guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights…. (emphasis added).” The Article lists a series of rights, which include the right to just and favorable remuneration, housing, social security, public health, medical care, social services, and protection against unemployment
SOCIAL, ECONOMIC, AND CULTURAL RIGHTS

• The US fails to accept social, economic, and cultural rights as true human rights that should be respected

• The nations’ history of progressive social, cultural, and political accomplishments prompts many of its nationals to believe it is supreme in its operations and that anyone can persevere in the public sphere if they work hard enough

• Both the gender and racial statute contain economic, social, and cultural rights, yet the nation perceives the cost of implementing ICERD is marginal compared to the objective costs of CEDAW’s mandates

• The US interprets ICERD to mandate *equality before the law* in regards to the rights, while CEDAW mandates the *provision* of specific social, economic, and cultural rights
PAID LEAVE INCLUDING REMUNERATED MATERNITY LEAVE

• CEDAW’s Article 11.1.e provides women the right to “paid leave,” which is reinforced in Article 11.2.b that states that members must “introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances”

• The Family and Medical Leave Act (FMLA) is the present federal legislation that monitors family and medical absences including maternity leave

• Under the act, women can take a twelve-week unpaid leave of absence from their place of employment

• Eligible employees for the FMLA cannot work in the informal sector, must have worked approximately twelve hundred hours for their employer, must have worked for the same employer for twelve months, and the employer must have at least fifty employees

• Therefore, the United States fails to protect unpaid leave for many of its nationals and it fails to federally mandate paid leave
PUBLIC SERVICES

CEDAW’s Article 11.1.e objectively explains that women are to have the “right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave”

- The Article would bind the state to continue offering its current public services and to begin offering services in the areas listed it currently does not
- Although some of the obligations are met to date, sickness benefits are not federally mandated
- In 1995 unemployment insurance payments equated to $21.9 billion. However, women are often part time workers, and such workers are not legally applicable for the program
- The Old-Age, Survivors, and Disability Insurance program provides monthly payments to US nationals who endure loss of income due to disability, retirement, or a spouse’s death, and is the largest income-maintenance program in the United States. However, all social security payments are at risk of being expunged
• CEDAWs Article 11.2.c objectively requires members “to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities”

• The US in dominance expects parents to find such resources autonomously from state aid

• Article 11.2.c would require the nation to, at the very least, dedicate resources to promote the establishment and development of more childcare facilities so working parents can better meet their children’s needs
PUBLIC SERVICES

• CEDAW’s Article 12.2 objectively requires state parties to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation”

• The nation presently offers Medicaid that finances 40% of all births in the United States. Medicaid coverage for pregnant women includes prenatal care through the pregnancy, labor, and delivery, and for 60 days postpartum as well as other pregnancy-related care

• Upon ratification the country would permanently bind itself to providing the economically costly services to women and to expand the provision to a greater pool of women, despite the fact there is widespread political disagreement and ambiguity about the need for such programs
EDUCATIONAL RESOURCES AND CULTURAL PREJUDICES

• ICERD’s Article 7 contends that members to the Convention must “adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination….”

• Comparatively, CEDAW’s Article 10.c delineates that state parties must “take all appropriate measures” to ensure “the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education…in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods”

• While both articles produce costs because adopting measures to eliminate prejudices requires state resources, the gender treaty’s language is specific while the racial statute’s terminology is broad

• The race convention allows states to interpret what immediate measures they should adopt to combat discrimination in the stated fields, in contrast, the gender convention specifically requires its members to, among other initiatives, revise textbooks
EDUCATIONAL RESOURCES AND CULTURAL PREJUDICES

- The gender pact’s Article 10.c would be continuously costly to implement because it objectively obligates members to “eliminate” stereotyped gender roles at “all levels.” In this sense, state parties are expected to make continuous progression towards destabilizing gendered appropriation.

- In contrast, the racial multilateral agreement’s Article 7 obligates its members to conduct “immediate” measures to combat racial prejudices.

- Upon sanctioning ICERD the US should have adopted new policies to assure racism further deteriorates in the fields listed in Article 7 in order to be in compliance with the mandate. Nevertheless, although the country has not implemented new policies, it constructs that it wholly complies with the Article as well as with the convention in general.
EDUCATIONAL RESOURCES AND CULTURAL PREJUDICES

- ICERD’s Article 3 requires its members to “condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”
- The nation perceives that it fulfills the requirement because the Supreme Court ruled de facto segregation does not constitute discrimination.
- In confliction with this standpoint, despite segregation not being required by law, the ICERD Committee criticizes the nation for the lingering racially based residential segregation and its negative consequences on people of color.
- The Committee urges the government to increase “the development of public housing complexes outside poor, racially segregated areas” and to “ensure the effective implementation of legislation adopted at the federal and state levels to combat discrimination in housing, including the phenomenon of ‘steering’ and other discriminatory practices carried out by private actors.”
BREAK THE CHAINS!
UNLEASH THE FURY OF WOMEN AS A MIGHTY FORCE FOR REVOLUTION

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