

NAME AND SHAME: HOW INTERNATIONAL PRESSURE ALLOWS CIVIL RIGHTS ACTIVISTS TO INCORPORATE HUMAN RIGHTS NORMS INTO AMERICAN JURISPRUDENCE

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INTRODUCTION

The United States has ratified international human rights treaties sparingly. Where it has ratified, it has provided such a large number of reservations that the treaties' domestic effects are effectively nullified. Even though international human rights *law* has not been directly incorporated into American jurisprudence, however, international human rights *norms* have greatly affected civil rights provisions in the United States by naming and shaming American civil rights abuses. Recognizing the relatively low success rate of tackling systemic racism in the United States through treaty implementation, this Note instead argues that naming and shaming American civil and human rights abuses more effectively forces domestic social progress. Furthermore, to maximize success, naming and shaming should expand from shaming the federal government to also shaming non-state actors who enable human rights abuses in the United States.

Part I of this Note will overview the human rights treaties that the United States has ratified and the differences between treaty provisions

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and American constitutional rights. It will then address several human rights enforcement mechanisms, with a focus on naming and shaming. Part II will provide a brief history of civil rights activists' appeals to international human rights frameworks in the 1940s–60s and the results of such appeals. Finally, Part III will address more recent international human rights appeals and their outcomes, as well as offer thoughts on how naming and shaming non-state actors may benefit civil rights and social justice movements going forward.

I. TENSIONS BETWEEN THE UNITED STATES CONSTITUTION AND INTERNATIONAL HUMAN RIGHTS LAW AND ENFORCEMENT

The United States has ratified three core human rights treaties: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment;¹ the International Covenant on Civil and Political Rights;² and the International Convention on the Elimination of All Forms of Racial Discrimination.³ These treaties generally provide more rights protections than are found in United States constitutional law and also provide broader protections than many pre-existing constitutional rights.⁴ The significant number of limitations that the United States has placed on domestic treaty implementation helps illustrate why civil rights activists in the United States look to international human rights to expand rights protections at home. The treaty provisions that provide rights not found in the Constitution are discussed in more detail in Section A. Section B then overviews human rights enforcement mechanisms used as alternatives to treaty ratification.

A. *Status of International Treaties in the United States*

The manner by which the United States has ratified its three core human rights treaties has limited the treaty rights available to

1. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, S. TREATY DOC. No. 100-20, 1465 U.N.T.S. 85 (entered into force June 26, 1987) [hereinafter Torture Convention].

2. International Covenant on Civil and Political Rights, *opened for signature* December 16, 1966, S. TREATY DOC. No. 95-20, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter CCPR].

3. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* December 21, 1965, S. TREATY DOC. No. 95-18, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD].

4. Richard B. Lillich, *The Constitution and International Human Rights*, 83 AM. J. INT'L L. 851, 852 (1989).

Americans.⁵ Prior to ratifying a treaty, the Department of Justice determines whether any provisions of the treaty contain rights protections that differ from current domestic law.⁶ Then, a reservation, understanding, or declaration (“RUD”) is drafted to excuse the United States from complying with the rights provision.⁷ The following subsections will overview the RUDs most relevant to civil rights protections. Further limiting the domestic impact of each treaty, the United States has attached non-self-executing declarations to the three human rights treaties it has ratified, meaning that the treaty does not carry the force of law on its own and must be implemented by legislation to be actionable.⁸ Finally, the United States has not assented to participation in rights hearings conducted by any of the treaty monitoring bodies for treaties it has ratified.⁹

1. The Torture Convention

The United States ratified the Torture Convention on October 21, 1994, ten years after it opened for signature.¹⁰ Eight RUDs were listed upon ratification.¹¹ The first reservation notes that the United States is only bound to Article 16 of the Convention, which references the prevention of “cruel, inhuman or degrading treatment or punishment,” insofar as such “punishment” means the punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments of the Constitution.¹² In its second reservation, the United States asserts that it will not be bound by Article 30 paragraph 1,¹³ which provides for the resolution of disputes between parties to the Convention.¹⁴ Each understanding listed by the United States provides definitions of torture that slightly differ from those contained in the Convention, or otherwise limits the Convention’s reach.¹⁵ Finally, as is the case for all three treaties ratified

5. See Kenneth Roth, *The Charade of US Ratification of International Human Rights Treaties*, 1 CHI. J. INT’L L. 347, 347 (2000) (“[O]n the few occasions when the US government has ratified a human rights treaty, it has done so in a way designed to preclude the treaty from having any domestic effect.”).

6. *Id.*

7. *Id.*

8. *Id.* at 348–49.

9. *Id.* at 349.

10. Torture Convention, *supra* note 1.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* art. 30. However, it does note that it may to agree to dispute resolution or arbitration in certain cases. *Id.*

15. Torture Convention, *supra* note 1.

by the United States, it declares that the Convention's provisions are not self-executing.¹⁶

2. Covenant on Civil and Political Rights

The United States ratified the CCPR on June 8, 1992, nearly twenty-five years after it was opened for signature and over fifteen years after it entered into force.¹⁷ Upon ratification, the United States listed thirteen RUDs.¹⁸ The first reservation notes that Article 20 of the Covenant, which prohibits the incitement of discrimination or violence on the basis of race, nationality, or religion,¹⁹ cannot “authorize or require legislation . . . that would restrict the right of free speech and association protected by the Constitution.”²⁰ Other reservations address capital punishment, cruel and inhuman treatment, and the treatment of juveniles as adults in criminal cases.²¹

The first understanding listed by the United States notes that race-based and other distinctions are permissible when “such distinctions are, at minimum, rationally related to a legitimate governmental objective.”²² This understanding further notes that the prohibitions in Article 4 paragraph 1 on discrimination during emergency situations will not “bar distinctions that may have a disproportionate effect upon persons of a particular status.”²³

Finally, in its first declaration, the United States affirms that the Covenant is not self-executing.²⁴ Its second declaration notes that the United States “will continue to adhere to the requirements and constraints of its Constitution in respect to . . . restrictions and limitations [on the freedom of expression].”²⁵ In its final declaration, the United States notes that Article 47 applies only to international law and not to domestic law.²⁶ That article recognizes that nothing in the Covenant may impair “the inherent right of all peoples to enjoy and

16. *Id.*

17. CCRP, *supra* note 2.

18. *Id.*

19. *Id.* art. 20.

20. CCRP, *supra* note 2.

21. *Id.*

22. *Id.*

23. *Id.* Other understandings address compensation for miscarriages of justice, the goals of punishment, the provision of counsel in criminal cases, and the prohibition on double jeopardy.

24. *Id.*

25. *Id.*

26. *Id.*

utilize fully and freely their natural wealth and resources.”²⁷ Neither state legislatures nor Congress has implemented legislation that would enforce the Covenant domestically.²⁸

3. Convention on the Elimination of All Forms of Racial Discrimination

CERD, arguably the treaty that most directly impacts civil rights and racial justice in the United States, was ratified by the United States on October 21, 1994, approximately twenty-five years after the treaty first went into force.²⁹ Again, the ratification was subject to several RUDs. First, the United States noted existing Constitutional protections for the freedom of speech, expression, and association.³⁰ As a result, the United States refused to accept obligations that would require restricting these freedoms and particularly objected to Articles 4 and 7 of the Convention.³¹ Article 4 directs parties to the Convention to condemn propaganda and organizations that promote any form of racial superiority or racial hatred.³² It also directs states to adopt “measures designed to eradicate all incitement to, or acts of, such discrimination” by prohibiting (1) hate speech, incitement of violence against any race, and the “provision of any assistance to racist activities”; (2) organizations and organized activity promoting racial discrimination; and (3) the promotion of racial discrimination by public authorities and institutions.³³ Article 7 requires parties to the Convention to adopt “immediate and effective measures” designed “to combat[] prejudices which lead to racial discrimination and to promot[e] understanding, tolerance and friendship among nations and racial or ethnical groups.”³⁴

Second, the United States noted existing Constitutional protections against discrimination and highlighted American values of protecting private conduct from government interference.³⁵ These values led the Senate to refuse any obligations outlined in Article 2 paragraph 1 and

27. *Id.* art. 47.

28. See David Kaye, *State Execution of the International Covenant on Civil and Political Rights*, 3 U.C. IRVINE L. REV. 95, 111 (2013) (“[W]ith some marginal exceptions, the United States has not implemented the Covenant domestically in any meaningful way.”).

29. CERD, *supra* note 3.

30. *Id.*

31. See *id.*

32. *Id.* art. 4.

33. *Id.*

34. *Id.* art. 7.

35. CERD, *supra* note 3.

subparagraphs (c) and (d), Article 3, and Article 5 “with respect to private conduct except as mandated by the Constitution and laws of the United States.”³⁶ Article 2 paragraph 1 requires that parties to the Convention “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination.”³⁷ Subparagraph (c) requires that each party amend or nullify any of its laws that “have the effect of creating or perpetuating racial discrimination,” and subparagraph (d) requires that states “shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.”³⁸

Article 3 directs parties to the Convention to “condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”³⁹ Article 5 reemphasizes the requirements of Article 2, and further requires parties “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.”⁴⁰ The article then lists rights that states must protect, including equal treatment in the administration of justice; state protection against violence or bodily harm; political rights; civil rights; economic, social, and cultural rights; and access to public accommodations.⁴¹

Third, the United States required that it must consent to any dispute submitted to the International Court of Justice to which it is a party.⁴² Fourth, the United States recognizes that the Convention would only “be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments.”⁴³ Finally, since CERD’s ratification and its accompanying non-self-executing declaration,

36. *Id.*

37. *Id.* art. 2(1).

38. *Id.* art. 2(1)(c)–(d).

39. *Id.* art. 3.

40. *Id.* art. 5.

41. *Id.* Political rights include “the right to participate in elections” and “to take part in the Government.” Civil rights include the rights to freedom of movement within the state, to leave any country, to nationality, to marriage, to own property, to inherit, to freedom of thought and religion, to freedom of opinion and expression, and to freedom of peaceful assembly and association. Economic, social and cultural rights include the rights to work, to form and join unions, to housing, to public health, to education, and to equal participation in cultural activities.

Id.

42. CERD, *supra* note 3.

43. *Id.*

Congress has yet to implement any legislation that would create a private right of action in domestic courts for violations of the Convention.⁴⁴

4. Enforcing Human Rights in the United States

Quantitative analyses provide conflicting views about the effect of treaty ratifications on the enforcement of human rights. One study concluded that there is “no statistically significant relationship between treaty ratification and human rights ratings.”⁴⁵ The study further found that countries that have ratified treaties are less likely to comply with these treaties than those countries that have not ratified.⁴⁶ Nevertheless, a more recent study based on new data and metrics to measure accountability suggested that ratification may indeed be correlated with higher respect for human rights.⁴⁷ Regardless, given the United States’ failure to ratify all nine core human rights treaties,⁴⁸ and its further failure to meaningfully implement those it has ratified, there appears to be little opportunity for human rights enforcement through treaty ratification in the United States.⁴⁹ Nevertheless, human rights enforcement can come in many forms beyond treaty ratification. This subsection will overview a variety of methods employed to minimize human rights violations, with a particular focus on “naming and shaming.”

Beyond treaty ratification, human rights protections may be enhanced through domestic policies designed to mitigate human rights

44. Audrey Daniel, *The Intent Doctrine and CERD: How the United States Fails to Meet Its International Obligations in Racial Discrimination Jurisprudence*, 4 DEPAUL J. FOR SOC. JUST. 263, 275 (2011).

45. Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935, 1994 (2002). For survey methods, see *id.* at 1989–92.

46. *Id.* at 1989, 1994.

47. Christopher J. Fariss, *The Changing Standard of Accountability and the Positive Relationship Between Human Rights Treaty Ratification and Compliance*, 48 BRIT. J. POL. SCI. 239, 266 (2017).

48. The nine core human rights treaties are the Torture Convention, CERD, CCPR, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and Convention on the Rights of Persons with Disabilities. *The Core International Human Rights Instruments and their monitoring bodies*, UNITED NATIONS, <https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx> (last visited Mar. 5, 2020).

49. See Roth, *supra* note 5, at 350 (“Indeed, one is hard-pressed to identify any US conduct that has changed because of the government’s supposed embrace of international human rights standards.”).

violations.⁵⁰ Self-reporting is one method that serves to enforce human rights and is the process by which states “engage in ongoing dialogue [about treaty compliance and human rights violations] with . . . treaty bodies.”⁵¹ Other suggestions seek to enhance protections by changing the way external actors enforce human rights. Currently, courts seeking to address human rights violations often employ a backwards-looking, retributive framework that seeks to punish those who have already committed violations, mirroring the criminal law process.⁵² Scholar Andrew Keane Woods has suggested alternatives to this criminal law model of enforcing human rights by arguing in favor of three alternative models to promote human rights: the tort model, the development model, and the Red Cross model.⁵³ The tort model is forward-looking and treats “rights violations as costly accidents to avoid going forward.”⁵⁴ The development model addresses existing state frameworks associated with rights violations and emphasizes economic rights violations.⁵⁵ Last, the Red Cross model eschews naming and shaming in favor of meeting privately and confidentially about rights violations.⁵⁶

Another method employed to enforce human rights is naming and shaming. Naming and shaming is the process by which states, nongovernmental organizations, or the media publicly call out another actor—usually a governmental actor—for committing human rights violations.⁵⁷ One example of naming and shaming is Human Rights

50. See KATHRYN SIKKINK, EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY 183–84 (2018). Six such policies include those that seek to: “(1) diminish war and seek nonviolent solutions to conflict; 2) promote democracy and enhance the quality of existing democracies; 3) guard against dehumanizing and exclusionary ideologies, whether about race, religion, gender, class, or any other status; 4) encourage states to ratify existing human rights treaties and work to enforce human rights laws and norms through nonviolent means; 5) end impunity, by supporting domestic and international accountability that can deter future crimes; and 6) support, expand, and protect domestic and transnational mobilization on behalf of human rights.” *Id.*

51. Cosette D. Creamer & Beth A. Simmons, *The Proof Is in the Process: Self-Reporting Under International Human Rights Treaties*, 114 AM. J. INT’L L. 1, 1 (2020). Self-reporting requirements are common enforcement tools in international law. *Id.* at 6. Human rights enforcement through self-reporting is enhanced by increased government commitment to human rights, state capacity, and regular reporting within regions. *Id.* at 19–20.

52. Andrew Keane Woods, *Discounting Rights*, 50 N.Y.U. J. INT’L L. & POL. 509, 527–29 (2018).

53. *Id.* at 534.

54. *Id.*

55. *Id.* at 535.

56. *Id.* at 537.

57. Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT’L ORG. 689, 689 (2008); see *name and shame*, CAMBRIDGE ONLINE

Watch's annual World Report, which touches on human rights issues around the globe.⁵⁸ In 2021, for instance, the Report opened with scathing criticism of the Trump administration's human rights record and a call for President Biden to make rights protections central to his administration.⁵⁹ The Report went on to call out the United States for several human rights violations, including racial injustice, limitations on women's access to healthcare, poor climate policies, and partnerships with abusive governments abroad.⁶⁰

In 2008, scholar Emilie Hafner-Burton published the first global statistical analysis of naming and shaming, which showed that it can be effective.⁶¹ Hafner-Burton gathered evidence that governments that were shamed as human rights violators generally improved their human rights protections by holding elections or passing rights-affirming legislation.⁶² Kenneth Roth, Executive Director of Human Rights Watch, further argues that naming and shaming works best when it generates public outrage in the country that is being shamed.⁶³ Shaming best generates this outrage when three factors are clearly identifiable: 1) the precise action amounting to a rights violation, 2) the actor responsible for that action, and 3) the appropriate remedy for the violation.⁶⁴ According to Roth, shaming should therefore aim to gradually shape the public's understanding of what constitutes rights violations, and to "broaden[] the number of governmental actions that can be seen [as violations]."⁶⁵

DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/name-and-shame> (last visited Jan. 30, 2022).

58. See HUMAN RIGHTS WATCH, WORLD REPORT 2021: EVENTS OF 2020 (2021), https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf ("World Report 2021, Human Rights Watch's 31st annual review of human rights practices and trends around the globe, reviews developments in more than 100 countries.").

59. *Id.* at 1–3.

60. *Id.* at 707–24.

61. Hafner-Burton, *supra* note 57, at 690. Hafner-Burton also found that naming and shaming rarely results in the end of "political terror" and is occasionally even followed by more. *Id.* at 691. These adverse effects of naming and shaming may occur because states are more easily able to reform political structures contributing human rights violations than they are able to control non-state actors causing terror. *Id.* Another explanation is that states execute rights violations to counter reforms they have put in place in response to shaming. *Id.* Negative reactions to naming and shaming are most prevalent when naming and shaming creates domestic opposition to violating leaders which in turn is "highly threatening to leaders who use repression to undermine their political opponents." *Id.* at 92.

62. *Id.* at 690–91.

63. Kenneth Roth, *Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization*, 26 HUM. RTS. Q. 63, 63, 67 (2004).

64. *Id.* at 68.

65. See *id.* at 71–72 ("An important part of our work should be to shape public opinion

Akshaya Kumar, Director of Crisis Advocacy at Human Rights Watch, further notes that naming and shaming “works best if advocates can raise the reputational costs of bad behavior.”⁶⁶ This also reflects the motivations of states that author Beth Simmons calls “strategic ratifiers.”⁶⁷ Strategic ratifiers are countries that ratify treaties “because other countries are doing so, and they would prefer to avoid criticism,” or “to ingratiate themselves with domestic groups or international audiences.”⁶⁸

The concept of avoiding reputational damage dovetails with the theory of “interest convergence” put forward by lawyer and activist Derrick Bell.⁶⁹ Through the lens of interest convergence, the interests of a group whose rights are being violated will only be accommodated when those interests converge with the interests of the violating party.⁷⁰ The interests of violating parties may include political advances abroad.⁷¹ Therefore, the enforcement mechanism of naming and shaming can be useful in bringing about civil rights and racial justice change in the United States when activists put pressure on the United States government via international appeals that threaten American political standing globally.

II. INTERNATIONAL HUMAN RIGHTS AND THE UNITED STATES CIVIL RIGHTS MOVEMENT, 1940–60S

To understand how appeals to international human rights frameworks—and especially naming and shaming—may benefit civil rights and racial justice actors in the United States today, it is helpful to understand how civil rights actors found success using such methods in

gradually so that it tends to see ESC issues not only in terms of distributive justice but also in terms of discriminatory or arbitrary conduct.”).

66. Akshaya Kumar, *Confronting the Shameless*, HUMAN RIGHTS WATCH (Dec. 28, 2016, 12:00 AM), <https://www.hrw.org/news/2016/12/28/confronting-shameless>.

67. BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS*, 58 (2009).

68. *Id.*

69. See generally Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (discussing a theory of interest convergence).

70. See *id.* at 523. As will be discussed in Part III, Bell uses the theory of interest convergence to explain the Supreme Court’s decision in *Brown v. Board of Education*, stating that “[t]he interests of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.” *Id.*

71. See *id.* at 524 (explaining that understanding the Supreme Court’s decision in *Brown v. Board of Education* requires “consideration of the decision’s value to . . . whites in policymaking positions”).

the past. This section evaluates the human rights frameworks employed by activists at the height of the American civil rights movement. During the 1940s, 50s, and 60s, civil rights actors appealed to the international community through petitions to the UN, litigation citing human rights law, and direct-action campaigns that attracted international attention. These activists' work shows a clear trend: appeals to international organizations invited pressure from international actors, which in turn facilitated the implementation of more protective civil rights law in the United States.

A. Direct Appeals to International Human Rights Bodies

Dating back to 1946, activists have sparked change for human rights protections by directly appealing to human rights bodies. While perhaps not the exact beginning of the civil rights story, this analysis will begin in 1946, soon after the UN Charter was signed. Around this time, organizations across the United States began to mobilize in the hopes of leveraging the Charter to attack domestic racism.⁷² One of the first organizations to do so was the National Negro Congress ("NNC"), which presented a petition accompanied by "'The Facts' on 'Oppression of the American Negro'" to the Economic and Social Council of the UN.⁷³ The petition cited equal rights provisions in the Charter, as well as the responsibilities of the Economic and Social Council and not-yet-formed Human Rights Commission.⁷⁴ It also relied on statistics from the United States government that highlighted socioeconomic gaps between Black and white Americans, as well as political limitations and violence directed towards Black Americans.⁷⁵ Finally, the petition requested that the UN study, make recommendations, and take any other actions it deemed necessary to end "the oppression of the American Negro."⁷⁶ The NNC's petition ultimately did not trigger any action by the UN, but it did garner significant attention.⁷⁷

The attention the petition attracted inspired prominent civil rights activist W.E.B. Du Bois to adopt similar strategies.⁷⁸ Working on behalf

72. Charles P. Henry & Tunua Thrash, *U.S. Human Rights Petitions Before the UN*, 26 BLACK SCHOLAR (ISSUE 3/4) 60, 62 (1996).

73. *Id.* at 62–63.

74. *Id.* at 63.

75. *Id.*

76. *Id.*

77. *Id.*

78. Sylvanna M. Falcón, *Invoking Human Rights and Transnational Activism in Racial*

of the National Association for the Advancement of Colored People (“NAACP”), he and other NAACP leadership composed “An Appeal to the World” in 1947.⁷⁹ In his introduction to the Appeal, Du Bois wrote that “the United States owes something to the world . . . [and] is in honor bound not only to protect its own people and its own interests, but to guard and respect the various peoples of the world who are its guests and allies.”⁸⁰ The Appeal went on to argue that “the Negro in the United States is the victim of wide deprivation of each of [the fundamental human rights]” promoted by the United Nations, including rights to “Education, Employment, Housing, and Health.”⁸¹

Furthermore, the Appeal linked a statement by Belgian delegate M. F. Dehousse to discrimination against Black Americans and Article 2, paragraph 7 of the Charter.⁸² Dehousse had stated that “if human rights are systematically denied or violated in one or other part of the world; there can be no doubt that such a situation . . . will, after a more or less brief period of confusion and anarchy, lead again to war.”⁸³ Consistent with Dehousse’s fears, the NAACP believed that the systemic violation of Black Americans’ human rights might cause war.⁸⁴ The Appeal therefore argued that these concerns could trigger action under the Charter because racial injustice in the United States posed a threat to international peace and security.⁸⁵

The Appeal then turned to Article 39 of the Charter,⁸⁶ which states that “[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make

Justice Struggles at Home: US Antiracist Activists and the UN Committee to Eliminate Racial Discrimination, 4 SOC’YS WITHOUT BORDERS 295, 296 (2009); see also Henry & Thrash, *supra* note 72, at 63 (“The attention the NNC petition attracted was not lost on W.E.B. Du Bois . . .”).

79. Falcón, *supra* note 78, at 296.

80. NAACP, AN APPEAL TO THE WORLD: A STATEMENT ON THE DENIAL OF HUMAN RIGHTS TO MINORITIES IN THE CASE OF CITIZENS OF NEGRO DESCENT IN THE UNITED STATES OF AMERICA AND AN APPEAL TO THE UNITED NATIONS FOR REDRESS 13 (W.E.B. Du Bois ed., 1947) [hereinafter AN APPEAL TO THE WORLD]. Du Bois went on to highlight acts of violence and discrimination against non-white international visitors and reasons that domestic discrimination “infring[es] upon the rights of the peoples of the world.” *Id.*

81. *Id.* at 62.

82. *Id.* at 91.

83. *Id.*

84. See *id.* (“[T]he well-nigh universal violation of the principle of ‘respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion,’ as far as Negroes are concerned, comes within the category of the situation outlined by M. Dehousse.”)

85. See *id.* (“ . . . Article 2, paragraph 7, [should] be interpreted in such a way to make possible action under the Charter . . .”).

86. *Id.* at 91.

recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security.”⁸⁷ In addition to provisions indicating that the Charter permitted the UN to address racism in the United States, the NAACP also believed that minority groups should be able to petition the General Assembly to ensure that the Security Council was adequately informed of threats to peace and security.⁸⁸

The Appeal did not find success upon its presentation.⁸⁹ Eleanor Roosevelt, along with Commission on Human Rights Director John Peters Humphrey, feared that the Appeal would hinder the passing of the Commission’s International Bill of Rights.⁹⁰ Instead, Humphrey recommended sending the appeal to the Subcommission in the Prevention of Discrimination and Protection of Minorities.⁹¹ There too, the Appeal gained little traction—it “was voted down four to one with seven abstentions” and the United States voting “no.”⁹²

Nevertheless, the Appeal was not a complete failure, as it garnered significant attention both domestically and abroad. Many American organizations signed onto the Appeal, including the National Negro Congress, the Council on African Affairs, the National Baptist Convention, the Urban League, and the National Association of Colored Women.⁹³ The NAACP additionally received requests for copies of the Appeal from the Soviet Union, Great Britain, and the Union of South Africa, all countries critical of racial discrimination in the United States.⁹⁴ Due to this attention, it is arguable that the Appeal “accomplished its purpose of arousing interest in discrimination.”⁹⁵

87. U.N. Charter art. 39.

88. AN APPEAL TO THE WORLD, *supra* note 80, at 91.

89. Henry & Thrash, *supra* note 72, at 65.

90. *Id.* at 64–65. Roosevelt, who was both a delegate to the Commission on Human Rights and a board member of the NAACP, led the opposition to the appeal. *Id.* at 65. Roosevelt thought it was embarrassing to have America’s dirty laundry—i.e. “racial practices”—aired “in an international forum”, and believed it to be an “affront” if any other country supported the petition. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 64.

94. MARY L. DUDZIAK, COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY 44 (2000) [hereinafter DUDZIAK, COLD WAR CIVIL RIGHTS] (quoting WALTER FRANCES WHITE, A MAN CALLED WHITE: THE AUTOBIOGRAPHY OF WALTER WHITE 358–59 (1948)).

95. DUDZIAK, COLD WAR CIVIL RIGHTS, *supra* note 94 at 45 (quoting GERALD HORNE, BLACK AND RED: W. E. B. DUBOIS AND THE AFRO-AMERICAN RESPONSE TO THE COLD WAR, 1944-1963 79–80 (1986)); *see also* Henry & Thrash, *supra* note 72, at 64 (“Apparently, this attention was the primary goal of the petition, since the action requested by the petitioners was

Undeterred by previous failed petitions, the Civil Rights Congress (“CRC”) submitted their petition, “We Charge Genocide,” to the UN when the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) entered into force in 1951.⁹⁶ The petition argued that under Article II of the Convention, there was ongoing “genocide against black people in the United States.”⁹⁷ Article II defines genocide as:

[A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.⁹⁸

To prove that the criteria for genocide applied to the treatment of Black Americans, the CRC cited incidents reported by aggrieved Black Americans, as well as newspapers and other research documents.⁹⁹ The CRC “solemnly ask[ed] the General Assembly to condemn this genocide” as a violation of the Convention and as a threat to international peace.¹⁰⁰ Like earlier petitions, “We Charge Genocide” attracted international attention but was not received favorably by the

very vague.”).

96. Henry & Thrash, *supra* note 72, at 65, 72; *see also* CIVIL RIGHTS CONGRESS, WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE (William L. Patterson ed. 1951) [hereinafter WE CHARGE GENOCIDE].

97. Henry & Thrash, *supra* note 72, at 65.

98. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948 (entered into force Jan. 12, 1951), S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277 [hereinafter Genocide Convention].

99. Henry & Thrash, *supra* note 72, at 65; *see also* DUDZIAK, *supra* note 94, at 63 (“The bulk of the . . . petition consisted of documentation of 153 killings, 344 other crimes of violence against African Americans, and other human rights abuses committed in the United States from 1945 to 1951.”).

100. WE CHARGE GENOCIDE, *supra* note 96, at 28.

federal government, nor was it acted on by the UN.¹⁰¹

The effects of international attention on the United States, however, should not be overlooked. These effects were particularly evident during the Cold War. For example, following the submission of “We Charge Genocide” in France, the petition’s editor was asked to surrender his passport by the United States embassy in Paris.¹⁰² He refused, but his passport was seized when he returned to the United States and he was further condemned for “air[ing] the nation’s dirty laundry overseas” in violation of unspoken Cold War norms.¹⁰³ This example illustrates how desperately the federal government wanted to maintain its international reputation, especially vis-à-vis communist countries. Furthermore, the attention garnered by these appeals and the domestic reaction to that attention inspired civil rights actors to continue shining a light on human rights abuses in the United States.

B. Human Rights Appeals and the Supreme Court

Despite the lack of formal action resulting from treaty appeals in the 1940s and 50s, human rights frameworks and international attention began to affect the Supreme Court during this time and into the 1960s. Perhaps the most notable example of this is the Supreme Court’s decision in *Brown v. Board of Education*, decided in 1954. The Court’s decision in *Brown*, which prohibited racially segregated public schools,¹⁰⁴ “reinterpret[ed] the Fifth and Fourteenth Amendments to incorporate the international norm prohibiting racial segregation.”¹⁰⁵ Although many factors led to the decision, scholars cite the “political synergy between human rights and civil rights” and the international embarrassment of maintaining segregated schools as two driving forces.¹⁰⁶

Returning to Derrick Bell’s theory of interest convergence, one can understand the Court’s movement towards desegregation by understanding the value such a move had to white Americans—that is,

101. See DUDZIAK, COLD WAR CIVIL RIGHTS, *supra* note 94, at 65–66 (“[E]fforts to internationalize the civil rights movement ran directly counter to U.S. government efforts to create and sustain an image overseas of a progressive and just nation.”).

102. *Id.* at 65.

103. *Id.* at 66.

104. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

105. David L. Sloss, *How International Human Rights Transformed the US Constitution*, 38 HUM. RTS. Q. 426, 448 (2016).

106. *Id.* at 449; see also Henry & Thrash, *supra* note 72, at 66–67 (“[T]he most famous civil rights case of the twentieth century, the *Brown* case, has been frequently cited as an example of the influence of foreign opinion on domestic race relations.”).

the value of keeping up appearances internationally.¹⁰⁷ At the time *Brown* was decided, the United States was struggling “to win the hearts and minds of emerging third world peoples,” and the media was recognizing that *Brown* could affect “U.S. prestige.”¹⁰⁸ To support this point, Bell quotes *Time* magazine, which noted that “[i]n many countries, where U.S. prestige and leadership have been damaged by the fact of U.S. segregation, [*Brown*] will come as a timely reassertion of the basic American principle that ‘all men are created equal.’”¹⁰⁹ Activists were also able to capitalize on international praise of *Brown* by arguing that civil rights work improved America’s image abroad and therefore “promoted . . . the nation’s Cold War interests.”¹¹⁰

The Court’s decision in *Brown* did not, however, put a stop to the embarrassment the United States was facing abroad. Three years after *Brown* was decided, many schools still deliberately delayed desegregation. One such school was Central High School in Little Rock, Arkansas, where violent protest erupted in response to desegregation plans.¹¹¹ The federal government was concerned with how the Soviet Union and other communist countries exploited the Little Rock Crisis, and how the Crisis affected America’s reputation abroad.¹¹² Indeed, Little Rock received significant negative coverage from news outlets around the world for nearly a month after protests erupted.¹¹³

Henry Cabot Lodge, the United States Ambassador to the UN, conveyed these worries to President Eisenhower in a letter stating that “at the United Nations I can see clearly the harm that the riots in Little Rock are doing to our foreign relations . . . I suspect that we lost several votes on the Chinese communist item because of Little Rock.”¹¹⁴ Eisenhower, in a televised address to the American people, pleaded

107. See Bell, *supra* note 69, at 524 (“[T]he decision in *Brown* . . . cannot be understood without some consideration of the decision’s value to . . . those whites in policymaking positions able to see the economic and political advances at home and abroad that would follow abandonment of segregation.”).

108. *Id.*

109. *Id.*

110. Mary L. Dudziak, *Brown as a Cold War Case*, 91 J. AM. POL. 32, 36 (2004).

111. See DUDZIAK, *COLD WAR CIVIL RIGHTS*, *supra* note 94, at 115–18.

112. *Id.* at 118–19, 121–24. Communist propaganda became so severe that some Americans accused the governor of Arkansas himself of purposely aiding the Soviets. *Id.* at 124.

113. See *id.* at 118–24.

114. See Mary L. Dudziak, *The Little Rock Crisis and Foreign Affairs: Race, Resistance, and the Image of American Democracy*, 70 S. CAL. L. REV. 1641, 1694 (1997) (citing and quoting the letter) [hereinafter Dudziak, *Little Rock and Foreign Affairs*].

with the state of Arkansas to comply with desegregation orders.¹¹⁵ President Eisenhower argued that if federal troops were removed from the school's campus, "a blot upon the fair name and high honor of our nation in the world will be removed. Thus will be restored the image of America"¹¹⁶

In response to the actions in Little Rock, the Supreme Court held in *Cooper v. Aaron* that school segregation violated the Constitution, reaffirming its holding in *Brown*.¹¹⁷ Upholding *Brown* was not only an assertion of the Court's legitimacy, but also an act of preserving international appearances.¹¹⁸ The central holding of *Brown* had been threatened by massive resistance to school desegregation, but the holding of *Cooper* allowed the United States to reassert to the world that despite the actions of a few in Arkansas, American ideals did not include racial segregation.¹¹⁹ Like *Brown* and the Little Rock protests themselves, *Cooper* was covered by media outlets across the globe.¹²⁰ In this way, international pressure on the United States once again had an effect on the Court, which sought to maintain the image of American democracy.¹²¹

Direct Action Campaigns and International Pressure to Reform

While some progress was finally being made on school desegregation through the courts, government actors and activists alike turned their attention to segregation in other public accommodations. For instance, President Truman's Committee on Civil Rights was embarrassed by examples of businesses refusing service to non-white foreign officials visiting Washington, D.C.¹²² In its report to the President, the Committee also indicated that domestic civil rights

115. Dwight D. Eisenhower, *Radio and Television Address to the American People on the Situation in Little Rock*, THE AMERICAN PRESIDENCY PROJECT (Sept. 24, 1957, 9:00 PM), <https://www.presidency.ucsb.edu/documents/radio-and-television-address-the-american-people-the-situation-little-rock>.

116. *Id.*

117. 358 U.S 1, 19–20 (1958).

118. Dudziak, *Little Rock Crisis and Foreign Affairs*, *supra* note 114 at 1647.

119. *Id.* at 1711.

120. DUDZIAK, *COLD WAR CIVIL RIGHTS*, *supra* note 94, at 147–48.

121. *Id.* at 151.

122. See PRESIDENT'S COMMITTEE ON CIVIL RIGHTS, *TO SECURE THESE RIGHTS* 95 (1947), <https://www.trumanlibrary.gov/library/to-secure-these-rights> [hereinafter *TO SECURE THESE RIGHTS*] ("The shameful and absurdity of Washington's treatment of Negro Americans is highlighted by the presence of many dark-skinned foreign visitors . . . Foreign officials are often mistaken for American Negroes and refused food, lodging and entertainment. However, once it is established that they are not Americans, they are accommodated.").

policy “has been an issue in world politics.”¹²³ The Committee then urged improvement in the realm of civil rights because it was “concerned with the good opinion of the peoples of the world.”¹²⁴

Activists also began to challenge segregation, but they did so through direct-action protests. For example, the 1961 Freedom Rides aimed to test Southern compliance with the Supreme Court’s ruling in *Boynton v. Virginia*.¹²⁵ Violence erupted as freedom riders arrived in Birmingham, Alabama, and the Kennedy administration immediately feared facing the same sort of international embarrassment that the Eisenhower administration had faced in the wake of Little Rock.¹²⁶ These fears were not unfounded, as international press critiqued the violence unfolding in Alabama, and reports out of Moscow framed the events as “indicative of the American ‘way of life.’”¹²⁷

The stakes were especially high at this time, because Kennedy was about to go on his first overseas visit.¹²⁸ He would be meeting with Soviet Premier Nikita Khrushchev and was hoping to mitigate the negative attention the United States received following the Bay of Pigs Invasion.¹²⁹ When the federal government eventually intervened in the crisis in Alabama, Attorney General Robert Kennedy made a statement reminding Americans to “bear in mind that the President is about to embark on a mission of great importance” and that “whatever we do in the United States at this time, which brings or causes discredit in our country, can be harmful to his mission.”¹³⁰ Such a statement indicates that, once again, the federal government was moved to support desegregation at least in part by pressure to comply with international norms and to maintain its reputation abroad.

The pressure continued to mount for the Kennedy administration as more protests and violence occurred in Birmingham in 1963.¹³¹

123. *Id.* at 147.

124. *Id.* at 148.

125. NICK BRYANT, *THE BYSTANDER: JOHN F. KENNEDY AND THE STRUGGLE FOR BLACK EQUALITY* 262 (2006); *see also* *Boynton v. Virginia*, 364 U.S. 454, 463 (1960) (holding that the Interstate Commerce Act bans segregation on public transportation).

126. *See* BRYANT, *supra* note 125, at 264; *see also* DUDZIAK, *COLD WAR CIVIL RIGHTS*, *supra* note 94, at 158 (“[T]he president was upset in part because the violence against the riders was ‘exactly the kind of thing the Communists used to make the United States look bad around the world.’”).

127. DUDZIAK, *COLD WAR CIVIL RIGHTS*, *supra* note 94, at 159.

128. BRYANT, *supra* note 125, at 264, 276.

129. DUDZIAK, *COLD WAR CIVIL RIGHTS*, *supra* note 94, at 159.

130. BRYANT, *supra* note 125, at 276.

131. *See generally* ADAM FAIRCLOUGH, *TO REDEEM THE SOUL OF AMERICA: THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND MARTIN LUTHER KING, JR.* 111–139

International press ran stories about American police arresting children and attacking protesters with dogs and firehoses, and the global community widely criticized the administration's lack of intervention.¹³² In Addis Ababa, for example, the Conference of African Heads of States and Governments had convened soon after the Birmingham demonstrations and discussed race relations in the United States.¹³³ Prime Minister Milton Obote of Uganda prompted this action as he presented an open letter to President Kennedy, part of which states:

the eyes and ears of the world are concentrated on events in Alabama and it is the duty of the free world and more so of the countries that hold themselves up as the leaders of that free world to see that all of their citizens, regardless of the colour of their skin, are free.¹³⁴

The Conference ultimately issued a resolution expressing its concern about racial discrimination in the United States and warned that the federal government's inaction would likely harm relationships between African governments and the United States.¹³⁵

Pressure from African heads of state and other negative commentary from around the world ultimately influenced the Kennedy administration to propose the legislation that would become the Civil Rights Act of 1964.¹³⁶ While lobbying for the bill, Kennedy organized private meetings with various groups to discuss implications of the bill.¹³⁷ In one meeting with the Business Council, for example, Kennedy told business elites that "clear evidence exists that [racial violence] is being exploited abroad and has serious implications in our international relations."¹³⁸ The State Department also lobbied for the bill: Secretary of State Dean Rusk lobbied Congresspeople, noting that

(1987) (discussing the 1963 SCLC-led direct action campaigns in Birmingham).

132. *Id.* at 126–27.

133. Mary L. Dudziak, *Birmingham, Addis Ababa and the Image of America: International Influence on U.S. Civil Rights Politics in the Kennedy Administration*, in *WINDOW ON FREEDOM: RACE, CIVIL RIGHTS, AND FOREIGN AFFAIRS, 1945-1988* 181, 181–82 (Brenda Gayle Plummer, ed., 2003) [hereinafter Dudziak, *Image of America*].

134. *Id.* at 182 (citing the letter written by Prime Minister Obote).

135. *Id.* at 189 (citing the Addis Ababa Resolution). A previously considered resolution would have immediately broken relations between the African states and the United States, and the amended resolution was a relief to the Kennedy administration. *Id.* at 189, 191.

136. *Id.* at 191.

137. John David Skrentny, *The effect of the Cold War on African-American civil rights: America and the world audience, 1945–1968*, 27 *THEORY AND SOCIETY* 237, 263 (1998).

138. *Id.* at 264.

“race relations . . . ‘had a profound impact on the world’s view of the United States and, therefore, on [its] foreign relations.’”¹³⁹ Assistant Secretary of State further urged the passage of the bill because relations with Africa grew “precarious” as the legislation stalled.¹⁴⁰

By mid-1963, the majority of Americans also agreed that discrimination and segregation were harming the United States’ international reputation.¹⁴¹ That feeling arose predominantly from Americans’ belief that discrimination was fodder for communist propaganda and “generally gave the country a bad name.”¹⁴² Thus, international attention to American human rights violations and resulting shame in the United States strongly influenced the federal government to codify civil rights domestically.

IV. LESSONS FROM THE USE OF HUMAN RIGHTS FRAMEWORKS BY PAST CIVIL RIGHTS MOVEMENTS

As history has shown, civil rights in the United States have been advanced when domestic civil rights abuses were clearly highlighted for the world to see. Although the results have not been to the effect of implementing treaty provisions directly, the United States has responded in the form of crucial Supreme Court decisions and legislation aimed at curbing racial discrimination. Drawing on this method, racial justice actors, and particularly those involved in the Black Lives Matter movement, have attempted to make appeals similar to those made at the height of the civil rights movement. Although recent appeals have received international attention and have gained traction with some legislators, reforms as sweeping as the *Brown* decision or the Civil Rights Act of 1964 have yet to materialize.

Nevertheless, racial justice actors can still achieve their goals by following naming and shaming frameworks. To increase the effectiveness of naming and shaming in modern civil rights movements, activists should target non-state actors that contribute to governmental rights abuses. Focusing on non-state actors is necessary because naming and shaming the United States is less effective when the government is politically divided and there is no cause to unify the country, such as opposition to communism and the presence of another global superpower. This Part proceeds in two sections. Section A details more

139. Dudziak, *Image of America*, *supra* note 133 at 193.

140. DUDZIAK, *COLD WAR CIVIL RIGHTS*, *supra* note 94, at 187.

141. *Id.*

142. *Id.*

recent appeals to human rights frameworks in the 2000s with a focus on police brutality, and the results of those appeals. Section B will argue for naming and shaming of powerful non-state actors.

A. Recent Human Rights Appeals, International Shame, and Domestic Effects

Racial justice actors have recently returned to the 1940s practice of making direct human rights appeals. Compared with earlier appeals, those of the 21st century have succeeded in gaining some response and action by UN bodies. In their international appeals, activists have particularly emphasized police violence and limitations on protest rights. International media, foreign leaders, and nongovernmental actors have all strongly condemned these rights violations, and some domestic leaders have proposed suggestions for change. The past and current presidential administrations, however, have differed in their reactions to international shaming, and current legislators are divided when it comes to passing bills. Therefore, little progress has been made by shaming American governmental actors.

I. A Return to International Appeals in the 21st Century

Racial justice activists of the 21st Century gained significant attention from their international appeals, both at the UN and at home in the United States. In some ways, these appeals achieved more than their predecessors had by triggering explicit governmental responses to international pressure. However, recent appeals have also fallen short of achieving federal action as strong as *Brown* or the Civil Rights Act of 1964.

Following the police killing of Michael Brown Jr. in 2014, Brown's family was joined by community organizations in submitting a statement to the UN Committee Against Torture ("CAT").¹⁴³ A primary goal of the statement was to highlight to a global audience the continuing American human rights abuses against communities of color.¹⁴⁴ The report begins by summarizing the events that took place

143. See generally FAMILY OF MICHAEL BROWN, ET AL., UNITED STATES' COMPLIANCE WITH THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT: WRITTEN STATEMENT ON THE POLICE SHOOTING OF MICHAEL BROWN AND ENSUING POLICE VIOLENCE AGAINST PROTESTERS IN FERGUSON, MISSOURI (2014) (submitted to the 53rd Session of the United Nations Committee Against Torture). [hereinafter FERGUSON CAT SUBMISSION].

144. See Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States after Ferguson*, 12

in Ferguson, Missouri, first describing Brown’s murder and the resulting prosecution of the police officer responsible for the fatal shooting.¹⁴⁵ It then summarizes the use of force by police officers against protestors.¹⁴⁶ Considering such uses of force, the report argues that the United States failed to implement recommendations issued by CAT in 2006.¹⁴⁷ The report then cites relevant articles of the Torture Convention and United States’ violations.¹⁴⁸ According to the report, these violations include the discriminatory killings of unarmed Black Americans, the excessive use of force against peaceful protestors, and the federal government’s failure to adequately address the militarization of the police.¹⁴⁹ Finally, the report lists questions and recommendations for the United States government.¹⁵⁰

Upon reviewing the Brown family’s report, members of CAT questioned members of the United States delegation, focusing their inquiry on police accountability.¹⁵¹ In its concluding observations following the review of the report, CAT also highlighted the issue of police brutality in the United States.¹⁵² Citing its concerns about use of force “against persons belonging to certain racial and ethnic groups,” as well as “the frequent and recurrent shooting or fatal pursuits by the police of unarmed black individuals,” CAT recommended that the United States:

- (a) Ensure that all instances of police brutality and excessive use of force by law enforcement officers are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;

HASTINGS RACE AND POVERTY L. J. 121, 125 (2015) (“Mike Brown Jr.’s family and several community organizations . . . believed it necessary to use this global stage as a way to build awareness among the international community of the U.S. government’s human rights abuses against its communities of Color.”).

145. FERGUSON CAT SUBMISSION, *supra* note 143, at 2–3.

146. *Id.* at 4. Examples of excessive force included police officer use of riot gear, tanks, and “other military-style armaments” against “largely peaceful protests.” *Id.* at 4–5.

147. *Id.* at 6.

148. *Id.* at 6–7.

149. *See id.* at 7.

150. *Id.* at 8–9.

151. Hansford & Jagannath, *supra* note 144, at 145.

152. *Id.*; *see also* CAT, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, para. 26, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014), <https://www.undocs.org/CAT/C/USA/CO/3-5> (“The Committee is concerned about the numerous reports of police brutality and excessive use of force by law enforcement officials, in particular against persons belonging to certain racial and ethnic groups, immigrants and LGBTI individuals.”) [hereinafter CAT Concluding Observations].

(b) Prosecute persons suspected of torture or ill-treatment and, if found guilty, ensure that they are punished according to the gravity of their acts;

(c) Provide effective remedies and rehabilitation to the victims
...¹⁵³

Following the issuance of CAT's concluding remarks, some of the representatives responsible for the initial Ferguson submission also presented testimony to the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights.¹⁵⁴ Many Congresspeople were aware of the Ferguson delegation's submission to CAT because it had received significant media attention, but few knew of CAT's resulting observations and recommendations.¹⁵⁵ The Ferguson delegation could therefore use CAT's remarks to support its testimony and legitimize its requests to the United States government.¹⁵⁶ Two months following the delegation's Congressional testimony, a member of the delegation also testified in front of President Obama's Task Force on 21st Century Policing.¹⁵⁷ Yet another delegate testified in front of the Missouri Advisory Committee to the United States Civil Rights Commission that same month. Subsequently, the Committee voted to send a memo to the Commission with several recommendations.¹⁵⁸ Both delegates emphasized CAT's concluding observations.¹⁵⁹

The Ferguson delegation's repeated references to CAT's recommended human rights norms directly affected American actors. The National Guard, for example, stated that its actions at future demonstrations would consider "valuing the protection of life over property in large part to preserve the 'image' of local government officials and politicians."¹⁶⁰ This response indicates that the United States government was, to some degree, shamed not only by international attention to its treatment of protestors and Black Americans, but also sought to protect its leaders from local backlash.¹⁶¹

153. CAT Concluding Observations, *supra* note 152, para. 26.

154. Hansford & Jagannath, *supra* note 144, at 149; see generally *The State of Civil and Human Rights in the United States: Hearing Before the Subcomm. on the Const., C.R. and Hum. Rts. of the S. Comm. on the Judiciary*, 113th Cong. (2014).

155. Hansford & Jagannath, *supra* note 144, at 150.

156. *Id.*

157. *Id.* at 151.

158. *Id.*

159. *Id.*

160. *Id.* at 152.

161. *Id.* at 152–53.

Even more recently, following the police killing of George Floyd, Floyd's brother, Philonise, appealed directly to the UN Human Rights Council (HRC), asking it to investigate the killings of Black Americans and the excessive use of force against protestors.¹⁶² The appeal was heard at the HRC's Urgent Debate on racism, which had been called by the African Group due to concerns about police brutality and human rights violations against Black people.¹⁶³ "You in the United Nations are your brothers' and sisters' keepers in America," Philonise said before asking the UN to help achieve justice for his brother and to help Black Americans.¹⁶⁴

In addition to Philonise's appeal, observers across the globe criticized police officers' responses to George Floyd's murder and the subsequent protests. The French Foreign Minister commented that "[a]ny act of violence committed against peaceful protestors or journalists is unacceptable."¹⁶⁵ In Ireland, the Prime Minister expressed "'genuine revulsion' at the 'heavy-handed response' . . . towards peaceful protestors" and noted an "absence of moral leadership."¹⁶⁶ The Chairman of the African Union explicitly called Floyd's cause of death "murder" and stated that the African Union "rejects the 'continuing discriminatory practices against black citizens of the USA,'"¹⁶⁷ mirroring the African heads-of-states' concerns in the aftermath of the 1963 Birmingham protests.

Nongovernmental organizations additionally criticized the United States in the wake of protests erupting across the country. Amnesty International noted the use of riot gear and military-grade weapons by police, with its National Director of Research commenting that police must work with protestors to prevent violence, and that all excessive or

162. *'I am my brother's keeper', Philonise Floyd tells UN rights body, in impassioned plea for racial justice*, UNITED NATIONS: UN NEWS (June 17, 2020), <https://news.un.org/en/story/2020/06/1066542>.

163. *Id.*

164. *Id.*

165. Reuters Staff, *Violence against protestors, press unacceptable, says France's Le Drian*, REUTERS (June 7, 2020, 12:59 PM), <https://www.reuters.com/article/us-minneapolis-police-protests-france/violence-against-protestors-press-unacceptable-says-frances-le-drian-idUSKBN23E0PA?il=0>.

166. Maggie Doyle, *Taoiseach says 'world has watched in horror' events following Floyd's killing*, RAIDÍÓ TEILIFÍS ÉIREANN (June 4, 2020, 10:21 PM), <https://www.rte.ie/news/politics/2020/06/04/1145404-coronavirus-politics/>.

167. Cara Anna, *In Rare Move, U.S. Embassies in Africa Condemn George Floyd Murder*, TIME (May 30, 2020, 12:01 PM), <https://web.archive.org/web/20200531100719/https://time.com/5845407/us-embassy-africa-condemn-george-floyd/>.

unnecessary uses of force must be investigated.¹⁶⁸ Addressing police killings, Amnesty International further called for the prosecution of responsible police officers, new state laws to restrict the use of lethal force, and federal government action to address rights violations at protests.¹⁶⁹ Human Rights Watch also called out “gratuitous violence” and systemic racism in the United States.¹⁷⁰

Just days after Philonise Floyd made his appeal to the UN, the HRC adopted a resolution addressing the human rights violations by law enforcement against Black people.¹⁷¹ The resolution cited the Council’s “alarm[] at the resurgence of violence, racial hatred, hate speech, hate crimes, neo-Nazism, neo-Fascism and violent nationalist ideologies based on racial or national prejudice.”¹⁷² It further highlighted the Inter-American Commission on Human Rights’ condemnation of systemic racism and George Floyd’s murder, and welcomed statements about Floyd’s killing.¹⁷³ Finally, the report requested that the High Commissioner for Human Rights “prepare a report on systemic racism [and] the violation of human rights law by law enforcement agencies, especially those incidents that resulted in the death of George Floyd . . .”¹⁷⁴ The report also requested that the High Commissioner investigate “government responses to anti-racism peaceful protests” and that states cooperate with any such investigation.¹⁷⁵

One year after the Urgent Debate, the High Commissioner for Human Rights released a report in response to the HRC’s requests.¹⁷⁶ The Commissioner’s report urged states to adopt measures designed to root out systemic racism, stating that “systemic racism needs a systemic

168. Press release, Amnesty International, USA: police must end ‘excessive’ militarised response to George Floyd protests (May 21, 2020), <https://www.amnesty.org.uk/press-releases/usa-police-must-end-excessive-militarised-response-george-floyd-protests>.

169. *Id.* One such action suggested by Amnesty International included the passing of the PEACE Act, *id.*, which has yet to pass the Senate. S. 2682, 117th Cong. (2021).

170. *George Floyd’s Killing and the Black Lives Lost: Reconfirming Our Commitment to Combat Injustice*, HUMAN RIGHTS WATCH (June 1, 2020, 9:27 PM), <https://www.hrw.org/news/2020/06/01/george-floyds-killing-and-black-lives-lost>.

171. Hum. Rts. Council Res. 43/1, U.N. Doc. A/HRC/RES/43/1, at 1 (June 30, 2020).

172. *Id.*

173. *Id.* at 2.

174. *Id.*

175. *Id.*

176. Rep. of the UN High Comm’r for Hum. Rts., *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, Hum. Rts. Council, on its Forty-Seventh Session, U.N. Doc. A/HRC/47/53, at 1 (June 1, 2021) [hereinafter 2021 Rep. of the UN High Comm’r for Hum. Rts.]; see also accompanying conference room paper, U.N. Doc. A/HRC/47/CRP.1 (June 28, 2021).

response.”¹⁷⁷ The Commissioner further recommended that states adopt measures designed to ensure police accountability and redress for victims, as well as policies to restrict the ability of law enforcement to use force.¹⁷⁸ With respect to the use of force by police in the United States, especially as it related to Black Lives Matter protests, the report also recognized several human rights violations including differential treatment of anti-racism protestors, militarized police, and use of surveillance.¹⁷⁹ The report referenced the United States more than any other country.¹⁸⁰

B. Governmental Responses to Naming and Shaming

In response to the Commissioner’s report, United States Secretary of State Antony Blinken released a press statement addressing the Biden administration’s “dedicat[ion] to addressing racial justice and inequities at home and abroad.”¹⁸¹ Secretary Blinken offered a “formal, standing invitation” to experts from the UN working on human rights issues, and noted that the United States also offered official visits to the Special Rapporteur on contemporary forms of racism and the Special Rapporteur on minority issues.¹⁸² The Secretary also welcomed the adoption of a resolution by the HRC addressing excessive use of force and human rights violations by law enforcement.¹⁸³ Notably, Secretary Blinken stated that “responsible nations must not shrink from scrutiny of their human rights record; rather, they should acknowledge it with the intent to improve.”¹⁸⁴ Such a statement indicates that the United States was not only publicly acknowledging the naming and shaming done in the Commissioner’s report, but was choosing to address it head-on in contrast to past administrations.

177. 2021 Rep. of the UN High Comm’r for Hum. Rts., *supra* note 176, at 8.

178. *Id.* at 14.

179. *See id.* at 15–16.

180. Christine Eldabh & Jamil Dakwar, *The UN’s George Floyd Resolution is a Vital Step Toward International Accountability*, ACLU: NEWS & COMMENTARY (July 19, 2021), <https://www.aclu.org/news/human-rights/the-uns-george-floyd-resolution-is-a-vital-step-toward-international-accountability/>.

181. Press Release, Antony Blinken, Secretary of State, U.S. Leadership on Human Rights and Ending Systemic Racism (July 13, 2021), <https://www.state.gov/u-s-leadership-on-human-rights-and-ending-systemic-racism/>.

182. *Id.*

183. *Id.*; *see also* Hum. Rts. Council Res. 47/21, U.N. Doc. A/HRC/RES/47/21, at 1 (July 13, 2021) (“Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality”).

184. Blinken, *supra* note 181.

During the 117th Congress, multiple bills have also been introduced to increase police accountability. However, these bills have not made it beyond the legislative branch. In February 2021, Representative Karen Bass of California introduced the George Floyd Justice in Policing Act, which has already passed in the House.¹⁸⁵ In March 2021, Representative Ayanna Pressley and Senator Edward Markey, both of Massachusetts, concurrently introduced the Ending Qualified Immunity Act in the House and Senate.¹⁸⁶ March 2021 also saw the introduction of several other bills, including the George Floyd Law Enforcement Trust and Integrity Act,¹⁸⁷ the Stop Militarizing Law Enforcement Act,¹⁸⁸ and the End Racial and Religious Profiling Act.¹⁸⁹ These bills were followed by even more, but none have passed both the House and Senate.

Apart from the lack of legislative results, naming and shaming in a broader international human rights context has caused some backlash from the United States, especially from the Trump administration. In response to Special Rapporteur Philip Alston's report on poverty in the United States, former United States Ambassador to the United Nations Nikki Haley charged Alston with "[using] his platform to make misleading and politically motivated statements about American domestic policy."¹⁹⁰ Haley further rebuked Alston's position within the UN, writing that he "wasted the UN's time and resources" and "was not following a UN assignment."¹⁹¹ Finally, Haley wrote that the American people will never "look to the United Nations for guidance" on policy issues, and will instead consider these issues through its own democratic process.¹⁹²

Political polarization is one explanation for the lack of domestic social progress brought on by international shame in recent years. During the height of the civil rights movement, partisan lines were not starkly drawn,¹⁹³ in part because parties and voters were united over

185. George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. (2021).

186. Ending Qualified Immunity Act, H.R. 1470, S. 492, 117th Cong. (2021).

187. George Floyd Law Enforcement Trust and Integrity Act of 2021, H.R. 1570, 117th Cong. (2021).

188. Stop Militarizing Law Enforcement Act, H.R. 1694, 117th Cong. (2021).

189. End Racial and Religious Profiling Act of 2021 (ERRPA), S. 597, 117th Cong. (2021).

190. Letter from Nikki Haley, United States Ambassador to the United Nations, to Senator Bernard Sanders (June 21, 2018), <https://www.sanders.senate.gov/wp-content/uploads/Haley-response-to-sanders.pdf>.

191. *Id.*

192. *Id.*

193. See Hahrie Han & David W. Brady, *A Delayed Return to Historical Norms*:

the need to address race-related issues,¹⁹⁴ and the threat of communism.¹⁹⁵ Today, however, parties are significantly more polarized, if not more polarized than ever before.¹⁹⁶ The result is often an inability of Congress to form consensus to legislate.¹⁹⁷ Therefore, it is not surprising that without shared concerns about international prestige and racial politics, it has been difficult for naming and shaming to stimulate significant change.

3. The Path Forward

Although racial justice activists in the United States have seen some steps taken toward progress and the protection of human rights, a question still remains: how can activists continue to force the hand of the federal government when it—or at least one half of its legislative body—is still acting shamelessly? Akshaya Kumar of Human Rights Watch offers one potential path forward:

We can challenge [governmental actors] by shifting our focus from their actions to the networks of financial enablers and arms suppliers who equip and sustain them. Some of these enablers may be more vulnerable to public exposure than their clients There is no one-size-fits-all approach. But focusing on the networks of the complicit, instead of just frontline abusers or their commanders, offers an important vehicle to protect and promote rights.¹⁹⁸

Some precedent already exists for pressuring non-state actors in the United States to comply with human rights norms; a significant example is pressure put on Amazon to stop providing police departments with its facial recognition software called Rekognition.¹⁹⁹

Congressional Party Polarization after the Second World War, 37 BRIT. J. POL. SCI. 505, 506 (2007) (“Throughout the 1950s and early 1960s, liberal voters often vote for Republican presidential and congressional candidates and a number of conservative voters choose Democratic candidates. The blurring of partisan lines on key national issues (like race and the role of government in society) enables this cross-party voting.”).

194. See *id.* (“The blurring of partisan lines on key national issues (like race and the role of government in society) enables this cross-party voting.”).

195. See Eugene R. Wittkopf & James M. McCormick, *The Cold War Consensus: Did It Exist?*, 22 POLITY 627, 631 (1990).

196. PEW RESEARCH CENTER, *Political Polarization in the American Public* (June 12, 2014), <https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/>.

197. Geoffrey C. Layman, et al., *Party Polarization in American Politics: Characteristics, Causes, and Consequences*, 9 ANN. R. POL. SCI. 83, 100–01 (2006).

198. Kumar, *supra* note 66.

199. See Karen Hao, *The two-year fight to stop Amazon from selling face recognition to the police*, TECH. REV. (June 12, 2020), <https://www.technologyreview.com/2020/06/12/1003482/amazon-stopped-selling-police-face-recognition-fight/>.

In 2018, Human Rights Watch, the American Civil Liberties Union, and several other organizations wrote a letter to Amazon demanding that the company “act swiftly to stand up for civil rights and civil liberties, including those of its own customers, and take Rekognition off the table for governments.”²⁰⁰ The letter cited the threat Rekognition poses to communities of color and the chilling effect surveillance could have on peaceful assembly and protest.²⁰¹ Two years later, in the wake of the 2020 Black Lives Matter protests and continued pressure, Amazon implemented a one-year moratorium on police use of Rekognition.²⁰²

Amazon, however, is not the only corporation providing police with facial recognition software—Amnesty International recently launched a new “Ban the Scan” campaign to address this “form of mass surveillance” because it “threaten[s] the rights to freedom of peaceful assembly and expression.”²⁰³ The campaign calls for “a total ban on the use, development, production, and sale, of facial recognition technology for mass surveillance purposes by the police and other government agencies and . . . for a ban on exports of the technology systems.”²⁰⁴ Echoing these calls to put pressure on technology companies is one way civil rights activists can tap into international networks to force change in the United States.

This framework may also prove effective as racial justice activists in the United States look toward issues beyond police reform. Mass incarceration provides one potential application, as activists could target private prisons that partner with the federal government. Indeed, human rights actors have already called for the private prison system to end entirely.²⁰⁵ Similar campaigns may be effective against private

200. Letter to Jeffrey Bezos, Founder and Chief Executive Office, Amazon.com, Inc. (May 22, 2018), https://www.hrw.org/sites/default/files/supporting_resources/201805bhr_ar_coalition_letter.pdf.

201. See *id.* (“People should be free to walk down the street without being watched by the government. Facial recognition in American communities threatens this freedom. In overpoliced communities of color, it could effectively eliminate it . . . Local police could use it to identify political protestors captured by officer body cameras.”).

202. Press release, Amazon.com, We are implementing a one-year moratorium on police use of Rekognition, (June 10, 2020), <https://www.aboutamazon.com/news/policy-news-views/we-are-implementing-a-one-year-moratorium-on-police-use-of-rekognition>.

203. Press release, Amnesty International, Ban dangerous facial recognition technology that amplifies racist policing, (Jan. 26, 2021, 8:22 AM), <https://www.amnesty.org/en/latest/press-release/2021/01/ban-dangerous-facial-recognition-technology-that-amplifies-racist-policing/>.

204. *Id.*

205. See UN NEWS, *US should end use of private ‘for profit’ detention centres, urge human rights experts*, UNITED NATIONS (Feb. 4, 2021), <https://news.un.org/en/story/2021/02/1083862> (“A group of UN independent human rights experts on Thursday welcomed the United States’ decision to stop using privately run federal prisons, and urged the Government to also end the

security groups that are hired to monitor protests and other events. Regardless of the issue activists tackle, “[f]inding ways to effectively freeze assets of enablers . . . is the key challenge for human rights advocates who need to adapt to the rise of a new generation of shameless abusers.”²⁰⁶

CONCLUSION

Throughout history, civil rights activists have appealed to international actors to implement change in the United States. Although such change has not come in the form of direct human rights treaty implementation, progress has been made by shining a spotlight on American race dynamics. Whenever the United States’ global reputation hung in the balance during the civil rights movement, the government was forced to react through some statement, legislation, or court decision that codified civil rights. Considering the substantial international attention received by the Black Lives Matter movement and the international criticism of American policing, continued naming and shaming will provide one path toward increased racial justice in the United States. With significantly polarized parties and a lack of unifying policy agendas, however, naming and shaming will be most effective when its target is non-state actors.

outsourcing of all detention centres, including those holding migrants and asylum seekers.”).

206. Kumar, *supra* note 66.