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THE HYPOCRISY AND RACISM BEHIND THE FORMULATION OF U S HUMAN RIGHTS FOREIGN POLICY

by

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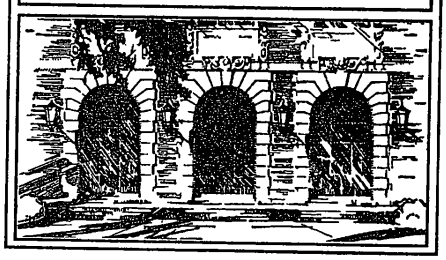

accordance with its own ideological preferences And my criticism on this point concerns both Democrats and Republicans

For example, in the Carter administration, the goal of promoting human rights oftentimes was used as an element of our overall foreign policy to oppose or undercut so-called authoritarian regimes of the right By contrast, during the Reagan administration, the goal of protecting human rights has been used almost exclusively to attack so-called totalitarian regimes of the left During both administrations, the cause of human rights was invoked as a justification for the purpose of promoting a definite political agenda, the protection of human rights was not simply viewed as a desirable objective in its own right To be sure, however, on this account the abuses of the Reagan administration have been far in excess of and magnitudinally different from any of those committed by the Carter administration

So long as the United States government refuses to ratify these major treaties, the cause of human rights will be used and abused by whatever administration is in power to oppose, attack, condemn, destabilize, etc those governments and regimes abroad with which it disagrees primarily for political reasons The cause of human rights will continue to be exploited as a means to another end and not treated as an end in itself within the formulation and conduct of American foreign policy This politicization of human rights by whatever goverrment is in power will continue to detract from, if not undermine and destroy the credibility of U S human rights foreign policy both at home and abroad

If the United States government is genuinely committed to the promotion of human rights at all times and in all places and with respect to all governments around the world, its human rights foreign policy must

itself This is not to say that in the meantime the United States government should not pursue the goal of promoting human rights around the world But rather, to point out that this goal cannot be accomplished in an effective manner until we first ratify these treaties, open ourselves up to similar criticism, and thus remove the hypocrisy that has so far permeated our international position on human rights

In response to this criticism, some opponents to the ratification of these treaties have argued that the United States government s internal legal system for the protection and promotion of human rights is so far superior to that found in most other states of the world that no point would be served by allowing our human rights record to be attacked by totalitarian or authoritarian states in the Second or Third World The proper response to that criticism is quite simple and forthright If our internal system for the protection of human rights is so perfect, then we have absolutely nothing to fear from foreign criticism especially if it emanates from totalitarian or authoritarian regimes whose internal defects are so patently obvious to all members of the international community as well as to the American people

The international protection of human rights is not a zero-sum game If there are deficiencies in our internal system for the promotion of human rights, then consistent with American values, we should certainly be willing to correct them And that axiom should hold true for no matter which state is offering the criticism Just because the Soviet Union might be deaf to the criticisms of the international community when it comes to perpetrating violations of basic human r_ghts upon its own citizens provides absolutely no good reason why the United States should react to foreign criticism in the same obtuse manner After all, America

same sources of opposition to the abolition of racial discrimination against Black Americans in the United States It is these same bastions of racism which are today continuing to fight a rear-guard operation against the attainment of complete and effective racial equality for all segments of American society by means of opposing the ratification of these basic international human rights treaties

We have all heard the argument advanced before, and we continue to hear the argument propounded today, by conservative Southern Senators such as the late Sam Ervin, Jr or Jesse Helms, inter alia that the ratification of these human rights treaties would somehow violate states rights and therefore would be unconstitutional under the Tenth Amendment to the United States Constitution The latter provides that all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people The gist of these opponents argument was and still is that the ratification of these international human rights instruments would infringe upon a state s supposedly traditional right to regulate the normal day-to-day affairs of its own citizens By implication, presumably, this would include the right of state governments to permit discrimination against Black Americans

The so-called cause of states rights was used to impede the institution of formal racial equality in the United States of America from the seminal decision of the United States Supreme Court in Brown v The Board of Education, 347 U S 483 (1954) until the adoption of the major pieces of civil rights legislation in the mid-1960 s States rights was always the battle cry of those who opposed the institution of racial equality in this country by means of the adoption of legislation by the

international agreement on matters affecting the foreign affairs of the United States of America

Some two decades after Missouri v Holland, the United States government sponsored the foundation of the United Nations Organization during the course of the Second World War The Charter of the United Nations was a treaty that received the advice and consent of two-thirds of the membership of the United States Senate For that reason the United Nations Charter was and still is entitled to claim the benefits of the so-called Supremacy Clause found in the United States Constitution Article 6 thereof provides in relevant part that all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding In other words, in the event of a conflict between a United States treaty and a state law or constitution, the provisions of the treaty must prevail Needless to say, the revolutionary implications of the Supremacy Clause when applied to the Charter of the United Nations were quite clear to both the proponents and opponents of eliminating all forms of racial discrimination against Blacks in the United States of America

For example, the Preamble to the United Nations Charter states that the peoples of the United Nations are determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small Likewise Charter article 1(3) states that one of the purposes of the Organization is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex

invoking the Supremacy Clause in U S federal courts on the ground that these promoted genocide? And in particular, later on, would it not be true for any multilateral international agreement entered into by the federal government for the promotion and protection of human rights that it could be used to strike down racially discriminatory legislation and practices by the states of the Union by invoking the Supremacy Clause in a federal court? In essence, how could the proponents of states rights continue to maintain their system of racial discrimination against Blacks on a state-by-state basis in America when the federal government was concluding international human rights treaties and agreements that could require the states to abolish these various forms of racially discriminatory laws and practices?

This issue was joined squarely in the by-now celebrated case of Sei Fujii v California, 217 P 2d 481 (1950), decided by the California District Court of Appeal In that case a Japanese national who was ineligible to become a United States citizen under the U S naturalization laws then in existence sued for a determination of whether or not an escheat of land he bought had occurred under the provisions of the California Alien Land Law which prohibited aliens ineligible to become citizens from acquiring real property in the state of California The plaintiff relied upon the human rights provisions found in the United Nations Charter, specifically its Preamble and articles 1, 55, and 56 He argued that under the terms of the Supremacy Clause, these provisions of a United States treaty must take precedence over the discriminatory state law The District Court of Appeal agreed with his argument and held that the Alien Land Law was unenforceable because it violated both the letter and the spirit of the United Nations Charter

state legislation and practices by means of the Supremacy Clause on the grounds that they promoted genocide The same principle would hold true for any other international human rights treaty that the federal government might conclude on behalf of the United States of America

Thus, while the defenders of racial discrimination were fighting a heated battle on the domestic front to oppose and impede Congress s adoption of civil rights legislation, the executive branch of the federal government could be concluding international treaties or agreements that might accomplish the exact same result So the defenders of racial discrimination had to broaden their attack in order to prevent the executive branch of the federal government from concluding any international human rights treaties that could possibly be used in a manner that would undercut so-called states rights for the purpose of continuing to discriminate against Black Americans From a constitutional perspective, the way they sought to do this proved to be most insidious and quite effective

In order to accomplish this objective, they turned to Senator Bricker, who at that time represented the state of Ohio, where the Ku Klux Klan was quite active and powerful Senator Bricker introduced what came to be known as the Bricker Amendment to the United States Constitution, S J Res 1 & 43, 83d Cong , 1st Sess (1953) The proposed Bricker Amendment attempted to solve the problem created by the ratification of international human rights treaties by the federal government in a manner favorable to the advocates of states rights for the purpose of continuing to allow states to practice or permit racial discrimination against Blacks There were six sections to the proposed Bricker Amendment two of which are relevant to the analysis presented here

The real heart of the Bricker Amendment, however was found in section 4 which provided that all executive or other agreements between the President and any international organization foreign power or official thereof shall be made only in the manner and to the extent to be prescribed by law and that such agreements shall be subject to the limitations imposed on treaties or the making of treaties by this article It was section 4 of the Bricker Amendment that constituted the heart of the threat to the executive branch of the federal government in order to coerce the cessation of its support for the negotiation, conclusion, and signature of fundamental human rights treaties on behalf of the United States of America

This was because the vast majority of international agreements entered into by the United States government with other governments, international organizations, or foreign officials never receive the advice and consent of two-thirds of the Senate Rather, they are entered into by means of executive agreements concluded by the President or his delegated authority on behalf of the United States of America With respect to some issue areas, these agreements require prior congressional authorization or subsequent congressional approval, with respect to other subjects the President is free to enter into these agreements under his own independent powers in accordance with the terms of the Constitution or powers that have already been delegated to him by Congress Section 4 of the Bricker Amendment would have made it almost impossible for the executive branch of the federal government to conduct any form of business with other foreign states without some form of express approval by Congress Such a requirement would have literally brought the conduct of foreign affairs by the United States government to an abrupt halt and the proponents of the

these four covenants have yet to receive the advice and consent of the Senate Moreover when it transmitted these four treaties to the Senate for consideration the Carter administration recommended that the Senate adopt a declaration along the lines of section 3 of the Bricker Amendment to the effect that these four covenants cannot become binding as internal law in the United States without the enactment of appropriate implementing legislation by the Congress Such an exemption of these four covenants from the benefits of the Supremacy Clause would gut a great deal of their meaning and effectiveness in the event that the United States Senate eventually does give its advice and consent to them

Superficially it appeared that the Reagan administration was successful in finally convincing the Senate to give its advice and consent to the 1948 Genocide Convention Quite frankly, it is shocking and inexcusable that the United States government has not yet become a party to this pathbreaking treaty that represented the first of the post-World War II covenants designed primarily to protect international human rights Even then, today s defenders of states rights and racial discrimination successfully fought a rear-guard action to amend the treaty in a variety of ways that flv in the face of the fact that the International Court of Justice has already held in an Advisory Opinion that amendments or reservations to the terms of the Genocide Convention were fundamentally inconsistent with its purpose and therefore invalid

When the U S Senate finally gave its advice and consent to the Genocide Convention on February 19 1986 by a vote of 83 to 11, it attached two reservations five understandings and one declaration I will not bother analyzing these in any detail here Suffice it to say that the one declaration provided that the President cannot deposit the

Angeles and Philadelphia, among others would vigorously contest the validity of this latter proposition

But even if the United States government were to someday ratify the Genocide Convention without the two reservations, five understandings and one declaration attached by the Senate, this act would not open up to judicial or political scrutiny and adjudication the monstrous crimes of the past that have been undeniably perpetrated against Black Americans with the active participation or tacit acquiescence of our state or federal governments This would be pursuant to the doctrine of customary international law enunciated in article 28 of the 1969 Vienna Convention on the Law of Treaties to the effect that unless specifically provided otherwise a treaty does not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party Nevertheless the serious problem created by the policies our federal and state governments currently pursue toward indigenous peoples in this country would still need to be examined in light of the letter and spirit of the Genocide Convent on and any other international human rights treaties we might ra fy If these international human rights treaties can somehow be used to improve the deplorable and lamentable condition of American Indians and Eskimos, all U S citizens will be better off for the success of such an endeavor Yet today there are some Americans located in certain regions of this country who opposed the ratification of the Genocide Convention for that very reason

Hence, we see a direct continuity between those who originally opposed racial non-discrimination and equal rights and liberties for all Americans in the name of states rights and those who are still opposing the U S

house by ratifying these major international human rights treaties and eliminating the last vestiges of racial discrimination in America today against Blacks Indians Eskimos and other minority groups that we can then have any right or standing under international law to preach to other countries how they should treat their own citizens Until that day comes the rank hypocrisy and racism behind the formulation of U S human rights foreign policy will continue to mock and undercut whatever good-faith efforts we might make to promote and protect human rights around the world