

# **Les cités, as favelas, and the projects: International Law obligations in combating racialized police brutality in French, Brazilian, and American ghettos**

## **Les cités, como favelas, e os projetos: obrigações do Direito Internacional na luta contra a brutalidade policial racista em guetos franceses, brasileiros e americanos**

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### **Abstract**

Police brutality is a problem that plagues countries across the globe. All too frequently the victims of police abuse are racial minorities in their respective countries. This paper investigates the notion that international treaty obligations against torture, racial discrimination, and the violation of civil and political rights, when ratified, make state parties liable for systemic acts of racialized police brutality within their territory. It will analyze the treaty obligations of each country (the United States, France, and Brazil) which stem from their ratification of three treaties: The International Convention on the Elimination of All Forms of Racial Discrimination, The Convention Against Torture, and The International Covenant on Civil and Political Rights. A discussion of how race is framed as well as the institutionalization of racism in each of the three societies in question will be followed by an evaluation of the practice of police brutality along racial lines. The United States has a traditionally binary concept of race, and Blacks and Latinos are subjected to disparate treatment at every stage of the criminal process. France adopts the notion of “colorblindness,” however the police’s use of excessive and lethal force against Arab and African suspects is conducted without fear of serious repercussions. And while Brazil sees itself as a “racial Utopia,” non-white Brazilians are disproportionately beaten, tortured, imprisoned, and killed by Brazilian police. Finally, the paper will address the possibility of legal redress for the violation of the above treaties through the practice of racialized police brutality by the United States, France, and Brazil.

**Key words:** police brutality, racial minorities, favela, ghetto, treaty obligations

### **Resumo**

A brutalidade policial é um problema que aflige os países em todo o mundo. Frequentemente vítimas de abuso policial são minorias raciais em seus respectivos países. Este artigo investiga a noção que as obrigações dos tratados internacionais contra a tortura, a discriminação racial e a violação dos direitos civis e políticos,

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quando ratificadas, fazem o estado responsável por atos sistêmicos de brutalidade policial no seu território. O artigo analisa as obrigações do tratado de cada país (os Estados Unidos, França e Brasil), que decorrem da ratificação de três tratados: Convenção Internacional sobre a Eliminação de Todas as Formas de Discriminação Racial, a Convenção contra a Tortura, e no Pacto Internacional sobre os Direitos Civis e Políticos. Primeiramente, há uma discussão sobre como a raça é definida assim como será analisado como ocorre a institucionalização do racismo em cada uma das três sociedades em questão e, na sequência, será feita uma avaliação da prática da brutalidade policial considerando as diferentes raças. Os Estados Unidos têm um conceito tradicionalmente binário de raça, e os negros e latinos são submetidos a tratamento diferenciado em todas as fases do processo criminal. A França adota a noção de “daltonismo”. No entanto, a polícia usa força excessiva e letal contra suspeitos árabes e africanos, sem receio de repercussões graves. Enquanto o Brasil se vê como uma “utopia racial” os brasileiros não-brancos são desproporcionalmente espancados, torturados, presos e mortos pela polícia brasileira. Por fim, o artigo irá abordar a possibilidade de reparação legal para a violação dos tratados mencionados por meio da prática de brutalidade policial racista praticada pelos Estados Unidos, França e Brasil.

**Palavras-chave:** brutalidade policial, minorias raciais, favela, gueto, tratado de obrigações.

## Introduction

Police brutality is a problem that plagues many countries across the globe. All too frequently the victims of police abuse are racial minorities in their respective countries. Police forces, rather than protecting racial minorities often target them as lowly elements of society, meant to be kept in line. They are stripped of their dignity, autonomy, and basic rights and placed in a different category where they are stigmatized, harassed, and abused. This article will investigate the notion that international treaty obligations against torture, racial discrimination, and the violation of civil and political rights, when ratified, make state parties liable for systemic acts of racialized police brutality within their territory.

Many skeptics argue that international human rights law is an ineffective means for addressing human rights violations. How can the international human rights community be effective at addressing problems as minimal as racial discrimination and police brutality, if it is unable to resolve catastrophes as extensive as genocide? This type of argument greatly undermines the significant accomplishments of international human rights law, which go unacknowledged publicly. While international human rights failures are objects of constant public scrutiny, the international human rights system has achieved great triumphs, such as the creation of ad hoc international criminal tribunals for the former Yu-

goslavia and Rwanda. These tribunals were successful in quietly prosecuting mid and high-level offenders of human rights, establishing a historical record of the crimes committed, and allowing for the vindication of victims by their day in court with stark numbers of witnesses testifying. The tribunals were effective in allowing instituting closure for the effected communities, and contributed to the development of international law by applying legal principles that were formerly only abstractly articulated. Additionally, international human rights law has been quite successful on the regional level. The European Court of Human Rights and the Inter-American Court of Human Rights have ruled on an enormous magnitude of human rights cases, resulting in the incorporation of human rights principles into domestic law. Additionally, there have been numerous convictions for the torture of individuals, such as Chuckie Taylor’s conviction in Florida in 2008 for the torture of scores of Liberians, and the Second Circuit conviction of Américo Norberto Peña Irala for the murder by torture of Joselito Filártiga in Paraguay. The triumphs of the international human rights system have not been as greatly publicized as the failures; however there has been a plenitude of positive accomplishments globally.

Given the general move of the world to an increasingly international plane, there is a real possibility for change regarding international law’s acceptance, in the future. Globalization, in all of its forms, has contributed to the increased prominence of international law in

domestic arenas. This trend will only increase with time, and the United States is part of that trend. The importance of treaty obligations will continue to expand and perhaps in the future, fundamental violations of American, French, and Brazilian treaty obligations will be more substantially addressed.

Loïc Wacquant, in his book “Urban Outcasts,” explains the context in which race and police brutality must be viewed (Wacquant, 2008, p. 12). He states:

[Ghettos] ... are mere warehouses for supernumerary populations that no longer have any identifiable political or economic utility in the new polarized capitalism ... [and] are spatial containers for the ostracization of undesirable social categories and activities... As the ‘frontline’ agency and frowning face of the state directly turned down towards precarious and marginal categories, the police... have again been entrusted, not only with maintaining public order, but also, in a very concrete sense that returns it to the historic mission of its origin, to buttress the new social order woven out of vertiginous inequalities and to check the turbulences born of the explosive conjunction of rampant poverty and stupendous affluence engendered by neoliberal capitalism in the cities of the advanced and advancing countries throughout the globe.

This article will analyze racialized police brutality as an explicit violation of various ratified international treaties, and as a marker of liability for the United States, France, and Brazil. It will first investigate the treaty obligations of each country (the United States, France, and Brazil) which stem from their ratification of three treaties: The International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) (United Nations High Commissioner for Human Rights, 1965), The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) (United Nations, 1985), and The International Covenant on Civil and Political Rights (“ICCPR”) (United Nations, 1966). The United States has adopted extensive reservations to these treaties, France has reserved to a lesser extent, and Brazil has adopted each treaty without reservation.

The investigation will continue with a discussion of how race is framed in each of the three societies in question. The United States has a traditionally binary concept of race, whereas France adopts the notion of “colorblindness,” and Brazil sees itself as a “racial Utopia.” The societal concepts of race in France and Brazil are immensely far from the reality on the ground. This section will discuss the existence and institutionalization of racism in France and Brazil.

Next, this review will evaluate the practice of police brutality along racial lines. In the United States, Blacks and Latinos are subjected to disparate treatment at every stage of the criminal process. In France the police’s use of excessive and lethal force against Arab and African suspects is conducted without fear of serious repercussions, whereas in Brazil, non-white Brazilians are disproportionately beaten, tortured, imprisoned, and killed by Brazilian police.

Finally, the article will address the possibility of legal redress for the violation of the CERD, CAT, and ICCPR treaties through the practice of racialized police brutality by the United States, France, and Brazil.

## Treaty obligations

The United States, France, and Brazil have each signed and ratified the following treaties: The International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) (United Nations High Commissioner for Human Rights, 1965), The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) (United Nations, 1985), and The International Covenant on Civil and Political Rights (“ICCPR”) (United Nations, 1966). By signing and ratifying those treaties, each state has established its consent to be bound, and to refrain from any acts that would defeat the object and purpose of the treaty. However, each state has a particular disposition on how the treaties should be applied both domestically and what its obligations under the treaty should be internationally. Because international law arguably does not have a coercive enforcement mechanism, states’ participation in and obligations resulting from treaties, vary considerably.

Upon ratification of the aforementioned treaties, the United States adopted several reservations. This has been a typical practice of the United States. The United States will frequently ratify a treaty, publicly in support of its object and purpose, however they will adopt reservations perceivable as contrary to the effectiveness of the treaty itself. One frequent reservation made by the United States, is a “non-self-executing” reservation, by which the U.S. claims that the “provisions of the Convention are not self-executing.” This ensures that a particular treaty does not create directly enforceable rights in its own courts, and additional domestic legislation must be adopted in order for the treaty to be implemented internally. Many argue that this type of reservation goes completely against the nature of the very treaties being ratified, because potential plaintiffs

may not bring a claim under the convention until Congress decides to adopt some sort of parallel legislation. Others wonder how the treaty can be enforceable if there is no ability to bring a claim.

Many organizations harshly criticize this practice, including Human Rights Watch and the American Civil Liberties Union which state, “While ratification enhanced Washington’s ability to criticize other governments for violating human rights, the Bush administration took steps to ensure that the treaty would provide no added protection for the rights of Americans... it carved out every provision of the treaty that it believed would have granted expanded rights to Americans [and] it declared the United States in full compliance with the remaining treaty provisions, in an effort to justify not granting Americans the right to invoke the treaty in U.S. courts” (Shapiro, 1993, p. 1-2).

Amnesty International similarly states that these types of reservations “seriously undermine the rights guaranteed by these treaties. If every government were to ratify treaties only after making reservations to ensure there is no change in existing state practice, the whole concept of international human rights protection, and the authority of such treaties, would become meaningless” (Amnesty International, 1995, p. 1).

Most countries do not have a similar process of “non-self-executing” treaties. And in the instance of the Convention on the Elimination of All Forms of Racial Discrimination, “no other country has made a reservation, understanding, or declaration rendering any of the substantive provisions of the Convention (Arts. 1-7) non-self-executing in their territories” (United Nations High Commissioner for Human Rights, 1965). It is important to keep in mind that the adoption of “non-self-executing” provisions by the United States in reservations to the treaties discussed below radically alters the possibility of their effective implementation within U.S. territory.

### **International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”)**

The International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) has been described as “the most comprehensive and unambiguous codification in treaty form of the idea of the equality of the races...” (Taifa, 1997, p. 648). CERD was ratified by Brazil in 1968, by France in 1971, and by the United States in 1994. It prohibits “racial discrimination” which is defined in its Article 1 as, “any distinction, exclusion, restriction or preference based on race,

colour, descent, or national or ethnic origin which has the purpose of or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” (United Nations High Commissioner for Human Rights, 1965).

The most important provision of CERD that applies to the case of racialized police brutality is its Article 5(b) which states:

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;

Additionally, Article 6 of the Convention provides a judicial remedy for violation of the Convention:

State parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

The United States, upon signature of CERD adopted a reservation stating, “The Constitution of the United States contains provisions for the protection of individual rights, such as the right of free speech, and nothing in the Convention shall be deemed to require or to authorize legislation or other action by the United States of America incompatible with the provisions of the Constitution of the United States of America.”

Upon ratification of the Convention, the United States further reserved with regard to Articles 4 and 7 of the treaty, stating, “the Constitution already contains extensive protection of individual freedom of speech, expression, and association” and that the United States will not accept any obligation under CERD to restrict those rights to the extent that they are protected by the Constitution. As to Article 1, the United States clarified that it “...does not accept any obligation under [CERD]

to enact legislation... with respect to private conduct except as mandated by the Constitution and the laws of the United States,” and with regards to Article 22 it stated that a case may not “be submitted to the jurisdiction of the International Court of Justice” unless the specific consent of the United States is obtained. On top of all of these reservations, the United States also adopted a non-self-executing provision, making the treaty effective in U.S. courts only after the adoption of domestic legislation.

Similarly, France made extensive reservations to the Convention upon its ratification in 1971. They adopted a reservation similar to the one adopted by the United States in reference to Article 4 of CERD. It stated, “France wishes to make it clear that it interprets the reference made therein to the principles of the Universal Declaration of Human Rights and to the rights set forth in article 5 of the Convention as releasing the States Parties from the obligation to enact anti-discrimination legislation which is incompatible with the freedoms of opinion and expression and of peaceful assembly and association guaranteed by those texts.” This is another common type of reservation made by the United States and France, aiming to insure that Constitutional rights of free speech, expression, assembly, and association are not compromised by the enforcement of the treaty.

Additionally, France reserved with regards to Article 6 of the treaty, stating, “France declares that the question of remedy through tribunals is, as far as France is concerned, governed by the rules of ordinary law,” and to Article 15 stating, “France’s accession to the Convention may not be interpreted as implying any change in its position regarding the resolution mentioned in that provision.”

Unlike the United States and France, Brazil ratified CERD with no reservations.

### **The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”)**

Another very important international treaty in the investigation of racialized police brutality is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). This treaty requires the prohibition and punishment of torture in law and in practice. Articles 12 and 16 of the Convention require states to ensure that there is a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or other cruel,

inhuman or degrading treatment has been committed and to bring those responsible to justice.

The CAT was ratified by France in 1986, by Brazil in 1989, and by the United States in 1994. Article 1 of the Convention Against Torture defines the term “torture” as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Section 2 of Article 1 further states “this article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”

Upon ratification of the Convention, the United States adopted an understanding in reference to the Convention’s definition of torture. The United States stated “that they only consider themselves bound ‘insofar as the term cruel, inhuman or degrading treatment or punishment’ means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.” They additionally adopted an understanding that, “in order to constitute torture, an act must be *specifically intended* to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from (i) the intentional infliction or threatened infliction of severe physical pain or suffering; (ii) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (iii) the threat of imminent death; or (iv) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality” (emphasis added). These reservations and understandings are especially problematic and seem to be at odds with the purpose of the treaty because the Convention adopts a significantly broader definition of the meaning of torture.

The CAT does not require specific intent in order for an act to constitute torture.

The United States additionally reserved extensively to other portions of the Convention in order to narrow the broad prohibition on the use of torture. One reservation adopted states that “[a] public official, prior to the activity constituting torture, [must] have *awareness* of such activity and thereafter breach his legal responsibility to intervene to prevent such activity” (emphasis added). Another states that the phrase “where there are substantial grounds for believing that he would be in danger of being subjected to torture,” used in Article 3, must adopt the meaning, “if it is *more likely than not* that he would be tortured” (emphasis added). Other reservations adopt further exceptions defining the death penalty as outside the definition of torture. Many more reservations narrow the broad prohibition on the use of torture, further extensively reserving to the substantive provisions of the Convention. On top of all of these reservations, the United States also adopted a non-self-executing provision, making the treaty ineffective in U.S. courts without the adoption of domestic legislation.

In contrast to the United States, France ratified the Convention Against Torture with only one procedural reservation that was allowed by the Convention itself: to refrain from submitting any dispute to arbitration. This same reservation has also been adopted by the United States. In 1988, France made a declaration recognizing “the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.”

Brazil repeated the same conduct it had engaged in with the CERD Convention, adopting the treaty without reservation. In 2006, Brazil made a declaration recognizing “the competence of the Committee against Torture to receive and consider denunciations of violations of the provisions of the Convention.”

### **The International Covenant on Civil and Political Rights (“ICCPR”)**

A third important international treaty that relates to the investigation of police brutality along racial lines is The International Covenant on Civil and Political Rights (“ICCPR”). The parties to the ICCPR agree to acknowledge all peoples’ right to self-determination, by which they may “freely determine their political status and freely pursue their economic, social and cultural development” (United Nations, 1966). The parties to the

ICCPR also agree to promote the “realization of the right of self-determination.”

The ICCPR was ratified by France in 1980 and by Brazil and the United States in 1992. Article 6 of the Covenant grants the right of every human being not to be arbitrarily deprived of life. Article 7 grants the right to freedom from torture or ill-treatment. Article 26 states that, “All persons are entitled without any discrimination to the equal protection of the law and that “the law shall... guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

As was the case with the prior two treaties, the United States, upon ratification of the Covenant, adopted several reservations. First, they reserved that the Constitutional rights of free speech and association will not be restricted by the statements in Article 20 which provide that, “any propaganda for war shall be prohibited by law,” and that, “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Additionally, the United States reserved the right to exercise capital punishment and to treat juveniles as adults in “exceptional circumstances.” The United States also adopted a provision identical to the one in the Convention Against Torture that, “‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”

The United States has also adopted a number of Understandings and Declarations, further tailoring the application of the Covenant to the federalist nature of American government. In addition to all of these Reservations, Understandings, and Declarations, the United States adopted a non-self-executing provision, making the treaty ineffective in U.S. courts without the adoption of domestic legislation. In addition, the United States failed to ratify the Optional Protocol of the ICCPR, which would allow individual petitions for redress.

Similar to the United States, France made extensive reservations to the Covenant upon ratification in 1980. They stated that in the event of a conflict between the Charter of the United Nations and the Covenant, “its obligations under the U.N. Charter will prevail.” In addition, France undertook to implement several articles of the Covenant in accordance with the European Convention of Human Rights and Fundamental Freedoms. France adopted an additional reservation providing that in a state of siege or emergency, the ICCPR

does not limit the power of the President to take “the measures required by circumstances.” France adopted other reservations limiting the applicability of several Articles of the Covenant to domestic provisions governing French armies and the entry and expulsion of aliens into and out of France.

France makes a very harsh reservation, claiming that in light of Article 2 of the Constitution of the French Republic (which claims that the language of France is French), Article 27 of the Covenant is not applicable whatsoever. Article 27 of the Covenant declares, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

France also reserved on Article 14(5) which states that, “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.” France interprets this provision as “stating a general principle to which the law may make limited exceptions, for example, in the case of certain offenses subject to the initial and final adjudication of a police court and of criminal offenses. However, an appeal against a final decision may be made to the Court of Cassation which rules on the legality of the decision concerned.”

As with the prior two treaties, Brazil adopted the ICCPR in 1992 without reservation. However, Brazil did not adopt the Optional Protocol to the ICCPR until mid-2009, allowing individuals to file complaints with the Human Rights Committee against states who allegedly have failed to comply with the ICCPR. Unlike the United States and Brazil, France has been the only one of the three countries considered in this analysis to ratify the Optional Protocol to the ICCPR (in 1981).

### **Other relevant international standards**

Other international standards establish additional obligations with regards to addressing racialized police brutality. The United Nations Code of Conduct for Law Enforcement Officials (United Nations, 1979) was adopted by the U.N. General Assembly in 1979. Article 2 of that code states, “in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons...” Article 3 states, “law enforcement officials should use force only when strictly necessary and to the extent required for the performance of their duty...”

And Article 5 states, “no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment...” This Code of Conduct is a non-binding resolution of the United Nations General Assembly. However, it holds evidentiary weight as to the presence of customary international law norms.

Additionally, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990) was adopted by consensus by the Eighth U.N. Congress on the Prevention of Crime and Treatment of Offenders in 1990. Principle 9 states that “firearms should be used as a last resort in self defense or to protect others against ‘imminent threat of death or serious injury’ and ‘only when less extreme means are insufficient to achieve these objectives’.” Principle 11 states that firearms should be used “in a manner likely to decrease the risk of unnecessary harm.” Again, although this is a non-binding resolution by a sub-committee of the United Nations General Assembly, it carries evidentiary force as to the existence of customary international law norms.

Both of these instruments provide that force should be used only as a last resort when non-violent measures have failed or would be clearly inappropriate, and that in all cases, the amount of force used must be proportionate to the threat encountered and designed to minimize damage and injury.

Finally, it has been argued that since the Universal Declaration of Human Rights (United Nations, 1948) is part of customary international law, it is therefore binding on all nations. However, the Declaration lacks the force necessary to attack the problem of police brutality because it contains no enforcement provisions. Each of these mechanisms provides evidentiary weight rendering the practice of police brutality, especially along racial lines, as against the principles of international human rights law.

It is thus safe to conclude that in regards to the CERD, CAT, and ICCPR treaties, the United States reserves a great deal, Brazil generally adopts treaty obligations without reservation, and France reserves to an extent, but not as much as the United States. This leads us to critically question whether ratification of treaties is seen as a merely formalistic process or whether each of these states takes seriously its obligations to the treaties it signs. This problem exemplifies a competing tension in international law between obtaining quantitative universality versus qualitative universality. Many would argue that allowing a flexible policy on the use of reservations by states, when ratifying a treaty, encourages

acceptance by a wide group of states. Others would argue that it is better to enforce a strict reservations policy, which would ensure that each party to a treaty would have the same obligations under the treaty as the other states, sacrificing quantity for quality.

Another consideration is whether certain states, as a result of their global power, have the ability to make greater reservations (in number and in scope) than those with less global power; and whether states with less global power, are politically forced to sign treaties, but have no intention of enforcing the obligations of the treaties within their territory. In the specific case of Brazil, this is a major concern. The Brazilian government, under great pressure from Great Britain, signed a treaty in 1826 promising the abolishment of the slave trade; however, they continued to practice slavery until its formal abolishment in 1880, importing an estimated one million new slaves in the interim period. The Brazilians claimed that the signing of the treaty was only “for the English to see,” given that the Brazilian elite had no real intention of stopping the profitable slave trade (Goldstein, 2003). Many argue that this type of practice continues today; that laws are enacted and treaties signed to evidence the intention to change, yet in practice, no substantive change is achieved or even planned.

However, one could further claim that these three states actually engaged in the act of signing and ratifying the treaties. They could have chosen not to sign and ratify them, but they arguably believed in the purpose and message of the treaty, as evidence of customary international law, and thus, they adopted them. Many of the reservations made have to do with the superiority of domestic law over international law; however, reservations that go directly against the object and purpose of the treaty are not as common, and are in fact very rare. As discussed above, the United States is the only country in the world, which reserved to the substantive articles of CERD, and it seems that they are the only country, which continually adopts reservations that are against the object and purpose of treaties (represented by the substantive articles of treaties). However, with the growing importance of international law, international norms are being incorporated into American domestic law, undermining the strength of these types of reservations.

## The framing of race

### USA: Traditionally binary conception of race

The concept of race in the United States is immensely complex. Given that there have been volumes

of books written on the subject, no brief discussion of the issue here will be sufficient to do justice to the topic of race in America. The purpose of the discussion of race here is to illustrate the traditionally binary nature of the conception of race in American history and society, as compared to France and Brazil.

The history of slavery and segregation and the racial separation between Blacks and Whites in the United States is largely governed by the so-called “one drop rule.” The “one drop rule” is the historically societal and legal concept that a person with any trace of African blood is considered Black. In addition to this concept there is the notion that classification as Black and the construction of one’s identity is not subject to an individual’s choice. Racial separation and distinction was historically extremely rigid in the United States. The motive of the “one drop rule” and non-voluntary nature of Black classification was to radically differentiate and justify the contradictory legal and societal distinctions between blacks and whites. This differentiation began during slavery and continued into the period of segregation when Jim Crow laws further implemented these notions. Notions of black inferiority and white superiority were supported by the eugenics movement, providing scientific justifications to the policies depriving blacks of the rights of human dignity and privilege afforded to whites. The rigid divide between Blacks and Whites in the United States largely prevented a system of racial or social mobility, and the effects of this separation are extensively seen today.

### France: Constitutional colorblindness

Despite its strong leadership in the European Union and well-established constitutional protections, France has been criticized by supra-national bodies for its policies regarding treatment of immigrant communities. Diametrically opposed to the American concept of race, France has adopted a policy of “colorblindness.” In 1952 there was an extensive movement by the French government to establish this policy (Bleich, 2000). French law actually makes the use of any racial categorization a criminal offense (Bruce-Jones, 2008). These policies derive from the ideals of liberty, equality, and fraternity, first laid out in the Declaration of the Rights of Man and of the Citizen, and the desire to establish a republic where all people would have equal opportunity regardless of their classification. However, the nature of French history is one where race has been prevalent, and its continued prohibition today has failed to allow for the equality of all races.



The history of French colonialism served to radically differentiate people on the basis of race. With colonies across the globe, from the Caribbean to Africa, to Asia, France dealt with and exploited people of all different races and colors. The decolonization movement radically affected France as well. France fought hard against the independence movements of Vietnam and Algeria; however, by the end of the 1960's most of France's colonies had gained independence. One result of the French colonial empire was the massive influx of immigrants from France's former colonies following their independence, many of whom fought on the front lines in World War II, yet received unequal pensions until 2002. Oftentimes, these immigrants were deliberately sought to rebuild the country after its World War II destruction.

Although many French deny the existence of racism, the United Nations Committee on the Elimination of Discrimination released a report in 2010, stating that racism in France is undergoing a "significant resurgence" (RFI News, 2010). Statistics with regard to race are quite limited. There have only been three surveys, conducted in 1927, 1942, and 1986, in which demographics, regarding immigration or birth rates of children of immigrants have been evaluated. Michèle Tribalat, a researcher at the National Institute of Demographic Studies (INED) claims that it is very difficult to discern statistics regarding the number of French immigrants or born to immigrants, because of the absence of official statistics. Additionally, the first Annual Report of the European Union Agency for Fundamental Rights (FRA), which covers information, events and developments related to racism and xenophobia in the European Union states that, "given that most racist incidents are not reported to the police or if they are, do not go on to be prosecuted... [there is a lack of effective] data collection mechanisms... [and] without good data about the extent and nature of racist crime, a Member State cannot accurately address the problem, and cannot state with any certainty whether racist crime is getting worse or better over time."

However, with the recent formation of the HALDE, the High Authority against Discrimination and for Equality in France, there has been a significant increase in the reporting of incidents of discrimination based on ethnic or racial discrimination (European Union Agency for Fundamental Rights, 2010). It is now evident that racial violence occurs quite frequently. The European Union Agency for Fundamental Rights (FRA) reported 864 racist crimes officially recorded in 2008 (European Union Agency for Fundamental Rights, 2010). Between 2000 and 2008, there was a 20.5% increase in the number

of officially recorded reports of racist crime (European Union Agency for Fundamental Rights, 2010).

Racism and discrimination in the area of employment is probably the most frequently reported. The HALDE documented 10,545 claims in 2009 (an increase of 21% since 2008 and of 69% since 2007), 49% of which were employment discrimination claims (Haute Autorité de Lutte Contre les Discriminations et Pour l'Égalité, 2009). The main type of complaint filed with the HALDE is discrimination based on origin. Under French law, defendants may now be held criminally liable or face civil penalties for their failure to disprove the rebuttable presumption of discrimination upon the presentation of sufficient evidence by the plaintiff (Haute Autorité de Lutte Contre les Discriminations et Pour l'Égalité, 2009).

Eddie Bruce-Jones, in his investigation of Anti-Discrimination Law in France and Germany, states, "The lived experience of racial identity in [France] is under siege. Governmental and popular efforts seek to limit the use of race as a concept. French law declares any use of racial categorization to be a criminal offense... yet racial violence in [France] demonstrates that race is still real" (Bruce-Jones, 2008, p. 425-426). Susan J. Terrio has characterized youth of non-European ancestry as "a nonexistent legal category but a stigmatizing social one" (Terrio, 2003, p. 151).

She further emphasizes the contradictory and ineffective nature of the French judicial system and French society to address racism, stating, "On the one hand, France represents itself as the first of the modern democratic nations as well as an exemplar and champion of universal human rights that embraces an expansive, assimilationist idea of citizenship. On the other hand, the universalist, egalitarian rhetoric on equality before the law effectively silences public or scholarly discourse on race and ethnicity (there is no social-science literature on race relations), perpetuates the official myth that since France has no legal minorities it has no minority problem, and frames discrimination as a class issue. This rhetoric also belies the very real and persistent use of ethnocultural categories in discriminatory practices aimed at immigrants and foreigners in housing, schools, at work, and by the police" (Terrio, 2003, p. 142).

### **Brazil: False racial utopia**

As Melissa Nobles states in her comparative evaluation of race and censuses in Brazil and the United States, "the idea of 'races' and strict boundaries between them, created and sustained until the mid twentieth century by U.S. law and custom, were

absent in Brazil... Brazilian slavery, in contrast [to the harsh, racially rigid American slavery] was thought to be less harsh because of higher manumission rates, the religious protections provided by Catholicism, and a sizable class of persons known as 'free people of color' whose free status made a strict correspondence between color and slave status impossible" (Nobles, 2000, p. 7-9). In Brazil, slavery lasted until 1888; Brazil was the last country in the world to abolish slavery. One characteristic difference between American and Brazilian slavery was the constant influx of new slaves from Africa. Differing from the United States, where importation of slaves made up only seven percent of the total slave importation to the Americas, Brazil imported a striking forty-one percent of the slaves of the Atlantic Slave trade (Nobles, 2000). The fact that Brazil was constantly importing new slaves, in addition to the fact that interracial sex was not prohibited in Brazil, facilitated the creation of mixed-races of people who were often able to attain social mobility, blurring the distinction along solely racial lines (Nobles, 2000).

Brazil, as opposed to the United States, never used the concept of race to suggest utterly separate human types (Goldstein, 2003). Brazil has a complex network of forty different racial color classification terms, including: "branco, preto, sarará, moreno claro, moreno escuro, mulato, moreno, mulato claro, mulato escuro, negro, caboclo, escuro, cabo verde, claro, aracuaba, roxo, amarelo, sarará vermelho, caboclo escuro, pardo, branca sarará, mambebe, branco caboclado, moreno escuro, mulato sarará, gazula, cor de cinza clara, crelo, louro, moreno claro caboclado, and mulato pele" (Harris, 1964, p. 58). "Additionally, Brazil did not develop a structure of legal supports to racism, and perhaps because racism in Brazil was less codified and more subtly manifest in social rather than in legal relations, it could not be challenged directly in the courts and became difficult to address" (Goldstein, 2003, p. 105). Emergences of African tradition, such as the infamous Brazilian samba, capoeira, and Afro-Brazilian religious traditions, were often subsumed into the broader definition of Brazilian identity, marking a process of "de-Africanization." Those elements that retained purely African elements were denigrated; dark-skin color and African racial features continued to be associated with slavery and were considered ugly (Goldstein, 2003).

Today, however, there exists the notion that Brazil is a "racial democracy" or a "racial Utopia." Because the degree of racial intermixing is relatively high, and because race relations appear to be harmonious, many believe that Brazil has transcended the American black-white racial dichotomy. However, despite appearances

of social relations, there is a lack of recognition of the striking institutionalized and societal racism of Brazil. The fact that there existed a relatively large class of "free people of color" in Brazil does not mean that the horrid institutional effects of slavery are not felt. There was no Civil Rights Movement in Brazil, as there was in the United States, and currently, generally speaking, those persons who live in Brazil's shantytowns or *favelas* are overwhelmingly black (with some exceptions of pockets of immigrants from the North East of Brazil who have European descent).

Loïc Wacquant, describes *favelas* in the following terms, "In Brazil... the label of *favela* fuses and confuses stable working-class districts that continue to provide solid harbors of proletarian integration into the city, zones in which the victims of 'regressive deindustrialization' are forsaken to their fate in an informal street economy increasingly dominated by criminal activities and the entropic violence they generate, and enclaves for *marginais* defined by the experience of group stigma and collective taint..." (Wacquant, 2008, p. 11).

Moreover, *favelas* are notoriously under-counted by the government when it comes to population. Daniela Fabricius states, "when it comes to *favelas*, which by definition evade or exceed administrative or bureaucratic oversight, both the efficacy and the politics of conventional mapping (and of statistics and demographics) must be questioned. Statistics, etymologically a 'science of the state,' have historically been an instrument of power. The indeterminacy of data on informality makes it particularly vulnerable to fabrication and manipulation. Census taking in *favelas* provides a notorious example. Population estimates for individual *favelas* vary widely, with differences between what the city declares the population to be and what the citizens themselves claim—usually a larger number that would give them a greater opportunity for political agency" (Fabricius, 2008, p. 4). One may view these statements as a testament to the intent of the Brazilian government to minimize the conception of being an obviously racist society or a society of African descent, to appeal to the global community in economic marketing terms.

One major point of disagreement among scholars and Brazilian citizens alike is whether the perverse inequalities of Brazil are a result of discrimination on the grounds of class or race. In 1997, Brazil was the country with the most unequal wealth distribution in the world (the richest 20% of the population have the greatest share of national income- 67.5%; highest inequality coefficient of all reporting countries) (World Bank, 1997). There is unequal income distribution and limited opportunities

for social mobility (Scalon, 1999). Several studies have revealed that blacks and browns earn less than whites even when they have the same degree of education, age, and work experience (Hasenbalg, 1979). Additionally, “a public opinion poll conducted by the *Folha de São Paulo* in April 1995 on a sample of over 5,000 interviewees of the whole country showed that the vast majority of the population (80%) agreed that racial prejudice was a fact of life in Brazil” (Cano, 1999, p. 3).

Donna M. Goldstein, in her provocative ethnography “Laughter Out of Place: Race, Class, Violence, and Sexuality in a Rio Shantytown,” explores the manifestation of racism in Brazil. She states that, “Although there is no legally sanctioned racism in Brazil, the structures of racism are present in everyday experiences. Because their existence and significance are often conveyed through indirect forms of communication- black-humored jokes and coded silences- they are much more difficult to describe and challenge” (Goldstein, 2003, p. 105). Goldstein discusses the relationship between a dark-skinned black woman Eliana, and her very light-skinned grandchild Fausto. Eliana is often perceived to be Fausto’s nanny. Goldstein explains that, “The links between color and class are particularly clear in the case of Eliana and her grandson Fausto. Color- hers and Fausto’s taken together- is ‘naturally’ perceived as an indicator of a class relationship... Rather, their presence together suggests a racialized class relationship: that of lower-class (black) nanny and upper-class (white) child” (Goldstein, 2003, p. 103).

A results-based analysis is also able to determine the striking presence of institutionalized racism in Brazil. According to Institute for Applied Economic Research (IPEA): “black people are born with lower weight than white people, are more likely to die before the age of one and are less likely to attend a day-care center. Their school repetition rates are also higher, as a result of which many of them drop out of the school system with a lower schooling than white people. More black young people die from a violent death than white youths and are less likely to find a job. When they do find a job, their wages are less than half those paid to white people, leading them to retire earlier with a lower pension, if they retire at all. During all of their lives, they are forced to rely on the worst health care system available in the country and end up living less and in greater poverty than white people” (Brazilian Government Institute for Applied Economic Research, 2007, p. 281).

The IPEA reports several statistics which demonstrate this principle of institutionalized racism in Brazil clearly. They report that two-thirds of poor people in Brazil are black and 46.3% of the black population

lives below the poverty line (twice as high as the white populations below the poverty line) (Brazilian Government Institute for Applied Economic Research, 2007). Differences between black and white enrollment rates in secondary education institutions are as high as 22%. Two of every three black youths have dropped out of secondary education or are very old for the grade-level they are in (i.e. 16 year olds in primary schools) (Brazilian Government Institute for Applied Economic Research, 2007). Among white students this is considerably lower: 42%. Only 6.6% of all black young people were attending a university, where as 19% of white youths were. Only 2% of Brazilian university students are black. The murder rate for black people is 31.8 per 100,000 people, about twice as high as the 18.4 rate of white people. In Northeastern Brazil, the murder rate was three times higher for blacks than it was for whites. Of each 4 people killed by the police, 3 are black.

These statistics, along with Brazil’s unique racial history, demonstrate a society that has perverse racial inequalities, yet espouses the public image of racial utopia. However, there is hope in the fact that the Special Secretariat for the Promotion of Racial Equality (*Secretaria Especial de Políticas de Promoção da Igualdade Racial*); and SEDH, the Special Secretariat for Human Rights (*Secretaria Especial dos Direitos Humanos*) now exist and are attempting to combat issues of racial discrimination and human rights violations in Brazil.

## Patterns of police brutality along racial lines

### USA: Blacks and Latinos subjected to disparate treatment at every stage of the criminal process

In the United States, statistical documentation of police brutality is difficult to adequately obtain. Most instances of police brutality are unreported, and take place away from public scrutiny. The few cases that reach the level of public scandal or prosecution, demonstrate the sheer brutality of the conduct involved. Occasional videotapes, audio tapes, and publicly-witnessed incidents of police brutality towards Blacks and Latinos in the United States occur often enough for the average American to be shocked by the level of viciousness. However, when communicating with Blacks and Latinos in the U.S., it will become readily apparent that racial profiling, harassment, and abuse are more of a daily occurrence in their lives, rather than a rare public spectacle.

Thousands of allegations of police abuse are filed each year in the United States. The Civil Rights Division of the Department of Justice receives about 8,000 complaints a year, with 75-85 percent of them involving problems with the police, most involving people of color (Thomas, 1995). Additionally, police officers have admitted that race is used as a determinative factor in deciding who to follow, detain, search, and arrest (United States v. Harvey, 1994). Police brutality in the United States is characterized by the excessive use of force by police officers, including unjustified shootings, severe beatings, fatal choking, and rough treatment (Human Rights Watch, 1998). People of color are the target of disproportionately high rates of excessive and deadly force used by police (Jenkins, 1992).

Several high profile incidents demonstrate the problem of police brutality in the United States. In 2009, Oscar Grant, lying face down on a subway platform, posing no threat, was shot in the back and killed by a transit police officer in California. In 2006, the New York Police Department killed Sean Bell, an unarmed young Black man in Queens, New York, firing 50 bullets at his person, and critically wounding his two friends Joseph Guzman and Trent Benefield. In 2003, Ousmane Zongo, a West African immigrant, was shot four times, twice in the back, by a NYPD officer. He had run away from the officer because he was frightened when the officer, not in police uniform, drew his weapon. Abner Louima, a public school worker getting ready to leave for work, was killed when police broke down the door of her Harlem apartment, releasing a deafening flash grenade, and ignoring her screams that she couldn't breathe and that she had a heart condition. She suffered a heart attack and was pronounced dead upon arrival to the hospital. In 1999, the murder of 23-year-old Guinean immigrant Amadou Diallo sparked a massive public outcry, especially when the officers responsible were acquitted of all charges. Unarmed Amadou Diallo was killed by 4 officers that fired 41 shots upon him when he pulled a wallet from his jacket.

Perhaps the most infamous incident was the Rodney King beating in Los Angeles in 1991, caught on video. Nkechi Taifa describes the incident as follows (Taifa, 1997, p. 671):

On March 3, 1991, eighty-one seconds of videotape filmed by a private citizen brought into national focus the blatant police brutality that is a tragic part of the African American experience. Rodney King, unarmed and clearly no visible threat to the fifteen or more policemen that surrounded him, received fifty-six blows and electric shocks from four White police officers. Beamed

into homes across the country was the image of Sergeant Stacey Joon twice firing a 50,000-volt Taser "stun gun" at the prostrate King, while three other members of the LAPD "took turns kicking him and smashing him in the head, neck, kidneys and legs with their truncheons." As a result of this severe beating, King received 11 skull fractures, a crushed cheekbone, a broken ankle, internal injuries, a burn on his chest, and brain damage. Unfortunately, this was not the first, nor the last incident of police brutality, and, absent videotaped footage, it probably would have been ignored.

The incident, followed by the jury acquittal of four police officers involved in the beatings, sparked the 1992 Los Angeles Race Riots, where thousands of people demonstrated their frustration with a police force and justice system they believed engaged in racial profiling and use of excessive force.

Until 1998, the data released by the New York Police Department on police shootings included information regarding the race of the victim. Almost 90% of victims shot by police officers in New York were Black or Latino. But in 1998, the police commissioner Howard Safir changed the policy to result in the removal of statistics on race from the annual NYPD reports. No reason was given for this action, but it probably was related to killing of Amadou Diallo by NYPD police officers. Following shooting of Sean Bell in 2006, the New York Civil Liberties Union sued NYPD for failing to release statistics on the race of victims of police shootings as a violation of a Freedom of Information Act request (Baker, 2008).

One of the most serious problems in addressing police brutality is the overwhelming barrier to accountability. Officers who commit police brutality often escape punishment and repeat their offenses. This is evident in the public cases discussed above. Much of the public outcry had to do with the fact that seemingly unambiguous murders by police, when tried in the criminal justice system, resulted in the acquittal of most of the officers involved. Human Rights Watch claims that the barrier to accountability is a result of unfettered police discretion, a police "code of silence," and inadequate disciplinary measures by police, departments, and administrators. Additionally, victims seeking redress faced overt intimidation as well as reluctance of prosecutors to take on their cases.

These high profile events, while stirring public sentiment, are only a small piece of the true picture. Nkechi Taifa articulates the racist nature of police abuse in his article on the infliction of police brutality against blacks in the United States (Taifa, 1997, p. 672):

Racial stereotypes of Blacks as drug dealers and thieves cause people of color to automatically be considered suspects when they are seen driving expensive cars. In spite of the assumption that police officers only target inner city youth, celebrities, sports figures, and middle-class African Americans also find themselves the victim of police racism and abuse. Johnny Gammage, a thirty-one year old African American is an example that received a considerable amount of media attention. Gammage, who was driving an expensive vehicle, was pulled over for a traffic stop. With five white officers present, Gammage was pinned to the ground with his face pressed to the pavement. The autopsy revealed that he suffocated after one of the officers stood on his neck and pressed down with a metal club. The victim was later discovered to be the cousin of Ray Seal, a prominent lineman for the Pittsburgh Steelers.

A recent ABC news special reported a litany of similar police misconduct around the country, including: a Black woman in South Carolina dragged from her car and threatened by a white police officer; a Florida county where hundreds of African Americans were stopped for minor traffic offenses; in southern New Jersey, evidence that 42% of the drivers stopped on the highway are Black; and in Maryland, where the African Americans only comprise 12% of the population, they comprised 72% of the drivers stopped on interstate I-95. Even more probative of the level of police harassment against Blacks was a simple test conducted by the Prime Time producers. Three African American men, all college age, drove around town in a luxury car with a hidden camera installed. They were immediately stopped by an officer who said they had not used a left blinker. Shortly thereafter another squad car arrived at the scene. When one of the occupants said he had no identification on him, all three of the youths were ordered out of the vehicle, separated and frisked, and the car was thoroughly searched.

Incarceration rate statistics give a more tangible demonstration of the sheer scale of institutionalized racism within the U.S. criminal justice system. The Department of Justice in 2006 reported that 1 in 36 Latino adults is behind bars, 1 in 15 black adults, and 1 in 9 black men between the ages of 20 and 34. As of 2009, 537 whites per 100,000 people in the United States were in prison, compared to 1,267 Latinos, and 3,261 Blacks. With the filter of age and race, the results are much more striking. In 2006, there were 12,603 Black males between the ages of 25-29 in prison per 100,000 people. That is 12.6% of Black men in that age group. There are more Black men in prison than enrolled in college (United States Department of Justice Bureau of Justice Statistics, 2004). In 1999, Blacks represented 12.7% of

the U.S. population, 15% of drug user (72% of all users are white), 36.8% of those arrested for a drug-related crime, 48.2% of American adults in state, and federal prisons and local jails and 42.5% of prisoners under sentence of death (United States Department of Justice Bureau of Justice Statistics, 2004). Blacks represent half of the total prison population. Latinos represent about 20%. Black men have more than a 1 in 4 chance of going to prison in their lifetime (compared to a 1 in 23 chance for a white man) (United States Department of Justice Bureau of Justice Statistics, 1997).

Nkechi Taifa argues that people of color are “subjected to unwarranted disparate treatment at every stage of the criminal justice process,” including “selective deployment of law enforcement personnel in communities of color, ... stops and arrests premised on racially-based profiles; prosecutorial misconduct in decisions of charging and pretrial detention; the lack of diversity in jury pools and the improper use of preemptory challenges to remove blacks from juries; the racial disparity in mandatory minimum sentences (particularly three-strikes and the crack cocaine disparity), and the racial application of the death penalty” (Taifa, 1997, p. 655-656).

### **France: Use of excessive and lethal force against Arab and African suspects without fear of serious repercussions**

‘Les cités’ or the ‘ghettos’ on the outskirts of Paris were built for the migrants from France’s former North African colonies (mostly Arab and Muslim) and for African immigrants. These sites are the location of immense police violence. Youths in the *cités*, French citizens, children and grandchildren of immigrants who helped rebuild France following World War II by providing cheap labor for France’s factories, are the subjects of constant ill-treatment and police brutality. They live in unemployment and harsh poverty. They are excluded from French society and subjugated to daily police harassment. They are routinely subjected to provocative identity checks by the various police forces patrolling the *cités*, which often end in violence.

Amnesty International’s 2005 report (Amnesty International, 2005b, p. 11), condemning the widespread police violence, especially along racial lines, introduces a classic case demonstrating the conduct of racialized police brutality:

In October 1999 Faudil Benlili, a youth outreach worker who worked at the town hall of La Cour-

neuve, and a friend, “Mimoun”, were driving a car, which bumped against a tram. The incident was slight, and the tram did not stop, but the two young men got out of the car to check for damage. Three CRS officers arrived. Suspecting the car might be stolen, they searched it “violently” and the key broke in the ignition lock, which seemed to confirm the officers’ suspicions. At this point the police reportedly resorted to violence against the two young men themselves. Faudil Benlili and his companion were hit with baton blows which “rained” down on them, and Mimoun fell on his knees. Faudil Benlili protested that the police had no right to act like that and that he worked in the town hall. They were then reportedly racially abused (“sale race de merde” – dirty race of shit, etc.), and taken to the police station of La Courneuve. After four hours in police custody they were taken to hospital for medical treatment, then returned to the station for another 20 hours of police custody. During this time, it was alleged, old bitternesses linked to the Algerian war were raised by the officers. Owing to his injuries, Faudil Benlili was signed off work for six days. He was unable to lodge a complaint at the police station, where colleagues of the CRS officers worked; one of the officers told him that his complaint would not be transmitted to the prosecutor by the police, so there was no point in trying. He, therefore, lodged a complaint with the prosecutor, with the support of his employers. According to the report, the case was still pending in 2002, but legal documents were lost, and the medical information had also disappeared. In the meantime the police officers brought a counter-complaint of “incitement to resistance” (“*provocation à la rébellion*”).

This theme of racial insults, harsh physical treatment, accusation without cause, all arising out of completely unrelated incidents in which no provocation of police officers has occurred, is seen countless times in the cases described in Amnesty International’s detailed report. A system of constant racial harassment on the streets, especially in the cités, followed by provocative identity checks, often results in the violent arrest of French individuals of Arab and African origin. A December 2004 report by the French national commission *Citoyens-Justice-Police* reported that 60 percent of the cases of race-related violations involved victims who were foreign nationals and 40 percent involved victims who had French nationality, but had a name or appearance which implied a foreign origin.

One of the main settings of racialized police brutality in France occurs while suspects are in police custody. Alleged suspects are often denied access to a lawyer, to medical examinations or treatment, or to conduct with relatives, and they are frequently mistreated by interrogators. A fair number of deaths have

occurred while in police custody as well. Given the wealth of rights guaranteed by French laws to those in police custody, these violations are especially demonstrative of the French justice system’s failure to practically implement its provisions, especially in the case of individuals of Arab and African origin. Additionally, the incorporation of anti-terrorism exceptions into these procedures has allowed for police officers, under the guise of suspected terrorism or drug-trafficking offenses, to remove many of the intended safeguards for accused individuals while in police custody. Human Rights Watch Report discusses the impact of counter-terrorism laws and their enforcement on the Muslim communities in France, stating, “The broad scope for arrest and remand to pretrial detention under the charge of criminal association in relation to a terrorist undertaking, as well as ill-treatment and religious-based harassment in police custody, fuel a perception among Muslims that all Muslims are suspect in the eyes of French authorities. Interrogations of terrorism suspects in police custody often include questions about religious beliefs and practices. Women who wear a religious headdress are invariably asked why; men are asked their views on women’s equality” (Human Rights Watch, 2008, p. 75). This dimension adds an additional element to the idea of racially-based police brutality and the lack of protection for suspected individuals in police custody.

In addition to the harsh treatment of suspects, there have been a number of documented deaths of individuals while in police custody. Some of these deaths have included: an individual dying of an asthma attack after being severely beaten while lying on the ground; an individual who had been shot with rubber bullets then held under restraint, slowly suffocating to death for 20 minutes; an individual who died from asphyxia or suffocation due to compression of the thorax by police officers; and an individual who died as a result of a heart attack following arrest and spraying with tear gas. The main cause of the deaths in these cases was attributed to a lack of medical attention while these individuals were in police custody, after having been very violently arrested and beaten. Each of the victims in the above cases was of African, Arab, or Latin American origin.

Other types of racist police violence include fatal shootings by law enforcement officers and the unrestricted use of firearms by portions of the French law enforcement. French law enforcement is divided into two sections, a national civilian police force (under control of the Minister of the Interior) and the *Gendarmerie nationale* (under control of Minister of Defense). The *Gendarmerie nationale* is seen as integral part of mili-

tary which acts in both a civilian and military capacity. The national civilian police force is divided into several components, including the BAC (*Brigades Anti-Criminalité*), which has “often come into conflict with young people in the ‘sensitive’ areas of the *cités*, the city suburbs or urban conglomerations of France, acquiring a controversial reputation from the 1980s onwards” (Amnesty International, 2005b, p. 8). The *Gendarmerie nationale* is authorized to utilize their firearms without the restrictions imposed on civilian police officers. This authorization has resulted in countless deaths without legal redress towards the violating officers, due to the legal power authorizing gendarmes to halt fleeing suspects by firing at them (Amnesty International, 1995). Amnesty International’s 2005 report has documented a number of these incidents. While there may have been a cut down on fatal shootings, a new policy of police brutality and abuse has emerged, with complaints of ill-treatment by police increasing 18.5 percent in 2004 (Amnesty International France, 2005a).

Incidents of “perverse racist aggression” as described by Pierre Truche, a former president of the French Court of Cassation, also add a great deal to the regime of police brutality and racialized abuse. Among others, these incidents include the killing of two North African youths, ages 15 and 17, as police allegedly deliberately chased them into the Clichy-sous-Bois subway station where they were electrocuted and died. It is said that they were attempting to avoid the heavy-handed identity checks by the police in the *cités* that often lead to unwarranted arrests and harsh abuse. This incident infuriated the sentiments of many immigrants in the *cités* leading to the infamous Paris riots of 2005. Another such incident was the storming of a *Kabyle* (Algerian Berber) café in Paris by 30 officers on New Year’s Eve and spraying tear gas in the room of a family party, injuring babies, women, and children, resulting in some deaths. An additional incident was the exploding of a tear gas canister inside a mosque. Each of these incidents were marked by the refusal of the police to apologize for their conduct, and were exacerbated by the racist comments of Nicolas Sarkozy, the current French president, who called the *cité* youth “scum” (*racaille*, which is a term that carries an implicit racial and ethnic resonance).

Perhaps the greatest fault of the French judicial system in relation to police brutality is its failure to provide a set of consequences for offending police officers. Amnesty International reports that there is a general reluctance of public prosecutors to pursue cases against police officers. There are unnecessarily lengthy delays in judicial proceedings, nominal sentencing or “token penalties”

for offending police officers, and serious problems at identification of the responsible officer. A large number of cases never reach the courtroom and if they do, convictions are rare and sentences are disproportionate to the offenses committed. This system has been described as a “two-speed justice,” one for cases brought by police and another for cases brought by victims of police violence (Amnesty International, 1995). Victims face great difficulty when attempting to register a complaint against a police officer at police stations, and are often faced with counter-complaints by police officers with the purpose of intimidation. A spirit of police solidarity encourages officers to cover up for their fellow officers and makes the identification of the specific officer who committed the crime extremely hard. Additionally, defenses such as “legitimate defense” or “state of necessity,” are used frequently, interpreted very broadly or imaginatively, and often accepted by the courts. Given that French courts infrequently publish the reasons for their decisions, and appeals are rarely granted, it is extremely hard to obtain some sort of legal redress for these grave violations of human rights.

In conclusion, Amnesty International reports that “the French government ministers, judges and senior police officers are allowing members of the police force to use excessive and sometimes lethal force against suspects of Arab and African origin without fear of serious repercussions” (Amnesty International France, 2005a). It is clear that the nature of police brutality and police conduct in France is seriously racialized, and that the mechanisms in place for dealing with these problems are incredibly ineffective.

### **Brazil: Non-white Brazilians are disproportionately beaten, tortured, imprisoned, and killed by Brazilian police**

The analysis of the case of police brutality in Brazil requires the adoption of a contextual analysis different in nature from that of the US and France. Whereas the United States and France are classified as so-called “developed nations,” Brazil is ambiguously somewhere in-between. Brazil has the 8th largest economy in the world, yet is one of the countries with the most unequal wealth distribution in the world (World Bank, 1997). The rule of law in Brazil is not developed to the same extent as the United States and France, and Brazil suffers from a homicide rate of about 55,000 people each year (Reuters News, 2006). The sheer scale of police brutality, inhumane prison treatment, torture, and murders in Brazil, makes it a situation incomparable to the

United States and France. However, the parallels in the racialization of police brutality and the similarities in the tactics used, provide striking evidence in the case against racialized police brutality world-wide.

The great majority of homicide victims and victims of police brutality in Brazil are not only poor, but nonwhite (Scheper-Hughes, 1992). In fact, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) reported that while the Brazilian national average rate of homicide is 28 per 100,000, black males from age 15 to 24 account for 68.4 homicides per 100,000, compared to whites who represent 39.3 out of 100,000 victims, a difference of 74%.

In its 1997 report on Police Brutality in Urban Brazil, Human Rights Watch examined the striking magnitude of abusive police conduct, investigating in detail, five of the most common forms of Brazilian police brutality. These five forms included: police use of deadly force in the course of massive raids into *favelas* (including unjustified fatal shootings of criminal suspects); police killings that suggest the inappropriate use of deadly force; police use of extremely excessive force to respond to potentially criminal, though not life-threatening situations (including torture); police engagement in off-duty murders; and “disappearances” of criminal suspects from police custody (Human Rights Watch, 1997). One common practice of Brazilian police is to take the corpses of the already-dead victims they have just killed, remove them from the crime scene in violation of Brazilian law, and take them to emergency rooms for “first aid” to be administered (Human Rights Watch, 1997).

Brazilian police in urban areas also frequently file false reports regarding the victims they have killed, claiming that the extrajudicial executions were in fact shootouts with dangerous criminal elements. Human Rights Watch reported in their submission to the Human Rights Council in 2007:

According to official figures, police killed 694 people in the first six months of 2007 in Rio de Janeiro in situations described as “resistance followed by death,” 33.5 percent more than in same period last year. The number includes 44 people killed during a two-month police operation aimed at dismantling drug trafficking gangs in *Complexo do Alemão*, Rio de Janeiro’s poorest neighborhood. Violence reached a peak on June 27, when 19 people were killed during alleged confrontations with the police. According to residents and local nongovernmental organizations, many of the killings were summary executions. In October, at least 12 people were killed during a police incursion in *Favela da Coréia*, including a 4-year-old boy. Police violence was also common in the state of São Paulo, where

officers killed 201 people in the first half of 2007, according to official data. Fifteen officers were killed during the same period.

Additionally, in recent investigations of São Paulo and Rio de Janeiro, it was found that military police were responsible for twelve percent of the homicides in the city (Husain, 2004). Saima Husain in her paper on policing in Brazilian *Favelas* (Husain, 2004, p. 7) states:

According to a Human Rights Watch report (2001) the autopsies of 222 bodies that were killed by the police showed that fifty-one percent were shot in the back, while twenty-three percent were shot more than five times. More than half of these victims did not have a prior criminal record. This suggests the possibility that the victims were not killed, as officers suggest, during a shootout between the police and local drug gangs or while they were resisting arrest but that they might have been summarily executed.

Another major issue regarding police brutality is the issue of torture. There have been numerous reports, verified for credibility, of police and prison guards torturing people in their custody as a form of punishment, intimidation, and extortion. The National Campaign against Torture, run by the Brazilian federal government, reports receiving 1,336 complaints of torture between October 2001 and July 2003. Additionally, there have been numerous reports of police using torture in order to obtain information or to coerce confessions. In the Brazilian state of Belo Horizonte, two to five cases of torture and beatings by police are reported each week. Additionally, considering that many instances of torture are not reported out of fear or due to the general notion of police impunity in Brazil, the figures are probably much higher. Human Rights Watch claimed in 1997 that “torture is still a routine practice in police precincts throughout Brazil, a practice that is widely accepted, particularly when a victim is a poor, criminal suspect.” (Human Rights Watch, 2007).

Prison conditions reflect additional evidence of police brutality. Prisons in Brazil are the site of intense violence. Just in the first four months of 2007, 651 people were killed while in prison, as reported by the parliamentary commission investigating Brazil’s prisons. Despite the order of the Inter-American Court of Human Rights, mandating the adoption of measures to guarantee the safety of inmates in a Brazilian prison, Brazil has not acted upon this command (Human Rights Watch, 2007). Perhaps the greatest demonstration of police brutality in the prison system is revealed in the *Carandiru* Massacre, depicted in the 2003 film “*Carandiru*.” Following



a prison riot, the Brazilian Military Police stormed the *Carandiru* prison, and murdered 111 prisoners. None of the sixty eight police were killed, and survivors of the massacre claimed that the police fired indiscriminately, shooting prisoners point-blank, not only in the open, but also at those who had already surrendered or tried to hide in their cells (BBC News, 2001).

Another dimension of racialized police brutality in Brazil is the murder of street children. There are somewhere between 200,000 to 8 million street children in Brazil. Marina Bandeira, president of FUNABEM, the national organization that addresses the issue of street children, states, “A child who is small, black and poor is by definition thought to be dangerous. The child then becomes ‘the problem’ when the real problem is the social structure that exists in Brazil.” She states that over 90 percent of children that her agency takes care of are black. The police often beat up these street children. One event that gained international attention occurred in 1993 when a state trooper killed street children as they slept on a sidewalk in front of the Candelaria church in Rio de Janeiro, Brazil. He opened fire on about seventy children who were playing or sleeping on the steps of the church and later returned to a nearby site to kill 2 more kids (CNN News, 1996). Fortunately, the event gained international attention and resulted in a life-time sentence for the policeman involved. Duncan Green in his book “Faces of Latin America” further analyses the state of street children in Brazil (Green, 1991, p. 62). He states:

In Brazil, so-called ‘social cleansing’ of street children and other ‘undesirables’ is carried out both by uniformed police officers, and by death squads, shadowy organizations with names like ‘Black Hand’ and ‘Final Justice,’ themselves often made up of former or off-duty policemen.

The fact that the majority of these children are black, adds additional support for the notion that police brutality in Brazil is highly racialized.

In her paper entitled, “Community Policing in Brazilian Favelas: effective implementation of human rights standards?” Saima Husain discusses the work of death squads made up of off-duty police officers (Husain, 2004, p. 10). She states:

Off-duty police officers tend to work together in a death or extermination squad. They target the poor, street children, and other marginalized groups. In certain cases these officers may be offered as much as \$1,000 per killing. That is quite a hefty sum for military police officers who generally earn \$300 a month.

In 1997, of 159 people arrested in Rio de Janeiro for suspected death squad activity, fifty-three were military police officers.

In fact, numerous government officials supervise death squads of off-duty policemen, including the Deputy Secretary of Public Security Maurílio Pinto de Medeiros in the city of Rio Grande do Norte (Human Rights Watch, 2007).

Perhaps the greatest fault of the Brazilian justice system is the impunity for police officers engaged in police brutality. There is a general failure of Brazilian officials to prosecute allegations of torture, police brutality, deaths in prison, and murders in general, especially those that occur in the favelas. Rather than condemn much of the police brutality that occurs, the Brazilian police forces tend to celebrate the conduct. The 1997 Human Rights Watch Report further discusses in detail how the killings conducted by police officers is celebrated rather than condemned in Brazil:

In Rio de Janeiro, in November 1995, the state governor signed a decree authorizing salary bonuses for officers demonstrating ‘bravery.’ At the same time, the secretary of public security revived a dormant provision that allows for promotions of police involved in acts of bravery. In practice, these bonuses and promotions have been used to reward officers that have killed criminal suspects, regardless of the circumstances. We examined ninety-two incidents resulting in recommendations for promotion between 1995 and 1996. In those instances of ‘bravery,’ Rio de Janeiro military police killed seventy-two civilians while suffering six deaths. According to press sources, these policies have led to a six-fold increase in the number of civilians killed by military police in the city of Rio [from 3 per month in 1994 to 32 per month in 1999].

This system continued in Rio de Janeiro under the notion of the state governor mentioned above that “crooks are not civilians... [that police should capture them] dead or alive” (Human Rights Watch, 2007). Saima Husain reports that the practice continued until 2000, and that between 1995 and 1999, 950 officers were promoted for acts of “bravery” and more than 3,000 military and 1,000 civil police officers were awarded bonuses (Husain, 2004).

Throughout this analysis, it is clear that there is a strong correlation between an individual’s non-white race, and their probability of being targeted by the police. Traditional surveys investigating the issue, conducted by the Brazilian Bureau of the Census in 1988, found that blacks were 2.4 times more likely to be assaulted

by policemen than whites (after controlling for income, education, age, urban status and region).

In a study using self-reported samples of 5,000, Brazilian São Paulo residents, Laura Mangels investigates whether there is a relationship between an individual's race and their probability of being targeted by the police in Brazil (regardless of class) (Mangels, 2007). Her research, although limited in scope, demonstrates that in São Paulo, *pardos* (or *mulatos*) are the most heavily policed group, followed by blacks. Mangels concludes that, in light of research showing that the division between whites and *pardos* is much greater than the difference between *pardos* and blacks, both *pardos* and blacks seem to be equally more targeted by the police in Sao Paulo in relation to whites. She finds that while young males are heavily targeted by the police, "racial disproportionality increases with the seriousness of the interaction." Blacks and *pardos* are only 25% or 29% more likely to be asked to show identification to the police than are whites, but they are 113% and 150% more likely to be physically assaulted than whites. 10% of young black males and 12% of *pardo* young male in Mangels' study were physically assaulted by the police in a 12-month period. Additionally, Mangels concludes that with the introduction of the variable of residence, living in a *favela* further raises the possibility of being physically assaulted by police (Mangels, 2007).

Another study conducts a similar investigation, this time investigating victim lethality rates in Rio de Janeiro and Sao Paulo, two of Brazil's biggest cities. Ignacio Cano determines that the likelihood of a black person being shot dead by police is over three times that of the general population. There is a disproportionately high number of blacks who are imprisoned and victimized by police action, and when police shoot inside a *favela*, it is much more likely that their targets will die, rather than be merely wounded (Cano, 1999, p. 43-44). Cano states:

Accidental victims, which represent a sample of the people who live in areas where police make use of their weapons, are darker than the general population. This confirms that police make use of lethal force particularly in areas where the blacks and browns live, that is, in the slums (*favelas*). Wounded opponents are darker than accidental victims and dead opponents have the darkest profile of all, comparable to the convict population... Results indicate that the chance of being killed versus wounded is higher when the incident occurs in a *favela*. More importantly, the chance of being killed versus wounded is significantly superior (around 8% higher) for blacks and browns than for whites, and this result holds true both inside and outside a *favela*. This turns into le-

thality indexes (number of people killed divided by number of people wounded) which are 37% to 100% higher for the blacks and the browns as compared to whites. It is very difficult to interpret these data in any way other than a racial bias on the part of the police. The evidence is particularly solid since: (a) racial categorisations are performed by the same source, police themselves, and in the same moment; (b) the analysis controls for the area of town where the incident happened and hence discards the alternative hypothesis that the racial imbalance may be due to the different racial compositions of these areas; (c) wounded and killed opponents were in principle in the same situation, confronting police with weapons, and differed only by their outcome.

Scholar Jaime Amparo-Alves claims that Black segregation in the *favelas*, mass imprisonment, and the killing of Black youth are three important elements of Brazilian racial domination. He claims that the "favela is reinforced in the White mind as a place of disorder and its inhabitants as potential criminals... The presence of state terror in the *favela* is rationalized as domination necessary to guarantee harmony and minimize conflicts... Indeed the massacre of young black men is made to seem as a normal part of everyday life and justified as a legitimate war against criminals... The predominant image of the black male as criminal, ugly, polluted and evil- and black women as the source of that 'aberration' - is the strategy by which white terror legitimates itself and materializes the abuse against the black body in the *favela*" (Amparo-Alves, 2008).

## Potential of Legal Redress

Given that the conduct of racialized police brutality explicitly violates the CERD, CAT, and ICCPR Treaties, there should be an international law cause of action against the United States, France, and Brazil for the violations of their treaty obligations. The question then becomes whether this cause of action is enforceable in the judicial mechanisms of domestic and international courts.

In the case of the United States, given the extensive reservations adopted with ratification, it is questionable whether these treaty obligations can render the U.S. liable for its conduct in racialized police brutality. Additionally, because each of these treaties contain non-self-executing provisions, it is impossible to bring them before U.S. courts without additional domestic legislation. In the international arena, the U.S. tends to participate in the International Court of Justice only when it is convenient, and frequently opts out of ICJ jurisdiction.

In the case of France, there is a lesser extent of reservations, most of which only go to the superiority of French domestic law over international law. It seems quite difficult to allege a domestic cause of action which specified discrimination along racial lines, given the “colorblindness” of the French constitution and the illegality of making a racial categorization in France. However, it seems that the European Community is a much more favorable arena for such types of claims. As a European Union member state, France is subjected to the supremacy of European Union Law. In a case of conflict with national law, EU Law will be followed. This principle was initially posed by the *Costa v. ENEL* decision of the European Court of Justice. In addition to the notion of supremacy, European regulations are directly applicable, and European directives must be transposed to national law by a law or decree.

Article 55 of the French Constitution recognizes the supremacy of international treaties to laws and administrative acts. Thus, the European Convention of Human Rights is considered domestic legislation. The *Conseil d’Etat* and the *Cour de Cassation* have long judged treaties as solely superior to previously-adopted laws, while they were considered inferior to posterior laws. However, with the Jacques Vabre case in 1975 and the Nicolo case in 1989, the *Cour de Cassation* and the *Conseil d’Etat* respectively disposed that treaties were superior to all laws, regardless of when they were adopted. It was not until 1981 that France accepted that the European Convention of Human Rights could be invoked against it in the European Court of Human Rights, 25 years after France ratified the Convention.

In France, many of the principles of the European Convention have attained constitutional value as Principles Particularly Necessary for Our Times (*les principes particulièrement nécessaires à notre temps*), or as Fundamental Principles Recognized by the Laws of the Republic (*les principes fondamentaux reconnus par les lois de la République*). However, the Convention has never been declared part of the French constitutional block. Despite this fact, with the adoption of the Treaty of Lisbon, the European Union now “adheres” to the European Convention of Human Rights. The details of this notion of “adhesion” are still being ascertained, however, the implications are that the European Union would become the 48th signatory to the Convention. This has implications for how the Convention will be viewed in France, due to the fact that it potentially forms part of European Law, which is superior in France to national law. It remains to be seen how adhesion will affect the constitutional value of the

Convention in France, and this will form a crucial portion of the research to be considered.

The European Court of Human Rights has issued thousands of decisions which have addressed a wide range of human rights issues, generally complied with by member states. Compliance with the European Convention of Human Rights judged by an individual complaints procedure before an independent court located in Strasbourg, France. Through enforcement of the various civil and political rights contained in the European Convention, the Court has been able to create a general culture of compliance with human rights norms across the European continent and it is only a matter of time before racial police brutality will be addressed. In fact, several cases in which France appeared were for causes of action dealing with police killings of individuals in their custody or police abuse and torture (Amnesty International, 2005b).

Similarly, in the case of Brazil, where the extent of violence is much higher than in France and the United States, and there is a lesser rule of law, there has been significant progress made with the growing importance of the Inter-American Court of Human Rights, and the trend towards following their rulings. Although not to the extent of the European Court of Human Rights, the Inter-American Court of Human Rights as well as the Inter-American Commission of Human Rights, have had increasing influence over the adjudication and investigation of alleged human rights violations. Margaret Popkin of The Center for Justice and Accountability reports (Popkin, 2004):

[C]ases and decisions in the Inter-American system of human rights have led to changes in laws and policies at the domestic level. Countries have embraced decisions emanating from the Inter-American system as a way to bring about change in their own institutions, policies and laws. In Peru, the Inter-American Court’s ruling in the Barrios Altos case has invalidated the effects of the 1995 amnesty law passed during the Fujimori administration. Investigations have been reopened. Following decisions from the Inter-American Commission and Court, judges arbitrarily dismissed during Fujimori’s reign were reinstated. The Guatemalan government has recently accepted responsibility in several high profile cases before the Inter-American Court, and has held public ceremonies to recognize the victims and the wrong they suffered at the hands of the State. Inter-American Court decisions have also ordered substantial damage awards to victims, which these states have paid. Decisions of the Inter-American Court are binding on the states that have accepted its jurisdiction, and the Latin American countries understand that they must comply.

The Inter-American Court and Commission of Human Rights have been successful in addressing human rights violations in Latin America. Although racialized police brutality has not yet been brought up in an actual case, at least two cases have been brought before the Commission involving police and death squad homicides of adolescents in Brazil (Human Rights Watch, 2007). With the growing influence of the Commission and the Court, it is only a matter of time that racialized police brutality will be examined.

Even if there exists no domestic or international remedy now, the future of international law is leaning in the direction of further prohibition of crimes of police brutality, and countries are incorporating protective standards into their domestic law. In the cases of France and Brazil, the expanding validity of regional courts, increases the likelihood that racialized police brutality will be addressed at some point in the near future. Even in the case of the United States, there is a move towards further integration of international law in domestic courts. Following the attacks of September 11 in 2001 the United States adopted a hostile attitude towards the use of international human rights law. Among the arguments rendered were the supremacy of the American legal system and the vagueness of international law.

However, in the past few years, Cindy SooHoo argues that there has been a significant change in attitude (SooHoo, 2008). She argues that there has been a globalization of legal systems, where international law is part of everyday legal categories. She further argues that there have been a multitude of landmark Supreme Court cases, where international law has been deemed relevant, especially in the comparative use of international law to display evidence of global norms. These cases include *Lawrence v. Texas* and *Roper v. Simmons*. SooHoo additionally states that the effectiveness of traditional strategies for combating human rights violations is waning. Courts seem to be getting increasingly conservative in regards to human rights arguments; courts are not as rights-protective, especially following September 11 and the Bush Administration; and many people do not have access to the American court system for remedying human rights violations. Additionally, historic events have played a part in the changing climate of increased international human rights considerations, including Hurricane Katrina, September 11, and torture and illegal detentions in Guantanamo prison and throughout the United States. The growth and development of advocacy forums across the United States has also increased the receptiveness of the American legal system to international human rights arguments. Ajamu

Baraka comments that “American conduct in torture and detention has cut through American exceptionalism” (Baraka, 2008).

Moreover, it is clear that the United States cares about its international human rights record. The U.S. sent a delegation to Geneva recently, to defend its record on CERD. They also sent a delegation to defend their human rights record on the War of Terror to the United Nations Human Rights Committee. Despite the alleged grave violations committed by the Bush Administration, it is clear that the United States still takes its international image seriously as a bastion rather than a violator of human rights, and will defend that reputation at all costs. The United States Supreme Court has stated “international law is part of our law,” as early as 1900 in *The Paquete Habana* case. This principle retains great value and has been incorporated into subsequent decisions, continually declaring that customary international norms are inherently a part of American common law.

Globalization, in all of its forms, has contributed to the increased prominence of international law in domestic arenas. This trend will only increase with time, and the United States is part of that trend. The conduct of racialized police brutality explicitly violates the CERD, CAT, and ICCPR treaties. The importance of treaty obligations will continue to expand and perhaps in the future, these fundamental violations of American, French, and Brazilian treaty obligations under the CERD, CAT, and ICCPR, will be more substantially addressed.

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