The Influence of International Law on Local Social Movements

by Mark F. Massoud

America did not invent human rights. In a very real sense, human rights invented America. – President Jimmy Carter

The [local] judges don’t care. And abusers know how to work the system and how to work the kids. So you’re constantly fighting not only your ex-husband, but the system. But you’re a wreck. And so you look like an idiot. – M.C., a survivor of domestic violence

INTRODUCTION: ADVANCING HUMAN RIGHTS

The inclination to see human rights as an international phenomenon, binding national governments, is strong. Human rights law emerged as a component of modern international law through the founding of the United Nations and the adoption of its Universal Declaration of Human Rights in 1948. Since then, human rights as an area of law has remained in the international realm—subject of a number of important treaties, conventions, and covenants binding national governments. This inclination shows no signs of reversal because, at least in American law schools where new lawyers are trained, human rights law is taught as a component of the public international law curriculum. Human rights law is not taught in domestic public or constitutional law courses or in the traditional first-year private law courses, such as contracts, torts, or property. Human rights started out in the international realm and—to many lawyers and their teachers who have not questioned this phenomenon—there seems to lie its rightful place.

While the inclination to reserve human rights discourse to international levels may not at first seem problematic, it does cloud an important development occurring in the field of human rights. That is, over the last decade, there has been increasing evidence that human rights have been powerful in local settings, in small towns and cities in the United States. Organizations with relatively small budgets serving small communities, compared to large bureaucratized governments or corporations,
have begun spending their limited resources on human rights strategies. They use international human rights law to buttress their research, mobilize their constituencies, and change people’s self-perceptions and esteem, especially those who have suffered abuse or neglect at the hands of government actors. Recently the Ford Foundation released a report examining the work of some of these nongovernmental organizations that have been using human rights law in the United States. The organizations cited in the report included, among others, a human rights education group in Georgia, a welfare rights group in New York, an American Indian law group in Montana, a border network in New Mexico, an environmental justice group in Louisiana, and an organization of women of color in northern California.

These examples are not exclusive. Throughout the United States, new and established groups have been attempting to hold their local governments accountable to international human rights standards. They apply the same human rights terminology and strategies that, during the second half of the twentieth century, were employed by larger, better-funded transnational networks and groups to hold national governments accountable for human rights abuses. In most cases they have encountered only limited success changing local government. But the unintended consequences of the approach have been to invigorate and enliven group members, endowing them with new senses of self-worth and strength to keep fighting what seems to them an uphill battle. This has been especially true, as my research suggests, in women’s rights movements that have used human rights methodologies.

Besides changing people’s perceptions of themselves in small towns and cities across America, these local groups’ creative use of international law is disrupting the predominant vein of thought in international law and international relations: realism. That is to say, by using international law successfully to change society at its most basic levels—local change and individual, personal change—the groups doing so pose an as of yet unanswered challenge to the realist vision of international law. This paper serves in part to document this reality, and to come to some conclusions about the nature of international law’s local application in the United States. As such this paper is as much about international law as it is about social movements.

**INTERDISCIPLINARY APPROACHES TO HUMAN RIGHTS**

My work is situated within an interdisciplinary agenda in international law, political science, and law and society. This paper supplements
liberal theory in international law, associated with Harold Koh, Catherine Powell, Anne-Marie Slaughter, and Dorothy Thomas. These scholars have written extensively about how international law affects the behavior of states as well as non-state actors. Their so-called liberal theories would suggest that in order to understand international law’s efficacy, legal scholars should evaluate the extent to which international law influences all forms of government. This includes what international lawyers call “sub-national actors,” including institutions within governments and interest groups (also called nongovernmental organizations) that attempt to bring nations into compliance with international law.

This paper also extends the work of constitutive theory in political science, associated with Michael McCann and Charles Epp, and the legal consciousness literature of the law and society movement, associated with Patricia Ewick, Sally Engle-Merry, and Susan Silbey. Generally, these scholars have used their research to show that law both constitutes and is at once constituted by society. That is to say, the “law” is imbued in everyday language, and everyday people are conscious of their “rights” and seek to assert them.

Michael McCann, in particular, broke new ground in his 1994 book, Rights at Work, by showing the ways in which “law” influences how individuals perceive themselves and how groups mobilize and assert their rights. McCann spent years studying the women’s pay equity reform movement. He found that the “law” as a discourse emerged in the distinct phases of social movements: movement-building; struggling to compel changes in policy; struggling for control over reform and implementation; and, finally, in the transformative legacy of legal action.

McCann found that women were able to mobilize more effectively when they perceived the law to be on their side. Though they lost some cases in the courtroom, the language of the law, in particular the language of rights, proved to be a useful rhetoric causing women to mobilize. In addition, the threat of going to the courts became an effective bargaining tool for the women who fought for pay equity. In other words, the threat of the courts was more effective than the courts themselves in producing lasting social reform. McCann’s study of legal mobilization provided evidence to legal scholars and political scientists that “law” is pervasive in social movements and in how those movements define themselves, their strategies, and their goals.

McCann also showed how rights become legal symbols that create solidarity and how legal tactics compel reform from political and economic elites. The concepts of rights and law are constitutive in American society, which is made up of interest groups and social movements.
When these individuals and groups attempt to vindicate those rights in courts, well-publicized litigation or threats of litigation encourage private or state actors to conduct “studies” of their work and ultimately to change their behaviors.

McCann’s work has given scholars in law and society and political science a deep understanding of the role of law in American society. His work is important because it provides insight into the more subtle—again, the symbolic and cultural—meanings of law, generally not studied in traditional law school curricula.

The same can be said of international law. A central thesis of this paper is that McCann’s argument of the constitutive nature of law in society can and should be applied to international law—that local social movements in the United States use international law by deploying international legal concepts of human rights to “shame” local governments into compliance.

This thesis runs counter to the predominant realist view that the international legal system is not effective on its own in producing change or inducing compliance. My view, however, is that international human rights law as a field of study and practice is much more than the doctrine taught in law schools or created by the United Nations; that is, the relations between state actors and the extent of their cooperation. Human rights law, as a branch of international law, has significantly influenced social movements and legal mobilization. Law, including international law, matters in complex ways for political mobilization. Similar to McCann, I see the law as pluralistic. And, like McCann and those who see international law affecting the behavior of non-state actors, my goal is to de-center the law, to remove it from the state, and to expose its role in the daily lives of individuals and movements. Finally, like McCann, I employed a research methodology that enabled me to spend time speaking with women who have deployed the law in legal mobilization here in the United States. In particular, the women I spoke with, mostly in California and Massachusetts, have used international law in an attempt to vindicate their rights in prisons or when they were treated unfairly during custody proceedings. Before I get there, however, I next provide some background on the significant tenets of the realist vision of international law and its critiques.

THE REALIST VISION OF INTERNATIONAL LAW

Human rights, as a component of international law, must cope with the criticisms advanced by legal scholars regarding the nature of international
law. Realism, arguably the predominant theory in international law during the second half of the twentieth century, has suggested that international laws—and this includes human rights laws—have little if any influence on the behaviors of states.10 Realism is about power—the capacity of each state to do what is best for itself. The realists, still associated with the classic Cold War–time works of Hedley Bull, George Kennan, and Hans Morgenthau, base their vision of society on Thomas Hobbes’s vision of life as nasty, brutish, solitary, and short.11 For the realists, social order is, so to speak, not ordered at all. Rather, it is governed by anarchy. This anarchy is quelled through regulation by a sovereign commander or authority. Citizens submit to this authority in order to achieve a kind of basic peace—the absence of violent conflict, with the presence of minimal security necessary for survival. The realist challenge to international lawyers is to establish the relevance of international law amidst each state’s struggle for power within ordered systems of anarchy.

To be sure, moderate realists would recognize that international law provides a mechanism for states to engage in relations with one another, to resolve disputes—violently in war or peaceably through negotiations—and to form agreements and bind themselves to them.12 But realists define the success of international law in terms of the extent to which it actually changes the choices made by individual states, the primary legal actors in the international arena. International law, in other words for the realists, fails to pass the “but for” test of success: that states would have acted differently or not at all or would not have made the same decision without international law.13

On the one hand, the “but for” test for success is a strict one, because it must be shown that without international law, the state would have acted differently. Practically, it is difficult if not impossible to prove what the world would have been like without international law, in part because of the pervasiveness in the public media of the United Nations and other international conventions and documents since 1945 and increasingly since the end of the Cold War.

On the other hand, the realists have made a valid point. International law is amorphous, uncertain, malleable, confusing—much more than, for example, domestic laws in the United States. For American realists, international law can be “an alien source of law, lacking democratic legitimacy.”14 There is little if any recognizable international government. In addition, most of the more well-known realist scholars of international law have come from American law schools, where students are taught that laws come from one branch of government, are
executed and enforced in another, and vindicated in a third—three separate but coordinate branches of government. The realists argue that this is a structure that is lacking in international law.

International law lacks a separation of powers, and thus, a legitimate democratic government, as we have come to know the meaning of the term in the United States. A separation of governmental powers in international law would ensure a system of checks and balances to limit a particular official’s or governmental group’s power. Realists, then, question the democratic legitimacy of international law.

First, there exists no real “legislature” in the international realm as there has been in the United States for more than two centuries—that is, a democratically elected representative body of limited enumerated powers that proposes, adopts, makes, and amends legislation. Without an international legislature to make laws, realists might ask rhetorically, how can we be certain there exists international law, let alone evaluate its efficacy?15

Second, there exists no effective international judiciary. We can analogize to the more established American courts, which are often used as the measuring stick for the effectiveness of international courts. American courts themselves are unable to produce widespread social change in part due to the limited structure of the judicial system. First, judges are “constrained by training, experience, and the office itself not to undertake responsibilities that belong to the legislature.”16 American courts are also constrained because of their inability to spend the large sums of money required to implement social reform.17 Thus, the judiciary must rely on other branches of government to implement its decisions.18

International courts suffer greater structural limits than domestic courts. First, judges in international tribunals are similarly constrained by their experience and their adherence to their role as a judge, or “role morality.”19 International courts also lack the capacity to administer and implement human rights. Though the United Nations Security Council has the power to enforce decisions of the International Court of Justice, these suffer from the structural limits of the Security Council—a single veto from one of the five permanent members is the difference between enforcement and non-enforcement of an ICJ decision. Further, only states can bring cases before international tribunals, and jurisdiction in international courts is wholly consent-based.20 A state needs only say to, for example, the International Criminal Court (ICC) that it refuses to grant the ICC jurisdiction to allow itself to be sued by another state in the ICC.21 For the plaintiff state that seeks redress, that may
serve, effectively, as a ruling in favor of the defendant.²² It seems, then, that international courts are even more limited in power not only because they experience similar constraints as domestic American courts but also because jurisdiction in international courts is consent-based.

Third, and speaking to the problem of law enforcement, there is no single “executive” branch in international law. To be sure, the United Nations Security Council enforces some of its own resolutions requiring the use of force.²³ But there is no real executive branch in international law because, again, there is no real legislation for such a branch to oversee, execute, and enforce. Also, it is unclear if an international legislature would enforce laws not subjected to legal judgment in an effective international judiciary.

The realist vein of international law is closely aligned theoretically with its cousin in political science, namely the realist (also called rationalist) strand of international relations. The realist theory of international relations argues that, at the domestic level in the United States, there is not much role for international law. Crudely put, the United States, like all states, will follow international law when it so chooses, and not follow international law when it is not in the United States’ best interest. Again, the basic premise here is that the state is the primary legal actor that chooses rationally among options to do what is in its collective best interest. Even if the decision chosen was the one recommended by international law, international law was unlikely the “but for” cause of the decision. Realists argue that there has been little or no convincing data presented to them that states would not have acted in the same way anyway, with or without international law.

The realists’ point about the amorphousness of international law and the difficulty of measuring its success is well taken. But their view is predicated on the belief that the only influence of international law on people’s lives is through the hierarchy of federalism. For the realists, if nation-states are the primary legal actors, then international law is successful when it influences a state’s collective national behavior. Realists would say that the only influence of international law on the United States that can be measured is its interface with federal branches of government. This would mean that in order to evaluate the effectiveness of international law in the United States, scholars would have to examine the extent to which it influenced decisions made in the federal executive, legislative, and judicial branches.

According to the realists, the most direct way to achieve federal implementation of international law is through the federal government.
Indeed, many groups have been attempting to encourage the federal government to adopt human rights treaties, making those treaties binding federal law upon government actors in the United States. Recent examples include those attempts by environmental, non-proliferation, and anti-death penalty organizations to bring federal law in line with international laws and norms.

By focusing only on the effect of international law on the federal government, realists ignore or fail to study the extent to which international law is creating real changes further down the ladder of federalism—at the state and local levels, and, in particular, at the level of interest groups, organizations, and individuals.24 The realists may place undue importance on outcomes, which ignores the effect of international law on individuals and political mobilization.

LIBERAL AND CONSTITUTIVE CRITIQUES OF THE REALIST VISION

The American realist vision of international law—whether coming from law schools or political science departments—tells us only part of the story and leaves us with unanswered questions. What realists tell us is that international law is unstructured and that the international legal system lacks any coherent government, and for that reason, it may not really exist, at least not in any familiar democratic form. Further, they argue that international law makes little if any difference on state action—or, at least not enough difference to meet the “but for” requirement they set forth. Assuming acceptance of these arguments, I still have trouble evaluating why international law is called upon so often. Nongovernmental organizations (NGOs)25 generally have only limited financial and material resources, but many of them use these minimal resources to deploy international law. Assuming leaders of NGOs are familiar with the realist veins in international law and international relations, why would they choose to invest what little they have into an ineffective strategy?26

One answer may be that interest groups and NGOs use international law, knowing well that it is not an effective legal strategy, but that it helps them gain political rhetoric. To say publicly that a state actor—like a judge, legislator, or government employee—violated the “law,” whatever that law is, can be politically powerful, especially in the media’s world of sound bites. In other words, groups employ international law when using local laws is not enough. International law, then, provides extra political leverage to domestic social movements. While
political rhetoric is important for shaming governments into compliance with international obligations, for such movements to spend their limited financial resources on political rhetoric alone—and not toward lasting social change—seems implausible.

Feminist legal scholar Dorothy Thomas provides another response. Thomas has advocated that interest groups work to get America to “internationalize” its obligations. This “internationalized approach may have political benefits that can be realized more immediately [than using domestic laws in domestic courts].” She says that, throughout the 1990s, social movements in the United States “suffered major setbacks in the struggle to combat race and gender discrimination, retain affirmative action, and ensure basic economic security” because of the focus on the domesticity of rights. Thus,

An appeal to the international human rights system can provide an effective tool for airing domestic rights violations and mobilizing international pressure. If the experience of the civil rights movement of the 1950s is any indication, the embarrassment of international attention may provide a powerful incentive to the United States to improve its domestic rights record.

Thomas’s argument is an instrumental one. International law is a tool that can be deployed by domestic social movements to mobilize pressure against rights abuses that occur here in the United States. As her theory goes, when the federal government is shamed into following international law, it will improve conditions for citizens by seeking to follow human rights principles. This shaming and pressure to change comes from above (through embarrassment with respect to other nations) and below (from local groups and organizations that put the focus on the U.S. government’s failure to sign or follow international conventions).

Nevertheless, the U.S. federal government has been determined, since the founding of the United Nations, to shield and insulate itself from international law and scrutiny. This has created a disincentive for NGOs in the second half of the twentieth century in the United States to use international law to hold the federal government accountable. But this disincentive has not asphyxiated civil society’s promotion of international law. Thomas cites evidence that in the last few years, established groups such as the National Organization for Women, the NAACP Legal Defense Fund, and the American Civil Liberties Union have added international components to their work. Using international law has
boosted these groups’ political clout by placing domestic struggles in an international context.31

Dorothy Thomas’s argument, written a decade ago in the Harvard Human Rights Journal, remains actively cited in legal scholarship, and has been augmented in recent years by Catherine Powell. Powell has argued that the federal government and sub-national government actors (state and local governments) should take part in a dialogue about rights, “creating areas of overlap in which neither system can claim total sovereignty.”32 She has criticized the traditional, constitutional process of domesticating international law.33 Powell’s criticism stems from the belief that treaty adoption by the President and Senate is not as democratic as typical federal domestic legislation, because of the absence of involvement of the House of Representatives, the truly representative body of Congress.34 Nor is the process decentralized, as is the process for ratifying constitutional amendments. Though some local or state governments may make informal agreements with other nations or their provinces (for example, California with Baja California about a localized border or roadway concern), and though state governments are involved in the process of amending the federal constitution, local and state government officials have no official voice in what is only a federal (executive or executive and legislative) decision to ratify an international treaty.

In addition, the traditional process of domesticating international law potentially undermines the scope and effect of international treaties. The President and Senate can propose—again, without input from the House—extensive reservations, understandings, and declarations to treaties, effectively rendering a broad human rights treaty nearly meaningless on the ground in the United States.

Catherine Powell, then, proposes that treaty adoption in the United States should be a more decentralized process, involving input from local actors. In that way, states and local actors become involved in treaty adoption and, ultimately, in treaty development as well. Whereas international law is based on a system of national actors—that is, in the United States, international law adopted represents the federal government’s interests only—individuals and the general public, and local and state governments, can become more engaged with the process of international lawmaking.35 Powell argues that the federal role should be supplemented with intergovernmental cooperation, that is between the layers of government.

Dorothy Thomas focuses her scholarship on the role of international law in localized strategies by NGOs, and Catherine Powell argues
that state and local governments in the United States are too disengaged from the process of international lawmaking. These individuals represent an increasingly vocal minority of international law scholars who seek—like McCann and others in political science did with domestic law—to de-center the flash point at which international law makes a difference in society, from the national level to the local level.

Others in international law have joined the chorus of examining the extent to which local actors can be involved in international lawmaking. Harold Hongju Koh has called for a more robust transnational legal process, whereby “academics, nongovernmental organizations, judges, executive officials, Congress, and foreign governments [interact] in a variety of public and private fora to make, interpret, internalize, and ultimately enforce rules of transnational law.”

In terms of implementation of international law in the United States, a number of liberal and constitutive legal scholars and lawyers have urged federal courts to adopt principles consistent with human rights. These groups, some of them led by Harold Koh himself, won legal battles during the 2003 U.S. Supreme Court term. That year the Court cited international principles favorably in two individual rights cases, one upholding under the Equal Protection Clause a narrowly tailored affirmative action policy at a law school, and the other finding unconstitutional under the Fourteenth Amendment’s Due Process Clause a sodomy law that infringed upon the constitutional right to privacy for same-sex couples.

Thus, there has been significant influence by NGOs and academics. Though worthy, the international law realists would argue, the work of these persons is generally futile. This is in part due to structural impediments—congressional representatives in the House are not involved, the competitive pressures against lobbying powerful Senators and the President, and, most important, the lack of data supporting the theory that international law actually influences federal lawmaking.

I join the minority of international law scholars who challenge the assumptions of the international law realists. My research in particular is on the role of NGOs and interest groups here in the United States as influencing and influenced by international law, an area in need of much study. Despite this deficit, there exist some qualitative data to report, and the latter half of this paper examines some of the preliminary successes that I was able to find through my research, interviewing activists in the United States who have used international law in their pursuit of women’s rights.
Interest groups that use international law in the United States attempt to engage in what Catherine Powell has called “dialogic federalism.” This is a process by which human rights can be introduced at multiple points of entry along the levels of federalism, but with coordination and extraction at the national level. The advantage of this process is that it creates a broader and deeper consensus over human rights commitments. And by bringing human rights norms closer to the people, the implementation of human rights is democratized.

INTERNATIONAL LAW AT THE SUB-NATIONAL LEVEL

A growing number of NGOs in the United States have chosen to use human rights to influence government actors at the state and local levels. It is at this level of government that I examine, qualitatively, the influence of international law on state actors. Though international law is traditionally implemented at the top of the ladder of federalism in the United States, it resides at the lower rungs of the ladder as well, because it is deployed by groups who use it to create legal and social change at the state or local levels.

Research Methodology

The case studies set forth below seek to augment, through primary research, the interdisciplinary theoretical work laid out by the constitutive and liberal legal scholars, including McCann, Thomas, Koh, and Powell. Thus I examined international law’s effectiveness through its influences on individual and group behaviors here in the United States.

This article sets forth the first in a series of results I intend to find on how international law is deployed by social movements. My emphasis has been on two groups here in the United States. First, in Massachusetts, I interviewed domestic violence survivors and the authors of the Battered Mothers’ Testimony Project (BMTP). The BMTP is a successful example of a local group that used international law to influence government actors at the state and local levels in the United States. The BMTP also influenced abuse survivors, affecting their perceptions of themselves. Second, at times I contrast analysis of the BMTP with that of another women’s rights group, Justice Now, located across the country in California. Justice Now has been working for more than three years to bring to light evidence of abuse against female prisoners in Chowchilla, site of two women’s prisons holding the largest single population of
incarcerated women in the world. While the work of the BMTP was mostly completed by the end of 2003, I also include comparative analysis from Justice Now because that organization is currently developing and deploying its human rights approach in the Chowchilla prisons. This enables me to present some practical problems of implementation of human rights strategies both as they unfold and as they are examined afterward.

My methodology is based on qualitative interviews, primarily with those affiliated with the BMTP, in Massachusetts. Monica Driggers, one of the BMTP report’s authors and an attorney-researcher at the Wellesley Centers for Women, spoke with me about the report they wrote—on human rights abuses in the family courts in Massachusetts—and contacted on my behalf the women who participated in the study, and about seven women contacted me. I was able to interview four of them by telephone during the spring of 2004, some of them two or three times. Most of my interviews with them lasted between one and a half and two hours. These survivors spoke with me candidly about their experiences with domestic violence, the Massachusetts family court system, and international law. The abuse survivors’ names are omitted, for their privacy.

In addition, I was able to speak with organizers of Justice Now’s human rights program about the organization’s work in women’s prisons and the extent to which international law makes a difference in it. I include results from this research here as well.

My interviews and research lead me to describe four successes of international law for local groups in the United States. The remaining sections of this paper provide more detailed analysis of each of these successes. In particular, when international law is deployed at the state and local level, it induces significant organizational as well as individual or psychological change. International law:

1. provides a methodology to expose and evaluate claims of abuse;
2. legitimizes and universalizes the rhetoric of accountability;
3. influences self-esteem; and
4. mobilizes individuals to form groups and assert rights.

**International Law Provides a Methodology to Expose and Evaluate Claims of Abuse**

International human rights law has come to mean more than the particular guarantees and provisions of its jurisprudential corpus: It is a story of law in action. Specifically, over the last half-century a number
of prominent international nongovernmental organizations (NGOs) and international watchdog groups—that seek to hold national governments accountable to human rights treaties—have formed with the explicit missions to promote human rights globally. The strategic locus of international human rights law is found in the work of these organizations that have sought to bring governments into compliance with those laws. These groups include well-known and well-funded organizations such as Amnesty International and Human Rights Watch—which, according to their website headlines, work “to protect human rights worldwide,” and “to defend human rights worldwide,” respectively.

In order to achieve their stated goal of “human rights worldwide,” international human rights NGOs have deployed a common five-stage methodology. The stages include 1) gathering data and recording abuses that occur, 2) determining government actor responsibility, 3) interpreting the abuses in light of the corpus of international human rights law (e.g., major human rights treaties), 4) exposing and publicizing the abuses and the responsible parties, and 5) holding government actors accountable. These five stages can be called the human rights methodology. International human rights law, then, can be said to have given rise to a reusable and transferable methodology for identifying, documenting, and denouncing abuses by government actors against individuals. Table One, below, outlines this human rights methodology and gives examples of how each stage would work in practice in a large human rights NGO, Amnesty International.

The development of human rights created a need to enforce or vindicate those rights. This need has been filled by a number of organizations that have emerged during the second half of the twentieth century whose purpose it became to expose and publicize human rights abuse occurring across the globe. Most notable among these human rights watchdog groups are Amnesty International and Human Rights Watch. These organizations, as a result of human rights law, helped establish and make successful the human rights methodology, or framework, of “naming and shaming.” In addition, and increasingly over the last few years, local organizations and local interest groups in the United States—those that work within a particular region or state of the United States, rather than at the federal level—have been applying the same human rights methodology to expose what they consider to be human rights abuses by local or state-level government actors in the United States.

In Massachusetts, for example, the human rights methodology provided the framework for the Battered Mothers’ Testimony Project.
The Influence of International Law on Local Social Movements

Table 1. The Human Rights Methodology

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<th>Stage</th>
<th>Strategy</th>
<th>Example</th>
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<tr>
<td>One</td>
<td>Gather data; record abuses</td>
<td>Amnesty International (AI) employees travel to major conflict zones to interview activists, refugees, militia members, and government officials to determine the extent of human rights abuse.</td>
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<tr>
<td>Two</td>
<td>Determine government actor responsibility</td>
<td>During and while analyzing interviews, AI employees determine the extent to which government actors ordered or were complacent in allowing abuse to occur.</td>
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<tr>
<td>Three</td>
<td>Interpret abuses in light of corpus of international human rights law</td>
<td>After returning to their offices, AI employees analyze the interviews. Often lawyers, these employees link abuses perpetrated by government actors with the specific human rights treaties that those abuses violate.</td>
</tr>
<tr>
<td>Four</td>
<td>Expose and publicize the abuses and responsible parties</td>
<td>After linking abuses with international laws, AI publishes an Annual Report of human rights abuses worldwide or a country or regional report, based on research conducted in stages one-three.</td>
</tr>
<tr>
<td>Five</td>
<td>Hold government actors accountable</td>
<td>AI’s “Urgent Action Appeals” invite members to write to leaders of foreign governments to pressure those larders to promote human rights in their countries (for example, in the form of releasing political prisoners).</td>
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authors of the 105-page report claim to have conducted a “human rights investigation of the Massachusetts family courts.” The authors explained the scope of their methodology: “To our knowledge, this is the first research project on battered mothers in the United States to implement this type of multi-method research design [using human rights fact-finding and qualitative and quantitative social science research].” The authors examined the successes and failures of the Massachusetts family court system by interviewing those familiar with it—for example, judges, attorneys, social workers, guardians ad litem, and the women who appeared in custody battles before those courts. “As in human rights fact-finding, the driving force behind [this] research is the prominence of the voices of the people under study.” The authors then considered the problems in the court system in light of human rights...
law, and denounced violations of that law in their report. The report “made human rights law extremely local, by applying international law to forty people [who live] near Wellesley.”

The authors of the report analyzed more than 40 qualitative interviews and follow-ups, and fact-checked a sample of them to ensure accuracy. The report then analyzed the Massachusetts family court system from the perspective of local Massachusetts law, federal law, and human rights law. In many cases, human rights law was listed alongside federal law and local law. The authors consciously paired domestic laws alongside international human rights law. This pairing gives increased moral weight to local laws by placing them alongside the more “universal” international laws. For example, the report concludes that judges and guardians ad litem in the Massachusetts family courts failed to protect battered mothers and children from abuse, by refusing to investigate mothers’ allegations of abuse, inaccurately characterizing women’s reports of abuse, omitting in official reports women’s descriptions of abuse, failing to take seriously fathers’ violations of restraining orders, and blaming women for abuse or punishing them for attempting to protect their children from abusive fathers. Not only do these situations pose problems under Massachusetts law, but had they occurred anywhere in the world, the report says, these situations would still be violations of law—human rights law.

After describing claims against the Massachusetts family court system, the report then links them directly to international and domestic laws; citing in international law the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Declaration on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; citing in federal law the Victims of Child Abuse Act of 1990; and citing in Massachusetts law the Presumption of Custody Law; the Massachusetts Abuse Prevention Act; and the Massachusetts criminal code provisions applied to domestic violence. The report goes on to argue that how women are treated in custody proceedings violates Massachusetts law as well as, and more fundamentally, human rights.

The report’s audiences were the family courts, policy makers, and women who experienced domestic violence. The report implicated judges for failing to prevent abuse, under the Massachusetts Abuse Prevention Act. In addition, the report claimed judges were guilty of torture and discrimination under international law, for failing to prevent abuse. This
added dimension, brought about by the strategic use of international law, gave judges “a sense of urgency that did not exist earlier.”

The goal of the human rights methodology is to shame government actors into action. The BMTP report’s main objective was public shaming: “Through press-play and media outreach, we’d get courts to see that they were [abusing women] on an international scale.”

In response to the report, judges generally remained skeptical about introducing international law to their courtrooms. One judge responded that human rights “may work well for systems in Third World countries, but not for a court in the United States.” Others in the courts reacted differently. One of the report’s authors told me that an attorney took her aside and asked her what she could do. The report had succeeded in changing her perception of the courtroom in which she worked—she did not want to think that it was a place of torture for women who may have already suffered abuse from their ex-husbands. Another member of the court’s personnel who worked on gender issues was frightened “that she could be involved in a scheme of torture on the women.” In addition, authors of the BMTP received unsubstantiated reports that some judges began circulating “what do we do now?” memos to each other after the report went public. So, overtly, judges’ public reactions to the report were simply that the human rights theory was inapplicable. Judges “refused to acknowledge the human rights underpinnings of law.” Internally, however, judges “reacted enormously to the ideas that they tortured or failed to protect women’s ... rights. The sheer human rights terminology was the spark that lit the dynamite. They freaked out.”

The strategy of public shaming using human rights terminology such as “torture” worked at least to call the attention of judges and others in the Massachusetts family court system to the plight of battered mothers who appear before them. Human rights provided a moral authority and universal tone that local law did not. Massachusetts law, like that of all states, is fluid and changing compared to international law, which seems to invoke a universal solidity. Though the realists argue that international law is amorphous and fluid, here we have an example of—in the minds of state actors—local law being amorphous and fluid but international law being solid and unchanging.

The BMTP’s strategy of using the human rights framework has been picked up by other organizations in other states. Ultimately all these groups hope for more federal strategies dealing with what they call local human rights abuse in their court systems. In June 2003, for
example, a similar battered mothers’ report against the Arizona courts was released, and a similar project occurred in California.\textsuperscript{57}

Separately, Justice Now, in California, has also been using the language of international law and the methodology of human rights to expose abuse in California’s prison facilities for women. Justice Now’s goal has been to think globally about the incarceration of women but to act locally to ensure that women prisoners are not abused. Justice Now has been meeting with women prisoners in California for a number of years. They “wanted to do more than Amnesty or Human Rights Watch,” according to Justice Now’s legal director, with whom I spoke.\textsuperscript{58}

Human rights provided the research framework for Justice Now. In 2003, Justice Now decided to begin an ambitious human rights documentation program. They began to educate women in the Chowchilla prisons on human rights standards relating to women prisoners through fact sheets related to the rights to health, privacy, family, and the rights of transgendered persons.\textsuperscript{59} Those women most interested would interview other women regarding human rights abuses occurring in the prisons. Rather than the organization documenting abuse, as the major international NGOs do and as the BMTP did, Justice Now asked women prisoners to work as documenters. Human rights law became an instrument to advocate for prison reform at the level of the California Department of Corrections and California state legislature.\textsuperscript{60}

Justice Now meets with women in prison, exposes them to human rights law, and trains the ones most interested to work as human rights documenters who will interview other prisoners on their experiences of torture. The documenters return data to Justice Now. Though the process is ongoing and, thus, the extent of its achievements cannot yet be evaluated, there have been some early successes. In particular, Justice Now has been providing copies of human rights treaties and documents, including the United Nations Standard Minimum Rules on the Treatment of Prisoners, to incarcerated women who are meeting in the visitors’ areas with Justice Now. Justice Now reports that these women return to their overcrowded cells and share and teach the information to the other women there. This human rights education has encouraged women to share their stories with the documenters, producing a rich qualitative data set. With these data, Justice Now will be publishing a human rights report that seeks to shame local government actors—police, wardens, guards, and legislators—by holding them accountable for what Justice Now calls human rights abuses in the California women’s prison system.\textsuperscript{61}
International Law Legitimizes and Universalizes the Rhetoric of Accountability

In addition to providing a methodology to hold local government actors accountable for human rights violations, international law influences local government actors by adding a “legal” or legitimizing dimension to political rhetoric. A government actor who does not meet his political obligations may be inadequate, but a government actor not meeting his legal obligations connotes a sense of urgency or failure. The BMTP report in Massachusetts stated that the family court system had failed to meet its “human rights obligations.” International law provided a language and a discourse to explain problems that were occurring in the court system against battered mothers. International law was a “new language to solve old problems.” For example, in addition to mentioning that Massachusetts law called for situations to be determined in the best interests of the child, the report cites the United Nations Convention on the Rights of the Child, an international document with the same prescriptions, but directed at all persons, not just those in Massachusetts. Citing both local law and an international convention gives the local law more weight and the international law more applicability. “We wanted to get policy makers to see domestic violence as a human rights issue. Human rights law is so much more preemptive [than local law].”

Exposing abuses by government actors and calling for accountability could be seen as a success in its own right. And in California, Justice Now sees international law as more sweeping in its provisions than federal law. “I don’t care what” federal law “says about these things. The Eighth Amendment [prohibition of cruel and unusual punishment] can only go so far.” Justice Now admits that its work would be much more restricted had it not been for the United Nations Standard Minimum Rules for the Treatment of Prisoners. Though international law is not mandatory authority, “by virtue of being a human being, you have these rights.”

International Law Influences Self-esteem

International law also influences the way people feel about themselves in a way that local laws do not. Embedded in human rights are the ideals of dignity and respect, that each person deserves dignity and respect. Many local laws are far too practical or logistical (in terms of
proscriptions and implementation) to be as sweeping as what can be found in a human rights treaty.

In Massachusetts, many of the women felt “beaten down” by their failures in the family court system. Mothers felt horrible for not winning in court—their abusive ex-husbands were awarded joint or, worse, full custody of their children.

For me it was debilitating. I never knew that I had married such a monster. I lost everything. He tried to get into my business. My youngest had migraines [because of this]. It’s so cruel. But I was able to come around. I feel much better about myself. I saved one of my kids.67

The women in the study had “very little understanding of their fundamental rights. It never occurred to them that they had a right to better treatment.”68 The women indicated that government actors, particularly judges, in the Massachusetts family court system protected their abusive husbands more than it protected them:

My ex-husband is in contempt of everything. He’s refused to carry health insurance for my children for ten years. The court knows it. They don’t care. He’s behind on child support [payments]. The court doesn’t care. I’ve got a pile a foot high of court orders on my ex-husband that they blatantly disregarded. I was supposed to have a trial two years ago in November, for my daughter, but the judge was not going to let the trial happen. Everything took place in judge’s chambers, without me.69

Another battered mother said, “[S]urvivors don’t see themselves as human, with rights. When you put it in the human rights context, it makes sense to them and also gets them angry, they say, ‘Wait a minute, animals have more rights than we do!’”70 Another battered mother concurred, “I have reclaimed my voice and found a way for my experiences to have meaning. The [Battered Mothers’ Testimony] Project has given me tools to understand what I have survived and hope for change.”

Michael McCann has written similarly, that women in the pay equity reform movement achieved a “sense of enhanced personal efficacy ... paralleled by increased respect from others.”71 In Chowchilla,
California, where the largest number of incarcerated women in the world live, many of them underwent similar ideological change. According to Justice Now, many women had felt that the abuse they suffered in prison—including overcrowded cells, mistreatment and sexual abuse by guards and other prison authorities, and cross-gender guarding—was their fault. But after reading about human rights law, many women experienced a transformation in their perceptions of themselves. These women moved from self-blame or self-hate to realizing that “they’re not the problem. Prisons are the problem.” While Justice Now conceded that not all the women they interviewed were self-hating—indeed, many felt they were strong for wanting to participate in the study to vindicate their basic human rights—many of them, began to transform their self-image as a result of their knowledge of international human rights law.

International Law Mobilizes Individuals to Form Groups and Assert Rights

Finally, international law is a mobilizing force in the United States, at the local level. The women I spoke with in Massachusetts told me that they wanted to do more with the human rights information from the BMTP report. “I knew ... that I wanted to help. I’m very capable of being a survivor. You read something [like the BMTP report] and say, I can make a difference.... Even going through hell, you have an ability to give back.” This woman also said that “I was with other women who went through it. There’s a camaraderie.” She later said that after the report was released, she attended meetings in Worcester, helped start a program at a local courthouse, and met with other groups across the state. Michael McCann has referred to this process as collective empowerment through solidarity. The programs, however, did not last long—not for want of interest or mobilization, but for lack of funds.

The authors of the report commented that one of the report’s greatest successes was its mobilizing force.
M.C., an abuse survivor, told me that after the BMTP report was released, she felt that, “well, someone understands us. But I also felt, well what can I do with this information now.... Yeah it was a great study. I think that we need to get it restarted—it’s a human rights issue.”

In addition to lack of financial support that would enable further local organizing around human rights, there existed particular stresses for many of the women—namely fear of organizing in public or being “caught” by their abusive ex-husbands. One woman, R.Y., had worked in law enforcement but had been generally unfamiliar with human rights documents prior to participating in the Massachusetts BMTP. She told me that though she wanted to help other women who had gone through what she had went through to understand their own human rights, she “was afraid of being visible, because of [her] ex-husband.” Believing in her own human rights was her call to action, and “one of the hopes [was] that survivors would pick up the plan. I was looking forward to being active, but I realized that I couldn’t without putting my children at risk.” She went on to explain about how a so-called fathers’ rights group would slash car tires of ex-wives or drive them off the road. She claimed that, at an organizing meeting held at the beach, many of the women who met to speak about human rights felt they were being watched or followed by two men. The meeting abruptly ended.

R.Y.’s story is not isolated. Another woman told me she was “like a marked woman” for speaking out through her participation in the BMTP and in helping other survivors of spousal abuse:

Instead of helping, every time we speak out, we get retaliated in this court. I’m not the only one, there’s a whole group of women who’ve gone through the absolute in this court. A reporter did a story [of an abuse survivor], and instead of it helping her, it hurt her case.79

Similarly, international law has given the incarcerated women in Chowchilla the same “urge to organize,” despite structural and other impediments. Though Justice Now’s work is in progress, their legal director in an interview told me that international law has been transformative and empowering for the women she met. The women would organize if they could, but prisoners are not allowed to organize, or else they would be sent to administrative segregation (also called “ad-seg” or solitary confinement).80 The women felt they had no choice but to endure the abuse they received in prison and hope that the coming report makes a difference on their conditions of confinement.
CONCLUSION: THE LOCAL POWER OF INTERNATIONAL LAW

As the case studies have shown, international human rights law is a lived reality in local settings. These local settings are where realist scholars of international law would not have expected to find international law interacting with and influencing behavior. Rather than existing only between nations, international law resides inside them, at the lower rungs of the ladder of federalism—local and state government. International law, constituted by society, also constitutes society.

International law produces local social change insofar as individuals working to influence local government think about, strategize, and use international law. One year after the release of the *Battered Mothers’ Testimony Project*, Massachusetts courts issued their own follow-up report on the treatment of domestic violence in the courts, called “Progress and Challenges.” Funded by the Justice Department, the report covered family, criminal, and probate courts. While not officially a response to the BMTP, its conclusions were strikingly familiar to those who have read the BMTP. In addition, groups in Arizona and California replicated the BMTP, and abuse survivors in Massachusetts and Arizona began to organize after the release of those reports, planned and attended workshops on human rights, and formed their own “protective parents’ networks.”

International human rights law bases itself in part on natural law principles that individuals are endowed with certain rights by virtue of being human beings. Domestic law, on the other hand, is positivist. Laws are “posited” by democratically elected leaders. International law forces courts to “dialogue on the issues, to respond to difficult questions” between positivism and natural law.81 International law, when deployed by local social movements, also interrupts the top-down chronology of federalism. NGOs traditionally have used international law to influence federal actors (Figure 1). New research suggests that NGOs have also been using international law to influence state and local legislation (Figure 2). My hypothesis is that the work of groups such as the Battered Mothers Testimony Project and Justice Now is indicative of a new way of implementing international law in the future. In particular, if laws promulgated at the highest level (internationally) are being deployed at the lowest level (locally), then through replication of reports and activities, these changes will likely reach the federal layer of government, ultimately with the goal of changing local, state, and federal laws.
Figure 1: NGOs Use International Law to Influence Federal Actors
Source: Mark Massoud

Figure 2: NGOs Use International Law to Influence State- and Local-level Actors
Source: Mark Massoud

(Figure 3). I suggest that in this new form of lawmaking, international law is in dialogue with the American system of federalism only after international law changes lower layers of our federal system, that is local and state law.

Henry Kissinger once wrote that American leaders have taken their values so much for granted that they rarely recognize how revolutionary and unsettling these values appear to others.82 Kissinger’s ideas on exporting American values may begin to take on decreased importance as international law is imported into American local government. Social
movements and groups, like the Battered Mother’s Testimony Project, attempt to make international law a part of our federalist structure (see Figure 3). International law is being deployed where the realists have not looked—in Americans’ backyards, infusing itself into the components of our federalist structure by NGOs using it to organize locally, to hold local politicians and judges accountable, and to create local social change affecting people’s daily lives and their attitudes about themselves. If my approach is correct, then these local community changes will aggregate into state and federal changes in the future as new and different types of groups emerge to vindicate human rights locally.

NOTES


2. The human rights methodology or strategy of documenting abuse by government actors is generally attributed to major transnational NGOs, in particular Amnesty International and Human Rights Watch.

3. Realism, described in more detail later on in this paper, generally doubts the efficacy—and in its more extreme and perhaps less intellectually serious strands, the existence—of international law.
4. For scholarship proposing collaborative research agenda between disciplines relevant to international legal studies, see generally Anne-Marie Slaughter, Andrew S. Tulumello, and Stepan Wood, “International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship,” *American Journal of International Law* 92 (1998): 367, which proposes collaborative research agenda between international relations and international law, two disciplines relevant to international legal studies. See also Anne-Marie Slaughter, “International Law and International Relations Theory: A Dual Agenda,” *American Journal of International Law* 87 (1993): 205, which argues, in part, for further integration of comparative constitutional law, international relations, and transnational law into international legal studies.

5. In particular, Slaughter’s model of the “disaggregated state” and Koh’s “transnational legal process theory” highlight the bottom-up approach of liberal theory in international law; that domestic institutions are also “transgovernmental actors.” “To the extent that these [domestic] institutions are constrained by domestic law, domestic legal rules emerge as a constraint on state action in the international system.” “International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship,” *American Journal of International Law* 92 (1998): 383.


8. Ibid., 11.

9. See also Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (New Haven, CT: Yale University Press, 1974), which argues that “rights” result from the interplay between social movements and government and other actors.

10. In this paper, I focus on the role of international human rights law on local social movements in the United States. I examine this in light of international law in general, of which human rights is a notable and growing component. Also, I should mention early on that I will later refer to “state actors” as “government actors” in order not to confuse “state” in its international context with “state” as in one of the fifty United States.

12. For the realists, the basic international actors are states that exist in comity with one another. For a classic work on this state-centric view, see, e.g., Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 2nd ed. (New York: Columbia University Press, 1995). On the other hand, more moderate realists, or “constructivists,” have based their work on the realist assumptions of power and anarchy. The constructivists, notably Alexander Wendt, have argued that the systems of power and anarchy have created new cultures within international politics. See, generally, Alexander Wendt, *Social Theory of International Politics* (New York: Cambridge University Press, 1999).

13. I thank Martha Davis for reminding me that at least moderate realists recognize that there are exceptions to the general view that international law does not generally influence state behavior. One of these exceptions is Sweden’s recent decision to expand child care rights to unemployed parents. The Swedish Ministry of Education said that its rationale for doing so was criticism coming from the United Nations regarding international law. Another exception would be the International Campaign to Ban Landmines, which has been successful at getting a number of federal governments to ban the use of landmines by signing and ratifying the Mine Ban Treaty. And in the United States, the Alien Tort Claims Act has provided jurisdiction in federal courts for foreigners to bring claims against those accused of perpetrating human rights atrocities abroad, whether or not Americans were victims.


17. Malcolm Feeley and Edward Rubin provide a notable exception to the general observation of legal scholars that courts are incapable of or at least reluctant in regard to implementing and supervising the implementation of their decisions. In exploring the nature of judicial policy making, Feeley and Rubin studied how, during the 1970s and 1980s, judges became the most active

18. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: University of Chicago Press, 1994), 21. Rosenberg uses, as an example, the landmark case of *Brown v. Bd. of Ed. of Topeka* to show that real changes in people’s attitudes toward civil rights or real implementation of that decision did not come until 10 years after *Brown*. In 1964, Congress responded to *Brown* by enacting the Civil Rights Act, and after that time, attitudes began to change markedly favoring desegregation in once-segregated areas. *Hollow Hope*, 93.


20. This is with the exception of *jus cogens* norms, which, as customary international law, can be brought against any state if violated.

21. The United States in 2001 rescinded its signature of the ICC Treaty. In addition, the United States has been making bilateral agreements with other state-parties to the ICC Treaty not to bring cases against the United States in the ICC.

22. Again, this idea is not foreign to the United States, which has often removed itself from potential lawsuits simply by not accepting compulsory (reciprocal) jurisdiction in the International Court of Justice (ICJ). In 1986, just three days before the Nicaraguan government filed suit against the United States for its aid to the anti-government contras, the United States modified its prior acceptance of compulsory ICJ jurisdiction to accept its jurisdiction in any non-Central American case only. See *Nicaragua v. United States*. In addition, practically and politically, Nicaragua could not go to the Security Council to enforce the decision of the ICJ against the United States, because the United States sits as a permanent member of the Security Council, and thus, could single-handedly veto any Security Council resolution not in the United States’ interests.

23. This power has only been utilized twice, in Korea in the 1950s and in the Persian Gulf War 40 years later. So, these UN Security Council actions remain limited in terms of constituting any real “executive” action under international law.

25. Throughout this paper, I refer to domestic interest groups and nongovernmental organizations (NGOs) interchangeably.

26. Many organizers and activists have law degrees, have studied international law, and are familiar with the realist criticisms of international law. The activists I interviewed in particular mentioned their familiarity with the ideas of the realists, whether or not they were able to attribute those ideas to the “realists” per se.


28. Ibid., 15.

29. Ibid., 22.

30. Ibid., 19, which cites the Eisenhower Administration’s call that no human rights treaty would be sent for Senate approval, and in recent years, the numbers of reservations limiting the scope of human rights treaties.

31. Ibid., 23.


33. The law of nations is generally introduced into the United States through the President, who has the authority under his constitutionally enumerated foreign relations powers to receive ambassadors and, by extension, make agreements or sign treaties with them. The Senate must give its advice and consent to a treaty in order for the treaty to become domesticated as binding law in the United States. The treaty must be consistent with federal principles. When a treaty and a federal statute are in direct conflict, the one adopted later in time trumps the earlier one. The President also has the power to issue Executive Orders that bind federal agencies to particular human rights treaties or to human rights in general. These mechanisms are built upon the “one nation” premise, that the United States—through the political branches of the federal government—has a single voice in international relations.


35. Ibid., 267.


37. See Grutter v. Bollinger, 539 U.S. 306, 343–344 (2003). There, Justice Ginsburg (in a concurrence signed by Justice Breyer) seemed to go out of her way to cite international law by beginning her concurrence with it. She wrote
that the majority’s idea of “temporary” affirmative action is in accord with international law. She went on to spend the rest of the first paragraph of her concurrence citing and otherwise referring favorably to the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. See also Lawrence v. Texas, 539 U.S. 558, 123 S. Ct. 2472, 2481 (2003). There, the Court’s five-vote majority written by Justice Kennedy cited a case by the European Court of Human Rights amidst its discussion of precedent. The court seemed to say that this case (Dudgeon v. United Kingdom, 45 European Court for Human Rights, 1981) should have influenced the now overruled Bowers v. Hardwick decision, made five years prior to Bowers. The majority opinion also cited at least three other European Court of Human Rights cases, saying that the “right [to homosexual privacy] has been accepted as an integral part of human freedom in many other countries. There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent,” 2483.

39. Ibid., 245, 250.
40. Ibid., 245, 250.
41. Despite my attempts, because of timing and security clearance difficulties, I was unable to visit the Chowchilla prisons in California to interview women there. I spoke with those familiar with the work of Justice Now, including the director of its human rights program, about their experiences working with the incarcerated women there.
43. For more information on how the human rights framework was used in transnational environmental, women’s rights, and human rights networks see, e.g., Margaret E. Keck and Kathryn Sikkink, Activists Beyond Borders (Ithaca, NY: Cornell University Press, 1998).
44. While Amnesty International’s work has extended beyond this methodology to include work against the death penalty and other rights-related topics, the human rights methodology presented here should be seen as an ideal type of the major part of AI’s international work.

46. Ibid., 5.
47. Ibid., 5.
50. Ibid., 27–31.
51. Interview with Monica Driggers, April 28, 2004.
53. Ibid.
54. Interview with Monica Driggers, April 28, 2004.
55. Ibid.
56. Ibid.
57. *Arizona Battered Mothers’ Testimony Project*, available from http://www.azcadv.org/PDFs/FS-BMTP%20report.pdf, 81. With funding from the United States Department of Health and Human Services, the Arizona Coalition Against Domestic Violence published in June 2003 its own Battered Mothers’ Testimony Project report. Using the language of international law, the report exclaims that “domestic violence and child abuse in Arizona are torture.” The author of this paper has a copy of the report.
58. Interview with Justice Now Program Director, April 28, 2004.
60. Interview with Justice Now Program Director, April 28, 2004.
61. Ibid.
63. Ibid., 163.
64. Interview with Monica Driggers, April 17, 2004.
65. Interview with Justice Now Program Director, April 28, 2004.
66. Ibid.
68. Interview with Monica Driggers, April 14, 2004.
70. Battered Mothers’ Testimony Project, PowerPoint Presentation, November 2003 (received via e-mail from Monica Driggers, Wellesley Centers for Women).

72. Whereas cross-gender guarding is allowed under the Fourteenth Amendment’s Equal Protection Clause, it is prohibited under international law. See, e.g., United Nations Standard Minimum Rules on the Treatment of Prisoners, Section 53(3): “Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.” Available from: http://www.unhchr.ch/html/menu3/b/h_comp34.htm.

73. Interview with Justice Now Program Director, April 28, 2004.

74. Interview with M.C., April 29, 2004.

75. Ibid.


77. Interview with Monica Driggers, April 29, 2004.

78. Ibid.


80. Interview with Justice Now Program Director, April 28, 2004.


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