

Can International Human Rights Law Bind Sovereign States?

-- The Case of *Dobbs v. Jackson*

Jialu Li *

Qingdao No.2 Middle School, Qingdao, Shandong, 266071, China

* Corresponding author Email: lululijialu@163.com

Abstract: This paper examines *Dobbs v. Jackson Women’s Health Organization*, focusing on the efficacy of international human rights law within the courts of a superpower. Through literature review and theoretical analysis, it introduces the concept of “symbolic compliance” and argues that the United States’ approach to human rights treaties is “not selective, but strategic.” Its treaty practice employs such instruments as assets of legitimacy on the international stage while simultaneously de-legalizing them domestically through mechanisms like “non-self-executing” status and reservations, rendering them “merely symbolic.” Case analysis reveals that *Dobbs* not only disregards international human rights treaties but also reinforces American exceptionalism by establishing an insular judicial philosophy through its reaffirmation of “history and tradition.” Compared to the monistic practices in Europe and Latin America, the U.S.’s dualistic tradition makes it more prone to exclude international law. Therefore, this paper argues that international human rights law lacks effectiveness against powerful states, with its efficacy determined by domestic political culture or institutional design. Finally, it suggests that strengthening treaty monitoring, transnational judicial dialogue, and civil society participation can enhance its effectiveness.

Keywords: International Human Rights Law; Sovereignty; Symbolic Compliance; American Exceptionalism; Compliance Theory; Critical Legal Studies; *Dobbs v. Jackson*.

1. Introduction

International human rights law emerged after World War II, beginning with the Universal Declaration of Human Rights. It has gradually developed into a universally applicable set of human rights standards, anchored by treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, these standards are often constrained in practice by national sovereignty or domestic systems. The most typical case is that in powerful nations, including the United States, international human rights treaties are frequently “used to make commitments abroad while circumventing them at home.”

The United States is a key proponent of international human rights discourse. Yet, by frequently invoking the principle of “non-self-executing treaties” and employing “reservations, understandings, and declarations” (RUDs) to limit the judicial application of treaties, it effectively renders international human rights law “dead law.” Domestically, this approach leads to the ‘formalization’ and “de-legalization” of such laws, achieving the dual purpose of projecting legitimacy internationally while simultaneously depoliticizing the issue through institutional exclusion domestically.

In 2022, the Supreme Court overturned the abortion rights established in *Roe v. Wade* through *Dobbs v. Jackson Women’s Health Organization*. This decision not only sparked domestic uproar but also exposed the absence of international human rights law. The ruling virtually eliminated any possibility of invoking international treaties, making judicial isolationism increasingly evident.

This paper argues that U.S. engagement with international human rights treaties constitutes not mere “selective compliance” but “**symbolic compliance**”: treaties are leveraged internationally, while domestic institutional arrangements and judicial logic negate their legal force. Focusing on *Dobbs* and drawing on monism–dualism, compliance theory, and critical legal studies, the paper highlights the limitations of international human rights law within the judiciaries of powerful states.

2. Literature Review

2.1. The Debate on Human Rights and Sovereignty

The emergence of international human rights law is regarded as challenging the concept of sovereignty. Sovereignty supremacists contend that states are the sole subjects of international law, and human rights issues fall under domestic affairs. Krasner argues that international human rights treaties, lacking enforcement mechanisms, essentially constitute a form of political moralization insufficient to constrain powerful states [1]. Universalist scholars maintain that human rights possess a universality transcending sovereignty. Peters contends that human rights form the legitimacy foundation of sovereignty, and a state’s sovereignty should be constrained if it commits severe human rights violations [2].

Critical scholars question the applicability of international human rights law from another angle. Koskeniemi argues that international law exists between “moral appeals” and “power politics,” making human rights treaties prone to becoming mere slogans [3].

2.2. U.S. Treaty Practice

U.S. practice reflects its dualistic approach. Advocates of the constitutional basis for the treaty selection system argue that their treaty choices constitute reasonable judgments within the constitutional framework. Goldsmith and Posner contend that the validity of international treaties should be determined through democratic procedures, asserting that the non-self-executing principle safeguards democratic sovereignty [4].

Critics of the system disagree, contending that it significantly weakens treaty binding force. Sloss contends that America's extensive reservations and declarations have led to the “death of the supremacy clause,” causing treaties to lose their proper standing domestically [5]. Other scholars contend that the U.S. system does not reject international law but represents a political expediency—a form of “selective compliance” that preserves domestic institutional autonomy while projecting an image on the international stage [6].

2.3. Research on Dobbs

Following Dobbs's overturning of *Roe v. Wade*, studies began examining the case's relationship with international human rights law. Some research noted that the majority's failure to cite international treaties reflects American judicial isolationism. Kaufman contends that the case demonstrates the U.S. Supreme Court employing an originalist judicial philosophy to exclude international human rights discourse [7]. Critical analyses go further, contending that Dobbs marks a divergence of U.S. reproductive rights protection from global trends. The decision not only undermines domestic women's rights but also erodes the authority of the international human rights system [8].

Concurrently, some scholars defend the majority opinion, arguing that the Court's adherence to constitutional text and historical tradition reflects judicial restraint. The absence of international treaties, they contend, is not hostility but a natural outcome of institutional logic.

3. Case Study: Dobbs v. Jackson Women's Health Organization

3.1. Case Background and Key Ruling

In 2022, the U.S. Supreme Court overturned the *Roe v. Wade* precedent on abortion rights in *Dobbs v. Jackson Women's Health Organization*. The 6-3 majority opinion held that the Constitution does not explicitly grant a right to abortion, thereby leaving the matter to state discretion. This ruling not only fundamentally reshaped the U.S. constitutional landscape but also exposed the absence of international human rights law.

3.2. The Absence of International Law

The majority opinion made no reference to core human rights treaties such as the ICCPR or CEDAW. Even dissenting opinions emphasizing individual liberty failed to invoke international law. U.S. courts have adopted an avoidance mechanism for major human rights issues closely tied to international norms: refraining from applying international treaties to protect core values of sovereignty and constitutional tradition. By contrast, the European Court of Human Rights reviewed Ireland's abortion restrictions based on the European Convention on Human Rights in *A, B and C*

v. Ireland, demonstrating international law's direct “effect” on jurisprudence.

3.3. Institutional Causes: Non-Self-Executing Nature and Reservations.

The institutional cause for international law's absence lies in America's dualist practice and the principle of treaty non-self-execution. Since *Foster v. Neilson*, the Supreme Court has adopted the principle that treaties are non-self-executing. Upon ratifying the ICCPR, the United States further clarified that certain provisions lack self-executing effect, thereby preventing courts from directly applying the ICCPR. Sloss contends this signifies “the death of the doctrine of treaty supremacy.” Evaluating this system reveals absolute discretion and domestication: the absence of international law ensures Congress and the courts possess absolute discretion in applying international law, meaning international human rights treaties carry no binding force within the United States [5].

3.4. The Shift in Judicial Philosophy

The majority's reliance on historical and traditional rights definitions prohibits invoking emerging or transnational human rights concepts, reinforcing originalist logic that excludes international law as “an external factor that should not influence constitutional interpretation.” In contrast, while *Roe v. Wade* did not directly cite the ICCPR, its expansions of privacy or liberty align to some extent with developments in international human rights law, falling under the category of “potentially influenced by international factors.” However, Dobbs' rejection of any international reference marks a shift from “potentially influenced by international factors” to “active exclusion.”

3.5. Comparative Perspectives: Europe and Latin America

In Europe, human rights treaties possess direct applicability, and courts continually expand reproductive rights protections through the European Convention on Human Rights. For instance, *A, B and C v. Ireland* recognized that excessive restrictions on abortion infringed upon women's rights. In Latin America, the Inter-American Court of Human Rights similarly invoked the American Convention on Human Rights to protect reproductive autonomy in *Artavia Murillo v. Costa Rica*. These cases demonstrate that under a monist system, international law can impose substantive constraints on domestic policy. In contrast, U.S. courts, adhering to a dualist and exceptionalist stance, refuse to recognize the authority of international treaties even when confronting identical human rights disputes.

In summary, the Dobbs case illustrates how the U.S. system curtails treaty efficacy through non-self-executing provisions and reservations, while ideologically dismissing international human rights law via originalism and exceptionalism. This produces “symbolic compliance,” invoking treaties to legitimize human rights discourse externally while denying their legal force domestically, highlighting how institutional and ideological contexts shape the application of international law.

4. Discussion

Dobbs v. Jackson illustrates how international human rights law operates as “symbolic compliance” in the U.S.,

reflecting the interplay of institutional design, political theory, and judicial reasoning. Despite Article VI declaring treaties the “supreme law of the land,” U.S. practice—through non-self-executing doctrines and restrictive **reservations, understandings, and declarations (RUDs)**—effectively delegalizes human rights treaties. Ratified treaties like the ICCPR thus serve externally to signal commitment and accrue diplomatic legitimacy, while internally remaining unenforceable to preserve sovereign control. Within this context, **Dobbs** required little justification to dismiss international human rights law almost entirely.

4.1. Conceptual Level: American Exceptionalism

Beyond institutional frameworks, the exceptionalism embedded in America's domestic political culture further reinforces its rejection of international human rights law. Forsythe and McConahgh note that while the United States typically emphasizes the universality of human rights in diplomacy and employs it as a tool of foreign policy, its constitutional culture and inviolable borders remain insurmountable barriers domestically [8]. During the Cold War, the U.S. frequently employed human rights discourse to criticize the Soviet Union; during the “War on Terror,” it invoked national security to limit its obligations under international human rights law.

In **Dobbs**, exceptionalism manifested as the absolute primacy of American tradition. The majority opinion held that whether a right is protected must be viewed as a matter of “American history and tradition,” not an issue of international consensus. The majority opinion's reasoning represents not merely a choice of legal methodology but an embodiment of exceptionalism: the United States asserts its right to define rights through its own power, free from the constraints of international human rights law.

4.2. Theoretical Level: The Explanatory Power of Compliance Theory and the Critical Legal Studies Perspective

According to compliance theory, why states in the international system adhere to international law has long been a question theorists seek to explain. Koh's “interaction process theory” posits that states gradually “internalize” international legal norms through participation in international interactions [9]. However, the United States' approach to human rights treaties defies this theory's expectations. Rather than incorporating international treaties into domestic law, the U.S. employs non-self-executing provisions or reservations, rendering the treaties themselves devoid of direct legal effect. Thus, at least in the context of great power dynamics, compliance theory fails to explain U.S. behavior.

In contrast to compliance theory, critical legal studies explain U.S. behavior differently. Koskeniemi argues that international law functions as a rhetorical tool for powerful states to justify foreign policy rather than constrain domestic conduct [3]. The U.S. approach to human rights treaties exemplifies this: internationally, it emphasizes human rights to advance foreign policy; domestically, institutional arrangements “de-legalize” treaties. This paper terms this “**symbolic compliance**”, where treaties are strategically symbolized to strip them of judicial force. **Dobbs v. Jackson** illustrates this clearly: the ruling cites no international law and actively excludes it by invoking “constitutional tradition.”

The U.S. thus does not merely ignore international law; through judicial philosophy and institutional design, it deliberately excludes it, demonstrating that human rights law can provoke **backlash** even in powerful state judiciaries, reinforcing sovereign supremacy.

4.3. Global Level: Spillover Effects and Human Rights Setbacks

Kaufman notes that the **Dobbs** case undermines the authority of international human rights discourse, potentially enabling other sovereign states to resist human rights treaties under the pretext of sovereign immunity [7]. For nations already skeptical of international human rights norms, **Dobbs** could serve as a “legitimizing tool” to justify domestic resistance to human rights law—even in a human rights champion like the United States.

This “spillover effect” is already apparent. In recent years, Poland's Constitutional Tribunal invoked **Dobbs** when restricting abortion rights, and political groups in conservative Latin American countries have similarly cited the ruling to argue that abortion is not protected under international human rights law, since even the U.S.—a supposed champion of human rights—refuses to enforce such norms domestically. **Dobbs** thus represents not only a setback for U.S. abortion rights but a blow to the global human rights trajectory. Although the UN Human Rights Committee criticized the decision in its 2022 review for violating ICCPR obligations, its lack of enforcement power confined the impact to public opinion and politics, highlighting the institutional impotence of international human rights law against powerful states.

The significance of **Dobbs** extends beyond the retreat of abortion rights within the United States; it also symbolizes the fate of international human rights law in the context of globalization. From the institutional level of “non-self-enforceability” to the ideological level of “exceptionalism,” from the theoretical debate over compliance versus critique to its global spillover effects, **Dobbs** reveals the marginalization and rhetoricalization of international human rights law within the judicial systems of powerful nations in the era of globalization.

5. Conclusion

Dobbs v. Jackson illustrates both a regression in U.S. reproductive rights and the “symbolic compliance” of international human rights law in powerful states. Institutional design and exclusionary judicial philosophy render treaties unenforceable domestically, revealing the vulnerability of international law to sovereign supremacy. Compared with monist systems like Europe's, U.S. dualism and exceptionalism underscore the practical limits of human rights universality. More broadly, symbolic compliance shows how states treat human rights treaties as diplomatic capital rather than binding norms, with **Dobbs** setting a precedent that may encourage other nations to resist international obligations, thereby weakening the legitimacy of global human rights discourse.

To overcome this impasse, the future of international human rights law must advance reforms on three fronts: First, strengthen international monitoring mechanisms to bridge the gap between treaties and practice through periodic reviews, case communications, and transnational judicial dialogue. Second, foster interaction between domestic and international

legal communities, enabling international norms to gradually permeate domestic systems through judicial interpretation and academic discourse. Third, emphasize the role of civil society and social movements, allowing political and moral pressure from below to compel states to move beyond formal commitments toward substantive action.

Thus, the *Dobbs* case represents not merely a judicial reversal but a warning sign of the systemic predicament facing international human rights law. Only by exerting simultaneous efforts across institutional, conceptual, and societal dimensions can international human rights law transcend “symbolic compliance” and truly fulfill its promise of universality.

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