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Access and Control: The Influence of International Law, Domestic Politics, and Social Movements on Reproductive Rights

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Abstract

Debate exists over whether international human rights law is effective for reproductive rights or if they should be handled domestically. There are claims that state sovereignty and lack of enforcement limit the power of international law. The case studies of Mexico and the United States provide an opportunity for comparison and evaluation because of the similarities between their political, legal and social systems. They demonstrate that there are several factors that impact a country's ability to provide reproductive rights, including political parties and their ideologies; election procedures and term limits; the power and ideology of a country's courts, especially a country's Supreme Court; and a country's participation and adherence to international law. These findings indicate progress in reproductive and women's rights can be achieved when a country participates in international law and capitalizes on social movements and liberal political structures.

Introduction

Reproductive healthcare is a contentious issue around the world. Every year, 35 million women have unsafe abortions, 13 million women have newborns who do not receive necessary medical care for complications, and 299,000 women die from the effects of pregnancy and childbirth in low to middle income countries (Sadinsky). Access and the right to bodily autonomy are essential to achieve gender equity and for the betterment of society.

There are several factors that impact a country's ability to provide reproductive healthcare. Political parties and their ideologies, as well as election procedures and term limits, are important for the creation of policy regarding reproduction. Also, the power and ideology of a country's courts, especially in a country's Supreme Court, can establish precedents regarding human rights. Finally, a country's level of participation and adherence to international law creates accountability and an incentive for progress. Comparing the cases of Mexico and the United States provides an opportunity for analysis and evaluation of these factors. The research indicates progress in reproductive and women's rights can be achieved when a country capitalizes on international law, social movements and liberal political structures.

International Law and Global Reproductive Rights

Global efforts and international law shape human rights developments around the world. International law provides universally accepted rights and expectations. While individual countries may have different paths and methods, the codification of human rights, including those relating to gender and reproduction, sets a foundation. Using international law as an example has allowed countries to make progress, as seen through global trends and individual case studies.

Global Trends

Over the last 40 years, there has been a greater focus on women's rights and reproductive rights on a global scale. There has also been an intentional effort to recognize them as human rights and as essential to the improvement of society—especially after the fall of the Soviet Union in the 1990's. This can be seen in the growing number of and participation in human rights treaties that address women and reproduction; it is also seen in widespread protests, such as Latin America's Green Wave, and the improvement of many women's lives globally.

According to the United Nations, the global fertility rate decreased from 3.2 live births per woman in 1990 to 2.5 in 2019 (“World Fertility and Family...”). The global rate of contraception usage increased, with nearly half of all women in the reproductive age group using some form of contraception in 2019, demonstrating an inverse relationship with fertility (“World Fertility and Family...”). Restrictions on abortion have been easing on a global scale, with over 30 countries amending laws to legalize abortion and make it more accessible and safer in the last 20 years (Goldberg). However, there are still 22 million unsafe abortions performed each year, resulting in roughly 47,000 deaths and 5 million injuries (“Abortion Worldwide: 20 Years...”).

International Human Rights Law and Women's Rights

While individual countries have had their own trajectories, the global focus on women can be traced to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW stipulates that it is the responsibility of the state to “take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on

a basis of equality with men” (“Convention on the Elimination...”). CEDAW also requires states to ensure equal access to healthcare, including family planning (“Convention on the Elimination...”). The standard created by ratification of CEDAW is that states are responsible for ending de jure and de facto discrimination against women by any means (Baldez).

CEDAW was a foundational treaty for women’s rights globally, but it was severely limited by the political environment it was created in. The tensions between capitalist and communist countries were high; many communist countries connected equal rights for women to their philosophies and held control of the CEDAW committee, thus restricting support from capitalist countries that feared they would be giving more power to communism (Baldez). After the fall of the Soviet Union in the 1990’s, ideology had less power over conversations surrounding CEDAW and its provisions began to be seen through a human rights lens (Baldez).

It is not just ideological differences that create tension regarding reproductive rights. While many countries participate in global human rights discourse, there is controversy over where international standards end and state sovereignty begins. While many human rights treaties do not have the power to dictate policy or state actions, there is an expectation of adherence. This expectation can be perceived as an infringement on state sovereignty, as it contradicts a state’s right to govern its constituents as it sees fit (Cassel). This can lead to uneven power dynamics, as world powers do not face accountability and other countries must adhere to standards they do not agree with (Cassel). This tension leads to weak enforcement of human rights treaties on a global scale, including CEDAW.

There are other important international conferences and conventions that have shaped women’s rights. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) condemns colonialism and racial discrimination and implores states to

take steps, including legislative, to end racial discrimination (International Convention on the Elimination...). This is an important initiative for women of color and women's rights movements overall. The 1976 Covenant on Economic, Social and Cultural Rights (ICESCR) establishes certain fundamental rights regarding work, education, lifestyle, health and culture, with specific recognition of the equality between women and men (International Covenant on Economic...). In 1994, the International Conference on Population and Development recognized reproductive rights as human rights; it strengthened 179 countries' commitments to women's health and safety with an intentional focus on preventing unsafe abortions (Goldberg). The International Covenant on Civil and Political Rights (ICCPR) of 1976 establishes equal rights between men and women and prohibits "any discrimination and 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" (International Covenant on Civil...).

Finally, the Organization of American States (OAS) has a few key components in the inter-American system for the protection of human rights (IAHRS). The 1948 approval of the American Declaration of the Rights and Duties of Man and adoption of the OAS charter established the fundamental rights of individuals for member states (OAS). The American Declaration of the Rights and Duties of Man was the first of its kind; it established equality before the law for all people and special protections for mothers and children (American Declaration of the Rights...). Also included in the OAS charter is the Inter-American Commission on Human Rights (IACHR), which was created in 1959. Over the years, it has been tasked with evaluating member states during visits and publishing reports, as well as reviewing petitions and complaints regarding human rights violations (OAS).

The American Convention on Human Rights was adopted in 1969 and entered into force in 1978. It defines the human rights that all member states are required to uphold and establishes the Inter-American Court of Human Rights. The Court is responsible for interpreting the Convention and for protecting human rights, as well as serving as a consult for any member states (American Convention on Human Rights). An example of the Court's power can be seen in *Artavia Murillo ("In Vitro Fertilization") v. Costa Rica* (2012), in which it determined that the right to life does not warrant the negation of other human rights; that personal integrity, personal freedom and rights to private life, reproductive autonomy and services and to create a family outweigh the importance of protecting an embryo; that international rights conventions and declarations do not protect life before birth; and that the lack of a universal definition of life's beginning means mandating a definition would impose beliefs on those who may disagree" ("Artavia Murillo ('In Vitro Fertilization')...").

Comparative Case Studies: Mexico and the United States

Rationale for Comparison

Mexico and the United States are ideal for comparison because of the similarities between their political, legal and social systems. These similarities allow for the ability to control variables and find trends regarding their stances on reproductive and women's rights domestically and internationally.

Both Mexico and the United States are federal republics, meaning they recognize state and federal power and elect officials to represent them in government. They each have three branches of government: executive, legislative and judicial. While the U.S. president is chosen by electors and the Mexican president is popularly elected, both select a cabinet, government

officials and Supreme Court justices. Both legislative branches are broken into two chambers, although they have different term limits and voting procedures (“Mexico”). Both countries have Supreme Court justices and a combination of federal and district courts (“Mexico”). Neither country has a recognized national religion, although religion plays an important role in influencing culture and shaping politics in each society. Both have histories of colonization and suffer from racial, ethnic and class divisions, which is evident in the discrimination between who has access to reproductive healthcare and the ability to practice their reproductive rights and bodily autonomy.

The United States

Laws and Policies Governing Reproduction

It is important to investigate access to contraception and laws regulating abortion, as both are indicators of the levels of bodily autonomy that exist for women. They also both demonstrate the ideological and political factors that influence accessibility of reproductive healthcare. For example, less than half of states require sex education classes, and only 10 require medical accuracy (Fay). The majority fail to educate on consent and healthy relationships (Fay). This lack of education can lead to ignorance and difficulties developing healthy relationships, as well as create gaps in knowledge about sexual options and healthcare. As will be discussed later, not all contraceptives are available over the counter, especially those targeted at women. It is important to note that almost all women will use contraception in their lifetime, with female sterilization, the pill, condoms and LARCs being the most used from 2015-2017 (“Current Contraceptive Status...”). There is a relationship between lack of education and access to contraception and the

dominant ideologies and politics of a state; more conservative states tend to have less comprehensive education and access (“Reproductive Rights”).

Federalism in the United States plays a significant role in reproductive healthcare and education. Because states’ rights are a foundational aspect of government, each state is allowed to govern its constituents with some flexibility. This is demonstrated in the diversity of sex education discussed above. It also leads to the range of laws regarding abortion. For example, most states do not allow abortion after a certain gestational limit, 36 require abortion be performed by a licensed professional and 19 require that abortion be performed in a hospital after a certain length of pregnancy (“An Overview of Abortion Laws”). Close to 20 states require counseling before having the procedure. Forty-five states allow providers to refuse to perform an abortion (“An Overview of Abortion Laws”).

While individual states have the right to govern their constituents, they do have to abide by some national provisions. The landmark Supreme Court case, *Roe v. Wade* (1973), established a woman’s right to abortion without excessive government restriction. Banning abortion violates the due process clause and right to privacy outlined by the Fourteenth Amendment of the U.S. Constitution. While this case guarantees a woman’s right to choose, there has been fierce opposition from anti-abortion groups, with many cases being sent to the courts to attempt to overturn *Roe*. Today, there are over 500 laws that restrict abortion in the United States (“United States”). Over 100 abortion restrictions have been passed in 2021 alone (Nash). If federal abortion protections were to be overturned, 21 states are prepared to completely ban or severely limit abortion: Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas and Utah (Sullivan). These

states are noticeably conservative leaning, with high percentages of religious individuals who typically vote for Republican candidates.

While the United States has legal foundations for restricting discrimination and providing access to abortion and bodily autonomy, it has not taken the initiative to ratify an international human rights treaty since 2002 (“UN Treaty Body Database”). This exempts the United States from being bound by the requirements in CEDAW, CESR and others, and thus the obligation to eliminate all forms of discrimination against women. It also has not ratified the American Convention on Human Rights, although 25 other American nations have (OAS). As discussed earlier, the United States is one of the countries that has concerns over its sovereignty in relation to human rights. It cannot be compelled to ratify international human rights treaties, as a foundational belief is that only the U.S. Congress can create laws; agreeing to follow international law threatens self-government (Attiah).

Race, Ethnicity and Access to Reproductive Care and Rights

In the United States, compared to white women, women who are BIPOC have less access to the healthcare they need and fewer opportunities to make reproductive choices, regardless of whether abortion or other forms of reproductive healthcare are legal (“Reproductive Justice”). This discrimination stems from the United States’ history of white supremacy. Controlling reproduction is a means to creating a white society, which was enabled through acts such as slavery, the removal of indigenous peoples and legal decisions that defined who could marry, own and reproduce with who (Solinger). As Rickie Solinger stated in *Pregnancy and Power*, the

United States was “fully racialized when laws and practices explicitly linked the degradation of Blacks and Indians to the elevation of whites” (Solinger)¹.

It is estimated that about one-third of Puerto Rican mothers have been sterilized for population control reasons (Krase). The procedure was not fully explained, and other contraceptive methods were not provided, infringing on the autonomy of these women and their informed consent (Krase). Mexican American women were forced to sign consent forms in English, although they only spoke Spanish (Krase). Latina women in New York and California were often targeted and in North Carolina, 65% of all sterilizations were performed on Black women (Krase). It is estimated that 25% of indigenous women and girls aged 15-44 were sterilized in the 1970s alone (Krase). On the other hand, white women have often struggled to receive sterilization, being required to have a certain number of children, or reach a particular age before having the procedure (Ross & Solinger).

It is not just sterilization that demonstrates the inequity in access. Compared to white women, Black and indigenous women are approximately three times as likely to die from pregnancy-related complications (“United States”). There are 19 million women who should be eligible for publicly funded contraception who live in places where they cannot access healthcare centers offering full contraceptive method options (“Birth Control Access”). To access certain contraceptive devices, such as the birth control pill or an IUD, a woman needs a prescription; this can be a barrier for those without access to a provider or financial resources. And although one in four women in the United States will terminate their pregnancy in their lifetime, and abortion is

¹ This text was written over 15 years ago; today, when using language that refers to a racial identity, including the word “people” would be preferred, as well as using American Indian, Native American, Indigenous people or a tribal name, depending on the person’s preference.

legal, abortion access has been restricted and 90% of counties do not have an abortion provider (“United States”).

While autonomy was determined on racial lines, economic standing was also, and remains, an important factor. Poor white women were often not afforded the same protection as wealthier white women, as they lacked protection from powerful men and dowries, and were often in servitude (Solinger). Because of their status, they were more likely to be prosecuted for pregnancy, extramarital sex or infanticide offenses, and were seen as less dignified than the wealthier members of their racial group (Solinger). Although poor white women have the benefit of white privilege, all impoverished women struggle to access reproductive healthcare owing to lack of coverage, inability to travel or afford services, lack of providers, lack of comprehensive education and stigmas (Ranji et al.).

Party Politics and Ideological Identification

For most of history, U.S. politics have been dominated by two political parties, owing to single-member districts with plurality voting, as well as the Electoral College. Today, the Democratic Party and the Republican Party are the two major political parties (“Political Parties”). Every president since 1852 has been either a Republican or a Democrat and Congress and state legislatures are predominantly members of the two parties (“The Role of Political Parties”). An increasing number of voters identify as Independents; however, the majority still lean toward one party (“The Role of Political Parties”).

The Democratic Party platform states that “every woman should be able to access high-quality reproductive health care services, including safe and legal abortion (“Achieving Universal, Affordable...”). It is committed to comprehensive healthcare, inclusive and medically

accurate sex education and access to family planning services (“Achieving Universal, Affordable...”). The Democratic Party tends to be influenced by liberal ideology, civil liberties and an active government. The Republican Party platform does not support public funding for abortions and is committed to protecting the right to life of unborn children (“Republican Platform 2016”). It also opposes funding any organizations that perform abortions, regardless of other functions, and encourages abstinence education in schools as opposed to “‘family planning’ programs” (“Republican Platform 2016”). The Republican Party tends to be influenced by conservative ideology, focusing on the economy, constitutional inflexibility and small government. The connection between ideology and partisanship has led to increased polarization in the United States as partisans identify more strongly with one party or the other, and members of one party feel negatively toward members of the other party (“U.S. Is Polarizing Faster...”).

Most of the U.S. public opposes allowing federal funding to go to organizations that only provide counseling on natural family planning methods; two-thirds oppose federal funding going to organizations that don’t inform pregnant women of all their options (Lamas & Bissell). Roughly 70% of Americans want *Roe v. Wade* upheld and nearly 60% said that laws restricting abortion are a “step in the wrong direction” (Goldberg). They also “identify protecting access to birth control, abortion and affordable health care as positive women’s health policy priorities for state and federal lawmakers” (Goldberg). While most Americans support upholding *Roe*, the majority also supports some restrictions on abortions (Montanaro). Political party, even more than gender, plays a role in the importance of reproductive healthcare, and abortion specifically is a tool for polarization and debate; it is the second most important issue for Republican voters and the fifth for Democrats (Montanaro).

The Impact of NGOs and Social Movements

NGOs are influential because they can provide direct assistance, information about causes, lobbying and campaigning tools and they create a space for individuals to have a more powerful voice (“Human Rights Activism...”). There are several organizations in the United States that have been active in the mainstream pro-choice movement and in fighting for reproductive justice. Planned Parenthood, the largest reproductive healthcare provider in the U.S., traces its activism to the birth control movement (“Planned Parenthood”). The American Civil Liberties Union (ACLU) has been actively pro-choice since its 1920 founding and created its Reproductive Freedom Project in 1974; it was also part of over 20 reproductive freedom Supreme Court cases, including *Roe v. Wade* (“Timeline of Important Reproductive...”).

NARAL has organized supporters of abortion care, birth control, paid parental leave and protections from pregnancy discrimination since 1969 (Solomon & Garrison). SisterSong, formed in 1997 and serving as a trailblazing force for reproductive justice, has the mission to “strengthen and amplify the collective voices of indigenous women and women of color to achieve reproductive justice by eradicating reproductive oppression and securing human rights” (“SisterSong”). In total, there are over 140 pro-choice organizations in the U.S. that financially, politically and socially support pro-choice policies and movements (“Pro-Choice Advocacy Organizations”).

It is not just pro-choice and reproductive justice organizations that have influenced the women’s movement. Today there are over 400 anti-abortion organizations in the United States (“Anti-Abortion Organizations”). Organizations like ALEC, which bring together conservative political figures and lobbyists to pass restrictive laws, as well as groups such as Americans United for Life, National Right to Life, the National Pro-Life Alliance and the Susan B. Anthony

List all are active in preventing women from receiving reproductive healthcare. These groups advocate on behalf of “unborn children” and work to establish anti-choice policies, such as abortion restrictions and maintaining the Hyde Amendment, while voting for anti-abortion legislators (*National Right to Life*). A major player in this trend was the Moral Majority, led by Jerry Falwell, which was an evangelical Christian group responsible for bringing religious conservatives into the political playing field. Their frustration over civil rights gains, especially regarding abortion, led to the merging of religion and nationalism against issues such as the Equal Rights Amendment, homosexuality, pornography and women's liberation; all of this would help President Ronald Reagan win the 1980 election (“People and Ideas...”).

Many of these organizations became increasingly active during the 1960’s and 1970’s at the height of the women’s rights movement, also commonly referred to as second-wave feminism. Catapulted by Betty Friedan’s *The Feminine Mystique*, post-WWII job openings, increased household income necessity and access to the pill, this movement originated in ending workplace discrimination and progressed to encompass political inequality, reproductive choice, sexuality, gender-based violence, marriage and household roles and more (The 1960s-70s American Feminist...). By using protest, lobbying and lawsuits, feminism in this era led to the “outlawing of gender discrimination in education, college sports, and obtaining financial credit; the banning of employment discrimination against pregnant women; the legalization of abortion and birth control; and the establishment of ‘irreconcilable differences’ as grounds for divorce and equalization of property division during divorce” (The 1960s-70s American Feminist...). These advancements for women received extensive pushback from anti-abortion and religious groups, as well as conservative politicians; this led to the failure to pass the Equal Rights Amendment and the continued debate over women’s rights today.

It is important to note that the women's rights movement of the 1960's and 1970's was greatly influenced and aided by surrounding movements, including the larger civil rights movement for racial justice, student movements and anti-war protests. The public was surrounded by demonstrations; this created a space for women's voices and foundations for social justice for multiple groups. However, it is also important to note that while it was influential, this movement centered cisgender, straight, white women and issues important to many women were pushed to the side.

Mexico

Laws and Policies Governing Reproduction

In 1974, an addition was made to Article 4 of the Mexican Constitution that stated, "Everyone has the right to decide freely, responsibly and informed about the number and spacing of their children" ("La Planificación Familiar Es..."). This led to increased conversations and services regarding family planning and contraception to help reduce population growth. Technically, oral contraception is free with or without insurance and can be accessed at health clinics over-the counter (Diaz). Mexico also has three main goals moving forward from its Specific Action Program for Family Planning and Contraception: increasing and improving access; meeting specific family planning and contraception needs, especially for disadvantaged groups; and encouraging participation in chosen fatherhood and male responsibility in family planning and contraception ("La Planificación Familiar Es...").

As in the United States, sex education and discussions of reproduction are divisive in Mexico. The Catholic Church and conservative ideologies are often at odds with those calling for autonomy and reproductive choice (Luijten). Regardless of this controversy, Mexico has

provided sex education in primary and secondary schools since the 1930's; the national government provides curriculum and materials for free, but states determine content in secondary schools, leading to differences in the level and content of education (Chandra-Mouli et al). Sex education was integrated with biology and civic curriculum in the 1970's owing to population concerns. In the 1990's, sex education was taken from a human rights approach, with reforms to the General Law of Education in 1993 that resulted in the inclusion of "social, emotional, and ethical aspects of sexuality, including information on gender, sexual rights, and pleasure" in primary school textbooks (Chandra-Mouli et al).

Because Mexico is a federal republic, there is tension between states' rights and the national government (like the United States). This is demonstrated by state decisions regarding secondary sex education and in its abortion laws. Until recently, abortion was considered a crime in most Mexican states, with exemptions for rape and some for fetal impairment. Today, only five Mexican states have officially lifted full abortion bans, although they are maintaining restrictions for gestational period. While recent court decisions have set the precedent that abortion cannot be prosecuted, it is still important to note that hundreds of people have been imprisoned and thousands arrested for abortion in Mexico (Gottesdiener). Further, while it cannot be prosecuted, it is probable that many states will continue to implement restrictions and legislation regarding abortion.

Unlike the United States, Mexico has been active in ratifying international human rights treaties. It has ratified all the treaties outlined in this paper, as well as the American Convention on Human Rights. Mexico has also established that ratified international treaties and law are equal to constitutional law ("La Planificación Familiar Es..."). Further, in 2013, "the Supreme Court of Mexico determined that the jurisprudence of the Inter-American Court of Human Rights

is binding for all Mexican judges, provided that it is more favorable for the persons involved in the trial. This includes all of the judgements issued by the Inter-American Court, even in cases in which Mexico was not a party to the litigation” (Reid). These decisions obligate Mexican courts to protect and uphold internationally determined human rights decisions.

Race, Ethnicity and Access to Reproductive Care and Rights

Historically, Spanish colonization led to three primary ethnic groups: indigenous groups, mestizos (a combination of indigenous and European descent) and Mexicans of European descent (“Mexico”). Today, race and ethnicity operate differently in Mexico than in the United States, as there has been a recent movement to identify with ethnicity rather than race. However, there is a long history of eugenics, partly as a reaction to public health concerns and the revolution in the 19th and 20th centuries, which encouraged “whitening” of the population through selective immigration, marriage and sterilization (Schell). This has left a legacy of racism, negative beliefs about mestizos and indigenous people and modern forced sterilizations of indigenous people, which has been condemned by the United Nations (Schell).

Today, most Mexicans identify as mestizo (Zizumbo-Colunga & Martínez). Although there have been claims that race is not a factor in discrimination in Mexico today, studies show that darker skin is related to lower education and wealth levels (Zizumbo-Colunga & Martínez). Many Mexicans have responded that race is not as large of a concern in their lives, which could owe to the culture surrounding mestizo heritage and celebrations such as Día de la Raza, as well as the burdens created by other demographics, including gender and socioeconomic status (Zizumbo-Colunga & Martínez).

As in the United States, ethnicity, wealth and marital status are important factors regarding access to contraception and rights to bodily autonomy in Mexico. Indigenous women are disproportionately affected by unsafe environmental factors, including illnesses from unsafe drinking water and respiratory diseases, as well as physical violence at the hands of machismo culture (“Mexico”). Indigenous women are also more likely to be refused service or to have services provided without informed consent, such as inserting an IUD without giving all the information (Rafanelli).

Although contraception is free, poor women and women who live in rural areas are less likely to have access to necessary healthcare and unmarried women are more likely to face stigma for seeking out contraception (Rafanelli). Finally, machismo culture and religion have an impact on access. Many Mexican women struggle to receive healthcare because their husbands do not want them using contraception, so they either must sneak it in or go without (Rafanelli). Mexico has the second largest number of Catholics in the world, and as such, often is in tension with the teachings of the Catholic Church versus the calls for access and autonomy (Garcia).

Party Politics and Ideological Identification

Mexico has several political parties, but today, four hold most of the power: The Institutional Revolutionary Party (PRI), the National Action Party (PAN), the Democratic Revolutionary Party (PRD) and the National Regeneration Movement (MORENA). The PRI dominated Mexican politics from 1929 until 2000, while being accused of corruption and election fraud and using violence toward protestors (“Left, Right or Center...”). The PRI is usually considered to have center-right ideology, with commitments to privatization, nationalism and capitalism, as well as a relationship with the Catholic Church (“Institutional Revolutionary

Party”). PAN developed in reaction to the actions of the PRI and was the party that won the 2000 presidential election. It is linked to conservative social ideologies and is committed to limited government (“National Action Party”). The PRD, also formed in reaction to the PRI, focuses on social welfare programs and is opposed to neoliberal policies enacted by the PRI (“Democratic Revolutionary Party”). Finally, MORENA, founded by President Andrés Manuel López Obrador, is center left with neoliberal economic policy goals. It won the 2018 presidential election by tapping into voters’ desires for change—an end to poverty, inequality, corruption and violence (Greene & Sánchez-Talanquer).

Of the major parties, PAN is the most opposed to abortion and reproductive choice, and has supported restrictive legislation, whereas PRI is more moderate (Lamas & Bissell). While the PRD ran on a pro-choice platform in the late 1900’s and 2000, specifically committed to the decriminalization of abortion, it failed to make good on its promise, owing to fears of losing political capital and the consequences of defying the Catholic Church (Lamas & Bissell). President López Obrador and the MORENA party did not run on abortion and did not initially take a stance, but his interior minister openly stated that she supported decriminalization and abortion rights; this forced the conversation into the political sphere, and initiated a new wave of abortion and reproductive care debate and activism (Cota).

Because of its conservative, Catholic population, reproductive healthcare, especially abortion, has been contentious in Mexico. However, there is a growing pro-choice movement. Most women use some form of contraception (“Contraceptive Prevalence, Any Methods...”). Support for abortion rose from 29% to 48% between March and November 2020 alone (“Support for Abortion Jumped...”). This came after the historic decision in Argentina to legalize abortion, sending waves through Latin America. Before that, in 2005, only 12% of the country was in

favor (Kitroeff & Lopez). While the majority of Mexicans are still anti-abortion, change is happening.

The Impact of NGOs and Social Movements

NGOs and social movements have been fundamental in changing conversations surrounding reproductive rights in Mexico. As the second largest Roman Catholic country in the world, Mexico has always had strong religious and conservative ties. For most states throughout its history, abortion has been a crime. Today, organizations like Help Center for the Latin American Woman (CAM) and ProLife attempt to convince women not to have abortions and other organizations, such as Steps For Life, organize rallies to protest the recent rollbacks of abortion restrictions. Many of these organizations have Catholic roots.

Feminist leaders in the late 1990's began meeting as part of the Campaign for Access to Justice for Women, led by GIRE (Information Group on Reproductive Choice). They established five key pillars for their activism: victims' rights, domestic violence, children and young people's rights, freedom from discrimination and abortion as healthcare (Lamas & Bissell). Seeing an opportunity with the election of the more liberal PRD in 2000, these women argued for their rights, only for them to be initially pushed to the side because of the PRD's fear of the Catholic Church (Lamas & Bissell).

One case in particular brought the abortion debate to the public's attention. Paulina del Carmen Ramírez Jacinto was 13 years old when she was raped. Living in a state that allowed for abortion in this case, she visited a hospital with the intention of ending her pregnancy. While there, she was forced to watch a pro-life film and to speak to a priest about being excommunicated; her mother was also told exaggerated risks, which eventually led to Paulina

deciding against abortion (Lamas & Bissell). GIRE and other groups, including Alaíde Foppa and Epikeia, supported her legal battle against the government and brought the case to the country's attention; public support and media coverage was at an all-time high (Lamas & Bissell). While conservative PAN officials, with support from Catholics, attempted to make abortion illegal in all cases in reaction to the recent pro-choice movement, activism and polling by NGOs led instead to exemptions for fetal impairment and women's health being passed. The PRD and PRI began to use abortion rights in their platforms, which would eventually lead to the decriminalization of abortion (Lamas & Bissell).

Outside of the abortion conversation, NGOs also seek to accomplish access to contraception, ending violence against women, promoting maternal health and other issues. At the turn of the century, more movements began taking off, which can help create a more open-minded and socially aware society. In relation to sex education, HIV prevention, adolescent pregnancy prevention and lesbian, gay, bisexual, transsexual, and intersex (LGBTI) rights all were influential in its development (Chandra-Mouli et al). The intersection of these movements and the women's movement, as seen in the United States, helps create a more inclusive, progressive society.

All of these moments of progress can be considered part of the Green Wave, which spread after beginning in Argentina. Calls in Argentina for the legalization of abortion inspired demonstrations and policy debates throughout Latin America and can be tied to the recent legislation being passed in Mexico ("About"). Mass protests and legislative demands have helped reduce stigma and begin the process of Latin American women gaining rights to bodily autonomy.

Comparison of Actions Taken by the U.S. and Mexico

Governments, Motivations and Policy Making

While both the U.S. and Mexican governments are federal republics, their election methods are different, and thus influential in the types of policy made. In Mexico, unlike the U.S., presidents cannot be reelected, and members of the legislature cannot be reelected immediately following their term (“The Mexican Electoral System”). Also unlike in the U.S., Mexican presidents are elected through simple or relative majority, while the legislature is elected via relative majority in single-member districts and proportional representation (“The Mexican Electoral System”). The Mexican Supreme Court justices serve 15-year terms, as opposed to life terms in the United States (“The Mexican Electoral System”). All of this is important, as public opinion and social movements change over time; allowing for more transitions, especially of the Court, creates an opportunity for progress and for diverse opinions in government.

While progressive legislation has moved through the legislature, the role of the Supreme Court cannot be overstated in either country. In the United States, the Supreme Court “is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution” (“The Court and Constitutional Interpretation”). The purpose of the Mexican Supreme Court is to “defend the Federal Constitution and protect human rights” (“Supreme Court of Mexico...”). People have been turning to both courts to make decisions about human rights frequently. Currently, the United States has a conservative majority, who will serve for their lives, which could be motivation for the recent outpouring of abortion restrictions from states. On the other hand, the Mexican Supreme Court has become more liberal since the early 2000’s, with greater education and

thought on gender and human rights, corresponding to new decisions regarding reproductive rights (Verza). The Court has also ruled in favor of same-sex marriage and lifted the recreational marijuana ban in recent years, demonstrating its liberal leanings in more than just reproduction (Navarro & Quinn).

Participation in international law is also influential. The United States has made it clear that it will not ratify human rights treaties, for fear of diminishing its sovereignty. As such, the only entity holding the U.S. accountable, and providing methods for progress, is the U.S. This can be seen today, as the Supreme Court hears *Dobbs v. Jackson Women's Health Organizations*, which could potentially overturn 50 years of precedent regarding reproductive rights and privacy. The U.S. also does not have guaranteed paid parental leave, pay equality or as discussed earlier, access to comprehensive sex education or contraception. In contrast, Mexico has parental leave for both birthed and adopted children and the aforementioned education and contraception access; it still has a gender wage gap. Many of the provisions regarding gender equality came after the ratification of international laws.

After the UN declared family planning a human right, Mexico amended its constitution to reflect the change, created media education campaigns about birth control and made contraception free (Diaz). Another example of the impact of international law can be seen in the requirement of a human rights focus in Mexico's sex education, which was established after the International Conference on Population and Development in 1994 and the Fourth World Conference on Women in 1995 (Chandra-Mouli et al). Further, in the recent Supreme Court case regarding life's beginning in Sinaloa, the court used very similar language to that used by the Inter-American Court in *Artavia Murillo ("In Vitro Fertilization") v. Costa Rica* (2012). It established that "federative entities lack the competence to define the origin of human life, the

concept of ‘person’ and the ownership of human rights” and that it is unconstitutional to grant “the status of person to the embryo or fetus and, based on that, adopt restrictive measures on the right to reproductive autonomy of women and pregnant persons” (“SCJN INVALIDA ²DISPOSICIÓN...”)².

Outcomes and Future Developments

Because of the trajectories taken by the United States and Mexico, they are on very different paths regarding reproduction. It is possible that within the next few years, abortion will be criminalized or banned in the United States and decriminalized and legal in Mexico. Access to birth control could become easier in Mexico, and more challenging in the United States. As has been noted, to create progress for reproductive rights, social movements and progressive leadership need to take advantage of liberal courts, changing party politics and precedent set by international law. With shorter court terms and greater chances of changing the legislature, Mexico has better opportunities moving forward to continue achieving reproductive autonomy, access and rights. After the recent decisions regarding abortion, it will be interesting to see how other Mexican states respond and what the future of bodily autonomy, as well as other rights, will be in Mexico. On the other hand, if the United States continues to avoid accountability internationally and maintain conservative justices and legislators, it will stall or begin to reverse much of the progress that has been made. It will be important to monitor *Dobbs v. Jackson Women's Health Organizations* and the bans set to take action in the United States should *Roe v.*

² When performing research, the exact precedent couldn't be found for the Coahuila and Sinaloa cases. This is an area for further research.

Wade fall, as well as the many rights that are contingent on the precedent of privacy and autonomy.

Conclusion

There is debate over whether codifying international human rights is effective. Part of the issue is the division between adherence and state sovereignty. The United States is not alone in its concern over international standards and other nations having a say in domestic happenings. Also, because cultures function differently, the human rights outlined by international bodies may not be what individual nations would have chosen or may seem to actively contradict certain cultural practices.

Mexico and the United States are similar in fundamental ways: federal republican governments, separation of church and state, histories of colonization, racism and socioeconomic divides. They also both have powerful social movements for civil and human rights, including the feminist movements in the U.S. and the Green Wave in Mexico. However, they have key differences. Mexico is active in its participation in international law and has more frequent Supreme Court changes, as well as restrictions on running for office multiple times and more popular elections. The United States is firm in its refusal to ratify international treaties and has life terms for Supreme Court justices, with few limitations on running for office.

While it is true that compliance with international standards is a challenge, and no nation has been successful in ending gender inequality, these cases demonstrate the influence they can have. This is especially true when there is domestic pressure from social movements and a liberal political system in place, such as the one currently in Mexico. Capitalizing on these factors can allow for progress in all areas and create greater equality for all.

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