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Recommended Citation

Nienke Grossman, *Populism, International Courts, and Women's Human Rights*, 35 Md. J. Int'l L. 104 (2021).

Available at: <https://digitalcommons.law.umaryland.edu/mjil/vol35/iss1/10>

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Populism, International Courts, and Women’s Human Rights

NIENKE GROSSMAN[†]

Since Donald Trump was elected President of the United States, and the United Kingdom chose to “brexit,” many international lawyers and scholars have spiraled into somewhat of an existential crisis. What of the rule of international law or universal human rights when, as Candidate Trump declared upon accepting the Republican Party’s nomination, “Americanism, not globalism, will be our credo”?¹ His populist “America First” refrain, combined with subsequent policy decisions withdrawing the United States from treaties and suspending participation in international bodies, led to doubts and questions about the relevance and resilience of the post-WWII global order, characterized by a commitment to human rights, multilateralism, and international institutions.

Despite frequent informal discussion and occasional international law scholarship on populism, its contours are often vague or conceptualized in such a way as to support a particular author’s arguments.² Also, populism’s impact or potential impact on specific categories of international institutions or stakeholders is infrequently the subject of inquiry. Few scholars have evaluated how

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1. Donald J. Trump, Presidential Candidate, Nomination Acceptance Speech at the Republican National Convention (July 21, 2016).

2. Christine Schwöbel-Patel, *Populism, International Law and the End of Keep Calm and Carry on Lawyering*, NETHERLANDS YEARBOOK OF INTERNATIONAL LAW (forthcoming 2019) (manuscript at 3).

populism interacts with state behavior in relation to international courts and tribunals, or quasi-adjudicative bodies.³ Further, it appears no scholarship thus far focuses on the impact of populism on the international legal rights of a particular group as mediated through these bodies. Such analysis may deepen our understanding of the extent to which populism can undermine these international institutions, as well as populism's potential impact on specific subnational or transnational stakeholders' international legal rights.

This contribution to the Maryland Journal of International Law's symposium on populism aims to begin to explore the impact populism may have on gender equality, or more specifically, women's human rights, as mediated by international courts and quasi-adjudicative bodies interpreting human rights law. In other words, it considers the extent to which populism is potentially harmful or helpful to women's human rights, as articulated by these institutions. Prominent scholars of populism have argued that populism is a gender neutral concept.⁴ Cas Mudde and Cristóbal Rovira Kaltwasser propose that although populism is often associated with *machismo*, male leaders, predominantly male electorates, and sometimes sexist policies, populism has no real link to gender.⁵ Instead, they assert, "the gender politics of populist actors are influenced by a combination of the national culture and accompanying ideology rather than by populist ideology itself."⁶ Asking the "woman question" about populism and international courts may be useful to bring to light hidden biases and assumptions in both law and institutions.⁷ Examining the impact of populism on the rights of one marginalized group may shed light on its impact on other such groups as well.

Does populism pose a threat to women's human rights as mediated by international courts and quasi-adjudicative bodies? Part I begins by showing that, despite populism's highly contested meaning, it is inherently anti-institutional and anti-pluralist. Consequently, populist governments are predisposed to reject or

3. *But see* Lawrence R. Helfer, *Populism and International Human Rights Law Institutions: A Survival Guide* 1–28 (iCourts, Working Paper No. 133, 2018); Erik Voeten, *Populism and Backlashes Against International Courts*, PERSPECTIVES ON POLITICS 1–16 (June 20, 2019).

4. Cas Mudde & Cristóbal Rovira Kaltwasser, *Vox Populi or Vox Masculine? Populism and Gender in Northern Europe and South America*, 49 PATTERNS OF PREJUDICE 16, 16–17 (2015).

5. *Id.*

6. *Id.*

7. Katherine Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990).

challenge international court interpretations of women's human rights that do not reflect the views of "the people" addressed by populist rhetoric. The extent to which populism will harm women's human rights, however, depends on at least two questions, discussed in Parts II and III, respectively: do populists share a regressive view of women's human rights, and how likely are they to inflict harm on international courts and quasi-judicative bodies in response to controversial decisions? Part III also discusses some steps international actors can take in response to populist challenges. Part IV concludes the essay.

I. POPULISM IS INHERENTLY ANTI-INSTITUTIONAL AND ANTI-PLURALIST.

Because populism is inherently anti-institutional and anti-pluralist, populist governments are likely to ignore international courts or quasi-judicative bodies' judgments that do not reflect their approach to women's human rights. The concept of populism is among the most highly contested in the political science literature, where much of the academic work on populism is found.⁸ It has been defined as a discourse, an ideology, a kind of leadership, a strategy, and a style, among others, and some argue that the concept is so vague as to lack utility.⁹ Somewhat surprisingly, authors rarely take the time to explain or define populism in the international law literature, despite its contestation in other fields of inquiry.¹⁰ When scholars do seek to define populism, three approaches predominate: ideational populism, populism as a political strategy, and populism as a style.¹¹

Perhaps the most favored definition of populism is the ideational one.¹² Cas Mudde argues that populism is a "thin-centered ideology that considers society to be ultimately separated into two homogenous and antagonistic camps, 'the pure people' versus 'the

8. Kurt Weyland, *Populism: A Political-Strategic Approach*, in THE OXFORD HANDBOOK OF POPULISM 67 (Cristóbal Rovira Kaltwasser et al. eds., 2017); Cas Mudde, *Populism: An Ideational Approach*, in THE OXFORD HANDBOOK OF POPULISM 27 (Cristóbal Rovira Kaltwasser et al. eds., 2017).

9. *Id.*

10. *See supra* note 3.

11. Niels Spierings et al., *Gender and Populist Radical-right Politics: An Introduction*, 49 PATTERNS OF PREJUDICE 3, 7 (2015); Cristóbal Rovira Kaltwasser, Paul Taggard, Paulina Ochoa Espejo, and Pierre Ostiguy, *Populism: An Overview of the Concept and the State of the Art*, in THE OXFORD HANDBOOK OF POPULISM 13-14 (Cristóbal Rovira Kaltwasser et al. eds., 2017).

12. *See, e.g.*, Voeten, *supra* note 3.

corrupt elite,' and which argues that politics should be an expression of the *volonté générale* (general will) of the people."¹³ In his bottom-up view, populism is rooted in morality; the people should be heard because they are "authentic," while the elite, although drawn from "the people," has put its own special interests above them.¹⁴ It is a "thin" ideology because it generally does not offer or provides few specific views on how society or politics or economics should be arranged to promote the well-being of "the people," and it is often paired with a host ideology to provide such content, such as nationalism or socialism.¹⁵ Who makes up "the people" and "the elite" depends on the manifestation of populism involved.¹⁶ Some populists may root their definitions of these terms in nationality or ethnicity, while others focus on class or educational differences.¹⁷ Mudde rejects, however, Ernesto Laclau's argument that "the people" and "the elite" are merely "empty signifiers" meaning nothing at all.¹⁸

In this version of populism, the populist leader, as the "vox populi" or the voice of the people, must separate him or herself from the elite and represents the authentic voice of the people.¹⁹ Mudde and co-author Cristóbal Rovira Kaltwasser assert that while populism is democratic, in that it involves popular sovereignty and majority rule, populism is inconsistent with liberal democracy, which includes independent institutions focused on protecting fundamental rights and minorities, and preventing "tyranny of the majority."²⁰ Populism rejects pluralism, minority rights, and the institutions that promote or protect them, because the will of the people reigns supreme.²¹

Kurt Weyland, on the other hand, adopts a political-strategic approach to populism and rejects the idea that populism is a particular ideology or discourse.²² Populism, in his view, is "a political strategy through which a personalistic leader seeks or exercises government power based on direct, unmediated, uninstitutionalized support from large numbers of mostly unorganized

13. CAS MUDDÉ & CRISTÓBAL ROVIRA KALTWASSER, POPULISM: A VERY SHORT INTRODUCTION 6 (2017); *See also* Mudde, *supra* note 8.

14. Mudde, *supra* note 8, at 29–30.

15. *Id.* at 30–32.

16. *Id.* at 32–33.

17. *Id.*

18. *Id.* at 32.

19. MUDDÉ & KALTWASSER, *supra* note 13, at 68.

20. *Id.* at 80–81.

21. *Id.* at 81.

22. *See generally* Weyland, *supra* note 8.

followers.”²³ For Weyland, populism is not bottom-up; it’s top-down. The charismatic leader identifies the “will of the people” and uses it to mobilize and direct followers.²⁴ A hallmark of populism is the direct and personalized connection between the leader and the people, often through mass rallies and media, and without cold institutions or procedural mechanisms getting in the way.²⁵ Populism is by definition personalistic, opportunistic, and flexible, and therefore, movements rooted in ideological purity do not qualify as “populist” and tend to stay on the margins of political life.²⁶ Weyland rejects ideational or discursive definitions of populism, in part, because of their democratic valence; in his view, populism is more concerned with the leader’s power, rather than the people’s will.²⁷ In the same vein, populist leaders brush away or seek to diminish the leverage of other actors – including established elites, political parties, and civil society – who may seek power for themselves or to limit populist leaders’ power.²⁸

Pierre Ostiguy presents a third “socio-cultural” or relational approach, which, in many ways builds upon Weyland’s work.²⁹ Rather than viewing populism as a top-down or bottom up phenomenon, Ostiguy views it as going both ways, and containing both socio-cultural and politico-cultural components.³⁰ It is the “antagonistic appropriation for political, mobilizational purposes of an ‘unrepresentable Other,’ itself historically created in the process of a specific ‘proper’ civilizational project,” such as liberalism or multiculturalism or European integration.³¹ Populism is “performative,” in that its politicians bring to light these groups in “inappropriate” and “transgressive” ways, rather than in accordance with proper norms of public behavior.³² Populist leaders “flaunt the low” and desecrate what is considered the “high.”³³ High and low refer to ways of relating to people (socio-cultural) and how to make decisions in politics (politico-cultural).³⁴ In the socio-cultural

23. *Id.* at 50.

24. *Id.*

25. *Id.* at 59.

26. *Id.* at 68.

27. *Id.* at 53.

28. *Id.* at 56-57.

29. Pierre Ostiguy, *Populism: A Socio-Cultural Approach*, in THE OXFORD HANDBOOK OF POPULISM 73 (Cristóbal Rovira Kaltwasser et al. eds., 2017).

30. *Id.*

31. *Id.* at 75.

32. *Id.* at 76.

33. *Id.*

34. *Id.* at 78.

context, “high” means “well-behaved, proper, composed,” while low includes slang, folksy language, “raw, culturally popular tastes.”³⁵

Importantly, populism is characterized by a specific script asserting that the authentic voices of the majority of the people are not heard, and their interests are not safeguarded, resulting in moral indignation.³⁶ Loudly, publicly, and aggressively pointing to the “nefarious minority” and mobilizing against it are therefore necessary populist techniques.³⁷ The minority may include “the oligarchy, the Jews, a socially dominant ethnic minority, the financial sector, the immigrants, the liberal elite, white colonizers, or black minorities, depending on the casting of the social antagonist.”³⁸ In addition, politico-culturally, “high” means favoring “formal, impersonal, legalistic, institutionally mediated models of authority,” while “low” includes “personalistic, strong (often male) leadership,” which is charismatic and close to “the people.”³⁹ For example, the low is generally unconcerned with acting in a manner considered improper by the international community and focuses instead on the relationship with the people.⁴⁰

These three predominant theoretical approaches to populism may have gendered consequences for women’s human rights as interpreted by international courts. Whichever definition of populism one chooses, it is likely to result in rejection of decisions of international courts which expand women’s rights beyond “the people’s” desires, because all three definitions of populism are anti-pluralist. Instead, populisms appear to thrive on their exclusivity. Ideational populism relies on an antipathy between the “pure people” and the “corrupt elite”; it cannot exist without creating clear boundaries between them. You are either part of “the people,” or you are not.⁴¹ Populists do not exclude all women from “the people”; in fact, populists have, at times, taken steps to expand women’s suffrage, like Juan and Eva Perón in Argentina and Getúlio Vargas in Brazil⁴² and increased the percentage of women in representative

35. *Id.*

36. *Id.* at 76.

37. *Id.* at 76-77.

38. *Id.* at 76.

39. *Id.* at 81-82.

40. *Id.* at 83.

41. Jan-Werner Muller, *What is Populism?*, UNIVERSITY OF PENNSYLVANIA PRESS, 1, 21 (2016).

42. Karen Kampwirth, *Introduction, Gender and Populism in Latin America*, PENNSYLVANIA STATE UNIVERSITY PRESS, 1, 4 (2010).

office.⁴³ Yet populist governments are likely to seek to limit social progress to what “the people’s” views are on what women’s rights should be. Further, if a women’s rights or feminist agenda is considered “elitist,” as opposed to associated with “the people,” the populist government is likely to demonize decisions or act against policies that promote it. The political-strategic and socio-cultural approaches are similarly anti-pluralist. Whatever groups or interests remain outside the tight relationship between the personalistic leader and the people, including civil society groups representing the views of Others in the society, are to be brushed aside. For socio-cultural populists, the voices of the “authentic” people are ignored, while “nefarious” minorities are given too much attention.⁴⁴ To the extent that feminists or women’s rights activists are part of the “nefarious minority,” or associated with powerful global forces, they are to be demonized.

On the other hand, international human rights courts and quasi-adjudicative bodies, which find facts and interpret and apply international human rights law, are rooted in liberal notions of individual rights. As Laurence Helfer has pointed out, international human rights bodies are pluralist in nature, and they can serve as counter-majoritarian backstops to domestic courts.⁴⁵ International courts tell states when their domestic laws do not go far enough in protecting the rights of historically disfavored groups, or when domestic courts do not apply the law equally to all groups or individuals in a society, or when the executive branch fails to take action necessary to comply with supranational human rights obligations. In interpreting human rights, these bodies have, at times, issued decisions that expand the rights of the vulnerable or socially disfavored, and they have utilized interpretive techniques which favor such outcomes.⁴⁶ Because of their inherent anti-pluralism, populist states are likely to reject decisions that expand women’s human rights beyond the desires of “the people,” as understood by the leader.⁴⁷

All three approaches to populism are also inherently anti-institutionalist, which facilitates populist governments’ decisions to ignore or reject the work of international courts. Populism is rooted in a personal and direct and unmediated relationship between the

43. See, e.g., Mudde & Kaltwasser, *supra* note 4.

44. See Ostiguy, *supra* note 29, at 76.

45. See Helfer, *supra* note 3.

46. See *Id.* (discussing the *pro hominem* principle).

47. See Erik Voeten, *Populism and Backlashes Against International Courts*, Perspectives on Politics, GEORGETOWN UNIVERSITY PRESS 2, 5, (2019).

leader and the people, whether top-down, bottom-up or two-way. Institutions are to be pushed aside when they get in the way of the leader and the people's preferences. International human rights courts, on the other hand, are institutions often located far from where facts giving rise to a dispute arose and are composed of international judges elected by several states. Judges are charged with serving as neutral arbiters of the rights and duties of states and individuals through application of principles of law and without regard for majoritarian preferences in a particular respondent state. The role of international courts and judges is wholly at odds with populist leaders who seek to effectuate their agendas with no constraints; populist leaders instead seek "to bend or even break [institutional] limitations" and erode checks and balances.⁴⁸ Further, if populist leaders reject *domestic* institutions when they counteract the will of the people, they are even more likely to attack international ones when they issue unpopular decisions.⁴⁹ The farther away the decision-makers are from the true and authentic people and the more counter-majoritarian their decisions are, the less legitimate they are likely to be in populist eyes.⁵⁰

Populisms' anti-pluralist and anti-institutionalist qualities appear incompatible with international human rights courts' commitment to liberal notions of human rights and role as an impartial counter-majoritarian check on power. Nonetheless, whether populism is harmful to gender equality in the international courts context may ultimately turn on the extent to which "the people's" understanding of women's human rights is unduly restrictive or regressive.

II. POPULISM AND WOMEN'S RIGHTS

Despite their anti-pluralist and anti-institutionalist nature, populist governments are unlikely to react negatively to international court decisions on women's human rights unless they transgress what "the people" want, as understood by the leader. If a populist movement favors women's human rights generally, or some aspect of women's human rights, it may embrace court decisions that promote its vision. On the other hand, if support for women's human rights is associated with the elite or a nefarious minority or Other, then populists will reject court decisions that validate such views.

48. Kurt Weyland, *Foreward*, in *Gender and Populism in Latin America: Passionate Politics*, PENNSYLVANIA STATE UNIVERSITY PRESS, i, ix-x (2010).

49. See Voeten, *supra* note 46, at 5.

50. *Id.* at 7.

Consequently, whether populism is inherently harmful for women's human rights as mediated through international courts depends, at least in part, on populism's approach to women's human rights, or what "the people" believe about the contours of women's rights.

Unfortunately, existing social science literature generally does not evaluate the relationship between populism and attitudes toward women's human rights, and the relationship between gender and populism is understudied,⁵¹ especially outside of Europe and the Americas.⁵² Nonetheless, to seek to better understand populism's potential impact on women's human rights, this section considers populism's (or populisms') relationship to gender by examining scholarship on populist parties' electorate, leaders, platforms, and rhetoric.

Although not dispositive on a party's views on women's human rights, it is worth noting that men appear to make up a greater share of voters for European populist radical right parties than women. In seven Northern and Western Europe countries, populist radical right parties received more votes from men than from women; about sixty percent of supporters were men.⁵³ Other parties on the center right, however, received similar support from men; in other words, populist radical right parties were not outliers when compared to other parties on the center right.⁵⁴ Niels Spierings and Andrej Zaslove found, however, that gender equality attitudes did not distinguish populist radical right voters from left- and center-right voters in seven European countries; instead, anti-immigrant positions were the main drivers of votes for the populist radical right.⁵⁵ Interestingly, the study showed some evidence that individuals with authoritarian or nativist views paired with beliefs in gay and lesbian rights had a disproportionately high likelihood of voting for populist radical right parties in Sweden and Norway.⁵⁶ In the United States, women voters preferred Democrat Hillary Clinton over right wing populist Donald Trump, by a twelve-point margin, while men preferred Trump over Clinton by a twelve point margin.⁵⁷ On the other hand, in Latin

51. See Weyland, *supra* note 47, at viii.

52. Valentine M. Moghadam & Gizem Kaftan, *Right-wing populisms north and south: Varieties and gender dynamics*, 75 WOMEN'S STUDIES INT'L FORUM 1, 1 (2019).

53. Niels Spierings & Andrej Zaslove, *Gendering the vote for populist radical-right parties*, 49 PATTERNS OF PREJUDICE 135, 147 (2015).

54. *Id.* at 152.

55. *Id.* at 152, 154.

56. *Id.* at 158.

57. Alec Tyson & Shiva Maniam, *Behind Trump's Victory: Divisions by Race, Gender, Education*, PEW RES. CEN. (Nov. 9, 2016), <https://www.pewresearch.org/fact->

America, populists from multiple ideological perspectives have purposefully pursued the female vote, and sometimes have even received a much higher percentage of female votes than male ones.⁵⁸

From a political representation standpoint, males are a significant proportion of populist leaders, but there have also been several female ones, including France's Marine Le Pen, the United States' Sarah Palin, Argentina's Evita Perón, and Denmark's Pia Kjaersgaard.⁵⁹ Many are relatives of male leaders, but several are not.⁶⁰ In Northern Europe, men dominate leadership positions in populist radical right parties, even when the top leader is a woman.⁶¹ One study showed populist radical right parties from Denmark and the Netherlands tended to have lower percentages of women in national and supranational parliaments than national averages.⁶² On the other hand, the representation of women in parliaments in Bolivia and Venezuela increased after left-wing populists Evo Morales and Hugo Chávez came to power.⁶³ In Bolivia, the percentage of women in Morales's party jumped from 8% to 46%, while in Venezuela, Chávez's party had 15% percent women in the 2005 to 2010 legislature, as compared to 2% women in other parties.⁶⁴ Interestingly, in absolute terms, the percentage of women in populist parties in the four Northern European and South American countries studied was quite similar.⁶⁵

Although scholarship is sparse concerning populist governments' views on women's human rights at the international level, some exists about their platforms and policies on gender equality at the domestic level.⁶⁶ Assessing whether policies are intended to promote or hinder gender equality or women's human rights is challenging because policies may affect women of different class, social status, economic power, race, and other intersectional identities in different ways, but they still may provide some insights into the relationship between gender and populism.

tank/2016/11/09/behind-trumps-victory-divisions-by-race-gender-education.

58. See Kampwirth, *supra* note 41, at 15.

59. See Mudde & Kaltwasser, *supra* note 4, at 21-22.

60. *Id.*

61. *Id.* at 22.

62. *Id.* at 24.

63. *Id.* at 25.

64. *Id.*

65. *Id.* at 26.

66. See, e.g., Spierings & Zaslove, *supra* note 52, at 137-38; see also, generally, Kampwirth, *supra* note 41.

Relying on the ideational definition of populism, Mudde and Kaltwasser found that the relationship of Northern European and South American populists to gender was influenced by national culture and the thicker ideology populism was paired with.⁶⁷ Populist actors reflected prevailing popular views on gender issues and roles, thereby adopting masculine positions in South America and a “gender-equal” approach in Northern Europe.⁶⁸ Because South American populisms analyzed were left wing and Northern European populisms were right wing, however, South American populist governments were more likely to promote a gender equality agenda than Northern European ones.⁶⁹ For example, populist radical right parties in Denmark and the Netherlands seemed to support gender equality, but did not make it a high priority and rejected affirmative steps by states to enhance gender equality, such as affirmative action or positive discrimination.⁷⁰ One study of six populist radical right parties in Western Europe, by Tjitske Akkerman, found they shared a conservative view of family relations, but varied on opposition and attention to issues like abortion, public child care funding, and same sex unions and marriages.⁷¹ The same study compared the positions of populist radical right parties with mainstream conservative parties and found the former were “without exception considerably more conservative...” on gender equality and women’s rights.⁷²

Interestingly, since European radical right populist parties are usually conservative in liberal countries, they support their positions against abortion or for traditional gender roles by emphasizing liberal values like autonomy, and sometimes they may accept a liberal law as a *fait accompli*.⁷³ Also, some use language about gender equality, freedom, and gay rights in fighting immigration from Muslim or non-Western countries, countries they argue discriminate against women and homosexuals, although they have not proposed policies that support gender equality or gay rights for immigrants.⁷⁴ Radical right

67. Mudde & Kaltwasser, *supra* note 4, at 17.

68. *Id.* at 19-20.

69. *Id.* at 20.

70. *Id.* at 27.

71. Tjitske Akkerman, *Gender and the Radical Right in Western Europe: a Comparative Analysis of Policy Agendas*, 49 *PATTERNS PREJUDICE* 37, 48-49 (Apr. 15, 2015).

72. *Id.* at 52.

73. *Id.* at 56-57.

74. *Id.* at 58; see also Stefanie Mayer, Edma Ajanovic, & Birgit Sauer, *Intersections and Inconsistencies: Framing Gender in Right-Wing Populist Discourses in Austria*, 22 *NORDIC J. FEMINIST & GENDER RES.* 250, 250- 266 (2014) (discussing framing of gender in right wing populist discourse in Austria).

populist parties in Turkey, Hungary, and Poland have adopted “pro-natalist” policies, encouraging women to have more children to propagate “the nation.”⁷⁵ In Poland, the right wing populist Law and Justice Party, among other policy proposals, sought to ban abortion shortly after taking power, resulting in mass mobilization of women in opposition.⁷⁶

Latin American populisms, both left and right-wing, have had a varied relationship with gender equality or women’s rights policies. Classical populists, from the 1930s to the 1960s, provided women with jobs, voting rights, and educational opportunities in several countries, while neo-populists in the 1980s and 1990s had a more complicated relationship with second wave feminism, which had more nuanced demands on topics such as domestic violence, sexuality, and reproductive rights.⁷⁷ While some populist leaders, like Nicaragua’s Arnoldo Alemán, attacked feminists as “elites,” others sought to incorporate them into their coalitions, like Peru’s Alberto Fujimori, who helped create electoral gender quotas, appointed women to cabinet positions, and expanded access to contraception.⁷⁸ At the same time, he and several of his health ministers have faced criminal charges for presiding over a forced sterilization policy affecting thousands of Peruvian indigenous women.⁷⁹

In the third wave of populism in Latin America, leaders like Venezuela’s Hugo Chávez and Bolivia’s Evo Morales promoted women’s rights in some significant ways, yet limited its reach in others.⁸⁰ For example, Venezuelan and Bolivian left-wing populist platforms included explicit language about the importance of the rights of women, openly discussed the importance of gender equality in promoting revolutionary agendas, and pushed for and achieved constitutional and legislative change.⁸¹ Morales had a more complex relationship with self-identified feminists, however, who were

75. See Moghadam & Kaftan, *supra* note 52, at 7.

76. Bogumila Hall, *Gendering Resistance to Right-Wing Populism: Black Protest and a New Wave of Feminist Activism in Poland?*, 63 AM. BEHAV. SCI. 1497, 1497 (2019).

77. See Kampwirth, *supra* note 41, at 3-6.

78. *Id.* at 6.

79. Kira Kay, *Peruvian Women Alleging Forced Sterilization Seek Justice*, PBS NEWSHOUR (Apr. 28, 2019), <https://www.pbs.org/newshour/show/peruvian-women-alleging-forced-sterilization-seek-justice>.

80. See Kampwirth, *supra* note 41, at 7; see generally, Stéphanie Rousseau, *Populism From Below: Gender Politics under Alberto Fujimori and Evo Morales*, in GENDER AND POPULISM IN LATIN AMERICA 140, 150-58 (Karen Kampwirth, ed., 2010).

81. See Mudde & Kaltwasser, *supra* note 4, at 29-30.

perceived as linked to foreign NGOs and the United Nations, and therefore, distinct from indigenous women's interests.⁸² When different groups of women – indigenous, lower class and rural women vs. liberal, middle-class and urban women – took different views on women's rights policies, Morales chose not to take a position in the debate.⁸³ Chávez created a new National Institute for Women by presidential decree, which presided over several women's groups and included longtime feminists, and the Chávez government promoted policies to lessen domestic burdens and to create new opportunities for public participation for poorer women.⁸⁴ At the same time, some Venezuelan feminists have expressed concerns that new policies have not changed the basic patriarchal structures in Venezuela.⁸⁵ Overall, Kurt Weyland argues that populist leaders in Latin America may be more comfortable with “feminine” rather than “feminist” demands. While feminine demands “seek specific, practical improvements for women while taking their basic insertion in society and family as given,” feminist demands are concerned with achieving strategic reforms “to guarantee women autonomy and equality.”⁸⁶

In the United States, the right-wing populist Trump administration has taken explicit steps to undermine women's human rights, at least in regard to reproductive and sexual health. Several human rights bodies charged with interpreting and applying international human rights law, have determined that access to such healthcare for women is a human right.⁸⁷ Nonetheless, at a 2019 UN

82. See Rousseau, *supra* note 79, at 157.

83. See Mudde & Kaltwasser, *supra* note 4, at 31.

84. Sujatha Fernandes, *Gender, Popular Participation, and the State*, in *GENDER AND POPULISM IN LATIN AMERICA* 202, 204-5, 209, 218 (Karen Kampwirth ed., 2010).

85. See, e.g., La Clase, *Feminist Struggles in Venezuela: An Interview With Comadres Púrpuras (Part II)*, VENEZUELANALYSIS.COM (Nov. 1, 2018), <https://venezuelanalysis.com/analysis/14127>.

86. See Weyland, *supra* note 47, at xi.

87. See, e.g., CEDAW, General Recommendation No. 24: Article 12 of the Convention (1999); *K.N.L.H. v. Peru*, CCPR Communication No. 1153/2003 (2005), CCPR/C/85/D/1153/2003 (finding, by the UN Human Rights Committee, that Peru violated adolescent girl's right to be free from cruel, inhuman, and degrading treatment under the Covenant on Civil and Political Rights, when a Peruvian hospital forced her to carry an inviable fetus to term; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (1 Feb. 2013), A/HRC/22/53, paras. 45-50; *Paulina del Carmen Ramirez Jacinto v. Mexico*, Inter-American Commission on Human rights, Petition 161-02, Report No. 21/07, Friendly Settlement, para. 19 (9 March 2007) (“The Commission also underscores that women cannot fully enjoy their human rights without having a timely access to comprehensive health care services, and to information and education in this sphere.”); Risa E. Kaufman, *Commission on Unalienable Rights and the Effort to Erase Reproductive Rights as Human Rights*, 4 COLUM. HUM. RTS. L. REV.

summit, U.S. Secretary of the Department of Health and Human Services Alex Azar declared that the United States and eighteen other countries, many with problematic human rights records, wished to eliminate reference to terms such as “reproductive health and rights” in UN documents because they may “undermine” the family and promote abortion.⁸⁸ In addition, the State Department began omitting information about availability of abortion, access to contraception, maternal mortality, and discrimination against women in health care from its human rights reports, resulting in complaints from civil society groups and members of Congress.⁸⁹ The US also threatened to veto a UN Security Council resolution on sexual violence in conflict unless language calling on UN bodies and donors to provide “sexual and reproductive health” assistance to survivors of sexual violence was cut.⁹⁰ In March 2019, the US announced it would reduce \$210,000 in funding to the Organization of American States, amounting to 5% of US funding for the Inter-American Commission of Human Rights, because of its alleged advocacy of abortion rights, although only one of its 253 press releases in 2019 concerned abortion.⁹¹

ONLINE 1, 3 (2019).

88. Alex M. Azar II, U.S. Sec’y of the Dep’t of Health and Human Servs., Remarks on Universal Health Coverage, U.N. General Assembly Press (Sept. 23, 2019), <https://www.hhs.gov/about/leadership/secretary/speeches/2019-speeches/remarks-on-universal-health-coverage.html>. The other countries were: Bahrain, Belarus, Brazil, Democratic Republic of the Congo, Egypt, Guatemala, Haiti, Hungary, Iraq, Libya, Mali, Nigeria, Poland, Russia, Saudi Arabia, Sudan, United Arab Emirates, and Yemen.

89. Press Release, Ctr. for Reprod. Rights, Lawmakers and Civil Soc’y Pressure Dep’t of State to Bring Back Deleted Reprod. Rights Sections in Annual Human Rights Reports (Oct. 3, 2018), <https://reproductiverights.org/press-room/lawmakers-and-civil-society-pressure-department-state-bring-back-deleted-reproductive>; Letter from Members of Congress of the United States to U.S. Sec’y of State Mike Pompeo (Oct. 1, 2018), <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/10.1.18%20-%20House%20of%20Representatives%20Pompeo%20Reproductive%20Rights%20Letter%20Final%20w%20signatures.pdf>.

90. Michelle Nicols, *Bowing to U.S. Demands, U.N. Waters Down Resolution on Sexual Violence in Conflict*, REUTERS (Apr. 23, 2019), <https://www.reuters.com/article/us-war-rape-usa/bowing-to-us-demands-un-waters-down-resolution-on-sexual-violence-in-conflict-idUSKCN1RZ27T>. After the revised resolution was passed, the French Ambassador to the UN decried the watering down of the resolution: “It is intolerable and incomprehensible that the Security Council is incapable of acknowledging that women and girls who suffered from sexual violence in conflict - and who obviously didn’t choose to become pregnant - should have the right to terminate their pregnancy.” *Id.*

91. Carol Morello, *Pompeo Cuts OAS Funds over Advocacy of Legal Abortion*, THE WASHINGTON POST (Mar. 26, 2019), https://www.washingtonpost.com/world/national-security/pompeo-cuts-oas-funds-over-advocacy-of-legal-abortion/2019/03/26/4ea5314d-d7e0-48de-b636-e552447430b0_story.html?noredirect=on; Doug Cassel, *Human Rights, Diplomatic Wrongs*, HARVARDILJ.ORG (Apr. 28, 2019), <https://harvardilj.org/2019/04/human-rights-diplomatic-wrongs/>.

Populist leaders also frequently use gendered rhetoric.⁹² In Latin America, masculinity and a macho style are “hallmarks” of most populist leaders, but populist leaders also depict women as essential actors in social change.⁹³ Both Morales and Chávez seemed to speak about women as both important political actors and as maternal figures who sacrifice on behalf of others.⁹⁴ At the same time, Chávez often exalted his sexual prowess and homophobic beliefs, and Morales plays up gossip on his sexual affairs with women.⁹⁵ In the United States, President Donald Trump has made statements calling attention to the size of his genitals,⁹⁶ as well as used misogynist language on multiple occasions. He has insulted women’s appearances, referred to women as animals, such as pigs and dogs, publicly mocked their bodily functions, including urination and menstruation, and made fun of the weight and shape of women’s bodies.⁹⁷ Across the Atlantic, Mudde and Kaltwasser found that Northern European parties did not have a particularly sexist or masculine discourse, but Eastern and Southern European parties did.⁹⁸ Pia Kjaersgaard, a long-time female leader of the Danish right wing populist party spoke out explicitly against the feminist movement and argued that its demands for gender equality have gone too far.⁹⁹ Interestingly, when arguing against Islamic immigration to Europe, however, right wing populist parties have used gendered rhetoric about preserving women’s rights and preventing “Islamic gender apartheid.”¹⁰⁰ Elzbieta Korulczuk and Agnieszka Graff argue that in recent years, illiberal populists in Poland and across the globe are increasingly and actively promoting an anti “gender ideology” discourse, in which leaders argue that individual rights must be

92. Mudde & Kaltwasser, *supra* note 4, at 34.

93. See Mudde & Kaltwasser, *supra* note 4, at 33.

94. Mudde & Kaltwasser, *supra* note 4, at 34; see also Rousseau, *supra* note 79, at 154.

95. See Mudde & Kaltwasser, *supra* note 4, at 34; see also Rousseau, *supra* note 80, at 155.

96. At a 2016 Republican debate, he said: “Look at those hands. Are they small hands? And he [Marco Rubio] referred to my hands if they’re small, something else must be small,” he said. “I guarantee you there’s no problem. I guarantee you.” Nick Gass, “Trump on small hands: ‘I guarantee you there’s no problem,’” Politico (March 3, 2016), at <https://www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/03/donald-trump-small-hands-220223>.

97. Michael D. Shear & Eileen Sullivan, ‘Horseface,’ ‘Lowlife,’ ‘Fat, Ugly’: How the President Demeans Women, N.Y. TIMES (Oct. 16, 2018), <https://www.nytimes.com/2018/10/16/us/politics/trump-women-insults.html>.

98. See Mudde & Kaltwasser, *supra* note 4, at 32.

99. Susi Meret, *Charismatic Female Leadership and Gender: Pia Kjaersgaard and the Danish People’s Party*, 49 PATTERNS OF PREJUDICE 81, 96 (2015).

100. See Mudde & Kaltwasser, *supra* note 4, at 28.

replaced with the rights of the traditional family as a basic unit of society, and that religious conservatism is under attack.¹⁰¹ Feminism or gender equality movements are perceived as “powerful and foreign ‘colonizers.’”¹⁰² From the left wing, Evo Morales has argued that colonialism has negatively affected gender relations, for example, by asserting that *machismo* is a foreign import, and that Bolivia should return to indigenous norms on gender relations instead.¹⁰³

The relationship between populism and policies promoting women’s rights is challenging to disentangle. In much of the existing research, populism is variously or vaguely defined, making generalizations about populism’s relationship to gender and women’s rights difficult to draw. Authors who do rely explicitly on a specific definition of populism rarely show or describe how populism operates apart from other kinds of social or political phenomena or what the impact of populism is, as distinguished from populism paired with a specific or thicker ideology, such as nationalism or authoritarianism or left-wing socialism, or even nationalism, authoritarian or socialism in the absence of populism.

Yet some (tentative) conclusions can be drawn. At a minimum, right wing populist parties are less likely to promote women’s rights or gender equality at the domestic level than third wave left-wing Latin American populists. In some instances, right wing populist governments have taken steps actively to curtail women’s rights at the domestic and international levels, such as by attacking women’s health and reproductive rights. Left wing populists appear more motivated to address gender inequality than right wing populist movements, and they have introduced legislative and even constitutional reforms to this end. Populist leaders of all stripes may be less willing to accede to demands aimed at increased autonomy for women, or which challenge traditional understandings of family structures or patriarchy. Some populist leaders, especially outside of Northern Europe, use *macho* language when speaking about women, while they still may recognize them as political partners. Although right wing politicians have used women’s rights language to seek to exclude Muslim immigrants, criticism of feminism as damaging to local, traditional gender relations appears more common. The populist narrative of the antipathy between the authentic “people”

101. Elzbieta Korolczuk & Agnieszka Graff, *Gender as ‘Ebola from Brussels’: The Anticolonial Frame and the Rise of Illiberal Populism*, 43 J. OF WOMEN IN CULTURE AND SOC’Y 797, 798-99 (2018).

102. *Id.* at 799.

103. Rousseau, *supra* note 79, at 154.

and the “other” may make feminism and women’s rights easy targets for populist ire, as liberal ideals such as human rights and universalism can be reframed as efforts by foreign powers to impose foreign values on unsuspecting and unwilling local communities. The populist rhetorical strategy of “flaunting the low,”¹⁰⁴ either by discussing sexual prowess or sexual affairs or insulting women does not necessarily directly affect women’s rights, but it may create an environment where such discursive behavior becomes normalized and may affect the way populations view their obligations to ensure women are not subject to sexual assault or other abusive behavior.

III. CAN POPULIST GOVERNMENTS CAUSE HARM TO INTERNATIONAL COURTS?

Populism’s relationship to gender may predispose some populist leaders against international adjudicative decisions that protect, reinforce or expand women’s human rights. But what actions will they take in response? And if they seek to undermine international courts, how likely are they to succeed? Rejecting or challenging international court decisions that counter-act domestic public opinion is nothing new, and it is certainly not limited to populist governments. Scholars have been struggling with what drives states to comply with or ignore international court rulings for many years.¹⁰⁵ More recently, scholars have attempted to systematize attempts to influence international courts and forms of resistance to international courts, such as verbal critiques, non-compliance, exit, or attempts to terminate a court.¹⁰⁶ They have also distinguished between “pushback,” or reacting negatively to some legal development and seeking to reverse it within the system, versus extraordinary “backlash,” questioning the authority of the court itself and aiming to transform or close the court.¹⁰⁷ Despite the dearth of research on the nature of populist governments’ reactions to unpalatable international

104. Ostiguy, *supra* note 11.

105. *See, e.g.*, KAREN J. ALTER, *THE NEW TERRAIN OF INTERNATIONAL LAW: COURTS, POLITICS, RIGHTS* 20-21 (2013); Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 *YALE L. J.* 273, 290 (1997); James L. Gibson & Gregory A. Caldeira, *The Legitimacy of Transnational Legal Institutions: Compliance, Support, and the European Court of Justice*, 39 *AM. J. POL. SCI.* 459 (1995); CONSTANZE SCHULTE, *COMPLIANCE WITH DECISIONS OF THE INTERNATIONAL COURT OF JUSTICE* (2004).

106. Mikael Rask Madsen et al., *Backlash Against International Courts: Explaining the Forms and Patterns of Resistance to International Courts*, 14 *INT’L J. L. IN CONTEXT* 197, 213 (2018).

107. *Id.* at 202-03.

court or quasi-adjudicative body decisions, there is reason to believe populist governments favor backlash over pushback.

As discussed above, prevailing definitions of populism are anti-institutional.¹⁰⁸ Philip Alston proposes populists are particularly dangerous to the human rights movement because they are comfortable with flaunting their disdain of social conventions.¹⁰⁹ They are willing to break rhetorical and legal boundaries previously left undisturbed, including long-held assumptions about multilateralism and human rights. Eric Posner argues that criticizing international courts is part and parcel of the populist challenge to international institutions associated with the post-WWII liberal order, which in their view, is run by disconnected elites and the nefarious establishment.¹¹⁰ In a first empirical work on the relationship between populism and backlash on international courts, Erik Voeten found that eighteen of twenty-eight backlash episodes against international courts originated from populist leaders.¹¹¹

Although backlash against international courts and quasi-adjudicative bodies is considered “very rare,”¹¹² a number of examples exist in recent years of populist governments exiting, undermining and attacking them. For example, Venezuela’s President Chávez denounced the American Convention on Human Rights and withdrew Venezuela from the Inter-American Court of Human Rights following an unfavorable court decision and several clashes with the Inter-American System of Human Rights.¹¹³ Populist presidents in Bolivia, Ecuador, Nicaragua, and Venezuela joined together in an effort to move the headquarters of the Inter-American Commission on Human Rights out of the United States, to restrict discretionary spending, and to limit the role of the Special Rapporteur on Freedom of Expression.¹¹⁴ Although framed as an effort to reform and

108. *See supra* Part I.

109. Philip Alston, *The Populist Challenge to Human Rights*, 9 J. HUM. RTS. PRAC. 1, 4 (2017).

110. *See, e.g.*, Eric A. Posner, *Liberal Internationalism and the Populist Backlash*, 49 ARIZ. ST. L. J. 795, 796 (2017).

111. Voeten, *supra* note 45, at 8.

112. *See generally*, Madsen, Cebulak & Wiebusch, *supra* note 105, at 217.

113. Díaz Peña v. Venezuela, preliminary objection, merits, reparations and costs, Inter-Am. Ct. H.R. (ser. c) No. 244 (June 26, 2012); Timothy Gill, *Venezuela Says ‘Adios’ to the Inter-American Court of Human Rights*, CHRISTIAN SCI. MONITOR (Sept. 11, 2013), <https://www.csmonitor.com/World/Americas/Latin-America-Monitor/2013/0911/Venezuela-says-adios-to-the-Inter-American-Court-of-Human-Rights>.

114. *See* AQ Editors, *Venezuela Officially Withdraws from Human Rights Body*, AMERICAS QUARTERLY (Sept. 10, 2013), <https://www.americasquarterly.org/content/venezuela-officially-withdraws-human-rights->

strengthen the Inter-American System, many of the countries promoting these changes had received great scrutiny for human rights violations, and human rights groups and think tanks warned these proposals were dangerous to the Commission's work.¹¹⁵

While the Obama Administration blocked the reappointment of a member of the World Trade Organization's Appellate Body in May 2016, citing disagreement with his on-the-record questions and decisions, the Trump Administration raised broader concerns about Appellate Body members' continued service on pending appeals after their terms expired, as well as other concerns about deviance in Appellate Body reports from WTO rules, and it blocked numerous proposals for reform or to fill vacancies.¹¹⁶ Rather than engaging with proposed amendments, the United States has "responded with disinterest" and failed to explain its disagreement with proposals.¹¹⁷ Starting in January 2020, only one member of the Appellate Body remains in office, leaving the multilateral trade system's dispute settlement regime on the verge of collapse.¹¹⁸ The Trump Administration has also interacted with the Inter-American Commission on Human Rights in unprecedented ways for the United States. It failed to appear at hearings for the first time in history,¹¹⁹ failed to lobby for its own nominee to the Commission, resulting in the second time in history that the United States candidate lost an election,¹²⁰ contributed zero dollars in voluntary contributions to the

body.

115. Mari Hayman, *ALBA-Backed Proposals for IACHR Reform Could Undermine the System*, WORLD POLITICS REV. (Mar. 27, 2013), <https://www.worldpoliticsreview.com/articles/12821/alba-backed-proposals-for-iachr-reform-could-undermine-the-system>; Inter-American Dialogue, Rule of Law Working Paper, Michael Camilleri & Danielle Edmonds, *An Institution Worth Defending: The Inter-American Human Rights System in the Trump Era at 2* (June 2017), https://www.thedialogue.org/wp-content/uploads/2017/06/IACHR-Working-Paper_Download-Resolution.pdf.

116. *United States Continues to Block New Appellate Body Members for the World Trade Organization, Risking the Collapse of the Appellate Process*, 133 AM. J. INT'L L. 822, 823-26 (2019).

117. *Id.*

118. World Trade Organization, *Appellate Body Members*, https://www.wto.org/english/tratop_e/dispu_e/ab_members_descrp_e.htm. (last visited January 28, 2020).

119. Editorial Board, *An Abdication on Human Rights*, N.Y. TIMES (Mar. 27, 2017), <https://www.nytimes.com/2017/03/27/opinion/an-abdication-on-human-rights.html?searchResultPosition=5>.

120. See Doug Cassel, *Human Rights, Diplomatic Wrongs*, HARV. INT'L L. J., <https://harvardilj.org/2019/04/human-rights-diplomatic-wrongs/> ("Senior Department officials lifted nary a finger to win the election."). The first time was in the George W. Bush Administration, when a politically well-connected candidate with little background in human

Commission's limited budget in 2018, and subsequently, seriously considered defunding the Commission entirely for supporting women's rights to reproductive health.¹²¹ To the extent populist governments favor backlash, these examples show how a populist government's displeasure with one or a series of decisions has the potential to impact meaningfully an entire international court or quasi-adjudicative body and the legal regime it interprets and applies.

When populist governments have powerful tools within a specific international court system, like the ability to block the appointment of adjudicators, withdraw significant amounts of funding, or mobilize powerful allies, successful backlash is likely more feasible. At the same time, even powerful populist governments face challenges in transforming displeasure into facts on the ground. Terminating an international court—the gravest form of backlash—is a collective effort, which requires agreement among multiple member states.¹²² Populist governments have a tough time cobbling together multilateral reform coalitions because of their “thin” ideologies.¹²³ Bolivia, Ecuador, Nicaragua, and Venezuela were ultimately unsuccessful in their efforts to persuade OAS member states to move the Inter-American Commission outside the United States or to limit external funding for the Special Rapporteur on Freedom of Expression.¹²⁴ In examining backlash episodes in three different African regional courts, Alter, Gathii, and Helfer found that consensus voting rules, too, presented obstacles for states seeking to modify a court's jurisdiction and access; following rules and internal procedures for change required agreement of multiple states and gave tempers a chance to cool.¹²⁵ In addition, states need broad agreement of both substantial international and domestic actors to torpedo a court successfully.¹²⁶ To shift from pushback to backlash, more than mere disagreement of experts or strong government resistance is needed; broader campaigns and public mobilizations provide the requisite support.¹²⁷ Without domestic and

rights lost the election. *See also* Camilleri & Edmonds, *supra* note 113, at 5.

121. Cassel, *supra* note 119; Press Release, IACHR, *LACHR Presents Accountability Report for 2018 Budget* (Mar. 14, 2019), https://www.oas.org/en/iachr/media_center/preleases/2019/067.asp.

122. Madsen, Cebula & Wiebusch, *supra* note 104, at 204.

123. Voeten, *supra* note 45, at 2.

124. *Id.* at 11.

125. Karen J. Alter, James T. Gathii & Laurence R. Helfer, *Backlash Against International Courts in West, East and Southern Africa: Causes and Consequences*, 27 *EURO. J. INT'L* 293, 295, 318 (2016).

126. Madsen, Cebula & Wiebusch, *supra* note 104, at 204.

127. *Id.* at 205.

international backing, populist states may still choose other forms of resistance, such as exiting a particular court, failing to comply with a court's decision, or denouncing it in public forums. While these steps certainly can negatively affect international courts, they are less extreme than terminating or effectively blocking the functioning of an adjudicative or quasi-adjudicative body.

States and other actors appear to have multiple tools at their disposal in responding to populist backlash. Mobilizing both domestic and international constituencies to block harmful actions against these bodies is one important strategy, since states need public support at the domestic level and multilateral support at the international level to engage in successful backlash.¹²⁸ Karen Alter, James Gathii, and Laurence Helfer attributed disparate outcomes in response to controversial decisions in three African regional courts to variations in the mobilization of secretariats, civil society, and sub-regional parliaments.¹²⁹ Secretariats, composed of a political appointee and professional staff, can serve as backstops to backlash efforts when professional and independent, and they can also create opportunities for meaningful civil society awareness and engagement.¹³⁰ Sub-regional parliaments, when more than just "talk shops," can also play a role in supporting international bodies through resolutions and interaction with the courts themselves, if appropriate.¹³¹ Ensuring that these bodies have strong institutional procedures and consensus practices may also enhance their resilience in the face of backlash.¹³² The nature of other states' and international organizations' responses and their leverage over populist states may help determine the effectiveness of backlash as well.

In the case of women's human rights, domestic and transnational civil society may be of particular importance. Both domestic and transnational constituencies have strong interests in responding to efforts to hobble bodies interpreting women's human rights, both for the sake of women's human rights, and for the sake of protecting the human rights system as a whole. For example, in response to efforts to defund the Inter-American Commission for allegedly supporting abortion rights, a group of former US Commissioners and nominees sought to explain why funding the Commission was consistent with

128. *See id.* at 204; *see also* Alter, Gathii & Helfer, *supra* note 123, at 321.

129. Alter, Gathii & Helfer, *supra* note 123, at 295.

130. *Id.* at 319.

131. *Id.* at 325.

132. *See generally* Alter, Gathii & Helfer, *supra* note 123.

federal law,¹³³ Democratic senators wrote to U.S. Secretary of State Michael Pompeo in support of funding,¹³⁴ and fifty domestic and international nongovernmental organizations decried the negative impact that defunding the Commission would have on human rights in the region.¹³⁵ Soon thereafter, Pompeo announced cuts of 5% in US funding, but did not eliminate all funding for the Commission.¹³⁶

Although empirical data is sparse, the inherent anti-pluralist and anti-institutional characteristics of populism and recent actions by populist governments in response to unpopular decisions suggest populist governments may shift easily from pushback to more dangerous backlash. Identification of tools for responding to backlash, and populist backlash specifically, and enhancing the resilience of international bodies, requires more scholarly and practical attention. Nonetheless, consensus-based rules for reform, mobilization of domestic, transnational, and international constituencies, and the leverage of other non-populist states may help to prevent lasting harm, depending in part on the relative power and resources of populist governments.

IV. CONCLUSION

Populism's impact on women's human rights as mediated through international courts is potentially both significant and harmful. Populism, in its many and varied forms, is noteworthy for its anti-pluralism and anti-institutionalism. Demonizing foreign judges who render counter-majoritarian decisions disconnected from "the people" fits easily within the populist narrative. While much remains to be learned about the relationship between populism and women's rights, the existing literature suggests most populist leaders are, at

133. Letter to Secretary Pompeo from former US Commissioners and Nominees (Feb. 13, 2019), https://theglobalamericans.org/wp-content/uploads/2019/02/Pompeo.IACHR_.2.13.19.pdf.

134. Letter from Senators to Secretary Pompeo (Feb. 26, 2019), at https://foreignaffairs.house.gov/_cache/files/a/2/a2983189-e980-4cf9-8632-8fed6400861/252450FADFC7D144B60851E5BF5388FD.02-26-19-engel-sires-menendez-cardin-letter-to-pompeo-regarding-inter-american-commission-on-human-rights.pdf.

135. Press Release, *50 Civil Society Organizations and Experts Join Calls for Continued US Funding of Inter-American Commission on Human Rights*, ROBERT F. KENNEDY HUMAN RIGHTS (Mar. 1, 2019), <https://rfkhumanrights.org/news/50-civil-society-organizations-and-experts-join-calls-for-continued-u-s-funding-of-inter-american-commission-on-human-rights>.

136. See Carol Morello, *Pompeo Cuts OAS Funds Over Advocacy of Legal Abortion*, WASH. POST (Mar. 26, 2019), https://www.washingtonpost.com/world/national-security/pompeo-cuts-oas-funds-over-advocacy-of-legal-abortion/2019/03/26/4ea5314d-d7e0-48de-b636-e552447430b0_story.html?noredirect=on.

least, likely to disfavor international court decisions that advance women's rights in substantial ways. Populist leaders of varying political stripes have linked feminist demands for autonomy or to dismantle patriarchy to a transnational, non-autochthonous, nefarious "elite," rather than "the people." They have utilized misogynist and sexualized rhetoric, insulting women's dignity and demeaning their status as equal rights holders in society, likely boding ill for rights-expanding efforts. Further, right-wing populist governments, particularly outside of Northern Europe, are associated with retrogressive approaches to gender equality, especially around the issue of sexual and reproductive health and autonomy, and some have taken concrete steps to limit women's reproductive health and promote pro-natalist policies.

When dissatisfied with a court's decision, populist governments appear predisposed to engage in backlash rather than pushback alone, endangering women's human rights – and human rights more generally. Although more research is needed, at least one empirical study and qualitative analysis show efforts by populist governments to harm institutions, rather than simply push back against a specific unpopular decision.¹³⁷ While some argue that populist critiques may lead to much needed reforms to these institutions, concrete real-world examples of such noble motives appear few and far between. Instead, a lack of engagement in real reform attempts at best, and efforts to terminate or narrow the jurisdiction of these bodies, potential defunding of bodies, and blocking of their functioning, at worst, appear more common. Populist governments seem more interested in burning down the house than building a new addition or remodeling the kitchen.

Whether populist governments succeed in their backlash depends on a number of factors, including their relative power and resources. States, transnational, and international constituencies seeking to protect these institutions from populist backlash are well-advised to take action to enhance their resilience, by ensuring consensus rules exist and are followed, and secretariats and transnational constituencies maintain regular and open lines of communication. In the face of backlash, domestic, transnational, and international constituencies must stand ready to mobilize in response.

137. *See supra*, Part III.