Domestic Politics, International Inaction:
The United States and Human Rights Treaties

by Alicia Marie van der Veen

B.A. in Comparative History of Ideas, 2005, University of Washington

A Thesis submitted to

The Faculty of
The Elliott School of International Affairs
of The George Washington University
in partial fulfillment of the requirements
for the degree of Master of Arts

January 31, 2012

Thesis directed by

Susan Sell
Professor of Political Science and International Affairs
Director, Institute for Global and International Studies

Martha Finnemore
University Professor of Political Science and International Affairs
Acknowledgments

I wish to acknowledge: my advisors, Susan Sell and Martha Finnemore for valuable guidance and advice; my teacher in Geneva, Stephanie Hofmann, whose final paper became the basis for this thesis; Ambassador George Moose, for his mentorship and invaluable introductions to scholars in this field; Harold Koh, Ambassador Melanne Verveer and Judy Heumann for their time and insight; my fiancé Casey Studhalter for all of his support; my parents Jan and Martha van der Veen for instilling in me a respect for academia, interest in the world and a passion to figure out ways to make it better; and to Melody Knight, my partner in crime, to the Lonely Hearts Thesis Club and many days at the library. Thank you all – I couldn’t have done it without you.
Despite being a proponent of human rights on the world stage and having some of the strongest protections of these rights at home, the United States has not ratified three major international human rights treaties: on the rights of women, children, and persons with disabilities. What causes this discrepancy? Though they are crafted in the international sphere, treaties are debated in the domestic – in the U.S. Senate – and thus become a political issue. Small but vocal groups feel threatened by a loss of sovereignty and an attack on values, and mobilize to lobby their Senators against these treaties. A larger group who favors ratification for the moral example it sets and the credibility gained on the world stage is not directly affected by the treaties – because these rights are so well enshrined at home – and therefore does not share this same incentive to mobilize. These arguments also tend to fall down political party lines, especially for the treaties on women’s and children’s rights, which deal with sensitive areas of the family and parenting. Structural impediments also play a part: one powerful Senator can block action for years, and the threshold to pass a convention is very high. These factors, combined with a general U.S. skepticism of the United Nations that is traced back to the organization’s founding, and questions on the effectiveness of treaties as tools of change result in U.S. ambivalence on international human rights treaties.
# Table of Contents

Acknowledgments................................................................. ii

Abstract of Thesis............................................................... iii

List of Tables ........................................................................... 5

Introduction ............................................................................. 6

The United States and Human Rights Treaties......................... 12
  Treaties as Tools of International Law .................................. 12
  The Nature of the Human Rights Regime ............................. 15
  Ratification ........................................................................... 18

The Domestic Dimension.......................................................... 23
  Sovereignty ........................................................................... 23
  Federalism and States' Rights ............................................ 27
  1950s Legacy and the Cold War ......................................... 30

The United States and International Institutions ...................... 33

The United States and Human Rights ...................................... 36

American Party Politics .......................................................... 38

Case Studies............................................................................. 43
  CEDAW .............................................................................. 44
  CRC .................................................................................. 60
  CRPD ............................................................................... 72

Conclusion .............................................................................. 77

Bibliography ............................................................................ 80
List of Tables

The United States and Human Rights Treaties……………………………………….….10
RUDs Attached by the United States to Ratified Human Rights Treaties……………..28
U.S. Signature and Ratification Noting Political Party in Power…………………………..40
Introduction

The United States has an erratic record when it comes to signing and ratifying international treaties. International human rights treaties make for a particularly interesting case study as human rights is a normative area which the United States portrays and understands itself as being a great champion. The country has some of the best national legal frameworks for protecting the rights of its citizens in the world and a progressive, if sometimes intrusive, record in promoting these rights abroad. Yet, when it comes to multilateral conventions on human rights, the United States often stands alone in its choice not to ratify major treaties: the country is one of only seven who have not ratified the convention on women’s rights (the other six being Iran, Nauru, Palau, Somalia, Sudan and Tonga); Somalia, which has no functioning national government, is the only other nation besides the United States which has not ratified the child’s rights treaty, and it has announced its intention to do so.¹

The United States has ratified only four of the twelve major international human rights treaties, and those outstanding include conventions on the rights of women, children, and persons with disabilities² – all rights to which no one doubts the commitment of the United States. Even for those treaties that the United States has ratified, support came after a lengthy debate and a drawn out period of time. Some 40 years passed between the signing and ratification of the convention against genocide.³ What accounts for this discrepancy between professed normative identity, domestic protections, and action on a multilateral level?

¹ Reuters Africa 2009
² United Nations, Multilateral Treaties Deposited with the Secretary General
³ Ibid.
In this paper, I will examine the domestic factors which play a role in the failure of the United States to so far ratify three major human rights treaties: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Conventions on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). The rights of women, children, and persons with disabilities are all those that the United States defends on the world stage and ratification would cause little, if any, changes to domestic U.S. laws. The United States played a leading role in the drafting of CEDAW and CRC, and the CRPD is based upon the country’s broad-reaching Americans with Disabilities Act. Each treaty reflects inherent American values. And, as noted above, the United States is one of very few countries which has not ratified these treaties – a list which includes none of its allies in other liberal, Western industrialized democracies. Yet the U.S. Senate has so far failed to offer its advice and consent for their ratification.

I will examine each of the three treaties in this case study in terms of their content and how current domestic U.S. law aligns with treaty requirements. I will examine arguments on each side of the ratification debate as well as review a variety of theories on which domestic factors account for American wariness of international human rights treaties. The literature on this topic is extensive. Natalie Kauffman and her colleagues argue that the current controversy is a legacy of the 1950s, when fears of Communism as well as desire to protect segregation by a few Conservative Senators (heavily influenced by the views of the American Bar Association) created hostility to these instruments of international law.\textsuperscript{4} While I agree this history still has an effect today, the players have

\textsuperscript{4} Kaufmann and Whiteman 1988, Kaufmann 1990
changed, and the once treaty-adverse ABA now supports ratification of these conventions.

Structural reasons certainly play a part: the two-thirds voting majority requirement in the Senate, ability of a committee chair to block a treaty from the floor and the power of lobby groups do not make treaty ratification without high political expense. A major factor is also the country’s federalist structure and the power of states in the union; human rights issues often fall under the jurisdiction of states as opposed to the federal government, which leads to opposition on these grounds. Yet a federal-state clause acknowledging that treaty tenets will be carried out at the state level could be added to each ratification, nullifying this impediment.

This federal-states tension ties into general sovereignty concerns, which segments of the United States have always had with the United Nations (UN). Despite being the most powerful nation behind the world body, there have been fears since its founding that giving the UN too much power will result in a ‘world government’ and a loss of sovereignty and freedom on the part of the United States.5 Others offer American exceptionalism as the underlying reason; something which can be seen in the reservations, understandings and declarations (RUDs) often added to U.S. ratification of human rights treaties, which effectively excuse the United States from their purview. Due to historical experience the United States also holds quite different views of human rights than do many other countries: the U.S. Constitution covers negative rights, and the country is more focused on civil and political individual rights, than it is on the more positive social and economic collective rights. This point of view is also a legacy of the Cold War, when American and Soviet ideologies competed for allies around the world.

---

5 Among others, see Rabkin
One factor that I will add to the above discussion is party politics, and the political ideology of the leadership in power at the time of treaty adoption. My initial prediction was that Democratic leadership would be more likely to pass human rights legislation than its Republican counterpart. While this does appear to be a trend, it does not hold across all cases: while a Republican-controlled Senate has never ratified a human rights treaty, a Democratic Senate is certainly not a guarantee of passage.

The ambivalent American record on international human rights treaties is a combination of several factors: sovereignty concerns; a perceived attack on conservative values; skepticism of both the United Nations as an organization and treaties as effective instruments of action; as well as the pivotal fact that the United States does not have a strong grassroots force mobilizing to gain these rights. The irony may be that because Americans do possess these rights at home, there is not a strong enough call to join the world community in proclaiming them to be important abroad.
### Table 1: The United States and Human Rights Treaties

**International Human Rights Treaties Ratified by the United States**

- The International Convention on the Elimination of All Forms of Racial Discrimination
- The International Covenant on Civil and Political Rights
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**International Human Rights Treaties Signed by the United States**

- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The Convention on the Rights of the Child
- The Convention on the Rights of Persons with Disabilities

**International Human Rights Treaties Neither Signed Nor Ratified by the United States**

- The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity
- The International Convention on the Suppression and Punishment of the Crime of Apartheid
- The International Convention Against Apartheid in Sports
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- The Agreement Establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean
- The International Convention for the Protection of All Persons from Enforced Disappearance
Treaties as Tools of International Law

Before moving into the literature on U.S. treaty ratification, it is important to first understand the powers and purposes of treaties as a source of international law. The Vienna Convention on International Treaties defines the rules of treaties between states. Although the United States is only a signatory and has not ratified the Vienna Convention, the country understands many of its provisions to constitute customary international law.6

According to the Vienna Convention, a treaty “means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”7 Article 26 of the convention specifies that “every treaty in force is binding upon the parties to it and must be performed in good faith.”8 Article six of the U.S. Constitution names treaties the “supreme law of the land,”9 effectively imposing them over other laws of the nation – which as we will see, leads to much of the opposition against international human rights treaties.

It is also important to clarify the distinction between a state being a signatory and a party to a convention. Signature does not bring with it any legal obligations; however, signature indicates “the State's intention to take steps to express its consent to be bound by the treaty at a later date.”10 Once ratified, a state is legally bound by the treaty. Time is allowed between signing and ratification for the state “to seek approval at the domestic

---

6 Treaties Pending in the Senate, U.S. Department of State, Office of the Legal Advisor
7 Vienna Convention on the Law of Treaties, Article 2(1)(a)
8 Vienna Convention on the Law of Treaties, Article 26
9 Transcript of the Constitution of the United States, National Archives
10 United Nations, Glossary of Treaty Body Terminology
level and enact any legislation necessary to implement the treaty domestically.\textsuperscript{11} It is interesting to note that there is no time limit set between signing and ratifying, and we observe that there are consistently long time lags between the signature and ratification of those treaties to which the United States has committed, which we will see in more detail as we examine the cases.

Signing is of course a much simpler act to achieve than ratification, as it is completed only by the head of state, while ratification requires agreement by the country’s legislative body. Thus, treaties differ from other instruments of foreign policy, such as executive agreements, where the head of state has much more independence to act unilaterally.\textsuperscript{12} Signing can be a political move by a country’s leader, to pay lip service in support of an issue to the international community without expending the domestic political capital to make it a reality; yet some argue that signing can also be a costly signal from a head of state to demonstrate intent to comply with the agreement.\textsuperscript{13}

Ratification procedures vary by country, but often involve a simple majority vote in the legislative body. In the American system, after the President signs an international treaty, it must be transmitted to the Senate for advice and consent to continue the process. It is then referred to the Senate Committee on Foreign Relations, which reports it out favorably or unfavorably to the Senate after consideration. If approved by the Senate, the President then ratifies the treaty, which is followed by deposit with the United Nations Secretary General and proclamation.\textsuperscript{14} The United States requires quite a high threshold for ratification, with a two-thirds majority vote in the Senate in order for a treaty to

\textsuperscript{11} United Nations Glossary of Treaty Body Terminology
\textsuperscript{12} Martin 2005
\textsuperscript{13} Martin 2005
\textsuperscript{14} Congressional Research Service 2001
become law. If any implementing legislation is required – which it often is – to make the treaty provisions domestic law, both the Senate and the House must pass the legislation.\footnote{Congressional Research Service 2001}

Many countries attach reservations, understandings and declarations (RUDs) to multilateral treaties, and the United States is no exception. Encouraged to an extent as they can make both negotiation and ratification of treaties more possible, RUDs should not go against the spirit of the treaty or nullify it.\footnote{Schabas 1996} Common RUDs the United States attaches to treaties include declaring that treaties are not self-executing (and thus require implementing domestic legislation); ensuring that a federal-state clause is added to clarify that the treaty’s provisions may be carried out at the state level; and that the agreements do not require changes in U.S. domestic law.\footnote{Schabas 2000} Some states worry, however, that by attaching RUDs to a treaty, countries are watering down the convention’s impact to the point of no meaning, throwing a country’s commitment to that treaty into doubt and in fact working to delegitimize international law.

Interestingly, human rights treaties have higher rates of RUDs than multilateral treaties overall.\footnote{Schabas 1996} Some countries, including Sweden, Norway, Portugal, Finland and Ireland have raised objections to this practice by other states with regards to the CRC.\footnote{Congressional Research Service 2001} Some nations have filed complaints against the United States, as many did after the American ratification of the Genocide Convention, which was accompanied by a large package of RUDs.\footnote{LeBlanc 1991, Power 2002}
The Nature of Human Rights Regimes

It is also worth examining the global human rights regime, which is dissimilar to almost any other framework for international cooperation. Unlike other multilateral regimes, it does not offer the reciprocal benefits of joint gains, burden-sharing, or reputation enhancement that come from cooperation. Furthermore, human rights treaties have weak enforcement mechanisms and touch on sensitive areas of national concern. More than other issues in international law, consequences are purely in the domestic, not international, sphere. Why then, would states participate in this regime?

In classical international relations theory, sovereignty and power reign supreme. Yet given the anarchical nature of the international system, states may find it beneficial at times to relinquish some sovereignty to enjoy the benefits of cooperation (reduced costs of operating alone): “when states face problems they cannot resolve individually and from which joint gains are possible or mutually undesirable outcomes are avoided.”

While treaties in other areas, such as trade, also bring domestic impacts, human rights treaties lack the reciprocal benefits found in other regimes. For example, unlike trade agreements which include elements of reciprocal compliance, reputation enhancement, the reduction of transaction costs and in which parties gain more from committing to the treaty than not, human rights treaties do not have a mutually beneficial nature.

Though negotiated in the international arena, human rights treaties have major consequences in the domestic realm. Rather than regulating policy and action across

---

21 Waltz 1979
22 Sikkink 1993, 438
23 Keohane 1984
24 Simmons 1998
borders, human rights treaties regulate the *internal activities* of a state.\(^{25}\) Therefore, human rights regimes directly challenge a fundamental norm of international law as defined in the UN Charter: that of state sovereignty and non-intervention.\(^{26}\) As Hathaway notes, “Human rights treaties impinge in core areas of national sovereignty without promising obvious material or strategic benefits.”\(^{27}\) Norms are developed and internalized at an international level, but implementation of those norms is individual at the national level.\(^{28}\) Human rights treaty membership is thus difficult to explain from a rationalist perspective, as the status of the rights of citizens in one country do not directly affect the national interests of another.

As this functionalist point of view does not quite explain the human rights regime, and it is therefore a puzzle as to what gains states achieve by concerning themselves with the internal human rights situations of other states. Hence norms and ideas enter the picture, and from the constructivist point of view, international human rights treaties make sense. In his analysis of the human rights regime, Donnelly uses a slightly modified version of Krasner’s classic definition of regime and articulates it as: “Norms and decision making procedures accepted by international actors to regulate an issue area.”\(^{29}\) The regime is centered around the United Nations, and thus its norms are laid out in its primary documents: the Universal Declaration of Human Rights and the International Human Rights Covenants. By this definition, the treaties I examine in this paper – CEDAW, CRC and CRPD – are examples of single issue regimes.

\(^{26}\) Charter of the United Nations, Article 2, Para. 7  
\(^{27}\) Hathaway 2002, 1938  
\(^{28}\) Donnelly 1986, 608  
\(^{29}\) Donnelly 1986, 602
Sikkink argues that “human rights does not represent a simple dichotomy of norms versus interests.” She writes that change in human rights comes when principled ideas are linked to material goods and demonstrated, tangible benefits. Sikkink, Simmons and others have shown how transnational advocacy networks such as international NGOs have played a role in creating the international human rights regime and encouraging states to adhere to its instruments, and that this movement is changing states’ understandings of national interest. Donnelly has argued that moral interests are no less “real” than material and that a sense of moral interdependence has led to the emergence of human rights regimes.

The human rights regime, according to Donnelly and others, is also relatively weak, and procedures beyond norm creation, promotion, and information exchange are largely absent. “The most important problem, however,” Donnelly writes, “was and remains the fact that a stronger international human rights regime does not rest on any perceived material interest of a state or coalition willing and able to supply it.” Human rights treaties therefore empower individual citizens to monitor and challenge the activities of their own governments, but there is no external punishment mechanism triggered when countries are not in compliance.

Thus we see that given the unique nature of the human rights regime – that it touches on sensitive areas of national sovereignty and internal matters of the state; that it does not offer the benefits typical of sovereignty-constraining regimes, such as cost- and burden-sharing, reputation enhancement, or mutual gains; and that it lacks a strong

---

30 Sikkink 1993, 437
32 Donnelly 1986, 616
enforcement mechanism, making it difficult to hold countries accountable to their declarations – that it is perhaps primed for controversy from the beginning.

**Treaty Ratification**

Many scholars question why nations would choose to bind themselves to these treaties which limit their action, or that are not their direct interests: “The most basic principle of international law is that states cannot be legally bound except with their own consent. So, in the first instance, the state need not enter into a treaty that does not conform to its interests.”\(^3^3\) As the Chayeses point out, treaties are negotiated, and therefore reflect compromise. They also reflect the balance of power in the negotiations, so not all countries will be equally happy with the outcome. As determined above, if reciprocal benefits are not received, and states resists instruments which regulate their behavior in the domestic sphere, why would they sign on to these instruments? Which kinds of countries are more and less likely to ratify treaties, and why? If some general patterns can be identified, perhaps this can shed some light on U.S. ratification of the three treaties examined in this paper.

Oona Hathaway and Beth Simmons have done great work in this area that can be applied to my cases. In Hathaway’s article on the costs of treaty commitment, she examines treaty ratification to understand how it is not purely linked to behavior.\(^3^4\) From the normative point of view, the United States and other liberal, democratic nations should ratify every human rights treaty; yet this isn’t the case. The costs of ratification must vary and be influenced by more factors that just this, to explain the variance we see

---

33 Chayes and Chayes 1993, 179
34 Hathaway 2003
across countries, issues areas, and time. Hathaway’s and Simmons’ work leads to some interesting conclusions that the countries one would intuitively expect to ratify human rights treaties – perhaps those that are democratic, with a strong rule of law, and which value these rights domestically – in fact may be disincentivized to ratify.

Hathaway argues that the costs of ratification vary across countries based on two criteria: they are a function of how much a country’s practices differ from the treaty requirements, as well as the country’s expectations that those costs will be realized.³⁵ Therefore, countries with strong internal monitoring and enforcement mechanisms are more likely to have the costs of membership realized. This holds true for the United States: with a culture of transparency and government oversight, and strong human rights entities like Amnesty International and Human Rights Watch, stringent monitoring of compliance would be expected.

Therefore, she finds that “countries with good human rights practices (low costs of compliance) and strong internal enforcement (high probability of realizing those costs) may therefore be less likely to sign or ratify a treaty than one might expect if one focused only on the practices themselves.”³⁶ This is indeed a surprising prediction, as Hathaway acknowledges. And it seems to hold well for the United States in the case of these three treaties – but it still leaves murky why the country has ratified other human rights treaties, and why other countries in similar situations (those with good practices and strong mechanisms for internal monitoring and enforcement) have done so.

Hathaway also writes that democratic nations are more likely to face internal pressures to abide by treaty commitments than non-democratic nations due to their

³⁵ Hathaway 2003, 13
³⁶ Hathaway 2003, 15
tradition of upholding the rule of law. Yet she also finds that democratic nations with good human rights practices should be *more likely* to join, which doesn’t hold for the United States (though it does for others, such as the Nordic countries).

In a different analysis of ratification, Simmons defines four types of ratifiers: sincere ratifiers, who intend to abide by the laws laid out in the treaty; strategic ratifiers, who do so because others do and they wish to avoid criticism; false negatives such as the United States, who support the values but will not ratify; and false positives, those countries who ratify but do not change their behavior or live up to a treaty’s provisions. Simmons identifies government preferences, domestic governing institutions, and varying incentives for some governments to ratify strategically as playing a role in determining human rights treaty ratification. The decision to ratify or not reflects how high the government expects the costs – both political and legal – of commitment to be.

Simmons disagrees with what she calls the ‘why not’ argument: the notion that countries ratify because of the lack of consequences (due to supposed weak enforcement) in the human rights regime. While it is true that there is no world government to enforce these laws, she contends that countries *are* held accountable – to major NGOs which conduct studies and publish reports on the state of human rights around the world. Simmons demonstrates that there are in fact political consequences for governments who ratify treaties, as groups can then mobilize to obtain that newly defined right, using the treaty as the center of their legal argument. She argues that ratification is not in fact, costless, due to the domestic legal implications of the agreement as well as the political

---

37 Hathaway 2003, 15-16
38 Hathaway 2003, 19
39 Simmons 2009
40 Hathaway 2003, 59
costs of those pushing for ratification. If it were costless, she argues, we would not
observe the variance in ratification across time, countries and issue areas that consistently
emerges.

Simmons identifies four factors which play a role in a country’s likelihood to
ratify human rights treaties: strength of domestic rule of law, the complexity of the
political process for ratification, federal structure, and the domestic legal system. Like
Hathaway, she finds that in countries with a strong domestic rule of law there are often
broader legal consequences to ratification, leading to lower instances of it. She also finds
that countries with common law systems ratify fewer treaties than those which operate a
civil law or other systems, due to the larger space allowed for interpretation and the
reliance on precedent, as opposed to codes and treaties. States with more federal systems
and more complex voting arrangements for the passage of legislation also have lower
rates of ratification. These findings hold for the United States: a federal, common law
country with a strong rule of law and a complicated ratification process.

Overall, Simmons sees ratification as reflecting preferences, of a state – but that
those preferences can change dramatically with a change of domestic governing coalition,
and can be impeded by domestic institutions. Simmons agrees in her findings that
countries with strong rights at home do not tend to share the demand for ratification of
these instruments. “In stable democracies treaties, treaties may be readily accepted, but
they are often redundant. Because political rights are largely protected… treaty
ratification adds very little political activity to that already established around
domestically guaranteed protections.”41

41 Simmons 2009, 16
Moravscik also finds that stable democracies are less likely to ratify human rights treaties. In his analysis of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), he finds that neither realist nor ideational accounts can explain its creation; as it was neither the insistence of the great powers nor normative persuasion which lead to the formation of the treaty.\textsuperscript{42} In fact, he finds that democracies allied with dictatorships and transitional regimes to oppose reciprocally binding human rights enforcement mechanisms. Instead, it was the governments of newly established democracies who were the most in favor of these agreements. He rightly identifies domestic political self-interest of those in power as the key criteria in this evaluation. Establishing a human rights regime “locks in” and consolidates democratic institutions, which enhances the credibility and stability of the new government. “In sum, governments turn to international enforcement when an international commitment effectively enforces the policy preferences of a particular government at a particular point in time against future domestic political alternatives.”\textsuperscript{43} Moravscik writes that governments will chose this option when these benefits outweigh the sovereignty costs of treaty membership. Newly established democracies are thus more interested in joining human rights regimes than are well-established democracies such as the United States. From this discussion, there are several takeaways that can be applied to our analysis. Given the fact that the United States has a strong rule of law, it may be more wary of treaties, even when its practices are in line. Though it is a democracy and thus shares the values espoused in the treaties, it is a stable democracy and does not have a constituency mobilizing for achievement of these rights. It is also federalist in structure,

\textsuperscript{42} Moravscik 2000, 219-220
\textsuperscript{43} Moravscik 2000, 220
and a common law country, leading to further wariness. The governing administrations also vary widely in the United States, which perhaps explains erratic behavior over time, and will be examined in further detail in the paper.

The Domestic Dimension

I will look at several of the main arguments put forth in the literature assessing why the United States has such an erratic record in human rights treaty ratification, and why that record does not reflect a purely normative decision making process. I will look at sovereignty concerns, federal/state issues, the legacy of the 1950s and Cold War-era aversion to human rights treaties, a different view of rights, structural impediments, a history of distrust with the UN as an institution, and the changing nature of American politics over the decades. I will later look for these factors in the specific arguments for and against ratification of CEDAW, CRC and CRPD.

Sovereignty Concerns

Concern over a loss of sovereignty is perhaps cited as the main factor influencing the erratic nature of U.S. treaty ratification, and as Donnelly argues, indicates further weakness of the human rights regime. Traditionally, sovereignty meant that no state had the right to interfere in the internal matters of another. Some argue, however, that this concept of sovereignty needs to and is changing, and thus international law need not be a threat to it.

The principle of the sovereign equality of all states is declared in the UN Charter:
Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.\(^{44}\)

Jeremy Rabkin’s work is representative of the traditional view of sovereignty, which he defines as independence.\(^{45}\) Rabkin is concerned that international law is not subject to the checks and balances that U.S. domestic law is. With the expansion of international law, he observes power flowing to the administrative or executive offices, thereby undermining electoral accountability. In this view the legitimacy of law is derived from an elected legislature accountable to its citizens; thus, international law should only cover the interactions between nations and not the actions or rights of individual citizens or how states govern at home. From this perspective, instruments such as human rights treaties are seen as mechanisms for the UN to expand its jurisdiction into areas which were traditionally, and should be, internal to the state. Rabkin also views international law as policy-creation by special interest groups, given the role that NGOs and other issue groups can have in the negotiation of these treaties.

Rabkin sees some international law as compatible with sovereignty, such as reducing barriers to trade. In his view, treaties should remain in areas which only cross international borders and involve reciprocity. The nature of the human rights regime does not conform to this definition; as noted above there is no reciprocal action which can be taken if one party does not adhere to the agreements, as there is in trade. If country X

\(^{44}\) Charter of the United Nations, Article 2, Para. 7.

\(^{45}\) Rabkin 1998
does not adhere to its agreement to reduce tariffs on imports of country Y, country Y can do the same thing in retaliation. But if country X prohibits its women from voting, reciprocal action makes no sense, and there is little other action which country Y can do to encourage country X to change its laws.

Rabkin also views human rights treaties that touch upon areas of family life (the raising of children, gender roles, etc., which are certainly discussed in both CEDAW and CRC) as inappropriate; he does not believe this should be the realm of the state, let alone the international community. This conservative American view of the right to individual liberty free from government intervention – as opposed to rights to benefits provided by the government – is linked to U.S. views of rights as differing from those of other countries, which is touched on more below.

Concerns of sovereignty are not unique to the human rights issue area. The debate over interference in the internal affairs of other nations is especially hot button issue in the areas of peacekeeping and military interventions, and has come to the forefront recently in the emerging concept of the Responsibility to Protect (R2P).46

The failures of the international community to respond to tragedies in Rwanda and Bosnia led some to propose a changed understanding of the accepted definition of sovereignty. The new understanding changes the right to independence from outside interference to one of responsibility to a country’s citizens. If a country will not or cannot protect its citizens from harm, the international community therefore has a responsibility

to act – the Responsibility to Protect. As one would expect, not all countries are on board
with this concept and some see it as a tool used by the strong to interfere with regimes
they do not like or to gain access to and influence in strategic regions. R2P in practice has
its criticisms; the sharpest, possibly, in the NATO intervention in Kosovo. The most
recent citation of R2P was used by the international community in its intervention in
Libya during the 2011 Arab Spring revolutions. It remains to be seen how this will turn
out, as well as how accepted R2P will be in the world. But regardless of issue area, the
defense of sovereignty is a strong force with which to be reckoned.

Some think this new concept of sovereignty should be applied to human rights, as
well. Sikkink finds that the concept of sovereignty is changing in her analysis of the
impact of transnational human rights networks in Latin America as “the international
human rights network seeks to redefine what is essentially within the domestic
jurisdiction of states.”\(^{47}\) She defines this new understanding of sovereignty as “a shared
set of understandings and expectations about the authority of the state and is reinforced
by practices.”\(^{48}\) Sikkink does not see the concept of sovereignty going away, but that the
concept is adapting to a newly interconnected world where non-state actors play a greater
role. Likewise, Koh argues that international law should not impinge upon American
sovereignty and encourages a new interpretation of it.\(^{49}\) He claims that by obeying
international norms the United States in fact builds soft power, enhances moral authority
and strengthens capacity for U.S. leadership.\(^{50}\)

\(^{47}\) Sikkink 1993, 413
\(^{48}\) Sikkink 1993, 414
\(^{49}\) Koh 2003
\(^{50}\) Koh 2003, 1480
Yet opponents of U.S. ratification of human rights treaties largely share Rabkin’s views on sovereignty. The vehemence of debate around sovereignty also seems to be a uniquely American phenomenon. Whether or not this stems from the U.S. role as the global hegemon, it is curious that the nation’s open, liberal, Western democratic allies do not share the same depth of distrust of international law.

Federalism and States’ Rights

State rather than federal law governs the rights of many of the issue areas covered in human rights treaties, such as children’s rights, in the United States. Yet as noted above, the Constitution proclaims that treaties are the “supreme law of the land.”51 States’ rights are well enshrined the U.S. Constitution,52 and any oversight of that by federal law – in any issue area – is a question of concern and gives rise to virulent debate. Some in the United States are wary not only of international oversight but also the increase of the powers of the federal government at the expense of the states.53

But other states, such as Australia, Canada and Switzerland, are also highly federalist – and yet do not share the United States’ erratic treaty ratification record. Furthermore, the federal-state issue can be overcome by attaching a reservation, understanding or declaration (RUD) to treaties clarifying this distinction. The United States has indeed attached RUDs to each of the four human rights treaties it has ratified.

---

51 Constitution of the United States, Article 6
52 The 10th Amendment reads: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
53 Among others see Baehr 1994, Amnesty International CEDAW website; Moss 2010; Blanchfield 2010
Table 2: RUDs Attached by the United States to Ratified Human Rights Treaties

- **Racial Discrimination**: RUDs indicating a protection of individual rights; that no action would be required that was incompatible with the Constitution; and declaring that the provisions were not self-executing (thus, requiring implementing legislation).

- **Torture Convention**: RUD indicating that the provisions were not self-executing.

- **Genocide Convention**: RUDs indicating that the consent of the United States was required to have a citizen appear before the ICJ; and that nothing in the convention overrode the Constitution.

- **ICCPR**: RUDs reserving the right to prosecute juveniles as adults; to execute anyone (including pregnant women); to protect free speech and association, and declaring that the provisions were not self-executing.

---

54 United Nations, Multilateral Treaties Deposited with the Secretary General
As noted above, other federal states run into similar legislative jurisdiction issues as does the United States, yet find ways to ratify the treaties and still adhere to their federalist systems. Australia made a declaration with the ICCPR which could serve as a model for the United States:

"Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise." 55

Furthermore, in its ratification of CEDAW, Australia pointed out that article 11(2), concerning maternity leave, was determined by the states and not the federal government. Canada also declared an understanding with CEDAW that accommodation could be carried out at “more than one level of government;” i.e. the territorial level, as opposed to the federal level, and still met the spirit of the treaty. 56

As noted earlier, however, RUDs can be a slippery slope and states should be wary of taking them to the point of effectively nullifying a treaty. The United States added a large amount of RUDs to its ratification of the Genocide Convention; the reservations became known as the Sovereignty Package 57 and amounted to two reservations, five understandings and one declaration that required implementing legislation. They effectively declared that the United States has to consent to being brought before the International Court of Justice (ICJ). Under the reciprocity law, this

---

55 United Nations, Multilateral treaties deposited with the Secretary General
56 United Nations, Multilateral treaties deposited with the Secretary General
also means that any other nation can invoke that reservation if the United States brings charges against it at the ICJ – rendering U.S. ratification, in many eyes, largely symbolic only. Implementing legislation also took two more years to complete, and thus the Convention did not become binding on the United States until 1989.\(^{58}\) The blowback from this package also demonstrates the detriment of RUDs: a year after U.S. ratification of the Genocide Convention was deposited with the UN Secretary General, nine European states had filed objections to aspects of the Sovereignty Package.\(^{59}\)

Therefore, while the federalist structure of the American government does not make it simple to sign on to treaties which cover rights governed by states under U.S. law, the ability to attach a reservation, declaration or understanding clarifying that the treaty’s requirements will be met under state law should suffice in ensuring that the country adheres to the spirit of the treaty, and facilitate ratification – as long as the RUDs do not go too far in effectively nullify the country’s participation.

1950s Legacy, the Cold War, and a Different View of Rights

Natalie Kaufman argues that the Senate’s reluctance to ratify human rights treaties is a legacy of the 1950s, when anti-Communist sentiment and segregationist sympathies caused these treaties to be viewed with suspicion.\(^{60}\) Kaufman demonstrates how the powerful influence of individuals in the American Bar Association (ABA) held sway over Senators and convinced them against ratifying the Genocide Convention. Some feared that convention ratification would cause the south’s Jim Crow laws and

\(^{58}\) United Nations, Multilateral treaties deposited with the Secretary General
\(^{59}\) Power 2002, LeBlanc 1991
other elements of segregation to be held up for international scrutiny. The ABA had legitimacy with the Senators given the legal nature of the convention and the fact that many Senators were lawyers themselves. The ABA mobilized public opinion by holding conferences and seminars and influenced policy makers by meeting with State Department officials, to spread this view.

Concerns centered on the definition of the term ‘genocide’ itself:

_In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:_

(a) _Killing members of the group;

(b) _Causing serious bodily or mental harm to members of the group;

(c) _Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) _Imposing measures intended to prevent births within the group;

(e) _Forcibly transferring children of the group to another group._

Questions were raised as to what determines “part of a group.” If _individuals_ could be determined part of a group, could the lynchings of African Americans be determined to be genocide? Also, what constituted “mental harm,” another term in the convention? Could the segregation of black and white Americans be argued to cause this?

Both the civil rights movement and the Cold War created hostility towards human rights treaties, as along with the above concerns, there were fears that the Communists would use the UN and multilateral treaties to their ends. Many scholars note that human

---

62 For a good discussion of these debates, see LeBlanc 1991
rights have always occupied a central place in domestic policy, but point out the
 distinction in U.S. views of civil and political rights versus economic and social rights.\textsuperscript{63} This is a theme which emerges in much of the literature and has large consequences for American choices in international treaties.

Barbara Stark examines why the United States has not ratified the economic and social covenants and only the civil and political ones.\textsuperscript{64} She discusses the difference in U.S. views on “positive” (economic and social) and “negative” (civil and political) rights, noting that the Constitution only covers negative rights. This interpretation is a very different conception of rights than exists in many other countries. Stark argues that during the Cold War, the United States tied economic rights with Communism and the Soviet Union, and therefore domestic human rights groups were unable to draw upon international human right treaties to achieve the economic rights missing from U.S. domestic law. Social and economic rights also became increasingly linked to the Soviet Union and communism during this time, further distancing them from the collective identity of Americans.

During this time, conservative Ohio Senator John Bricker proposed his controversial amendment of the same name, which would have reduced the President’s powers and increased those of Congress in international law making. Though (barely) defeated, the debate around the Bricker Amendment and the fears that it represented caused then Secretary of State John Foster Dulles to announce in 1953 that the United States did not intend to ratify human rights treaties – and, Kaufman argues, the ripple effects linger to this day.

\textsuperscript{63} See Baehr 1994, Sunstein 2005, Stark 2000
\textsuperscript{64} Stark 2000
Kaufman describes the ways in which the treaties were portrayed as controversial, many of which are the same tactics used today. Treaties were said to threaten the American form of government and opponents placed the debate in a legalistic framework despite being, in fact, political in nature. She also demonstrates how these arguments have remained fairly similar over time, including fears of individual and states’ rights being taken away in favor of a world government. As she writes, “the belief grew that the human rights treaties were challenges to U.S. law and practice, as opposed to being a means of internationalizing traditional U.S. values.”

It is interesting to note that the ABA has changed its positions on these treaties over time, and now in fact supports the ratification of many international treaties, including the Convention on the Law of the Sea (LOS), the Rome Statute for an International Criminal Court and the American Convention on Human Rights, along with CEDAW and the CRC.

The United States and International Institutions

The United States has long had an ambivalent relationship with global engagement and international institutions, which perhaps can be used to illuminate its ambivalent relationship with human rights treaties in particular. As Peter Baehr points out, the country’s foreign policy has been one of trying to merge ethics and interests, moralism and realism, which often leads to inconsistent behavior.

The country has vacillated over the years between isolationism and robust international engagement of two kinds: unilateral and multilateral. Stewart Patrick writes

---

65 Kaufman 1990, 51
66 American Bar Association 2011
67 Baehr 1994, 81
that the United States’ ambivalent engagement with multilateralism results from a clash of views of how American should behave in the world. In his analysis, as the country became more powerful economically, three diverse views emerged: Roosevelt’s great power internationalism, Wilson’s liberal intuitionalism, and isolationism. Though the three outlooks differed, they shared a basic belief in American exceptionalism. He contends that it is the clash of these three views, held by different segments of society and different leaders, which causes the ambivalence towards multilateralism we see today. Patrick identifies a pattern of the country promoting instruments of collective security over the years but failing to abide by or enforce them.

Perhaps due to accidents of history and geography, American leaders adopted an isolationist, non-interventionist approach to foreign policy from the beginning. This approach is possibly most famously espoused in President Thomas Jefferson’s 1801 inaugural speech, which declared, "Peace, commerce, and honest friendship with all nations-entangling alliances with none."  

International engagement received a boost following World War One – a war, incidentally, in which the country was loathe to intervene. Yet afterwards, President Woodrow Wilson made a valiant effort to change America’s role in the global system by laying out a vision for the new world order in his Fourteen Points Speech. This vision included the concept of self determination, open economic markets, open covenants of peace, disarmament, and the creation of an international body to solve disputes without the use of force: the League of Nations. Wilson travelled to Versailles to found this new world body, which was tragically destined for failure; as John Maynard Keynes elegantly

---

68 Patrick 2008  
69 Jefferson 1801  
70 Wilson 1918
noted, Wilson was overshadowed by French Prime Minister Georges Clemenceau at the negotiations and returned to the United States largely defeated in achieving the objectives laid out in his speech.\textsuperscript{71} To add insult to injury, the U.S. Senate voted against joining the League of Nations, which meant the country never became a part of an entity which its president had created. Instead of embracing engagement in the new global order, the United States and the rest of the world retreated to closed economic and nationalistic foreign policies, the Great Depression ensued shortly thereafter, and twenty years later Europe was at war again.

The actions taken by the United States were entirely different after World War Two. President Roosevelt had ushered in a new internationalist vision with his Four Freedoms Speech, detailing freedom of speech and expression, freedom of worship, freedom from want and freedom from fear.\textsuperscript{72} The country emerged from this conflict in a far greater position of power relative to other nations – as well as relative to where it had been after the First World War – and had learned a lesson from its recent history: that isolationist retreat would not bring about peace. Instead, the country now accepted the role of global hegemon in creating and maintaining a world order which included an open liberal economic system, the physical reconstruction of Germany, Europe and Japan, economic aid on unprecedented levels, a collective security system, and the United Nations – which it not only joined, but in which it took a leadership role.

The United States led the way to an open liberal multilateral economic order through its own domestic policies (lowering tariffs, providing access to its markets, etc.) and by founding and providing the majority funding for the IMF and the World Bank.

\textsuperscript{71} Keynes 1920
\textsuperscript{72} Roosevelt 1941
This new economic system was also built out of the lessons of the Great Depression – that the policies of protectionism and closed markets were a barrier to growth, and that paths to peace and prosperity lay in open access to trade. Having witnessed the devastating results of nationalistic security policies, the notion of collective security was also seen as an urgent need after World War Two. The United States, unlike other countries who fought in the war, still retained a great military capacity and had not suffered the catastrophic losses which others had in population or economic and military terms. The country was an advocate for, underwriter of and participant in the main collective security systems created following World War Two: the UN Security Council and NATO.

The United States and International Human Rights

Given the atrocities committed during the Holocaust, human rights were also pushed to the forefront of the global stage after World War Two. Eleanor Roosevelt took a lead role for the United States in drafting the Universal Declaration of Human Rights (UDHR), which affirmed the rights detailed within it as a common standard of achievement for all.\textsuperscript{73} The UDHR declared the right to life, to not be held in slavery or subject to torture, protection of the rule of law, freedom of movement, thought, expression and association. The United States played a key role in the early days of the UN Commission on Human Rights (now the Human Rights Council) and in drafting the Covenants on Civil and Political Rights and Economic and Social Rights. Yet in a foreshadowing of continued of ambivalence, the United States has still not ratified the latter.

\textsuperscript{73} Flood 2000, 349
David P. Forsythe gives a sound historical analysis of the U.S. relationship with the international human rights regime, and how the country’s relationship with it varies over time.74 From 1945 to 1953 he describes the United States as giving the regime limited support: as mentioned above, the nation was an important actor in the drafting of the UDHR, but did not really want a strong human rights regime due to a desire to protect Jim Crow laws and others from international scrutiny.

As the Cold War heated up, the 1950s became the height of opposition to human rights treaties in the U.S. Senate culminating with the Bricker Amendment controversy. Forsythe describes the period between 1954 and 1974 as one of U.S. neglect for the international human rights treaty regime. As mentioned above, international covenants were seen as socialist, and American nationalism dominated the mood of the day. Human rights were only supported if they could be used as a part of the larger anti-Communist policy to spread democracy and capitalism around the world. Furthermore, the explosion in UN membership of newly independent nations emerging from colonization meant an increased focus on social and economic rights in the world forum, which the United States tends not to value as highly. President Nixon and his National Security Advisor and then Secretary of State Henry Kissinger did not place a high value on the promotion of international human rights during this time.

Between 1974 and 1981 there was renewed interest in human rights: Jimmy Carter highlighted them in his Presidential campaign and focused on getting a batch of international treaties passed during his tenure, including the Covenant on Civil and Political Rights. Yet Forsythe and others point out that his policies were somewhat

74 Forsythe 1990
inconsistent – Carter included many reservations, declarations and understandings on the treaties he sent to the Senate for ratification, watering down their impact.\(^{75}\)

From 1981, Forsythe observes a return to Cold War politics: President Reagan viewed human rights policy as useful only to serve an anti-Communism agenda. Strong beliefs in American exceptionalism, unilateralism, and against an international definition of human rights ruled the thinking in this period. The Clinton Administration took the approach of forceful intervention in human rights issues around the world, with mixed results; President Bush largely ignored human rights and shunned instruments of international cooperation, choosing unilateral over multilateral action. Where are we today? President Obama has brought a return to a more multilateral approach to foreign policy and a re-engagement with international institutions.

The pendulum on U.S. views on international human rights has swung dramatically over the decades with changes in political leadership. Which lead me to inquire if the ratification of human rights treaties is an issue that runs straight down party lines in American politics.

*American Partisan Politics*

As detailed above in the section on the United States and human rights, Forsythe and others see the shift in domestic politics as the primary explanation for the complex and ambiguous relationship the United States has with the international human rights regime. I decided to examine the party in control of the White House and the Senate for each human rights treaty at the time it came into being, and at U.S. signing and ratification, to see if any patterns could be determined. My prediction was that Democrats

\(^{75}\) See Forsythe 1990, Schabas 2000 and Lillich 1981
would be more likely to ratify international human rights treaties and Republicans would
be less inclined, given generally stronger Democratic support for universal rights and
social protections, and traditionally stronger Republican protections for the freedom of
the individual above the oversight of the state.

Upon starting this research, I thought there might be a correlation between which
party held the Presidency and the Senate that would shed light on U.S. ambivalence in
human rights treaty ratification. Looking at the data, it does seem to have something to do
with the party in power (in his analysis, Moravcsik also notes that support for human
rights treaties comes disproportionately from Democratic Presidents and members of
Congress while opposition is disproportionately Republican⁷⁶); yet, a Democratic
majority in the Senate is certainly not a guarantee for ratification.⁷⁷

There are currently fourteen multilateral treaties deposited with the UN Secretary
General under Chapter IV: Human Rights.⁷⁸ Of these, the United States has signed eight
and ratified only four (those four are: the Convention on the Prevention and Punishment
of the Crime of Genocide, the International Convention on the Elimination of All Forms
of Racial Discrimination, the International Covenant on Civil and Political Rights and the
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment). As we see from the data, seven of the eight signatures were completed by a
Democratic President. Three Democratic and seven Republican Presidents passed on the
opportunity to sign treaties which opened for signature during their time in office.⁷⁹

---

⁷⁶ Moravscik 2002, 356
⁷⁷ See Table 3: Human Rights Treaties: U.S. Signature and Ratification Noting Political Party in Power
⁷⁸ United Nations Treaty Collection
⁷⁹ This information and all of the following dates of opening, ratification and signature can be found in the
United Nations Treaty Collection website
<table>
<thead>
<tr>
<th>Treaty*</th>
<th>Open for Signing at UN</th>
<th>White House</th>
<th>Senate</th>
<th>Entry into Force</th>
<th>US Signature</th>
<th>White House</th>
<th>Senate</th>
<th>US Ratification</th>
<th>White House</th>
<th>Senate</th>
<th>Lag Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Racial Discrimination</td>
<td>7-Mar-66</td>
<td>D: Johnson</td>
<td>D</td>
<td>4-Jan-69</td>
<td>28-Sep-66</td>
<td>D: Johnson</td>
<td>D</td>
<td>21-Oct-94</td>
<td>D: Clinton</td>
<td>D</td>
<td>28 years</td>
</tr>
<tr>
<td>Economic, Social and Cultural Rig</td>
<td>16-Dec-66</td>
<td>D: Johnson</td>
<td>D</td>
<td>3-Jan-76</td>
<td>5-Oct-77</td>
<td>D: Carter</td>
<td>D</td>
<td>-</td>
<td>-</td>
<td>34+ years</td>
<td></td>
</tr>
<tr>
<td>War Crimes</td>
<td>26-Nov-68</td>
<td>D: Johnson</td>
<td>D</td>
<td>11-Nov-70</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Apartheid</td>
<td>30-Nov-73</td>
<td>R: Nixon</td>
<td>D</td>
<td>18-Jul-67</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>CEDAW</td>
<td>18-Dec-79</td>
<td>D: Carter</td>
<td>D</td>
<td>3-Sep-81</td>
<td>17-Jul-80</td>
<td>D: Carter</td>
<td>D</td>
<td>-</td>
<td>-</td>
<td>31+ years</td>
<td></td>
</tr>
<tr>
<td>Apartheid in Sports</td>
<td>10-Dec-85</td>
<td>R: Reagan</td>
<td>R</td>
<td>3-Apr-88</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>CRC</td>
<td>20-Nov-89</td>
<td>R: Bush 1</td>
<td>D</td>
<td>2-Sep-90</td>
<td>16-Feb-95</td>
<td>D: Clinton</td>
<td>R</td>
<td>-</td>
<td>-</td>
<td>16+ years</td>
<td></td>
</tr>
<tr>
<td>Migrant Workers</td>
<td>18-Dec-90</td>
<td>R: Bush 1</td>
<td>D</td>
<td>1-Jul-03</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Indigenous People</td>
<td>24-Jul-92</td>
<td>R: Bush 1</td>
<td>D</td>
<td>4-Aug-93</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>CRPD</td>
<td>13-Dec-06</td>
<td>R: Bush 2</td>
<td>R</td>
<td>3-May-08</td>
<td>30-Jul-09</td>
<td>D: Obama</td>
<td>D</td>
<td>-</td>
<td>-</td>
<td>2+ years</td>
<td></td>
</tr>
<tr>
<td>Disappearance</td>
<td>20-Dec-06</td>
<td>R: Bush 2</td>
<td>R</td>
<td>23-Dec-10</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>COUNT</td>
<td>6 D / 8 R</td>
<td>7 D / 1 R</td>
<td>6 D / 2 R</td>
<td>4 D / 0 R</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Treaty Names in Full*
- Convention on the Prevention and Punishment of the Crime of Genocide
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity
- International Convention on the Suppression and Punishment of the Crime of Apartheid
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- International Convention against Apartheid in Sports
- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean
- Convention on the Rights of Persons with Disabilities
- International Convention for the Protection of All Persons from Enforced Disappearance
As we see in the table, all four ratifications were accomplished by a Democrat-majority Senate. This is an item to note: a Republican-controlled Senate has never ratified an international human rights treaty. Yet, Democratic Senates have also come and gone without ratification. Furthermore, none of the treaties were ratified under the same Administration during which they were signed; there were lag times of six, 15, 28 and 40 years for these treaties to be ratified. There is no simple rule of which party will sign and ratify these treaties, but it does trend towards the Democratic party.

What’s the political record for the human rights treaties that the United States has ratified? The Convention on the Prevention and Punishment of the Crime of Genocide was adopted shortly after the end of World War Two and was signed by Democratic President Truman in the same year, 1948. Yet it was not ratified until 40 years later, in 1988, under a Democratic Senate – though, as we will see later, at the behest of Republican President Ronald Reagan.

The International Convention on the Elimination of All Forms of Racial Discrimination was also adopted and signed in the same year, 1966, under Democratic President Lyndon Johnson. Given the civil rights movement in the United States at this time and the country’s shameful history of slavery, it makes sense that there was a very vocal constituency in favor of this treaty. Yet it also was not ratified until decades later, under the 1994 Democratically-controlled Senate.

The International Covenant on Civil and Political Rights was also adopted by the UN in 1966, but the United States did not become a signatory until 1977, under Democratic President Carter. It took 15 years to ratify, which finally occurred under the 1992 Democrat majority Senate.
The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted in 1984 and the United States signed on in 1988 under Republican President Reagan – the only Republican President, it should be noted, to sign a human rights treaty. It was not ratified until six years later, under the 1994 Democratic Senate.

Thus we observe a trend that it takes a Democratic President to sign on to the treaty in the first place; we see this with President Obama signing the Convention on Persons with Disabilities though the treaty was adopted by the UN under his predecessor, George W. Bush. Likewise, George H.W. Bush did not sign the Convention on the Rights of the Child, but his Democratic successor Bill Clinton did.

It does also seem to be the case that a Democratically-controlled Senate is necessary for a human rights treaty to be ratified; but it is not all that is needed. All four human rights treaties that have been ratified were passed under a Democratic Senate, but Democratic control has come and gone over the years, and the three examined in this paper are still not ratified.

It of course should be noted that not all Democrats feel the same way about these issues and neither can this be said of Republicans. Regional geography and constituent interests play a large part in how moderate, liberal or conservative politicians are within their own party. Furthermore, as we see with the influence of certain actors like Senator Bricker and Presidents such as Jimmy Carter, individual leaders play a key role in shaping U.S. policy. We’ll see more of this with the figure of Senator Jesse Helms with and the ratification debates over CEDAW and the CRC.
There are also structural constraints to U.S treaty ratification. The Senate requires a two-thirds super majority to pass international treaty legislation, which is certainly a high threshold to clear – the highest, in fact, of any industrialized democracy.\textsuperscript{80} A committee chair is also able to block a vote if a supermajority exists, a feature that can keep items off the agenda, depending on the whims or constituents of the chair. Chairs certainly have had influence, such as former Senate Foreign Relations Committee chair Jesse Helms, who delivered on his promise to prevent CEDAW from seeing “the light of day” during his tenure.

The literature is rich with analysis of the United States’ relationship with human rights treaties. Many factors seem to be at play in the erratic behavior we observe: issues of sovereignty and states’ rights, a legacy of the Cold War and hostility to international law from the 1950s, wariness with the United Nations as an institution and international law in general, and changes in American politics. I will now examine these three specific treaties and see which of these factors we observe, or if any new ones emerge.

**Research Design**

I chose CEDAW, CRC and CRPD because they cover rights for which the United States has very strong domestic protections and that the country promotes heavily on the world stage. It is therefore a puzzle to try to reconcile this identity with refusal so far to ratify these instruments on an international level. These treaties differ from the other human rights treaties which the United States has not ratified in their substance and the areas they cover. They have also all been signed by an American president; thus, all have

\textsuperscript{80} Moravscik 2002, 358
had their value confirmed by a leader and are pending approval by the Senate to be ratified.

In the examination of these three treaties, I will be looking for the reasons cited above in the literature review as well as domestic politics, in the arguments for and against treaty ratification. Through examining hearing testimony, the Congressional record, resolutions and statements on the treaties by members of the U.S. Senate, articles, and advocacy documents, I will assess what is preventing the ratification of each, attempt to draw conclusions for all three and extrapolate on the ratification challenge faced by human rights treaties in general.

**The Three Cases: CEDAW, CRC and CRPD**

*The Convention on the Elimination of All Forms of Discrimination Against Women*

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the UN General Assembly on 18 December 1979 and entered into force in 3 September 1981.\(^{81}\) The United States signed the convention on 1 March 1980; President Jimmy Carter submitted it to the Senate for advice and consent on 12 November 1980.\(^{82}\) Then President Carter was a Democrat with a strong record on human rights, and both bodies of Congress were controlled by Democrats – yet they could not accomplish ratification. CEDAW has been considered in hearings by the Senate Committee on Foreign Relations five times: in 1988, 1990, 1994, 2002 and 2010. In 1994

---

\(^{81}\) All dates from United Nations Treaty Collection website  
\(^{82}\) U.S. Department of State Office of the Legal Advisor website
and 2002, the committee reported CEDAW out favorably, but it has yet to be brought to
the Senate floor for consideration.  

The current Obama Administration formally asked the Senate to consider
ratification of CEDAW in 2009 and listed the treaty on its 2009 treaty priority list. The Senate Judiciary Committee held a hearing on CEDAW ratification in November
2010 but the convention has still not made it to the full floor. The United States is one
of only seven countries who have not ratified the Convention, the other six being Iran,
Nauru, Palau, Somalia, Sudan and Tonga – causing many to remark on the kind of
company the nation keeps.

CEDAW defines discrimination as: “any distinction, exclusion or restriction made
on the basis of sex which has the effect or purpose of impairing or nullifying the
recognition, enjoyment or exercise by women, irrespective of their marital status, on a
basis of equality of men and women, of human rights and fundamental freedoms in the
political, economic, social, cultural, civil or any other field.” It requires that states
incorporate gender equality into their legislation and grants women the same rights as
men with respect to many things including: determining their nationality and that of their
children; access to education, employment, health care (including family planning) and
political participation; and equality with men before the law.

The treaty established a Committee on the Elimination of Discrimination Against
Women, made up of experts responsible for assessing progress of the implementation of

83 Blanchfield 2010 (CEDAW)
84 Moss 2010, 8
85 Treaty Priority List for the 111th Congress
86 U.S. Senate Committee of the Judiciary, Hearings & Meetings
87 United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination
Against Women
the treaty’s measures by state parties. Countries party to the treaty must submit regular reports and address concerns and recommendations of the Committee.88

The United States prides itself on its equality for women and champions women’s rights around the world. The country has legislation protecting the rights of women to vote, eliminating discrimination in education and guaranteeing equal pay, and protecting the right to abortion (though to be sure this is a hotly contested right). Both the White House and the Department of State list women’s issues as a top policy priority and have stand alone offices devoted to them: the White House’s Council on Women and Girls and the State Department’s Office for Global Women’s Issues.

The content of the women’s treaty is consistent with existing U.S. laws protecting the rights of women.89 Despite this alignment and strong support for the values espoused in the document, opposition to the treaty is strong. Groups against ratification include conservative academic institutes, grassroots groups of home school associations, parental rights groups and religious organizations. Groups in support of treaty ratification include liberal legal scholars, women’s rights advocates, human rights NGOs, and the current Administration.

CEDAW: Arguments Against Ratification

Opposition to U.S. ratification of CEDAW is organized around the following themes: concerns over a loss of sovereignty; questions on gender roles, family structure and independence, including the right to homeschooling; interpretations of the treaty’s stance on abortion, family planning and prostitution; and questions of the effectiveness of

88 United Nations, Committee on the Elimination of Discrimination against Women (website)
89 Amnesty International, CEDAW webpage
the instrument itself including the lack of benefits it offers American women. Opponents include organizations such as the Heritage Foundation, the American Enterprise Institute, the Home School Legal Defense Fund, and conservative lawmakers and politicians.

Sovereignty

Opponents cite a loss of sovereignty as inherent to ratification of CEDAW, and particularly dislike the role of the committee in formulating recommendations and reviewing country reports. They argue that this is not a democratic but a bureaucratic process, and that legislation should be created and debated through the U.S. legal process and not a panel at the UN.90

Many conservatives, The Heritage Foundation’s Steven Groves included, tend to view the committee as attempting to push a liberal agenda which they describe as antithetical to traditional American principles and is seeking to change the role of women as mothers and caretakers in society. Groves critiques the committee for policy recommendations viewed at odds with American values – “highly controversial issues regarding American social and cultural norms” – and claims that ratification would produce “at best, an intangible and fleeting public diplomacy benefit.”91 Christina Hoff Sommers, of the conservative think tank American Enterprise Institute’s (AEI) sees CEDAW’s ‘rules’ as “antithetical to American values, and any good-faith effort to incorporate them into American law would conflict with our traditions of individual

90 See for example, Fagan 2002, Fagan 2011 and Groves 2010
91 Groves 2010
Sommers and her colleagues view these treaties as government oversight into areas traditionally ruled by individual liberty and private choice, such as parenting.

Conservative articles in the media also use inflammatory language, claiming that the treaty: “intrudes on the family and strips parents of the power to raise their children without government interference.” The committee is often described in derogatory language, labeled in one representative instance as “a group of unaccountable so-called experts in Switzerland.”

Arguments in this vein also convene around the unknown; that despite claims that the United States will not have to modify any laws to be in compliance with treaty provisions, that in fact there is no way to tell if and how U.S. policies would have to change. Interestingly, the opposition uses the same fact the proponents do – the strength and compatibility of our existing domestic laws – as a reason not to ratify the treaty. In their view, there is no reason to do so, as Americans have nothing to gain from the treaty.

**Values and Hot Button Issues**

Concerns about the role of the committee tie in well to the next major contention, which is that the treaty delves into areas of gender roles and the family. As Groves describes: “The CEDAW Committee has for 30 years established a consistent record of promoting gender-related policies that do not comport with existing American legal and

---

92 Sommers 2010, 4-5
93 Abrams 2011
94 Groves 2010
95 Fagan 2002
cultural norms and has encouraged the national governments of CEDAW members to engage in social engineering on a massive scale.”

Sommers has a particular issue with Article 5(a), which states: “States Parties shall take all appropriate measures . . . [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (italics mine). In her view, this is eliminating gender stereotypes, including those of femininity and motherhood, which should instead be cause célèbre.

The Home School Legal Defense Association (HSLDA) is a group which mounts powerful campaigns against the treaty when it comes up for deliberation in Senate committees and is representative of those that argue that CEDAW would impose restrictions of the freedom of Americans to homeschool their children. HSLDA describes itself as a nonprofit advocacy organization established to defend and advance the constitutional right of parents to direct the education of their children and to protect family freedoms. HSLDA is against both CEDAW and CRC (its opposition to the CRC is further detailed below). Specifically, the organization has a problem with Article 10 of CEDAW which ensures equality between men and women in education, prohibiting stereotyped gender roles and access to information on family planning. This discussion of the elimination of stereotyping of gender roles causes some groups to claim that the

96 Groves 2010
97 HSLDA website
98 Estrada 2009
UN is attempting redefine the American family structure and the roles of men and women in it.99

Many pro-life groups also object to Article 12, which ensures access to family planning services, interpreting this provision as condoning and legalizing abortion, despite the fact that many countries which have ratified the treaty outlaw abortion.100 Repeated again and again in arguments against ratification is the citation of one committee report which criticized the establishment of a Mother’s Day in Belarus, and the criticism of Ireland, Peru, Argentina and others for outlawing abortion.101 Yet these recommendations are recommendations only; as discussed earlier in this paper, human rights treaties do not have an enforcement mechanism. Furthermore, the treaty itself does not advocate abortion, though the arguments of those opposed to ratification lead a reader to believe that is does.

**Effectiveness**

Finally, opponents argue that U.S ratification of CEDAW would in fact not advance national interests or the rights of women domestically. They argue that deeds matter more than words, question the effectiveness of the treaty, and believe that the United States better demonstrates its commitment to women’s rights through its actions. As former U.S. Ambassador to the United Nations Jeanne Kirkpatrick stated in her 2002 testimony, “it is more important to do than to speak.”102

---

99 Amnesty International, CEDAW
100 Amnesty International, CEDAW
101 Fagan 2002, Groves 2010
102 Kirkpatrick 2002
The Heritage Foundation’s Steven Groves is another who believes that the actions the United States has taken in protecting and promoting women’s rights as far more powerful messages to the international community than CEDAW ratification would be. Many opponents point out that many countries which have ratified CEDAW are places where women still enjoy far from equal rights and protection under the law. Saudi Arabia is an often-cited case, where despite being just granted the right to vote and run for office in 2015, women still cannot drive. Others jump on the lack of enforcement of the human rights regime as a means to discredit the instrument, with one article stating: “The U.N. itself admits that there is no way for it to enforce its own laws and protect children.” Yet this argument seems to contradict opponents’ claims that by ratifying the treaty, the United States would be bound by these very same rules.

In her 2002 testimony, lawyer Kathryn Balmforth lays out two reasons for her opposition: first, that it offers nothing for American women. American civil rights legislation protects women in the United States and, more importantly, laws are created through a democratic judicial system and can be contested through that system. Opponents see these issues as purely domestic. In his 2010 testimony, Groves details the laws that exist to protect women’s rights in the United States and sees no way that CEDAW ratification benefits American women. He also doubts that ratification would enhance U.S. moral leadership on the issue.

---

103 Groves 2010
106 Abrams 2011
107 Balmforth 2002
108 Groves 2010
CEDAW opponents tend not to believe in the power of treaties in general to signify or effect real change – to them, it is not signing but implementation, not the word but the deed that matters. Opponents wonder how U.S. ratification would improve the rights of women around the world and if there are better ways for the country to advance international women’s rights.

**CEDAW: Arguments for Ratification**

Proponents of U.S. ratification of CEDAW include groups such as Amnesty International, Human Rights Watch, the National Organization for Women, the American Bar Association, UN-affiliated groups such as the United Nations Association of the USA and liberal lawmakers, academics and politicians. Arguments for ratification fall into the following categories: that ratification would make a statement of strong support for global women’s rights; that there is a low legal cost to do so as it would cause no change to our domestic laws; that continued non-ratification damages our moral standing and reputation of being a global leader on human rights; and therefore, that it harms our foreign policy interests and diplomatic efforts to improve the lots of women’s lives around the world. Implicit in these arguments in the belief that the treaty *is* an effective instrument in advancing the development of women and girls globally.

**Foreign Policy Implications**

In his 2002 testimony for ratification, current State Department Legal Advisor Harold Koh gives two main reasons why the United States should ratify CEDAW: “First, ratification would make an important global statement regarding the seriousness of our
national commitment to these issues. Second, ratification would have a major impact in ensuring both the appearance and the reality that our national practices fully satisfy or exceed international standards.”\(^{109}\)

In Ambassador Melanne Verveer’s 2010 testimony, she claims ratification is “critical to our efforts to promote and defend the rights of women across the globe.”\(^{110}\) The current Ambassador at Large for Global Women’s Issues and longtime women’s rights advocate links our ratification of CEDAW with our ability to prevent human rights abuses against women around the world: “Some governments use the fact that the U.S. has not ratified the treaty as a pretext for not living up to their own obligations under it. Our failure to ratify also deprives us of a powerful tool to combat discrimination against women around the world, because as a non-party, it makes it more difficult for us to press other parties to live up to their commitments under the treaty.”\(^{111}\) NGOs such as Amnesty International, Human Rights Watch, and the Working Group on Ratification agree that U.S. moral leadership on this issue matters, and that it can be achieved by sending a powerful message through ratification.\(^{112}\)

Proponents see the lack of U.S. ratification of CEDAW as hindering the country’s ability to make a different in women’s rights around the world. As Koh stated: “From my direct experience as America’s chief human rights official, I can testify that our continuing failure to ratify CEDAW has reduced our global standing, damaged our diplomatic relations, and hindered our ability to lead in the international human rights

\(^{109}\) Koh 2002
\(^{110}\) Verveer 2010
\(^{111}\) Verveer 2010
\(^{112}\) See, for example, fact sheets by these groups
community.” Proponents also point out that the United States cannot participate in the Committee without ratification; therefore, in answers to concerns about the committee, ratification advocates argue that Committee membership would give the United States a concrete role in shaping the evaluation other member states’ progress.

**Compatibility with Existing Law**

Koh and others point out how compatible the treaty is with domestic U.S. laws – both as a reason to ratify, and as an answer to those concerned with diminished states’ rights. Koh also rightly points out the Senate’s ability to place understandings or implementing legislation “specifying the precise ways in which the federal legislature will carry out our international obligations under this treaty.”

**Effectiveness**

While acknowledging that women’s rights are not perfect in every country, including in many which have ratified CEDAW, Verveer and other proponents describe the treaty as a tool that women in oppressed societies can use to claim their rights: “Around the world, women are using the Women’s Treaty as an instrument for progress and empowerment. There are countless stories of women who have used their countries’ commitments to the treaty to bring constitutions, laws, and policies in line with the principle of nondiscrimination against women.” Reports such as those by the CEDAW Ratification Working Group count successes in countries which have used the treaty to gain rights from their governments, such as improved sexual harassment laws in

---

113 Koh 2002  
114 Koh 2002  
115 Verveer 2002
Australia and increased maternity leave benefits in Germany, Poland and the U.K. The National Women’s Law Center cites CEDAW as increasing the number of educational opportunities for girls in Bangladesh and expanding political participation for women in Kuwait, among other examples.

**Senate Politics**

CEDAW has had support from some Senate heavyweights. Current Vice President and former Senator Joe Biden (D-Delaware) and Senator Barbara Boxer (D-California) co-authored an Op-Ed in 2002 urging their fellow Senators to ratify the treaty. Biden served as Chair of the Senate Foreign Relations Committee (SFRC) from 2001-2003 and 2007-2009, and during his first tenure, succeeded in getting CEDAW voted out of committee and to the Senate floor. Boxer, who still serves on the Committee, helped create the first-ever subcommittee to focus on global women’s issues in 2009.

But the convention has had powerful detractors in the Senate as well; Senator Jesse Helms (R- North Carolina) was chair from 1995-2001 when the Senate was in Republican hands. Senator Helms called CEDAW a radical feminist manifesto and vowed that “it will never see the light of day on my watch.”

“Why has CEDAW, the Convention of Elimination of All Forms of Discrimination Against Women, never been ratified?” he asked on the Senate floor on

---

116 Working Group on Ratification of the CEDAW 2001, 25
117 CEDAW Task Force 2010
118 Biden & Boxer, 2002
119 History of the Committee, United States Senate
120 Defense and Foreign Policy, U.S. Senator Barbara Boxer
121 Helms, S.Res306, 2000
March 8 – International Women’s Day, it should be noted – 2000. “Because it is a bad treaty; it is a terrible treaty negotiated by radical feminists with the intent of enshrining their radical antifamily agenda into international law. I will have no part of that.” In these words we hear the same sentiment echoed by the conservative groups opposed to the treaty: concerns that the UN is trying to impose radical values on the United States.

In that same session of Congress where Senator Helms spoke, Representative Lynn Woolsey (D-California), along with Representative Nancy Pelosi (D-California) and others were escorted from a committee hearing lead by the Senator. The Congresswomen had entered mid-hearing to demand a reply to their unanswered requests for a meeting on CEDAW.

Helms continued: “I say to these women who are picketing my office: Dream on. If its authors and implementers had their way, the United States, as a signatory to this treaty, would have to legalize prostitution, legalize abortion, eliminate what CEDAW regards as the preferable environment of institutional day care instead of children staying at home. This treaty is not about opportunities for women. It is about denigrating motherhood and undermining the family.” On this same day, Senators John Kerry (D-Massachusetts), Russ Feingold (D-Wisconsin) and Dianne Feinstein (D-California) – yes, all Democrats – took to the Senate floor to urge action on CEDAW.

Senator Helms clearly saw CEDAW as an affront to what he viewed as traditional American values. During that same session of Congress, he introduced two resolutions calling on the Senate to reject CEDAW on the grounds that it “demeans motherhood and

---

122 Helms 2000
123 Dewar 1999
124 Helms 2000
undermines the traditional family.”\textsuperscript{125} Though the resolutions had no co-sponsors, Senator Helms didn’t need any; as the chair of the SFRC, he alone could hold up hearings and determine the committee’s schedule. Senator Boxer, in the same year, countered with three resolutions urging the SFRC to hold a hearing and to act on CEDAW; at its apex, the resolution had 34 co-sponsors. \textsuperscript{126}

Once control of the Senate shifted back to Democrats in 2002, then-chair of the SFRC Biden scheduled a vote on the treaty, boldly challenging the wishes of the Bush Administration – a position that may have shifted over time. As the media reported: “After the administration originally said it approved of the treaty, which is known as CEDAW, conservative organizations launched an energetic campaign against it. In letters, e-mails and phone calls to President Bush, Powell and Republican senators, groups such as Concerned Women for America have denounced the treaty as a "dangerous, anti-family document" and "a thinly veiled cover for demanding abortion and decriminalizing prostitution."\textsuperscript{127} On July 30, 2002, the committee voted it to the floor, but it was never voted upon there.\textsuperscript{128}

At the most recent hearing in November 2010, three Senators spoke in support of CEDAW ratification in the Committee on the Judiciary: Senator Dick Durbin (D-Illinois), Senator and Committee Chairman Patrick Leahy (D-Vermont) and Senator Ben Cardin (D-Maryland).\textsuperscript{129} Each gave examples of the progress CEDAW has made in advancing women’s rights in other countries, and all three pointed out that the country

\textsuperscript{125} S.Res.306 and S.Res.307; both 106\textsuperscript{th} Congress
\textsuperscript{126} S.Res.273, S.Res.279 and S.Res,286; all 106\textsuperscript{th} Congress
\textsuperscript{127} DeYoung 2002
\textsuperscript{128} Dao 2002
\textsuperscript{129} U.S. Senate Committee on the Judiciary, Hearings and Meetings (webpage)
has ratified similar human rights treaties on genocide, torture, race and civil and political rights.

In his statement, Senator Leahy argues that ratification would make CEDAW more effective internationally and reaffirm the United States as a leader in protecting women’s rights around the world.130

Senator Durbin explicitly makes the point that his stance for ratification is not related to women’s rights in the United States: “Let's be clear. The United States does not need to ratify CEDAW to protect the rights of American women and girls. Women have fought a long and difficult struggle for equal rights in the United States, with many victories along the way.”131 He links the status of women in the United States to other domestic legislation – citing, for example, the fact that women still earn 77 cents on the dollar that men earn as a reason that the Paycheck Fairness Act should have passed. He points out that CEDAW would not change U.S. laws and that domestic legislation exceeds the convention in some ways, but argues that it will improve the nation’s ability to fight for women and girls around the world.

Only Senator Cardin argues that CEDAW has benefits for American women as he believes there is still progress to be made on their rights at home: “American women still confront issues such as lack of equity in pay, threats to economic security, inadequate maternal health care, human trafficking and violence against women.”132 Senator Cardin also argues the point that ratification allows the United States a seat at the table to discuss how to improve rights both at home and abroad.

130 Leahy 2010
131 Durbin statement, November 2010
132 Cardin statement, November 2010
The House has encouraged Senate action for some time; Representative Woolsey has introduced resolutions as far back as 1999 calling on the Senate to ratify CEDAW. She did so again in 2011, introducing H.Res.20 which expresses the sense of the House of Representatives that the Senate should ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)."133 The resolution counts 120 co-sponsors – all, it should be noted, are Democrats. In March 2011 the resolution was referred to the Subcommittee on Africa, Global Health, and Human Rights. At the time of this writing, no further action has been taken.

Analysis

Opponents of CEDAW are passionate about keeping the United States from ratifying the treaty as it touches on fundamental ‘values’ areas of family, gender and privacy: issues that are quite controversial in American society. Opponents tend to be conservative and are concerned over a loss of sovereignty and intrusion of not only the government but international bureaucrats into family life. They use inflammatory language in their opposition, which results in fierce and visceral responses from constituents.

Proponents, meanwhile, while arguing valid consequences of increased moral standing and strengthening America’s ability to improve women’s rights abroad, offer nothing that truly affects the daily life of American women. Even Nicholas Kristof inadvertently summed it up in his article advocating ratification: “the treaty has almost nothing to do with American women, who already enjoy the rights the treaty supports.”134

133 Woolsey 2011
134 Kristof 2002
Thus, because American women already claim these rights, no coalition has really formed to mobilize grassroots support for CEDAW ratification. The feared loss of independence and traditional family values trumps the perceived international gains, and has resulted in a stalemate on the treaty. We also see the effect that one powerful opponent can have, embodied here in former Senator Jesse Helms. He agreed with the arguments of the opposition, and given his role as the gatekeeper to committee hearings and votes, prevented movement on the treaty for years.

*The Convention on the Rights of the Child*

The Convention on the Rights of the Child (CRC) was introduced and unanimously adopted by the UN General Assembly on 20 December 1989 and entered into force on 2 September 1990.\(^\text{135}\) Introduced to celebrate the 1979 International Year of the Child, the treaty put into international law the 1959 UN Declaration on the Rights of the Child, and took ten years to negotiate.\(^\text{136}\) It has been ratified by more countries than any other human rights treaty in the world.

Despite playing a key role in negotiating the treaty – in fact, *the* most active role of all member states, proposing text for 38 of 40 provisions, including successfully incorporating articles on preventing child abuse and protecting freedom of religion, expression, and association – the United States did not sign the CRC until 16 February 1995.\(^\text{137}\) Somalia, which has no functioning national government, is the only other nation...
besides the United States which has not ratified the treaty, and it has announced its intention to do so.\textsuperscript{138}

When the CRC was adopted by the UN, George H.W. Bush, a Republican, was serving as President, though the Democrats controlled both houses of Congress. The United States did not sign the convention until Democratic President Bill Clinton assumed office. After the Clinton Administration signed the treaty in 1995, it announced its intention to submit it to the Senate with RUDs, but strong resistance from the Senate, including from Jesse Helms, prevented that from occurring.\textsuperscript{139} President Obama stated his commitment to reviewing CRC during the 2008 campaign, and his Administration is currently conducting an interagency review of it.\textsuperscript{140} The treaty has still not been transmitted to the Senate to begin the ratification process, though in 2009 the State Department again affirmed the Obama Administration’s commitment to the principles in the treaty.\textsuperscript{141}

The Convention defines a child as those persons less than eighteen years of age. It specifically does not define when life begins, so as not to enter into the abortion debate, a sensitive and controversial point in many countries. The treaty highlights the right of children to survival; to develop to their fullest potential; to protection from abuse, neglect and exploitation; and to participate in family, cultural and social life. The treaty details children’s right to development, name and nationality, education, health care and juvenile justice, and makes special protections for children with disabilities, orphans and refugees.

\textsuperscript{138} Reuters Africa 2009
\textsuperscript{139} Blanchfield 2010
\textsuperscript{140} Blanchfield 2010, 1
\textsuperscript{141} Kelly, U.S. Department of State Daily Press Briefing November 24, 2009
It is the first document of its kind that moves from protection of the child to active participation of the child in determining its development.

Like CEDAW, the CRC establishes a Committee to monitor progress by state parties in meeting treaty obligations. The committee counts 18 members who are experts on children’s issues and serve four year terms. Members are nominated and elected by states party to the treaty, who try to meet geographical representation. States parties must submit reports to the committee on how they are adhering to the convention’s requirements. Reports are due two years after ratifying the treaty, and then every five years beyond that time.

It should be noted that the United States has signed and ratified the two optional protocols to the convention: the Optional Protocol on the Involvement of Children in Armed Conflict, and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The former restricts governments from recruiting children under the age of eighteen into their armed forces and mandates that they do not engage in hostilities; the later calls upon states to outlaw the sale, prostitution and pornography of children.

**CRC: Arguments Against Ratification**

Opposition falls into the following broad categories, with detail in each one: that the treaty is a threat to parents’ rights and undermines the structure of the family; that it undermines U.S. sovereignty; and that it covers legislation that typically falls under state control as opposed to the federal government. Like CEDAW, the CRC also touches upon controversial issues usually thought to be governed by individual choice in the United States.

---

142 United Nations Treaty Collection website
States, such as the discipline and education of children, and abortion; it also covers family law more than any other human rights treaty.\textsuperscript{143} Opposition groups argue that the treaty weakens parents’ rights and allows the UN to determine how parents should raise their children.\textsuperscript{144} Like CEDAW, many opponents also point to ratifiers who do not meet the standards for children’s’ rights laid out in the treaty, such as Sudan, as an indication that it is an ineffective tool for supporting children’s rights.

**Sovereignty**

Opponents argue that like CEDAW, the CRC would undermine U.S. sovereignty as well as interfere with the private lives of families and parents’ decisions for their children. As he does in his arguments against CEDAW, the Heritage Foundation’s Fagan characterizes the CRC in inflammatory language, describing it as “a campaign to undermine the foundations of society.”\textsuperscript{145} He writes: “The United Nations has become the tool of a powerful socialist-feminist alliance that has worked deliberately to promote a radical restructuring of society… by urging nations to change their domestic policies…” and will “deconstruct the two-parent family and counter traditional religious (read: Christian) norms.”\textsuperscript{146}

**Federal-State Laws**

The content in the CRC deals with issues that are very much the purview of states in the American government, such as healthcare, education and the legal system. In his

\textsuperscript{143} Kilbourne 1996-1997
\textsuperscript{144} Human Rights Watch 2009, 5
\textsuperscript{145} Fagan 2001
\textsuperscript{146} Fagan 2001
2009 op-ed in the Washington Times, the president of the HSLDA claims that CRC ratification would have a “negative impact on domestic laws and practice” as it is “superior to laws in every state regarding the parent-child relationship.” He claims it is contrary to U.S. law as courts and social workers do not have the right to interfere in the parent-child relationship, unless in cases of proven abuse. He points to education as an area where this conflict will cause the most problems.

**Values and Hot Button Issues**

Many opponents worry that CRC ratification will impede upon the rights of parents to raise their children as they see fit. Parentalrights.org is one such activist group, with a mission: “to protect children by empowering parents through adoption of the Parental Rights Amendment to the U.S. Constitution and by preventing ratification of the UN’s Convention on the Rights of the Child.” The mission continues: “Our team works to preserve the right of every current and future American child to be raised and represented by parents who love them, and not by disconnected government bureaucrats.” The group proposes to achieve its goal by gaining citizen support of the amendment, cosponsors in Congress, state resolutions in support of it, and sponsors for Senator Jim DeMint’s (R-South Carolina) S.Res.99, against CRC ratification, which will be examined in more detail later on.

As noted above, states purposefully chose not to include language on abortion in the treaty as it is such a controversial issues and attitudes and laws vary widely by

---

147 Smith 2009
148 Parentalrights.org
country.\textsuperscript{149} Several countries which have outlawed abortion have in fact ratified the treaty, such as Ireland, the Philippines and the Vatican.\textsuperscript{150} Yet opponents do not like the fact that the treaty does mention the right to family planning services and education. Another prior point of protest was that the convention outlaws the death penalty to those under the age of 18, which used to be permitted in the United States. However, in 2005 the Supreme Court found this to be unconstitutional, and therefore the law no longer exists.\textsuperscript{151} The provisions dealing with a child’s right to privacy also irk opponents, who understand it to mean that a child is free to do whatever s/he pleases, without needing to tell his or her parents. Privacy, along with weakened parental rights, was a cited objection to the CRC of the Bush Administration.\textsuperscript{152}

\textbf{CRC: Arguments For Ratification}

Similar to arguments for CEDAW ratification, CRC proponents contend that ratification would bring positive effects to American credibility and reputation in human rights and international law and make a difference in the ability of the United States to have an impact on children’s rights around the world; believe the treaty to be effective; and note that U.S. practice falls in line with treaty provisions, requiring no changes to domestic laws. They also do not see the fact that many of these issue areas fall under state jurisdiction as an impediment to ratification, given the ability to attach RUDs to U.S. ratification of the treaty.

\textsuperscript{149} Kilbourne 1996, Blanchfield 2010, Alston 1990
\textsuperscript{150} Campaign for U.S. Ratification of the CRC
\textsuperscript{151} Human Rights Watch 2009, 6
\textsuperscript{152} Blanchfield 2010, Summary
It should be noted that proponents are also by and large surprised by opposition to ratification given strong U.S. involvement in the drafting of the treaty. Academic Cynthia Price Cohen argues that “the most significant changes in the world view of children’s rights can be directly attributed to proposals tabled by the United States delegation.”\textsuperscript{153} In her analysis of the ten-year negotiation period, she details how the United States changed the tone of the discussion from one of protection and care of children, which existed in prior international agreements, to a fuller spectrum of human rights.\textsuperscript{154} Many of the articles which are now considered controversial are in fact articles that were proposed by the U.S. delegation during the negotiation process, including Articles 13-16, which cover freedoms of expression, of thought and religion, of association and assembly, and privacy.

**Strengthening Children’s Rights Globally**

Organizations such as Save the Children argue that U.S. ratification would in fact legitimize the treaty itself, and that U.S. non-ratification is used to deflect criticism of nations not keeping to the convention’s standards.\textsuperscript{155} Organizations like CAFETY, the Community Alliance for the Ethical Treatment of Youth, point out that without ratification, the United States cannot participate in the committee and other instruments set up to monitor and evaluate how states adhere to treaty requirements.\textsuperscript{156} They also

\textsuperscript{153} Cohen 1998, 12
\textsuperscript{154} International agreements on children’s rights prior to the CRC include anti-trafficking and child labor of the ILO, the League of Nations’ Declaration of Geneva in 1924; special protections in the 1949 Geneva Convention; the 1959 Declaration of the Rights of the Child; and 1966’s ICCPR
\textsuperscript{155} Triplehorn 2005, 6
\textsuperscript{156} CAFETY (website)
argue that U.S. ratification would further bring to the forefront a global discussion on children’s rights.

**Effectiveness**

Proponents find the CRC to be an effective tool for citizens to use in advocating for children’s rights in their countries. UNICEF cites several ways in which the CRC has been used to ensure that children are protected, including in an anti-female genital mutilation campaign in Egypt, creating foster care for orphaned children in Ukraine, and passing legislation against child marriage in Niger.157 Cynthia Price Cohen also argues that the convention has made a major difference in improving the lives of children around the world.158

**Compatibility with Existing Law**

As with CEDAW, ratification proponents point out how compatible existing U.S. law is with the CRC, including the fact that areas governed by states could be easily noted in treaty RUDs. In her analysis of the implications of CRC ratification, scholar Susan Kilbourne finds that federalism should not be an impediment, given that RUDs could be added and that the treaty does not require action at a national level.159 The United States would be in compliance given its laws at the state level, which other analyses also support.160

157 United States Fund for UNICEF, 2011
158 Cohen 1999-2000
159 See Kilbourne 1998, among others
160 Davidson 1990
Another legal issue raised is that of the definition of the ‘best interests’ of the child, which is mentioned in articles 3, 9, 18 and 40. Yet many scholars have analyzed that the treaty’s use of the term is in line with the understanding of it under American law. The ABA, which supports ratification, also details how compatible the treaty is with U.S. law, including with the definition of the ‘best interests’ of the child as found in the Bill of Rights.

**Senate Politics**

In March 2011, South Carolina Republican Senator Jim DeMint introduced S.Res.99, a resolution expressing that the President should not transmit the CRC to the Senate as the treaty “undermines traditional principles of law in the United States regarding parents and children.” As of April 2011, the resolution had 37 co-sponsors – all Republican. The two-thirds majority ratification requirement means that 67 Senators have to vote to ratify the treaty; with 37 cosponsors of this bill, that leaves only 63. Even assuming all 63 would vote for it, it would not be enough to meet the two-thirds majority threshold. Furthermore, seven of the eight Republicans on the SFRC are also co-sponsors of S.Res.99: James Risch (Idaho), Marco Rubio (Florida), James Inhofe (Oklahoma), Johnny Isakson (Georgia), John Barrosso (Wyoming), Mike Lee (Utah) and the bill’s sponsor Jim DeMint, giving the convention little chance of a hearing, even if it were to be transmitted to the Senate.

---

161 Ellis 1990, American Bar Association 2006
162 American Bar Association 2006
163 United States Senate Resolution 99 (112th session)
164 112th Congress Committee Members, United States Senate Committee on Foreign Relations
S. Res 99 reads as follows:

Expressing the sense of the Senate that the primary safeguard for the well-being and protection of children is the family, and that the primary safeguards for the legal rights of children in the United States are the Constitutions of the United States and the several States, and that, because the use of international treaties to govern policy in the United States on families and children is contrary to principles of self-government and federalism, and that, because the United Nations Convention on the Rights of the Child undermines traditional principles of law in the United States regarding parents and children, the President should not transmit the Convention to the Senate for its advice and consent.

Senator DeMint promotes faith-based initiatives and family values as some of his priority issues, and advocates against abortion. He introduced the same resolution in the 111th session of Congress, during which he tallied 30 cosponsors. In that same session, Representative Peter Hoekstra (R-Michigan) introduced H.Res.1376, which uses exactly the same language as DeMint’s resolutions, to the House. It failed to earn any cosponsors.

At one point the convention had some bipartisan support in the Senate: in 1991, Republican Senators Bob Dole (Kansas) and Richard Lugar (Indiana) joined with Democrats Chris Dodd (Connecticut) and Mark Hatfield (Oregon) to urge then President George H.W. Bush to sign the treaty. At that time, the Administration’s concerns were over states’ rights and “a constitutional question of whether basic human rights in this country can be guaranteed by an international treaty.”

---

165 Taylor 1991
166 Taylor 1991
In 1995, at the time of the signing of the convention by then Ambassador to the UN Madeleine Albright, Senator Dole was against the CRC, citing “thousands of calls from all over the country in opposition” that his office had received.\textsuperscript{167} Senator Dole raised concerns over articles 13, 14 and 15 – those granting freedom of speech, thought, conscience, religion and assembly – as potentially limiting parents’ ability to determine how to best raise their children. He also declared that U.S. state, federal and local laws were better for protecting children’s rights and raised the common Republican desire for less government in citizen’s lives, belittling the “multilateral quasi-government that is the U.N.”\textsuperscript{168}

In that same year, Jesse Helms introduced S.Res.133, a “resolution expressing the sense of the Senate that the primary safeguard for the well-being and protection of children is the family, and that, because the United Nations Convention on the Rights of the Child could undermine the rights of the family, the President should not sign and transmit it to the Senate”\textsuperscript{169} (exactly the same language used in Senator DeMint’s current resolution). S.Res.133 counted 26 co-sponsors, all Republican.

Major supporters of the CRC have included Senators Patrick Leahy (D-Vermont), and Bill Bradley (D-New Jersey). Senator Leahy introduced a resolution in 1992 urging the President to seek the Senate's advice and consent to ratification of the United Nations Convention on the Rights of the Child, which counted 23 cosponsors.\textsuperscript{170}

\begin{footnotesize}
\begin{enumerate}
\item Dole 1995
\item Dole 1995
\item Helms 1995, S.Res.133
\item Leahy, 1992, S.Res.352
\end{enumerate}
\end{footnotesize}
As mentioned above, both optional protocols to the convention have been ratified by the Senate; they were transmitted by President Clinton in July 2000, and the Senate voted to ratify them in June 2002 (while under Democratic control). The Clinton Administration also supported the larger treaty but neglected to transmit it to the Senate. This was not down party lines, however; the Bush Administration also supported their ratification. The protocols, to which states can be members regardless of their status to the main convention, are considered less controversial.

Analysis

Susan Kilbourne argues that much of the opposition to the CRC is based on a misunderstanding of its tenets, and the spreading of misinformation about it. She argues that the opposition reads the treaty as targeting parents, when it is actually intended to target governments. Kilbourne also analyzes the organizations that are for ratification, and finds that they are not as organized or vocal as the opposition, which leads to them being less effective. Mancur Olson’s insights on the logic of collective action are applicable here, where he finds that larger interest groups are less organized and active than their smaller counterparts.

The arguments we observe are very similar to those in the CEDAW debate; groups threatened by a perceived attack on values and sovereignty mobilize to lobby their Senators to block action on the CRC. The opposition seems to have the upper hand in this

---

171 Lynch 2000
172 Harris 1995
173 Blanchfield 2010 (CRC), p5
175 Cohen 1996
176 Olson 1971, 128
debate, and I would argue it is because that the proponents’ arguments for ratification are again not as persuasive, or not as direct. The main arguments for ratifying – that the treaty would provide a framework for U.S. child policy, would focus the country on children’s issues due to the reporting requirement, and that ratification would give the United States a seat at the table to participate in formulating policy at the committee – do not impact the daily life of American citizens and therefore mobilize constituents the way the threat of the loss of certain freedoms do.

_The Convention on the Rights of Persons with Disabilities_

The Convention on the Right of Persons with Disabilities (CRPD) was adopted on 13 December 2006 and entered into force on 3 May 2008.177 When it opened for signature on 30 March 2007, it received the highest number of signatories to a UN Convention on its opening day in history.178 As of November 2011, 106 nations have ratified the treaty.179

The purpose of the convention is to “protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”180 It provides for equal opportunity in and access to information, education, health care, equal protection under the law, special consideration for women and children and in emergency situations, the right to live independently, and the right to privacy. It also affirms the importance of the research, promotion and provision of communication aides, mobility devices, and technology to

---

177 UN Treaty Collection (website)  
178 UN Enable (website)  
179 UN Enable (website)  
180 United Nations General Assembly, Convention on the Rights of Persons with Disabilities
meet the needs of persons with disabilities. In the creation of legislation and policies it requires that governments consult with persons of disabilities themselves, giving them an active role in articulating their rights.

Like CEDAW and CRC, there will also be a Committee on the Rights of Persons with Disabilities made up of experts, to which state parties will provide reports every two years. The Conference of States Parties also holds the authority to consider any matter related to the implementation of the treaty. Article 33 of the Convention further specifies that states must set up national focal points and independent monitoring mechanisms.

The United States has some of the strongest domestic protections in the word for persons with disabilities, with the landmark Americans with Disabilities Act (ADA) of 1990. The White House has a Special Assistant to the President for Disability Policy, the State Department has a Special Advisor for International Disability Rights, and the Administration celebrates the International Day of Persons with Disabilities on 3 December. In 2010, Secretary of State Hillary Clinton said in a statement: “The United States is proud to be a signatory to the Convention on the Rights of Persons with Disabilities, and we look forward to continuing our efforts to support its full and effective implementation.”

The United States was instrumental in providing technical assistance and guidance during the drafting of the treaty. Yet as detailed before, Republican U.S. President George W. Bush did not support the treaty; according to the former administration, U.S. national legislation (the ADA) was more than sufficient and therefore there was no need to adhere to an international covenant on the issue. The CRPD was not signed until 30 July 2009 after Democrat Barack Obama was in office.

---

181 Clinton 2010
and both houses of Congress were in Democratic hands. At the time of signing, U.S. Permanent Representative to the United Nations, Ambassador Susan Rice, remarked that the President would be submitting the treaty to the Senate for its advice and consent shortly.182

The treaty has not yet had much action in Congress; one supporter is Iowa Democratic Senator Tom Harkin, who was instrumental in crafting and passing the ADA legislation. When President Obama signed the CRPD in 2009, Senator Harkin took to the Senate floor to discuss the anniversary of the ADA and express his support for the transmittal of the treaty and its ratification.183 The issue for him is a personal one; his brother was disabled and he has taken other actions to ensure that disability rights and access are included in U.S. foreign policy action, such as creating disability advisor positions at the Department of State and the U.S. Agency for International Development (USAID).184

A report conducted by the National Council on Disability found that “the aims of the CRPD are consistent with U.S. disability law… For the majority of articles, U.S. law can be viewed as either being of a level with the mandates of the Convention or capable of reaching those levels either through more rigorous implementation and/or additional actions by Congress.”185

The CRPD is much newer than the other two treaties examined in this paper; it also has not been ratified by as many countries – only 106.186 Due to its newness and perhaps to the fact that the rights of persons with disabilities is not as hot button or

182 Rice July 30, 2009
183 Harkin 2009
184 Harkin (website)
185 NCD Report, 1-3
186 UN Enable (website)
values-driven of an issue as are items interfering with the family and traditional gender roles, there is not as much debate out there about this treaty. Again, given the strength of protections of the rights of persons with disabilities – thanks to the valiant efforts of U.S. disability rights advocates for many, many years\(^ {187} \) – there are no further rights to be gained from ratification. The main argument against ratification is thus the sovereignty one.

**CRPD: Arguments Against Ratification**

A report by the conservative Heritage Foundation argues the same point that the Bush Administration did: that ratifying the CRPD does not advance U.S. interests as the rights of the disabled are well protected under domestic law, and that treaty ratification would only “oblige the federal government to defer to an unaccountable committee of academics and ‘disability experts’ in Switzerland in violation of the principles of U.S. sovereignty and federalism.”\(^ {188} \) Again, we observe a resistance to the bureaucracy of the committee, as well as doubt that ratification does anything concrete for American citizens. As for claims that ratifying the treaty would demonstrate its commitment to upholding these rights to the international community, the report argues that the country already does so through its actions, and that this is more important than the symbolic gesture of treaty ratification.

\(^{187}\) For a powerful and informative history of disability rights in the United States, see Eric Neudel’s 2011 film *Lives Worth Living* 

\(^{188}\) Groves 2010
CRPD: Arguments For Ratification

Arguments for ratification center on U.S. leadership for international disability rights, and the fact that no changes to existing law would be required. The American Bar Association endorsed U.S. ratification of the convention in 2009,\(^{189}\) noting the NCD report’s conclusion that there is no legal impediment to ratification. The report does note that, as discussed above, the CRPD covers both negative and positive rights - the “United States legal framework is directed toward civil and political (or negative) rights protection, and leaves economic, social, and cultural (or positive) rights, when these are provided, to Congress.”\(^{190}\) Thus though some of the treaty’s provisions fall within existing law, there are some gaps. Those items which fall under state jurisdiction can be justified with an RUD.

Advocacy groups such as the U.S. International Council on Disabilities argue that the United States is missing an opportunity to ensure that other countries meet its high standards; like the other treaties, the United States cannot participate in the committee unless it has ratified.\(^{191}\) Human Rights Watch agrees that ratification would reinstate American leadership on this issue, and also points out that the monitoring mechanism required upon ratification would ensure that the country complies with standards.\(^{192}\)

Analysis

While the CRPD still struggles with similar arguments based on sovereignty and states’ rights, it does not touch on sensitive topics such as family planning, gender roles,

---

\(^{189}\) American Bar Association 2009  
\(^{190}\) NCD Report, 8  
\(^{191}\) U.S. International Council on Disabilities (website)  
\(^{192}\) Human Rights Watch, 15
or parenting as CEDAW and the CRC do. Therefore, it is my conclusion that the CRPD has the best chance of ratification of the three human rights treaties examined in this paper. Yet, like the other two, the CRPD still lacks a strong grassroots base advocating for its ratification, as disability rights are well-protected domestically. Again, Mancur Olson’s research can provide some research into this puzzle: The groups that would be most affected by this legislation are already well-protected, and thus have no further incentive to mobilize. 193

Conclusion

For each of the three treaties examined in this paper, there are strong objections from groups concerned with a loss of U.S. sovereignty at the expense of the UN, state sovereignty at the expense of the Federal government, and individual freedoms – despite the treaty provisions being mostly in line with current domestic laws and practice. Opponents fear that ratification of these treaties will impose laws above those of the United States and take away important individual rights – particularly in the sensitive, values areas of the family, gender roles and parenting (for CEDAW and the CRC). Concerns are put in the language of ceding authority and sovereignty from the American people and their democratically-elected lawmakers and well-functioning judicial system to unnamed bureaucrats in Switzerland. Opponents also chastise international NGOs in terms of their involvement with the UN committees which monitor treaty implementation and review country reports and identify them as other radical advocates of these treaties.

Of the above mentioned factors, which are the most powerful in contributing to the United States’ erratic record on human rights treaty ratification? States’ rights

193 Olson 1971
concerns can be assuaged with RUDs, as the country has done with other human rights treaties, and other federalist countries regularly do. Sovereignty concerns seem to be tied to American conservatism—again, it cannot go without noting that no Republican-controlled Senate has ratified a human rights treaty, and most Presidents who sign or advocate for them are Democrats. The fact that CEDAW and the CRC deal with hot-button issues values linked to family, gender roles, child rearing, and family planning adds fuel to the fire.

Perhaps the strongest factor, ironically, is the very strength of the rights of women, children and the disabled in the United States, which results in a lack of mobilization for these treaties among a domestic audience. There are no domestic rights to be gained for U.S. citizens from ratifying CEDAW, the CRC or the CRPD; and therefore, no one pushing strongly enough for that to happen. The arguments that by not ratifying, the U.S. is losing credibility and its ability to promote human rights in the international arena is no match with concerns that by ratifying, the citizens are losing important freedoms. The threat of the loss of these rights mobilizes small groups to lobby their lawmakers, while the greater good of building a reputation as a protector of human rights on the world stage does not move citizens in the same way.

What does it take, then, to get a human rights treaty ratified? In Samantha Power’s “A Problem From Hell”: America and the Age of Genocide she describes the context in which the Senate finally gave its advice and consent – after 40 years – to ratify the Genocide Convention. Despite fierce Republican opposition, for many of the same reasons outlined for these three treaties and summarized earlier in this paper, President Reagan requested the Senate’s advice and consent as an attempt to recover from the
public backlash from his visit to West Germany’s Bitburg Cemetery – a cemetery where some Nazi officials are buried. According to Harold Koh, who prepared the press guidance for treaty ratification at the request of the National Security Council, it was “the only reason” the Administration pushed ratification.\textsuperscript{195} If history is any lesson, and at the risk of sounding too cynical, it may take domestic political fallout of some kind to move these treaties.

It’s also interesting to dissect the narrative of these arguments. In Le Blanc’s assessment of the debate over ratification of the genocide treaty, he concludes that the opponents were controlling the debate the whole time. “It is important to devise strategies that enable proponents of ratification of other human rights treaties to be on the offensive rather than on the defensive,” he remarks.\textsuperscript{196} Indeed, rather than be on the offensive, proponents of CEDAW, the CRC and the CRPD seem to continually be responding to arguments opponents put forth. A potentially more productive strategy might be for advocates to ask if ratification of other UN human rights treaties has undermined U.S. sovereignty in any way, for example. Areas for further research could include analysis of the rhetoric used in arguments for and against treaty ratification, to assess which side commands a stronger communications strategy.

Do the CEDAW, CRC or CRPD stand a chance of being ratified in the near future? In my assessment, given the hot button issues they touch upon, CEDAW and CRC face an uphill battle. CRPD has a better chance of ratification, as it covers an area that is less controversial than the other two. Perhaps it will see the light of day soon.

\textsuperscript{195} Power 2002, 163

\textsuperscript{196} LeBlanc, 1991, 243
Bibliography


United Nations. *Multilateral Treaties Deposited with the Secretary-General.*


United States Department of State. "Treaty Priority List for the 111th Congress."


United States Senate. "112th Congress Committee Members." *United States Senate Committee on Foreign Relations.*

United States Senate. *United States Senate Committee on Foreign Relations.*


