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All for the Kids: A Case for Ratification of the U.N. Convention on the Rights of the Child

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All for the Kids: A Case for United States Ratification of the U.N. Convention on the Rights of
the Child

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ABSTRACT

The United Nations Convention on the Rights of the Child (CRC) is the most rapidly signed and ratified human rights instrument in UN history, yet the United States is the only UN member not to ratify the CRC. However, if the United States wants to maintain its status as a global human rights leader, ratifying the CRC would be a step in the right direction.

There are several arguments against U.S. ratification, such as a concern that the CRC could undermine parental authority, more specific concerns relating to issues such as children's education and access to abortion, and a concern that the CRC would interfere with U.S. sovereignty. Close examination of various CRC articles handily dispels most of these worries, however. There are areas in which the U.S. could improve its policies related to children, but these improvements would not be necessary prior to CRC ratification. Instead, policy improvement should be an ongoing process after ratification. Finally, if the U.S. were to ratify the CRC, it might encourage State Parties who have already ratified to re-examine their own efforts toward making the world a better place for children. It is time for the U.S. to put aside its pride and commit to building a brighter future for the youngest citizens of the world by ratifying the Convention on the Rights of the Child.

Hamline University Department of Legal Studies Honors Project

ALL FOR THE KIDS: A CASE FOR UNITED STATES RATIFICATION OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD

Jessica L. Hirte

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I. Introduction

Children are among the most vulnerable populations in the world. From their conscription as soldiers in military conflict to disruption of their education due to civil unrest to the hardships they face due to poverty and hunger, children are at great risk for manipulation and abuse, not only from their parents or guardians, but from the government regimes they live under.

The United Nations' Convention on the Rights of the Child (CRC)¹ marks the first time international community has recognized children's vulnerability and the protections they are entitled to under the law. The CRC is a comprehensive human rights instrument encompassing any person under the age of 18, running the gamut from a child's right to life and liberty of person to a right to adequate medical treatment to a right to recreation and play. State Parties who sign and ratify the CRC must undertake the responsibilities outlined in the document to ensure governments protect the rights of children. Accompanying the Convention are three Optional Protocols regarding children's involvement in armed conflict, child trafficking, prostitution, and pornography, and a communications procedure for children to file reports of violations with the UN Committee on the Rights of the Child. Since it was opened for signature on November 20, 1988, 196 United Nations member-states have signed and ratified the CRC; it is the most rapidly ratified human rights instrument in UN history.² In fact, all but one member of the United Nations has ratified the CRC to date: the United States.

Why has one of the most powerful and influential countries in the world—indeed, by many standards, *the* most powerful and influential country in the world—refused to acknowledge the rights of children on the international stage? Consider that Somalia, one of the perennial holdouts for ratification and a country with a lengthy record of human rights violations, ratified the Convention on January 20, 2015.³ Also consider that South Sudan, a country which has only existed independently since 2011 and continues to experience governmental turmoil six years

¹ U.N. Convention on the Rights of the Child.

² UNICEF, *About the Convention*. https://www.unicef.org/rightsite/237_202.htm

³ United Nations News Centre, *UN lauds Somalia as country ratifies landmark children's rights treaty*. (January 20, 2015) http://www.un.org/apps/news/story.asp?NewsID=49845#.WOAMX2_yupo (last visited April 2, 2017)

afterward, ratified the Convention on May 4, 2015.⁴ This leaves the United States standing alone among UN members who have recognized and approved of the principles behind the Convention (i.e. why a country signs a human rights treaty in general) but has not committed to being legally bound to implementing those principles in practice (i.e. why a country ratifies a human rights treaty). Non-ratification seems particularly odd when the U.S. introduced more articles to the CRC than any other country (Articles 10, 13 through 16, 19 and 25 specifically) and played a significant part in drafting the treaty.⁵

It is not as though ratifying international treaties in the United States is particularly arduous. After the Secretary of State signs a treaty, the President formally submits the treaty to the Senate.⁶ The Senate must approve the treaty with a two-thirds majority, and is also responsible for drafting any reservations, understandings, or declarations⁷ the United States wishes to attach to the treaty. Once approval is complete, the President ratifies and deposits the treaty with the UN Secretary-General. Secretary of State Madeleine Albright signed the CRC in 1995; however, no sitting President has submitted the treaty for Senate approval since that time⁸.

What stops the U.S. from moving forward with ratification? As it turns out, despite the CRC's strengths as a human rights instrument, there is a strong bloc of opposition to its

⁴ United Nations News Centre, *UN lauds South Sudan as country ratifies landmark child rights treaty* (May 4, 2015) http://www.un.org/apps/news/story.asp?NewsID=50759#.WOAMpG_yupo (last visited April 2, 2017).

⁵ James L. Scherrer, *The United Nations Convention on the Rights of the Child as Policy and Strategy for Social Work Action in Child Welfare in the United States*, 57 SOCIAL WORK 11 (2012).

⁶ The Campaign for U.S. Ratification of the Convention on the Rights of the Child, *How Does the United States Ratify Treaties?* (2017) <http://www.childrightscampaign.org/why-ratify/how-does-the-united-states-ratify-treaties>

⁷ Reservations, understandings, and declarations, or RUDs, are statements through which a country can further express their stance on a given human rights treaty. Reservations place limits on the commitments a country has after ratification—typically, reservations are written because either domestic law or socio-cultural norms inhibit a country's government from closely adhering to the treaty's ideals. Understandings explain how a country interprets the language of certain provisions of a treaty in light of the country's domestic law. Declarations lay out how the provisions of a treaty will interact with a country's domestic law (e.g. the treaty in part or in whole shall not be taken to supersede a country's federal constitution). To further add to the confusion, sometimes the terms reservation, understanding, and declaration are used interchangeably.

⁸ Lawrence J. Cohen and Anthony T. DeBenedet, M.D., *Why Is the U.S. Against Children's Rights?*, TIME (January 24, 2012). <http://ideas.time.com/2012/01/24/why-is-the-us-against-childrens-rights/>

ratification. Political conservatives generally object to ratification, as they see human rights instruments such as the CRC as infringements upon the sovereignty of the United States and its people. To characterize the CRC as an infringement upon U.S. sovereignty, though, is to fundamentally misunderstand the functioning of international human rights instruments in general.⁹ Some objections come from parents who believe their authority will be undermined and the government made the “true” parent of children. Then there is the question of whether any revisions must be made to existing U.S. law to comply with CRC standards. However, despite any objections or potential changes we might need to make to domestic policy, I argue the United States should ratify the U.N. Convention on the Rights of the Child.

Part II of this article addresses the overarching question why United States ratification should occur at all. Part III looks at the various articulated objections to the Convention on the Rights of the Child and addresses each with a thorough analysis of the Convention articles in question. Part IV examines potential revisions that could be made to existing U.S. law to bring the country within compliance of the CRC’s standards. Part V serves as the conclusion.

II. Why Ratification at All?

One major question must be considered before all else: why should the United States ratify the Convention on the Rights of the Child at all? Should we simply submit to international peer pressure and ratify because all other U.N. members have done so? What does it say when other countries such as Somalia, Turkey, and Iran, which by most standards have horrendous human rights records, ratify the CRC and continue to perpetrate atrocities on their own people?

⁹ For reasons I will explain later in this paper, international human rights instruments have always been held as having less authority in the United States than the Constitution. Additionally, most human rights instruments often include a statement in one of their concluding provisions that the instrument should not be construed as superior to any existing domestic law that already meets or exceeds the standards set forth in the instrument. The CRC includes such a statement in Article 41: “Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in (a) the law of a State party; or (b) international law in force for that State.” See *infra* Section III, subsection A.

Does the United States not have to improve itself first in certain areas of law¹⁰ before even considering ratification? What about the fact that the CRC contains no formal enforcement mechanism¹¹, so neither the United States nor any other country would have sanctions or other punishments imposed for noncompliance with the Convention's terms? Without any enforcement mechanism beyond the Committee on the Rights of the Child, does that mean the CRC is largely aspirational? Does any of this matter at all?

First of all, we must recognize the unique role the United States plays on the global stage. For better or for worse, the United States is one of the most powerful nations in the world. It was one of the founding members of the United Nations, and its predecessor, the League of Nations. The United States occupies a permanent seat on the U.N. Security Council, and gives the most in foreign aid dollars out of any economically advanced nation in the U.N.¹² In short, we are influential. Therefore, our ratification or non-ratification of human rights instruments does not go unnoticed.

Does CRC ratification by states with human rights violations invalidate the CRC as an effective human rights instrument? No. The United States itself does not adhere perfectly to the handful of international treaties it has ratified already. After all, one treaty the U.S. has ratified is the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the continued existence and operation of Guantanamo Bay Detention Center flies in the face of the Convention. Ratification of a treaty merely means a commitment to

¹⁰ See *infra* Section IV of this paper for further discussion.

¹¹ Barbara Bennett Woodhouse, "The Family-Supportive Nature of the U.N. Convention on the Rights of the Child," *THE U.N CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION*, 37, 48 (Jonathan Todres et al. eds., 2007)

¹² Joe Myers, *Foreign aid: These countries are the most generous*, WORLD ECONOMIC FORUM (August 19, 2016), <https://www.weforum.org/agenda/2016/08/foreign-aid-these-countries-are-the-most-generous/> Note that when considered as a percentage of gross national income (GNI), Sweden is the top donor in the world; the U.S. does not appear in the top 10 givers due to its massive GDP.

changing and improving the state of current affairs by implementing the treaty's ideals with domestic policy. It does not mean that a nation must be perfect to start. Furthermore, if the United States ratified the CRC, it could potentially trigger a norm cascade¹³ among all other nations which have ratified the CRC but have less than admirable human rights records.

Besides, if the United States were to join the rest of the world in ratifying the CRC, it would mean putting our flaws on international display. It would mean confessing to our shortcomings when it comes to nurturing our children as a country, and acknowledging that perhaps we may not always know what the best policy choices are. It would mean justifying why we can afford \$2 billion a day in military spending, yet we let millions of our youngest people suffer from violence, poverty, and sickness.¹⁴ In short, we would need to demonstrate some humility. And although there may be some who would see such a move as a sign of U.S. weakness, it is actually a demonstration of strength. If one of the most powerful nations in the world can admit it do not always know the best course of action to take and is willing to submit itself to some level of international scrutiny, then it may lead other smaller, less powerful nations to admit they need help as well.

It is time to consider the impact our policies have upon our future generations. It is time for the United States to ratify the Convention on the Rights of the Child and join the rest of the

¹³ Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INTERNATIONAL ORGANIZATION 887, 895 (1998). Finnemore and Sikkink suggest a norm "life cycle" in international relations, of which a norm cascade is just one part. The cycle starts with norm entrepreneurs (in this case, the United Nations) persuading so-called norm leaders to embrace new norms. In this case, the new norms would be the standards and rights listed in the CRC, such as children's rights to access education and health care. These norm leaders would in turn try to socialize other states into adopting those norms. Those other states, by a combination of pressure to conform and a desire to enhance their legitimacy on the international level, begin to adopt those norms. This triggers a norm cascade until all states involved have internalized the norms as part of their everyday operations—this stage is fittingly called norm internalization. Since the U.S. is the only country who has yet to ratify the CRC, the norm cascade would begin after ratification, wherein the U.S. would likely begin to pressure those states with less than exemplary human rights records to move more rapidly toward norm internalization.

¹⁴ Kul Chandra Gautam, *Time for USA to Ratify the Child Rights Convention*, 89 CHILD WELFARE 221, 223 (2010).

global community in securing a bright, hopeful world for tomorrow by improving the world of today. After all, it is all for the kids.

III. Objections and Counterarguments

Despite the strong reasons why the United States should ratify the CRC, there are still those who object to the idea. Objections stem from multiple sources, all of which vocalize their opinions on the subject with passionate, vigorous language. One webpage explicitly against ratification, No CRC for USA!, states that parents should “protect their children from a dangerous treaty” and calls the CRC “the greatest assault on parental rights in America.”¹⁵ The webpage contains a list of ten things one should know about the structure of the CRC, including one item which states that Congress would be empowered to directly legislate on all matters that would bring the United States within compliance of the CRC’s standards, and another item which suggests that all policies relating to children in the United States would fall under ultimate authority of “a committee of 18 experts from other nations, sitting in Geneva”—presumably referring to the UN Committee on the Rights of the Child, although there are only ten elected experts on the Committee¹⁶, not eighteen—because of their ability to issue binding interpretations CRC articles.¹⁷ The same list also claims that the CRC would override all existing laws, including our Constitution, regarding children and their families due to the Supremacy Clause of the Constitution.¹⁸

No CRC for USA! draws its list of objections from another site, ParentalRights.org, which appears to be slightly less polemic on the surface. The group running ParentalRights.org advocates passing a Parental Rights Amendment to the Constitution, which sounds benign

¹⁵ No CRC for USA! www.nocrc.org

¹⁶ U.N. Convention on the Rights of the Child, art. 43(2).

¹⁷ No CRC for USA! www.nocrc.org

¹⁸ *Id.*

enough. However, upon examination of their list of reasons why they believe the CRC is a threat, it is clear the people behind the website also lack some understanding as to how international human rights instruments function, as well as understanding of the CRC itself. Among the group's concerns are that children would be able to access reproductive health information and services, including abortion, without parental consent; children would be able to challenge every parental decision through a court of law with their "right to be heard"; the best interest of the child doctrine would allow government agencies to override every decision made by every parent if a government worker disagreed with the parent's decision; and that it would be considered illegal to spend more on national defense than on children's welfare.¹⁹ It does not help when politicians such as Rick Santorum make sweeping statements which suggest that liberals believe "the state should form the hearts and minds of our youth so they think the way the government wants them to think."²⁰ Such statements only serve to cast undue fear and confusion on the whole matter of children's rights, parental rights, and government intervention.

A. U.S. Sovereignty and the CRC

One major objection to ratification of the CRC is its potential interference with U.S. sovereignty. Conservatives in the United States have regarded the U.N. with suspicion since its inception post-World War II, and thus far have been the largest bloc of resistance in the Senate for approval of the CRC.²¹ This resistance is likely the main reason why the United States has only become a State Party to three U.N. human rights instruments and two optional protocols to

¹⁹ PARENTALRIGHTS.ORG, http://www.parentalrights.org/international_law_threats (follow "20 Things You Need to Know" under The UN Convention on the Rights of a Child) (last accessed March 16, 2017)

²⁰ Rick Santorum, *Children Belong to Parents, Not Government*. (April 14, 2013, 4:38 PM), <http://www.wnd.com/2013/04/children-belong-to-parents-not-government/> (last accessed March 16, 2017)

²¹ S.C., *Why won't the US ratify the UN convention on children's rights?*, THE ECONOMIST (Oct. 7, 2013), <http://www.economist.com/blogs/economist-explains/2013/10/economist-explains-2>

date²². Including the CRC, the United States is a signatory to three other instruments: the International Convention on Economic, Social, and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of Persons with Disabilities.²³ The United States has neither signed nor ratified the remaining nine U.N. conventions and optional protocols.²⁴

The simple fact that the United States has ratified treaties before the CRC should be enough indication that ratification can occur without infringement on U.S. sovereignty. If a country feels it is necessary to somehow modify how a given human rights instrument will apply to their government, the country can enter RUDs²⁵ when it deposits the ratified treaty with the UN Secretary-General. Indeed, the United States has entered a declaration with every treaty it has ratified so far.²⁶ These declarations can be summarized as follows: the United States believing that the Constitution or other domestic law already offers the protections a given treaty requires, and the treaty is non-self-executing.²⁷ Should the ratification process of the CRC

²² United Nations Human Rights Office of the High Commissioner, *Status of Ratification Interactive Dashboard*, <http://indicators.ohchr.org/> (last visited March 19, 2017). These instruments and protocols are: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Note that the two ratified protocols are related to the CRC.

²³ *Id.*

²⁴ United Nations Human Rights Office of the High Commissioner, *Status of Ratification Interactive Dashboard*, <http://indicators.ohchr.org/> (last visited March 19, 2017). The two conventions the U.S. has neither signed nor ratified are the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of all Persons from Enforced Disappearance. The optional protocols which have not been signed or ratified are: two Optional Protocols related to the International Covenant on Civil and Political Rights (ICCPR), the second one which aims to abolish the death penalty; Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; Optional Protocol to the Convention on the Rights of the Child on a communications procedure; and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

²⁵ See *supra* note 6.

²⁶ *Id.*

²⁷ *Id.* Non-self-executing treaties require a State Party to pass some kind of domestic legislation for the treaty to take effect as law, whereas self-executing treaties require no further legislation.

resume at some point, the U.S. Senate would be free to draft any sort of RUDs it deems necessary or appropriate.

One argument against ratification is that the CRC would then supersede all existing laws involving children and families in the United States, including the Constitution. This argument demonstrates a fundamental misunderstanding not only of international law and its applicability to the United States, but also of the Constitution and related case law. The Supremacy Clause states: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”²⁸ Nowhere in that language does it suggest that treaties would supersede the Constitution’s authority; the operative “and” suggests that the Constitution and any treaties made by the United States would have equal legal authority. If that was not clear enough, the Supreme Court iterated in *Reid v. Covert* that it “has regularly and uniformly recognized the supremacy of the Constitution over a treaty.”²⁹ Therefore, the Convention on the Rights of the Child has no power to override the Constitution, in whole or in part, or any other U.S. law by extension. And while the UN Committee on the Rights of the Child has the authority to issue interpretations of articles within the CRC, those interpretations would somewhat defer to the Constitution, because the Committee’s existence derives from the CRC. Finally, Congress would be the authority on legislating directly on matters relating to the CRC, but its legislation would be subject to interpretation by the judicial system pursuant to the concept of checks and balances.

²⁸ U.S. CONST. art. VI, cl. 2.

²⁹ *Reid v. Covert*, 354 U.S. 1, 17 (1957). It is worth noting that the treaty in question in *Covert* was not a true treaty in the sense of U.S. law, but rather an executive agreement between the United States and Great Britain. Executive agreements are not ratified by the legislature, whereas international treaties are ratified; however, executive agreements are still considered binding international agreements in the United States.

The language of the CRC itself also does not suggest any sort of infringement on U.S. sovereignty. Article 41 states: “Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in (a) the law of a State Party, or (b) international law in force for that State.”³⁰ In other words, if the United States feels as though there are existing domestic laws which better protect children than the articles of the CRC, the CRC will not have any adverse effect on those laws. However, the United States currently lacks any comprehensive national strategy on children³¹ regarding their welfare, so such an argument may not be so easily accepted by the Committee on the Rights of the Child. Furthermore, Articles 44 and 45 outline the kind of international oversight the CRC would force upon the United States, and the oversight is hardly intrusive. State Parties are required to submit reports to the Committee on the Rights of the Child within two years of CRC ratification and every five years thereafter. In these reports, a State Party must describe the progress it has made in implementing the CRC through domestic law and practice as well as any difficulties it has encountered in fulfilling their obligations under the convention.³² If the Committee should find anything particularly troubling in these State Party reports, it is able to send the reports along to agencies such as the United Nations Children’s Fund (UNICEF) for further guidance and assistance. None of this suggests any sort of cumbersome or overbearing oversight by the United Nations.

B. The CRC’s Parent-Positive and Family-Friendly Nature

³⁰ U.N. Convention on the Rights of the Child, art. 41.

³¹ James L. Scherrer, *The United Nations Convention on the Rights of the Child as Policy and Strategy for Social Work Action in Child Welfare in the United States*, 57 SOCIAL WORK 11, 18 (2012). Essentially, the U.S. government has not made consistent commitments to rectifying issues such as child poverty, child hunger, and illiteracy. In other words, legislation aimed at improving the lives of children in the U.S. seems to be more reactive than proactive, and child welfare seems to be relatively low-priority.

³² U.N. Convention on the Rights of the Child, art. 44(1),(2).

Another major argument against CRC ratification is the CRC would undercut parental authority and make State Party governments the true parents of children. However, the Convention on the Rights of the Child does not insert itself as a barrier between children and their parents. Much like the Bill of Rights, the CRC bestows rights upon a specific class of people (in this instance, anyone under 18 years of age), and the government cannot infringe upon those rights. In fact, the CRC greatly supports the family unit as the primary means to raise children, and never intends to undermine parental authority at any point. Starting with the preamble, the CRC recognizes the value and importance of family: "...the family, as the fundamental group of society...should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community...the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding..."³³ The preamble not only highlights the family as important, but categorizes the family as "the fundamental group of society"³⁴ that is entitled to any necessary assistance from the government to help raise the child. This hardly sounds like the U.N. intended the CRC to undermine parental authority. Rather, it reflects the U.N.'s aim that the CRC is a pro-family human rights instrument.

Later, the CRC sets the best interest of the child as the main standard for all actions involving children, regardless of what governmental body is taking action. Incidentally, the best interest of the child has been the standard of family law proceedings in the United States for decades³⁵, so this language is nothing new. However, Article 3 further provides that "State Parties

³³ U.N. Convention on the Rights of the Child, Preamble ¶5-6.

³⁴ *Id.*

³⁵ Initially, the United States followed English common law practice and awarded custody of children to their father in divorce cases, reflecting the idea of absolute paternal power. This later evolved to the "tender years" doctrine in the mid-19th century, which presumes that very young children should remain with their mother after a divorce. However, the tender years doctrine generally tipped the scales in overwhelming favor of mothers during custody battles. By the 1990s, most U.S. states had enacted "best interest of the child" statutes which listed several factors

[should]...ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her...”³⁶

Parental authority is explicitly deferred to and respected under this article. Not only are parents listed first, but the “rights and duties” of parents are placed ahead of any government action taken to ensure protection and care for children. This again is reflected in United States family law: children cannot simply be taken away from their parents by the government unless such action is in the best interest of the child involved.³⁷ Article 5 uses similar language to Article 3, iterating that the State Party government is meant to respect the rights and duties of parents relative to the child’s ability to exercise the rights enumerated within the CRC. In other words, as a child grows closer to 18 years of age and can exercise more of their rights for themselves (such as freedom of speech and religion as seen in Articles 12 and 13 respectively), the government must recognize the child’s ability and parental authority in reasonable proportion to one another.

Even before a child knows of the rights they have under the CRC, a newborn has several rights given to them directly related to their identity. A child has the right to “a name...a nationality, and, as far as possible...to know and be cared for by his or her parents.”³⁸ The government is not the primary caregiver of children in the CRC, as some ratification opponents

judges could consider in child custody cases. See Minn. Stat §518.17, subd. 1(a) as an example, which was revised in 2015 to be more child-focused (see <https://www.revisor.mn.gov/laws/?id=30&year=2015&type=0> for the complete relevant session law). It should be noted, though, that the best interest of the child is still something of a nebulous concept despite attempts at legislative guidance. For further reading on this topic, see Andrea Charlow, *Awarding Custody: The Best Interest of the Child and Other Fictions*, 5 YALE L. & POL’Y REV. 267 (1986).

³⁶ U.N. Convention on the Rights of the Child, art. 3(2).

³⁷ See Minn. Stat. §260C.175, subd. 1 as an example. Other states have similar statutes regarding children being taken into immediate government custody to protect their welfare. See also U.S. Department of Health and Human Services, Children’s Bureau, *Determining the best interests of the child*. (2016) https://www.childwelfare.gov/pubPDFs/best_interest.pdf

³⁸ U.N. Convention on the Rights of the Child, art. 7(1).

might like to suggest—the children’s parents are clearly the primary caregivers. The phrase “as far as possible” implies that if government intervention is necessary in the care of a child, there must be effort made by the government to allow contact between a child and their parents, cases of extreme abuse and termination of parental rights obviously notwithstanding. Article 7 brings up several interesting questions of who should be defined as the child’s parents³⁹. It is quite likely that the UN will simply leave the answering of these questions to individual State Parties, but the answers would be fascinating nonetheless.

On the subject of separating children from their parents, the CRC once more expresses a parent-positive approach—parents and children should be kept together wherever possible, and the best interest of the child must be considered if separation is necessary⁴⁰. Article 18 expands on this idea in discussing responsibilities of two parents who are responsible for caring and raising the child⁴¹. Obviously there will be instances where both parents cannot be present and active in a child’s life, such as death or a custody arrangement in which one parent has full physical and legal custody. However, the CRC remains insistent that both parents to the fullest extent possible should have some level of responsibility for the child’s upbringing. Much like Article 7, the phrase “both parents” brings up some questions regarding parentage.⁴² Once again,

³⁹ Unlike the word “child,” the CRC does not provide any sort of definition for “parents”, nor has the UN issued any separate definition for the word since the CRC was opened for accession. Does the word “parents” include both biological and adoptive parents? Would surrogates or sperm and egg donors be considered biological parents since parts of their biology were involved in the conception, development, or birth of an infant child? Would a child’s “right to know his or her parents” jeopardize closed adoption, where the biological parents’ identities are sealed and withheld from the child?

⁴⁰ U.N. Convention on the Rights of the Child, art. 9(1): “State Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”

⁴¹ U.N. Convention on the Rights of the Child, art. 18(1): “State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents, or as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child...”

⁴² See footnote 38. Also consider whether a child could legally have more than two parents listed on a birth certificate, such as an instance where two married men used a surrogate to carry their baby. Could the surrogate be

it is more likely than not that the UN will leave the answering of these questions up to the individual State Parties.

Finally, Article 20 emphasizes the paramount importance of the family unit and parents by instructing State Parties to provide appropriate alternative care for children who are “temporarily or permanently deprived of their family environment, or in whose own best interest cannot be allowed to remain in that environment.”⁴³ Keeping children and parents together is clearly one of the goals of the CRC, not the undermining of parental authority. State Party governments must respect family privacy, with parents considered the best means of raising and developing the youngest citizens of the world.

C. Specific Children’s Rights Concerns

Although the CRC would not interfere with U.S. sovereignty post-ratification and clearly has a parent-positive and family-friendly nature, there still remain some more specific arguments from opponents to ratification regarding specific enumerated rights. Opponents to ratification argue that it would:

1. allow children to sue their parents.
2. undermine parents’ ability to teach their religion to their children.
3. undermine parental choice in their children’s education.
4. enable teenagers to get abortions without parental consent.
5. require the United States to outlaw corporal punishment, thereby undermining the discipline of children.⁴⁴

These arguments are echoed by lists found on the No CRC for USA! and parentalrights.org websites. In addition to those listed above, parentalrights.org includes concern that children

considered a parent, and if so, how much responsibility should be expected of that individual to care for the child? Should individuals such as surrogates or donors be expected to care for the children?

⁴³ U.N. Convention on the Rights of the Child, art. 20(1).

⁴⁴ JONATHAN TODRES, “Analyzing the Opposition to U.S. Ratification of the U.N. Convention on the Rights of the Child,” *THE U.N CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION*, 19, 24 (Jonathan Todres et al. eds., 2007).

would have a legally enforceable right to leisure, that Christian schools that refuse to deviate from their religious curricula to teach “alternative worldviews” would be in violation of Article 29, and that parents who opt to remove their children from sex education in school has been held out of compliance with the CRC.⁴⁵

i. Standing to Sue

The argument that children would be able to sue their parents stems from a misunderstanding of Article 12, which reads: “...the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative...in a manner consistent with the procedural rules of national law.”⁴⁶ In most U.S. states, a child’s interests are represented by a guardian ad litem in court proceedings. Guardians ad litem typically appear in cases of child abuse or neglect, as well as in custody and visitation proceedings, and recommend to the court which courses of action would be in the child’s best interest. Children are generally not considered parties to marriage dissolutions on their own, as their family interest does not constitute an interest which would sufficiently allow intervention as a right.⁴⁷ Insofar as standing to bring suit, the state courts have been somewhat divergent in their rulings. The Florida District Court of Appeal has held that “non-age is a disability that [prevents] a child from initiating” an action to terminate a parent’s rights.⁴⁸ Contrast to another case in Florida, *Twigg v. Mays*, that allowed a child to sever all ties with her biological parents after their relationship broke down.⁴⁹ A Connecticut court found a child able to sue regarding a prior paternity judgement, albeit through her guardian ad litem⁵⁰,

⁴⁵ PARENTALRIGHTS.ORG, http://www.parentalrights.org/international_law_threats (follow “20 Things You Need to Know” under The UN Convention on the Rights of a Child) (last accessed March 16, 2017).

⁴⁶ U.N. Convention on the Rights of the Child, art. 18(2).

⁴⁷ Stephen R. Arnott, *Autonomy, Standing, and Children’s Rights*, 33 WM. MITCHELL L. REV. 807, 821 (2007).

⁴⁸ *Kingsley v. Kingsley*, 623 So. 2d 780, 784 (Fla. Dist. Ct. App. 1993).

⁴⁹ *Twiggs v. Mays*, No. 88-4489-CA-01, 1993 WL 330624, at *3 (Fla. Cir. Ct. Aug. 18, 1993).

⁵⁰ *Ramos v. Cox*, No. FA000630917, 2002 WL 31894798, at *1 (Conn. Super. Ct. Dec. 3, 2002).

while a Pennsylvania court blocked three children from modifying their custody arrangement on the basis that their mother was attempting to vicariously re-litigate a previously settled matter.⁵¹ Even if children were permitted to sue their parents under ratification of the CRC, the system of federalism which governs the United States would prevent a federal entity from issuing a blanket binding opinion on the matter, and as seen above, states would be divided on the applicability of children's standing. Furthermore, "Americans assume that individual "rights" must inevitably lead to litigation between individuals...The CRC is not intended to empower children to sue their parents. What the CRC does is provide children (and their parents) protection from the intrusion of government into family privacy."⁵² In other words, simply because children have rights under the CRC does not necessarily mean they will litigate on the basis of those rights.

ii. Freedom of Religion

The argument that parents would lose their ability to educate their children about their religion under CRC ratification is an odd one, particularly when the First Amendment of the U.S. Constitution already ensures freedom of religion to all residing within the borders of the country. Nevertheless, the argument bears examination. Article 27 requires State Parties to allow children the freedom of religion; State Parties also must respect the parents' right to provide direction to the child exercising their right to freedom of religion.⁵³ Simply because the child's right to freedom of religion is listed before the right of parents to provide direction in regards to that freedom does not mean the child's right is superior. Instead, children's ability to exercise their

⁵¹ *Frank v. Frank*, 833 A.2d 194, 197, (Pa. Super. Ct. 2003).

⁵² Barbara Bennett Woodhouse, "The Family-Supportive Nature of the U.N. Convention on the Rights of the Child," *THE U.N CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION*, 37, 40 (Jonathan Todres et al. eds., 2007) .

⁵³ U.N. Convention on the Rights of the Child, art. 14(1),(2): "State Parties shall respect the right of the child to freedom of...religion. State Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

freedom of religion is tied directly to their parents' right to guide their child. As children age and grow in their decision-making ability, parents would presumably make concessions to the child's choices, such as the choice to abstain from practice or to convert to another religion. Nothing in the text of Article 14 suggests that children have free reign over their religion, with parents as little more than helpless bystanders.

iii. Education

Another argument against CRC ratification is the CRC would limit parental choice in where and how to educate their children. Article 29, Section 1 is the point of contention for this argument. Though too lengthy to quote in full here, Article 29, Section 1 is a list of how State Parties should attempt to direct the education of children. Among the subjects the CRC recommends for education are: respect for human rights and fundamental freedoms; respect for one's parents, cultural identity, values, and civilizations other than one's own; preparation for life in a free and equal society; and respect for the natural environment.⁵⁴ Section 2 emphasizes that nothing in either Article 28 or 29 should be interpreted as interfering with the liberties of those who run educational institutions in State Parties, subject to the minimum educational requirements that the State Party may set forth. Nothing in Article 29 suggests that a parent is limited in where they send their child to school, that they must choose private education over public education, or that homeschooling or other tutoring is somehow a lesser form of education. Nor does the article appear to impose any sort of penalty upon Christian schools (or any other religion-based school) who refuse to teach alternative worldviews, as ParentalRights.org would

⁵⁴ U.N. Convention on the Rights of the Child, art. 29(1): "State Parties agree that the education of the child shall be directed to...the development of respect for human rights and fundamental freedoms...his or her own cultural identity...the national values of the country in which the child is living...and for civilizations different from his or her own...[t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national, and religious groups and persons of indigenous origin...[and] respect for the natural environment."

like to suggest. Finally, the educational subjects listed in Article 29 *are* broadly defined; however, none of the subjects listed seem too far out of line as to deter U.S. ratification of the CRC.

iv. Privacy and Access to Abortions

The argument that teenagers could receive abortions without parental consent is a confusing one, particularly in the context of the United States. To be certain, Article 24 does require “State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health...State Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”⁵⁵ But the word “abortion” does not appear anywhere in Article 24⁵⁶, or elsewhere in the CRC. In fact, the CRC takes a neutral stance with regards to abortion and makes no statement on when childhood begins (the only qualification placed on childhood in the CRC is the age of majority at 18 years of age). This allows State Parties with both pro-choice and pro-life stances to resolve family planning issues for themselves, mostly by entering understandings or declarations regarding what they find to be pertinent language to their cause.⁵⁷ Article 16(1) regarding a child’s right to be free from “arbitrary or unlawful interference with his or her privacy” could be read as a right to abortion under existing U.S. case law.⁵⁸ However, Article 16(1)’s right to privacy is not *necessarily* a

⁵⁵ U.N. Convention on the Rights of the Child, art. 24(1). It is worth noting that abortion opponents often interpret the phrase “health care services” as code for abortion, although the subsections of Article 24(2) suggests a broad range of health care services, such as primary health care, appropriate pre-natal and post-natal care for mothers, and measures to combat child mortality, disease, and malnutrition.

⁵⁶ Article 24(2)(f) does contain the phrase “family planning education and services,” which could be construed to include abortion, but does not *necessarily* include abortion.

⁵⁷ Jonathan Todres & Louise N. Howe, “What the Convention on the Rights of the Child Says (and Doesn’t Say) About Abortion and Family Planning,” *THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION*, 163, 167 (Jonathan Todres et al. eds., 2007)

⁵⁸ The ever-controversial right to privacy first appeared in U.S. case law in *Griswold v. Connecticut* (1965). In a 7-2 decision, the Supreme Court held that a Connecticut statute prohibiting the use or distribution of materials related to contraception violated the right to marital privacy. The majority reasoning for *Griswold* stated that “specific guarantees in the Bill of Rights have penumbras...various guarantees create zones of privacy.” *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). These zones of privacy exist within the freedom of association in the First

right to abortion⁵⁹. Other issues of children’s privacy, such as juvenile defendants’ privacy in the criminal justice system, were more likely the concerns in mind when this particular article was drafted⁶⁰. Moreover, teenagers’ access to abortion in the United States is an issue left to the states to decide, with some states requiring parental notification before the procedure and other states with no such requirement.⁶¹ Combined with the fact that teenage pregnancy in the United States is at a historic low⁶², the argument that teenagers could receive abortion services without parental notice post-ratification of the CRC is largely unfounded.

v. Corporal Punishment

Some ratification opponents fear that the CRC, once ratified, could supersede the Constitution and outright ban corporal punishment nationwide. The CRC requires State Parties to “take all appropriate...measures to protect the child from all forms of physical or mental violence, injury, or abuse,”⁶³ as well as “ensure that school discipline is administered in a manner consistent with the child’s human dignity.”⁶⁴ Whether corporal punishment can or should be considered a form of physical abuse (which would trigger government intervention as per CRC

Amendment, the right of protection against unlawful search and seizure in the Fourth Amendment, the Self-Incrimination Clause of the Fifth Amendment, and the Ninth Amendment, which reads, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” *Id.* The right to privacy was expanded in *Roe v. Wade* (1973), where the Supreme Court ruled “[t]he right to privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty...or...in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” *Roe v. Wade*, 410 U.S. 113, 153 (1973).

⁵⁹ As noted *supra* note 57, the Supreme Court found the right to privacy in multiple constitutional amendments in *Griswold v. Connecticut*, none of which explicitly mention the right to an abortion. The right to an abortion relies upon the right to privacy, but the right to privacy is not limited strictly in application to abortion.

⁶⁰ See *Todres & Howe* at 170.

⁶¹ Planned Parenthood Federation of America, Inc. *Parental Consent and Notification Laws*. <https://www.plannedparenthood.org/learn/abortion/parental-consent-notification-laws> (2017).

⁶² Center for Disease Control. *About Teen Pregnancy: Teen Pregnancy in the United States*. <https://www.cdc.gov/teenpregnancy/about/> (April 26, 2016).

⁶³ U.N. Convention on the Rights of the Child, art. 19.

⁶⁴ U.N. Convention on the Rights of the Child, art. 28(2).

Article 19) is well a subject for another paper.⁶⁵ However, as discussed earlier in this paper⁶⁶, the CRC cannot override the Constitution due to the Supremacy Clause. Furthermore, Congress would be unable to make a law implementing either CRC Article 19 or 28(2) without basing its authority to do so on some existing constitutional power under Article II. Therefore, the states would still be free to legislate on the matter of corporal punishment, much as they do today, after CRC ratification.

vi. Sex Education

Finally, some opponents argue that parents would be unable to remove their children from sex education after ratification because doing so does not comply with the CRC's standards.⁶⁷ The argument stems from a 1995 document from the Commission on the Rights of the Child in response to CRC progress reports submitted by the United Kingdom⁶⁸. Under Section C of this document, item 14⁶⁹ details some concerns the Committee has regarding the implementation of Article 12—the right of a child to form and express their own view. The Committee is worried that children being removed by parts from parts of sex education programs in England and Wales interferes with those children's Article 12 rights⁷⁰; however, it does not pass any form of judgment or impose any sanctions for noncompliance on either England or Wales for allowing this practice. This comment merely serves as a yellow light to the United Kingdom that the country should examine this issue before it potentially turns into a larger

⁶⁵ For further reading, see Stephen Arnott, *Corporal Punishment in Minnesota: It's Domestic and It's Violence but Is It Domestic Violence?*, 16 FAMILY LAW FORUM 62 (2007).

⁶⁶ See *supra* Section III, subsection A.

⁶⁷ PARENTALRIGHTS.ORG, http://www.parentalrights.org/international_law_threats (follow “20 Things You Need to Know” under The UN Convention on the Rights of a Child) (last accessed March 16, 2017)

⁶⁸ See *supra* Section A of this paper regarding the State Party reporting procedure.

⁶⁹ U.N. Doc. CRC/C/15/Add.34 (1995). Concluding observation of the Committee on the Rights of the Child, United Kingdom of Great Britain and Northern Ireland. <http://hrlibrary.umn.edu/crc/UK8.htm>

⁷⁰ One could argue that removing children from sex education also interferes with their right under Article 24(2)(f) to access “family planning education and services,” since discussion of contraception—also referred to as *family planning*—is often a large part of sex education classes.

problem. Parents in the United States who send their children to public school have been free to remove their children from sex education classes for years; parents who send their children to private schools may never encounter this issue. Should the U.S. ratify the CRC, it *might* receive a similar response to the practice of removing children from sex education as the United Kingdom, but this is not guaranteed to happen.

IV. Potential Revisions to U.S. Law

Setting aside the various arguments against ratification, there is the question of whether the United States is prepared to implement a human rights treaty such as the CRC. After all, it is one thing to sign a human rights treaty and approve of the ideas contained within the treaty; it is another thing altogether to ratify that treaty and do the work necessary to recognize those ideas. Therefore, an overview of areas of law where the U.S. may need to bolster its support of children is in order.

One of the most glaring areas where the United States needs improvement with regards to children is in the juvenile justice system. To quote from the ACLU: “The most obvious arena in which the United States denies children their human rights—and their childhood—is the criminal justice system.”⁷¹ Though the rate of juvenile residential placement has fallen by over 50% in the last twenty years, there are still over 50,000 juveniles in the criminal justice system in the United States.⁷² Non-Hispanic Black juveniles are incarcerated at over four times the rate of their non-Hispanic white juvenile peers.⁷³ And although conditions vary by institution and by state,

⁷¹ Sarah Mehta, *There's Only One Country That Hasn't Ratified the Convention on Children's Rights: US*, AMERICAN CIVIL LIBERTIES UNION BLOG: SPEAK FREELY (Nov. 20, 2015, 1:30 PM)

<https://www.aclu.org/blog/speak-freely/theres-only-one-country-hasnt-ratified-convention-childrens-rights-us>

⁷² U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *Statistical Briefing Book*. <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2014> Note that the statistic of 50,000+ juveniles refers only to data taken on juveniles in residential placement, meaning they are awaiting adjudication, have been adjudicated for an offense, or are otherwise housed outside their homes. This data does not account for juveniles housed in alternative corrections facilities, including adult corrections.

⁷³ *Id.* at <https://www.ojjdp.gov/ojstatbb/corrections/qa08203.asp?qaDate=2013>

“horrific institutional conditions are common, not exceptional” in juvenile corrections facilities. Such conditions include excessive use of isolation and restraints as a means of penalizing offenders who act out, unsanitary conditions in cells, and sexual harassment of both inmates and corrections officers.⁷⁴ About 10,000 youth are held in adult jails and prisons in the United States, and being held in such facilities greatly increases a youth offender’s risk for sexual abuse and manifestation or reappearance of mental illness symptoms.⁷⁵ In short, system-wide reforms in the juvenile justice system are quite necessary to bring the United States within compliance of pertinent CRC obligations (Articles 37 and 40 specifically).⁷⁶

This is not to say that the United States has made no progress in improving its juvenile justice system. Until 2005, the United States permitted the death penalty to be used for juvenile offenders; it was the only country in the world at that time to still have the punishment on the books in the juvenile system. In *Roper v. Simmons*, the Supreme Court ruled the death penalty for juveniles to be cruel and unusual punishment under the Eighth Amendment and a violation of equal protection under the Fourteenth Amendment. Since the *Roper* ruling, the Supreme Court has been slowly chipping away at the next most severe punishment in the juvenile justice system: life in prison without the possibility of parole (LWOP). Once again, the United States stands alone as the only country in the world to sentence people under the age of 18 to life without

⁷⁴ Vincent Schiraldi, *What Mass Incarceration Looks Like for Juveniles*, NEW YORK TIMES (Nov. 10, 2015), https://www.nytimes.com/2015/11/11/opinion/what-mass-incarceration-looks-like-for-juveniles.html?_r=1

⁷⁵ Campaign for Youth Justice, *Key Facts: Youth in the Justice System* 1, 3 (April 2012). <https://www.campaignforyouthjustice.org/documents/KeyYouthCrimeFacts.pdf>

⁷⁶ Article 37 generally reads as a combination of the Fifth and Eighth Amendments to the U.S. Constitution: No child shall be subject to cruel and unusual punishment; the child must be detained for the shortest amount of time possible; and the child’s dignity and right to access legal assistance while detained must be respected. Article 40 expands upon Article 37 and provides a child’s right to a fair and speedy trial and the right to be presumed innocent until proven guilty in a court of law, among other rights; essentially Article 40 is an international, expanded version of the Fifth Amendment.

parole⁷⁷. In *Graham v. Florida* (2010), juvenile LWOP sentencing was restricted to juvenile offenders who had committed homicide—all other types of offenders under the *Graham* ruling should be sentenced with a “meaningful opportunity for release”⁷⁸ in mind. Justice Kennedy for the majority said, “A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only,”⁷⁹ referring to how much longer and more mentally punishing an LWOP sentence is to a juvenile offender. In 2012, *Miller v. Alabama* and *Jackson v. Hobbs* were decided jointly by the Court, and the Court determined mandatory LWOP sentences for juvenile homicide offenders were unconstitutional under the Eighth Amendment. The Court let the individual states decide whether the *Miller* and *Hobbs* rulings applied retroactively to offenders sentenced before 2012. However, in 2016, the Supreme Court made that determination for the states in *Montgomery v. Louisiana*, when it found that *Miller* did indeed apply retroactively.⁸⁰ Consequently, all juvenile homicide offenders who were sentenced to LWOP under mandatory sentencing guidelines before 2012 are now able to have their sentencing reviewed before the courts. So although the United States is still in violation of Article 37(a) of the CRC⁸¹, the Supreme Court has narrowed the applicability of LWOP sentencing so that it likely will become an extinct sentence within a few years. This is, of course, but one issue in the juvenile justice system. Reforms will be a lengthy and complex process across the board.

Another area where the United States could do better in supporting its children is in education. Article 28(1) of the CRC places an obligation on State Parties to “recognize the right

⁷⁷ Joshua Rovner, *Juvenile Life Without Parole: An Overview*, THE SENTENCING PROJECT (July 1, 2016).

<http://www.sentencingproject.org/publications/juvenile-life-without-parole/>

⁷⁸ *Graham v. Florida*, 560 U.S. 48, 50 (2010)

⁷⁹ *Id.* at 70.

⁸⁰ *Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016).

⁸¹ U.N. Convention on the Rights of the Child, art. 37(a): “...neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

of the child to education” and lists the various ways in which State Parties could recognize this right. The United States currently fulfills some of these obligations—for example, the public school systems satisfy the requirement to make primary education compulsory and available free to all.⁸² Other obligations are arguably met, such as making higher education accessible to all students on the basis of capacity⁸³. However, issues such as skyrocketing tuition costs and mounting student loan debt nationwide call into question just how well current measures to meet this end are working. Add to this that the U.S. students overall perform at about average worldwide in science, mathematics, and reading⁸⁴ when they were once the top students in the world, and one would question just how well the United States could meet the education obligations of the CRC.

Improving the U.S. education system to be within compliance of the CRC would be a daunting task, though not insurmountable. The top priority would be to recognize every child’s right to an education as a constitutional right. However, the Supreme Court has held that the right to education is neither explicitly nor implicitly protected under the Constitution⁸⁵ and has yet to rule otherwise in recent years. Perhaps the most effective solution would be a constitutional amendment recognizing a right to education, rather than waiting for another constitutional challenge similar to *San Antonio Indep. School Dist. v. Rodriguez*. Unfortunately, the current

⁸² U.N. Convention on the Rights of the Child, art. 28(1)(a). See also art. 28(1)(e), which says that State Parties should “take measures to encourage regular attendance at schools and the reduction of drop-out rates”; state compulsory education statutes also fulfill this obligation.

⁸³ *Id.* at art. 28(1)(c).

⁸⁴ Drew DeSilver, *U.S. students’ academic achievement still lags that of their peers in many other countries*. Pew Research Center (February 15, 2017), <http://www.pewresearch.org/fact-tank/2017/02/15/u-s-students-internationally-math-science/>

⁸⁵ *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973). Rodriguez et. al argued that education was a fundamental personal right because it is essential in order to fully exercise one’s First Amendment right to free speech and the right to vote. The Supreme Court rejected this argument, as they found relative differences in education spending levels (as opposed to substantial differences) did not violate such personal rights if an education for the “basic minimal skills for enjoyment of the rights” was provided.

polarized political climate in the United States suggests that any kind of constitutional amendment might be difficult to draft and ratify at this time. Along with this, the newly appointed Secretary of Education has endorsed ideas (such as the privatization of all public schools nationwide) which would only move the United States further away from recognizing the ideals of the CRC, not toward them. More comprehensive suggestions on how to meet the other education obligations of the CRC, like further developing different forms of secondary education⁸⁶ and improving accessibility to higher education, fall outside the scope of this paper, but it is clear that further work needs to be done.

One other area where the United States simply must do better is ensuring an adequate standard of living for its children. Article 27 of the CRC requires State Parties to “recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”⁸⁷ The United States is clearly failing in this aspect: over 15 million children, or 21% of all children, live in families with incomes below the federal poverty line.⁸⁸ When accounting for the fact that most families need twice the income of the federal poverty line to provide for basic needs, about two in every five children, or 43%, live in low-income families.⁸⁹ On a global scale, the United States ranks 26th out of 29 developed nations in overall child well-being and scores in the bottom third of those developed nations in the five categories of material well-being, health and safety, education, behaviors and risks, and housing and environment.⁹⁰ Reforms for improvement in this area would be numerous, but perhaps a starting point would be a reevaluation of the federal poverty line, using updated data to reach a

⁸⁶ U.N. Convention on the Rights of the Child, art. 28(1)(b).

⁸⁷ U.N. Convention on the Rights of the Child, art. 27(1).

⁸⁸ National Center for Children in Poverty, “Child Poverty.” <http://www.nccp.org/topics/childpoverty.html>

⁸⁹ *Id.*

⁹⁰ Peter Adamson, *Innocenti Report Card 11—Child well-being in rich countries: an overview*, UNICEF (April 2013) <https://www.unicef.org/media/files/RC11-ENG-embargo.pdf>

more accurate means of measurement. Other possible reforms include increasing the federal minimum wage, which in turn would encourage states to raise their own minimum wages and lift families out of poverty, as well as loosening eligibility requirements for state and federal welfare programs. However, the current administration appears to favor slashing social spending as a means of improving the country instead of increasing social spending, so once more, the United States has moved further away from fulfilling its potential State Party obligations in the CRC.

All of this isn't to say that the United States does not already recognize *some* of the ideals which the CRC espouses. As mentioned above, primary education is made available to all students free of charge through the public school systems, which is in line with Article 28(1)(a). Child labor laws have been in place in the 1930s—the Fair Labor Standards Act of 1938 prohibits children under fourteen years of age from any kind of non-agricultural employment and limits the hours children may work until age 18 to avoid interference with their schooling, and states have their own statutes regarding the matter of child employment. This is in compliance with Article 32. The best interest of the child standard has been the standard by which all family law courts have ruled for decades, and the standard recurs throughout the CRC starting with Article 5. Insofar as creating children's media along the lines of Article 17⁹¹, the United States is a world leader in that respect, with shows like *Sesame Street* being broadcast in dozens of countries worldwide and having multiple international co-productions. The systems of social work, foster placement, adoption, and family and juvenile courts exist in accordance with Articles 19, 20, 21, and 40, and all of these systems operate—at least in aspiration—with the best interest of the child standard in mind. And finally, it is worth noting that the United States

⁹¹ U.N. Convention on the Rights of the Child, art. 17: “States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual, and moral well-being and physical and mental health.”

provided major input in drafting the CRC, introducing more articles to the Convention than any other nation.⁹² Articles 13 through 16 in particular evoke the language of the First Amendment with the freedoms of expression, religion, association and peaceful assembly, and the right to privacy as implied under the Fourth Amendment. It goes without saying that the United States vigorously protects the Constitutional Amendments and so would have to make no changes to the law in this respect.

V. Conclusion

Because the United States holds a unique position as a world power in international politics, it should ratify the U.N. Convention on the Rights of the Child. Though several arguments exist as to why the United States should not ratify the Convention on the Rights of the Child, these arguments can be easily refuted by closely examining the CRC's articles. Ratification of other international treaties has not yet affected U.S. sovereignty, and the CRC is no different in this respect. Worries about the undermining of parental authority are unfounded—the CRC is in fact quite supportive of parents and families. Other more specific concerns, such as the government's role in children's education and children's access to abortions, are either based on misunderstandings of certain CRC provisions or taking quotes out of context.

The United States undoubtedly has work to do in domestic policy once it ratifies the CRC. Areas such as juvenile justice, education, and child poverty will all merit further investigation and improvement, but none of these are insurmountable tasks for a country that was founded largely as an experiment to be modified and re-shaped as needed. Additionally, there are areas where the United States already recognizes the ideals espoused in the CRC. We have come a long way in ensuring the rights of our people through decades of legislation and judicial

⁹² James L. Scherrer, *The United Nations Convention on the Rights of the Child as Policy and Strategy for Social Work Action in Child Welfare in the United States*, 57 SOCIAL WORK 11 (2012).

rulings, and children are yet another group deserving of the same time and effort we have devoted to other disenfranchised groups.

The United States' ratification of the Convention on the Rights of the Child will be a bold step the country can take as a human rights leader, and it is a step we ought to take. Our children deserve it.