

Eastern Illinois University

The Keep

Undergraduate Honors Theses

Honors College

2017

The United States and the United Nations Convention on the Rights of the Child, 1989-1995

Katie St. John

Follow this and additional works at: https://thekeep.eiu.edu/honors_theses



Part of the [International Relations Commons](#)

The United States and the Convention on the Rights of the Child, 1989-1995

BY

Katie St. John

UNDERGRADUATE THESIS

Submitted in partial fulfillment of the requirement for obtaining

UNDERGRADUATE DEPARTMENTAL HONORS

Department of History along with the Honors College at

EASTERN ILLINOIS UNIVERSITY

Charleston, Illinois

2017

I hereby recommend this thesis to be accepted as fulfilling the thesis requirement for obtaining
Undergraduate Departmental Honors

April 28, 2017
Date

Dr. Săce Elder
Thesis Advisor

May 1, 2017
Date

Dr. Charles R. Foy /
Honors Coordinator

4/28/2017
Date

Dr. Nora Pat Small
History Department Chair

EASTERN ILLINOIS UNIVERSITY

THE UNITED STATES AND THE UNITED NATIONS CONVENTION ON
THE RIGHTS OF THE CHILD, 1989-1995

A THESIS SUBMITTED TO THE FACULTY OF THE HISTORY
DEPARTMENT IN CANDIDACY FOR UNDERGRADUATE HONORS
RESEARCH FOR THE DEGREE OF HISTORY

BY

KATIE ST. JOHN

CHARLESTON, ILLINOIS

MAY 2017

Special thanks to Dr. Sace Elder and Dr. Lynne Curry of Eastern Illinois University for all their time and dedication in helping me develop and produce my thesis. I would also like to thank the librarians and staff of Booth Library at Eastern Illinois University and the University Library at the University of Illinois at Urbana-Champaign for making my project possible through their expertise in researching.

Introduction

The twentieth anniversary of the United Nations Declaration of the Rights of the Child, drafted in 1959, became an instrumental year for the beginning of children as the United Nations felt the need to draft an international treaty for children. The twentieth anniversary started what

became known as the International Year of the Child (IYC), and it is during this year that the United Nations began working towards the international treaty that would establish legally binding protections for children's rights. Ten years later, on November 20th 1989, the United Nations adopted the Convention on the Rights of the Child (CRC) after the Commission on Human Rights and the U.N. Economic and Social Council had given their support. Now what remained was for the member states to ratify the treaty.

The Convention on the Rights of the Child is perhaps one of the most all-inclusive documents ever produced for human rights, and many nations found that the provisions conflicted with domestic laws and cultural norms. Therefore, the ratification process included an implementation strategy that assisted nations in the adoption of the Convention. By 1997, one hundred ninety countries had ratified the CRC using this implementation process. To this date, every country but the United States has signed the CRC. If the CRC is meant to be a positive step in protecting the world's children, then why not sign and ratify it? Why can the United States not accomplish what other countries have with the CRC?

My research project is intended to investigate the Convention on the Rights of the Child, specifically in regards to the United States and the decision. The United States had supported other documents put forth by the United Nations, and had been a country that supported positive rights for children. Therefore, the refusal of the United States to ratify the CRC begs explanation. To do this, I examine specific provisions of the CRC that were contentious leading up to the adoption of the Convention. I argue that the United States faced strong opposition to the United Nations Convention on the Rights of the Child for three reasons. First, opponents of the CRC feared that the international treaty would undermine parental authority by mandating greater state oversight of family relations. This concern about parental authority was rooted in long-standing

normative assumptions about the idealized American family, childhood, and the role of parents as primary caregivers of children. Second, concerns about United States sovereignty, combined with the importance of state's rights (a special concern of conservatives), prevented the CRC from gaining the support it needed from the Bush and Clinton administrations. Finally, the people of the United States were largely misinformed about the UN drafting and implementation process, which heightened fears and encouraged resistance to accepting the CRC as the law of the land.

Other scholars have debated different reasons why the Convention has not been ratified by the United States, but none have approached this question historically. In her legal study of the CRC, Luisa Blanchfield writes that some critics "have expressed strong concern that the Convention will give the U.N. Committee on the Rights of the Child or the U.S. Government authority over the family structure and how parents choose to raise their children."¹ The importance of the family as a private institution ruled by the parents as a historical concept is key to explaining why people would be afraid of a change that made the U.S. Government the authority figure and not the parents. Blanchfield cites critics that opposed the Convention because allowing the Committee "to interpret what is in the best interest of U.S. Children severely undermines the role of U.S. parents."² In this thesis, I draw attention to the historical idealized and normalized construction of the family that required constant defense against

¹Luisa Blanchfield, "The United Nations Convention on the Rights of the Child: Background and Policy Issues," Congressional Research Service, April 1, 2009: 9, http://www.americanbar.org/content/dam/aba/publishing/insights_law_society/R40484.authcheckdam.pdf. Blanchfield is an analyst on International Rights and has authored numerous works covering that topic.

²Luisa, Blanchfield, "The United Nations Convention on the Rights of the Child: Background and Policy Issue," *Congressional Research Service*, April 1, 2009. http://www.americanbar.org/content/dam/aba/publishing/insights_law_society/R40484.authcheckdam.pdf, 9.

perceived threats. Blanchfield takes for granted the hierarchical nuclear family because of long term historical development, and the CRC debates drew attention to the historical element of the family. Cohen also joins the debate about parents' rights over their children, and succeeds in pointing out that there are multiple other treaties from the United Nations that the U.S. has signed and ratified, so the fact that U.S. has yet to ratify the CRC has more to do with simple opposition to the U.N., however, that does play a part.

To the problem of parental authority, Cohen adds the United States' concern about sovereignty. Cohen states that "many Americans misunderstood the structure and function of the United Nations, viewing it as some sort of world government possessing universal powers of enforcement," and that through the CRC, the United Nations intended for each nation that signs and ratifies the convention, to do so voluntarily," and to know that the CRC was designed "to assist nations in meeting their own goals," but not by "surrender[ing] any piece of their sovereignty."³ Furthermore, she makes the argument that "fear, uncertainty, and misinformation all play a part in preventing U.S. ratification of the Convention."⁴ I agree that the opposition stemmed from misunderstanding of the U.N. and the desire to keep U.S. sovereignty safe, but I add many of the American objections rose from the perceived threats to American laws and institutions relating to the family, misunderstandings that were only exacerbated by a lack of understanding of the U.N. drafting and ratification process.

Furthermore, my research offers an investigation into how this process worked, I demonstrate that other nations shared with the United States concerns about the CRC.

³Cohen, Cynthia Price Cohen, "The Role of the United States in the Drafting of the Convention on the Rights of the Child," *Emory International Law Review* 20, no. 1 (Spring 2006): 185-198. *Academic Search Complete*, EBSCOhost (accessed October 19, 2016), 195.

⁴*Ibid.*

However, by following the reservation and declaration process, they were able to reconcile domestic laws and policies with this new international law. The thesis thus puts the United States in context with other nations that shared U.S. concerns, but who nonetheless ratified the CRC, something other scholars have omitted from their explanations.

~

To answer my proposed questions about the United States' failure to ratify the CRC, it is necessary to first consider the legal and cultural tradition of parental authority in the United States. Since the early seventeenth century when the tradition of common law carried over to the Americas, the father of a family had always had complete control with rights and responsibilities as the head of the household. This set up the foundation for years to come that children, and women, too, did not have much say in what happened to them or the family, the idea of America as a patriarchy. During the nineteenth century, women eventually gained legal autonomy, but children remained "covered" under their parents. Though modified in the twentieth century, this tradition had an impact on people when the convention was proposed, and prohibited some Americans from accepting this idea that children could have their own set of rights they could claim in opposition to their parents. Chapter One traces the development of parental authority in the United States.

This concept of parental rights influenced the public debates about the CRC in the 1980's, at precisely the moment when Christian conservative movement was placing greater emphasis on the nuclear family. This movement in turn affected how the public viewed the ability of the CRC as a negative document that would take away parental rights. In chapter two, the debates in the public are compared to the effect the Convention might have had on the government. During these years, there were many writers who expressed their opinion the

Convention in newspapers and publications like the *New York Times*, *America*, *The Nation*, *Unesco Courier*. I explore both sides of the argument presented in the newspapers: those that supported the convention, and those that did not. Given that the people of the United States were the ones that influenced the policy-making of the presidential administration, it is particularly important to research how they felt about the Convention because it was the public opinion that would affect the decision of the Bush and Clinton administrations when debating whether to ratify the CRC. These sources reveal deep concerns about conflicts between US federal, state, and local law on the one hand, and international law that the CRC would obligate the U.S. to enforce on the other hand. Many of the concerns in the newspapers were centered on the rights the CRC took away from parents rather than the positive rights it granted to children.

The final chapter examines the ratification of other nations and the formal reservations that they expressed when adopting the CRC. These reservations allowed other nations to implement the parts of the CRC that didn't conflict with their already established laws, while stating what articles, or part of articles, they did not want to adopt for various reasons. There are complex reasons the United States is the only country that has refused to ratify the CRC. Examining the reservations of other nations indicates how other nations resolved the concerns about the CRC discussed in chapter two. Comparing these concerns with the different reservations allows the conclusion to be made that perhaps the United States could make use of the same process.

Chapter One

Changing America

The longstanding tradition of parental authority that existed very strongly since the nineteenth century surely influenced the people who thought the CRC would take away from their rights. Those opposed to ratifying the CRC in the late 1980s and 1990s had an issue of what the CRC took away, rather than what it gave to children, especially those children that suffer. The American family ideal underwent changes in the late nineteenth and twentieth centuries, but

the central principles upon which it rested remained. At the end of the 1980s, the limits of parental authority remained a highly contested issue, even within the American legal system. In this chapter, I trace the development of the American family idea, and further argue that the pivotal shift from the family as a public institution to a private institution placed extreme importance on the rights of parents over their dependent children.

~

One idea that emerged in the nineteenth century was the idea of the republican family. The republican family focused on the individual and their role within the family and society, and weakened the patriarchal family in colonial America. Patriarchy yielded somewhat to the authority of mothers as caregivers and nurturers, though women never entirely usurped the power of men in the household. Michael Grossberg suggests that the emergence of the republican family brought about dissatisfaction with the old structure in the family because “as modifications of the traditional ideal of the family accumulated with time, families became less and less willing to sacrifice domestic autonomy to the dictates of communal supervision.”⁵ This meant that people were unhappy with the way their lives were going when the community was in everyone’s business all of the time, and were no longer going to compromise. Instead, people wanted to focus on individual interests. Prior to this change, people focused a lot on the ideal of living and belonging to a community where everyone watched out for one another and helped one another. By contrast, the republican nuclear family reflected the value of individualism, and became the vehicle through which people could pursue their own personal fulfillment and material acquisitiveness. The republican family allowed people to focus on themselves in the privacy of their own home, there was no longer a need to watch out for troublesome neighbors,

⁵Grossberg, Michael Grossberg, *Governing the Hearth: Law and Family in Nineteenth-Century America*, Chapel Hill: University of North Carolina Press, 1985, 5.

or help a neighbor make ends meet by giving them food. The republican family was a private institution in which only the parents were to maintain the well-being of their nuclear family. Like all changes, there were people who feared the disruption of the family and inheritance patterns because of this new ideology, but many people embraced this change. The new ideal helped to bring more independence to individuals in the family instead of focusing on contributing to the community. The republican family brought about change because before households worked as a part of a team to the larger community, and one member could not carry out his or her duties without the rest of the team, and there was not much room for individual fulfillment.

The new republican family ideology also meant a new place for each household member under the law. Although men had always overseen family affairs, the real change occurred within the role of a woman. When the republican family emerged, there were new places for members of the family within the structure. Before, women and children were covered under men, through *femme covert*; however, with independence as a new factor, women were given their own sphere to operate within the house, the domestic sphere, and the men were responsible for family support by controlling the public sphere. This shift stressed how important a woman's role was. Before, women, and children, were just there with no real sense of importance. The republican family introduced the idea of how important the parents, as opposed to just the father, were to the family, and that gave the parents as a team more rights over their children since women were no longer on a similar playing field as children. With this new ideology that emerged in the nineteenth century, a lot changed in society and those changes affected the long-standing tradition in America when it came the governing the family, especially children.⁶

⁶Grossberg, 6-7.

~

The changes in family life didn't stop in the nineteenth century. Mark Brandon argues that the changes in the legal status of the family were brought about by competing cultural norms by different groups in society, and that the white republican family was not the only one that underwent changes. For example, Brandon discusses groups such as African American families, the Mormon community that practiced polygamy, tribal families, and families that settled in the West. Brandon argues efforts to contain this diversity with the law led to the emergence of a Constitutional status of the family.

The African American family played a particularly important role in the shaping of American family law. African American families posed a "problem" for Americans from its very foundation. Many Americans did not know what to do with slaves and their idea of a family. The system of slavery made it difficult for slaves to maintain a family structure, but nevertheless slaves made their idea of a family work, whether they be separated and reunited, or reformed completely. After the Civil War and the Emancipation Proclamation, slaves were considered freedmen. Their status as a slave was once protected by the Constitution; however, now the African American people were legally freedmen with equal rights to white Americans. Because a new type of family was being interjected into society, one that had been illegitimate as property during slavery, many people were angered and confused. How could slavery, that was so deeply rooted into American society, end abruptly? How were people to supposed to accept the new status of the freedmen, and what would from their own culture that was once masked by slavery?

One of the most challenging aspects for slaves was maintaining a family while working for their masters. Brandon identifies two concepts that challenged the slave family as "sexual predation by whites" and the second "involved the susceptibility of slave families to being

broken up.”⁷ Although sex between whites and slaves was not the social norm, it occurred quite frequently and within every social class in America. Relations between whites and slaves occurred between white men with black women, and white women with black men. The existence of these relationships also varied. Some claimed to love their sex partner, some were in married relationships, some relationships lasted a long time, and others were short lived, but the fact of the matter is they existed. The law also did not do much to put an end to these sexual relations and let the relations go unpunished in two court cases, *Patton v. Patton*, and *Mosser v. Mosser*. The results of these cases reinforced an idea that a “legal toleration of sex between the races was the norm in Antebellum America.”⁸ The idea of whether it was acceptable for person of any class to marry outside of his or her race was controversial. States struggled with this idea and the reactions varied. Most Americans after the Civil War accepted the marriage of a white man to a black woman if the man was of lower class, however, it was less acceptable and more suspicious if a black man and white woman wanted to marry. This concern of black men and white women received more legal attention and brought about policing racial lines. These relations disrupted many slaves’ families, as well as white, American families; however, it also created mixed families that were more present in society, and thus created a blending of cultures between the two races. Of course, it was not accepted by all, but when the two races mixed, the parents blended customs such as parenting styles, religion, food, dress, and so on. This was just one way that freedmen changed society in America after the Emancipation Proclamation.

The possibility of slave families being separated also disrupted the idea of families for them. Slaveholding families often sold off the children of two slave parents, sometimes the wife,

⁷Mark E. Brandon, *States of Union: Family and Change in the American Constitutional Order* (Lawrence: University Press of Kansas, 2013), 95.

⁸Brandon, 97.

or sometimes the husband, and the reason for doing so varied. Some slaveholder may have faced financial troubles, and selling a slave was one to earn money and spend less maintaining that slaves life.⁹ Even more shocking is the fact that the Supreme Court encouraged the sale of individual slaves rather than the group or family of slaves because “the market value of the whole was typically less than the sum of its parts.”¹⁰ Regardless of the reason, families were broken up and it made it very difficult for slaves to maintain their families with these practices. For children, especially, this was detrimental as they could be raised by two, or sometimes more than that, very different people within in their childhood, which produced a group of children with different cultural norms from some of their African American counterparts. From interracial marrying and broken families, it’s easy to see how a cultural group such as the African Americans changed society after slavery.

If two slaves managed to stay together throughout the Civil War, then recognizing marriages between slaves was possible through common-law marriage. This would allow former slaves to have a legitimate marriage and continue their own families if they were still together, or attempt to look for their children. The “institution of common-law marriage promoted both a practical equity and a kind of liberty that an administrative state would have been unable to deliver”, however; many states extended the rights of marriage to former slaves.¹¹ No matter the specific issue at hand, it is easy to see how former slaves even after the Civil War struggled to start their own families and how children specifically could be impacted, but nonetheless the racial family in America remained tough and existed despite these conditions.¹²

⁹Brandon, 98.

¹⁰Ibid.

¹¹Brandon, 102.

¹²Ibid.

In regards to change over a slow period of time, the “racial family was integral to the nation’s self-constitution. It formed the creation of rules for who could be a full member of the order. And it influenced the enforcement of legal rules concerning who could establish a permanent home and where.”¹³ In addition, Brandon’s argument about cultural groups undergoing change is similar to those of the white, normalized family. After the slaves were granted freedom, their family relationships were no longer dictated by the slave owners and the market for slaves, but now instead they could begin to establish their own private institution without white interference, just as the republican family was privatized away from the community. But regardless of the challenges the racial family faced, it has been considered an “American family.” The example shown by explaining the racial family is important in establishing that the long-standing traditions of a family construct changes over time, and that the law played an important role in defending the normalized family. The CRC presented yet another challenge to this complex idea of family. Perhaps people may have felt that there was finally an established enough sense of family after these changes that Grossberg and Brandon discussed that more change just was not necessary.

~

Another significant development in American parent-child relations was the emergence of the child as an object of scientific research in the twentieth century. This model was built upon early ideas that children were vulnerable and needed protection, and it allowed for new institutions to protect children. Barbara Bennett Woodhouse is a specialist in children’s rights throughout American history. Perhaps the most interesting part of Woodhouses’s argument is the idea of the emergence of “childhood studies” and what it has accomplished. Woodhouse takes

¹³Ibid., 107.

into consideration the integration of the “growing understanding of child development with [the] growing awareness of how environmental and cultural influences define children’s worlds”, but also what children have done to define their own status.¹⁴ When people in society started to understand how children developed, societal views on child abuse also changed. It became a more sensitive subject. This is important because the emergence of developmental psychology reinforced the notion that children needed protection and guidance from adults, the child’s “interests” were thus to be happy and to develop into a healthy being, which benefitted society with productive and dependable citizens. On the one hand, this elevated status of the child authorizes state intervention into the family to assure the family was doing an adequate job protecting the child. On the other hand, it also legitimated the authority of custodial adults over not-yet-autonomous beings. Developmental psychology thus constructed a child in need of constant supervision. This supervision could come from state-recognized experts; but it also came from parents.¹⁵

~

No case more dramatically illustrates this tension between children’s interests and parental authority than the Joshua DeShaney case of 1989. In *The DeShaney Case: Child Abuse, Family Rights, and the Dilemma of State Intervention*, by Lynne Curry describes the life a boy named Joshua, who lived with his father, who was remarried after his mother gave up her rights. Joshua’s early childhood was one filled with “accidents.” Eventually the state got involved by assigning a child protection worker, Ann Kemmeter. She had met with Randy, Joshua’s father, to

¹⁴Barbara Bennett Woodhouse, *Hidden in Plain Sight: The Tragedy of Children’s Rights from Ben Franklin to Lionel Tate* (Princeton: Princeton University Press, 2008), 5.

¹⁵On the emergence of protectionism and the notion of the vulnerable child, see Susan J Pearson, *The Rights of the Defenseless: Protecting Animals and Children in Gilded Age America* (Chicago: University of Chicago Press, 2011).

offer guidance to him on how to parent Josh so that he would not have so many accidents.¹⁶

Kemmeter's attempt to help correct the problem through guidance was typical of the family preservation model. Part of the model was guidance, and the other was state authority over the parents; however, there was a fine line between the two, and it was not always clear when the protection worker needed to assert more authority over the situation.¹⁷

In Josh's specific case, the "accidents" became more and more frequent, so Kemmeter started to focus on "better parenting skills to lessen Josh's tendency to harm himself," since Josh's father and his wife seemed annoyed with the idea that Kemmeter would think of them as child abusers.¹⁸ After this approach failed to help the problem, Kemmeter began to question the nature of the accidents. As a child protection worker, she was there to protect the child, and she had no real inclination to believe that Josh's "accidents" weren't actually accidents. Because there had been a shift from a public, communal family to a private, nuclear family, it was crucial to defend this very private institution. During this time, protecting the private institution of the family was more important than protecting the child.¹⁹ This meant that because the DeShaney family was more concerned with protecting their identity as a family and their control over their own son, they did not want the state intervening to protect Joshua. Maintaining a stable family was far more important, and admitting there was a problem would ultimately lead to a failed family. Furthermore, the family had become such a private institution that strict regulations made it difficult for social workers to transgress the rights of the parents.

¹⁶Lynne Curry, *The DeShaney Case: Child Abuse, Family Rights, and the Dilemma of State Intervention* (Lawrence: University Press of Kansas, 2007), 13-17.

¹⁷*Ibid.*, 23-4.

¹⁸*Ibid.*, 26.

¹⁹Curry, 61.

Gender also influenced the problem of domestic abuse and how it was perceived. Women and children were often the ones abused, although not always. Women were also often blamed for child neglect, which is why Kemmeter was inclined to blame Marie for Josh's accidents rather than his own father.²⁰ After Josh's last, almost fatal injury, the DeShaney family was investigated under a closer microscope, and Randy was sentenced. Eventually, Josh's mother wanted to investigate what happened with her son, and felt like fighting the case at the Supreme Court level would help her and her son heal. Although they lost the case, the facts presented were interesting in regards to constitutional history. Josh's lawyers tried to argue a few main points. Sullivan had to establish "that the tort of negligence had occurred, establishing that it was a violation of Joshua's constitutional right", and he had to explain why Joshua's case was one of "special relationships" so that it was applicable to the federal law.²¹ In the end, Sullivan was trying to argue that although it was an individual person that committed the crime, and not a state, it was still the state's job to protect and not neglect Josh as a child. The court did not agree with this statement, because the court felt that the state could not act on behalf of protecting an individual since it was not a person and could not give the protection a child needed against its own parents. Despite the international embrace of rights discourse with regard to children, in the United States the child enjoyed no protected status while under the custodial care of a parent.

~

The DeShaney case was a dramatic case-study in the persistence of the private family that had emerged in the nineteenth century. Within that model, gender continued to define the appropriate roles of parents within the family. The special needs of the developing child authorized state supervision of the parent in the execution of his responsibilities, but they did not

²⁰Ibid., 43.

²¹Ibid., 86.

create a special obligation on the part of the state. In absolving Winnebago County social workers from culpability in his father's abusive treatment, it reinforced the legal sanctity of parental authority.

Chapter Two

"The Magna Carta for Children"

The DeShaney case was decided in 1989, the same year in that the United Nations Convention on the Rights of the Child was finalized. The DeShaney case offers a clear example of why the United Nations, many national governments, and children's rights activists believed a strong human rights instrument for children was necessary. But it also illustrates one of the chief obstacles to ratification by the United States: the challenge a human rights regime for children presented our constitutional arrangements. In this chapter I layout the drafting process of the CRC, and the implementation process required for each nation that signs and ratifies the CRC. Furthermore, I highlight the general problems children were facing that the CRC addressed, and then focus on the United States to bring to light the issues that the people had with the CRC.

Knowing this information is crucial when figuring out why the CRC has yet to be ratified by the United States. Problematic articles were centered on controversial topics such as the freedom of religion, adoption, minimum age for participation in the military, and the issue of when life begins. The latter two were particularly important to the United States.

~

The CRC wasn't drafted out of the blue, and there had been previous documents meant to protect children, such as The Declaration of the Rights of the Child, which outlined ten principles, including the right to equality, the right to name a nationality, the right to protection against all forms of neglect, cruelty, and exploitation, the right to understanding and love by parents and society.²² These instruments, however, were not legally binding, and thus supporters of children's rights wanted more robust international law. During 1979, the International Year of the Child (IYC), the United Nations resolved that the issues that children faced could only be resolved by drafting such a treaty so that each nation that signed on would have a legal contract they had to follow for children. The U.N. Commission on Human Rights set up a working group, chaired by Adam Lopatka of Poland, that was given the task of drafting the Convention on the Rights of the Child. The working group labored from 1979 until 1988, during which time members of the working group would meet one week out of the year until 1988. The working group took ideas from the text presented by the Polish government. This text contained twenty articles that provided basic rights to children. The working group expanded upon those ideas and added more articles into the convention totaling forty-one articles.²³

²²"Declaration of the Rights of the Child, 1959," Humanium Together for Children's Rights, accessed April 19, 2017, <http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/>.

²³Cynthia Price Cohen, "United Nations Adopts the Convention on the Rights of the Child." *The Twentieth Century, 1971-2000*, 2377-378.

Besides these additional articles, the convention also included an implementation process for the different nations that signed and ratified the document. This process included States Parties, one from each nation, that were required to report on the progress made in that particular country on implementing the rights outlined in the convention. The States Parties reported to the Committee on the Rights of the Child, another group established for the convention. The committee then evaluated the progress made using outside sources, such as the NGO group. More support for the convention was gained when about thirty nongovernmental organizations formed the Informal Ad Hoc NGO Group (NGO Group). This group helped in decisions made by the working group and reviewed articles of the convention, then recommending changes for the working group or sometimes completely new articles. There was a second reading of the convention in which legal scholars highlighted weaknesses within the convention. In the end, there were a total of fifty-four articles revised and then adopted by the working group. These articles covered a wide variety of topics such as defining the child, protection for the child, education, parental guidance, adoption and family relations, respect for the child and their views, freedoms of a child, right to privacy, access to information, health and health services, leisure, play, and culture, labor laws and exploitation, war and armed conflicts, juvenile justice, and implementation measures.²⁴ Eventually, on November 20, 1989 the General Assembly of the United Nations adopted the Convention on the Rights of the Child. Some nations had no hesitation in signing and ratifying the CRC, while others, like the U.S., had a hard time reconciling the CRC with already existing laws in place.

~

²⁴Rachel Hodgkin and Newell, Peter, *Implementation Handbook for the Convention on the Rights of the Child* (New York: UNICEF, 2007), 48.

Widespread discussion among people in the United States began to circulate before the International Convention on the Rights of the Child was signed or ratified by any country. Of course, some were better informed than others, and people took advantage of the news media to begin the conversation about the United States and its stance on the Convention. Before signing and ratification took place, it seemed as if the United States was on board with the Convention, and would ratify it. However, as the public became more interested in the Convention, some commentators began to express concerns over specific provisions. So, where's the compromise? Perhaps by examining the hotly debated issues in the Convention, such as describing children as people with rights, when life begins for a child, the military age, and others, more sense can be made as to why the U.S. cannot come to a compromise.

In November of 1988, A Special to the *New York Times* entitled "Charter on Children's Rights Gains in U.N." written by Paul Lewis, offered a first glimpse of the attitude towards the convention before the signing and ratification process. Lewis stated that, "for the first time, it redefines them as children's rights," meaning that for the first time in history, the Convention identified children as a group of people needing special protection.²⁵ Furthermore, Lewis described the Convention as a way to ensure children have the opportunity to "enjoy a family life" whether they come from a traditional family, a foster care system, or are adopted.²⁶ The overall tone of the article was positive, and he seemed to suggest it brought some hope to the children around the world who suffered on a daily basis, because the convention would do only good things for children.

²⁵Paul, Lewis, Special to The New York Times. "Charter on Children's Rights Gains in U.N." *New York Times (1923-Current File)*, Nov 11, 1988.

<http://search.proquest.com.proxy1.library.eiu.edu/docview/110430615?accountid=10705>

²⁶Ibid.

In October of 1989, the *New York Times* published an article entitled, “Long Talks Bring Child Rights Charter to U.N.” written by Marvine Howe, describing how the CRC got started. This article seems to be one of the first of many articles about the CRC that *NYT* published that year. It points to the suffering of children with more than 38,000 dying daily “from lack of food, shelter, or primary health care,” about 100 million children that work under dangerous conditions, and 80 million homeless children with a lot more refugees.²⁷ Howe quoted James P. Grant, the Executive Director of UNICEF, an agency devoted to protecting children, stating “[t]he Convention makes it clear that children are persons with inalienable human rights and that the violation of these rights is unacceptable” and many wouldn’t disagree that children needed better conditions, but people were suspicious of whether or not it was the Convention that could bring the improved conditions children needed. The article raised a further issue with the CRC, namely, how to finance the Committee on the Rights of the Child, which was given the responsibility to overview the nations that signed on to the CRC and their compliance with the document. Many nations felt like the United Nations should be responsible for funding the CRC, but the U.S. felt that the ratifying nations should be financially responsible.²⁸ It could be that before the CRC was finalized the U.S. did not want to be held at all responsible for funding any part of the CRC.

In the same article, Howe also referenced the issue with the question right of a fetus, stating that many people felt it needed to be discussed further because of the uncertainty of the United Nations goals at only including it in the preamble. In the United States, anti-abortion

²⁷Marvine Howe, Special to The New York Times. "Long Talks Bring Child Rights Charter to U.N." *New York Times (1923-Current File)*, Oct 29, 1989. <http://search.proquest.com.proxy1.library.eiu.edu/docview/110204621?accountid=10705>.

²⁸Howe, Special to The New York Times. "Long Talks Bring Child Rights Charter to U.N.", 8.

legislation of the nineteenth century was ruled unconstitutional in 1973. No state could infringe upon a woman's right to terminate a pregnancy within the first trimester. Critics of the CRC, according to Luisia Blanchfield, stated that the language could result in the Committee attempting to control abortion laws within the U.S., even though it is not directly stated in the Convention, but supporters of the Convention state that since there is not any anti-abortion language within the document itself, and therefore it would be an issue left up to the United States.²⁹ It was clearly stated in the CRC that childhood ended at 18, but there was no consensus on when it began. In a part of the preamble, it stated that "children need 'special safeguards and care, including appropriate legal protection before as well as after birth,'" but that was as specific as it got in regards to that issue.³⁰ The preamble is a nonbinding part of the CRC, so therefore it did not really establish a legal norm, but even mentioning anything about when life should begin, bothered some nations. In the United States abortion rights advocates worried it was just a way in to outlaw abortion.

Other articles, like "UN approves pact on rights of children," published in the leftist publication *The Nation*, also shared news about the preamble, and its reference to abortion. The fact that multiple news sources were reporting on the same topic again makes it clear that this was an issue the American people were talking about and was important to a certain degree. *The Nation* article appeared in 1989.³¹ The most interesting part of the article, especially since the United States still has not ratified the CRC, quoted a senior American official close to the drafting process who said, "[w]e believe that this is a popular issued favored by a majority of

²⁹Ibid.

³⁰Howe, "Long Talks Bring Child Rights Charter to U.N.", 8.

³¹"UN approves pact on rights of children" *The Nation*, November 21, 1989.

Americans,” and that there “appeared to be no obstacle to United States approval of the treaty.”³² Perhaps this official was stating this because it is what people wanted to hear, but clearly the officials knew of obstacles with the CRC since it was never passed to the Senate for further discussion.

A second article published by the *New York Times* in November of 1989, highlights the contested parts of the CRC early on, those being abortion, adoption, the minimum age for military combat, and child labor. In addition, this article quoted UNICEF officials who said that the reason for the “delay [in drafting the CRC] was a general lack of interest in children.”³³ The drafting and adoption process of the CRC allowed nations to get a glimpse of what kind of law would be in place if and when the said nation decided to sign on, which allowed the public time to become aware of some of the debates from each nation. For example, “the Nordic countries sought to set the minimum age for military combat at 18 years rather than 15,” [b]ut the United States successfully opposed the move, noting that 15 was the age set in the Geneva Convention.” The debate continued, however, and “[s]everal countries, including Iran, Jordan, and Algeria, voiced reservations about articles of the convention that might conflict their national laws.”³⁴

After the Convention came into existence, the United States was forced, like many other nations at the time, to decide what its action would be, to sign and ratify, or not. In December of 1989, *The Nation* reported that the Bush administration was making an issue of the military age once again. Even though the age of service had been set at 15 by the previous Geneva Convention and affirmed by the CRC, the real problem was that the United States allowed “17-

³² Howe, "Long Talks Bring Child Rights Charter to U.N.", 8.

³³Special to the New York Times. "U.N. Assembly Adopts Doctrine Outlining Children's Basic Rights." *New York Times (1923-Current File)*, Nov 21, 1989, A6, <http://search.proquest.com.proxy1.library.eiu.edu/docview/110326101?accountid=10705>.

³⁴Special to the New York Times. "U.N. Assembly Adopts Doctrine Outlining Children's Basic Rights," A6.

year-olds who have parental consent,” and “[t]o go along with the higher age would have meant losing those 17-year-old volunteers, something the Department of Defense is unwilling to do.”³⁵ When other nations raised the issue again, the Bush administration opposed raising the age because they did not want to lose younger volunteers. The *Common Cause Magazine* shared this similar view in a later 1990 article entitled, “The Children’s Hour.”³⁶ If the age was higher, then the U.S. would have lost some of their support in foreign nations since a good amount of their military personal are younger, adding another reason why the United States was not willing to compromise. This 1990 debate yielded no change in the CRC, and thus in the end the U.S. had no reason to reject the CRC on these grounds?

Even though this was one issue hotly contested by many nations, it wasn’t the only one, and even all issues aside, the *Common Cause Magazine* described the U.S. as a nation that had a “consistent pattern of resistance to U.N. efforts to promote international human rights and economic justice,” failing to ratify multiple other documents composed by the United Nations.³⁷ The resistance to the U.N. efforts in composing international doctrines was a part of both the Bush and Clinton Administration. Realistically, this article stated, “there was little hope that the Administration will break with the past and advocate that Congress endorse the Convention on the Rights of the Child.”³⁸ This meant that regardless of what the United States could say as an excuse as to why they refused to sign and ratify the CRC, resistance was a trend in US foreign policy, and the CRC needed a president willing to break the cycle.

³⁵“Our Children.” *The Nation*, December 18, 1989, 740.

³⁶S. Hornick and H. Idelson, “The Children’s Hour.” *Common Cause Magazine*, 1990.

³⁷“Our Children.” *The Nation*, December 18, 1989, 740.

³⁸*Ibid.*

However, the previous issues listed were just the beginning of the conflict surrounding the CRC, and also the beginning of the news coverage. The issue of the United States refusing to ratify U.N. treaties was still a topic of the debate in 1995 when Katha Pollit in *The Nation* stated that she wished the United States would take the U.N. more seriously, and that the CRC is common sense for the U.S. to take part in.³⁹ In January of 1991, "The World's Shame," an article published in the *Scholastic Update*, again made a reference to the clashing of U. S policy with the Convention on the Rights of the Child, and this time in particular with the laws already established in the states allowing youths to be executed under the age of 18 because in adherence to the Convention, "no child shall be subject to torture or cruel treatment."⁴⁰ This article also went on to summarize some of the other basic protections offered in the CRC, such as "Children have the right to leisure and play, the right to be protected from the use of drugs, and the right to be protected from sexual exploitation and abuse, including prostitution and involvement in pornography."⁴¹ All of these rights and more seem like positive protections that anyone would want their child to have. In a letter to the editor in the *New York Times* entitled, "Ratify the U.N. Rights of the Child Convention" published in 1991, the diligent work by leaders in New York is explained as a way to keep the momentum for support going.⁴² But why is there not support if only positive rights for children included? The answer to this question went back and forth over time.

³⁹ Katha Pollit, "Subject to Debate." *Nation* 261, no. 11 (October 9, 1995): 376. *Academic Search Complete*, EBSCOhost (accessed October 5, 2016), 376.

⁴⁰"The World's Shame." *Scholastic Update*. January 25, 1991, 3.

⁴¹The World's Shame." *Scholastic Update*, 3.

⁴²Matilda R. Cuomo, "Ratify the U.N. Rights of the Child Convention." *New York Times (1923-Current File)*, Jul 18, 1991, A20, <http://search.proquest.com.proxy1.library.eiu.edu/docview/108726651?accountid=10705>.

In 1995, *The Washington Post* published an article entitled “U.S. to Sign U.N. Pact of Child Rights” by John F. Harris in which it was stated that “the Clinton Administration...will seek to have the United States join the United Nations Convention on the Right of the Child, setting up a possible ratification battle in the Senate with conservatives that argue that the measure might weaken the authority of the parent.”⁴³ The article provides strong evidence that Americans worried about what the CRC would do to their authority over their children. Harris states that “some critics said the convention might allow children to sue their parents or prohibit states from executing juvenile murderers,” thereby threatening the authority of the parents and the state; however, later in the article, Harris stated that an “administration official said it will not give children the right to sue parents or supersede state laws dealing with the punishment of minors.”⁴⁴ Here the misunderstanding of the CRC in the minds of the American intensified with the fear of losing authority is to blame for the confusion and dramatic claims about the CRC.

In chapter one we spent time defining how important the rights parents have over their children with strong traditional ties, and how that set up the stage for a hard tide to turn when came to the CRC, but this article just puts it into words. This serves as an example of just a small percentage of the people who were actually worried that their children might have more power over their own lives and parents would lose some. Most people in an authority position is willing to give up power, but then again those that worried about losing power were largely misinformed about the CRC. Luisa Blanchfield stated this idea before and it’s again reinforced in my

⁴³Jon F Harris, "U.S. to Sign U.N. Pact on Child Rights," *The Washington Post*, February 11, 1995, A3.

⁴⁴Harris, "U.S. to Sign U.N. Pact on Child Rights, A3.

Introduction, so many parents felt that they are the only ones who should have any authority over how their children are raised, and that the CRC would take away from their ability to do so.⁴⁵

In 1999, one of the last years examined in my study, *the New York Times* published an article entitled, "Fighting to Save Children From Battle" in which it was stated that the U.S. "has not ratified the convention, and may not do so. Fearing it will be used for political purposes, the United States opposes the creation of the international criminal court" that was established by the CRC.⁴⁶ This criminal court was created as another way to uphold the CRC because previously it could not be cited in a nation's particular legal system as precedent to punish someone, whether that nation had a law in place in regards to the said offense or not. It was more a flexible set of guidelines and recommendations for each nation to improve the quality of children's lives.

~

From the Clinton Administration through the George W. Bush administrations, we had two, separate administrations that were not on the same page including the President, Senate, or Congress. For example, during the Clinton administration, the CRC was signed, but not submitted to the Senate because of widespread opposition from members in Congress. Perhaps this opposition was present because of actual fear of the United States losing control to the United Nations, or perhaps it was because the Congress was composed of Republicans that didn't want to work with a Democratic agenda. On the other hand, during the Bush Administration, the CRC was never sent to the Congress for approval because the Bush Administration was fearful of the United States giving up its authority over its own people to the

⁴⁵Blanchfield, 9.

⁴⁶Judith Miller and Paul Lewis, "Fighting to Save Children from Battle." *New York Times (1923-Current File)*, Aug 08, 1999, 14, <http://search.proquest.com.proxy1.library.eiu.edu/docview/110013438?accountid=10705>.

United Nations.⁴⁷ Regardless of the then-current political situation, what we have are numerous media sources that covered the CRC, attempting to flesh out the larger issues and explain it better; however, the Convention was not ratified.

The people of the United States are the ones who vote for their officials, and their voices are to be heard through these elected people, so a conclusion can be drawn that the opposition was great enough for the officials to hold off on ratifying the CRC due to public opinion in combination with government apprehensiveness. Going forward, if more people understood how the CRC worked, and just how flexible it was, than perhaps it would give Americans a great motivation to push their elected officials to do what's in the best interest of their children and ratify the CRC. Chapter three is designed to explain the reservations, declarations, and objections that can be submitted by a signing and ratifying nation so that certain parts of the CRC can be altered, or left out completely to avoid any conflicting existing law that a nation may have in place. During the years, before, and after the CRC, this process was not made readily accessible for the citizens of the United States thus making them a little less informed on the CRC than should be when considering such a positive document for our world's children.

⁴⁷For a further discussion on policy issue during the Clinton and Bush Administrations, see the "Summary" in Luisa Blanchfield, "The United Nations Convention on the Rights of the Child: Background and Policy Issues," Congressional Research Service, April 1, 2009. http://www.americanbar.org/content/dam/aba/publishing/insights_law_society/R40484.authcheckdam.pdf.

Chapter Three

Reservations and Declarations

The United Nations Convention on the Rights of the Child was welcomed with enthusiasm by multiple nations at the signing ceremony on January 20, 1990. More nations signed the convention at this ceremony, in total 60, than any other human rights treaty before. By December 1, 1991 a little over 100 countries had signed onto the CRC, and 192 by 2006. This ratification success rate should not be mistaken for consensus, however. Many member countries expressed concerns about various aspects of the Convention. In contrast to the United States, however, these states used the ratification process to register their reservations while also signing on to the agreement. The wide use of reservations by other countries only underscores the United States' unwillingness to work within the UN system toward joining the international community in accepted the CRC obligations.

In this chapter, I present examples of reservations and declarations of various nations that serve as examples of the ways in which countries that signed and ratified the CRC did so while maintaining their already existing laws and governments. I compare articles that were debated by the United States and other countries and highlight articles that were not debated by the U.S. in order to show that the CRC was in fact problematic for more than the U.S.; however, other nations found a way around their problems.

Submitting a reservation to the CRC allowed “a State to participate in a multilateral treaty in which the State would otherwise be unwilling or unable to participate.”⁴⁸ By following this process, many other nations had signed and ratified the CRC while formally outlining any problems with the already existing laws in each country. The process of ratification and declarations allow any states to accept the CRC, even while disapproving parts of the treaty.

In order to submit a reservation to the CRC, the signing nation must submit any reservations, signed by that State’s official, “at the time of signature or when depositing an instrument of ratification, acceptance, approval or accession.”⁴⁹ After the reservation is submitted, the Secretary-General sends the reservation out to any state that may be concerned with it, and if no state takes issue with that reservation, the reservation is then accepted by the Secretary-General. Any state wishing to object has 12 months to do so.⁵⁰

Another alternative for a State to ensure the Convention is compatible with existing domestic law is through an interpretative declaration. A “state may make a declaration about its understanding of a matter contained in or the interpretation of a particular provision in a treaty.”⁵¹ Interpretative declarations do not “purport to exclude or modify the legal effects of a treaty,” unlike reservations. They rather clear up the meaning of a specific article of the CRC, or the entire CRC itself, and are not legally binding. These declarations are also submitted at the time of signing the treaty, but sometimes may be added after. Since interpretive declarations are merely an understanding of an article, or a treaty and have no legal authority, they do not have to be signed by that state’s authority, but the United Nations prefers that these declarations are

⁴⁸United Nations, *Treaty Handbook*, prepared by the Treaty Section of the Office of Legal Affairs, United Nations, 2012, accessed December 5, 2016, 12, <https://treaties.un.org/doc/source/publications/THB/English.pdf>.

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid.,16.

signed to ensure its a declaration and not a reservation. The Secretary-General approves all declarations, just like reservations, to ensure that they did not constitute a reservation instead. It is then circulated to other States affected by the declaration, “allowing those States to draw their own legal conclusions as it its status.”⁵² The process by which a State can file a reservation or declaration is similar and allows two different options for States to sign and ratify the CRC in accordance with already existing laws for any controversial article or part of the treaty.

~

In chapter two I outlined some of the main concerns that the people of the United States had with the CRC, and concluded that because of the negative popular opinion, the CRC did not receive the push it needed in the government for it to be ratified. Here, I demonstrate how other countries that shared US concerns about X used the system of reservations and interpretive declarations to reconcile their concerns with the CRC.

I also examine concerns raised by member nations not raised in the United States. By examining the reservation and declaration process in a real situation, I show how different countries adjusted the CRC with already existing policy and ideology in order to ratify the treaty. In doing this, I intend to make it clear that the United States was not unique in its resistance to the Convention, but through the reservation and declaration process, 196 other countries became parties to the treaty. First I will cover the issues that the United States shared with other countries, and then move onto issue unique to different countries

~

The United States and Argentina agreed that the CRC and the issue of when life begins was problematic. In no place other than the preamble is anything mentioned about life starting

⁵²United Nations, *Treaty Handbook*, 18.

for a child, and the preamble does not affect the legality of the treaty or what it requires of its signatories since it is a nonbinding part of the treaty. However, in article one, “a child means every human being below the age of 18 years, unless the law applicable to the child, majority is attained earlier,” so the age limit is set for when childhood ends.⁵³ Argentina shared U.S. concerns with this aspect of the Convention. When Argentina signed and ratified the Convention in June 1990, they submitted a declaration that stated “[c]oncerning article 1 of the Convention, the Argentina Republic declares that the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of 18.”⁵⁴ Argentina thus defined when childhood began for themselves through this declaration. So, even though the CRC does not legally set when childhood begins, through a declaration, a nation could have done so or had the option to insert its own opinion or ideology of when life began.

The media in the United States made light of this same issue, when childhood begins, and the United States had the same opportunity as Argentina to submit a declaration in regards to this issue if it was that big of an issue.⁵⁵ It was possible to reconcile this issue with policy in the United States, so that if abortion laws change, then a declaration could follow that change in order to remain congruent with United States policy. This only serves as one example of how reservations served to reconcile the treaty with policy for Argentina.

The United States was also fearful that the CRC would take away parental authority by not allowing parents to punish their children as they deemed necessary. Some parents even

⁵³Rachel Hodgkin and Newell, Peter, *Implementation Handbook for the Convention on the Rights of the Child* (New York: UNICEF, 2007)1.

⁵⁴United Nations. Committee on the Rights of the Child. *Reservations, Declarations, and Objections Relating to the Convention on the Rights of the Child Note by the Secretary General*. United Nations, 1998, 13.

⁵⁵The problems the United States had with when life begin is discussed in more detail in Chapter 2.

feared that because of the CRC, children could sue their parents. Because of the long-standing tradition of parents having complete authority over their children, and a sense of a private family, people in the U.S. expected to have control over how they chose to punish their children. One article that outlines juvenile justice, article 40, was questionable in the eyes of the United States as granting the UN too much control over how children can be punished. Article 40 stipulates that any child being punished for whatever law that may have been broken should at least be guaranteed “to be presumed innocent until proven guilty according to the law.” The accused was “to be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardians,” and guaranteed help when defending him or herself.⁵⁶ The fact that it was required to help a child when preparing legal guidance when defending him or herself was viewed as the U.N. overstepping its boundaries and impeding on the states within the U.S. to handle how juvenile courts would be maintained.

Germany submitted a reservation in regards to this article, stating that there did not have to be a legal right for every child to have assistance when preparing to defend oneself; nor should punishments be reviewed by a “higher competent authority or judicial body.”⁵⁷ This can be viewed as Germany’s successful attempt to ensure that parents have the right to punish their children, as well as any lower courts, and if a child did commit a crime, it did not fall back on the parents to obtain defense for their child. As Germany, the United States could have submitted a similar reservation outlining any punishment set forth by a parent or legal guardian does not have to be approved by a higher court, and list anything else that may infringe on parent’s rights.

The military age was also an issue for the United States among other nations. While the age was kept at 15, which was established by the Geneva Convention, the article was nonetheless

⁵⁶Hodgkin and Newell, 601.

⁵⁷United Nations, Committee on the Rights of the Child, 23.

controversial. Article 38 specifically outlined the CRC's standpoint on the military age in which all States Parties are required to

respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts... take all feasible measures to ensure that under-15-year-olds do not take direct part in hostilities, refrain from recruiting under-15-year-olds into armed forces, give priority to the oldest when recruiting 15- to 18-year olds, take all feasible measures to ensure protection and care of children affected by an armed conflict.⁵⁸

Because at the beginning, the age of 15 seemed too young to some opponents such as Argentina and the Principality of Andorra, this article compelled some countries to submit a reservation or declaration. Austria submitted a declaration stating that only male citizens could participate in armed conflict, and Argentina submitted a declaration that it would like the CRC to prohibit children in armed conflict.⁵⁹ Andorra submitted a reservation stating that the "Principality of Andorra deplores the fact that the Convention on the Rights of the Child does not prohibit the use of children in armed conflicts," which was another way to interject their ideology that 15 was too young to be participating in armed conflicts. Argentina stated something similar, claiming that "the Argentine Republic declares that it would have liked the Convention categorically to prohibit the use of children in armed conflicts; such a prohibition exists in its domestic law, which...it shall continue to apply," thereby stating that its own domestic law will continue to apply regardless of the military age being set at 15.⁶⁰ These are just a few variations of how other nations dealt with this article in regards to their own popular opinion or policies, and the United

⁵⁸Hodgkin and Newell, 573.

⁵⁹United Nations, Committee on the Rights of the Child, 13-14.

⁶⁰Ibid., 13.

States ultimately got what they wanted with the age being kept at 15; however if it were needed, a declaration could have cleared up any other views the U.S. had in regards to the military age.

~

Next, I examine articles that were contested in other states besides the United States, and secondly articles contested by more than just the U.S., but for various reasons. Article 37, a second article that dealt with juvenile justice, states, “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment,” and “every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of deprivation of his or her liberty before a court or other competent, independent, and impartial authority, and to a prompt decision on such action.”⁶¹ In particular, the latter half of this article is what made people believe children could sue their parents, but as a whole it seemed as if parents would lose control.

Australia took issue with article 37, although it was in regards to paragraph (c), which states children should be separated from adults when in prison.⁶² Australia already had existing guidelines about children imprisonment, and therefore opted to sign and ratify the CRC without complying to article 37 because the CRC called for the separation of children and adults in prison; however, Australia was unable to comply with idea of separating the prisoners. Canada also found article 37 contentious. Canada submitted a reservation allowing them to “reserve the right not to detain children separately from adults where this is not appropriate or feasible,” meaning that children and adults could be in the same prison.⁶³ The Government of the Cook Islands also submitted a similar reservation about article 37 because they too wanted to reserves

⁶¹Hodgkin and Newell, *Implementation Handbook*, 547.

⁶²United Nations, Committee on the Rights of the Child, 14.

⁶³*Ibid.*, 16.

the right not to apply article 37, particularly in regards to paragraph c, stating that they did not have to separate children and adults in prison a clear guideline for child imprisonment.⁶⁴ The example of Australia, Canada, and the Government of Cook represent how different nations disagreed over the articles for various reasons; however, through the reservation process, each of these governments adjusted the CRC with already existing laws.

Article 21, an article that the United States did not state an issue with, caused problems for nations such as Korea, Russia, and Argentina, but for various reasons. Argentina submitted a reservation “to subparagraphs (b), (c), (d), and (e)...and declares that those subparagraphs shall not apply in areas within its jurisdiction because, in its view, before they can be applied a strict mechanism must exist for the legal protection of children in matters of intercountry adoption, to prevent trafficking in and the sale of children.”⁶⁵ In summary, the four areas that Argentina had issues with dealt with intercountry adoption and the practice associated with it; however, as noted for Argentina’s declaration, the guidelines set forth by the United Nations were not strict enough for Argentina to feel comfortable with Article 21.⁶⁶

Another option for the United States would be to follow the example set by Ireland, a more unique situation. When signing and ratifying the CRC, Ireland submitted a reservation stating, “Ireland reserves the right to make, when ratifying the Convention, such declarations or reservations as it may consider necessary.”⁶⁷ This is different from other nations because it allowed Ireland to make changes to their version of the CRC as they saw necessary. Here, Ireland did not list out reservations and declaration as they were needed before ratification, but

⁶⁴United Nations, Committee on the Rights of the Child, 19.

⁶⁵Ibid., 13.

⁶⁶ Hodgkin and Newell, *Implementation Handbook*, 293. A more complete list of what Article 21 entails can be found from page 293-300 in the *Implementation Handbook*.

⁶⁷United Nations, Committee on the Rights of the Child, 26.

instead gave themselves the authority to do it on a continuous basis. Although why Ireland followed this path is not clear in the official United Nations Convention on the Rights of the Child document that contains all the reservations and declarations submitted thus far. Following this method would have allowed the United States to have more time sign and ratify the CRC and resolve problems as they come up. Similarly, to Ireland, Indonesia set out the list of articles that it chose to adhere to, those being 1, 14, 16, 17, 21, 22, and 29, and that they will be applied “in conformity with its constitution.”⁶⁸ Without stating a reservation or declaration for every article it did not agree with, Indonesia listed the articles that it would apply to its constitution to make it easier on them. Out of 54 articles, Indonesia accepted seven, but were still able to sign and ratify the CRC.⁶⁹

~

From all the stated examples, it can be concluded that many nations took their own unique paths to work around problem areas within the CRC to be able to sign and ratify what worked with their already existing laws. Because the reservation and declaration process is laid out in the CRC, each country can submit one and have it approved so that it would not conflict with policy or ideology. Some nations submitted about an entire article, others about a subparagraph, and some just submitted its opinion about an article but took no action. It’s easier to assume that there must be a practical path for the United States as well.

⁶⁸United Nations, Committee on the Rights of the Child, 25.

⁶⁹According to the United Nations Treaty website, many nations have since withdrawn their reservations to articles that were submitted upon ratification. Although the reasons for withdrawing the reservations are not given, one can assume it’s because there was no longer an issue with the article thus no longer a need for the reservation or declaration. For example, Austria’s declaration for article 38 (military age) was withdrawn and the Government of Cook withdrew its reservation for article 37 (juvenile justice). More information can be found by checking the United Nations Treaty website under Depositary, and Status of Treaties, accessed April 19, 2017. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en.

The CRC was intended to be a positive document for continuing the improvement of children's rights, and in the United States it was widely viewed as a negative document taking away from parents; however, every other nation and their parents have found a way to still have parental authority and follow the guidelines set forth by the CRC. Whether the issue is "giving away" political authority to the United Nations by signing on to the CRC, or if it is that the people are seriously misinformed about the CRC, and what it would do to parent's rights, there must be a solution. By brushing it under the rug, the United States isn't doing anything positive for it as a nation or its children.

Conclusion

Throughout this thesis, I have argued that there were three main reasons the United States has failed to ratify the CRC. The first was the fear that the CRC would undermine parental authority by mandating greater state oversight of family relations. Because of the long-standing normative assumptions about the idealized America family, childhood, and the role of parents as primary caregivers of children, the threat the U.N. posed was dangerous and Americans needed to protect the family structure. By using examples from the media, which was an indication of the popular opinion from 1898 until 1995, I have shown that the American people were misinformed, but also afraid. The importance of parental authority grounded in the nineteenth through the early twentieth century of the republican family, and the pivotal shift away from the communal family was what needed protection from the U.N.

Second, the importance of the United States sovereignty from the United Nations combined with the importance of states' rights during the Bush and Clinton administrations, prevented the CRC from gaining the support it needed from the Government. Because both the Bush and Clinton administrations, separately, were not on the same page as the Congress, the CRC never made it into any real debates amongst Congress members, which was necessary for passage. In addition, my findings in the media reiterate this point by showing examples of hesitation amongst citizens since they felt that the CRC would allow a government institution into the private of their own home and take away power from them. Because this idea was circulating in society, policymakers could conclude that the CRC would not receive the support it needed.

Lastly, I have shown that the people of the United States were largely misinformed about the CRC and its implementation process, which heightened all their fears and continued

resistance to the CRC. The citizens of the United States were so bothered by the idea of giving any power up, that the actual content in the CRC did not have much value. The simple, yet damaging, fear is what kept people from jumping onboard with the CRC so that the CRC could be ratified in the United States.

In the future, a comparative study of all the reservations and declarations submitted by each country that has ratified the CRC would be beneficial to further define how the process worked in action. In addition, it would place the United States' problems in context, making it more clear how a reservation or declaration can work with a country's already existing law.

Here we are 28 years later, 197 countries have signed and ratified the CRC, and the United States is the last left to do so. Previously, the United States had prided itself as a leader in developing child's rights, but have yet to ratify the most extensive, legal binding treaty ever produced to do just that, develop children's rights. It is important to analyze these types of events, ideas and treaties historically because it unpacks so much more about the bigger picture, and helps to explain why things are the way that they are. In addition, by studying the CRC historically, it becomes clear that one simple answer does not suffice when it comes to questioning why the U.S. has and history helps explain the more complex answer. The implication of my research, especially in regards to the last chapter, is that the United States has not made use of the reservation and declaration process to overcome the problems it has with the CRC, and that the problem of parental authority was, and still is, so deeply embedded in the traditional family. Even today, society struggles with parental rights over children. For example, vaccinations for children are left up to the parents to decide, and some disagree with this because it may or may not be in the best interest of the child, but regardless the parents want to have the right to decide for their child, regardless of what others think. With my conclusions in mind, it is

upsetting to see the U.S. in the current state it is in regards to the CRC, but there is always time for improvement and change, even if it does not happen overnight.

Bibliography

Primary

Cuomo, Matilda R. "Ratify the U.N. Rights of the Child Convention." *New York Times (1923-Current File)*, Jul 18, 1991.

<http://search.proquest.com.proxy1.library.eiu.edu/docview/108726651?accountid=10705>

Drinan, Robert F. 1993. "A New Worldwide Commitment to the Rights of Children." *America* 169, no. 11: 22-23. *Academic Search Complete*, EBSCOhost (accessed October 3, 2016)

Harris, Jon F. "U.S. to Sign U.N. Pact on Child Rights." *The Washington Post*. February 11, 1995, A3.

Hornick, S. and H. Idelson, "The Children's Hour." *Common Cause Magazine*, 1990.

Howe, Marvine. Special to The New York Times. "Long Talks Bring Child Rights Charter to U.N." *New York Times (1923-Current File)*, Oct 29, 1989.

<http://search.proquest.com.proxy1.library.eiu.edu/docview/110204621?accountid=10705>.

Lewis, Paul. Special to The New York Times. "Charter on Children's Rights Gains in U.N." *New York Times (1923-Current File)*, Nov 11, 1988.

<http://search.proquest.com.proxy1.library.eiu.edu/docview/110430615?accountid=10705>.

Manciaux, Michel. "The Right to Be Heard." *Unesco Courier*, October 1991, Children in Danger sec. Accessed October 3, 2016. unesco.org.

Miller, Judith and Paul Lewis. "Fighting to Save Children from Battle." *New York Times (1923-Current File)*, Aug 08, 1999.

<http://search.proquest.com.proxy1.library.eiu.edu/docview/110013438?accountid=10705>.

Pollitt, Katha. "Subject to Debate." *Nation* 261, no. 11 (October 9, 1995): 376. *Academic Search Complete*, EBSCOhost (accessed October 5, 2016).

Special to the New York Times. "U.N. Assembly Adopts Doctrine Outlining Children's Basic Rights." *New York Times (1923-Current File)*, Nov 21, 1989.

<http://search.proquest.com.proxyl.library.eiu.edu/docview/110326101?accountid=10705>.

"The Convention on the Rights of the Child." *Unesco Courier*, October 1991, Children in Danger sec. Accessed October 3, 2016. unesco.org.

United Nations. Committee on the Rights of the Child. *Reservations, Declarations, and Objections Relating to the Convention on the Rights of the Child Note by the Secretary General*. United Nations, 1998.

United Nations, *Treaty Handbook*, prepared by the Treaty Section of the Office of Legal Affairs, United Nations, 2012, accessed December 5, 2016, <https://treaties.un.org/doc/source/publications/THB/English.pdf>.

United Nations, "United Nations Treaty Collections." United Nations. Accessed April 19, 2017. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en.

Secondary

Alston, Philip, John Tobin, and Mac Darrow. *Laying the Foundations for Children's Rights: An Independent Study of Some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child*. Florence, Italy: UNICEF, 2005.

Blanchfield, Luisa. "The United Nations Convention on the Rights of the Child: Background and Policy Issue." *Congressional Research Service*, April 1, 2009. http://www.americanbar.org/content/dam/aba/publishing/insights_law_society/R40484.authcheckdam.pdf.

Brandon, Mark E. *States of Union: Family and Change in the American Constitutional Order*.

Lawrence: University Press of Kansas, 2013.

Cohen, Cynthia Price. "The Role of the United States in the Drafting of the Convention on the Rights of the Child." *Emory International Law Review* 20, no. 1 (Spring 2006 2006): 185-198. *Academic Search Complete*, EBSCOhost (accessed October 19, 2016).

Cohen, Cynthia Price. "United Nations Adopts the Convention on the Rights of the Child." *The Twentieth Century, 1971-2000*. 2377-380.

Curry, Lynne. *The DeShaney Case: Child Abuse, Family Rights, and the Dilemma of State Intervention*. Lawrence: University of Kansas Press, 2007.

Grossberg, Michael. *Governing the Hearth: Law and Family in Nineteenth-Century America*. Chapel Hill: University of North Carolina Press, 1985.

Hodgkin, Rachel, and Peter Newell. *Implementation Handbook for the Convention on the Rights of the Child*. New York: UNICEF, 2007.

Law Reform and Implementation of the Convention on the Rights of the Child. Florence, Italy: UNICEF Innocenti Research Centre, 2007.

Legislative History of the Convention on the Rights of the Child. Vol. 1. New York, NY: United Nations, 2007.

Woodhouse, Barbara Bennett. *Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate*. Princeton: Princeton University Press, 2008.