The Time is Now to Ratify the Convention on the Rights of the Child

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ON SEPTEMBER 2, 1990 the Convention on the Rights of the Child ("CRC") went into effect.1 This treaty came after decades of work and discussion,2 with the promise “to provide a framework for advocacy on behalf of children and for enhancing the awareness of the special needs of children on the part of decision-makers and the public.”3 To this day, the CRC is the most widely accepted treaty by the international community.4 As with many other human rights treaties, the United States played a significant role in creating the CRC, even contributing to some key provisions.5 Despite this involvement, however, the U.S. has nevertheless taken a back seat regarding human rights issues by failing to ratify many of these core international instruments, including the CRC.6

With then-First Lady Eleanor Roosevelt as chair of the Universal Declaration of Human Rights drafting committee,7 the United States started out as one of the greatest supporters of human rights but has since grown less cooperative when it comes to international human rights treaties. Although President Bill Clinton did sign the CRC in 1995, the treaty has yet to go before the Senate for advice and con-
sent, rendering it non-binding. This comment explores the arguments employed by the United States to justify its failure to ratify, and how these tensions can be assuaged. By passing the CRC, systems facilitating education, healthcare, and juvenile detention could all be improved because the current standards do not reflect what we, as a society-at-large, deem satisfactory. This comment advocates that U.S. ratification could positively impact domestic laws concerning children’s rights. In addition, passage of the CRC would give the United States an opportunity to regain international credibility by realigning with the global community in promoting, monitoring, and enforcing human rights for all.

I. History

Before discussing the CRC, and its historical record, it is important to understand how the U.S. has acted regarding the ratification of international human rights instruments. The United Nations Human Rights Office of the High Commissioner lists eighteen human rights instruments on record that are in force. These include the various optional protocols to the main treaties.

Of the eighteen instruments listed, nine are considered the core human rights treaties, and the United States has ratified three of the nine. The nine major human rights treaties are: (1) the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”); (2) the International Covenant on Civil and Political Rights (“ICCPR”); (3) the International Covenant on Economic, Social, and Cultural Rights; (4) the Convention on the Elimination of All Forms of Discrimination Against Women; (5) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”); (6) the International Convention

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10. Id. (click the drop-down list to see the eighteen instruments on record).
12. Status of Ratification Interactive Dashboard, supra note 9 (click United States of America on interactive map to see history of signature and ratification).
on the Protection of the Rights of All Migrant Workers and Members of Their Families; (7) the International Convention for the Protection of All Persons from Enforced Disappearance; (8) the Convention on the Rights of Persons with Disabilities; and (9) the CRC. 13 The U.S. has ratified the ICCPR, CAT, and ICERD, as well as both the Optional Protocol to the CRC on the involvement of children in armed conflict, and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. 14

On its face, it appears the United States has been willing to participate in the creation of, and even ratify, many human rights instruments; however, this is a bit misleading. One of the major caveats to ratifying the above-mentioned treaties has been the inclusion of reservations, understandings, and declarations ("RUDs"). Reservations are typically characterized as qualifications that alter States’ obligations under the treaty but that cannot change the text of the treaty. 15 Understandings interpret or clarify a provision but do not alter them. 16 Declarations are statements that express the position or opinion of the State as a sort of reaction to a provision in the treaty. 17 All the treaties the United States has ratified, including the optional protocols, contain RUDs. 18

The practice of relying on RUDs began in the 1950s under the direction of Senator John W. Bricker. Afraid that the Genocide Convention would leave the U.S. open to international scrutiny and interfere with domestic affairs, Senator Bricker proposed various amendments to the U.S. Constitution prohibiting the nation from entering into any international treaties that “might infringe on the powers of the states or be applicable in domestic courts without implementing legislation.” 19 The Bricker amendments failed, but eventually resulted in the U.S. practice of limiting ratification of treaties. 20 One of the most common declarations that the United States

13. Core International Instruments, supra note 11.
14. Status of Ratification Interactive Dashboard, supra note 9 (click United States of America on interactive map to see history of signature and ratification).
16. Id.
17. Id.
18. Status of Ratification Interactive Dashboard, supra note 9 (click United States of America on interactive map; then click “Declarations” tab for RUDs).
has attached to each ratified human rights treaty has been a non-self-executing declaration. A non-self-executing declaration means that the treaties cannot be the basis of a cause of action. This was the heart of the Bricker amendments, essentially making treaties unenforceable without implementing legislation. The same concerns that appeared in the Bricker amendments continue to resonate with each new human rights instrument. This background has played a significant role in the ratification of new treaties, including the CRC, as will be discussed below.

A. The Convention on the Rights of the Child

The CRC is a human rights treaty that began its development almost thirty years before the actual treaty was written and ratified. In 1959, the General Assembly unanimously adopted the Declaration of the Rights of the Child, which contained ten principles describing rights considered essential to children. The driving principle behind the declaration was that children need special safeguards due to their “physical and mental immaturity.” The document covers everything from education to pre- and post-natal care, and recognizes “the fundamental importance in all countries, developing and industrialized, of programmes benefiting children . . . as part of broader efforts to accelerate economic and social progress.”

The Convention on the Rights of the Child was finally adopted in November of 1989. Although the United States signed the treaty in 1995, it has not been sent to the Senate for advice and consent for ratification. To date, the United States stands alone as the only State not to ratify the treaty, with Somalia having ratified the treaty in October 2015, and South Sudan having ratified the treaty in January 2015. This is one area where the United States should not be proud to stand alone.

23. AUDIVISUAL LIBR. INT’L L., supra note 2.
25. Id. at 19–20.
26. Id. at 19.
27. Id. at 19–20.
30. AUDIVISUAL LIBR. INT’L L., supra note 2.
B. Initial Objections by Parties to the Treaty

Some initial objections that States had regarding the CRC concerned parental rights, religious objections, military issues, adoption, and education; however, even the countries with these objections eventually ratified.\footnote{Id.} For example, Mr. Aboul Hassani from the Islamic Republic of Iran stated in the 44th Session of the General Assembly, “[a]lthough my delegation attaches great importance to the Convention on the Rights of the Child, I should like to place on record our reservation on any article that would contradict Islamic beliefs and values.”\footnote{U.N. HIGH COMM’R FOR HUMAN RIGHTS, Legislative History of the Convention on the Rights of the Child 271 (2007).} Similarly, Mr. Hamadneh from Jordan stated a reservation that the child’s right to freedom of religion means that the child has the right to practice his religion, not to choose the religion or the belief they will practice.\footnote{Id. at 271.} Other States had reservations about what age children should be allowed to enter armed conflicts.\footnote{AUDIOVISUAL LIBR., INT’L L., supra note 2.} Ultimately, the treaty mandated fifteen as the minimum age for children to participate in armed conflicts.\footnote{Convention on the Rights of the Child, supra note 1.}

II. U.S. Objections to the Convention on the Rights of the Child

Why does the United States refuse to ratify this treaty? Historically, the opposition to the CRC has been constant. Generally, the opponents of the CRC express concerns over sovereignty, federalism, reproductive and family planning rights, parental rights, and juvenile justice.\footnote{Rutkow & Lozman, supra note 4, at 168.} Some of these issues arise from a misinterpretation of what is in the CRC provisions, while others have been dealt with through recent Supreme Court cases. This section will address these issues.

A. Sovereignty

Sovereignty refers to the independence of a nation-state.\footnote{Id. at 173.} After World War II, the United Nations was formed to ensure peace among nations while protecting the sovereignty of all nations.\footnote{U.N. Charter preamble.} In other words, States cannot invade other States and violate an independent
nation-state’s borders. Joining the United Nations was, in a way, giving up a level of sovereignty to protect all States, but this was intended to be for limited purposes. The fear is that ratifying the CRC will be a surrender of independence for the United States, because upon ratification, the U.S. would be subject to the laws made by other nations. Additionally, international instruments, such as the CRC, create decision-making bodies that monitor and report on the conduct of States Parties. However, members who sit on the decision-making body are, of course, not always American. Thus, there is apprehension that the U.S. could be bound by a decision the body makes without even having a seat at the table. The fallacy in this argument, as will be discussed below, is that all treaties have decision-making bodies, and the U.S. has not been deterred from signing other such human rights instruments. The CRC should be no exception.

B. Federalism

The federalism argument, one frequently cited for domestic law, debates the rights of individual states versus the rights of the federal government. In essence, this is a sovereignty argument at the individual state level within the United States. The CRC contains provisions that are largely legislated at the state level. For example, the CRC contains provisions for family planning, education, juvenile justice, and custody. In the same way that opponents have concerns that the CRC would have an impact on laws at the federal level, those that make the federalism argument do not want an international body making laws for individual states.

In Missouri v. Holland, the United States signed a treaty with Great Britain regarding a migratory bird that was in danger of extinction. The state of Missouri sued the U.S. Game Warden alleging that the federal government was infringing on states’ rights under the Tenth Amendment to the U.S. Constitution. The Court stated that valid treaties between countries are binding on the individual states, and that a treaty may override an individual state’s power on matters normally decided at the state level. Based on this case it seems that an international treaty could potentially override individual state rights

40. Id.
41. Id. at 175.
43. 252 U.S. 416, 434 (1920).
44. Id.
45. Id.
even where the federal government itself would lack power under the Tenth Amendment. Some could make the argument that the federal government could use the treaty to bypass Tenth Amendment limits and enforce the treaty against the states. Because state governments themselves do not have a say in the adoption of a treaty or its accompanying RUDs, the power of individual states could potentially be usurped.

C. Abortion Concerns

Another argument against the CRC is that it does not offer any protections for fetuses and would serve to encourage abortion and other pro-choice policies.46 Americans United for Life is a public interest law firm that has argued in favor of pro-life policies for over forty years and has successfully argued pro-life abortion cases before the Supreme Court.47 William Saunders, the Senior Vice President of Americans United for Life, wrote the following:

[T]he CRC made the news recently when . . . the “Committee of the CRC” issued critical comments to a party to the Convention, criticizing the stance of the Catholic Church on life, abortion and other issues that can be decided in part based on personal values.

It told the Catholic Church to “ensure its interpretation of scripture” was in line with the Committee’s liberal views . . . . In essence, it ordered the church to violate the conscience and beliefs to conform to the CRC’s views.48

Whether this statement is true or not, it gives insight into some of the concerns held by CRC opponents. If the treaty omits a stance on abortion, or if there is a perception that the treaty advocates a pro-choice stance, this is something that proponents will have to deal with. Despite the fact that many other States with varying abortion stances have ratified the CRC, the United States seems to be in a unique position where opponents of abortion are able to voice their stance in a way that serves as a substantial barrier to the CRC’s passage. Therefore, proponents of the CRC cannot just ignore these concerns without addressing them in some meaningful way.

46. Rutkow & Lozman, supra note 4, at 178.
D. Parents’ Rights

Parental rights in the United States provide another ground for opposition to the CRC.\textsuperscript{49} There appears to be an inconsistency between Supreme Court precedent and the provisions of the CRC as the following cases and CRC provisions will show. Several Supreme Court cases affirm the right of the parent to establish a home and bring up children under the Fourteenth Amendment.

In \textit{Meyer v. Nebraska}, the Supreme Court discussed the validity of a statute that prohibited a school from teaching a foreign language.\textsuperscript{50} The Court held that the statute was invalid.\textsuperscript{51} The Court stated that under the Fourteenth Amendment, “[c]orresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life.”\textsuperscript{52}

Shortly thereafter in \textit{Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary}, the Court invalidated a statute in Oregon that compelled students to go to a particular school.\textsuperscript{53} The Court cited \textit{Meyer v. Nebraska} in its decision, and stated that the statute “unreasonably interfered with the liberty of [the] parents and guardians to direct the upbringing and education of children.”\textsuperscript{54} Furthermore, the Court held that “[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”\textsuperscript{55}

These two cases make clear that the Fourteenth Amendment gives parents the right to establish a home and bring up children the way they see fit.\textsuperscript{56} Ironically, Articles 5 and 12 of the CRC appear in line with the Court’s stance on parental rights.

1. Article 5 of the CRC

Article 5 of the CRC states the following:

\begin{quote}
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appro-
\end{quote}

\begin{itemize}
\item \textsuperscript{49} Rutkow & Lozman, \textit{supra} note 4, at 179.
\item \textsuperscript{50} 262 U.S. 390, 396 (1923).
\item \textsuperscript{51} \textit{Id.} at 403.
\item \textsuperscript{52} \textit{Id.} at 400.
\item \textsuperscript{53} 268 U.S. 510, 534–35 (1925).
\item \textsuperscript{54} \textit{Id.}
\item \textsuperscript{55} \textit{Id.} at 535.
\item \textsuperscript{56} \textit{Meyer}, 262 U.S. at 399.
\end{itemize}
appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.\(^{57}\)

Despite what seems like a position favoring parental rights, CRC opponents interpret this article to mean that parents are only to provide advice for their children, who are otherwise autonomous.\(^{58}\) In other words, the article can be read to imply that parental rights diminish as children’s rights increase. This starkly contradicts the Supreme Court cases detailed above. Constitutional Law Professor David M. Smolin explains that the term “rights” generally refers to autonomy rights, which in the U.S., and many other countries, are not conferred to children.\(^{59}\) For example, in the United States, children are not allowed to vote, enter contracts, get married, get a job, drink or smoke, but they are compelled to go to school.\(^{60}\) Thus, the inference of autonomy rights for children strips parents of the right to raise and protect their children.

2. Article 12 of the CRC

Article 12 of the CRC states: “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”\(^{61}\) Opponents of the CRC have taken issue with this article because it could be construed as meaning that parents can be prohibited from religious upbringing if a child does not want to go to church or practice a particular religion.\(^{62}\) As mentioned above, this was one of the concerns when Islamic States first began adopting the CRC.\(^{63}\)

These States, governing under Sharia Law, expressed a concern about religion and even asked for a reservation stating that children

\(^{57}\) Convention on the Rights of the Child, supra note 1, art. 5.


\(^{59}\) Id. at 92.


\(^{61}\) Convention on the Rights of the Child, supra note 1, art. 12.

\(^{62}\) Smolin, supra note 58, at 91.

\(^{63}\) U.N. HIGH COMM’R FOR HUMAN RIGHTS, supra note 32.
have the right to practice religion but not to choose the religion. In regards to this, Smolin stated, “[t]his difficulty has been acknowledged even by supporters of CRC ratification . . . the relationship between the government, parents, and children ‘is not sufficiently worked out.’”

There have also been issues regarding education. For example, in 2011, a U.S. Senate Resolution, supported by twenty-nine senators, stated that the CRC is contrary to principles of self-government and federalism, and that because the CRC undermines traditional American legal principles, the U.S. should not ratify it. The resolution gave examples from other countries where parties to the Convention were found in violation of the treaty when parents prohibited children from receiving sex education and where parents used common disciplinary measures. Whether these allegations are true or not, it is important that proponents understand all of the objections to the CRC and try to provide answers.

E. Juvenile Justice

There have been significant changes in the U.S. concerning juvenile justice reform; accordingly, issues with the CRC regarding juveniles have largely become moot. Article 37 of the CRC provides that “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.” For many years the United States government tried and sentenced juveniles to death if found guilty on murder charges. Capital punishment for minors was constitutional under the Eighth Amendment until 2005. However, in \textit{Roper v. Simmons}, the Supreme Court held that the Eighth Amendment forbids the imposition of the death penalty on juvenile offenders under eighteen. This was a monumental ruling for CRC proponents and for international law in general. In the majority opinion, Justice Kennedy referenced the CRC and the “weight of international opinion against the juvenile death penalty” to

\begin{thebibliography}{99}
\bibitem{note64} Id.
\bibitem{note65} Smolin, \textit{supra} note 58, at 95.
\bibitem{note67} Id.
\bibitem{note68} Convention on the Rights of the Child, \textit{supra} note 1, art. 37.
\bibitem{note69} 543 U.S. 551, 578 (2005).
\end{thebibliography}
support its ruling that the practice was unconstitutional. Generally, matters of criminal law are left to the states, thus CRC opponents argued that its ratification would infringe on states’ rights. However, the U.S. Constitution gives the federal government the right to enter into treaties.

The next hurdle the United States faces is prohibiting life-without-parole sentences for minors, which many states impose. To date, Supreme Court decisions have somewhat successfully chipped away at the frequency of life-without-parole sentences. In *Graham v. Florida*, the Supreme Court dealt with whether the Constitution permits a juvenile offender to be sentenced to life in prison without parole for a non-homicide crime. In that case, the juvenile defendant, along with some friends, attempted to rob a restaurant before it closed. The defendant walked into a restaurant and attacked the manager by taking a metal bar to his head, inflicting an injury that later required stitches. The defendant was charged as an adult and convicted of armed burglary with assault or battery, a felony, which carried a maximum penalty of life without parole. He was found guilty on these counts and in order to avoid a life sentence without parole, he entered a plea deal. Later, the defendant violated his parole by committing another robbery and life without parole was imposed. The Court held that the Constitution prohibits imposing life without parole for a juvenile offense that is not a homicide. The opinion relied on *Roper* and also referenced international consensus against the imposition of life without parole sentences as a factor in its holding.

The juvenile justice argument was even further chipped away in the 2012 case *Miller v. Alabama*. In this case, which was jointly tried between Florida and Alabama, two fourteen-year-old boys were sentenced to life without parole for murder. The issue was whether the Constitution prohibited life without parole sentences for juveniles.
The Court held that mandatory life without parole for those who were under the age of eighteen at the time of the commission of their crimes violates the Eighth Amendment of the Constitution, which prohibits cruel and unusual punishments.83

Most recently, in 2016, Montgomery v. Louisiana dealt with whether the new constitutional rule announced in Miller applied retroactively.84 In a six to three decision, the Court held that the Miller rule did apply retroactively, and that juvenile homicide offenders should be considered for parole.85 These cases indicate that, although juvenile life sentences without parole are not yet unconstitutional in the United States, Supreme Court jurisprudence is heading in that direction. Therefore, the U.S. is close to being in full compliance with most of Article 37 of the CRC.

III. Responses to Objections

This next section will respond to the concerns that CRC opponents have expressed in an effort to clear up some of the misconceptions and argue in favor of ratification.

A. Sovereignty Response

The sovereignty argument is one that can be dealt with rather simply. As discussed above, the United States has attached non-self-executing reservations to every treaty that it has signed.86 This almost ensures that international treaties will not go into effect directly unless there is accompanying domestic legislation. The federal courts are not permitted to use the human rights treaties as a basis for a cause of action because of these kinds of reservations. Rutkow and Lozman argue that:

A sovereign nation can decide that its sovereign interests are advanced . . . by making agreements with other nations that limit what it can otherwise do . . . . Even more, a sovereign nation can decide that its sovereign interests are advanced . . . by agreeing with other nations to delegate interpretive authority over treaties to some supranational body.87

In addition, both state and federal courts have been more willing to rely on international law to decide key elements of cases, as was

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83. Id.
84. 136 S. Ct. 718, 725 (2016).
85. Id. at 736.
86. Rutkow & Lozman, supra note 4, at 167.
87. Id. at 181 (quoting Mark Tushnet, Transnational/Domestic Constitutional Law, 37 Loy. L.A. L. Rev. 239, 261 (2003)).
discussed in *Roper*. In other words, it seems like the United States is more open to relying on the opinion of the international community in making legal decisions than feeling undermined by international law.\(^{88}\) Furthermore, ratifying the CRC will give the United States an opportunity to participate in the CRC decision-making body. Now, as it stands, the United States does not have a say in monitoring international compliance with the CRC. If the U.S. has Americans on the decision-making body this may alleviate some of the fear that the United States will be governed by a group of foreign states.

In 2000, the United States signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict as well as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.\(^ {89}\) Just two years later, the United States ratified both optional protocols.\(^ {90}\) This shows that the United States is trying to comply with the CRC and is at least amenable to the possibility of its ratification. The sovereignty argument did not prohibit these two protocols from going into effect, and therefore, should not prohibit the ratification of the CRC because these treaties are closely related. It does not make sense to sign one and not the other. Generally, countries cannot ratify a protocol without being party to a treaty, but these were drafted in a way that allowed the United States to ratify them.\(^ {91}\)

The United States also has the use of RUDs at its disposal. Attaching these to the CRC can resolve sovereignty issues. A reservation stating that the Constitution is the supreme law of the land or that no CRC provision undermining the sovereignty, independence, and self-government of the United States will go into effect can effectively combat the sovereignty arguments. The U.S. can use reservations in several ways to ensure its sovereignty is not weakened. Some countries may have a problem with a reservation that appears to undermine the treaty, which is prohibited under a given treaty. The United States


\(^{90}\) *Id.*

should ratify the treaty without any reservations, but as a compromise this seems the only likely approach. But at a point, these RUDs can severely alter the purpose and intent of treaties.92

B. Federalism Response

Federalism concerns can be resolved in very much the same way as sovereignty concerns discussed above. As previously stated, a non-self-executing provision would prohibit a court from directly applying the CRC to cases. In addition, many of the state concerns that were used as reasons to not ratify the CRC have become non-issues because they have been dealt with by Roper and subsequent cases, which held the imposition of the death penalty and mandatory life without parole sentences for minors unconstitutional.93 It is true that Missouri stands for the proposition that the federal government is legally able to enforce a treaty against an individual state,94 but this would remain in the federal government’s power to do so, and is not the same as a foreign power imposing a law at the state level.

C. Responses to Reproductive and Abortion Concerns

Nowhere in the CRC does the word abortion appear, nor is there an inference that the CRC in any way condones the practice of abortion. In fact, it could be argued that the United States is violating the CRC for legalizing abortion. To understand this, it is important to look at the history of the creation of the CRC.

As stated in Part 1, the CRC was the culmination of more than thirty years of work.95 The first emanation of the CRC was the Declaration of the Rights of the Child, which was adopted in 1959.96 The preamble to the Declaration of the Rights of the Child states the following, “[w]hereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”97 Those opposing the CRC on the grounds that it condones abortion can point to this as indicating the spirit of the CRC, and see that it does not truly endorse

93. Roper, 543 U.S. at 578.
95. AUDIovISUAL LIBR. INT’L L., supra note 2.
96. Id.
97. Declaration of the Rights of the Child, supra note 24 (emphasis added).
abortion. Proponents may have to concede this point if they hope to get the treaty ratified.

In her article regarding the CRC’s origins, Cynthia Cohen wrote, “[a] further compromise was finally hammered out . . . when the Pre-ramble to the Convention was expanded to include a paragraph quoting the 1959 Declaration which refers to ‘appropriate legal protection, before as well as after birth.’”98 Abortion was an issue in the drafting process, and the drafters recognized this potential hurdle and purposely left language vague to account for States that had legalized abortion and those that had not.99 Either way, the CRC does not explicitly endorse abortion nor is it appropriate for proponents to tout the CRC as a treaty concerning abortion rights. Getting away from this characterization of the CRC could help ease some of the tensions surrounding it, and lead to ratification.

D. Responses to Parental Rights

From a reading of the CRC it is evident that opponents who argue parents will have reduced rights misunderstand the CRC’s intent. The CRC is commonly understood to have three sections regarding children’s rights: protection, provision, and participation.100 These three sections are inherent within the family structure. Therefore, parents are supposed to protect children, provide for their needs, and allow for participation.101 Smolin argues however that:

The parental roles of providing for the needs of the child and protecting the child from harm often require parents to act contrary to the immediate desires and will of the child and are not effectuated primarily through offering the child choices. Protecting the child often requires the parent to remove options and choices from the child. Similarly, the common parental provision of housing, food, shelter, and education to children is not well described as mere advice regarding choices.102

This means that the CRC does not stand for the proposition that children’s rights will trump parents’ rights. In fact, children’s rights can be fostered within the home and under the direction of the parents.103 Obviously, infants and very young children do not have the requisite maturity to decide matters for their own well-being, thus they

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99. Id.
100. Smolin, supra note 58, at 91.
101. Id.
102. Id.
103. Id. at 93–94.
must often defer to their parents. The CRC makes this clear by providing that "the views of the child [will be] given due weight in accordance with the age and maturity of the child."\textsuperscript{104} Other CRC provisions, such as Article 9, which deals with separation and replacement, also enforce the idea that the best place for a child is, as far as possible, at home with the parents.\textsuperscript{105} An inference can be made that while in the household, children will be subject to the parents' authority, unless there is abuse.

The issue of a foreign entity interfering with how a parent educates his or her child has also been frequently cited as an issue, but as discussed above, the Supreme Court has established clear rules regarding parental rights to bring up their children.\textsuperscript{106} Once again, the United States can attach a reservation to the CRC stating that nothing in the CRC will be construed to minimize a parent's constitutional rights to educate and bring up his or her children.

\section*{E. Juvenile Justice Response}

As previously discussed, the line of Supreme Court cases has almost harmonized U.S. domestic policy regarding juvenile sentencing with international standards under the CRC. As of the ruling in \textit{Montgomery v. Louisiana}, about 2,100 juveniles will be eligible for parole.\textsuperscript{107} In the eyes of CRC proponents, one of the last hurdles to surpass, however, is making juvenile life without parole sentences completely unconstitutional.

\section*{IV. U.S. Shortcomings Regarding Children's Rights}

The remainder of this comment will examine some of the most pressing shortcomings the U.S. faces regarding the rights of children. Specifically, American policies regarding juvenile detention centers, immigration, education, healthcare, and corporal punishment should be examined against the provisions of the CRC. There is an important opportunity to secure the rights of children moving forward. Ratifying the CRC could put pressure towards policy changes domestically to achieve these positive changes.

\begin{thebibliography}{9}
\bibitem{104} Convention on the Rights of the Child, \textit{supra} note 1, art. 12.
\bibitem{105} \textit{Id.} art. 9.
\end{thebibliography}
A. Juvenile Sentencing/Incarceration

Since 1999 there has been a decline in the number of American minors committed to juvenile facilities. In 1999, 77,835 juveniles were incarcerated, the greatest amount in U.S. history. As of 2013, this number had reduced significantly, reaching an all-time low of 35,246 incarcerated youth. Despite the numbers dropping, there are additional concerns associated with juvenile incarceration, including the harsher sentences and higher frequency in incarcerations of racial minorities. Racial minorities accounted for sixty-eight percent of youth in residential placement in 2013, and African American males comprised the largest segment of that percentage.

Along with over representation of racial minorities in the system, there are numerous reports that detention centers for girls around the country are filled with physical and sexual abuse. Reports from states such as New York, Indiana, Mississippi, Ohio, and Texas, have documented numerous abuses including: rape by guards, humiliation of girls as they shower by male guards, strip-searches, physical assaults, degrading comments, inappropriate touching, and commercial sexual exploitation. Research has shown that girls are the fastest growing groups of juveniles detained in the United States, and that they are more susceptible than boys to getting sexually abused while in detention centers. Article 37(c) of the CRC addresses how children should be treated if they are detained:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her

109. Id.
110. Id.
111. Id.
114. Id. at 1714.
115. Id. at 1716–17.
116. Id. at 1717, 1719.
family through correspondence and visits, save in exceptional circumstances.\textsuperscript{117}

Based on the documented reports of abuse, these rights are not being protected in U.S. detention centers for girls. Ratifying the CRC could bring awareness to the noncompliance of juvenile detention centers within the United States. The CRC has a supervisory body that monitors party compliance with the treaty.\textsuperscript{118} States Parties are required to submit reports about their progress on compliance with the CRC within two years of entry into force and then every five years thereafter.\textsuperscript{119} Although this is self-reporting, non-governmental organizations, non-profits, and other human rights organizations send reports that they have created to help the supervisory body make concluding observations regarding the status of compliance with the CRC.\textsuperscript{120} Although these observations are not binding, the “mobilization of shame” can be an effective way of bringing awareness and change to a state that is not complying with their treaty obligations.\textsuperscript{121} The ratification of the CRC can encourage the United States to not only deal with its juvenile incarceration rates, but also its mass incarceration rates generally. A study by MIT economist Joseph Doyle found that “those who were incarcerated as juveniles are 23 percentage points more likely to end up in jail as an adult when compared with juvenile offenders who, by the grace of a lenient judge, avoided incarceration.”\textsuperscript{122}

Even though the CRC addresses children’s rights, ratifying it could be a way of dealing with mass incarceration on a larger level. Opponents may perhaps argue that allowing committee members to investigate detention centers is a violation of sovereignty. However, transparency in juvenile justice is essential if the United States is to raise its credibility on children’s rights.

B. Unaccompanied Minors and Immigration Policies

Article 10 of the CRC states the following:

\begin{itemize}
  \item 117. Convention on the Rights of the Child, \textit{supra} note 1, art. 37(c).
  \item 118. \textit{Id.} art. 44.
  \item 119. \textit{Id.}
  \item 120. Okereke, \textit{supra} note 113, at 1724.
\end{itemize}
In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.123

Current U.S. immigration policies regarding the treatment of unaccompanied minors have been far from “positive, humane, and expeditious.”124 The Bureau of Citizenship and Immigration Services is the government entity in charge of admitting refugees from other countries. There was a shift from the Immigration and Nationality Services to the Bureau as the entity in charge of admitting refugees. This adjustment has been positive for meeting the CRC standard because the Bureau’s plan is to help particularly vulnerable migrants.125 Emily Benfer, however, argues that in practice, immigration officials start removal proceedings for practically every unaccompanied minor in the United States.126 The average period of time that a minor will wait in a detention facility is 34.2 days, and some have been held up to a year.127

According to a report, between October 2013 and October 2014, immigration authorities at the southern border of the United States apprehended 52,000 unaccompanied children from Honduras, Guatemala, and El Salvador.128 The Government Accountability Office (GAO) found that there are great deficiencies in the rights of children who try to enter the United States.129 Besides very long detention periods, many children are denied legal recourse depending on their country of origin.130 The GAO reported that only one-third of unac-

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123. Convention on the Rights of the Child, supra note 1, art. 10.
126. Id. at 738.
127. Id.
129. Id. at 71 (stating reports from the U.S. Government Accountability Office).
130. Id.
companied children are given legal representation. Furthermore, the physical treatment of unaccompanied minors at detention facilities falls well below the standards of the CRC. In one detention center in Pennsylvania, there have been reports of physical abuse of children and deprivation of necessities such as mattresses and clothes.

The evidence is sufficient to show that U.S. policy in dealing with unaccompanied minors would not comply with the CRC. By ratifying the CRC, and therefore implementing the accompanying oversight procedures, there would be tracking of these violations, which would bring light to the plight of children suffering abuses at the hand of the system. As anti-immigration sentiments proliferate from Washington, it is important now more than ever to secure the rights of unaccompanied minors and detained minors so that their cases are handled in a positive, humane, and expeditious manner.

C. Education

Education and healthcare are both positive rights. Positive rights refer to those rights that can only be satisfied by requiring action on behalf of the government to provide them. Regarding education, Article 28 states the following:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
(a) Make primary education compulsory and available free to all;
(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.

Critiques take issue with the treaty’s inclusion of economic, social, and cultural rights. Disagreement centers around which specific rights constitute “real rights.” Opponents of the CRC assert that social rights are not necessarily “rights” as defined by American jurisprudence, thus the United States is unwilling to recognize those “values” as rights. This incongruence explains why the U.S. has also

131. Id.
132. Benfer, supra note 125, at 744.
134. Convention on the Rights of the Child, supra note 1, art. 28.
135. Rutkow & Lozman, supra note 4, at 168.
136. Id.
137. Id. at 169.
yet to ratify the International Covenant on Economic, Social and Cultural Rights.\textsuperscript{138}

The CRC emphasizes the need for States Parties to make education affordable, and if possible, free. As of 2013, according to the World Factbook, the United States ranks 63rd in education expenditures with these expenditures amounting to a mere 4.9\% of the GDP.\textsuperscript{139} With the rising cost of education, ratifying the CRC could make education more accessible. Although the CRC applies to children under eighteen, ratification could have the effect of pushing the United States to invest long-term in children—even into their college years. For example, tuition and fees for California state schools and private schools have increased dramatically over the past thirty years.\textsuperscript{140} Despite California’s efforts to lower the cost of higher education through financial aid programs, more students than ever before are required to rely on loans at an amount that is debilitating for the students’ long-term financial stability.\textsuperscript{141} Between 2000 and 2012 the percentage of full-time college freshmen that took out school loans increased from twenty-eight percent to thirty-five percent.\textsuperscript{142}

All around the country students and their advocates have called for access to free education. Again, even though the CRC applies to minors, the CRC can encourage the United States to prepare children for college when they are young through savings programs or other financial assistance. There is simply more the United States can do to provide access to education for children and those aspiring to go on to higher education.

\section*{D. Healthcare}

Article 24 of the CRC discusses health care for children. It asks States Parties to:

[R]ecognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.\textsuperscript{143}

\begin{thebibliography}{99}
\bibitem{id} Id.
\bibitem{id}Id.
\bibitem{id}Id.
\bibitem{id}Convention on the Rights of the Child, supra note 1, art. 24.
\end{thebibliography}
Recently, Congress was in a heated debate regarding the Affordable Care Act ("ACA"), popularly known as "Obamacare," which was in danger of being repealed and replaced by the American Health Care Act.\textsuperscript{144} According to one report, more than 1.1 million people in the Pacific Northwest would have lost health insurance under the proposed act.\textsuperscript{145} The Congressional Budget Office ("CBO") estimated the effect of the American Health Care Act if it were to pass. The CBO estimate reported that in 2018 alone, 14 million more people would be uninsured under the American Health Care Act than under current law.\textsuperscript{146} This would undoubtedly affect children whose parents would become uninsured. Under Obamacare, "if a child goes without government-defined health insurance coverage for any month of the year, their parent must pay a fine."\textsuperscript{147} Thus, even by that standard the U.S. was not in compliance with the CRC because parents could just pay fines and children would still be left uninsured.\textsuperscript{148}

As of the writing of this comment, the American Healthcare Act failed to pass, however, the ACA's individual mandate was repealed.\textsuperscript{149}

Healthcare has, and will continue to be a contentious debate in the United States, but considering the CRC urges States Parties to regard healthcare as a right, ratification of the treaty could be a step in the direction of securing that right as a reality for all Americans. If access to healthcare was truly considered a right, after all, U.S. laws would most certainly change to reflect that principle.

E. Corporal Punishment

The CRC can provide support for eliminating the practice of corporal punishment on children. It can be inferred that the CRC prohibits this use of corporal punishment. Article 19 says "States Parties


\textsuperscript{145} Paul Shukovsky, Bleak Consequences of ACA Repeal Projected in Northwest (2017), Bloomberg BNA.


\textsuperscript{148} Id.

\textsuperscript{149} Robert King, The Obamacare Individual Mandate is Repealed. Here’s What’s Next, WASH. EXAMINER (Jan. 14, 2018, 12:01 AM), https://www.washingtonexaminer.com/the-obamacare-individual-mandate-is-repealed-heres-whats-next [https://perma.cc/HX5P-ZBTA].
shall take all appropriate . . . measures to protect the child from all forms of physical . . . violence, injury or abuse . . . while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

In addition, Article 28 provides that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” Lastly, Article 37 provides that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”

What may seem an ancient practice is still practiced across the United States. Between 2006–2007, about a quarter of a million students received corporal punishment. In the U.S., corporal punishment is legal in about twenty states. Former Education Secretary John B. King Jr. expressed the need to end corporal punishment in schools in his press release:

Our schools are bound by a sacred trust to safeguard the well-being, safety, and extraordinary potential of the children and youth within the communities they serve . . . . While some may argue that corporal punishment is a tradition in some school communities, society has evolved and past practice alone is no justification. No school can be considered safe or supportive if its students are fearful of being physically punished. We strongly urge states to eliminate the use of corporal punishment in schools—a practice that educators, civil rights advocates, medical professionals, and researchers agree is harmful to students and which the data show us unequivocally disproportionately impacts students of color and students with disabilities.

This is a practice that should no longer be tolerated. Not only is it antiquated, but the practice goes against other treaties that the United States has already signed such as the Torture Convention which prohibits cruel, inhuman and degrading treatment. Corporal punishment in the United States, particularly in schools, is carried out through paddling and other physical abuse. Minority children are typically

151. Id. art. 28 (emphasis added).
152. Id. art. 37.
154. Id. at 1037.
156. Farmer & Stinson, supra note 153, at 1039.
punished more than white students.\footnote{Id.} Ratifying the CRC could highlight this issue and put pressure on the United States to end these practices. Again, although the CRC does not explicitly prohibit corporal punishment, the CRC can be used as a starting point for eradicating this practice because of the treaty’s language against the physical punishment of children.

V. Conclusion

It has been about twenty-five years since the Convention on the Rights of the Child was adopted. More than once, the United States has come close to ratifying the CRC, but has always been stopped by opponents who argue the treaty will undermine state sovereignty, federalism, harm parental rights, and push an agenda not in line with American values. These objections can be eased with reservations, understandings, and declarations. Moreover, changes in law and culture have already minimized many of these concerns. Therefore, the United States has shown a willingness to participate internationally in the drafting of such treaties, yet has not signed this one for what now are irrelevant if not minimal concerns. Furthermore, if the CRC is ratified it could lead to changes domestically that will greatly protect the rights of children in many areas of their lives, including immigration, education, the juvenile justice system, healthcare, and overall treatment with dignity. Ratifying the CRC will also give credibility to the United States’ commitment to human rights. As of today, the United States stands as the only nation to not ratify the CRC. It is time for this to occur especially in a time of insecurity and fear for many children in the country. It would be a step in the right direction for a nation that is struggling with how to resolve mass incarceration, rising tuition costs, massive migration, and declining healthcare. It is time.