

2019

## Opposing Viewpoints: In Favor of United States Ratification of the Convention on the Rights of the Child

Carly Helman

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### Recommended Citation

Carly Helman, *Opposing Viewpoints: In Favor of United States Ratification of the Convention on the Rights of the Child*, 39 CHILD. LEGAL RTS. J. 191 (2020).

Available at: <https://lawcommons.luc.edu/clrj/vol39/iss2/10>

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*Opposing Viewpoints:*  
**In Favor of United States Ratification of the Convention on the Rights  
of the Child**

*By: Carly Helman*

**BACKGROUND**

On November 20, 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC). The United States was actively involved in ten years of multilateral negotiation and the drafting of the treaty. The CRC became the most rapidly and widely adopted treaty on human rights in the world. The Clinton administration, as a symbolic act, signed the treaty on behalf of the United States. However, almost 30 years after its adoption, the United States stands alone as the only United Nations (UN) member nation that has not ratified the agreement. There are legal experts who raise state sovereignty concerns connected to ratification of the CRC. However, other experts claim the time has come for the United States to join the rest of the world by ratifying the CRC and committing itself to prioritizing the rights of children.

This article will summarize three major arguments for United States ratification of the CRC and address a major concern that stands against the treaty's ratification. First, ratification of the CRC would be a symbolic show of commitment to the document's lofty aspirational goals for the rights of children. Second, ratification would address current areas of United States non-compliance with the CRC. Third, as the only country in the world that has not yet ratified the treaty, ratification of the CRC would increase the United States' credibility abroad as an advocate for human rights and show the country's willingness to hold itself to the same standard as all other countries. Finally, the major concern in opposition to ratification, infringement of state sovereignty, could be addressed through a jurisdictional reservation in the ratification of the CRC that will ensure federal compliance without intruding on states' rights.

**I. ASPIRATIONAL GOALS IN THE CRC**

The CRC is the spiritual successor of the Declaration of the Rights of the Child, adopted in 1959 by the UN, and the Geneva Declaration of the Rights of the Child, adopted in 1924 by the League of Nations. The preamble of the treaty lays out the UN's commitment to protecting childhood through "special care and assistance" and the importance of raising a child with the ideals of "peace, dignity, tolerance, freedom, equality and solidarity." The preamble is followed by 42 substantive articles, which protect children in a number of different circumstances. However, the enforcement mechanism for the

treaty is relatively weak as the UN cannot compel nations that have signed the agreement to follow its directives. Therefore, ratification of the CRC on its own is not enough to ensure compliance. It is up to the individual nation to create laws and regulations to comply with the agreement.

Despite the aspirational nature of the treaty, by 2014, the 25<sup>th</sup> anniversary of the treaty, the global child mortality rate had fallen by half; 90 percent of countries improved or created free, compulsory education available to children; and commitment to the treaty worldwide had remained deep and consistent. By contrast, as of 2016, the United States ranked 30<sup>th</sup> out of 34 Organization for Economic Cooperation and Development (OECD) countries in child poverty, beating out only Turkey, Israel, Spain, and Chile. Roughly 15 million, or about 21 percent, of all children in the United States live in poverty. The average for OECD countries is about 13 percent. The United States continues to be the only high-income country not to grant paid maternity leave. The infant mortality rate in the United States has also been slow to fall, slower than other comparable countries. By some studies, the United States' infant mortality rate was about 70 percent higher than other comparable countries, while some studies put the number closer to 35 percent higher as of 2014.

Although statutory changes and enforcement under the CRC are largely optional due to the weak structure of UN enforcement, the global trend for child wellbeing outside the United States has been on the rise. Child wellbeing in the United States during the same time period has not kept pace at its best and has been stagnant at its worse. No reasonable expert argues that the United States' ratification of the CRC is going to fix these problems on its own. However, federal ratification of the CRC would send a strong message that these issues should be a national priority. With a strong federal statement prioritizing the rights of children, followed by federal funding supporting that goal, experts believe that the country could close the gap between child wellbeing in the United States and other developed nations.

## II. AREAS OF U.S. LEGAL NON-COMPLIANCE WITH THE CRC

The United States heavily influenced the negotiations and drafting of the CRC. Therefore, many domestic laws are already in compliance with the CRC, even beyond the level of compliance in other ratifying nations. However, there are three major areas where the United States is not in compliance with the CRC and a number of areas where the official laws comply with the CRC, but enforcement of those laws has failed or lacks funding.

The first area of conflict is the United States' stance on juvenile justice. In 2005, the United States Supreme Court in *Roper v. Simmons* took a huge step toward nationwide compliance with the CRC when it ruled that the execution of juvenile offenders violates

the Eighth Amendment guarantee to freedom from cruel and unusual punishment. However, Article 37(b) of the CRC requires that confinement of juveniles must be used for the “shortest appropriate period of time” and requires the “needs of the child” to be a component of sentencing. The lack of a nationwide ban on life sentences with no possibility of parole would likely run afoul of Article 37(b) of the CRC, as the sentence relates more to the nature of the crime than the needs of the child being sentenced.

Moreover, Article 40(1) requires ratifying countries to focus their juvenile justice system on rehabilitative, rather than punitive goals for the child. In recent years, the nationwide trend in the United States has been leaning toward a more punitive justice system overall, with the juvenile justice system not excluded from that trend. Although some states and jurisdictions have a focus on rehabilitation for juvenile offenders, that concern has not been widely adopted and is not likely to be widely adopted in the near future.

Second, and perhaps most important, is the United States’ refusal to recognize a child’s right to education. The United States Constitution does not guarantee the right to education, as determined in the Supreme Court decision of *San Antonio Independent School District v. Rodriguez* in 1973. The CRC requires ratifying nations not only to recognize a child’s right to education, but to an education that will ensure a child’s development to “their fullest potential.” Even where the federal government has recognized a right to some level of education, particularly in the area of disability rights for children, that recognition is only for minimal skill development, not maximum.

This trend continues today with a number of judicial decisions confirming the 1973 Supreme Court judgment. Most recently, a Federal District Court judge in Michigan dismissed a class action lawsuit brought by students of failing Detroit schools who claimed they had been denied access to literacy. Although the judge admitted that the conditions alleged were devastating and the type of education being denied was “minimally adequate education,” he nevertheless dismissed the suit by affirming that access to even minimally adequate education is not a fundamental right in the United States.

Additionally, Article 12 of the CRC ensures children who are able to form and express their own opinions the right to be heard in any issue that affects them, especially in judicial or administrative proceedings. However, the United States does not guarantee a child the opportunity to be heard in a number of proceedings that greatly affect their lives and wellbeing. For example, in the 1979 *Parham v. J.R.* decision, the Supreme Court expressly denied children the right to a hearing when their parents or guardians wanted to commit them to a mental institution. The Court guaranteed only that a neutral factfinder must determine whether the admissions standards for psychiatric institutions in the relevant jurisdiction were met. An even more widespread area where children lack the nationwide

right to be heard is in custody hearings related to divorce. This issue persists even though the child is the direct subject of the custody proceedings. The CRC does not require that children's views be followed in any hearings that might affect them, only that their views are considered as part of the best interests of the child standard. However, the United States has not yet recognized that limited right.

Finally, in a number of other areas, the United States has failed to adequately enforce laws that are in compliance with the CRC. These areas include, but are not limited to, adequate living standards related to nutrition, clothing, and shelter; access to quality health care and child care; and child abuse and neglect. There is no guarantee that ratification of the CRC would create immediate compliance and increased enforcement in the named areas, but in these areas the United States trails the international standard. Ratification of the CRC would demonstrate a federal commitment to ending these particular gaps in children's rights.

### III. THE INTERNATIONAL IMAGE OF THE UNITED STATES

The last major argument for ratification concerns the United States' image on the world stage. The United States has been a leader for the rights of children since shortly after World War II. In fact, the United States has ratified two CRC Optional Protocols: one regarding the rights of children in armed conflict, the other laying out restrictions on child pornography and child prostitution. However, the United States' failure to ratify the CRC creates serious issues for the United States in their attempts to shape the international dialogue on the rights of children. Further, it opens the United States to claims of hypocrisy from other ratifying nations when the United States objects to another country's treatment of children.

In terms of shaping the international conversation, the United States cannot be a member of the UN Committee on the Rights of the Child, the primary international body for guiding international dialogue on that subject. The Committee creates law in the ever-evolving area of human rights for children. Not only is the United States barred from membership on this Committee, the United States cannot participate in any way in the Committee's discussions or decisions. As the Committee is the guiding international body in establishing norms and developing other protocols related to children's rights, the United States' failure to ratify the CRC has all but silenced the country's voice on the global stage where the development of children's rights is concerned.

In addition to affirmatively silencing their own voice, the United States is likely to be silenced by other countries on the issue of children's rights based on the failure to ratify the CRC domestically. The United States cannot claim the moral high ground in international negotiations on human rights for children when it is the only nation in the

world that has not ratified the seminal agreement on that issue. It would be viewed as hypocritical, and rightly so, for the United States to chastise another country for denying children the right to an education when the United States itself does not guarantee that same right.

By ratifying the CRC, the United States would increase its credibility on the world stage for the human rights of children. It would also return the United States to the international conversation on human rights and give the United States a chance to regain its status as a leading voice for the international rights of children.

#### **IV. RESPONSE TO OPPOSITION**

The major critique in opposition to ratification of the CRC is the federalist concern about the infringement of states' rights. This concern is not invalid, nor is it unique to the ratification of the CRC. However, the United States has ratified other treaties that posed the same threat to states' rights by ratifying such treaties with reservations. Reservations are a widely used international treaty tool that allows countries to ratify broad, multi-lateral agreements in harmony with domestic legal and political requirements.

In the case of the CRC, the United States Senate could ratify the treaty with a specific federal reservation. The CRC allows such reservations, so long as the reservation is not incompatible with the goals and purpose of the agreement. If the United States were to ratify the treaty with the reservation that it would implement only the provisions the federal government can control, there would be no conflict with state sovereignty and no incompatibility with the goal or purpose of the CRC.

A similar tool the US could employ is to ratify the treaty as a non-self-executing treaty. A non-self-executing treaty does not automatically change state or federal law and keeps the treaty's provisions from being enforceable in US courts. A non-self-executing treaty requires a further act of Congress, like the passage of a law, to make any particular treaty provision binding at the federal level or in federal courts.

The United States could choose to ratify the treaty in either of these two limited ways in order to combat concerns regarding state sovereignty. Ratification of the CRC, even in this limited way, would go a long way toward encouraging state and local governments to change their statutes, regulations, and policies to benefit children. Furthermore, it would set the United States on the path back to compliance with international norms where children's legal rights are concerned.

## CONCLUSION

The opposition to ratification of the CRC is deeply rooted and long standing. However, the time has come for the United States to commit to the protection of its children and rejoin the international community on the issue. Furthermore, the United States can achieve this important objective without compromising its federalist principles and overstepping constitutional boundaries.

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