

2015

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Recommended Citation

Durkit, Kasie (2015) "'Please be a lady... you are not going to be heard': The Debate over the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women," *International ResearchScape Journal*: Vol. 3, Article 7.

DOI: <https://doi.org/10.25035/irj.03.01.07>

Available at: <https://scholarworks.bgsu.edu/irj/vol3/iss1/7>

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on the Elimination of All Forms of Discrimination against Women

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Abstract

Why did the United States fail to ratify the Convention on the Elimination of All Forms of Discrimination against Women? This overarching question forms the basis of this paper and will be answered using an array of primary and secondary sources. This paper gleans most of its evidence from the Senate Foreign Relations Committee Hearings of 1994 and 2002, letters from both President Jimmy Carter and former Secretary of State Colin Powell, Congressional Research Service reports on CEDAW from 2013 and 2007, several Senators’ statements in the Congressional Record, Congressional testimony, and the text of the CEDAW treaty. This paper integrates these primary sources with secondary sources, citing legal analyses by former Attorney General Harold Hongju Koh, positions taken by lobby groups such as Amnesty International, the Heritage Foundation, and Concerned Women for America, the text, “Circle of Empowerment” by CEDAW Committee veteran Hannah-Beate Schopp-Schilling, and research on the legislative impact of CEDAW by Dutch legal analyst Rikki Holtmaat.

This paper contends that CEDAW’s failure stemmed from:

- 1) the belief that U.S. women’s rights are already “covered,”
- 2) the convergence of federalism and inherent constitutional restrictions,
- 3) the belief that CEDAW will subvert American sovereignty, and,
- 4) distorted interpretations of the CEDAW Committee’s recommendations.

Introduction

With one hundred of their colleagues’ signatures clutched tightly in their hands, nine women from the U.S. House of Representatives marched resolutely through the halls of the Dirksen Office Building in pursuit of change. For four years they had watched as Senate Foreign Relations Committee Chairman Jesse Helms refused to hear discussion on the ratification of the United Nations treaty “Convention on the Elimination of All Forms of Discrimination against Women,” known colloquially as the “Magna

Carta” of women’s rights. Now in 1999, these women were going to do something about that. Not finding Helms in his office in the Dirksen Office Building, the women regrouped, and decided to break-in to a nearby room where he was holding a hearing. Locating Helms, the women marched straight up to him and demanded one thing: put the CEDAW treaty on the agenda. The chairman’s answer? A police escort out of the hearing room and Helms’ provocation, “Please be a lady...you are not going to be heard,” (Dewar A31).

The object of these Congresswomen’s moxie, “CEDAW,” is an international women’s rights treaty initially signed by President Jimmy Carter in 1980, but never ratified by Congress. It is unequivocally the most comprehensive women’s rights treaty of its kind. With the threefold aim of achieving women’s full equality before the law, improving the position of women in society, and combating entrenched gender stereotypes, CEDAW works to highlight the breadth of women’s inequality and eradicate all manifestations of it. Overtly asymmetrical in its intent and purpose, CEDAW recognizes that it is women who face extensive, extant gender discrimination, and therefore CEDAW seeks to eliminate discrimination solely against women, rather than discrimination against men and women. Further, the Convention encourages nations to take all appropriate measures to modify existing laws, regulations, customs, and practices that constitute discrimination against women. CEDAW highlights the need for de facto equality between women and men economically, politically, socially, civilly, educationally, and culturally. Lastly, CEDAW holds ratifying countries accountable for change by asking that countries submit a progress report every four years tracking their implementation of treaty guidelines, while utilizing a twenty-three member CEDAW Committee to monitor these reports and make recommendations for improvement (Holtmaat 3-21).

Though he was a serious roadblock, Jesse Helms was not the only factor contributing to CEDAW’s failure in the United States. The Convention has languished for thirty-four years in the U.S. Senate

Foreign Relations Committee, never making it to the floor for a vote. It has languished while 187 of 193 United Nations members have ratified and implemented CEDAW worldwide. It has languished despite the United States' recognition that it is the only developed country in the world that has failed to reach ratification.

Reasons for CEDAW's Failure in the United States

Why did the United States fail to ratify the Convention on the Elimination of All Forms of Discrimination against Women? This overarching question forms the basis of this paper and will be answered using an array of primary and secondary sources. This paper gleans most of its evidence from the Senate Foreign Relations Committee Hearings of 1994 and 2002, letters from both President Jimmy Carter and former Secretary of State Colin Powell, Congressional Research Service reports on CEDAW from 2013 and 2007, several Senators' statements in the Congressional Record, Congressional testimony, and the text of the CEDAW treaty. This paper integrates these primary sources with secondary sources, citing legal analyses by former Attorney General Harold Hongju Koh, positions taken by lobby groups such as Amnesty International, the Heritage Foundation, and Concerned Women for America, the text, "Circle of Empowerment" by CEDAW Committee veteran Hannah-Beate Schopp-Schilling, and research on the legislative impact of CEDAW by Dutch legal analyst Rikki Holtmaat. From these sources, this paper argues that there are four factors contributing to CEDAW's failure in the United States: the belief that women's rights are already "covered" in the United States, inherent Constitutional restrictions and the problem of implementing CEDAW in a federal system, the belief that CEDAW will subvert American sovereignty, and distorted understandings of the CEDAW Committee's recommendations.

In order to understand why the CEDAW treaty has thus far failed to be ratified in the United States and why it continues to take a back-seat for ratification, it is helpful to understand the beginnings of

CEDAW, the main thrusts of the Convention, and the context within which President Carter introduced the treaty to the U.S Senate.

Consciousness Raising to Ratification: The Beginnings of CEDAW

The UN Commission on the Status of Women (UNCSW) was chiefly responsible for the first drafts of CEDAW. Established in 1946, the commission began as a 15-member delegation under the UN Council on Human Rights (UNHCR) and was responsible for researching and monitoring women's social, civil, economic, political, and educational rights (United Nations). Additionally, the UNCSW had the herculean task of "raising the status of women, irrespective of nationality, race, language or religion, to equality with men in all fields of the human enterprise, and to eliminate all discrimination against women in the provisions of statutory law, in legal maxims or rules, or in interpretation of customary law" (United Nations).

The UNCSW authored several prodigious documents, such as the Universal Declaration of Human Rights (signed by the U.S.), the Convention on the Minimum Age for Marriage (signed by the U.S., but not ratified), the Convention on the Political Rights of Women (signed by the U.S. and ratified in 1976), and the Declaration on the Elimination of Discrimination against Women, the precursor to CEDAW (United Nations). These documents were significant not only because they defined a comprehensive set of rights to which all people were entitled, but also for creating a blueprint that would outline how these rights should be guaranteed, and what gendered discrimination looked like (United Nations).

On the UNCSW's 25th anniversary in 1972, the UNCSW recommended to the UN Economic and Social Council and General Assembly that the year 1975 should denote an "International Women's Year" to remind all United Nations members that "new and increased efforts were needed" to deal with persistent manifestations of women's discrimination worldwide (Schöpp-Schilling and Flinterman 11). During this

“International Women’s Year,” the First UN World Conference was held in Mexico City: arguably one of the most significant watershed moments for women’s rights since the Seneca Falls Convention of 1848. Out of a maelstrom of consciousness-raising among thousands of international feminists – including American luminaries Gloria Steinem, Betty Friedan and Jane Fonda – came the World Plan of Action. The World Plan of Action called for the adoption by international governments of the UNCSW’s working draft of CEDAW’s successor, the Convention on the Elimination of All Forms of Discrimination against Women (Schöpp-Schilling and Flinterman 11).

Content of the CEDAW Treaty: Main Provisions

The CEDAW treaty rests on three main assumptions about basic human rights. First, that the UN was created to reaffirm faith in human rights, the dignity and worth of the human person, and equal rights for both women and men. Second, that extensive discrimination against women continues to exist. And third, that a full and complete development of a country, the welfare of the world, and the cause of peace require the maximum participation of women on equal terms with men in all fields (UNCSW Preamble).

Under these three assumptions, the CEDAW treaty puts forth 30 provisions that ratifying states must be in accord with. Articles one through five are perhaps the most fundamental for defining and ensuring basic rights. Article one defines discrimination as, “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field,” (UNCSW).

Building on Article one, Article two provides a plan of action for ratifying parties to eliminate discrimination against women by encouraging the adoption of equality between women and men in their

national constitutions by sanctioning and prohibiting all discrimination where appropriate, by establishing legal protections for women on an equal basis with men, by ensuring that public institutions and public authorities do not engage in discrimination against women, by taking measures against discrimination against women by any person or organization, and by modifying or abolishing existing laws or cultural practices promulgating discrimination against women (UNCSW).

Further, Article three asks parties to consider women's full development and advancement in the political, social, economic, and cultural fields, whereas article four demands "de facto" equality between women and men without separate standards (UNCSW). Finally, Article five asks that social and cultural patterns of conduct between women and men be modified to achieve the elimination of prejudicial practices based on the inferiority or superiority of either of the sexes or on gender stereotypes. This Article also ensures that women and men have equal responsibility in the upbringing and development of their children (UNCSW).

The succeeding articles are more nuanced. Articles six through sixteen outline the actions parties should take in a variety of environments concerning women's equality, discrimination, and health. These environments include the elimination of trafficking (Article 6), equal participation in government (Article 7b), equal opportunities for scholarships, sports, and continuing education (Article 10), the right to equal pay, free choice of profession, maternity leave with pay and child care (Article 11), access to health care services including those related to family planning (Article 14b), the right to freely choose a spouse, and the right of ownership of property (Article 16). Some countries may have found this list daunting, as some countries have no current legislation, acts, or constitutional protections guaranteeing these rights. Other countries, such as the United States, have most elements in place, yet do not guarantee rights such as comparable worth or paid maternity leave (UNCSW).

Anticipating this level of variation between countries, CEDAW provides a framework in Articles 17 through 30 for the implementation of CEDAW by ratifying parties. For example, Article 17 provides for the establishment of the Committee on the Elimination of All Forms of Discrimination against Women, which consists of twenty-three gender experts from ratifying parties of “high moral standing and competence in the field.” These experts are elected for four years and meet once a year to review reports from countries, determine their progress, and make recommendations for improvement (UNCSW).

Significantly, Article 28 allows for ratification to occur concurrently with reservations to the treaty, meaning that a state can take issue with a certain component of the treaty while still ratifying it. Additionally, the “Optional Protocol” was added October 6th, 1999. This addendum allows for a “communications procedure” that permits groups or individuals to file complaints directly with the CEDAW committee (Blanchfield 2013 3).

The quasi-binding nature of the treaty and the establishment of the twenty-three member oversight committee created an arduous negotiation process. After great debate, CEDAW was opened for signature, ratification, or accession by all United Nation member states on December 18th, 1979. CEDAW entered into force on September 3rd, 1981, after twenty UN members had become party to it. By its ten-year anniversary, 100 countries had ratified. Now, thirty-four years later, 187 UN members have signed and ratified the treaty, leaving just six UN member states that have not ratified: Iran, Palau, Sudan, Somalia, Tonga, and the United States of America (Blanchfield 2013 12).

There is a great bit of irony that America, the purported bastion of freedom and equality, has not ratified CEDAW. Thus, what are the reasons for the United States’ non-ratification? The following section provides the historical context under which CEDAW was introduced in the United States, succeeded by the crux of this paper’s analysis: the factors leading to CEDAW’s defeat within the United States.

Seneca Falls to the E.R.A: The United States Climate for Women's Rights

The latent intransigence that the women's movement has fought since Seneca Falls in the United States gives context to why CEDAW was met with resistance in the U.S. Senate. An abridged timeline of some of the most salient cases denying women's full equality and opportunity since 1848 will help to illustrate this.

From July 19-20 of 1848, the first ever women's rights convention was held in Seneca Falls, NY, giving traction to a movement for women's civil, social, political, and religious rights. Yet, this convention was primarily met with bigoted remarks, such as those documented in the *Oneida Whig*:

This bolt is the most shocking and unnatural incident ever recorded in the history of womanity. If our ladies will insist on voting and legislating, where, gentleman, will be our dinners and elbows? ("Bolting")

Several years later in 1855, in the case *Missouri v. Celia*, a black female slave was declared the property of her master without the right to defense against her master's rape ("The Path"). In 1860, Connecticut became the first state to prohibit all abortions ("The Path"). In 1866 and 1870, "citizens" and "voters" were only defined as "male" in the 14th and 15th Amendments to the Constitution, frustrating the efforts of suffragists like Susan B. Anthony and Sojourner Truth ("Black Women"). In the 1873 Supreme Court case *Bradwell V. Illinois*, the Court upheld the decision that states can restrict women from the "practice of any profession, to uphold the law of the creator," ("The Path"). In the same year, the Comstock Laws were passed, making all contraceptive information "obscene material." A decade later in 1887, the Senate voted on women's suffrage, which failed 34-16, with 25 senators not even bothering to vote ("The Path").

By the start of the 20th century, leaders in the women's rights movement were fighting against established discrimination tooth and nail. In 1913, Alice Paul and Lucy Burns of the National Women's

Party and Ida B. Wells of the Alpha Suffrage Club marched in a suffrage parade in Washington, and picketed the White House for female suffrage (“Black Women”). Paul and Burns would later be arrested for “obstructing traffic” and were incarcerated at Occoquan Workhouse and force-fed raw eggs after initiating a hunger strike (“Miss Alice”). On the night of November 17, 1917, known as the “Night of Terror,” a group of suffragists picketing for the vote were brutally beaten by the police to the point of unconsciousness (“Night of Terror”). However, the suffragists did not struggle in vain. Less than two full years later on June 4, 1919, the Senate debated state and federal restrictions on voting based on gender. The Nineteenth Amendment was subsequently ratified by a sufficient number of states and became the law in 1920.

Fast forward to WWII’s end and the seven million women who took jobs during wartime in the place of their male counterparts were gradually forced out of their jobs despite polls showing that 80% wanted to continue working. In 1960, the FDA approved birth control, yet it was not legalized for all Americans until the 1972 Supreme Court Case *Eisenstadt v. Baird*. During this time, white women were making 59 cents to every dollar a white man made, while women of color made only 75% of what white women made, due to occupational segregation and continued racial discrimination (Marwell “Wage”). In an attempt to rectify pay inequity, the Equal Pay Act was passed in 1963, yet it did not cover executives, professionals, administrators, domestics, or agricultural workers. One year later, the Civil Rights Act of 1964 was passed, barring gender discrimination in employment and establishing the Equal Employment Opportunity Commission to investigate complaints of gender bias. This commission received 50,000 complaints within its first five years (“The Path”).

In 1973, the pivotal Supreme Court case *Roe v. Wade* established a woman’s right to abortion, effectively voiding the anti-abortion laws of 46 states (“The Path”). Before the 1974 Equal Credit Opportunity Act, women were not allowed to apply for credit, and until the 1978 Pregnancy

Discrimination Act, women could be fired from the workplace for being pregnant (Senate Report 1994, 1-53). In 1972, the Equal Rights Amendment passed both houses of Congress yet failed to acquire the requisite number of state ratifications by 1982. Thus, when President Carter introduced the Convention on the Elimination of All Forms of Discrimination against Women to Congress in 1980, the country looked divided on women's rights. On the one hand, women were making significant strides in all spheres via legislative acts. On the other hand, women were still earning paltry fractions of what white men made, women comprised only 2% of the Senate and 4.57% of the House, the Fortune 100 featured no female executives, there were no women on the Supreme Court, and women still had no guarantee to maternity leave ("The Path").

Within this setting, President Jimmy Carter introduced the treaty to the Senate Foreign Relations Committee (SFRC) for the advice and consent of the Senate. The following portion of this paper presents four factors contributing to CEDAW's dormancy in the SFRC today, beginning with the ubiquitous belief that women's rights are already "covered" in the United States.

U.S. Women's Rights Are Already "Covered"

One factor contributing to the apathy and exasperation towards CEDAW has been the underlying belief that "women are already covered" in terms of equal rights in the United States. To expand, this notion suggests that women in America already have an abundance of established rights that have elevated them to become the freest faction of women in the world.

While such a conjecture is problematic, this notion is certainly not completely unsubstantiated. By the end of the 1970's, there was a progressive climate for women's rights and women were celebrating a wave of legislative protections. In fact, President Carter and his legal staff illustrate this very well in a memorandum of law outlining the compliance of U.S law to CEDAW's articles as of 1980. This memo

was an addendum to Carter's Letter of Submittal of the CEDAW to the Senate, and enumerates all statutes, programs, and acts that broadly or specifically prohibit discrimination on the basis of sex. A few of these include the Equal Credit Opportunity Act, the Equal Pay Act, Title VIII of the Fair Housing Act, the Equal Educational Opportunities Act of 1974, and Title IX of the Educational Amendments of 1972 (Message from the President, 2-3). The list above was expanded fourteen years later in the report on the SFRC Hearing on CEDAW in 1994. The SFRC committee enumerated the rights women had gained (or were in place) that helped to combat discrimination, empower women as equal persons to men, or give women legal power to attain either of the former privileges. The committee cited the Equal Protection Clause of the Fourteenth Amendment, the Due Process Clause of the Fifth Amendment, and the Nineteenth Amendment, the Women's Educational Equity Act of 1978, the Carl D. Perkins Vocational and Applied Technology Act, the Pregnancy Discrimination Act, the Family and Medical Leave Act of 1993, the Family Violence Prevention and Services Act, the Violence Against Women Act of 1994, and eventually Lily-Ledbetter Fair Pay Restoration Act of 2009 (Senate Report 1994, 7-15).

This list of protections and guarantees marking the progress of women's equality in the United States has inspired a set of vocal Senators and lobby groups to state that the United States has indeed reached symmetry between the two sexes. Yet, this position dismisses incontrovertible gender discrimination and inequity such as wage inequality, domestic violence, low participation by women in politics and the STEM fields, gender stereotyping, and the lack of access to women's healthcare. By ignoring such concrete examples of gender-based discrimination, these Senators and lobby groups believe that CEDAW is an object of futility and obsolescence.

For example, within the section, "Minority Views of Senators Helms, Kassebaum, Brown, Coverdell, and Gregg," within the SFRC of 1994, the committee members state:

We are hesitant to invest much hope that it will lead to real changes in the lives of women...we

share the view that considerable energy should be expended by the United States government and non-governmental organizations to seek improvement in the lives of women around the world... improvements in the status of women in countries such as India, China and Sudan will ultimately be made in *those* countries, *not in the United States* (Senate Report 2002, 53-54).

Thus, members in the 1994 hearing did not view CEDAW as an instrument that could rectify the gender inequities listed above, and instead, understood it as vehicle more fitted to other countries, implying that the United States is already a sterling example of women's equality.

This sentiment was repeated eight years later in 2002 in, "Additional Views of Senators Helms, Brownback, and Enzi," within the report on the SFRC Hearing on CEDAW. The Senators agreed that, "Nowhere are women better protected from discrimination than in the United States.... there need be no rush to ratification. There is no emergency. This Convention has been on the Committee calendar for 22 years" (26-27). These sentiments built on the previous assumption that American women are the freest and most equal women in the world. At the same time, the committee's sentiments portray a great deal of apathy towards CEDAW, openly admitting that there was no emergency to having CEDAW ratified and likewise implicitly indicating that current gender inequality was not an emergency to these members.

Powerful lobby groups, such as the Heritage Foundation and "Save Mother's Day," similarly argued that there was no need to adopt CEDAW due to America's "extensive legal framework" protecting and empowering women. This sentiment is found within Congressional testimony given by the Heritage Foundation to the Senate Committee on the Judiciary Subcommittee on Human Rights and the Law on November 18, 2010. The Foundation stated:

Ratification of CEDAW would neither advance U.S. national interest within the international community nor enhance the rights of women in the United States ... Domestically, ratification of

CEDAW is not needed to end gender discrimination nor advance women's rights ... It is difficult to imagine how membership in CEDAW will further advance the protections provided to women in the United States ... Those who say that ratification would allow the United States to claim the moral high ground within the international community – at least in regard to women's rights – imply that the United States is deficient in protecting those rights, when in truth the United States has been a leader and standard bearer for empowering women. It already holds the moral high ground (1-2).

This statement is especially notable for its insistence that the Convention would not help to advance any protections provided to women: a conception that overtly omits facts of inequity between men and women in the United States. Women are not constitutionally equal to men, nor does the United States have comparable worth policies, paid maternity leave, or equal access to family planning, which are all provisions that CEDAW promotes for incorporation. Secondly, this statement is significant for its assertion that the United States is the standard bearer for empowering women. Just before 2010, the World Bank ranked the United States 31st in the world in terms of its capacity to empower women. Iceland, not the United States, took the title as the standard bearer for empowering women.

In the same vein, but perhaps more parochial in its understanding of CEDAW, "Save Mother's Day," a powerful arm of the women's lobby "Concerned Women for America," argued:

If CEDAW were adopted, it would deny women basic freedoms and rights in America...

Ironically, CEDAW would limit American women's freedom. Ratifying CEDAW would subject American women to the supervision of a UN committee, thereby infringing on our liberty...and the U.S. Constitution already covers women" (1).

This understanding of CEDAW's mission is an important illustration of why many groups believe CEDAW would not only be futile in correcting gender inequality, assuming that they believe inequality between genders exists, but that it would be *detrimental* for women's rights. This dialogue is pervasive

within conservative lobby groups and institutions of Congress, and therefore the belief that women are already “covered” is an important factor to consider when thinking about why CEDAW has failed in the United States.

Convergence of Federalism and CEDAW: Inherent Constitutional Restrictions

One of the more banal reasons for CEDAW’s failure in the United States can be attributed to the United States’ federal system, which bifurcates jurisdiction between national and state governments. While UN treaty-monitoring bodies have indicated that treaty obligations run to sub-national governments as well as federal governments, the United States has taken the position that the federal government has very limited authority under U.S. law to impose international norms on states.

The United States is not the only country to take exception to this obligation. Canada, who has ratified CEDAW, has also confronted this conflict about implementing CEDAW within a federal system. The CEDAW Committee responded to Canada’s qualms in their Concluding Observations of 2008:

While the Committee is cognizant of the complex federal and constitutional structures in the State party, it underlines...that the federal government is responsible for ensuring the implementation of the Convention and providing leadership to the provincial and territorial governments in that context (paragraph 11).

Thus, the Committee on CEDAW recommended that even countries with federal systems should try to implement CEDAW to the greatest extent possible, including states or provinces, public authorities, and institutions – no matter what their domestic law. Yet in 1980, it was clear that the U.S. administration had a problem with such a policy. In a Letter of Submittal officially submitting the CEDAW treaty for the advice and consent of the Senate, President Carter addressed concerns about CEDAW and federalism. The President remarked:

The Convention includes *no provision* that would take into account the division of

Authority between the state and Federal governments in the United States. Indeed, Article 24 obligates parties to adopt all necessary measures ‘at the national level’ to realize the rights recognized in the Convention. We therefore recommend a reservation that would deal with the provisions imposing obligations whose fulfillment is dependent upon the state and local governments as well as Federal Government (Message from the President 2-3).

Though no affirmative actions were taken on the treaty for several years after President Carter’s initial remarks, his statements about the need for a reservation to the treaty that dealt exclusively with federalism were echoed in the SFRC Hearing on CEDAW in 1994. In a move that legal analyst Harold Hongju Koh termed “Swiss cheese” ratification, in which a country may make legal exceptions to an international treaty using “reservations, understandings, and declarations (RUDs),” the SFRC suggested an “understanding” that addressed federalism, but not necessarily in the direction CEDAW suggests (263-276). This “understanding” read:

Articles 2(d) and 24 taken together would require the Federal Government to ensure that the State and local governments comply with the Convention. Many specific areas covered by the Convention, for example education, are within the purview of state and local governments, rather than the Federal Government...To reflect this situation, the administration [Clinton] is proposing an understanding to make it clear that the United States will carry out its obligations under the Convention in a manner consistent with the Federal nature of its form of government (Senate Hearing 1994, 7).

What is important to consider about the SFRC’s “understanding” is that depending on the U.S. administration, the extent to which the federal government would try to oblige states to comply with the CEDAW treaty would vary greatly, given the federal government’s limited jurisdiction over purely state affairs. While the Clinton Administration intimated that they would indeed take “all appropriate measures to ensure fulfillment of this constitution,” the George W. Bush Administration rebuked any encroachment on state issues (Senate Hearing 1994, 10). The George W. Bush Administration

“emphasized the importance of ensuring the Convention would not conflict with United States Constitutional and statutory laws in areas typically controlled by the States,” (Blanchfield 2006, 5). Therefore, depending on the President, it is possible that CEDAW—even if ratified—would never be enforced or adopted by the states.

One factor illustrating how difficult it would be to have individual U.S. states comply with CEDAW concerns the repercussions of a Senator’s “yes” vote on CEDAW in her or his own state (Schöpp-Schilling and Flinterman 14). For example, if a Senator represents a state that ascribes high value to individualism, the Senator’s constituents may balk at a treaty that reaches into the private sphere to eradicate discrimination at the person-to-person level. Correspondingly, if a Senator comes from a state that is traditionally suspicious of multi-lateral treaties, especially human rights treaties that could “conceivably threaten traditional concepts of family,” that Senator would face considerable opposition for re-election if she or he voted “yes” for CEDAW (Schöpp-Schilling and Flinterman 14-15). CEDAW is clear in its Preamble that there must be “a change in the traditional role of men as well as the role of women,” which is likely to rankle many Senators’ constituents across the U.S. (UNCSW Preamble). Thus, this crossroads of how to implement CEDAW amidst U.S. Constitutional restrictions has created a difficult dialogue, and produced the question of whether CEDAW would even be effective in a federal system, slowing the pace of CEDAW on its road to ratification and implementation.

CEDAW’s Subversion of American Sovereignty

A “problematic strength” is what French political thinker Alexis de Tocqueville termed America’s “high valuation of individualism and self-empowerment,” which is another factor contributing to CEDAW’s failure in the U.S. (Schöpp-Schilling and Flinterman 14-15). This “problematic strength” is what undergirds many Americans’ suspicion of entangling, multi-lateral treaties which may have the potential to subvert American sovereignty and autonomy. This protection of sovereignty at the Congressional

level is likewise not a novel agenda in the United States' history with international treaties. The United States currently has not ratified a score of other international treaties, and especially not United Nations Treaties. These treaties include the Law of the Sea Treaty (161 ratifying parties), the International Criminal Court (121 ratifying parties), the Kyoto Protocol (191 ratifying parties), the Convention on the Rights of the Child (193 ratifying parties – only the USA and Somalia have not ratified), the “Land Mine” Treaty (160 ratifying parties), the Comprehensive Nuclear-Test-Ban Treaty (157 ratifying parties), the International Covenant on Economic, Social, and Cultural Rights (160 ratifying parties), the Convention for the Protection of all Persons from Enforced Disappearance (opened for ratification 2007, 40 ratifying parties), the UNESCO Convention on the Protection of the Underwater Cultural Heritage (opened for ratification 2001, 20 ratifying parties), the Convention on Cluster Munitions (opened for ratification 2008, 84 ratifying parties), the Convention on the Rights of Persons with Disabilities (opened for ratification 2007, 143 ratifying parties), and The League of Nations (58 ratifying parties at its peak) (Human Rights Watch).

Opponents of CEDAW express consistent convictions: ratifying an international treaty would limit the purview of American freedom, autonomy, and Constitutional jurisdiction. This attitude is recurrent through a host of Congressional documentation.

In the 1994 Report on the SFRC Hearing on CEDAW, for example, the minority views of committee members were couched in the following terms: “We believe that countries such as the United States, which wish to protect the dignity and improve the treatment of individuals, must guard against treaties that overreach,” (53). This belief, that the CEDAW treaty would encroach very uncomfortably on U.S law and culture only intensified in later Senate hearing discussions. Within the 2002 Report on the SFRC Hearing on CEDAW, the Senators contributing to the “minority views” portion of the hearing offered their dissenting opinions not just on CEDAW’s interruption of American sovereignty and

tradition, but on other international treaties as well:

CEDAW plainly represents a disturbing international trend exalting international law over constitutionally-based domestic law... It is illustrated by the Kyoto Protocol to the United Nations Framework Convention on Climate Change, the United Nations Convention on the Rights of the Child, and the Rome Statute Establishing a Permanent International Criminal Court... The trend is in conflict with U.S. Constitutional traditions of self-government. To undermine these traditions is to undermine the foundation of American Federalism, which cost many years to establish and thousands of lives in a fratricidal civil war (21-22).

Whereas these excerpts from both the 1994 hearing and the 2002 hearing reflect a broad paranoia for treaties that may subvert American sovereignty, other Congressional members and lobby groups have made statements that target the CEDAW committee more directly. While Congressional and lobby groups' interpretations of CEDAW Committee recommendations will be discussed at length later in this paper, it is important to note that a faction of Congressional leaders believe the Committee on CEDAW is the true instrument that will undermine American sovereignty.

One such view is reflected within the Hearing before the Committee on International Relations in the House of Representatives in May of 2000. House Member Christopher Smith commented on the CEDAW Committee's "hidden agenda" in the hearing:

CEDAW ratification is about furthering an agenda which seeks to insure abortion on demand and which refuses to recognize any legitimate distinctions between men and women ... Earlier this year for example, the CEDAW Committee demonstrated its view of such stereotyped roles when it expressed concern that Belorussia had introduced symbols such as a Mother's Day. Do our constituents, Mr. Chairman, really want a group of international bureaucrats telling them that the day set aside to honor our mothers must be abolished? I think not (Hearing 2000).

Similarly, Grace S. Melton of the Heritage Foundation took suspicions about the CEDAW Committee a

step further in a web memo published April 6, 2010. Melton wrote, “Resist the Radical Feminists...Becoming a party to CEDAW would mean ceding authority to an unelected committee comprised of foreign gender ‘experts’ and would do nothing to advance the rights of women,” (2).

Melton and Congressman Smith do not speak for the entire Republican Party. As Kavita N. Ramdas and Kathleen Kelly Janus note in their Policy Review on CEDAW that many prominent members on the right, including Orrin Hatch, Colin Powell and John McCain, have supported CEDAW’s ratification (30). Yet, this language that CEDAW represents a “disturbing trend” of supporting multi-lateral treaties alleged to subvert American sovereignty and that the CEDAW Committee has a “hidden agenda” is language with longevity. This language has been in circulation through Congressional testimony from 1994 to present, including the latest report in 2013 from the Congressional Research Service on “Issues in the U.S Ratification [of CEDAW] Debate.” In short, the fear of CEDAW’s subversion of American sovereignty is a bedrock factor contributing to CEDAW’s failure in the United States.

A Distorted Interpretation of the CEDAW Committee’s Recommendations

Among members of the President’s cabinet, members of Congress, and major lobby groups, there has been a very conspicuous trend of misunderstanding, cherry picking, or even deliberately misconstruing the CEDAW Committee’s recommendations to countries. These misunderstandings are the final factor contributing to CEDAW’s failure in the United States.

A few U.S. Representatives’ misunderstandings of the CEDAW Committee’s decisions stem from an extensive overestimation of the power that the Committee has over a ratifying country. Many Congressional members believe that the Committee acts as an oversight body that has the power to sanction governments and demand changes in a country’s domestic laws. This assumption is unfounded.

The text of the CEDAW treaty calls for a twenty-three member committee to watch over the progress

ratifying parties make in eradicating women's inequality. Each year these members, all experts in the field governed by the Convention, convene for two weeks to consider the reports countries submit under Article 18 of the Convention. After evaluating these reports, the Committee on CEDAW then proceeds to make "suggestions or general recommendations based on the examination of the reports" (UNCSW Articles 18, 21). These recommendations are non-binding, and there are no legal ramifications for not heeding the Committee's suggestions. As an additional point to consider, the CEDAW treaty is non-self executing. Representative Carolyn Maloney described in the January 4th issue of the Congressional Record that non-self executing legislation "would have to go through the normal Congressional process" (2013). Thus, CEDAW is truly just a guideline.

Despite the knowledge that the Committee on CEDAW is a rather toothless oversight body, many United States Representatives still overestimate its power and paint a flagrantly negative picture of CEDAW. For example, within the Minority Views of the 2002 Report on the SFRC Hearing on CEDAW, Senators Helms, Brownback, Enzi and Allen make comments that both inflate the CEDAW Committee's ability and function, and take out of context a recommendation made by the CEDAW Committee in 1999:

Ratification of CEDAW will invite meddling in all of these areas by the CEDAW-established compliance 'Committee'. The Committee, which is composed in part of gender activists sent by dictatorships that oppress women, has issued bizarre recommendations against Mother's Day in Belarus and in favor of legalization of prostitution in China. Using such recommendations, CEDAW backers will press federal and state judges to adopt completely unforeseen and unintended interpretations of the treaty in order to force changes in well-settled U.S. law and policy (22-23).

This dissenting opinion is problematic not only for its suggestion that the CEDAW Committee would be "meddling" in affairs, but for also suggesting that these Senators do not understand the nature and scope

of the Committee. In addition, the rejection of CEDAW is motivated by the belief that U.S. law and culture does not need to be criticized or reformed. Similar sentiments were found outside of Congress, as well.

Former Secretary of State Colin Powell wrote former Chairman of the SRFC Joseph R. Biden Jr. that the George W. Bush Administration believed “eighteen other treaties are either in urgent need of Senate approval or are of a very high priority” instead of CEDAW, a statement representing the George W. Bush Administration’s belief that the CEDAW Committee’s recommendations were “troubling” (Senate Hearing 2002 16-17). Powell states, “Reports and recommendations have raised troubling questions in their substance and analysis, such as the Committee’s reports on Belarus (addressing Mother’s Day), China (legalized prostitution), and Croatia (abortion),” (Senate Hearing 2002 16-17). Similarly, former Chairman of the SRFC Jesse Helms stated in Congressional Record 2198 of March 8, 2000, that CEDAW:

[...] is a terrible treaty negotiated by radical feminists with the intent of enshrining their radical anti-family agenda into international law. I will have no part of that... They propose global legalization of abortion... For example this committee has instructed Ireland – a country that restricts abortions – to ‘facilitate a national dialogue on * * * the restrictive abortion laws’ of Ireland and has declared in another report that under the CEDAW treaty ‘it is discriminatory for a [government] to refuse to legally provide for the performance of certain reproductive health services for women’ – that is to say, abortion... They even called for the abolishment of Mother’s Day,” (Congressional Record 2198).

Lastly, with the same acrimonious flare, the “Save Mother’s Day” Campaign stated that the CEDAW Committee,

[...] has made the best case for why the United States should *not* ratify CEDAW. It told China

to decriminalize prostitution, which degrades women as objects to be bought and sold, and destroys the health and marriages of women whose husbands buy prostitutes...It has pressured countries to provide abortions, which, at least half the time, kill unborn girls and can cause serious and sometimes fatal, medical and psychological damage to women (Wright 1).

If the two most upsetting cases consistently cited by U.S. Representatives and lobby groups, China and Belarus, are traced back to their origin and evaluated, it would become clear that these Representatives and lobby groups were being hyperbolic.

For example, within the CEDAW Committee's Concluding Observations on China's 1999 and 2006 reports, the context and motivation for the Committee's recommendation to China to decriminalize prostitution is in stark contrast to the Congressmen and lobby group's descriptions. The Committee explained that they were "concerned that prostitution, which is often a result of poverty and economic deprivation, is illegal in China" and that the continued criminalization of prostitution has an asymmetrical impact on the prostitutes rather than on the prosecution and punishment of pimps and traffickers. Additionally, the Committee expressed concern that "prostitutes may be kept in administrative detention without due process of law," and that, "[g]iven the HIV/AIDS pandemic, the Committee also recommends that due attention is paid to health services for women in prostitution," (Concluding Observations China, 288-9, 19-20).

This paints an entirely different picture than what the Representatives and lobby groups have described. The Committee did not ask China to "legalize" prostitution; rather, the Committee offered guidelines about how to handle criminal prostitution cases in the context of rampant prostitution that is often a side-effect of poverty. The Committee noted that prostitution has an asymmetrical gendered impact in which female prostitutes are prosecuted more often than the pimps who demand it, and that often, the women

prosecuted are not given due process. Lastly, the Committee noted that China should undertake more stringent measures to punish those who sexually exploit women and that the country should help to rehabilitate those women who were victims of trafficking. These suggestions do not indicate that the Committee was celebrating prostitution or endorsing its legalization, as the U.S. Representatives and lobby groups' remarks imply (Concluding Observations China, 288-9, 19-20).

Moreover, when evaluating the Belarus Concluding Observations of 2000, the comments are not as severe as several Congressional members portrayed. The CEDAW Committee expressed its concern over the prevalence of sex-role stereotypes that were inherently embedded in the symbols of Mothers' Day and the Mothers' Award in Belarus, which the Committee believed encouraged women's traditional roles (Concluding Observations Belarus 361). When comparing the statements of U.S Representatives and lobby groups' remarks about Mother's Day and the Mothers' Award in Belarus with the Committee's actual recommendations, the differences are notable. First, nowhere in the Committee's recommendations is there a suggestion to abolish Mother's Day in Belarus. Second, a person would have to be willing to step out of an ethnocentric, dogmatic mindset to understand that Mother's Day and the Mother's Award in Belarus are quite different than in the United States. Belarus' Mother's Award hearkens back to the Nazi era "Cross of Honour of the German Mother," in which German mothers were given a medal for "exemplary motherhood" and the number of children they conceived for the German nation. In Belarus, a medal is awarded to mothers who give birth to and raise five children. In this way, sex roles are being inordinately reinforced, with females being typified as reproducers by the state. Finally, depending on a person's ideological or cultural stance on Mother's Day, the celebration of this day may give pause to someone who does not appreciate the overemphasis on one aspect of her life: as a female who has the capability to give birth. This one aspect has historically relegated women to the private sphere, thereby limiting women in all other aspects of life and establishing the parochial outlook that has plagued women as inferior.

This discussion on the disparity between U.S. Representatives and lobby groups statements, and what was actually said in CEDAW Committee Recommendations, is vitally important due to the erroneous nature of the former's statements. These erroneous statements are incendiary and have the potential to both misinform and inflame the public and Congress, with apocryphal statements being understood as fact and leading figures like Colin Powell to believe the CEDAW Committee wants to legalize prostitution everywhere. If Congressional members are still questioning the Committee's "troubling" actions in 2013 when there is a wealth of information available to them that contradicts this, such a discrepancy is certainly a factor contributing to CEDAW's failure.

Conclusion

When in the course of human events it became clear that women were still considered inferior to men, CEDAW emerged: a treaty declaring women's inalienable rights. As former Secretary of State Hilary Clinton echoed in her famous speech at the Fourth World Conference on Women, "Human rights are women's rights, and women's rights are human rights." In this vein, the Convention on the Elimination of All Forms of Discrimination against Women aimed to guarantee basic rights to all women, recognizing that these rights are inalienable and that it is the duty of the state to protect and fulfill these rights. Further, CEDAW deliberately focused its attention on discrimination against women rather than against men and women. This helped to address the need to revolutionize existing ideologies "where women are assigned unequal, subordinate or 'other' roles in human life, in all its facets, in both the private and public sphere," (Holtmaat 12).

Yet, despite the optimism of the treaty for change, the United States pulled on CEDAW's reins until it came to a slow, screeching halt within the Senate Foreign Relations Committee. Despite 187 world countries' ratification of the treaty, the United States crossed its arms and chose to remain the only developed country in the world not to ratify it. Why the reluctance? This paper argued that there are four

factors contributing to CEDAW's burial. These factors include: inherent constitutional restrictions and the problem of implementing CEDAW in a federal system, the belief that CEDAW will subvert American sovereignty, distorted understandings of the CEDAW Committees recommendations, and the belief that women in the United States are already "covered" in terms of equality.

However, women are not yet "covered," and the ratification of CEDAW has the power to create change. CEDAW has allowed countries to fight even the most deep-rooted discrimination. Women's rights activists in Afghanistan have used CEDAW to lobby for language in Article 22 of their constitution of January 2004, stating that women and men are equal before the law. CEDAW has also helped to make rape a crime in Afghanistan for the first time (United Nations "Frequently"). Further, the Ukraine, Thailand, Nepal and the Philippines—by dint of ratifying CEDAW—have all passed new legislation to curb sex trafficking (Arriaga 1-6).

Additionally, both Japan and Columbia have passed recent legislation making domestic violence a crime and gave legal protection to survivors after ratifying CEDAW (United Nations "Frequently"). To conform to CEDAW's standards, Turkey amended their national laws so that women no longer have to ask their husbands for permission to work (Arriaga 1-6). Kenya utilized CEDAW to address differences in inheritance rights and eliminate discrimination against widows and daughters of the deceased (United Nations "Frequently"). Additionally, the Parliament of Kuwait voted to extend voting rights to women in 2005 following the CEDAW Committee's recommendation to eradicate discriminatory provisions in Kuwait's electoral law (United Nations "Frequently"). Lastly, Bangladesh has utilized CEDAW to help attain gender equality in primary school enrollment and hopes to eliminate all gender disparities in secondary education by 2015 (United Nations "Frequently").

This is why the treaty matters for the United States. The United States is not the exemplar of women's

equality and progress as many glamorize it to be. For example, in the United States today, women represent just 3.1% of CEOs, 14.9% of Board of Directors Members, and 12.5% of executive officers even though women comprise 48% of the workforce. Hispanic and Latina women, African American and black women, American Indian, White, and Asian American women are earning 54, 64, 59, 79 and 90 cents for every dollar a white, non-Hispanic man earns (Fisher "Women"). Further, on average, three women a day are murdered by their husbands or boyfriends in the United States and one out of every six American women has been the victim of an attempted or completed rape in her lifetime (Ramdas, Janus and Kelley 37-38).

Compared to other countries, the United States' culture of inequity towards women is pronounced. According to the Inter-Parliamentary Union, the United States ranks 83rd out of all countries in the world for women's representation in Congress, with 18.3% in the House, and 20% in the Senate. Such percentages are paltry considering that 50.8% of the total population is female (Parline). According to the World Bank's GINI coefficient, the United States' score of .42 on a scale of income inequality from zero (perfect equality) to 1, indicates that the United States has the highest post-tax-and-transfer income inequality of any highly developed country in the world (Gongloff). Further, according to the World Economic Forum's Global Gender Gap Report of 2013, the United States ranks 23rd overall out of 136 countries ("1" being the best), ranking 60th in the world for female political empowerment, 53rd for life expectancy, 67th for wage equality for equal work, and currently without a female head of state or national paid maternity leave program.

With these statistics in mind, the United States cannot afford to be incredulous about CEDAW's capacity to help rectify these discrepancies, and the United States cannot afford clemency towards divisive remarks about CEDAW's "hidden agenda." The United States has to act, because as Nicholas Kristof aptly remarked in the New York Times, we are not number one anymore. Interestingly enough,

city resolutions in support of CEDAW's ratification have passed in over 47 U.S. cities, including Los Angeles, California, and Louisville, Kentucky (WeDo). New York City has combined measures from both CEDAW and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in a city ordinance, whereas San Francisco has created a CEDAW task force to help protect women's human rights and monitor potential budget discrimination against girls' and women's services. Also, over 190 religious, civic, and community organizations in the United States have come out in support of CEDAW. Some of these organizations include the AFL-CIO, the United Methodist Church, the League of Women Voters, the YWCA, and the American Bar Association (WeDo).

Thus, while minority opinions within Congressional hearings may have the power to bury CEDAW for years at a time, they will hopefully be overcome by a swelling tide of support to bring women to equal footing with men. Ratifying CEDAW in the United States would be one small step for women, and a giant leap for mankind.

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