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Exhume CEDAW from its Grave: An Analysis of the Actors Who Helped to Bury the Convention on the Elimination of Discrimination against Women in the United States

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Exhume CEDAW from its Grave

An Analysis of the Actors Who Helped to Bury the
Convention on the Elimination of Discrimination against Women in the United States
Kasie Durkit - HIST 4800 - April 24th, 2014

Introduction

With 100 signatures from their colleagues 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 United Nation's treaty, "Convention on the Elimination of Discrimination against Women", 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*. Helms' answer? A police escort out of the hearing, and Helm's provocation, "*Please be a lady...you are NOT going to be heard.*"¹

The object of these Congresswomen's impatience and moxie, "CEDAW", is an international women's rights treaty that was initially signed –but not ratified – by President Jimmy Carter in 1980, and 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, and combating entrenched gender ideologies, 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 seeks to eliminate discrimination against *women*, instead of on the grounds of *sex*. Further, CEDAW galvanizes states to take all appropriate measures to modify existing laws, regulations, customs and practices that constitute discrimination against women. CEDAW

¹ Helen Dewar, "Ladies' of the House Rebuffed; Lawmakers Crash Senate Hearing; Helms Summons Police," *Washington Post*, October 28, 1999.

highlights the need for de facto equality between men and women economically, politically, socially, civilly, educationally, and culturally. Lastly, and rather uniquely, CEDAW keeps ratifying countries accountable for change by asking that ratifying countries submit a progress report at least every four years on implementation of treaty guidelines, and utilizes a 23-member CEDAW Committee to monitor these state reports and make recommendations for improvement.²

Though he was a serious roadblock, the incorrigible Jesse Helms has not been the only factor contributing to CEDAW's failure in the United States, because CEDAW has languished for *thirty-four years* in the US Senate Foreign Relations Committee, never making it to the floor for a vote; it has languished, despite 187 of 193 United Nations members' ratification and implementation of CEDAW worldwide; it has languished, despite the United States' recognition that it is the only industrialized country in the world, not to have ratified it.

What are the reasons for CEDAW's failure in the United States? This overarching question forms the basis for my research and analysis, and will be answered using an array of primary and secondary sources. Of the primary sources, this paper gleans most of its evidence from government documents, such as reports from the Senate Foreign Relations Committee Hearings of 1994 and 2002, letters from both President Jimmy Carter and former Secretary of State Colin Powell, the Congressional Research Service's report on CEDAW in 2013 and 2007, Senator's statements in the Congressional Record, the Congressional testimony of influential lobby groups, and the text of the CEDAW Treaty. Additionally, to supplement these primary sources, this paper integrates several secondary sources, such as 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

² Holtmaat, Riki. *Towards Different Law and Public Policy: The Significance of Article 5a CEDAW for the Elimination of Structural Gender Discrimination*. The Hague: Ministry of Social Affairs and Employment, 2004. Print. 3-21.

Committee veteran Hannah-Beate Schopp-Schilling, and research on the legislative impact of CEDAW by Dutch legal analyst Rikki Holtmaat.

Through careful consideration and evaluation of these sources, **this paper seeks to illustrate that CEDAW has failed due to four factors: 1)** the belief that U.S. women's rights are already "covered" **2)** the convergence of federalism and CEDAW, and inherent constitutional restrictions, **3)** the belief that CEDAW will subvert American Sovereignty, and **4)** distorted interpretations 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 first to grasp 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

When looking to answer "who" is responsible for the drafting of the CEDAW treaty, one need not look farther than the UN Commission on the Status of Women (CSW). Established in 1946, the CSW began as a 15-member delegation under the UN Council on Human Rights, and was responsible for researching and monitoring women's social, civil, economic, political and educational rights.³ Additionally, the CSW had the herculean task to "raise 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."⁴

Illustrating an affirmative move in this direction, the CSW authored several prodigious documents, such as the Universal Declaration of Human Rights (signed by the US), the Convention

³ United Nations. "A Brief History of the CSW." UN Women: United Nations Entity for Gender Equality and the Empowerment of Women. Accessed March 26, 2014. <http://www.unwomen.org/co/csw/brief-history>.

⁴ Ibid.

on the Minimum Age for Marriage (US signed, not ratified), Convention on the Political Rights of Women (US signed and ratified 1976), and finally, the Declaration on the Elimination of Discrimination against Women, the precursor to CEDAW.⁵ These documents were immensely significant not only for their defining of a comprehensive set of rights to which all people are entitled, but for creating a blueprint that would outline how these rights should be guaranteed, and an illustration of what discrimination is from a *gendered* perspective.

On the CSW's 25th anniversary in 1972, the CSW recommended to the U.N. Economic and Social Council, as well as the 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.⁶ During this "International Women's Year", the First UN World Conference was held in Mexico City – arguably one of the most significant watersheds for women's rights since the Seneca Falls Convention of 1848. Out of a maelstrom of consciousness-raising among a few thousand 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 CSW's working draft of DEDAW's successor, the Convention on the Elimination of Discrimination against Women.⁷

Content of the CEDAW Treaty: Main Provisions

The content and significance of the CEDAW treaty relies heavily on three main assumptions about basic human rights. The first assumption lies within the UN Charter, and underpins the mission of the United Nations in general to guarantee basic human rights: that the UN works to reaffirm faith in human rights, the dignity and worth of the human person, and equal rights for

⁵ United Nations. "A Brief History of the CSW."

⁶ Schöpp-Schilling, Hanna-Beate, and C. Flinterman. *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women*. New York, NY: Feminist at the City University of New York, 2007. Print. 11.

⁷ Schöpp-Schilling, Hanna-Beate, and C. Flinterman, *The Circle of Empowerment*, 11.

both men and women. The second assumption: that extensive discrimination against women continues to exist. Finally, the third assumption: 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.⁸

Bearing these three assumptions in mind, the CEDAW treaty outlines 30 articles for ratifying states to adhere to, and implement within their own existing laws, regulations, customs and practices. Articles One through Five are perhaps the most fundamental for defining and ensuring these basic rights. Article One defines discrimination against women 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.⁹

Building on Article One, Article Two suggests a plan of action and obligation for ratifying parties to pursue the elimination of discrimination against women by embodying the principle of equality between men in women 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 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 to modify or abolish existing laws or cultural practices constituting discrimination against women.¹⁰

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 men and women, without separate standards.

⁸ Commission on the Status of Women. *Text of the Convention on the Elimination of Discrimination against Women*. N.p.: United Nations, 1979.

⁹ Ibid.

¹⁰ Commission on the Status of Women. *Text of the Convention on the Elimination of Discrimination against Women*. Article two.

Finally, Article five – perhaps the most threatening article to countries – asks that *social and cultural patterns* of conduct between men and women be modified, with the intent of achieving the elimination of prejudices and practices which are based on the inferiority or superiority of either of the sexes or on *stereotyped roles* for men and women. This article also provides for the understanding that men and women have equal responsibility in the upbringing and development of their children.¹¹

After these first five fundamental articles are laid out, the proceeding articles become a bit more nuanced, with detailed steps in Articles 6-16 outlining the actions parties should take in a variety of fields concerning women’s equality, discrimination and health; these fields include the elimination of trafficking (Article 6), equal participation in government (Article 7b), the same 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), and the right to freely choose a spouse, and right of ownership of property (Article 16). Some countries may have found – and continue to find – this list daunting, as they may have no current legislation, acts, or constitutional protections guaranteeing these rights; other countries, such as the United States, have most in place, yet do not guarantee such rights as “comparable worth” or “paid maternity leave”.¹²

Anticipating this level of variation between countries, CEDAW provided a framework in Articles 17 through 30, for implementation of CEDAW by ratifying parties. For example, Article 17 provides for the establishment of the Committee on the Elimination of Discrimination against Women, which consists of 23 experts from ratifying parties of “high moral standing and

¹¹ Commission on the Status of Women. *Text of the Convention on the Elimination of Discrimination against Women*. Article five.

¹² Commission on the Status of Women. *Text of the Convention on the Elimination of Discrimination against Women*. Articles six through sixteen.

competence in the field.” These experts are elected for four years, and meet once a year to review reports from countries to determine their progress, and make recommendations for improvement.¹³ Additionally, and very importantly, Article 28 allows for ratification to occur concurrently with *reservations* to the treaty, wherein a state may take issue with a certain component of the treaty, while still ratifying it. Lastly, an addendum, the “Optional Protocol” was added October 6th, 1999, and allows for a “communications procedure”, that permits groups or individuals to file complaints *directly* with the CEDAW committee.¹⁴

After an arduous negotiation process regarding the Convention’s 30 articles, legally binding nature, and 23-member oversight committee, CEDAW was opened for signature, ratification or accession by all United Nations member states on December 18th, 1979. Shortly thereafter, the Convention entered into force on September 3rd, 1981, after 20 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 both signed, and *ratified* the treaty, leaving just six UN member states not to have followed suit: Iran, Palau, Sudan, Somalia, Tonga and the United States of America.¹⁵

America – the bastion of freedom and equality – is not keeping very good company among those listed as non-ratifiers. 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.

¹³ Commission on the Status of Women. *Text of the Convention on the Elimination of Discrimination against Women*. Article seventeen.

¹⁴ “The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate”, *Congressional Research Service*, Luisa Blanchfield (Specialist in International Relations), May 7, 2013. 3.

¹⁵ *Ibid.*, 12.

Seneca Falls to the E.R.A: US Climate for Women's Rights

It is critical to understand the latent intransigence that the women's movement has fought indefatigably since Seneca Falls in the United States, to comprehend 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 19th-20th 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 met with some of the most bigoted remarks, such as those 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?"¹⁶ Several years later in 1855, in the case *Missouri v. Celia*, a female black slave was declared the property of her master, without the right to defense against her master's rape.¹⁷ In 1860 Connecticut became the first state to prohibit all abortions.¹⁸ Six years later in 1866, "citizens" and "voters" are referred to as *male* in the 14th Amendment to the constitution, giving women's suffrage a dim outlook; women abolitionists campaigning against this insertion were told by Frederick Douglass that it was "negro's hour" and that women's suffrage would have to wait.¹⁹ In the 1873 Supreme Court case *Bradwell V. Illinois*, the Supreme Court upheld the decision that states can restrict women from the "practice of any profession, to uphold the law of the creator."²⁰ In the same year, the Comstock Laws were passed, making all contraceptive information "obscene

¹⁶ "Bolting among the Ladies." *Oneida Whig*. August 1, 1848.

¹⁷ "The Path of the Women's Rights Movement: A Timeline of the Women's Rights Movement 1848 - 1998." The Prism. <http://www.ibiblio.org/prism/mar98/path.html>.

¹⁸ Ibid.

¹⁹ Hewitt, Nancy A. "Abolition and Suffrage." PBS.

<https://www.pbs.org/stantonanthony/resources/index.html?body=abolitionists.html>.

²⁰ "The Path of the Women's Rights Movement".

material". A decade later in 1887, the US Senate voted on women's suffrage; it failed 34-16, with 25 senators not even bothering to vote.²¹

At 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, picketed the White House for female suffrage; consequently, Paul and Burns were arrested for "obstructing traffic" and were incarcerated at Occoquan Workhouse, and force-fed raw eggs after initiating a hunger strike.²² On the night of November 17th, 1917, known as the "Night of Terror", a group of suffragists also picketing for the vote were brutally beaten by the police to the point of unconsciousness.²³

Fast forward to WWII's end, and the 7 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.²⁴ In 1960, the FDA approved birth control, yet it was not legalized for *all* Americans until 1972 with the Supreme Court Case *Eisenstadt v. Baird*.²⁵ In the same year, women were making a meager 60 cents to every dollar a man made.²⁶ In an attempt to rectify this pay discrepancy, the Equal Pay Act was passed in 1963, yet it did not cover executives, professionals, administrators, domestics, or agricultural workers.²⁷ One year later, the Civil Rights Act of 1964 was passed, barring gender discrimination in employment, and established the Equal Employment Opportunity Commission to investigate complaints of the like; this commission received **50,000 complaints** within its first five years.²⁸

²¹ "The Path of the Women's Rights Movement".

²² "Miss Alice Paul on Hunger Strike: Suffragist Leader Adopts This Means of Protesting against Washington Prison Fare." *New York Times* (Washington). November 7, 1917.

²³ "Night of Terror Leads to Women's Vote in 1917." WomensNews.org. Last modified October 29, 2004. <http://womensnews.org/story/our-story/041029/night-terror-leads-womens-vote-1917#.Uy0H4pGmBg0>.

²⁴ "The Path of the Women's Rights Movement"

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ The Path of the Women's Rights Movement."

By 1970, women's wages had fallen to 59 cents for every dollar a man made, and 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.²⁹ Before 1974, and the Equal Credit Opportunity Act, women were not allowed to apply for credit, and until 1978 and the Pregnancy Discrimination Act, women could be fired from the workplace for being pregnant.³⁰ In 1972, Alice Paul's Equal Rights Amendment passed both houses of Congress, yet, failed to acquire the requisite number of state ratifications by 1982.³¹ Thus by 1980 and President Carter's introduction of the Convention on the Elimination of Discrimination against Women, the country looked dubious towards 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 only making about 61 cents to every dollar a white man made, there were only 2.00% of women in the Senate, and 4.57% of women in the House, the Fortune 100 featured no woman executives, there were no women on the Supreme Court, and women had no guarantee to maternity leave – to cite a few examples of women's inequality.³²

Within this setting, President Carter introduced the Treaty to the Senate Foreign Relations Committee (SFRC), for advice and consent of 2/3^{rds} of the Senate. Bearing this context in mind, 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 apathetic responses towards CEDAW, and even exasperation towards CEDAW, has been the underlying belief and language that "women are already covered" in terms of women's rights in the United States. To expand, this notion suggests – as will be seen in

²⁹ "The Path of the Women's Rights Movement."

³⁰ Report on the Hearing on the Convention on the Elimination of Discrimination against Women, S. Rep. No. 103rd-103-38, 2d Sess., at 1-53 (1994).

³¹ "The Path of the Women's Rights Movement."

³² Ibid.

the proceeding documents – that women in America have an abundance of established rights that have elevated them to become one of the freest factions of women in the world. While this conjecture is problematic, as will be argued later, this notion is certainly not 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 Jimmy 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 President Jimmy Carter's Letter of Submittal of the CEDAW to the Senate, and enumerates all statutes, programs or 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 1972.³³

This list above was expanded on fourteen years later, in the report on the SFRC Hearing on CEDAW in 1994; the committee enumerated the rights women had gained (or were in place) that helped to combat discrimination, empower them as equal persons to men, or give women legal power to attain either of the former privileges. A few examples included:

- The Equal Protection Clause of the Fourteenth Amendment (applied for intentional discrimination), and Due Process Clause of the Fifth Amendment
- The Nineteenth Amendment in the U.S. Constitution (women's suffrage)
- The Women's Educational Equity Act of 1978 (helps-financially-to meet the requirements of Title IX)
- The Carl D. Perkins Vocational and Applied Technology Act (to eliminate sexual stereotyping in vocational education)
- The Pregnancy Discrimination Act (prohibits employers from providing "less favorable treatment" of pregnancy-related conditions in comparison with other conditions)
- The Family and Medical Leave Act of 1993 (12 weeks unpaid leave for birth or adoption)
- Family Violence Prevention and Services Act

³³See, Message from the President of the United States transmitting the Convention on the Elimination of Discrimination against Women, S. Exec. Doc. No. 96, 2d. Sess., at 2-3 (1980).

Post – 1994 Hearing, legislation includes:

- The Violence Against Women Act of 1994 (funds services for victims of rape)
- Lily-Ledbetter Fair Pay Restoration Act of 2009 (180 day window to file a complaint for victims of pay discrimination)

Yet, despite this formidable list of protections and guarantees – validating the progress of women’s equality in the United States – there has been a very recognizable *consensus* among a few very vocal Senators and lobby groups that the U.S., indeed, has reached symmetry between the two sexes; there is seemingly no *recognition* of incontrovertible, extant gender discrimination and inequity of the day – wage inequality, domestic violence, low female political participation and STEM participation, gender stereotyping, and women’s healthcare – to name a few. Consequently, 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.**”³⁴ [Emphasis Added]

Thus, members in the 1994 hearing did not view CEDAW as an instrument that could rectify those gender inequities listed above, and instead, they understood CEDAW as making more of an impact in *other* countries – perhaps implying that the United States is a more sterling example of women’s equality.³⁵

Furthermore, this sentiment is reflected in the “Additional Views of Senators Helms, Brownback, and Enzi” within the report on the SFRC Hearing on CEDAW, eight years later in 2002.

³⁴ Report on the Hearing on the Convention on the Elimination of Discrimination against Women, S.Rep. No. 107th-107-9, 2d Sess., at 1-26 (2002). 53-54.

³⁵ In the epilogue to this paper, I will be illustrating why the United States, is indeed, not the sterling exemplar of women’s rights that many assume we are.

The above listed Senators agreed that “nowhere are women better protected from discrimination than in the United States” and that “there need be no rush to ratification. There is no emergency. This Convention has been on the Committee calendar for 22 years.”³⁶ These sentiments build on the previous presumption that American women are the most free and 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, perhaps implicitly indicating that current gender inequality was *also* not an emergency to these few members.

Powerful lobby groups, such as the Heritage Foundation and “Save Mother’s Day”, have also steadfastly argued that the CEDAW treaty is baseless 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 U.S. Senate Committee on the Judiciary Subcommittee on Human Rights and the Law on November 18th, 2010, as the Foundation states:

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.”³⁷ [Emphasis added]

This quote is especially notable for its insistence that CEDAW would *not* help to further advance any protections provided to women – a conception that overtly omits facts of inequity between men and women in the United States. Facts like, women are not constitutionally equal to men, nor does the U.S. have comparable worth policies, paid maternity leave, or equal access to family

³⁶ Sentate Congressional Hearing, September 6th, 2002, on the Convention on the Elimination of all forms of Discrimination against Women. 26-27.

³⁷ “*Women’s Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*”: *Hearings Before the Committee on the Judiciary Subcommittee on Human Rights and the Law* (2010) (statement of The Heritage Foundation), 1-2.

planning – all guidelines that CEDAW promotes for incorporation. Secondly, this quote is significant for its assertion that the U.S. is the standard bearer for empowering women; to demonstrate why this is erroneous, just before 2010, the World Bank ranked the United States in terms of its capacity to empower women, at 31st in the world. Iceland took 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”) argues, “If CEDAW was 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 U.N. committee, thereby infringing on our liberty...the U.S. Constitution already covers women.”³⁸ This backwards understanding of CEDAW’s mission and capability is important for its illustration that many groups believe CEDAW would not only be *futile* in correcting any gender inequality (IF they believe inequality between genders exists) but that CEDAW would be *detrimental* for women’s rights. This apocryphal dialogue is pervasive within conservative lobby groups, institutions and members 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 United Nations treaty monitoring bodies have indicated that treaty obligations run to the sub-national governments, as well as federal governments, the United States

³⁸ Wright, Wendy. "Why the U.S. Has Not — and Should Not — Ratify CEDAW." Save Mother's Day: A Campaign to Educate America about the Dangers of CEDAW. Accessed February 18, 2014. 1.

has taken the position that the Federal government has very limited authority under U.S. law to impose international norms on states.

The U.S., in fact, is not the only country to take exception to this obligation. Canada – who has ratified CEDAW – has also incurred 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.”³⁹ Thus, the Committee on CEDAW recommends that even countries with federal systems should try to implement CEDAW to the greatest extent, including states or provinces, public authorities and institutions – no matter their domestic law.

Even in 1980, it was clear the U.S. Presidential administration had a problem with this. In a Letter of Submittal officially submitting the CEDAW treaty for “advice and consent” of two-thirds of the Senate, former President Jimmy Carter addresses concerns about CEDAW and federalism for the first time. President Carter remarks:

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**.⁴⁰[Emphasis Added]

Though there were no affirmative actions 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 deals exclusively with federalism were echoed in the SFRC Hearing on CEDAW in 1994. In a move that legal analyst Harold Hongju Koh terms, “swiss cheese” ratification – in which a country may make

³⁹ CEDAW Concluding Observations: Canada, 42nd Session, 7 November 2008, U.N. CEDAW/C/CAN/CO/7, para. 11.

⁴⁰ Message from the President of the United States, November 12th, 1980, on CEDAW.

legal exceptions to an international treaty using “reservations, understandings, and declarations (RUDs)”⁴¹ – the SFRC suggested an “understanding” that addressed federalism – and perhaps not in the direction CEDAW suggests. This “understanding” reads:

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**.⁴² [Emphasis Added]

What is important to consider with the above “understanding” is that depending on the Presidential Administration, the extent to which the Federal government would try to still oblige states to comply with the CEDAW treaty, given the Federal government’s limited jurisdiction over purely state affairs, varies greatly. While the Clinton Administration – the administration responsible for this specific understanding – intimated that they would indeed take all “all appropriate measures to ensure fulfillment of this constitution”⁴³, the George W. Bush Administration rebuked any encroachment on State issues; the George W. Bush Administration “emphasized the importance of ensuring the Convention would not conflict with U.S. Constitutional and statutory laws in areas typically controlled by the States.”⁴⁴ Therefore, depending on the President, it is possible that CEDAW –even if ratified – could never be enforced or adopted by the states.

One factor that goes to show what a difficulty it would be to have individual U.S. states comply with CEDAW, is U.S. Senators’ consideration of the repercussions of a “yes” vote on

⁴¹ Koh, Harold Hongju. 2002. "Why America Should Ratify The Women's Rights Treaty (Cedaw)." *Case Western Reserve Journal Of International Law* 34, no. 3: 263-276. *Legal Collection*, EBSCOhost (accessed February 3, 2014).

⁴² Senate Hearing 1994. 7.

⁴³ Senate Hearing 1994. 10.

⁴⁴ “The Convention on the Elimination of All Forms of Discrimination against Women(CEDAW): Congressional Issues”, *Congressional Research Service*, Luisa Blanchfield, Updated December 14, 2006. 5.

CEDAW, in his or her own state.⁴⁵ For example, if a Senator comes from a state that ascribes high value to the notion of individualism and self-empowerment, the Senator's constituents may balk at a treaty seeking to eradicate discrimination at the *person-to-person* level. Additionally, 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 he or she voted "yes" for CEDAW⁴⁶; CEDAW asks **exactly** that in its Preamble: "a change in the traditional role of men as well as the role of women"⁴⁷

Thus, this crossroads of how to implement CEDAW amidst U.S. constitutional restrictions, has created a difficult dialogue, and question, "*would CEDAW even be effective in the U.S., due to the federal system?*" which has slowed 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"⁴⁸; this "problematic strength" is what undergirds many American's suspicion of entangling, multi-lateral treaties, that they believe have the potential to subvert American sovereignty and autonomy. This valuation of individualism and sovereignty is certainly not a novel idea as applied to CEDAW; the United States currently has not ratified a score of other international treaties – and especially United Nations Treaties (which are bolded below):

- **The Law of the Sea Treaty** (161 ratifying parties)
- International Criminal Court (121 ratifying parties)
- **Kyoto Protocol** (191 ratifying parties)

⁴⁵ Schöpp-Schilling, Hanna-Beate, and C. Flinterman. *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women*. New York, NY: Feminist at the City University of New York, 2007. Print. 14

⁴⁶ Schöpp-Schilling, Hanna-Beate, and C. Flinterman. *The Circle of Empowerment*. 14-15.

⁴⁷ CEDAW text, Preamble.

⁴⁸ Schöpp-Schilling, Hanna-Beate, and C. Flinterman. *The Circle of Empowerment*. 14-15.

- **Convention on the Rights of the Child** (193 ratifying parties – only the USA and Somalia have not ratified)
- Ottawa Treaty or Land Mine Treaty (160 ratifying parties)
- Comprehensive Nuclear-Test-Ban Treaty (157 ratifying parties)
- **International Covenant on Economic, Social, and Cultural Rights** (160 ratifying parties)
- **Convention for the Protection of all Persons from Enforced Disappearance** (opened for ratification 2007; 40 ratifying parties)
- **UNESCO Convention on the Protection of the Underwater Cultural Heritage** (opened for ratification 2001; 20 ratifying parties)
- Convention on Cluster Munitions (opened for ratification 2008; 84 ratifying parties)
- **Convention on the Rights of Persons with Disabilities** (opened for ratification 2007; 143 ratifying parties)

And lest we forget...

- The League of Nations (58 ratifying parties at its peak)⁴⁹⁵⁰

Opponents of CEDAW, homologous with the opponents of the above listed treaties, express this same conviction – that ratifying an international treaty would limit the purview of American freedom, autonomy, and U.S. Constitutional jurisdiction. This attitude is recurrent through a whole host of Congressional documentation.

For example, in the 1994 Report on the SFRC Hearing on CEDAW, the minority views of committee members were as such: “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*.”⁵¹ 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 offer 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

⁴⁹ Robillard, Kevin. "10 Treaties the U.S. Hasn't Ratified." Politico. Last modified July 24, 2012.

⁵⁰ Human Rights Watch. *United States Ratification of International Human Rights Treaties*. N.p.: n.p., 2009.

⁵¹ Senate Hearing 1994, 53.

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.⁵² [Emphasis Added]

Whereas these excerpts from both the 1994 hearing and the 2002 hearing reflect a more broad paranoia and disdain for treaties that may subvert American sovereignty, other Congressional members and lobby groups make statements that are more targeted at the CEDAW committee. While Congressional and lobby group's 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 Mr. Christopher Smith (R-NJ) remarks about the CEDAW Committee, and the 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 it's 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.**⁵³ [Emphasis Added]

Similarly, Grace S. Melton of the Heritage Foundation, a lobby group/think tank in support of the same political party of Mr. Smith, takes CEDAW Committee suspicion a step farther in a web memo published April 6th, 2010. Melton writes, "**Resist the Radical Feminists...Becoming a party to**

⁵² Senate Hearing 2002, 21-22.

⁵³ *CEDAW: Hearings Before the Committee on International Relations*, 106th Cong., Second (2000) (statement of Christopher H. Smith).

CEDAW would mean ceding authority to an unelected committee comprised of foreign gender 'experts' and would do nothing to advance the rights of women."⁵⁴

Melton and Congressman Smith certainly do not speak for the entire Republican Party; as Kavita N. Ramdas and Kathleen Kelly Janus note in their Policy Review on CEDAW, many prominent members on the right, including Orrin Hatch, Colin Powell and John McCain have supported CEDAW's ratification.⁵⁵ 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 certainly language with longevity. This language has been transcendent 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". Therefore, 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 a deliberate misconstruing of the CEDAW Committee's recommendations to countries; this selective and distorted construal is then promulgated by government documents, creating either a very reductive understanding of CEDAW, or a caricature of CEDAW, which has contributed massively to CEDAW's failure in the United States.

The first issue contributing to certain U.S. representatives' misconstruing of the CEDAW Committee's decisions, is an extensive overestimation of what power the Committee on CEDAW,

⁵⁴ Melton, Grace. "CEDAW and the New U.N. Gender Office: The U.S. Can Do Better." The Heritage Foundation. Last modified April 7, 2010.

⁵⁵ Ramdas, Kavita N. Janus, Kathleen Kelly. 2011. "Ratifying Women's Rights." *Policy Review* no.169: 29-38. *Legal Collection*, EBSCOhost (accessed February 3, 2014).

and the treaty for that matter, *actually has* over a ratifying country. Many Congressional members believe the Committee acts as an oversight body that has the power to sanction governments, and demand changes in a country's domestic laws.⁵⁶ This assumption, however, is unfounded.

As detailed in the text of the CEDAW treaty, here are the facts: Part Five of the Convention on the Elimination of Discrimination against Women calls for a 23-member committee, that would watch over the progress ratifying parties were making in eradicating women's inequality; each year these members – all experts in the field covered by the convention – would convene for two weeks to consider the reports countries submit under Article 18 of the convention. After evaluating these reports, the Committee on CEDAW would then proceed to make “suggestions or general recommendations based on the examination of the reports.”⁵⁷ 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*, which Carolyn Maloney describes in the January 4th issue of the Congressional record, to mean: “any legislation that the United States *might* adopt to comply with the treaty would have to go through the normal congressional process”⁵⁸; thus, CEDAW is truly just a guideline.

Despite this knowledge – that the Committee on CEDAW is, in reality, a rather toothless oversight body – many U.S. Representatives still overestimate its power, and then use this fallacy in conjunction with cherry-picked Committee recommendations to 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:

⁵⁶ See “CEDAW's Subversion of American Sovereignty” section of paper.

⁵⁷ CEDAW text, Articles 18 and 21. 1979.

⁵⁸ Congressional Record, H.R. Doc. No. E16 (2013).

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 which 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**⁵⁹. [Emphasis added]

This dissenting opinion above is problematic not only for its suggestion that the CEDAW Committee would be "meddling" in affairs – suggesting again, that a few Senators do not understand the nature and scope of the committee, OR, that U.S. law and culture *does not need to be* criticized or reformed – but for its distorted nature of the Committee's recommendations. Before providing an analysis that proves why these statements are in fact, flawed, it is critical to point out that statements of the same nature are made elsewhere.

For instance, Former Secretary of State Colin Powell wrote the then 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 of a very high priority" instead of CEDAW, a statement attributed to the George W. Bush Administration's belief that the CEDAW Committee's recommendations were "troubling".⁶⁰ Powell states, "However, other 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)."⁶¹ Similarly, Senator, and past Chairman of the SRFC, Jesse Helms stated in Congressional Record 2198 of March 8th, 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

⁵⁹ Senate Hearing 2002, 22-23.

⁶⁰ Senate Hearing 2002, 16-17.

⁶¹ Senate Hearing 2002, 16-17.

certain reproductive health services for women' – that is to say, abortion...**They even called for the Abolishment of Mother's Day.**"⁶²[Emphasis added]

Lastly, with the same acrimonious flare, the "Save Mother's Day" campaign states about the CEDAW Committee:

In fact, the CEDAW Committee has made the best case for why the U.S. 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.⁶³

If one were to take the two most upsetting cases consistently listed above by U.S.

Representatives or lobby groups, ie: China and Belarus, and trace these cases back to their origin – the "Concluding Observations" of the Committee on CEDAW – 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 can be better understood. The Committee explains 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 traffickers⁶⁴. Also, the Committee expressed concern that "prostitutes may be kept in administrative detention without due process of law" and that "Given the HIV/AIDS pandemic, the Committee also recommends that due attention be paid to health services for women in prostitution."⁶⁵ Lastly, the Committee notes that China should work towards combatting all forms of trafficking in women and girls, increase

⁶² Congressional Record, S. Doc. No. 2198 (2000)

⁶³ Wright, Wendy. "Why the U.S. Has Not — and Should Not — Ratify CEDAW." Save Mother's Day".

⁶⁴ Concluding Observations on the Committee on the Elimination of Discrimination Against Women: China, 3/02/99, paragraphs 288-289 and 25/8/2006, paragraphs 19-20.

⁶⁵ Ibid.

enforcement of the law against trafficking, and institute measures to rehabilitate and reintegrate prostitutes back into society.⁶⁶

Thus, when comparing the statements of U.S. Representatives and lobby groups, with the actual text of the Committee's recommendations, a few things become clear. First, the Committee does not ask China to "legalize" prostitution; instead, the Committee elucidates the rampant prostitution in China that is often the side effect of poverty and accounts for *so many* arrests of women. Ergo, the Committee recommended that China decriminalize prostitution, perhaps because of the desperation that prostitution is born from, in that country. Second, the Committee notes that prostitution has an asymmetrical impact on the genders, in which female prostitutes are prosecuted *more often* than the pimps who demand it, and that often times, the women prosecuted are not given due process. This contextual information gives better insight as to *why* the Committee recommended decriminalization of prostitution, but the Senators and lobby groups did not include this context. Lastly, the Committee notes 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.

Considering the Belarus Concluding Observations of 2000, the comments are pretty straightforward. The 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.⁶⁷

Now, when comparing the statements of U.S. Representatives and lobby groups' remarks

⁶⁶ Concluding Observations on the Committee on the Elimination of Discrimination Against Women: China, 3/02/99, paragraphs 288-289 and 25/8/2006, paragraphs 19-20

⁶⁷ Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Belarus, 31/0-1/2000, paragraph 361.

about Mother's Day and the Mothers' Award in Belarus, and the Committee's actual recommendations, the differences are severe.

First, nowhere in the Committee's recommendations is there a suggestion to *abolish*, as Chairman Helms put it, 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 is quite different than in the United States; Belarus' Mother's Award hearkens back to the Nazi era award, "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— which had to be four or more. 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, there-by limiting women in all *other* aspects of life, 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 statements. These erroneous statements are incendiary, and have the potential to both misinform and inflame the public, who may not be familiar with CEDAW at all. As is typical, these apocryphal statements are understood as fact, and then all of the sudden Colin Powell believes the CEDAW Committee wants to legalize prostitution everywhere. Clearly, the former statement is an embellishment on true events; however, 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– that is a problem, and certainly a factor contributing to CEDAW’s failure.

Epilogue

When in the course of human events it became clear that women were still considered inferior to men, out came CEDAW: 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”⁶⁸; in this vein, the Convention on the Elimination of Discrimination against Women tries 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.⁶⁹ Further, CEDAW deliberately places the emphasis on *women*; the treaty is asymmetrical in nature, focusing its attention on discrimination against *women*, rather than on the grounds of sex. This helps to address the need to revolutionize existing ideas and ideologies “where women are assigned unequal, subordinate or ‘other’ roles in human life, in all its facets, in both the private and public sphere.”⁷⁰

Yet, despite the gravity and inherent 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; and despite 187 of 193 world countries’ ratification of the treaty, the United States crossed its arms, and chose to remain the only industrialized country in the world not to ratify it. Why the reluctance? This paper argued that there are indeed 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

⁶⁸ Clinton, Hilary Rodham. "Remarks For The United Nations Fourth World Conference On Women." Speech transcript, United Nations Fourth World Conference on Women, Beijing, China, September 5, 1995.

⁶⁹ Holtmaat, Riki. *Towards Different Law and Public Policy*. 2004.

⁷⁰ *Ibid.*, 12.

belief that women in the U.S. are already “covered”, and that CEDAW does not have the power to make real change.

Yet, perhaps what is the most unique and wonderful thing about CEDAW is that it does have the power to influence *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*.⁷¹ Ukraine, Thailand, Nepal and the Philippines – by dint of ratifying CEDAW – have all passed new legislation to curb sex trafficking.⁷² Similarly, both Japan and Columbia have passed recent legislation making domestic violence a crime, and gives legal protection to victims, after ratifying CEDAW.⁷³ 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.⁷⁴ Kenya manipulated CEDAW to address differences in inheritance rights, and eliminate discrimination against widows and daughters of the deceased.⁷⁵ 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.⁷⁶ 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 2015.⁷⁷

And this is why the treaty matters for the United States – we are not the exemplar of women’s equality and progress as many glamorize the United States to be. For example, in the

⁷¹ United Nations. "Frequently Asked Questions: What Success Has CEDAW Had in Other Countries?" CEDAW 2014. Last modified 2014. <http://www.cedaw2011.org/index.php/about-cedaw/faq>.

⁷² Arriaga, Alexandra. "Support Ratification of the Convention on the Elimination of Discrimination against Women." In *Promoting Freedom and Preventing Genocide*, 1-6.

⁷³ Ibid.

⁷⁴ Arriaga, Alexandra. "Support Ratification of the Convention on the Elimination of Discrimination against Women." In *Promoting Freedom and Preventing Genocide*, 1-6.

⁷⁵ United Nations. "Frequently Asked Questions".

⁷⁶ Ibid.

⁷⁷ Ibid.

United States today, women represent just 3.1% of CEO's, 14.9% of Board or Directors Members, and 12.5% of executive officers – even though women comprise 48% of the workforce. Women are still earning on a national average, 77 cents to every man's dollar, with women of color, lower class and rural women fairing even worse. Further, on average, three women a day are murdered by their husbands or boyfriends in the US, and one out of every six American women has been the victim of an attempted or completed rape in her lifetime.⁷⁸

When compared to other countries, the United States' culture of inequity towards women is sharp. According to the Inter-Parliamentary Union, the United States ranks 83rd out of all the countries in the world for women's representation in Congress, with 18.3% in the House, and 20% in the Senate – paltry considering that 50.8% of the total population is female.⁷⁹ 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 US has the highest post-tax-and-transfer income inequality of any highly developed country in the world.⁸⁰ Also, according to the Global Gender Gap Report of 2013, by the World Economic Forum, the United States ranks 23rd overall out of 136 countries (1 being the best), with such indicators like a ranking of 60th in the world for female political empowerment, a ranking of 53rd for life expectancy, a ranking of 67th for wage equality for equal work, and facts such as, there has never been a female head of state or national maternity leave program.⁸¹

With these stats 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 insular remarks about CEDAW's "hidden agenda". The United States has to act, because as

⁷⁸ Ramdas, Kavita N. Janus, Kathleen Kelly. 2011. "Ratifying Women's Rights." *Policy Review* no.169: 29-38. *Legal Collection*, EBSCOhost (accessed February 3, 2014).

⁷⁹ Women in National Parliaments as of January 2014." In *Parline*. <http://www.ipu.org/wmn-e/classif.htm>.

⁸⁰ Gongloff, Mark. "The U.S. Has The Worst Income Inequality In The Developed World, Thanks To Wall Street: Study." *Huffington Post*. Last modified August 15, 2013.

⁸¹ World Economic Forum. "Global Gender Gap Index 2013." Last modified 2013. Digital file.

Nicholas Kristof aptly remarks 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 cities like Los Angeles, CA, and Louisville, KY.⁸² 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 even has a CEDAW task force to help protect women's human rights, as well as 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, United Methodist Church, League of Women Voters, the YWCA and the American Bar Association.⁸³

Thus, while minority opinions within Congressional hearings may have the power to bury CEDAW for years at a time, they will 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.

⁸² WeDo. "CEDAW in the United States: Why a Treaty for the Rights of Women?" Women Engaging Globally. Last modified 2006. Accessed April 12, 2014. <http://www.wedo.org/wp-content/uploads/cedaw-factsheet.pdf>.

⁸³ Ibid.

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Harold Hongju Koh, a Korean-American lawyer, served as the Legal Adviser of the Department of State for the Obama Administration from 2009 to 2013, as well as the Assistant Secretary of State for Democracy, Human Rights, and Labor during the Clinton Administration from 1998-2001. In addition to these roles, Koh also was and continues to be a legal scholar, and wrote the above listed article to help argue in support of CEDAW's ratifications, as well as address why the U.S. has had reservations ratifying CEDAW, and provides reasons why these reservations are null. Koh argues that America cannot continue to be a world leader – especially a world leader promoting women's rights and progress- if America does not become party to this international treaty. Additionally, Koh argues that when a country ratifies CEDAW, that ratification is one of the surest indicators of a country's commitment to internalize gender equality within domestic law. As for primary and secondary sources, Koh draws from the actual CEDAW articles and treaty, articles from the International Convention on the Elimination of All Forms of Racial Discrimination, Richard Goldstone's *Prosecuting Rape as a War Crime*, the 1994 Senate Foreign Relations Committee Report, Louis Henkin's "U.S. Ratification of Human Rights Conventions, Patrick Fagan's *How UN Conventions on Women's and Children's Rights Undermine Family, Religion and Sovereignty*, and First Lady Laura Bush's remarks to the United Nations on International Women's Day in 2002.

This source has proven to be exceptionally beneficial to my research paper, as Koh's article helps to frame what CEDAW's issues are from the perspective of a top level administrator. Koh also points to several fallacies within the opposition's reasoning, and these key points that Koh draws out will be points I will also look at from the other side of the argument. Koh also uses references that will be helpful to add to my current list of references, citing key organizations in opposition to CEDAW, such as the Heritage Foundation.

Ramdas, Kavita N. Janus, Kathleen Kelly. 2011. "Ratifying Women's Rights." *Policy Review* no.169: 29-38. *Legal Collection*, EBSCOhost (accessed February 3, 2014).

Kavita Ramdas, the former President and CEO of the Global Fund for Women, and Kathleen Kelly, a graduate of U.C Berkeley Law School and co-founder of "Spark" – a non-profit promoting gender equality, are the authors of the above listed policy review analyzing CEDAW's effectiveness and importance. Ramdas and Kelly argue that CEDAW's ratification allows nations "to take an important step on the path towards greater equality of both opportunity and outcome for women and men". Further, Ramdas and Kelly help to outline CEDAW's major obstacles and opposition groups, such as CEDAW's Article 5(a), and Senator Jesse Helms and the Concerned Women for America. As for primary and secondary sources, Ramdas and Kelly draw on the actual CEDAW articles and treaty, the Supreme Court Case *Ropers V. Simmons*, a forthcoming paper by David Rosenblum on gender-binaries, a letter from Sima Samar – chair of the Human Rights Commission, and past Minister of Women's Affairs in Afghanistan – addressing CEDAW's importance in developing countries, and a 2010 report from International Center for Research on Women.

Ramdas and Kelly offer helpful insight to my paper because they present CEDAW in a slightly different light than many of my other sources; Ramdas and Kelly describe CEDAW as a tool for *agency*, and as a movement towards eradicating poverty – a point I will make sure to address, as it represents a potential bargaining point in the Senate for ratification. Additionally, Ramdas and Kelly include the feminist perspective, and include several examples that portray all the areas in which the U.S. does not exemplify gender equality, which will be a major point in my epilogue.

Robillard, Kevin. "10 Treaties the U.S. Hasn't Ratified." Politico. Last modified July 24, 2012.
<http://www.politico.com/gallery/2012/07/10-treaties-the-u-s-hasnt-ratified/000303-003922.html>.

Sciammacco, Christina. "NOW Pressures Senate for Ratification of CEDAW." *National NOW Times* 30, no. 3 (Summer, 1998): 12.
<http://search.proquest.com/docview/222017011?accountid=26417>

SOMMERS, CHRISTINA HOFF. 2011. "Feminism by Treaty." *Policy Review* no. 167: 37-50.
Legal Collection, EBSCOhost (accessed February 3, 2014).

"The Path of the Women's Rights Movement: A Timeline of the Women's Rights Movement 1848 - 1998." The Prism. <http://www.ibiblio.org/prism/mar98/path.html>.

WeDo. "CEDAW in the United States: Why a Treaty for the Rights of Women?" Women Engaging Globally. Last modified 2006. Accessed April 12, 2014. <http://www.wedo.org/wp-content/uploads/cedaw-factsheet.pdf>.

Wright, Wendy. "Why the U.S. Has Not — and Should Not — Ratify CEDAW." Save Mother's Day: A Campaign to Educate America about the Dangers of CEDAW. Accessed February 18, 2014. <http://www.savemothersday.com/noratify.shtml>.

Government Publications

Arriaga, Alexandra. "Support Ratification of the Convention on the Elimination of Discrimination against Women." In *Promoting Freedom and Preventing Genocide*, 1-6.

CEDAW: Hearings Before the Committee on International Relations, 106th Cong., Second (2000) (statement of Christopher H. Smith).

CEDAW Concluding Observations: Canada, 42nd Session, 7 November 2008, U.N. CEDAW/C/CAN/CO/7, para. 11.

Clinton, Hilary Rodham. "Remarks For The United Nations Fourth World Conference On Women." Speech transcript, United Nations Fourth World Conference on Women, Beijing, China, September 5, 1995.

Commission on the Status of Women. *Text of the Convention on the Elimination of Discrimination against Women*. N.p.: United Nations, 1979.

Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Belarus, 31/0-1/2000, paragraph 361.

Written by the Committee on the CEDAW, the Concluding Observations of 2000 give detailed recommendations for Belarus to consider, such as the prevalence of sex-role stereotyping, and the celebration of traditional roles for women. These recommendations were especially significant for my paper because these recommendations, along with China, are one of the most frequently, and most egregiously misunderstood and misconstrued of any recommendations of the committee. Many Congressman and members of prominent lobby groups believe that the Committee told Belarus to abolish Mother's Day, which is flatly untrue. Thus, it was helpful to compare U.S. Senator's remarks about these recommendations, with the *actual* statements of the committee. Some of these recommendations for Belarus are below:

"The Committee is concerned by the continuing prevalence of sex-role stereotypes and by the reintroduction of such symbols as a Mothers' Day and a Mothers' Award, which it sees as encouraging women's traditional roles. It is also concerned whether the introduction of human rights and gender education aimed at countering such stereotyping is being effectively implemented."

Concluding Observations on the Committee on the Elimination of Discrimination Against Women: China, 3/02/99, paragraphs 288-289 and 25/8/2006, paragraphs 19-20.

Written by the Committee on the CEDAW, the Concluding Observations of 1999 and 2006 give detailed recommendations for China to consider, concerning several different issues like trafficking and political participation. These recommendations were especially significant for my paper because these recommendations, along with Belarus, are one of the most frequently, and most egregiously misunderstood and misconstrued of any recommendations of the committee. It was helpful to compare U.S. Senator's remarks about these recommendations, with the *actual* statements of the committee. Some of these statements are below:

“The Committee also expresses concern that the continued criminalization of prostitution has a disproportionate impact on prostitutes rather than on the prosecution and punishment of pimps and traffickers. It is also concerned that prostitutes may be kept in administrative detention without due process of law. Moreover, the Committee is concerned about the insufficient data and statistical information about the extent of trafficking, in particular internal trafficking”

Congressional Record, S. Doc. No. 1276 (2000).

The Congressional Record is an official daily record of the statements, debates or hearings of U.S. Congressmen and women. Published by the U.S. Government Printing office on March 8th, 2000, this specific Congressional Record includes the statements of SFRC Chairman Jess Helms, and what he terms, “THE RADICAL AGENDA OF CEDAW”. Chairman Helms presents all the reasons why he believes CEDAW should not be ratified; this record is especially significant for my paper people this source gives an inside look at exactly *why* Helms would not allow CEDAW on the SFRC agenda for six years. This source all reveals a very high level of sexism, and bigotry, which are certainly two very unflattering characteristics for a Chairman of a very important committee to have. An excerpt from his statement in the Congressional Record demonstrates this:

“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...”

Congressional Record, H.R. Doc. No. E16 (2013).

Office of the President, Letter to Hon. Joseph R. Biden, Jr., Chairman from Colin Powell, Secretary of State, S. Doc. (2002).

Report on the Hearing on the Convention on the Elimination of Discrimination against Women, S. Rep. No. 107th-107-9, 2d Sess., at 1-26 (2002).

The authors of this Report on the 2002 Senate Hearing, the Committee on Foreign Relations, comprise a Standing Committee in the United States Senate. The tasks of the Committee on Foreign Relations include: reviewing foreign policy legislation and bringing it to debate in the Senate, reviewing federal funding for foreign aid programs, considering high level positions in the Department of State, and considering or debating treaties. The last designated task, reviewing treaties, is the most germane to this source, as the above listed source is a report on the Senate Congressional Hearing of September 6th, 2002, in which the committee held a public hearing on CEDAW. This source is exceedingly important to my research because it helps to better paint a picture of the views of top level officials, U.S. Congressmen and Women, and the Bush Administration, on CEDAW. The report outlines the U.S.' early involvement with CEDAW, the committee's understandings of CEDAW's effect on US law, the Bush Administration's reservations and conditions for the treaty's ratification, a cost estimate of CEDAW's implementation, and minority views. Also, the 2002 Report includes a letter from Colin Powell to SFRC Chair Joe Biden about the Bush Administration's stance on CEDAW, as well as Assistant Attorney General Daniel J. Bryant's letter to Chair Biden, which makes complaints about the "vague" nature of CEDAW. The minority views are especially colorful in the 2002 report, which are often something to pay careful attention to, because while they are in the minority, the voices against CEDAW often voice concerns and arguments that really *stick*- these arguments brought up by the minority appear consistently in several government publications over a 30 year time span. CEDAW is often cited as a treaty that dilutes American autonomy and sovereignty, and this excerpt from the hearing is a good examples of this:

"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."

Report on the Hearing on the Convention on the Elimination of Discrimination against Women, S. Rep. No. 103rd-103-38, 2d Sess., at 1-53 (1994).

The authors of this Senate Hearing, the Committee on Foreign Relations, comprise a Standing Committee in the United States Senate. The tasks of the Committee on Foreign Relations include: reviewing foreign policy legislation and bringing it to debate in the Senate, reviewing federal funding for foreign aid programs, considering high level positions in the Department of State, and considering or debating treaties. The last designated task, reviewing treaties, is the most germane to this source, as the above listed source is a report on the Senate Congressional Hearing of September 27th, 1994, in which the committee held a public hearing on CEDAW. This source is exceedingly important to my research because it helps to better paint a picture of the views of top level officials, U.S Congressmen and Women, and the Clinton Administration, on CEDAW. The report outlines the U.S.' early involvement with CEDAW, the committee's understandings of CEDAW's effect on US law, the Clinton Administration's reservations and conditions for the treaty's ratification, a cost estimate of CEDAW's implementation, and minority views. The minority views are often something to pay careful attention to, because while they are in the minority, the voices against CEDAW are strong, and have so far been successful because CEDAW has not been ratified for thirty years. CEDAW is often cited as a treaty that dilutes American autonomy and sovereignty, and these excerpts from the hearing are good examples of this:

"We believe that countries such as the United States, which wish to protect the dignity and improve treatment of individuals, must guard against treaties that *overreach*"

"The minority rejects outright the view that the United States must be a party to the treaty in order to criticize or encourage other governments in their practices regarding women"

Message from the President of the United States transmitting the Convention on the Elimination of Discrimination against Women, S. Exec. Doc. No. 96, 2d. Sess., at 2-3 (1980).

This source was written both by President Jimmy Carter, and his legal staff. It includes a letter of submittal – which officially submitted the CEDAW to the Senate Foreign Relations Committee for advice and consent of 2/3rds of the Senate – as well as a memorandum of law, which outlines what legislative protections were already in place for women in the U.S. This source was especially useful to me, because it helped me to understand what some of the initial concerns were of this President towards CEDAW – as he was the first President to have any interaction with it at all. President Carter, in many ways, sets the pace and the tone of the CEDAW momentum and dialogue with this "Letter of Submittal" in 1980. An excerpt from this document addresses on of President Carter's initial concerns about CEDAW and federalism:

“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”

“Humans Rights Brief”, A Legal Resource for the International Human Rights Community, “Treaty for the Rights of Women Deserves Full U.S. Support”, by Nora O’Connell and Ritu Sharma*, Volume 10 Issue 2, 2003.

“Restoring American Leadership: Cooperative Steps to Advance Global Progress”, Security and Peace Institute, 2005.

“The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate”, *Congressional Research Service*, Luisa Blanchfield (Specialist in International Relations), May 7, 2013

The Congressional Research Service (CRS) is a non-partisan, public policy research “think tank” of the United States Congress, and works directly with Congressional Members and their staff on a confidential, and non-partisan basis. Working in tandem with the Congressional Budget Office and the Government Accountability Office, the CRS aims to create accurate, in-depth and objective reports to assist Congress with present and future issues of national policy. Acting as a representative for the CRS, Luisa Blanchfield – a specialist in international relations - organized the above listed report in May of 2013 to detail the issues of the US’ non-ratification of CEDAW to date. Further, this report outlines all U.S. actions with regard to CEDAW, all presidential administration’s positions on CEDAW since its inception (including the Obama Administration), understood “effectiveness” of CEDAW, perceived impact on US sovereignty, problem areas of CEDAW as CRS and Congress have understood them, additional international treaties rejected by the US, and a timeline of all hearings on CEDAW. For example, in the following excerpt from the report, one of the contentious issues of sovereignty is addressed:

“For many policymakers, the question of U.S. ratification of CEDAW touches on the broader issue of national sovereignty. The minority views in the 2002 SRFC report on the Convention, for instance, state that CEDAW represents ‘a disturbing national trend’ of favoring international law over U.S. constitutional and self-government, thereby undermining U.S. sovereignty”

“The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Congressional Issues”, *Congressional Research Service*, Luisa Blanchfield (Analyst in Foreign Affairs Foreign Affairs, Defense, and Trade Division), Updated December 14, 2006.

United Nations. "A Brief History of the CSW." UN Women: United Nations Entity for Gender Equality and the Empowerment of Women. Accessed March 26, 2014. <http://www.unwomen.org/co/csw/brief-history>.

United Nations. "Frequently Asked Questions: What Success Has CEDAW Had in Other Countries?" CEDAW 2014. Last modified 2014. <http://www.cedaw2011.org/index.php/about-cedaw/faq>.

"Women in National Parliaments as of January 2014." In *Parline*. <http://www.ipu.org/wmn-e/classif.htm>.

"Women's Rights are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women": Hearings Before the Committee on the Judiciary Subcommittee on Human Rights and the Law (2010) (statement of The Heritage Foundation)

The Heritage Foundation, the group responsible for this Congressional testimony, is a conservative lobby group and think tank based in Washington, D.C., and is considered one of the most influential conservative research organizations in the United States. On November 18th, 2010, the Foundation – represented by Steven Groves – presented the research to the U.S. Senate that the Foundation had collected about the impact of the CEDAW treaty, and their opinion on whether ratifying CEDAW would benefit the U.S. in the international community. The source includes references to decisions made by the Committee on CEDAW, text from the CEDAW treaty, and past U.S. legislation that corresponds with CEDAW's tenets. Below is a quote from their testimony:

"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"

World Economic Forum. "Global Gender Gap Index 2013." Last modified 2013. Digital file.