

Advocating for human rights treaty ratification in the USA – A comparison between CRC and CRPD advocacy

Diana Volonakis

Abstract

Past scholarly research in the interdisciplinary field of children's rights studies has explored the subject of US ratification of the Convention on the Rights of the child (CRC) and come to a set of common conclusions, namely that governmental reticence to accept a human rights framework in reforming the nation's public policy remains the main explanation for prolonged non-adherence to the convention. While the State plays a key role in the drafting, ratification and implementation of international human rights treaties, this paper focuses its enquiry on non-State actors that advocate for – or against – CRC ratification in the US. Subsequently, this article compares CRC ratification advocacy with actions led by American advocates for the ratification of the Convention on the Rights of Persons with Disabilities (CRPD), and proposes an interpretation as to why CRPD advocates have successfully gained the support of religiously and politically conservative constituents, whereas the children's rights movement has not. A final section puts forward recommendations aimed at improving the effectiveness of the pro-CRC ratification campaign, especially in regards to the facilitation of child participation in advocacy activities.

Keywords: The Campaign for US Ratification of the CRC, ParentalRights.org, children's rights in the US, CRC ratification, CRPD ratification, American exceptionalism

Der Kampf für die Ratifizierung von Menschenrechtsabkommen in den USA – ein Vergleich der Kampagnen für die UN-Kinderrechtskonvention und die UN-Behindertenrechtskonvention

Zusammenfassung

Schon frühere wissenschaftliche Untersuchungen im interdisziplinären Feld der Kinderrechtsstudien haben sich mit der Thematik der (Nicht-)Ratifikation der UN-Kinderrechtskonvention (UN-KRK) durch die Vereinigten Staaten von Amerika beschäftigt, deren Ergebnisse sich in einer Kernthese zusammenfassen lassen: Die offensichtliche Zurückhaltung der amerikanischen Regierung, die UN-KRK in staatliches Recht umzuwandeln, wird als Hauptursache für die anhaltenden Ratifizierungsvorbehalte gegenüber diesem Menschenrechtsvertrag angesehen. Auch wenn die Nationalstaaten eine Schlüsselrolle in der Ausarbeitung, Ratifizierung und Implementierung von internationalen Menschenrechtsverträgen spielen, liegt der Fokus in diesem Beitrag auf den nichtstaatlichen Akteuren, die sich für oder gegen die Ratifizierung der UN-KRK in den USA einsetzen. Der Beitrag vergleicht die (bisher) gescheiterten Kampagnen der Befürworter der UN-KRK mit den erfolgreichen Strategien der Interessensvertreter der UN-Behindertenrechtskonvention (UN-BRK). Es wird versucht, eine mögliche Erklärung dafür zu liefern, warum es den Befürwortern der UN-BRK gelang, die Unterstützung der religiös und politisch konservativen Wählerschaft zu erhalten, diese Unterstützung den Befürwortern der UN-KRK bisher jedoch versagt blieb. Der Beitrag endet mit einigen Empfehlungen zur Verbesserung der Effektivität der aktuellen Pro-UN-KRK-Ratifizierungsbemühungen unter besonderer Berücksichtigung der Ermöglichung von Partizipationsstrukturen für Kinder an derartigen Kampagnen.

Schlagwörter: Kampagne zur Ratifizierung der UN-Kinderrechtskonvention durch die Vereinigten Staaten von Amerika, ParentalRights.org, Kinderrechte in den USA, Ratifizierung der UN-KRK, Ratifizierung der UN-BRK, Amerikanischer Exzeptionalismus

1 Introduction

In a momentous development for the advancement of the global children's rights agenda, the Somali government ratified the CRC in January 2015. The event gave rise to renewed criticisms directed at the US government for its prolonged non-adherence, despite the wealth of interdisciplinary literature arguing the merits of American ratification (*Almog/Bendor* 2003; *Fink* 1991; *Kilbourne* 1996; *Lawrence-Karski* 1996; *Price Cohen* 1995; *Rutkow/Lozman* 2006; *Todres/Wojcik/Revaz* 2006). The authors identify the US government's reticence to accept a human rights framework in reforming the nation's public policy as the main explanation for extended non-adherence to the treaty (*Hertel/Libal* 2011; *Lauren* 2009). While the State plays an indisputably key role in the drafting, ratification and implementation of human rights treaties, *Stammers* (1999) acknowledges that "the role of social movements in the long-term historical development of human rights has been of great significance" (p. 981). This paper argues that in order to fully understand the multiple explanatory factors hindering ratification, it is necessary to take into account the actions of American civil society organizations, which have taken up the task of advocating for – or against – US CRC ratification.

The *Campaign for US Ratification of the CRC* is a volunteer-driven network of diverse actors who support ratification of the CRC by the US, and who further aim to implement its provisions at the national level. The Campaign is active through its website, and its leadership is assumed by a core group of volunteers, some of whom were interviewed in the framework of this research. According to interviewees, the three objectives of the campaign are to: 1) Make awareness-raising documents available to the general public upon the content and potentially beneficial impact of CRC ratification on the well-being of American children, 2) Call on website visitors to sign a cyber-petition addressed to the US President calling for timely CRC ratification, and 3) Call on CEOs of child-related businesses to publicly express their support for CRC ratification.

ParentalRights.org is a web-based organization in existence since 2007, and founded by its current president, *Michael Farris*. He also founded the Home School Legal Defence Association (HSLDA), which is committed to safeguarding the right of American parents to home-school their children since 1983. Much like the *Campaign for US ratification of the CRC*, *Parentalrights.org* is an internet-based campaign. Campaign members identify themselves as members of a broader American parental rights movement (*Lane* 1998; *McCarthy* 1988), which has adopted a staunch stance against the principles of the CRC. Proponents of the movement have coalesced around the campaign and continue to undermine the principles of the convention and downplay the potential benefits of ratification (*Butler* 2012; *Dwyert* 1994; *Gunn* 2006; *Smolin* 2006). While the *Campaign for US ratification of the CRC* advocates for child empowerment through the implementation of the principles of the CRC, the counter-campaign considers parental empowerment to constitute the most effective framework towards ensuring child well-being and protection.

Following a brief historical reminder of the significant developments concerning the CRC under the *Obama* administration, this paper will link the US government's reluctance to ratify the CRC to the concept of "American exceptionalism" (*Ignatieff* 2004), a sentiment whereby the nation's leadership considers itself exempt from the very same rules it helped devise. Using concepts developed by social movement theorists, the paper will subsequently analyse the "blocking mechanisms" (*Hertel* 2006) effectively deployed by *ParentalRights.org* to counter the children's rights movement's message, despite overwhelming public sympathy for the cause of child protection and well-being. The failure of American CRC advocates to put children's rights on the political agenda is compared to the relative success of advocates of the Convention for the rights of persons with disabilities (CRPD). Despite its current unratified status, the CRPD enjoys bipartisan support from both Democrats and Republicans, an enviable situation from the viewpoint of CRC advocates, whose convention has come under the continuous criticisms from religiously and politically conservative American interest groups. In a final section, the benefits of facilitating child participation and its potential contribution to CRC advocacy in the US will be discussed.

2 Theoretical frameworks

Advocates for – or against – US CRC ratification are conceptualized as actors within social movements, defined by *Tilly* (2004) as "[...] contentious performances, displays and campaigns by which ordinary people make collective claims on others. In other words, social movements are the vehicles by which individuals participate in public politics" (p. 3). In this perspective, social movements endow the individual with a heightened degree of social agency, and extant forms of power are contested through human rights claims (*Stammers* 1999).

In order to maintain long-term viability and produce change, social movements procure and organize resources, a process which further triggers the organization of a counter-movement: "As one social movement begins mobilizing resources toward its goals, individuals and institutions who oppose those goals or whose resources are threatened coalesce around opposing goals into counter-movements" (*Meyer/Staggenborg* 1996, p. 1628). Both campaign and counter-campaign are dynamic entities which are subject to – and producers of – social mechanisms, i.e. "frequently occurring and easily recognizable causal patterns...which allow us to explain, but not predict, certain events" (*Elster* 1999, p. 26). Social mechanisms are useful for the researcher studying human rights advocacy campaigns, in constructing a partial explanation as to the processes inherent to campaign emergence, framing and strategy.

Building on the work by *Keck/Sikkink* (1998) on the social mechanisms that regiment the emergence of human rights campaigns, *Hertel* (2006) further developed dimensions of human rights campaign evolution by exploring instances of disagreement amongst activists as to the effectiveness or pertinence of a campaign's frame. Counter-campaigners wholly or partially reject the initial campaign's frame through a social mechanism referred to by *Hertel* (2006) as "blocking":

"Blocking [...] is action by receiving-end activists aimed at halting or at least significantly stalling a campaign's progress in order to pressure senders to change their frame. Activists on the receiving

end of a campaign block by expressing norms in a way very distinct from that of the senders, seeking to stop the campaign until the understandings of norms on both “ends” of the campaign are aligned. Actors on the receiving end of the campaign choose normative reference points – such as human rights treaties – that are distinct from those the senders refer to in setting the campaign’s opening frame. The receivers [...] use a variety of contentious tactics aimed at persuading the senders to change their frame and corresponding policy goals.” (p. 6)

This article extends the concept of “blocking” mechanisms to the North American setting, allowing to highlight the manner in which *ParentalRights.org* has successfully resorted to such mechanisms by adopting a range of contentious tactics and advancing an alternative normative reference point to the CRC.

3 Data collection

From a methodological perspective, preliminary data was obtained through a secondary literature review. Supplementary data was obtained through semi-structured telephone interviews of members engaged in either the *Campaign for US ratification of the CRC* or *ParentalRights.org*. The two campaigns were selected for analysis on the basis of their positions as leading civil society organizations engaged in pro- and anti-CRC advocacy in the US.

In total, 90 minute interviews were carried out with 2 Steering Committee members of the pro-CRC campaign. Interviewees were selected on the basis of their enduring involvement and deep knowledge of the campaign’s activities since its inception. Both interviews were carried out via Skype, with interviewees having received the questions in advance.

In addition to the 2 Steering Committee members, an additional interview was carried out with an individual who is involved with UNCRC awareness-raising in the US as an affiliate of an NGO. While this third interviewee had not been a member to the pro-CRC campaign, the person is familiar with the campaign’s activities and was able to provide an external point of view.

The Steering Committee members were requested to provide information pertaining to the context of the Campaign’s creation, the process of election of Steering Committee members, the carrying out of advocacy activities, and their perception of the opposing group, *ParentalRights.org*, and its efficiency.

After each interview, participants were given the opportunity to read the transcript and attach comments and/or clarifications. The interview has proven to be a uniquely sensitive and powerful method of capturing the experiences and lived meanings of the interviewee’s world. The process aimed to identify the meanings the interviewee gives to her/his experience as advocate, and to her/his understanding of the concept of children’s rights. Also, it is an effective means to explore the participant’s perception of the opposition’s claims and contentious tactics. Further data pertaining to the pro-CRC Campaign was gathered through the analyses of discourses vehicled via the written and audio-visual content of the Campaign’s website.

From the outset of the research, interview requests with members of *ParentalRights.org* were denied. This constituted a serious obstacle to data collection. Data pertaining to *ParentalRights.org* (history, membership, activities, guiding principles, etc.) was obtained through the organization’s official website.

4 American exceptionalism, Obama, and the CRC

By the time *Barack Obama* had succeeded *George W. Bush*, the latter administration's blatant disregard for international human rights law had come under intense international criticism, especially in relation to the retaliatory military ventures in the wake of 9/11. *Koh*, Legal Advisor to the Department of State (2009-2013), stated that "the [Bush] administration's obsessive focus on the War on Terror [...] has taken an extraordinary toll upon US global human rights policy" (2007, p. 636). Perhaps the most problematic facet of the *Bush* administration was its unilateral brand of foreign policy, which severely impaired the US' credibility before the international community. This political attitude can be tied to the concept of "American exceptionalism", which is most eloquently and ironically described by *Forsythe* (2011):

"A foundational assumption of US exceptionalism has been a belief in and commitment to American virtue, American values, American law, and American experience – which are then to be radiated outward. If other countries accept the supremacy of international law and compel their constitutions and judges to yield to it, that fact only marks their inferiority. US citizens are presumed to have no such complexes." (p. 22)

Ignatieff (2004) identifies three distinct categories of American exceptionalism: political, normative, and legal, each of which will be briefly commented upon.

Political exceptionalism is demonstrated through the conduct of US international relations, which are based upon the creation of alliances and networks in which the American nation acts as a partial arbiter, with its foreign politics which denounce alleged human rights violations in order to gain a position of moral superiority. Such a strategy is viewed as hypocritical, since "the United States, it is said, seek to sit in judgment on others but will not submit its human rights behaviour to international judgment" (*Henkin* 1995, p. 47). Scholars refer to political exceptionalism, likening it to an apparent "schizophrenic rights reality" (*Hertel/Libal* 2011, p. 14), whereby those who seek to enforce human rights abroad refuse to enforce the same rights within their own borders.

Normative exceptionalism is demonstrated in such cases where the US decides to adhere to international treaties, often accompanying ratification by RUDs (Reservations, Understandings, and Declarations). RUDs alter the obligations of a given State vis-à-vis the treaty, permitting the State to elude certain responsibilities. Frequent recourse to RUDs is considered problematic, since "as result of those qualifications of its adherence, U.S. ratification has been described as specious, meretricious, hypocritical" (*Henkin* 1995, p. 52).

The third and final form of American exceptionalism according to *Ignatieff* (2004) is legal exceptionalism, which can be likened to the practice of legal isolationism. Despite the fact that the US actively participates in the creation of international human rights law, the State takes great pains to exempt itself from the same rules it helped devise. US courts seek to protect themselves against being overly influenced by foreign sources concerning human rights, and repeated efforts have been made to preserve American constitutional law from being "polluted" by foreign laws and international law, which are considered inferior.

According to *Koh* (2007), the political category is the single most problematic expression of American exceptionalism. The international community has charged US foreign policy with demonstrating a double standard. US shortcomings, as well as the failings of

its allies, are judged with less criticism than the actions of its enemies. US international relations are based upon the creation of alliances and networks, in which the American leadership is said to act as partial arbiter, and alleged human rights violations abroad serve as justification to assert the moral superiority of the US. Human rights advocates recognized the election of *Barack Obama* as a much awaited window of opportunity “[...] to reaffirm and strengthen the longstanding commitment of the United States to human rights at home and abroad” (Powell 2008, p. 39). The ratification of major international human rights treaties, including the CRC, is regarded as an essential step towards achieving these twin goals. When questioned about the CRC during the Walden University Presidential Youth Debate in 2008, Obama stated that “it is embarrassing to find ourselves [the US] in the company of Somalia, a lawless land. I will review this [treaty] and other treaties to ensure that the United States resumes its global leadership in human rights”. On January 15 2009, during the Confirmation Hearing of *Susan Rice*, US permanent representative to the United Nations, she declared the CRC “a very important treaty and a noble cause. There can be no doubt that [President Obama] and Secretary Clinton and I share a commitment to the objectives of this treaty and will take it up as an early question to ensure that the United States is playing and resumes its global leadership role in human rights.” In November 2009, the State Department announced an interagency policy review of human rights treaties to which the US is not party, including the CRC¹. The most recent significant development concerning CRC ratification by the US occurred in March 2011, when the *Obama* Administration’s intent to “review how we [the United States] could move towards its ratification”² was quoted in the State’s Universal Periodic Review.

In the face of pressing economic and military matters, the *Obama* administration may not have prioritized the human rights issue, but it can nevertheless be credited for taking small steps towards upholding human rights standards in the US and abroad. In 2009, *Obama* moved rapidly to reverse the most abusive aspects of the *Bush* administration’s approach to fighting the ever controversial “war on terror”, insisting that strict standards be adopted by the US military in regards to the treatment of detainees suspected of terrorism. The administration signed the UN Convention on the Rights of People with Disabilities (CRPD) in 2009, making it the first international human rights treaty the US had signed in nearly a decade. The last treaty ratified by the US dates back to 2002, when the US ratified the two Optional Protocols (OP) to the Convention on the Rights of the Child, on the involvement of children in armed conflict (OPAC) and on the sale of children, child prostitution and child pornography (OPSC). Authors in children’s rights have argued that the OPs enjoyed timely ratification since they were considered to be of less controversial nature than the CRC itself, given that “in the view of many, existing US laws generally met the standards of the agreements” (Blanchfield 2009, p. 5). The OPs are documents which relate to specific topics, and which call for a clear and unequivocal stance against practices that are very largely regarded as reprehensible by the American leadership. Therefore, a clear consensus was achieved and the OPs were rapidly ratified.

Looking back on *Obama*’s consecutive terms in office, *Forsythe* (2011) notes that the presidential rhetoric has come to “carry a multilateral and multicultural flavour” (p. 787). Despite the marked change in rhetoric in regards to human rights, the translation of words into deeds by the *Obama* administration remains problematic. Regarding the CRC, despite the US delegation’s active involvement in its drafting process (*Price Cohen* 1998), the government has consistently demonstrated a will to be exempt from the same rules it

helped devise. American exceptionalism continues to guide American foreign policy under the *Obama* administration, and has heavily impacted the national debate surrounding US-CRC ratification.

Despite having made some minor progress in regards to human rights, and despite the inspirational and idealistic rhetoric which placed human rights at the centre of a new US foreign policy, self interest in security and economic advantage remains at the top of the political agenda, supported by powerful domestic constituents. Government inaction spurred the creation of two major civil society campaigns in favour of – or against – CRC ratification: the *Campaign for US ratification of the CRC* and *ParentalRights.org*.

5 Blocking mechanisms deployed by *ParentalRights.org*

ParentalRights.org has deployed blocking mechanisms to counter the pro-CRC campaign's message by advancing three points: 1) American parents are being categorized as unfit, or otherwise falling victim to "enemy boundary creep" (*Crowley* 2009), 2) Pro-CRC actors are leading an attack against so-called traditional American values, and 3) The premise that the CRC is the normative text of reference which will safeguard the interests of American families is contested; an alternative normative reference, the Parental Rights Constitutional Amendment, is advanced instead.

5.1 American parents falling victim to "enemy boundary creep"

In order to expand on this point, I will refer to the research carried out by *Jocelyn Crowley* (2009) which focuses on father's rights activism in the US. Activists feel that groups which advocate for the rights of battered women have inappropriately vilified fathers, by depicting all fathers as potential criminals. In this way, women's rights advocates hope to secure advantages for female beneficiaries, in the form of child custody or spousal support. This strategy is denounced by father's rights activists, who identify themselves as the victims of what *Crowley* (2009) calls "enemy boundary creep" (p. 723), a perception whereby a group feels that it is being unjustly categorized as deviant or criminal. According to *Crowley*, interviewed father's rights advocates stated that domestic violence is undoubtedly a real and serious problem, but also felt dismayed that all fathers are being perceived as "the adversary" by the women's rights groups. The purpose of *Crowley's* (2009) analyses is to "articulate how an unlikely counter-movement can use the accusation of enemy boundary creep by its social movement opponents in an effort to shift the political discourse on a significant public problem" (p. 273).

The advocacy group studied by *Crowley* shares a common point with the parental rights group at the centre of my own study, *ParentalRights.org*: Both organizations perceive themselves to be unjustly categorized as criminal or deviant by an opposing social movement. The wronged individuals fight back by denouncing the opposition's unfair defamatory tactics. In this manner, they seek to discredit the opposition and gain supporters. This phenomenon is called "enemy boundary push back" (*Crowley* 2009, p. 725). Much like fathers' rights groups feel that women's rights groups unjustly portray all fathers as violent and unloving husbands and fathers, *ParentalRights.org* advances that the CRC,

and the campaign that advocates for its ratification, are responsible for unfairly portraying American parents as being unfit and abusive.

Using material obtained through the *ParentalRights.org* website and docudrama³, it is possible to detail the narrative the counter-campaign has adopted as to how the campaign is exploiting enemy boundary creep, and how *ParentalRights.org* is pushing back. Entitled “Overruled: Government Invasion of Your Parental Rights”, the following words are uttered by *Farris* at film’s opening:

“The government has a role, it’s not the role of a parent, it is a role of a backstop. If you abuse your kids, if you neglect your kids and they have evidence of that, then the government moves in, and they should move in, in those circumstances. But when they treat all of us as if we’re child abusers, that’s absolutely outrageous, and we can’t stand for it.”

ParentalRights.org contends that American parents are falling victim to enemy boundary creep, the phenomenon defined by *Crowley*. While *ParentalRights.org* certainly does not uphold the freedom of abusers to victimize children, it upholds the view that the majority of American parents are perfectly able to direct the upbringing of their children and ensure their protection. The mere idea that respectable citizens should have their relationship with their children placed under government scrutiny is enough for *ParentalRights.org* to denounce the CRC as an unwarranted attack on the reputations of American parents. Mass suspicion is thought to allow the government to indiscriminately intrude into the private sphere of the family, thus subjecting even the most capable parents to an untenable degree of government suspicion. Through its internet platform *ParentalRights.org* seeks to pass an unequivocal message: If the CRC were to be ratified, an ever greater number of American parents would fall victim to enemy boundary creep. Even parents who are not guilty of abuse or neglect will come under tight governmental supervision and treated as potential criminals. Any form of conflict between child and parent would be sufficient grounds for the US government to intervene and intimidate parents into compliance.

5.2 Linking the issue to different and equally important sets of values supported by the majority of the citizenry

Social movements are rarely able to ignore their opposition. This is especially true in open political systems; social movements that achieve initial success in the legislative or judicial arenas must always be prepared for counterattack. One of the most effective means of counterattack is to “link the issue under consideration to a different and equally important set of values that are supported by the majority of the citizenry” (*Meyer/Staggenborg* 1996, p. 1638). *ParentalRights.org* has advanced that the CRC – and the pro-CRC campaign by extension – is the vehicle through which foreign actors wage a war on core values perceived as “American”.

It is useful to keep in mind that the CRC was adopted by the UN General Assembly only eleven days after the fall of the Berlin Wall. With the final collapse of the Soviet Union in 1991, Americans began to look elsewhere for an organizing principle to guide American politics. In 1992, US presidential candidate *Patrick Buchanan* gave voice to what had increasingly become identified as a major political issue: The culture war, or the conflict that had, in the eyes of many conservative Americans, replaced the Cold War.

“My friends, this election is about much more than who gets what. It is about who we are. It is about what we believe. It is about what we stand for as Americans. There is a religious war going on in our country for the soul of America. It is a cultural war, as critical to the kind of nation we will one day be as was the Cold War itself.” (Republican National Convention, 17.08.1992)

While the term “culture war” already existed in the political lexicon, “it was Patrick Buchanan’s call to arms that entrenched it in public discussion” (Gunn 2006, p. 98). In the aftermath of the Cold War, a new conflict is identified: While the Soviets were an outside menace, conveniently hidden away behind the Wall, the new “religious war” or “culture war” is an intestine conflict unravelling in the heart of American. Progressives and conservatives, democrats and republicans battle over religious and moral issues such as, but not limited to, abortion, homosexual rights, religion in public schools, etc. The situation is humorously interpreted by journalist *Michael Barone*: “America is two countries. And they’re not on speaking terms”.⁴

Through the Overruled docudrama, members of *ParentalRights.org* hold to be true that the culture war of the 1990s is in fact still in progress. The CRC is presented as a text which aims to undermine “traditional American family values” (no single clear definition of this concept is given by *Parentalrights.org*). Despite involvement of US delegates and NGOs in the treaty drafting process, conservative constituents such as those adhering to the ranks of *ParentalRights.org* continue to regard the United Nations – and its treaties – with suspicion, as “many Americans had previously accused [the United Nations] of being the willing handmaiden of expansionist and atheistic communism” (Gunn 2006, p. 111).

ParentalRights.org therefore considers the CRC as a clear and present danger to American families. Members of the organization appear to have been galvanized by the same “culture war” issues that were identified in *Patrick Buchanan*’s 1992 speech: Contraception, abortion, homosexuality, parental discipline of children, and parental control over decisions affecting children’s lives. While it is true that the CRC makes mention of some of these issues, the counter-movement has interpreted the convention as if the document were intentionally designed to promote all of these perceived evils, as it has been argued by *Saunders* (2002):

“Nearly all the evils we face can be hidden in this language [of the CRC]: abortion, contraception as health care, pornographic sex education, abortion as a method of family planning, stigmatization of traditional religious beliefs and educational practices, and the exportation of the culture of death to the developing world.” (p. 2)

With the same rhetorical anger used to denounce communism in the 1950s, *ParentalRights.org* is attacking the CRC and its community of proponents. In this vein, the Parental Rights docudrama goes as far as to reduce the CRC to a government attempt to institute socialism in America:

“Karl Marx said in order to establish a perfect socialist State, you have to destroy the family. You have to substitute the government and its authority for parental authority in the rearing of children. [...] The parental rights amendment is really the last roadblock against the implementation of socialism in America.”

5.3 The Parental Rights Constitutional Amendment

The third and final blocking mechanism deployed by *ParentalRights.org* to counter the actions of the pro-CRC campaign is the proposal of a Parental Rights Constitutional Amendment. In the US, a constitutional amendment is a correction or revision of the original content of the United States Constitution of 1788. Every year, some two hundred amendments are introduced. Of these, only a rare 27 have ever been approved, having been ratified by three-quarters of the States. *ParentalRights.org*'s constitutional amendment reads as follows⁵:

1. The liberty of parents to direct the upbringing, education, and care of their children is a fundamental right.
2. Neither the United States nor any State shall infringe this right without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.
3. This article shall not be construed to apply to a parental action or decision that would end life.
4. No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.

It has previously been established that counter-campaigns adopt alternative normative reference points from those put forward by the initial movement. If the counter-movement were to ground their ideology in a constitutional amendment, this would go far to legitimize their cause before the American public.

Section 4 of the amendment is designed as a constitutional roadblock to prevent the CRC from achieving ratification. However, a closer reading would indicate that section 4 would not prevent CRC ratification: The section prohibits the US government from ratifying international instruments that would limit the parents' right to raise their children and allow vast government intrusion into the private sphere of the family. Considering that the CRC enshrines the parent's right to raise the child in accordance with the family's culture, religious affiliation, and personal values (including but not limited to articles 3, 5, 9, 10, 14, 16, 18, and 24), the content of the said amendment contains no provisions that contradict the CRC. Therefore, in the unlikely scenario that the amendment is accepted by the American people, it will not prevent the CRC from achieving ratification.

6 A comparison between CRC and CRPD ratification advocacy in the US

In its previous sections, this article enumerated the blocking mechanisms deployed by *ParentalRights.org*, which are thought to be partially responsible for delaying CRC ratification in the US. In the present section, the US government's treatment of the CRC will be compared to the State's treatment of a separate UN human rights treaty, the Convention on the rights of persons with disabilities (CRPD, adopted by the UN General Assembly in November 2009). The purpose of the CRPD is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity" (CRPD, Article 1).

Like the CRC, the CRPD remains unratified by the US. But unlike the children's rights convention, the CRPD successfully overcame the multiple administrative hurdles, and was submitted to a full Senate vote on December 4 2012, a mere 3 years following the CRPD's adoption. In comparison, the CRC was adopted over 25 years ago, but has yet to be the object of a full Senate vote. Therefore, despite the fact that the CRPD remains unratified, the Senate vote having fallen 6 votes short of the necessary super-majority, its advocates appear to have succeeded in putting disability rights on the political agenda in a way that children's rights advocates have not.

The following section will discuss one of the elements that may explain the relative success encountered by the CRPD as compared to the CRC: Namely, effective framing strategies have allowed to build consensus among both sides of the American political spectrum, thereby earning the CRPD a broad range of bipartisan support.

In effect, US Senators such as *John McCain* and *Robert Dole*, both prominent figures in American conservative politics, are vocal in their support for the treaty. In his appeal to the Senate Foreign Relations Committee in 2012, *Dole* identified a specific group included in the broader category of "persons with disabilities": US military Veterans presenting service-related disabilities, such as post-traumatic stress disorder and limb amputation. By emphasizing the potential benefits the treaty would procure this group, politically conservative Republicans equate support for CRPD ratification with support for soldiers involved in US military ventures, as illustrated by *Bob Dole's* following statement:

"US ratification of the CRPD will improve the physical, technological and communication access outside the US, thereby helping to ensure that Americans – particularly, many thousands of disabled American Veterans – have equal opportunities to live, work, and travel abroad." (Senate Foreign Relations Committee, 12.07.2012)

Remarkably, American CRPD advocates appear to have succeeded in rendering the human rights treaty compatible with the ideology of American exceptionalism: Promoting and defending the rights of persons with disabilities is conceptualized as an act of patriotism, and an implicit acceptance of the government's military agenda.

While CRPD advocacy continues its appeal for ratification, progress on the CRC front appears to have been stalled indefinitely due to political inaction and proactive strategies by the counter-movement, despite having been adopted twenty years prior to the CRPD by the UN General Assembly.

Presently, the children's rights/parental rights movements are engaged in a stalemate: The CRC has come no closer to ratification, and the Parental Rights Constitutional Amendment appears to suffer a lack of Senate support. How can the children's rights movement put an end to the standoff? One such strategy is to encourage and facilitate child participation in order for children and youth to partake in CRC ratification advocacy.

7 Recommendations for future CRC advocacy strategies in the US

In the US, CRPD ratification advocates succeeded in grasping the attention of policy makers and civil society, largely thanks to the support of Republicans of the likes of *Dole* and *McCain*, who contributed to frame the treaty as a document which gives much needed

support to disabled veterans. While the CRPD appears to be on its way towards timely ratification, progress on the CRC front has been stalled indefinitely due to the actions of its opponents, despite the 20-year “headstart” of being adopted by the UN General Assembly.

In the following sections, suggestions are made for two possible future strategies towards achieving CRC ratification: 1) Change the campaign frame from a child-centred one to a family-centred one, and 2) Create partnerships with organizations which carry out human rights education in schools in order to raise awareness among the American youth on the necessity of CRC ratification.

If the CRC has remained unratified for over two decades, the fault lies, in part, with the children’s rights movement, who has never quite succeeded in framing the issue of CRC ratification in a way that would generate the support of the general American public and policy makers. US children’s rights advocates have chosen to adopt a child-centric stance: CRC advocates mainly argue that the treaty would promote the respect of children’s rights, therefore giving the impression that children would be the sole beneficiaries of the panel of rights enshrined in the convention. Children’s rights advocates have neglected to emphasize that the CRC also contains provisions relative to the rights of parents and other caretakers (cf. section 5.3). By singling out the child as the sole beneficiary of the protection offered by the CRC, the children’s rights movement appears to be “putting children first”, at the perceived detriment of parents and other family members whose rights appear to be minimized or ignored. The American children’s rights movement’s message of “giving children rights” has never quite managed to capture the attention of the American public and rally support.

In order to solve this problem, the US children’s right movement may consider broadening their frame, by including in their advocacy message that the CRC does in fact also include provisions which especially protect parents and the family unit, rather than just children (including but not limited to articles 3, 5, 9, 10, 14, 16, 18, and 24). This would permit the movement to gain public support for the convention, as well as to neutralize the opposition’s arguments which accuse the children’s rights movement of putting children first at the detriment of parents.

The second recommendation to the campaign in view of achieving their advocacy goals is to reach out to organizations specializing in the field of human rights education in American schools. In the US alone, several organizations either provide human rights education in schools or are involved in the development of educational materials. However, their main focus is human rights in general, and not children’s rights in particular. A partnership between such organizations and the Campaign would create an opportunity to provide education on children’s rights in schools, which would have multiple benefits. It is an efficient way to spread the campaign’s pro-CRC message to those who are most concerned by the CRC today. By conducting public awareness-raising activities in schools, children will come to know the convention and may even choose to become advocates for its ratification, by hosting awareness-raising activities in their own communities. Thus, children’s rights education in schools would not only permit the campaign to spread their message to a large audience, but it would also permit the campaign to recruit a new generation of future CRC advocates to its cause. The recruitment aspect is crucial since the CRC appears to have a long road to ratification ahead, and it is questionable whether the present representatives of the children’s rights movement will ever see ratification. The children who would choose to join the pro-CRC cause could also be given the

opportunity to participate in developing campaign strategy. In such a way, the campaign may go as far as to form a Youth Advisory Committee, fully involved in all the aspects of the campaign's CRC-advocacy. It is believed that the campaign has neglected this opportunity for youth participation, and that its realization would inject new and exciting advocacy techniques and strategies into a stalling campaign.

8 Conclusions

In their insightful work on social movement dynamics, *Meyer/Staggenborg* (1996) contend that effective human rights activists must always seek out new venues and strategic opportunities to promote their agendas in the political arena. Perhaps most importantly, successful human rights advocacy must constantly re-examine the nature of their claims to ensure that the public majority remains sympathetic to their cause.

While *Hertel* (2006) used blocking mechanisms to describe patterns of interaction which occur between transnational human rights advocacy groups (typically involving two or more States), this paper has established that the author's concepts are useful toward understanding patterns of campaign interaction occurring in a single-country context. By conceptualizing the US CRC ratification debate as a social movement phenomenon, this paper provides a deeper understanding of the interaction taking place between the children's rights movement and the parental rights movement in the US. Efforts to identify the CRC as a consensus document are undermined by the counter-movement, which continues to taint the convention with controversy through its blocking mechanisms.

A comparison of the framing strategies deployed by pro-CRC organizations to pro-CRPD organizations demonstrated that the CRPD has garnered considerable support from the same political and religious conservatives who oppose CRC ratification. Patriotic and pro-militaristic rhetoric has been utilized by CRPD advocates in order to secure the support of conservative constituents for this human rights treaty. CRPD advocates can be said to have succeeded in framing their human rights claims as to be made compatible with the ideology of American exceptionalism.

Faced with an opposition which has deftly succeeded at undermining its human rights claims, it is more than ever necessary for the *Campaign for US Ratification of the CRC* to review its advocacy strategy. This article suggests that altering the campaign's central frame from child-centred to more family-centred would emphasize the consensual nature of the treaty. In addition, encouraging and facilitating child and youth participation in the framework of CRC ratification advocacy is thought to hold great potential. Future research is required in order to assess the most effective means of recruiting a diverse panel of child participants to this nation-wide advocacy campaign.

Notes

- 1 Department of State Daily Press Briefing by *Ian Kelly*, Spokesperson, Washington, DC, November 24, 2009.
- 2 U.S. Response to U.N. Human Rights Council Working Group Report, Report of the United States of America. Submitted to the U.N. High Commissioner for Human Rights in Conjunction with Universal Periodic Review, March 10, 2011.

- 3 ParentalRights.org Docudrama: ParentalRights.org released a film (release date unknown), entitled "Overruled: Government Invasion of Your Parental Rights". The film features a number of high ranked members of ParentalRights.org. <http://www.overruledmovie.com/>. Retrieved 14.11.2013.
- 4 The Washington Examiner, 06.11.2012
- 5 Hearing before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary, House of Representatives, 09.09.2014. http://judiciary.house.gov/_cache/files/068082b6-098f-4f07-957a-71d7b33058db/113-104-89705.pdf. Retrieved 30.04.2015.

Bibliography

- Almog, S./Bendor, A. L.* (2003): The UN Convention on the Rights of the Child meets the American Constitution: Towards a supreme law of the world, *The International Journal of Children's Rights*, 11, 3, pp. 273-289.
- Blanchfield, L.* (2009): United Nations Convention on the Rights of the Child: Background and Policy Issues. Available online at: <http://fpc.state.gov/documents/organization/134266.pdf>, date: 30.03.2016.
- Butler, C.* (2012): Child rights: the movement, international law, the opposition. – Indiana.
- Crowley, J. E.* (2009): Father's rights groups, domestic violence, and political countermobilization. *Social Forces*, 88, 2, pp. 723-756.
- Dwyert, J. G.* (1994): Parents' religion and children's welfare: debunking the doctrine of parents' rights. *California Law Review*, 82, 6, pp. 1371-1447.
- Elster, J.* (1999): Rational choice history: A case of excessive ambition. *The American Political Science Review*, 94, 3, pp. 685-695.
- Fink, J. R.* (1991): America under Clinton: New Hope for Ratification Practice and Implementation. *The International Journal of Children's Rights*, 2, 2, pp. 191-196.
- Forsythe, D. P.* (2011): US foreign policy and human rights: Situating Obama. *Human Rights Quarterly*, 33, 3, pp. 767-789.
- Gunn, T. J.* (2006): The religious right and the opposition to U.S. ratification of the convention on the rights of the child. *Emory International Law Review*, 20, 1, pp. 111-128.
- Henkin, L.* (1995): U.S. ratification of human rights conventions: The ghost of Senator Bricker. *The American Journal of International Law*, 89, 2, pp. 341-350.
- Hertel, S.* (2006): Unexpected power. Conflict and change among transnational activists. – New York.
- Hertel, S./Libal, K.* (2011): Paradoxes and possibilities: Domestic human rights policy in context. In: *Hertel, S./Libal, K.* (Eds.): *Human rights in the United States. Beyond exceptionalism.* – New York, pp. 1-24.
- Ignatieff, M.* (2004): American exceptionalism and human rights. *European Journal of International Law*, 15, pp. 11-53.
- Keck, M. E./Sikkink, K.* (1998): *Activists beyond borders.* – New York.
- Kilbourne, S.* (1996): U.S. failure to ratify the convention on the rights of the child: playing politics with children's rights. *Transnational & Contemporary Problems*, 6, pp. 437-461.
- Koh, H.* (2003): On American exceptionalism. *Stanford Law Review*, 55, pp. 96-139.
- Koh, H.* (2007): Restoring America's human rights reputation. *Cornell Journal of International Law*, 40, pp. 635-659.
- Lane, L. L.* (1998): The parental rights movement. *University of Colorado Law Review*, 69, pp. 825-849.
- Lauren, P. G.* (2009): A human rights lens on U.S. history: Human rights at home and human rights abroad. In: *Albisa, C./Davis, M. F./Soohoo, C.* (Eds.): *Bringing human rights home. A history of human rights in the United States.* – Pennsylvania, pp. 7-39.
- Lawrence-Karlski, R.* (1996): Legal Rights of the Child: The United States and the United Nations Convention on the Rights of the Child. *The International Journal of Children's Rights*, 4, 1, pp. 19-44.
- Lipset, S.* (1996): American exceptionalism: A double-edged sword. – New York.
- McCarthy, F. B.* (1988): The confused constitutional status and meaning of parental rights. *Georgia Law Review*, 22, pp. 975-1033.
- Meyer, D. S./Staggenborg, S.* (1996): Movements, counter-movements, and the structure of political opportunity. *The American Journal of Sociology*, 101, 6, pp. 1628-1660.

- Powell, C.* (2008): Human rights at home: A domestic policy blueprint for a new administration. – Washington, DC. Available online at: <http://www.acslaw.org/files/C%20Powell%20Blueprint.pdf>, date: 30.04.2015.
- Price Cohen, C.* (1995): United States signs the Convention on the Rights of the Child. *The International Journal of Children's Rights*, 3, 2, pp. 281-282.
- Price Cohen, C.* (1998): The role of the United States in drafting the convention on the rights of the child: Creating a new world fit for children. *Loyola Poverty*, 4, 9, pp. 25-49.
- Rutkow, L./Lozman, J. T.* (2006): Suffer the children? A call for the United States ratification of the United Nations Convention on the rights of the child. *Harvard Human Rights Journal*, 19, pp. 159-190.
- Saunders, W.*, (2002): The UN threat to the family: bad treaties make bad law. *Family Research Council*, no. 88. Online available at: <https://www.frc.org/get.cfm?i=PD02G1>, date: 02.04.2012.
- Smolin, D.* (2006): Overcoming religious objections to the Convention on the Rights of the Child. *Emory Law Review*, 20, pp. 81-110.
- Stammers, N.* (1999): Social movements and the social construction of human rights. *Human Rights Quarterly*, 21, 4, pp. 980-1000.
- Tilly, C.* (2004): *Social Movements, 1768-2004*. – London.
- Todres, J./Wojcik, M. E./Revaz, C. R.* (2006): *The U.N. convention on the rights of the child: An analysis of treaty provisions and implications of U.S. ratification*. – New York.