HOW DO PROPONENTS AND OPPONENTS OF RATIFICATION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD EXPLAIN THEIR VIEWS REGARDING CHILDREN’S PARTICIPATORY RIGHTS? A MULTIPLE-CASE STUDY

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ABSTRACT

The United Nations Convention on the Rights of the Child (CRC), an international human rights treaty, has been ratified by every State except the United States and Somalia. It contains enumerated rights, including five articles pertaining to children’s participation rights such as the right to speech, privacy, association, and religion. Ratification of the CRC is controversial, particularly because religious and social conservatives deem the CRC potentially harmful to families. Major education groups are among the myriad of CRC supporters in the Untied States. Thus far, supporters have been unable to achieve ratification.

The purpose of this multiple case study was to investigate the perspectives of two distinct groups: opponents and proponents of ratification. The qualitative research design, selected to explore the research goals, was especially well suited for studying the unquantifiable opinions and beliefs under investigation. The following research question guided the research: “How do proponents and opponents of ratification of the Convention on the Rights of the Child explain their views regarding children’s participatory rights?” Particular attention was given to the participation
rights contained in Articles 12 through 17. Data were gathered from participants through interviews and limited follow-up communication. Other documentary data gathered on each participant included articles, books, and blog entries.

Four themes emerged in each of the two cases: rights, impact, fear/trust, and worldview. The themes were identical in both cases but the sub-themes were different, and cross-case analysis revealed substantial differences between the two cases. Opinions differed between and within cases regarding the potential tangible impact of the CRC, with views ranging from neutral to pessimistic to optimistic.

After considering the findings, numerous implications and recommendations were identified. Ratification of the CRC was deemed possible, especially if the concerns of opponents were understood and addressed in a meaningful way. Further targeted research was noted as being necessary in order to identify specific concerns and remedies. Early childhood educators, in particular, could play an important role in the ratification process as mediators, interpreters, and advocates for the rights and welfare of children.
DEDICATION

To my family.
ACKNOWLEDGEMENTS

A community of people supported and encouraged me throughout my doctoral program. Dr. Jerry Aldridge first believed in my potential and carved out a space for me at the School of Education. Dr. Lois Christensen helped me formulate my ideas, and encouraged me to conceive of early childhood education in my own terms.

Thanks to all of my UAB instructors, especially those on my committee – Drs. Debbie Strevy, Kay Emfinger, and Nataliya Ivankova. Drs. Emfinger and Strevy demonstrate consistent commitment to diversity, creativity, and high standards for all. Dr. Ivankova encouraged me to become a better scholar and researcher; she set high standards and never waivered in her willingness to help me achieve them. Dr. Lynn Kirkland, my committee chairperson, helped guide and support me. Dr. Kirkland gave generously of herself in order to help me achieve my goals.

My family surrounded me with love and support throughout this process. My mother, Maryann, is my first – and best – teacher. She is a mirror and a rock for me and countless other students. My father, Gary, acted as my chief proofreader and constant cheerleader. My godparents, Roberta and Delbert Long, have loved and supported me in this and all of my journeys. My children, Tori and Tru, daily teach me how to live more fully and love more completely. My husband, Lance, has given me the love, space, and support necessary to fulfill this goal.
How Do Proponents and Opponents of Ratification of the United Nations Convention on the Rights of the Child Explain Their Views Regarding Children’s Participatory Rights? A Multiple-Case Study

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CHAPTER ONE
INTRODUCTION

Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world (Roosevelt, 1958).

The United Nations Convention on the Rights of the Child (CRC), an international human rights treaty adopted by the United Nations (UN) in 1989, is the most widely ratified human rights treaty in history. It is a modern attempt to fulfill Eleanor Roosevelt’s vision of support for the diverse needs of the world’s children in their homes, schools, neighborhoods, and beyond (UNICEF, 2011). However, the United States is one of only two States that have not ratified the CRC. The other State, Somalia, recently announced its intent to ratify (Reuters Africa, 2009).

Human rights discourse has long included children among the groups deserving special protections and consideration (Weissbrodt, 2006). Notably, the 1948 Universal Declaration of Human Rights offered early statements regarding the right of children to
an education, including the introductory statement, “Everyone has the right to education” (Art. 26). Jean Piaget (1948), a Swiss psychologist, wrote optimistically about the Declaration. He believed that the statement could not only ensure children’s right to education, but could also improve the content of the education they receive. He wrote, “Thus the obligations of society to educate the individual have been outlined, but certain social goals of education were emphasized as well” (p. 42).

Educators have consistently recognized that children’s rights are inextricably linked with their profession (Association for Childhood Education International, 2007). In 1973, the editors of the Harvard Educational Review convincingly argued for strengthening communication and bonds between educators and the children’s rights community:

The Harvard Educational Review has always been interested in children, but we have usually seen them as subjects for research, objects of pedagogy, or products of the schools…While this approach has helped structure academic inquiry, often it has not helped us understand what it is like to be a child growing up in American or how various social institutions, among them the schools, affect children’s lives (Butler, p. v).

In the years since the publication of that article, educators have adopted the language of “rights” in addition to the language of “needs” when addressing children’s issues (International Reading Association, 2000). As Curtis (2009) noted, educators have become true advocates for children’s rights over the past decades. Some prominent education organizations have developed comprehensive positions on the CRC, including
issues surrounding child participation rights (Association for Childhood Education International, 2007).

The Convention on the Rights of the Child galvanizes diverse groups interested in children, including lawyers, educators, social workers, and others (Campaign for U.S. Ratification, 2010a). At the same time, it draws substantial opposition from critics who assert that it is harmful to families, and ultimately hurts the very children it endeavors to protect (Dotson, 2009). Because of the ongoing opposition, the United States is the only State that actively opposes ratification of the CRC (Todres, Wojcik & Revaz, 2006). Yet, the United States actively participated in its crafting (Cohen, 2006). Furthermore, some of the CRC’s core provisions, like the ‘best interest’ standard, are rooted in American jurisprudence (Mason, 2006).

The U.S. Department of State, on its webpage, proudly declares a belief in the Universal Declaration of Human Rights as the embodiment of what it seeks to promote through U.S. foreign policy (2010). The United States, however, has failed to ratify major human rights treaties in recent years, including the Convention on the Rights of the Child (Rutkow & Lozman, 2008). Some analysts indicate that the United States is not actually serious about human rights, that the rhetoric is a mere charade (Roth, 2000). Others in the international community attribute non-ratification to the complicated ratification procedure in the U.S. (UNICEF, 2010). The Chairperson of the Committee on the Rights of the Child, Yanghee Lee, recently cited a lack of political will as the primary reason for U.S. non-ratification (U.N. News Centre, 2010). Ms. Lee reiterated the Committee’s request that the United States ratify the Convention. During the presidential campaign, President Obama stated, “It is embarrassing to find ourselves in
the company of Somalia, a lawless land. I will review this and other treaties to ensure that the United States resumes its global leadership in human rights” (as cited in Geary, 2008, para. 6). However, the United States has made no significant moves toward ratification since that statement was made.

Potent objections to the CRC relate to cultural, religious, and social traditions in the United States. These objections are difficult to overcome because they are fundamental to some traditional conceptions of childhood, the family, and the relationship between the two. Religious conservatives strongly oppose ratification based on their views of family-related issues (Fagan, Saunders & Fragoso, 2009; Schlafly, 1993). Prominent groups opposing ratification include Focus on the Family, the Eagle Forum, the Heritage Foundation, and the Home School Legal Defense Association. These groups fear the effect that some provisions could have on the family, especially on the rights of parents to control and direct various aspects of their children’s lives (Fagan, 2001). Even some supporters of the CRC agree that its language is not clear with regard to the relationships between the rights of parents, children, and the government (Renteln, 1997). CRC opponents successfully prevent ratification despite support from diverse pro-ratification groups including the Association for Childhood Education International, the International Reading Association, the American Academy of Pediatrics, the World Organization for Early Childhood Education, and the Girl Scouts of America (Campaign for U.S. Ratification, 2010a). Conservative groups effectively mobilized their supporters during the Clinton administration when the treaty was originally signed but not ratified and continue to demand support from political leadership (Kilbourne, 1996). Proponents
of ratification have thus far been unable to generate enough political support for ratification.

Statement of the Research Problem

A philosophical chasm exists between proponents and opponents of ratification. Major education-related organizations support ratification because they believe the CRC aligns with their visions for children (National Education Association, 2010; Association for Childhood Education International, 2007; Paintal, 2007). The United Nations Children’s Fund (2009) maintains that the CRC has profoundly improved the health, education, and care of children around the world. Ratification proponents view the treaty as an important tool for improving conditions for children in the United States. They believe it offers a framework for programs as well as mandates and standards for political leaders (Campaign for U.S Ratification of the CRC, 2010b). Proponents also believe ratification would allow the United States to have a heightened role in international child wellness issues, including encouraging other governments to improve conditions for children (Campaign for U.S. Ratification of the CRC, 2010b).

Conversely, opponents of ratification hold fundamentally different ideas about both children’s rights and about the potential impact of CRC ratification (Rutkow & Lozman, 2008; Fagan, 2001). They distrust the motives and roles of educators and education organizations that support ratification (Schlaflly, 2007).

The political and social divide over ratification in the United States is formidable, but perhaps not insurmountable. For example, proponents and opponents of CRC ratification both support child wellbeing, but they have different ideas about what
constitutes wellbeing. Thus far, opponents and proponents have found little or no common ground. Limited literature supports the idea that the concerns of religious and social conservatives may be addressed in an effort to permit ratification (Smolin, 2006). This study is based on a belief that an exploration of the differences and similarities in the perspectives of opponents and proponents might facilitate more productive communication. In particular, the voices of educators are important because of their profound commitment to and understanding of children.

**Purpose of the Study**

The purpose of this qualitative multiple case study was to understand and explain the views of proponents and opponents of ratification of the United Nations Convention on the Rights of the Child. The study focuses specifically on participant views about Articles 12 through 17 of the CRC, which contain the participation-related rights.

Articles 12 through 17 are targeted for three primary reasons. First, opponents of ratification often cite the participation rights as particularly objectionable. Second, some of the participation rights contain ideas related to autonomy, independence, and information that are especially important for many educators. Third, many of the participation rights are relevant to practical administrative concerns of educators, and have already been litigated in the school context.

**Research Questions**

This central research question guides the research: “How do proponents and opponents of ratification of the Convention on the Rights of the Child in the United
States explain their views regarding children’s participatory rights?” The following sub-questions explore the central research question in more detail:

1. How from participants’ perspectives does the Convention on the Rights of the Child conflict or align with cultural, religious, or legal traditions?
2. How do participants’ experiences, cultural beliefs, and religion inform their views relating to the Convention on the Rights of the Child?
3. What areas, if any, do participants identify for compromise or bridge-building between proponents and opponents in order to facilitate movement toward ratification?
4. What are participants’ beliefs about the potential impact of ratification in the United States?

Significance of the Study

Issues surrounding ratification of the CRC should be of interest to everyone interested in children. The Convention offers a tool for people concerned about children, families, and communities. Well-intentioned persons might disagree about ratification, but everyone connected with child wellbeing has a stake in the discourse. In particular, children’s rights are central to the practices and beliefs of most educators. Early childhood educators inform the CRC discussion in a unique way because they so fundamentally understand the ideas behind many of the provisions. Teachers see first-hand the acute health, nutrition, and education needs of the most vulnerable members of our communities. They also have a keen understanding of child development and family relations, important elements for successful implementation of the treaty.
This research crosses academic boundaries, bringing together the tools and mindsets of law and education. Although the disciplines are not frequently merged, they come together in a seamless and meaningful way. E.O. Wilson (1998), a prominent biologist, called this approach “consilience,” a merging or synthesis of academic disciplines. Earlier, in the same vein, Jean Piaget (1948) wrote of the need for interdisciplinary research in his discussion of the Universal Declaration of Human Rights. At the time, he wrote that researchers were “ill-prepared…owing to instruction which aims at specialization but ends up in compartmentalization” (p.26). The bond between law and education should be fostered and strengthened by both lawyers and educators; both fields can be informed and improved through increased cross-communication.

Numerous scholarly works pertain to various aspects of the CRC. The existing literature provides detailed information about CRC provisions and implications for United States ratification, including conflicts with U.S. law (Todres, 2006). Various provisions of the CRC have been analyzed in detail (Thorgeirsdottir, 2006; Brems, 2005). Scholars have covered the international background and context of the CRC (Mower, 1997). Individuals and organizations have also discussed international legal and social implications and implementations (Hodgkin & Newell, 2002; UNICEF, 2007; Andrews & Kaufman, 1999). Much has been written in the United States by persons and organizations supporting ratification, both by lawyers and non-lawyers (Brown, 2006; Odland, 2006). Some limited works have thoughtfully examined the concerns of the conservative religious community that have largely prevented ratification (Carter, 2006; Smolin, 2006; Gunn, 2006).
However, no published research combines legal thought and qualitative research methods in the manner of this study. I collected information from proponents and opponents in order to obtain clarification and insight into their positions. I sought a meaningful, comprehensive explanation and understanding of people’s objections to and support for Articles 12 though 17. I collected, analyzed, and represented these perspectives in an honest and open-minded manner.

Limitations

The research was limited by recruitment of the study participants. I faced substantial difficulty recruiting participants, particularly opponents of ratification. Many potential participants stated that they would not communicate in any formal manner due to concerns over privacy; these concerns were not allayed by the Informed Consent Document or other assurances related to Institutional Review Board or American Psychological Association (2009) ethical guidelines. Dozens of possible participants did not respond to communication or stated their desire not to participate.

Recruitment was further limited because of the specialized nature of the research. Participants needed to be knowledgeable about the CRC. Many possible participants lacked adequate detailed knowledge of the CRC in order to participate. I found it difficult to identify classroom teachers willing and able to participate. Therefore, I relied heavily on education professors who were informed and welcomed participation.

Elements of the study were limited, too, by the need to maintain participant anonymity. Most participants are prominent people in their fields, and would be recognizable if too much information about them were disclosed. I therefore refrained
from including detailed personal information or quotations from their published works. Full information would have made the dissertation richer and would have facilitated better triangulation of the data.

Assumptions

The assumptions of the study were as follows:

1. Participants willingly participated in the study.
2. Participants truthfully expressed their opinions during the interviews and follow-up communication.
3. The data collected and information reported will be of practical significance.

Definition of Terms

*Child* is a person under the age of eighteen, unless otherwise specified.

*Committee on the Rights of the Child* is a body created by the Convention on the Rights of the Child for monitoring implementation of the treaty.

*Fundamental Right.* The most protected rights in the United States. These rights may only be limited if the government passes the highest level of legal scrutiny.

*International law* refers to a number of forms of law. International law is sometimes enforceable, but often is not. The term is used loosely in this paper, not necessarily requiring enforcement mechanisms and sometimes using the term to describe ideas with mere international consensus. For example, reference is made to the CRC as international law, despite the fact that the United States is not a party and is therefore not bound by it.
Internationalism is a philosophy of cooperation and coordination between sovereign States. The term is used in this sense unless it is otherwise defined in the study.

Negative rights are rights that do not require action on the part of the government; they require inaction in some cases. Freedom of speech and religion are considered negative rights.

Optional protocols are legal instruments that are attached to treaties and which address specific issues in detail or which address new issues. The United States has ratified the optional protocols to the CRC but has not ratified the CRC itself.

Positive rights are rights that require action. They include education and health care.

Ratification is the act of a State becoming legally bound by a treaty. States have different mechanisms for ratification.

Reservations, Understandings and Declarations (RUDs) are statements that States attach to treaty ratifications. They may clarify, limit, or otherwise change the obligations of a treaty as it pertains to that State.

Sovereignty refers to a State’s self-rule and autonomy over itself.

State is the term I use for sovereign states in this paper. I use the term instead of country or nation’.

Treaty is a form of international law. The mechanics of treaty creation in the United States are governed by the Constitution. The Vienna Convention on the Law of Treaties (1980) is the international source for creation, enforcement, and other aspects of treaty existence.
Organization of the Study

This study is organized into five chapters. Chapter One introduces the study. Chapter Two reviews the literature related to the study topic. The review of the literature is broad, providing a foundation for readers who may be unfamiliar with the legal and historical landscape of the research topic. Chapter Three describes the methodological framework of the study, detailing the methods used and the rationale for using them. Chapter Four discusses the findings of the two cases as well as a discussion of the two cases in concert. Chapter Five describes the study findings, implications of the findings, and recommendations for future research.
CHAPTER TWO

REVIEW OF LITERATURE

The CRC, a sophisticated legal document, is relatively simple to read, but its implications and nuances are challenging even for experienced attorneys. The CRC is particularly tricky because it crosses philosophical and disciplinary boundaries. Proponents and opponents of ratification understand the document in fundamentally different ways; each group brings its own ideas about history, rights, religion, sovereignty, and other issues.

This study and its participants must be understood in context. Many of the controversies surrounding the CRC result from misunderstanding and misinformation. Proponents of ratification sometimes fail to understand the rationale for opponents’ objections, and therefore cannot engage in productive dialog. Opponents, on the other hand, often do not understand the limits of CRC enforceability or the fact that children in the United States already have many of the rights that the CRC outlines.

This section includes a review of the historical, social and, legal traditions in which the CRC is grounded. I provide background on the sociocultural and sociohistorical forces related to the creation and support of the CRC as well as opposition to its ratification. A legal foundation is included to facilitate readers’ understanding of the document’s place in domestic and international law. I also introduce some of the myriad ways that the CRC is relevant to educators, including classroom teachers, administrators, teacher educators, and policymakers.
History of the Convention on the Rights of the Child

The needs of children have been included consistently in international human rights documents (Weissbrodt, 2006). However, the CRC represents a substantial departure from preceding documents. Earlier works, notably the Declaration on the Rights of the Child (1959), sometimes used the term ‘rights’ but the Declaration is more about the responsibilities of adults rather than the enforceable rights of children.

Furthermore, the 1942, 1948, and 1959 Declarations on the Rights of the Child were non-binding resolutions, whereas the CRC is a binding treaty. Adoption of the Declarations meant only that a State agreed with its principles, not that they were legally compelled to adhere to them. The CRC is grounded in the human rights tradition that gave birth to it, but it represents a fundamental and profound shift. The CRC acknowledges that children are rights-holders, and it is a binding treaty.

The League of Nations, the predecessor to the United Nations, endorsed the first Declaration on the Rights of the Child in 1924. The brief document averred that children should be given the best that mankind has to offer, but rights in the document were vague and aspirational. The Declaration’s language made it clear that adults have a responsibility to provide for and to protect children, but it did not affirm that children have a right to provision and protection.

The United Nations adopted the second Declaration on the Rights of the Child in 1948 and adopted a third version in 1959. The 1959 treaty contained ten principles, some of which are very similar to the language of the CRC. However, all of these rights related to child protection, not child participation. These rights included the following: special protection for disabled children; protection from neglect and exploitation; and
protection from employment before a minimum age. The language of the Declaration was also very specific with regard to the important role of parents.

The specific needs of children have also been addressed in some of the United Nations’ most significant human rights treaties. Policymakers have long recognized that children have a special legal status and are uniquely vulnerable in times of difficulty. The United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948, with the United States voting in favor of adoption. The document contained child-specific information, including both protection language and rights language. The Declaration emphasized, “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same protection” (Art. 25, §2). It further declared, “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory” (Art. 26, §1). Additionally, “Parents have a prior right to choose the kind of education that shall be given to their children” (Art. 26, §3). Significantly, the document acknowledged that children have the right to an education, but their parents have a superseding right to choose the type of education that the child receives.

The Geneva Convention for the Protection of Civilian Persons in Time of War, signed in 1949 and ratified by the United States in 1955, also acknowledged the special needs and status of children. It set out special protections for children, pregnant women, and mothers of young children. According to the document, children orphaned or separated from their families should be cared for, with their maintenance and education “facilitated in all circumstances” (Art. 24).
Children and family were stressed in the International Covenant on Economic, Social and Cultural Rights, signed by the U.S. in 1977 but never ratified. The Covenant recognized, “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children” (Art. 10, §1).

Creation of the Convention on the Rights of the Child

The Polish Delegation in 1979 proposed that the United Nations celebrate the International Year of the Child by creating a treaty protecting the rights of children. This initial draft was essentially a version of the 1959 Declaration on the Rights of the Child with additional text related to implementation (Price Cohen, 1998). An Open-Ended Working Group of the Commission on Human Rights subsequently drafted the document, working on it for ten years. Member states, non-member states, and nongovernmental organizations participated in the project, consistently expanding the original Polish document (UNICEF, 2002).

The U.S. was active in the drafting process, and proposed more articles than any other nation (Price Cohen, 2006). The U.S. delegation prevented some language from being included because the document was written based on consensus (Price Cohen). For example, the United States successfully prevented changes to Article 38, setting the minimum age for serving in armed conflict. The United States wanted to retain the originally drafted age of 15, whereas other States’ representatives wanted to change the age to 18 (Price Cohen).
The CRC was initially proposed during President Carter’s administration, but the bulk of the drafting occurred during President Reagan’s time in office. During the Reagan and first Bush administrations, U.S. State Department delegations participated actively in drafting nearly all of the CRC’s articles (Kilbourne, 1996). The United States made recommendations on 38 of the CRC’s substantive provisions (Price Cohen, 1998).

The U.S. specifically proposed Articles 14 and 15, two of the participation rights articles. Article 14, freedom of religion, was strongly opposed by Islamic states. They asserted that the Qur’an dictates that a child cannot choose her/his own religion, and must follow a father’s religion. The inclusion of a paragraph on parental guidance satisfied these objectors (Price Cohen, 2006).

Concerns of the Convention on the Rights of the Child

The CRC is the first international treaty to incorporate the full spectrum of human rights – civil, political, and social – into a single document (UNICEF, 2008). The document is organized into a preamble and 54 articles, some of which relate to treaty implementation and organization. The Preamble refers to a number of preceding documents that recognized child rights: the Universal Declaration of Human Rights; the Declarations on the Rights of the Child; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights. The Preamble affirms the principle of non-distinction regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” It also emphasizes respect for the family as the most fundamental unit of
society. The text of the CRC, intentionally broad, accommodates a variety of cultural and political traditions.

The document addresses a volume of concerns that may seem routine and basic to an American audience, such as the right to a name, nationality, and birth registration. It also deals with positive rights issues that may be less comfortable for Americans, such as a right to medical care and social security. It covers a child’s right to education and a right to recreation. It also delineates ages for military service as well as a number of issues relating to penal law. Some of these may conflict with existing United States law, an issue that will be discussed later in this chapter.

The U.S. Constitution and Children’s Rights

The United States Constitution does not contain language ascribing any particular rights to children. However, the Supreme Court has ruled on the application of some rights for children. In Planned Parenthood of Cent. Mo. v. Danforth (1976), the Supreme Court said, “Constitutional rights do not mature and come into being magically and only when one attains the state-defined age of majority” (p. 74). From the mid-20th century through the present, courts have attempted to work out the relationship between age and constitutional rights. A series of important cases focused on children’s rights in various areas. The Court recognized, for example, that children have various rights in criminal proceedings (In re Gault, 1967; In re Winship, 1970). The Supreme Court found that children have a right to freedom of speech in schools (Tinker v. Des Moines Indep. Cnty. Sch. Dist., 1969) that extends somewhat to freedom of the press in school newspapers (Dean v. Utica, 2004; Hazelwood v. Kuhlmeier, 1988). The Supreme Court has also
recognized that there is a limit to a parent’s free exercise of religion when it relates to their children (Prince v. Massachusetts, 1944). Lower courts have also decided important rights cases. For example, the 7th Circuit recognized a right to freedom of assembly (Hodgkins v. Peterson, 2004).

Criminal law cases drove the early children’s rights movement in many ways; therefore, it is useful to understand the most significant criminal caselaw. Until the mid 20th century, juveniles received very different treatment by the police and the courts with regard to their procedural and substantive rights in criminal proceedings. The Supreme Court case In re Gault (1967) established the principle that juveniles accused of a crime in delinquency proceedings have the same due process rights as adults. These included the right against self-incrimination, the right to counsel, and the right to timely notification of charges. The case, significant in terms of the policy implications of the specific case, also recognized that due process rights extend to children. In re Gault is generally deemed the most important children’s rights case because it signified that children are entitled to Constitutional protections and solidified the premise that lawyers could advance the interests of children in the courts. Other criminal cases followed, including In re Winship (1970), which held that every element of the crime must be proven beyond a reasonable doubt in crimes against juveniles.

Supreme Court caselaw makes it clear that children are entitled to many protections under the United States Constitution. This body of law continually expands, as the Court takes new cases to guide bodies of government in shaping statutory law and various regulations. For example, the Supreme Court recently heard Safford v. Redding (2009), a case involving the strip search of a 13-year-old girl at her school in Arizona.
The Court held that the school violated the student’s Fourth Amendment right to be free of unreasonable search and seizure. The Court’s ruling helped clarify the limits of the Fourth Amendment as applied to students, giving greater guidance to schools and policymakers.

Human Rights Treaties

The Untied States ratified other important human rights treaties in recent years, including the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Abolition of Forced Labor Convention; and the Convention on the Prevention and Punishment of the Crime of Genocide. However, the U.S. has failed to ratify other widely ratified treaties, notably the CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). There have been recent efforts to ratify the Convention on the Rights of Persons with Disabilities (e.g., ACLU, 2009).

Opponents demonstrate particular vitriol with two of the above-mentioned treaties: CEDAW and the CRC. Conservative activists have singled out these two treaties as destructive to the family and offensive to traditional American values (Farris, 2010). They criticize CEDAW for many of the same reasons as the CRC; they group them together as part of the same feminist, anti-family agenda (Fagen, 2001). They criticize the Committee on the Elimination of Discrimination against Women for many of the same reasons given for their objections to the Committee on the Rights of the Child. For example, they disagree with the stance of the Committee on the Elimination of
Discrimination Against Women on the decriminalization of prostitution (Wright, 2002). CEDAW is an interesting comparison with the CRC because it is similarly widely ratified; one hundred eighty five States have ratified the Convention. Both treaties deal with conceptions of the family and traditionally marginalized members of the family: women and children.

Some scholars assert that ignorance and misunderstanding of human rights treaties, including CEDAW and the CRC, are major causes of the confusion and controversy surrounding the CRC (Bennett Woodhouse, 2006). Legal scholars address these issues (Detrick, 1999), but opponents of ratification still question against whom the treaty will be enforced (Schafly, 1993).

Human rights treaties are enforceable against the State, not against individuals. They are rather like the Bill of Rights of the U.S. Constitution, for example, which sets forth rights that may not be violated by the State; it does not govern the conduct of individuals. The Bill of Rights of the U.S. Constitution was originally enforceable only against the federal government, but over time, the Supreme Court recognized that all but five provisions are incorporated. This incorporation means that they are enforceable against the states as well. Only very limited rights apply to private persons or non-governmental institutions.

Opponents of ratification assert that the U.S. already has strong protections for children and a long history of child protection, thus making ratification superfluous (Farris, 2001). This line of questioning may also resonate with supporters of ratification, especially when one considers the results of long-term quantitative studies on human rights treaty ratification. One study considered evidence from 166 States over a 45-year
period, finding that ratification makes little to no difference in a State’s human rights record (Hathaway, 2002). At the 20th anniversary of the CRC’s entry into force, UNICEF (2009) acknowledged that much more needs to be done for children, but asserted that the Convention had made powerful changes in law and policy around the world.

The Participation Rights

The rights contained in Articles 12 through 17 of the Convention on the Rights of the Child are sometimes referred to as the “participation rights” because they cover issues related to child participation in various spheres. Each right is set forth separately, even though some are closely related. For example, the speech rights in Article 12 closely relate to the information rights in Article 17. As stated previously, some of the rights are already relatively well defined in the United States, owing to caselaw or state statutory law.

Article 12

This article covers children’s rights to expression in matters that affect them. The CRC and adherents hold that children have the right “to say what they think should happen and have their opinions taken into account” (UNICEF, 2010, p. 2). The language indicates a developmental standard for the kind of speech rights the child has at any given time.

The first provision is a general statement about children’s rights to express themselves:

States Parties shall assure to the child who is capable of forming his or her own
views the right to express those views freely in all matters affecting the child, the
views of the child being given due weight in accordance with the age and maturity
of the child.

The second paragraph of the article addresses children’s rights to be heard in
formal proceedings affecting them. For example, it covers a child’s right to be heard in
custody cases.

For this purpose, the child shall in particular be provided the opportunity to be
heard in any judicial and administrative proceedings affecting the child, either
directly, or through a representative or an appropriate body, in a manner
consistent with the procedural rules of national law.

Opponents of ratification cite Article 12 as allowing or encouraging children to
sue their parents. Parentalrights.org, a major parents’ rights organization, said “The
danger of Article 12 is that it grants the government broad, discretionary legal authority,
to protect the child’s nebulous ‘right to be heard’ at all times when the child’s interests
are involved” (Kamakawiwoole, 2008c, p. 1). Critics of the CRC emphasize the
possibility that the treaty could cause children to assert rights against their parents. The
Phyllis Schlafly Report (1993, sec. 2.3) questioned, “Can he demand a government-paid
lawyer to file a lawsuit against his parents?” She continued by asking, “Does this mean
that a child can assert his right to say anything he wants to his parents at the dinner table”
(sec. 2.5)?

Despite the rhetoric, most states already have provisions similar to some of
Article 12 in their codes. Texas Family Code Section 153.009, for instance, states that
“the court shall interview in chambers a child 12 years or older and may interview in
chambers a child 12 years of age or older” for purposes of determining custodial arrangements. State laws differ with regard to the age, procedure, and circumstances, but the laws generally fulfill the spirit of Article 12.

Article 13

The first provision of Article 13 covers the general limits of the freedom of expression. It states:

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

The article continues with a standard limitation on the rights to speech:

The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (ordre public), or of public health or morals.

In particular, Article 13 resonates with some educators because it aligns with their educational philosophies. If children actively construct knowledge through experience (Piaget, 1953), then they logically must have access to information. Maria Montessori (1949/1995) said, “Education is not something which the teacher does, but it is a natural process which develops spontaneously in the human being. It is not acquired by listening to words, but in virtue of experiences in which the child acts on his environment” (p. 8).

Educational philosophies incorporate ideas similar to those contained in Article
13. In particular, Reggio Emilia educators espouse access to myriad ways of self-expression and diverse learning materials (Cadwell, 1997). For example, Reggio philosophy speaks of the ‘hundred languages of children’ referring to the numerous ways that children relate to the world (Edward, Gandini & Forman, 1993).

Opponents voice alarm over the prospect of ratification; they assert that it allows children unlimited freedom to access information, even against their parents’ wishes. For example, one group stated, “Under Article 13, any attempts to prevent their children from interacting with material parents deem unacceptable is forbidden. Children are vested with a ‘freedom of expression’ right, which is virtually absolute” (National Center for Home Education, 1999, para. 7). A commentator (Kamakawiwoole, 2008b) stated, “While Article 13 allows the right of information to be restrained in order to ‘respect the rights or reputations of others,’ this respect does not extend to the decisions of parents” (part 2, para. 7). Some parents’ rights advocates make a connection between Article 13 and the government’s ability to strip parents’ educational decisionmaking, especially regulating homeschooling.

Aspects of children’s right to speech have been litigated in United States courts. Issues of freedom of speech for children often arise in schools; these matters are of keen interest to administrators and policymakers. In Tinker v. Des Moines Indep. Cnty. Sch. Dist. (1969), the Supreme Court defined some freedom of speech rights in schools. The Tinker case involved students who wore black armbands to school in order to protest the Vietnam War. The school declared a policy against the armbands and suspended offending students for violation of the policy. The Court held that the policy violated the
students’ constitutional rights. The Court ruled that administrators must demonstrate constitutionally valid reasons for limiting student speech.

The *Tinker* decision has been clarified subsequent to the ruling. Sexually explicit materials, for instance, are not constitutionally protected in the school context (*Bethel School District v. Fraser*, 1986). In *Hazelwood v. Kuhlmeier* (1988), the Supreme Court found that schools may limit the content of school newspapers for legitimate educational reasons. In *Dean v. Utica* (2004), a Federal Court in Michigan ruled that a school cannot censor a newspaper article based on reasons that were not pedagogically related.

*Article 14*

This Article discusses the extent and limits of the rights to thought, conscience, and religion. It says the following:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Critics of ratification cite Article 14 as particularly offensive. For example, one group wrote, “In Article 14, children are guaranteed ‘freedom of thought, conscience and religion.’ Children have a legal right to object to all religious training. Alternatively,
children may assert their right against parental objection to participate in the occult” (National Center for Home Education, 1999, para. 7). In an article entitled “Article 14: Religion is Child Abuse?” another group emphasized, “The danger of Article 14 is that it disrupts this crucial balance, tipping the scales in favor of the government and those who claim to “know better” in our society” (Kamakawiwoole, 2008a, p.1). Another opponent (Eakman, 2009) said, “This (Article 14) might pass if parents were encouraged to transmit traditional moral and spiritual boundaries. But in a value-neutral culture where children are assaulted with every sort of perversion, from innuendoes to images, it is a recipe for disaster” (para.11).

Proponents of ratification assert that Article 14 is actually protective of parents in religious teaching. For instance, law professor Johnathan Todres (2006) emphasized that Article 14 affirms the important role of parents in religious instruction and guidance. He stated, “Parents and legal guardians should not be concerned that ratification of the CRC would restrict their ability to teach religion to their children” (p. 25).

Numerous people and institutions of faith support ratification. The Vatican, for instance, ratified early. Major religious organizations across the United States offer official statements of support for ratification, including the United Methodist Church (2004), the Episcopal Church (1994), the Evangelical Lutheran Church in America (2002), the Unitarian Universalist Church (1996) and numerous others.

A major case involving children and religion was Prince v. Massachusetts (1944). It concerned Sarah Prince, a Jehovah’s Witness minister and the legal guardian of a nine-year old girl. She took the child out on the streets to preach and distribute literature, violating applicable labor laws. Prince asserted that the labor laws violated her
Constitutional equal protection rights and her right to exercise her religion. The Court disagreed, finding that the government may limit parental authority, even when religious liberty is involved. The Court said, “The family itself is not beyond regulation in the public interest, as against a claim of religious liberty. And neither the rights of religion nor the rights of parenthood are beyond limitation” (p. 166)

Courts have found it constitutionally acceptable to limit a parent’s religious freedom when it comes to medically necessary care for minor children. Both the Prince decision and other cases have established the principle that government has an interest in protecting children, and that this obligation arises when religious practices subject children to possible death or substantial risk (Prince v. Massachusetts, 1944; Jehovah’s Witnesses v. King County Hospital Unit No. 1 (1967), affirmed per curiam 1968). Religion is not a valid legal defense when a person neglects or harms a child (Walker v. Superior Court, 1988).

Article 15

The article describes children’s rights to association. It poses a number of practical considerations for policymakers and educational administrators, and is subject to a number of criticisms from ratification opponents. The text is as follows:

States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

The text continues these limitations, which are especially important in the children’s rights context:
No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Opponents fear that Article 15 allows children to associate with whomever they please, despite parental objections. A group warned, “Parents could be prevented from forbidding their child to associate with people deemed to be objectionable companions. Under Article 15, children could claim a ‘fundamental’ right to join gangs, cults, and racist organizations over parental objection” (National Center for Home Education, 1999, para. 9).

Courts throughout the United States have faced the freedom of assembly issues that have arisen with the increasing popularity of municipal curfew laws. However, the Supreme Court has not addressed the issue of children’s freedom of assembly nor has it addressed curfews as they relate to children. The lack of clear guidance from the Supreme Court has resulted in court rulings that are often inconsistent (Shepherd, 1997).

The 7th Circuit Court of Appeals addressed a curfew case in *Hodgkins v. Peterson* (2004). Colin Hodgkins was arrested with three friends at a restaurant around 11:00 p.m., where the group ate after attending a school soccer game. Colin Hodgkins was subjected to breathalyzer and urine tests, both of which were negative; he was also questioned by a community volunteer about his family’s church attendance. His mother and he challenged the constitutionality of the Indiana law, alleging that it violated the First Amendment rights of minors and violated the substantive due process rights of parents in
the control and upbringing of their children. The law contained affirmative defenses for minors arrested while participating in, going to, or returning from lawful employment, religious events, or school sanctioned activities. However, the 7th District Court of Appeals found that, even with these exceptions, the curfew “leaves minors on their way to or from protected First Amendment activity vulnerable to arrest and thus creates a chill that unconstitutionally imposes upon their First Amendment rights” (para. 1).

Many courts have upheld the constitutionality of other curfew laws, finding that they served a compelling state interest. Because curfew laws vary by state and/or municipality, and courts have been so split, it is difficult to ascertain a national legal consensus on this issue (Shepherd, 1997).

Article 16

This article covers children’s rights to privacy, and protects them from interference with that right.

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

The child has the right to the protection of the law against such interference or attacks.

Opponents of ratification object to the article primarily because it includes one highly charged word: privacy; opponents believe that the CRC could usher in abortions without parental consent or access to birth control (Fagan, 2001). One publication declared, “Under U.S. Supreme Court decisions, ‘privacy’ is the operative word which has created
the right to abortion (Phylis Schlafly Report, 1993, sec. 8, para. 4). Another said, “This UN sanctioned ‘privacy’ would seemingly establish...the child’s right to obtain an abortion without parental notice, the right to purchase and use contraceptives, and the right to pornography in the home (National Center for Home Education, 1999, para. 10). Yet another stated, “Article 16 will forever enshrine in our law the right of a minor to get an abortion or birth control without any parental objection allowed” (Sanders, 2009, para. 8).

The CRC is ambiguous with regard to the beginning of ‘childhood’ and thus whether it implies any fetal rights (Janoff, 2004). The CRC clearly does not mention any reproductive issues, including abortion or birth control. Proponents of ratification point to the language of the Convention as well as to the published opinions of the Committee on the Rights of the Child that are frequently critical of States with high rates of teen pregnancy and abortion. For example, in the 1993 Russia country report, the Committee criticized both the frequency of abortions as well as the indication that abortion is used as a method of family planning in Russia.

Every other State except the United States and Somalia has ratified the treaty, even those with very restrictive policies on reproductive rights. The Holy See included a reservation specifically regarding abortion, but other States with restrictive policies did not.

Many scholars believe that Article 16 would have no effect on current U.S. law regarding the privacy of minors or abortion access (Tosado, 2006). The Supreme Court has held that states must offer children an alternative to obtaining parental consent before obtaining an abortion if their laws demand such consent (Bellotti v. Baird, 1979).
Article 17

This article especially appeals to educators, because it emphasizes children’s rights as active learners. It closely relates to Article 13, also of particular appeal to educators. Article 17 establishes children’s rights to access a variety of learning sources, and charges governments with responsibilities to facilitate production of materials for children. It also respects children’s cultural and linguistic rights. The article is extremely controversial, offending opponents for the very reasons that it inspires proponents.

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 17 emphasizes the link between media, information, and child development. Educators have long taken seriously the importance of access to diverse sources of information, as revealed by Lucy Sprague Mitchell’s 1916 “credo” of the Bank Street School for Children: “Lively intellectual curiosities turn the world into an exciting laboratory and keep one ever a learner” (as cited in Temes, 2002, p. 187). Other progressive educators echo the importance of active, experiential learning and the importance of access to materials.

As technology continues to evolve, educators and policymakers must accommodate children’s desire for expanded materials in order to fuel their curiosities. Educators recognize the important link between progressive education ideas and new ways of accessing information (Spira, 1998). For example, diSessa (2000) stated, “Computers can be the technical foundation of a new and dramatically enhanced literacy…which will have penetration and depth of influence comparable to what we have already experienced in coming to a mass, text-based literacy” (p. 4).

Educators are at the forefront of the debate over censorship. A 1981 open letter from the National Council of Teachers of English (NCTE), for instance, passionately argued for “the right to read”:

The right to read, like all rights guaranteed or implied within our constitutional tradition, can be used wisely or foolishly. In many ways, education is an effort to improve the quality of choices open to all students. But to deny the freedom of
choice in fear that it may be unwisely used is to destroy the freedom itself. For this reason, we respect the right of individuals to be selective in their own reading. But for the same reason, we oppose efforts of individuals or groups to limit the freedom of choice of others or to impose their own standards or tastes upon the community at large (para. 1).

Reading is fundamentally important to children’s development and learning; research shows that access to and use of books positively affects learning in a number of areas (International Reading Association, 2000). Librarians, along with teachers, provide books and other materials to children, both in schools and in the greater community. The American Library Association (2004) stressed, “Intellectual Freedom is the right of every individual to both seek and receive information from all points of view without restriction. It provides for free access to all expressions of ideas through which any and all sides of a question, cause or movement may be explored” (para. 1). The American Library Association (2004) specifically addressed issues of child access; their guidelines make clear that they believe parents have a right to make decisions only for their own children and not for the greater public. They emphasized:

Lack of access to information can be harmful to minors. Librarians and library governing bodies have a public and professional obligation to ensure that all members of the community they serve have free, equal, and equitable access to the entire range of library resources regardless of content, approach, format, or amount of detail (para. 5).

The furious debate over censorship continues. Groups staunchly opposed to ‘offensive’ material demand the removal of books such as: *I Know Why The Caged Bird*
Sings by Maya Angelou; *One Hundred Years Of Solitude* by Gabriel Garcia Marquez; *Slaughterhouse Five* by Kurt Vonnegut; and numerous others (Parents Against Bad Books In Schools, 2010).

Opponents frequently cite Article 17 as a vehicle for child access to pornography and other indecent materials (Reisman, 2010). The Eagle Forum and other groups (Schafly, 1993) believe, for example, that the article could be used by children to demand the right to watch television and question whether it could be used by children who want to only speak their native languages at school.

Some scholars believe that children in the United States already possess the rights enumerated in Article 17 (Lee, 2006). The Supreme Court, for example, established a vital connection between free speech rights and the right to receive information (*Griswold v. Connecticut*, 1965). The Supreme Court, in *Tinker v. Des Moines* (1969), declared that children have some speech rights; thus, it is reasonable to infer that children have some rights to receive information under the U.S. Constitution. One Supreme Court case, *Board of Education, Island Trees Free School District No. 26 v. Pico* (1982), addressed information rights. The case was decided by a 5-4 margin, with the majority disagreeing on the rationales for their rulings. In that case, the school board removed certain books from the school library that it characterized as “Anti-American, anti-Christian, anti-Semitic, and just plain filthy” (p. 853). The Supreme Court ruled that the First Amendment limits the ability of school boards to take that kind of action. Justice Brennan wrote:

In brief, we hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and
seek by their removal to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *West Virginia Board of Education v. Barnette*, 319 U.S., at 642. Such purposes stand inescapably condemned by our precedents (sec. 1, part c).

Thus, the Court has already defined some of the constitutional parameters associated with access to information.

**CRC Optional Protocol and Worst Forms of Child Labor Convention**

The two optional protocols to the CRC were ratified by the United States without much debate: Optional Protocol on the involvement of children in armed conflict; and Optional Protocol on the sale of children, child prostitution, and child pornography. Also, the U.S. ratified another important treaty relating to child wellbeing: the Worst Forms of Child Labor Convention (1999).

These documents are not controversial. All relate to undiluted child protection rather than children’s rights. The Worst Forms of Child Labor Convention (1999) concerns particularly abhorrent forms of child labor, including slavery-like work, child prostitution or pornography, drug-related work, and unsafe work. It does not state that children have a “right” to be free from these types of work, but rather that they should be shielded from it by their governments.

**The Committee on the Rights of the Child**

The Committee on the Rights of the Child, established by Article 43 of the CRC, calls for the creation of the Committee with eighteen “experts of high moral standing”
who are elected by the member States. The current membership of the Committee is diverse, with members from eighteen different States. The current chairperson is from Korea; the vice-chairpersons are from Algeria and Ghana. The Committee receives reports from States regarding CRC implementation; they make recommendations based on these reports and other information. Member States submit reports to the Committee within two years of the CRC’s entry into force and submit reports every five years thereafter.

The Committee’s recommendations are not binding; there is no CRC enforcement body or mechanism. Nevertheless, opponents in the United States object to the group and to the idea that an international force could dictate domestic family policy (Farris, 2009). Some of the Committee’s positions have been controversial, notably its stance on corporal punishment. For example, the Committee issued a General Comment in 2006 at its 42nd session that said, “Corporal punishment is invariably degrading (para. 11).” The committee encouraged State parties “to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures” (para. 2).

Corporal punishment in educational settings is common in the twenty states that do not prohibit corporal punishment in schools. The U.S. Department of Education Office for Civil Rights reported that 223,190 public school students were subjected to corporal punishment in 2006-2007, which often involved being struck with a paddle.

Corporal punishment is also common in American homes. A 1997 Gallup poll, for example, found that 65% of Americans favored corporal punishment. One study found that six percent of parents spanked children between four and nine months old;
twenty-nine percent spanked children between ten and eighteen months old; 64% percent spanked children between nineteen and thirty-five months (Regaldo et al., 2004).

Obviously, there is a major disconnect between the beliefs of the Committee and the mainstream of American thought on this matter. Some opponents of ratification point to corporal punishment as an area in which the Committee attempts to wrestle childrearing decisions from families (Farris, 2009b).

Some opponents are concerned about specific issues, like corporal punishment, but others object to the very existence and nature of the Committee. One article stated, “A committee of 18 experts from other nations, sitting in Geneva, has the authority to issue official interpretations which are entitled to binding weight in American courts and legislatures. This effectively transfers ultimate authority for all policies in this area to this foreign committee” (Farris, 2009a, sec. 1). Phyllis Schlafly (1998) related in a speech, “Article 43 sets up a Committee on the Rights of the Child consisting of ten ‘experts’ to monitor compliance. Do you want UN ‘experts’ monitoring the way you raise your children” (sec. 10)?

Implementation and Enforcement of the Convention on the Rights of the Child

Implementation and enforcement of the CRC are largely up to the discretion and ability of the ratifying State. The CRC provides for reporting and monitoring by the Committee on the Rights of the Child, but there is no international body that can enforce the terms of the CRC. The Committee attempts to guide parties in successful implementation of the CRC. The United Nations Children’s Fund (UNICEF) provides practical support for countries seeking to implement the CRC (Hodgkin & Newell, 2002).
A frequent criticism of the CRC involves enforcement and oversight by “nannies in blue berets” that can dictate what Americans can do (Farris, 2009b).

Enforcement of international law is a difficult proposition. Most commonly, it refers to using deterrent sanctions in order to bring States into compliance (Rubin, 1993). Some international structures have relatively effective enforcement mechanisms. For example, the World Trade Organization uses a variety of meaningful economic enforcement mechanisms. The CRC, by contrast, has no enforcement measures built into its structure. Rather, it relies on international pressure and a State’s desire to bring itself into compliance with the language and spirit of the treaty.

Reservations, Understandings, and Declarations

Reservations, understandings, and declarations (RUDs) are common and widely accepted. States use RUDs to modify their responsibilities or to make general statements that the State deems important for clarification or demonstrative purposes. RUDs do not modify other States’ obligations under a treaty. The Vienna Convention on the Law of Treaties (1969) governs the creation and interpretation of treaties. Article 19 states that reservations may be formulated by a State unless the treaty prohibits the reservation or the reservation is “incompatible with the object and purpose of the treaty” (p. 8).

Many ratifying States included reservations to the Convention on the Rights of the Child. Some of the reservations appear innocuous and should not have any major impact on treaty implementation. For example, the Canadian government included reservations dealing with incarceration of young people as well as inconsistencies between the CRC and aboriginal Canadian people. However, a number of States made far more expansive
reservations. Iran and Saudi Arabia, for example, declared that they would not abide by any portions of the Convention that conflict with Islamic law in any way.

The United States commonly inserts a number of reservations when signing international treaties. In particular, the U.S. has a strong history of ratifying only with non-self-execution provisions. Self-executing treaties are ones that do not require ancillary legislation, court action, or any other implementing action in order to become the law of the land. Treaties that are not self-executing require that some action be taken in order for them to become effective. Some scholars insist that implied non-self execution is patently inconsistent with the Constitution and should not be a part of standard legal doctrine (Flaherty, 1999; Vazquez, 1999; Paust, 1988). However, the doctrine is widely recognized among both legislators and jurists. Professor John Yoo (1999), a member of the Justice Department under President George W. Bush, argued that viewing treaties as not being self-executing is consistent with Constitutional principles. He said that the principle promotes the ideas that domestic law should be made through democratic processes, and that it is most consistent with separation of powers. Louis Henkin (1997) stated that human rights treaties have not been self-executing since the 1950s. Most scholars consider this to be black letter law, or law that is free from dispute or doubt. Thus, even if the CRC were to be ratified by the United States, it would require further legislative action in order for part or all of it to become U.S. law.
Inconsistencies Between U.S. Law and the CRC

There are substantive inconsistencies between the CRC and some state and federal laws. For example, Article 37 of the CRC prohibits imposing life imprisonment and capital punishment for crimes committed by persons under age 18. In 2005, the United States Supreme Court abolished capital punishment for children under 18 (*Roper v. Simmons*). However, children under 18 can still be given life imprisonment without any possibility of parole. Such sentences are common in the United States, according to Human Rights Watch; the group found that 2,225 children were serving life sentences without any possibility of parole in 2004 (Human Rights Watch, 2005). Obviously, Article 37 represents a distinct conflict between the CRC and recognized criminal law in the United States. Other countries also have conflicts between their domestic laws and certain provisions of the CRC. They resolved these conflicts through a series of declarations and reservations to the CRC. It is clear through even a cursory review of the declarations and reservations to the CRC that the United States can easily resolve purely legal objections through reservations and declarations.

Relevant Aspects of United States Law

The CRC, like other treaties, should not be analyzed in a legal and historical vacuum. The United States has a unique set of legal philosophies that are important for understanding the opposition to ratification as well as the potential impact of ratification.
Positive and Negative Rights

Positive rights are rights to certain things; negative rights are rights to be free from certain things. The United States has a long, indisputable tradition of recognizing negative rights. The U.S. Constitution contains a series of negative rights, such as the right to be free from government interference in a number of important areas. For instance, the 4th Amendment protects the right to be free from unreasonable searches and seizures by the government. Positive rights, by contrast, impose an affirmative obligation of action on behalf of a rights-holder, such as the right to health care, housing, or other services. Positive rights are seen by many Americans as patently inconsistent with negative rights, and as affirmatively harmful to the citizen’s relationship with the state (Macham, 2001). Others blur the distinction far more substantially, arguing, for example, that there is a positive right to freedom and wellbeing (Gewirth, 1996).

The Supreme Court has been unwilling to recognize constitutional rights to affirmative government services. Even some positive rights that many people view as fundamental are not, in fact, legally recognized as such. For example, education is widely recognized as a human right in the international community. It is enshrined as a basic human right in the CRC; the Universal Declaration of Human Rights; and the International Covenant on Economic, Social and Cultural Rights. Many people in the United States believe that children have a constitutionally protected, fundamental right to a government-provided education. However, the Supreme Court has declared education is not a fundamental right guaranteed by the Constitution. In the landmark Brown v. Board of Education (1954) decision, the Supreme Court stated, “education is perhaps the most important function of state and local governments” (p. 493). The Court did not
address the rights-status of education in Brown. In the subsequent San Antonio
Independent School District v. Rodriguez (1973), the Supreme Court explicitly rejected
recognizing education as a fundamental right. It said, “Education, of course, is not
among the rights afforded explicit protection under our Federal Constitution. Nor do we
find any basis for saying it is implicitly so protected” (p. 35).

The Convention on the Rights of the Child uses both positive and negative rights
language. For example, Article 24 says, “States Parties recognize the right of the child to
the enjoyment of the highest attainable standard of health and to facilities for the
treatment of illness and rehabilitation of health.” Some conservative critics have a
problem with this idea of a ‘right’ to health care. For example, Dr. Michael Farris,
founder of Patrick Henry College, said the following in a radio interview with Phyllis
Schafly (2009): “Historically, everyone can recognize the common-sense reality that
children have needs…when you change from ‘needs’ to ‘rights… ‘rights’ have a
government connotation…children have the right to government-furnished everything”
(para. 3). Other international law documents, notably including the Universal
Declaration of Human Rights (1948), include both positive and negative rights.
Additionally, positive rights to things like social security, medicare, and unemployment
benefits are widely recognized in the United States.

Rights and Remedies

The body of American law is contained in the Constitution, federal statutes, and
state statutes. For example, the First Amendment to the United States Constitution states
“Congress shall make no law respecting an establishment of religion or prohibiting the
free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress or grievances.” Most Americans recognize these principles, but often do not think about the necessary mechanisms for enforcing the right. The rights to peaceably assemble or to freely exercise religion or speech are without meaning if people do not have the ability to seek remedies when the government infringes upon these rights. The courts are charged with evaluating governmental violations of these well-established Constitutional rights and setting remedies when they are violated. Depending on the particular right, there may be multiple rights-holders and multiple rights-enforcers; there may also be multiple persons or institutions that may be charged with violating these rights.

In the case of children’s rights, the discussion of rights and remedies is further complicated because children often must be represented by an adult responsible for enforcing their rights. Different states have different procedures for child representation. In general, if a child is not yet capable of acting on his or her behalf, a parent, guardian ad litem, attorney ad litem, or some combination thereof is selected to act on behalf of the child. A guardian ad litem, a person appointed by a court, acts on behalf of the child and/or in the best interests of the child; an attorney ad litem, an attorney appointed by the court, represents the child in court (Oliphant & Steegh, 2010).

United States Sovereignty Concerns

Oppenheim (1928/2009) famously said the following about sovereignty:

There exists perhaps no conception the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the
moment when it was introduced into political science until the present day, has
never had a meaning which was universally agreed upon (p. 111).

Sovereignty is the concept of absolute power and final authority over that which
is governed. In *Leviathan* (1651/2009), Hobbes conceived of the sovereign as the
ultimate authority, over which there could be no other. There could only be one
sovereign over any territory, and the sovereign’s power was absolute.

Sovereignty is an incredibly complex concept in political science and philosophy.
Because it is difficult to define, it is somewhat tricky to address. Activists frequently cite
sovereignty as the rationale for opposing any international scheme, including the World
Trade Organization (Cobb, 1994); climate change regulation (Simpson, 2009); and the
United Nations’ various efforts (Paul, 2005). It is also often discussed as an objection to
the CRC, in particular (Young, 2010).

**Parental Rights in the United States**

The parental rights movement is a major political force in the Untied States today.
There is currently a movement to amend the U.S. Constitution so that it explicitly
recognizes parental rights. Senator Jim DeMint proposed it the Senate in the 111th
Congress in 2009 (OpenCongress, 2010). The proposal includes the following three
sections:

- The liberty of parents to direct the upbringing and education of their children is a
  fundamental right.
- Neither the United States nor any state shall infringe upon this right without
demonstrating that its governmental interest as applied to the person is of the
highest order and not otherwise served.

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. Organizations like Parentalrights.org have strongly promoted the Parental Rights Amendment as a way to guarantee governmental respect for the fundamental rights of parents (Home School Legal Defense Association, 2009).

**Parental Rights Doctrine**

The rights of parents to control the upbringing of their children is not included in the text of the Constitution. However, the Supreme Court recognized parenting as a fundamental liberty in a series of cases; the existence and measure of parental rights are an established part of Constitutional jurisprudence. The line of parental rights cases shaped and defined the rights of biological parents to look after their children. A basic understanding of these cases is useful for understanding the current legal status of parents.

Because parental rights have been deemed fundamental rights, they are accorded special status and protection. Courts must treat fundamental rights differently than other rights. Any infringement on a fundamental right is subject to a standard known as strict scrutiny. In order to pass the strict scrutiny test, a policy must fulfill the following: (1) It must serve a compelling government interest; (2) It must be narrowly tailored to achieve that interest; (3) It must be the least restrictive means to achieving the interest. Only approximately thirty percent of cases brought before the Federal Courts survive the strict scrutiny test (Winkler, 2006).
Meyer v. Nebraska

Meyer, a 1923 Supreme Court case, is still an important and frequently cited Constitutional decision. In this case, a teacher at Zion Parochial School used a German bible for instruction. He claimed that using this text served the purpose of both religious and German instruction. He was charged with violating a Nebraska law that forbade the teaching of a foreign language before high school.

The Court found the Nebraska statute unconstitutional because it violated the liberty interests of parents. The case marked an early statement of the extent of a parent’s right to determine the type of instruction their children receive. The case had a major impact on Constitutional law. It marked recognition of individual liberty rights not specifically enumerated in the Constitution.

The Court has never attempted to define, with exactness, the liberty guaranteed by the Fourteenth Amendment. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men (p. 399).

Pierce v. Society of Sisters of the Holy Names of Jesus and Mary

In 1925, the Court again significantly expanded the Fourteenth Amendment, ushering in a more expansive understanding of Due Process. The case involved an
Oregon referendum aimed at dismantling parochial education because it eliminated parents’ option to choose a private school in order to satisfy the state’s compulsory education requirements.

The Court found that the law violated parents’ liberty interests, which are protected by the Fourteenth Amendment. The Court said, “Under the doctrine of *Meyer v. Nebraska*, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control” (p. 535). Further, they said, “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations” (p. 536).

*Wisconsin v. Yoder*

This 1972 case involved three Amish families in Wisconsin. The families decided to stop sending their children to school after the 8th grade because of their religious beliefs. The Court ruled in favor of the Amish families, holding that the state’s insistence on compulsory education after the 8th grade violated their freedom of religion. The Court held that mandated high school attendance would be counter to the Amish religion.

*Santosky v. Kramer*

The Court established the standard for termination of parental rights in 1982. In this case, the state of New York removed three children from the Santosky home and alleged that they would be subject to neglect by their parents if they were allowed to return. The parents alleged unconstitutionality in the process of determining whether
children should be removed from their care.

Different types of cases require different burdens of proof. The three recognized standards are the following: preponderance of evidence, which is the lowest standard; clear and convincing evidence, the medium standard; and beyond a reasonable doubt, the highest standard. At that time, New York and some other states required only a fair preponderance of the evidence. The plaintiffs asserted that this standard violated their Fourteenth Amendment due process rights.

The Court agreed with the Santoskys, finding that the state must support their claims by clear and convincing evidence, a higher legal standard. The Court said, “The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State” (p. 753). In a footnote to the case, the Court addressed the issue of conflicting liberty interests, saying, “The fact that important liberty interests of the child and its foster parents may also be affected by a permanent neglect proceeding does not justify denying the natural parents constitutionally adequate procedures (p. 780).”

**Emerging Parental Rights Issues**

Family structure in the United States has changed dramatically in recent decades. The rights of various family members have been confronted and determined both by the courts and by state legislatures. These issues include the following: the custody rights of unmarried fathers (*Stanley v. Illinois*, 1972); the rights of adoptive parents versus biological parents (*In re Clausen*, 1993; *In re Kirchner*, 1993); grandparents’ visitation
rights (*Troxel v. Granville*, 2000); rights in situations of assisted reproduction; and custody in gay and lesbian families (*Miller-Jenkins v. Miller-Jenkins*, 2008).

**Children’s Rights in the United States**

Hilary Rodham (1973), in her early career as a child advocate, famously said that ‘children’s rights’ is “a slogan in search of a definition” (p. 487). Children’s rights, like other legal and social concepts, evolve constantly. The relationship between children, family, and the state changes as time passes and people alter their conceptions of children and childhood. During the early years of American history, children were viewed as chattel, the property of their fathers. They were not distinct legal persons with any rights enforceable on their own behalves. Their legal status was more like that of family livestock than independent or semi-independent persons. Children without parents were apprenticed, sent to work in factories, or were subject to placement with families for whom they would work in exchange for subsistence.

Educators are among the many professionals who worked both to improve the material conditions for children and to change the conception of children in society. John Dewey (1897/2010) said, “The isolation of the teacher is a thing of the past. The processes of education have come to be recognized as fundamental and vital in any attempt to improve human conditions and elevate society” (p. 1). Improvement of conditions for children was the first step in the American children’s rights movement; that movement today continues in very different forms but with the same ideals.
The Progressives Era

Many consider the earliest foundation of the children’s rights movement to be in relation to abandoned or orphaned children. Charles Loring Brace founded the Children’s Aid Society in 1853, with the goal of taking in and caring for street children. Soon after the Society’s founding, Brace started the Orphan Trains, which placed orphaned children with families in the Western U.S (Children’s Aid Society, 2010; O’Connor, 2001). The change in policy with regard to orphans marked a shift in the way that the state and society viewed children; they were subject to greater protection, beginning to be seen more as people in need of care rather than labor sources to be exploited.

In 1836, Massachusetts became the first state with restrictions on child labor. The state required that children under age 15 attend school for a minimum of three months per year. In 1842, Massachusetts began limiting children to ten hours of work per day. Other states instituted similar laws. In 1851, Massachusetts created the first adoption laws that recognized that adoption is based on child welfare as opposed to labor and the financial interests of adults. Massachusetts instituted mandatory school attendance in 1852, which began the movement away from permitting young children to be engaged in labor and requiring them to attend school. However, accomplishing an end to child labor took decades. Organizations such as the National Child Labor Committee, formed in the 1890s, worked hard to abolish child labor. The Committee had some success in encouraging legislation to prohibit child labor, but they encountered opposition from the courts and from politicians.

Societal interest in child protection through legal institutions began in the mid to
late 1800s. The first court case in which parents were punished for mistreating a child was in 1869, when parents were arrested and fined after locking their blind son in a basement for days. In 1874, the New York Society for the Prevention of Cruelty to Animals encouraged police to remove an 8-year old child from her adoptive parents after learning that she was beaten regularly and not allowed to go outside. Soon, the New York Society for the Prevention of Cruelty to Children was founded; it was the first organization interested in promoting the interests of abused children (Shelman & Lazoritz, 1999). Soon other organizations were formed; they joined together as the American Humane Association in 1877.

In the early 1900s, there were many heroes of the children’s rights movement who advocated simultaneously for education, protection, and limitations on child labor. A vocal group of women and men across the United States began to advocate for progressive social causes, including the welfare of children. This period is sometimes called the “Progressives Era.”

John Dewey, a leading progressive educator, worked for social change and education reform. He believed that education is a tool for social reform, and that teachers have an important role to play in changing society through teaching (Martin, 2002). Education was an important element for other child advocates, as well. For example, Jane Addams founded the Juvenile Protective Association in Chicago in 1901, and was a founder of the U.S. Settlement House Movement. Throughout her life, she strongly advocated against child exploitation and racism. Hull House, founded by Addams, provided diverse services to individuals and families, including night classes, food programs, and numerous other programs for children. Many refer to Addams as the
founder of modern social work. In 1931, she became the first American woman to be awarded the Nobel Peace Prize (Knight, 2006; Davis, 2001). Mary Harris, also known as Mother Jones, was a prominent socialist and activist. She organized the Children’s Crusade in an attempt to bring attention to child labor and lack of access to education (Gorn, 2002).

Attention by these and other activists brought about the first White House Conference on Children in 1909 when Theodore Roosevelt was in office. One major outcome of the Conference was the declaration that children should not be removed from their families based only upon the family’s poverty. The Conference also created the Children’s Bureau of the U.S. Congress.

The first attempt at federal child labor legislation was passed in 1916, but it was declared unconstitutional in 1918. Congress again attempted legislation in 1924, but it was blocked by opposition within Congress. The Great Depression finally accomplished an end to child labor, as children were pushed out of low-wage jobs when they were needed by adults. Franklin Roosevelt signed the Fair Labor Standards Act in 1938, ending many forms of child labor (Hawes, 1991).

The Modern Children’s Rights Movement

Most scholars agree that the modern children’s rights movement began as a product of the 1960s (Guggenheim, 2005). It is situated alongside other civil rights movements, including the movement for the rights of African-Americans, the women’s movement, and the prisoner’s rights movement. From its earliest formation, there has often been a lack of consensus about what its goals should be as well as what children’s
rights should actually be (Minow, 1995).

*Liberationists.* Some children’s rights advocates believe that children should have rights similar or identical to those of adults (Hawes, 1991). For example, John Holt wrote a great deal about children’s rights and freedom. In *Escape from Childhood* (1974), he wrote “I propose…that the rights, privileges, duties of adult citizens be made available to any young person, of whatever age, who wants to make use of them (p. 1).” Many of the liberationist writings were philosophical exercises rather than legal treatises. For example, Howard Cohen (1980) advocated a philosophical foundation for extending adult rights to children and for ending the oppression of young people.

The works of the liberationists, although often misinterpreted, continue to inspire ridicule and fear of children’s rights and of children’s rights advocates. For example, liberation is sometimes linked with tolerance for pedophilia or increased sexual behaviors among minors (Holloway, 2002). When some people hear the term ‘child advocacy,’ the first thing that enters their minds is the total child freedom advocated by some liberationists. The liberationists themselves would probably not agree with the characterizations that have been made about them. Certainly the mainstream of children’s rights advocates would not agree that children should have total freedom or rights identical to those of adults.

*Mainstream Children’s Rights Advocacy.* Most modern child advocacy organizations focus upon child, family, and community wellbeing; advocates work for the wellbeing of children in a myriad of ways. A diverse group of people call themselves “child advocates,” including educators, social workers, and legal professionals. Education organizations strongly advocate for ratification of the CRC as part of their
broad advocacy for child wellbeing. Likewise, social workers advocate for individual children and families locally, nationally, and internationally. Nevertheless, when many people think of ‘child advocates,’ they immediately think of lawyers. Indeed, lawyers have played a prominent role in child advocacy, particularly since the Supreme Court in *In re Gault* (1967) declared that children have a right to legal representation in criminal cases; prior to that decision, juvenile courts had discouraged attorney participation because they felt that such intervention was regarded as a hindrance in discovering the child’s best interest (Guggenheim, 2005). Following that decision, lawyers began acting on behalf of children in greater numbers.

Some believe that the large-scale involvement of lawyers for children is a negative development. Guggenheim (2005), a child advocate and lawyer himself, said: “Within a decade I even reached the (what still seems to many) remarkable conclusion that providing children with lawyers in a whole variety of legal matters was antithetical to children’s interests (preface, x).” Other legal advocates for children strongly disagree with him. Howard Davidson (2006), Director of the American Bar Association (ABA) Center on Children and the Law, wrote, “Few legal professionals would focus on advancing children’s rights as distinguished from children’s protection from harm (p. 70).”

**Summary of Review**

The research topic demands a tandem consideration of history, law and other fields. Thus, this review of literature provides readers with information necessary to a thoughtful examination of the participants’ perspectives. First, the review covered the five participation articles in some detail, noting the perspectives of proponents and
opponents as well as the state of the law with regard to each article. This information is important for understanding and evaluating participant arguments. Second, the review included relevant background information, including treaty information, conflicts between U.S. law and the CRC, and the Committee on the Rights of the Child. The background discussions are also useful when examining the findings and for understanding potential resolutions between opponents and proponents. Third, the review discussed historical information that helps frame the ratification discussion. This information is useful because the CRC is, in some ways, the fruit of the historical children’s rights movement, a movement that has consistently included educators.

In order to fully understand the debate between proponents and opponents, I believe that it is essential to understand the perpetual shifting and modification that our Constitution facilitates. Societal and legal perspectives on children have shifted dramatically since the Constitution was ratified in 1789. Today, children in the United States have a myriad of rights that are legally enforceable and may not be infringed upon by the government. It is not clear the extent to which ratification of the CRC would alter the rights of children, even if it were ratified without reservations. If it were ratified with the reservations that are commonly used by the United States, notably with a non-self execution clause, the treaty would have no effect unless the Congress decided to introduce additional legislation. It could, however, have substantial symbolic impact.

As this review demonstrated, proponents and opponents of ratification have extremely different views about a myriad of issues, including children’s and parental rights. Their views differ greatly on the potential impact of ratification, and about the
proper place of government. The broad literature supports the findings of this study, presented in Chapter 4.
CHAPTER THREE

RESEARCH METHODS

Qualitative Research and the Approach of Inquiry

The origins of the word ‘method’ involve the idea of “a route that leads to the goal” (p.4), according to Kvale (1996). The seeds of this study began with a desire to investigate and describe the views of opponents and proponents of ratification of the CRC. I wanted to develop a holistic picture of opponent and proponent views, particularly as they relate to Articles 12 through 17 of the CRC. The research method was born of the research goals in a natural, pragmatic manner. Qualitative multiple case study (Yin, 2009; Stake, 1995) was the practical, obvious methodological choice.

The broad world of qualitative research matches the demands of the research goals. In-depth participant experiences, thoughts, and reflections were essential to the core research purposes. Anyone curious about the CRC can conduct a cursory Internet search to find out the general, stated beliefs of proponents and opponents of ratification; this study went farther and investigated the issue more deeply. I investigated, among other things, how opponents and proponents came to hold their beliefs, what informs their beliefs, and how their beliefs translate into policy. Creswell (2007) argued that the qualitative researcher “builds a complex, holistic picture, analyzes words, reports detailed views of informants, and conducts the study in a natural setting” (p. 249). This detailed picture was necessary in order to fulfill the research goals.
Qualitative research was also useful to the present study because of the cross-disciplinary nature of the work. Throughout the research process, I drew from the fields of law, political science, education, social work, and other fields. Each field employs unique traditions and frameworks for analysis; qualitative research afforded the flexibility and ability to work within and between disciplines (Denizen & Lincoln, 2003).

Case study similarly fit the research goals as well as my own framework for understanding and interpreting the issues related to the CRC. I was initially attracted to case study research because of my legal training. American law schools use casebook training, wherein students study court decisions rather than statutes in order to understand the law. This method promotes flexible thinking as well as an understanding that laws do not exist apart from their implementation and interpretation.

Qualitative case study involves exploring an issue using one or more cases; the exploration occurs within a bounded system or systems (Creswell, 2007). Merriam (1998) related, “the single most defining characteristic of case study lies in delimitating the object of study, the case” (p.27). On its face, the research goal involved two distinct units for investigation, two cases for analysis. Cases have boundaries, interrelated parts making up a whole (Stake, 1995). The two cases in this study, proponents and opponents of CRC ratification, are bounded by their views and expertise relating to the CRC as well as by time and space (Creswell, 2007).

Multiple case study is a specific type of case study that involves two cases studied independently using replication logic (Yin, 2009). Each case is studied independently, but the researcher keeps in mind the collection of cases (Stake, 2006). Analysis of the
case is conducted both within-cases and across-cases; themes are identified both from the individual cases and through cross-case analysis (Stake, 2006).

Yin (2009) asserted that generalizations of results may be made in multiple case study, but only to theories and not to populations. Generalizability to populations was not a goal of this research. Stake (1978) further asserted that even theory-building is not necessarily an important primary goal of qualitative research. Rather, he said that the best use of case study is “for adding to existing experience and human understanding” (p. 4). This study is predicated on achieving a deep understanding of a topic using multiple case study. It is not about predicting the opinions of either case, but rather about understanding the cases and making practical deductions therefrom.

Yin (2009) further identified the components of research design that a researcher needs to incorporate in a case study: “the study’s questions; propositions, if any; units of analysis; logic linking the data to the propositions; and the criteria for interpreting the findings” (p.27). I was mindful of each element when designing the multiple case study methodology, and kept the elements in mind throughout the study.

Yin (2009) suggested that case study researchers collect as many sources of evidence as possible. I collected the following: documentation, archival records, interviews, and limited direct observation. Each source of evidence allowed me to develop a richer, deeper understanding of the cases. It also allowed for triangulation of data and ultimately greater reliability of the findings.
Philosophical Assumptions and Theoretical Framework

Creswell (2007) related that a researcher takes a position on five philosophical assumptions, each of which assumptions have implications for this research: “ontology, epistemology, axiology, rhetorical, and methodological assumptions” (p. 15). These assumptions interrelate with and dictate the choice of a research paradigm, a researcher’s worldview (Lincoln & Guba, 2000; Creswell, 2007). According to Guba (1990), the worldview is “a basic set of beliefs or assumptions that guide action” (p. 17).

The ontological question involves the nature of reality and what can ultimately be known about reality (Lincoln & Guba, 2000). I approached the institutions and concepts as social constructs rather than as objective realities. My focus was, as Kvale (1996) wrote, “on the interpretation and negotiation of the meaning of the social world” (p. 41). The epistemological assumption involves, among other things, the relationship between the researcher and the subject of the research. This distance may vary, but the researcher should attempt to minimize the distance (Creswell, 2007). I attempted to minimize the distance between the participants and myself. I sought a meaningful partnership with each participant, in which I learned and grew as much as possible. The axiological assumption relates to the role of values in a study. Qualitative researchers accept that research is value-laden (Creswell, 2007). I believe that values and knowledge interact consistently when learning, and that it is not necessary or possible to suspend values.

The rhetorical assumption relates to the qualitative language used in the research, and in particular to the differences between qualitative and quantitative research. Qualitative research has its own standards, language, and measures for validity. Lincoln and Guba (1994) described that the methodological assumption relates to the logic dictating the
structure of a qualitative study, or how a researcher can “go about finding whatever he or she believes can be known” (p. 108). This process extends beyond the inductive nature of qualitative research or the building of a study from the broad to the specific (Creswell, 2007). I researched, interpreted, and reported from the perspective of a passionate, interested researcher.

My worldview aligns most with the constructive-interpretive paradigm. Creswell (2007) stated that constructivists “seek an understanding of the world in which they live and work” (p. 8) relying on participant’s subjective views. The interpretive paradigm “defines shared constructs and meanings as ‘situated’; that is, they are located or affected by the…contextual characteristics of those who espouse them” (Schensul & LeCompte, 1999, pp. 48-49). Throughout the study, I focused on the constructed, subjective beliefs of the participants. The meaning of the project arose from the participants’ constructed views.

Creswell (1998) stated that case study, unlike other qualitative approaches, need not have a specific theory guiding the research. I became more interested in conducting this study when I found that too much of the existing work on the Convention on the Rights of the Child was heavily guided by individual passion and bias. Thus, I tried to refrain from having a set theory to the maximum extent feasible.

I am personally guided by the transformative paradigm, which recognizes that reality is subjective, and can be shaped by political, social, cultural, and other values (Mertens, 2007). I believe strongly in better standards of living for all of the world’s children. I believe that the CRC provides a good foundation for international cooperation and coordination in the interest of children. I hope that this study
contributes to the dialog necessary for greater U.S. involvement in international human rights related to children, whether or not the U.S. ultimately ratifies the CRC.

Site and Participants

The topic of this research is highly specific and demands that participants have a relatively high level of knowledge. Thus, recruitment and sampling procedures were challenging and required a great deal of perseverance. Recruitment was by far the most difficult part of the research. Each participant needed to be extremely knowledgeable about the CRC and willing to discuss his or her beliefs and opinions in detail. Many of the participants are nationally known experts on law, education, homeschooling, and related topics.

The adequacy of sample size for qualitative research is not fixed. Patton (1990) pointed out that size is “subject to peer review, consensual validation, and judgment” (p. 186). He stressed that the important factor is that the procedures be clearly explained so that the research can be critically reviewed. Sandelowski (1995) stated, “determining adequate sample size in qualitative research is ultimately a matter of judgment and expertise” (p. 179). The most challenging group for recruitment in this study was Case One, opponents of U.S. ratification. Case One consists of only three participants despite great efforts and utilization of multiple sampling procedures. Pro-ratification participants were far more receptive to recruitment efforts. So, Case Two includes eight participants.

I used purposeful sampling procedures in order to find participants for the research, ultimately selecting individual participants based on what could be learned from each (Stake, 1995). Participants were selected because “they can purposefully inform an
understanding of the research problem and central phenomenon in the study” (Creswell, 2007, p. 125). Each case was information-rich (Patton, 1990) and meaningful.

I employed maximum variation sampling in order to obtain diversity of perspective and to identify patterns within and between the two cases (Miles & Huberman, 1994). The diversity of perspectives in this study are subtle but meaningful. For example, a law professor and an education professor each brought unique perspectives, training and thought. I recruited from as many academic disciplines as possible. I also recruited from conservative organizations, lobbying groups, and professional organizations. All participants share some qualities. For instance, they are all relatively highly educated. However, there are pronounced differences in their life experiences and perspectives.

I also relied on snowball or chain sampling. Patton (1990) said that this technique relies on recruitment “from people who know people who know what cases are information-rich, that is, good examples for study” (p. 182). Many participants suggested other participants. Some of the participants’ suggestions, particularly from Case One, declined to participate.

There was no fixed research site for the study, as the participants were bound by their connection to the research topic, not by any physical or professional connection. I met or communicated with each participant at the location of his/her choosing.

Data Collection

Qualitative researchers gather evidence from many sources and in many ways (Erlandson et al., 1993). Yin (2009) specifically recommended that case study
researchers in particular collect as many forms of evidence as possible, including interviews, documentary evidence, and observation. Stake (2005) recommended that case researchers investigate the nature of the case, the case’s historical background, as well as the economic, legal, and aesthetic contexts of the case.

I collected as many forms of case study evidence as possible. Each participant had individual constraints and offerings. Thus, I collected information specific to each participant. All participants had documentary evidence available, including published works in books or journals; transcriptions of past interviews or speeches; and blog entries. I was able to attend a public speech given by one participant.

Interviews were the primary method of evidence gathering in the study. The interviews were relatively informal and conversational. I hoped to “derive interpretations, not facts or laws, from respondent talk” (Warren, 2002, p.83). I conducted one primary interview with each participant, up to 60 minutes in length. I also had follow-up interviews with some participants, ranging from 10 to 30 minutes in length. These interviews were conducted if clarification or additional information was necessary.

Interviews were recorded and transcribed verbatim, except in two cases. Two participants consented to be interviewed, but did not want to be recorded. I took extremely careful notes during those interviews in order to have precise data for analysis. Interviews were conducted in person and via telephone, depending on circumstance and proximity. Participants live and work throughout the United States, so telephone interviews were often practically necessary. I received approval from the Institutional
Review Board (IRB) for a telephone interview introduction and specific approval for communication with participants via telephone or other electronic means.

The interview questions developed naturally out of the research purpose and research questions. The questions are as follows:

1. Please tell me about yourself.
2. How do you describe your general beliefs about the CRC?
3. How do you describe your beliefs about the participation rights contained in Articles 12 through 17 of the CRC?
4. Do you find any CRC articles particularly interesting, offensive, or noteworthy? Why?
5. How do you believe that the CRC does or does not conflict with American cultural, religious, or legal traditions?
6. How do your experiences, cultural beliefs, and religion inform your views relating to the CRC?
7. Do you see any areas available for compromise and bridge building between opponents and proponents (i.e., Convention reservations)?
8. What else would you like to tell me about your views on the CRC?

Data Analysis

Qualitative data analysis is a systematic search for meaning (Hatch, 2002) and is a process, not an event (Erlandson, Harris, Skipper & Allen 1993). Qualitative data analysis and collection are sometimes referred to as a ‘zigzag process’ because the researcher collects data, analyzes it, and then returns to the field to collect more data.
(Miller & Salkind, 2002). Thus, in a sense, initial analysis of the data began with the first collection of data. Formal analysis of the data began after the conclusion of data collection.

I first prepared the data for analysis by transcribing the interviews and reading them multiple times as well as reading and organizing all other sources of evidence, as recommended by Creswell (2007). Creswell (2007) recommended that researchers review “all collected information to obtain a sense of the overall data” (p. 140). I then began coding the evidence by making notes in the margins of the various evidence sources. I used ‘in vivo coding’ which entails using participant words, when possible, to code the data (Creswell, 2005).

Stake (1995) indicated, “two strategic ways that researchers reach new meanings about cases are through direct interpretation of the individual instance and through aggregation of instances until something can be said about them as a class” (p. 74). I identified themes that emerged from the coding process. I conducted both within-case and cross-case analysis as recommended by Stake (2006). I first analyzed the cases independently, identifying themes and sub-themes for each case. I analyzed the themes from the cases in concert, identifying differences and commonalities across the two cases.

Trustworthiness and Credibility

Qualitative research methodologists have devised alternate language and means of conceptualizing validity (Janesick, 2003). Lincoln and Guba (1985) used the terms “credibility”, “transferability”, “dependability, and “confirmability” to replace the terms “internal validity”, “external validity”, “reliability”, and “objectivity”. Trustworthiness
of the research may be improved through a number of strategies, including the following that were employed in this project: clarifying researcher bias; rich thick descriptions; triangulation; and peer debriefing (Creswell, 2009; Merriam, 1998).

First, I attempted to understand, disclose, and manage my own biases relevant to the study. At the outset of the project as well as throughout the research and writing, I strived to identify personal bias. I disclosed these biases in an effort to give readers insight into my reasoning (Creswell, 2008).

Second, I incorporated rich thick descriptions when possible during the writing of the study. Descriptive, insightful, first person language affords readers greater insight into the case (Creswell & Miller, 2000). I used open-ended interview questions in order to encourage participants to use their own words to describe their views; participant quotes were used as often as possible in the writing to support my interpretation of the data.

Third, I used triangulation of data sources to verify themes (Creswell, 2008). Triangulation allows for a more encompassing view of themes and subthemes (Yin, 2009). I used the following data sources for triangulation: interview data; observation and reflection; and written materials. I utilized as many data sources as possible for each participant.

Fourth, I utilized peer debriefing in order to obtain critical review. Lincoln and Guba (1985) stated that peer debriefing is “a process of exposing oneself to a disinterested peer…for the purpose of exploring aspects of the inquiry that might otherwise remain implicit only within the inquirer’s mind” (p. 308). My doctoral committee served as the primary reviewer for the research project.
Ethical Considerations

Ethical guidelines for the conduct of this study were derived from the American Psychological Association (APA). The APA requires that the researcher guard the interests of the participants, including obtaining informed consent for all participants (American Psychological Association, 2009).

I complied with the University of Alabama at Birmingham’s Institutional Review Board’s (IRB) procedural and substantive guidelines throughout the conduct of this study. I received IRB approval for the project under expedited review prior to recruiting participants or corresponding with them in any way. Each participant received a copy of IRB approved informed consent documents.

I took great care to ensure participant anonymity as well as integrity of the research materials. Participants stressed the requirement that their identities be kept confidential. Some emphasized that they could be compromised professionally, if their words were attributed to them. I kept all participant documents in a locked, metal file cabinet, including emails, transcripts, and other data. Each participant was given the opportunity to select a pseudonym. I selected all pseudonyms because none of the participants wished to do so. All participant institutional affiliations were disguised in order to heighten participant anonymity. Additionally, I refrained from using any identifying published materials in order to prevent any identification.
Role of the Researcher

I believe that the United States should ratify the CRC, and believe that ratification can be accomplished with substantial communication and compromise on all sides. Prior to the outset of the project, I had substantial contact with others who supported ratification, but little or no contact with opponents of ratification. Conversely, I had very little personal experience with the organizations that oppose ratification.

I have experience as a lawyer for children, and self-identify as an advocate for children’s rights. I also have experience representing mothers in cases involving children. In that capacity, I acted as a parent advocate in court. I believe that parental rights and children’s rights are not mutually exclusive; they complement each other in most circumstances. At the same time, I have had personal experience with parents whose rights should have been limited in order to protect the health or safety needs of their children.

I belong to or closely follow the work of organizations that support ratification, including the World Organization for Early Childhood Education (OMEP), the Association for Childhood Education International (ACEI), the Campaign for Ratification of the CRC, and the American Bar Association’s Center on Children and the Law.
CHAPTER FOUR

FINDINGS

This chapter consists of three parts: Case One Findings describes the themes and sub-themes for opponents of United States ratification of the Convention on the Rights of the Child; Case Two Findings describes the themes and sub-themes for ratification proponents; and Cross-Case Analysis describes the findings from the cross-case analysis of the two preceding cases. The next chapter, Discussion, frames these findings, places them in context, and introduces reflections on the findings.

Case Study 1: Opponents of U.S. Ratification of the Convention on the Rights of the Child

Participants

Opponents of U.S. ratification of the CRC are not a homogenous group; individual rationales for opposing ratification are diverse and often complex. Nevertheless, the literature suggested some things that unite many opponents (Smolin, 2006). They are often bound by shared religious convictions, for example, as well as adherence to conservative social and political ideas. The three participants in this case were from different states and had different educational and professional backgrounds. Despite the differences, they all were conservative socially and politically, and they were all evangelical Christians.
“Mr. Davis,” a conservative leader in a southern state, was politically active in the state, having served on statewide committees and having lobbied the legislature on various issues. He was an expert on homeschooling and parental rights issues. He was an active blogger, organizer, and speaker. He closely followed the news associated with the CRC since the early 1990s, and supports national efforts to oppose ratification. He self-identified as an evangelical Christian.

“Mrs. Brown” was a longtime conservative activist. She lead a major state conservative group for many years, and long held a leadership position in the national group as well. She had written frequently and extensively about a range of conservative issues, and was knowledgeable about the CRC. She participated in the political arena in many capacities. She self-identified as an evangelical Christian.

“Professor Lee,” a conservative, Christian law professor, was a legal scholar on constitutional matters as well as international law. He had published many scholarly articles about the CRC and related issues. He was active in international and national organizations.

**Themes**

Four themes emerged from the interviews and documentary data: (1) fear/trust; (2) parental rights; (3) worldview; and (4) tangible impact issues. Subthemes were identified for each theme (see Table 1).
### Table 1

**Themes and Subthemes of Case One: Opponents of CRC Ratification**

<table>
<thead>
<tr>
<th>Fear/Trust</th>
<th>Parental Rights</th>
<th>Worldview</th>
<th>Tangible Impact Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial Activism</td>
<td>Disempowerment of Parents</td>
<td>Religious Perspective</td>
<td>Reservations</td>
</tr>
<tr>
<td>Government Overreach</td>
<td>Children Versus Parents Situation</td>
<td>U.S. Constitutional and Sovereignty Issues</td>
<td>Impact</td>
</tr>
<tr>
<td>Committee on the Rights of the Child</td>
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**Fear/Trust.** Issues of fear and trust resonated with all of the participants, both in their writings and during the interviews. Professor Lee best summarized the data on this theme when he said, “The point is, ‘who do you trust’ is a big thing for religious conservatives.” The participants all stressed that they fundamentally do not trust the government, the United Nations, or judges to decide what is best for children. This perspective echoed constantly in the literature, both from participants and organizations with which they were affiliated. Three distinct sub-themes emerged within this theme: (1) judicial activism; (2) government overreach; and (3) Committee on the Rights of the Child.

**Judicial Activism.** The participants cited the judiciary as particularly problematic for them. The formal and informal publications by the participants and/or their organizations referred to “judicial activism” and/or “activist judges.” Professor Lee said, “Religious conservatives do not trust judges and justices to be reasonable in terms of what they view as reasonable.” Mrs. Brown expressed her negative opinion during the interview, saying, “The family law courts in America are a real problem today. They’re
not accountable to anyone.” Mrs. Brown’s organization had countless documents that
chdore various abuses by the activist judiciary; her own writings and interview
transcripts referred to activist judges as a major problem.

The CRC was sometimes characterized by the participants as ammunition that
could be used by judges to further their personal, liberal agendas. Mr. Davis emphasized
that idea by stating, “I have no doubt that if the Convention were there, there would be
judges who would be using that as rationalization for what they want to accomplish.” He
further said, “We do clearly have a problem with activist judges who are looking for
justification for what they want to do. I think that is a great problem.” Mr. Davis’ blog
entries echo this idea, citing the agenda of judges with regard to a range of issues
important to conservatives. Professor Lee said that religious conservatives feel, “Judges
did all these things when they didn’t have any language to work with – so what are they
going to do with this?” His words effectively summarized the interview and the
published materials by the participants; their opinions about the CRC were informed by
their fundamental distrust of government institutions, particularly the judiciary.

Government Overreach. Professor Lee described the fears of the opponents,
saying, “When you focus on ‘children’s rights’ you are really empowering the
government.” The participants indicated their beliefs that the government needs to be
kept in check so that it does not overreach. Each professed a sincere belief in the
importance of limited government. Mrs. Brown referred to the “overreach of government
involvement” in family life, especially with regard to state agencies charged with child
protection. A main platform of Mrs. Brown’s organization focuses on limiting government, and reigning in governmental power.

Mr. Davis’ writings emphasized his suspicion of state agencies and the potential that they have to intrude inappropriately in families. He expressed concerns about the increased reach of the government in people’s lives if the CRC were ratified. For example, he said, “CPS and all sorts of child advocates argue that corporal punishment is tantamount to child abuse. Those are the kinds of things I would expect to see happen if the Convention on the Rights of the Child is adopted.” The participants expressed their honest fears that the government could use the CRC to further a political and social agenda with which they did not agree.

Committee on the Rights of the Child. Participants were uncomfortable with the idea of international intrusion in American family law and family life. Mrs. Brown, for example, passionately stated, “The family is the cornerstone of American society. To turn the whole body of family law over to an international body — instead of being helpful in any way I can imagine — would be a travesty of justice.” She continued, “We’re talking about the Committee on the Rights of the Child with ten ‘experts’ – Do we want ten anybody? I wouldn’t trust ten anybody. Especially when, in all probability, there’s not going to be an American on there. To determine how our children in the United States are going to be treated? I would never see that as wise.” Mrs. Brown’s organization published a variety of materials critical of the United Nations in general, and very suspicious of the possibility of a “nanny state” in which international persons have control over the goings on in the United States.
Professor Lee had mixed opinions on the Committee. He said, “There is a problem with the Committee because some of their reports are very good, and some of their reports – they have certain ideological issues they hit on.” He cited their dislike of corporal punishment, something that most Americans find acceptable. He referred to some of their positions, including corporal punishment, as “culturally absurd in terms of children and their families.” The Committee was deemed by the participants as a suspicious ‘other.’ They did not trust the body to understand Untied States law or culture, and were resistant to the idea that any foreign person or institution could tell American families how to behave.

*Summary.* Issues of fear and trust appeared frequently during the interviews as well as in the documentary evidence from the participants. Anti-ratification participants voiced distrust of the institutions of government and the United Nations. They viewed the U.S. courts with suspicion, fearing that the CRC could be used as a tool for stripping away the rights of individuals and families, and promoting a liberal agenda with which they did not agree. Participants in this group shared the desire to limit government, and to provide checks on the government’s ability to overreach. They distrusted the Committee on the Rights of the Child as a United Nations institution, separate and apart from U.S. culture and tradition.

*Parental Rights*

All participants stressed parental rights themes, both during the interviews and in their writings. They said that they viewed the participation rights in the Convention as
potentially devastating to the traditional family, as it could empower children to act in ways contrary to what the family wanted; they indicated concern about the dynamic that this could enact within families as well as the power relationships it could create among family, child and government. Sub-themes that emerged within this theme were: disempowerment of parents; and creation of a children versus parents situation.

_Disempowerment of Parents._ Two of the participants emphasized that they viewed the Convention as a tool to disempower parents, stripping them of their fundamental rights to make decisions for their children. Mrs. Brown said, “The parents are given the determination from God to know and the determination to do what is truly in the best interests of the child.” The website for her organization included information about the ways that the CRC would disempower parents while simultaneously empowering children, the government, and the Untied Nations.

Mr. Davis, a leader in parents’ rights issues, had a great deal to say about parent rights and had a wealth of material on his website and blog. He was concerned about the usurpation of parental rights by the government and by international bodies. He stated, “We as parents have a fundamental right to direct the education and upbringing of children and this United Nations Convention would dramatically undercut that and be harmful to children.” He was particularly critical of the threats he already sees facing parents, particularly from the government via child protective services. He commented on his ideas about the most appropriate way to protect children. He said, “I think the best way to do that is to empower parents to protect their children. My experience working with CPS and others that articulate their desire to protect children is that they almost see
parents as a problem.” Mr. Davis communicated his profound distrust of child protective services, and his belief that the CRC would cripple parents’ abilities to protect themselves.

The participants indicated that they believe the rights set forth in Articles 12 through 17 are currently reserved for the parents, not the children. The Convention as they indicated would represent a stripping of parent rights, and a transfer of those rights to children. For example, Mrs. Brown said, “Article 14 – freedom of religion – We’re talking about children. I don’t know – some would say the words in these articles could be construed to prohibit children from being taken to church, could prohibit biblical commentary on homosexuality. We wouldn’t know unless we adopted it.” From her perspective, parents should decide those things for their children.

Mr. Davis and Mrs. Brown cited multiple examples of cases overseas where parents’ rights to direct the upbringing of their children are being limited by the CRC. For example, Mr. Davis said, “In Great Britain, you see problems with parents who have problems with sex education and that sort of thing in schools…Those are the sorts of things I would expect to see happen if the United Nations Convention on the Rights of the Child is adopted by the U.S. Senate.” All three participants gave examples of stories they perceived as negative from States where the CRC has been ratified.

*Children Versus Parents Situation.* Participants expressed concern that the CRC could empower children to conflict with their parents over the participation rights, in particular. They shared their specific concern that children could even sue their parents in order to choose their own religion or associate with whom they choose. Mrs. Brown
voiced concern about Articles 12 through 17, saying, “They, it seems to me, give children rights to disregard parental authority.” She cited Article 13, in particular, “The freedom of expression…what does that mean? Does that mean sexually explicit music, films, magazines? Well, we don’t know.” Mrs. Brown’s organization charges that, under the CRC, parents would be powerless to prevent access to or participation in pornography and other things. Mr. Davis said, “I’ve read some stories about children having a right to choose their own religion so that parents can’t force them to go to church.” He expressed great concern about this dynamic, particularly relating to the government stripping parents of the right to direct the religious upbringing of their children.

Summary. Parental rights issues were at the very front of opponent discussions about ratification. The participants expressed their views that conservatives are alarmed by the idea that the CRC could take rights away from parents and hand them, wholesale, to their children. They actively oppose government intrusion in the family, and want to protect the traditional control that parents have over the upbringing of their children. They viewed children’s rights as being in direct conflict with parent’s rights.

Worldview

Mr. Davis said pointedly, “We all agree that we want to protect children, but there is a fundamental disagreement on how we get there based on our worldview.” Professor Lee framed the issue, saying, “it relates to how you conceptualize State, parent, society, child, and their relationship.” The three participants all identified a somewhat nebulous worldview difference between opponents and proponents of ratification. They sometimes
specifically pointed to their beliefs that they have differing perspectives on worldview issues. The difference was rooted in profound philosophical and cultural views. The differences identified in the data constitute the following sub-themes: (1) religious perspective; and (2) U.S. constitutional and sovereignty issues.

Religious Perspective. All participants discussed religion to some degree. Religion was also prominently featured in the writings of each participant; each was an active Evangelical Christian. During the interviews, Professor Lee discussed religion in a descriptive and philosophical way. Mrs. Brown and Mr. Davis communicated their beliefs more directly and made a direct connection between their opinions about the CRC and their faith.

Professor Lee said, “pro-family groups…are generally reflexively opposed to the CRC.” He cited concerns about “abortion policy and things related to international family planning groups.” Abortion concerns were addressed by the participants because of the word “privacy” contained in the CRC. The word is seen by some as synonymous with abortion rights because it was the basis for the Supreme Court’s decision in Roe v. Wade. Mrs. Brown cited issues of reproductive rights associated with Article 16, which sets forth a right to privacy. She said, “It’s also debatable where this treaty would come down on abortion. We know that the ‘so called’ right to privacy was the basis for Roe v. Wade.” Her writings were very critical of reproductive rights, especially extending such rights to children.

The participants cited the connection between religion and the very concept of rights in the United States framework. Mrs. Brown also made a connection between
religion and the Constitution. She asked, “Are we going to base this whole area on the U.S. Constitution which provides that rights are unalienable from God and cannot be taken away?” She also repeatedly stated that parents are the persons charged by God with responsibility for family decision-making.

**U.S. Constitutional and Sovereignty Issues.** The great importance of U.S. sovereignty was cited by each of the participants. The participants stressed the paramount importance of United States sovereignty. Professor Lee related that many of the concerns held by conservatives, “are national sovereignty issues.” Mrs. Brown discussed a series of potential problems that the participation rights could trigger, including issues associated with religion, homosexuality, national pride, and English language. Regarding the discussion of those issues, she stated, “We’re having a serious debate in this country. We need to be able to take that on our own grounds, not no international grounds or under international law.” She further discussed Article 17, stating that it could cause schools to allow further degradation of the English language and erosion of pride in U.S. history. She stressed, “I don’t think we want to turn it - education – over to the U.N. This is not a good idea in terms of our country’s culture.”

All of the participants characterized themselves as strict constructionists of the U.S. Constitution. Mr. Davis related, “The Supreme Court justices are already quoting laws from other countries. That is greatly disturbing to those of us who believe in a strict constructionist approach.” Mrs. Brown and her organization frequently publish materials related to the merits and importance of strict construction in interpreting the Constitution. The participants were concerned that justices seek out original intent when interpreting
laws and rights, and that they not consult international decisions or documents when deciding cases.

*Summary.* The participants in this group had a distinct worldview, influenced by their religion, conservativism, and constitutional interpretation. They were religious conservatives with strong beliefs related to their religion. They were strict constructionists of the U.S. Constitution. Their worldview was a major factor in their opposition to ratification.

*Tangible Impact Issues*

Opponents of ratification took seriously the possible impact of ratification. Mr. Davis’ and Mrs. Brown’s writings were full of predictions about the changes that ratification would bring about for American families. They strongly stated that the U.S. is completely bound by the treaties it ratifies and that it should be prepared to adhere strictly to the terms of all ratified treaties. Professor Lee, on the other hand, shared a substantially different perspective on the impact of ratification. He indicated that ratification would have little to no impact because the U.S. would ratify the treaty with a number of reservations that would effectively nullify much of its content. The sub-themes relating to tangible impact issues were: (1) reservations; and (2) impact.

*Reservations.* Findings were mixed on the topic of reservations, primarily because Professor Lee had an exceptionally strong base of knowledge about reservations. Professor Lee spoke about the importance of reservations, understandings, and
declarations (RUDs) more than any participant. He was considered a national expert on RUDs, and has written a great deal about their importance. He spoke about people’s understanding of the CRC, saying, “The other thing they just don’t seem to understand is that almost or essentially every human rights treaty that the U.S. has ratified has had attached to it a non self-execution provision which effectively means that none of this is going to mean anything in the courts. They talk about the treaty – when they cheerlead – as though it is going to have all these transformative effects.” Professor Lee specifically identified reservations as a way for conservatives to negate provisions they dislike, and to moderate the negative effects of the treaty. Specifically, he pointed out the importance of non self-execution provisions. He declared, “I don’t think you’ll ever get a human rights treaty through the U.S. Senate without a non self-executing provision.” The other two opponent participants said they did not know enough about reservations to comment on them. They disregarded the idea that reservations could negate treaty provisions or that they would require further Congressional action in order to take effect. Both participants cited the traditional notion that treaties become the supreme law of the land.

Impact. The two non-lawyer participants were very concerned about the impact that ratification could have on education, family law, and other areas. All three participants cited the concerns of homeschooling families. Mr. Davis indicated, “The homeschool community is very concerned about the possible impact.” His concern was supported by examples of homeschooling being outlawed or constrained in ratifying States.
Mr. Davis and Mrs. Brown communicated their beliefs that the treaty language would automatically become the law in the United States upon treaty ratification. Mrs. Brown cautioned, “When the Constitution says that treaties are the supreme law of the land – and we sign the treaty, then those of us who believe in the rule of law would have to say that we would adhere to the treaty. We would have to assume that would be what our nation would do.” The constitutional obligations were very clear to Mrs. Brown and Mr. Davis.

Professor Lee had different ideas about the overall possible impact, largely because of his knowledge about RUDs as well as his understanding of the ways that treaties are ratified. He did, however, express his opinion that the concerns of opponents are valid and should not be “made fun of.” He said that the legalistic culture of the U.S. poses a real problem if the CRC were ratified without RUDs, but completely dismissed the idea that it could be ratified without RUDs. He ultimately concluded, “I just don’t think it’s going to do a huge amount of positive.” The only major positive effect he shared was the following: “It will strengthen the hand of the U.S. diplomatically.” This improvement was nevertheless deemed important for governmental and non-governmental organizations.

*Summary.* The participants in this group verbalized mixed opinions about the possible impact of the CRC. Professor Lee’s opinions are not characteristic of the literature from anti-ratification groups. They are, however, common among law professors and others well-versed in treaty ratification procedures and international law.
The other two participants’ ideas about the possibly devastating effects are more in line with published materials from their groups as well as other anti-ratification groups.

**Case One Summary**

Case One participants expressed similar ideas about ratification of the CRC. The following themes emerged from the data: fear/trust; parental rights; worldview; and tangible impact issues. Within the fear/trust theme, three sub-themes were identified: judicial activism; government overreach; and Committee on the Rights of the Child. The participants expressed their lack of trust in each of those bodies, and believed that ratification could inappropriately empower those groups.

The following sub-themes were identified for the parental rights theme: disempowerment of parents; and children versus parents situation. Participants expressed their belief that ratification would disempower parents in family decisionmaking, and that it could encourage children to sue their parents or otherwise confront them in inappropriate ways.

The worldview theme also had two sub-themes: religious perspective; and U.S. Constitutional and sovereignty issues. Among other things, participants expressed their ideas that ratification was incompatible with their religious views, and that the CRC infringed on U.S. sovereignty.

The final theme, tangible impact issues, had two sub-themes: reservations and impact. Only one of the participants expressed the belief that the CRC would not have a major impact, particularly if ratified with reservations. The other participants viewed ratification as potentially devastating.
Case Study 2: Proponents of U.S. Ratification of the Convention on the Rights of the Child

Participants

The proponent participants in this study did not share the same philosophical, religious, educational, or professional backgrounds. However, they did share a common interest in children and a common belief in children’s rights.

“Professor Lamb,” an early childhood educator and CRC activist, was an active proponent of ratification, and served in support of ratification at the United Nations. Through her writing and speaking, she encouraged educators to become more active in a variety of children’s rights matters. She believed strongly that children should be educated about their rights and should be empowered to act on their own behalves.

“Professor Smith,” a law professor, was one of the leading proponents of U.S. ratification of the CRC. He is extremely knowledgeable about all aspects of the CRC as well as other human rights issues. He spoke frequently to audiences in the U.S. and around the world. He has written extensively about the CRC.

“Professor Dell” was an early childhood educator at a major university. She was formerly a policymaker on education matters in a presidential administration. She was extremely knowledgeable about the CRC as well as other human and children’s rights issues.

“Dr. Sands” was an international education leader with many years of teaching experience. He has spent time in the U.S. and elsewhere, and has expertise about CRC implementation in a State that has ratified the CRC.
“Mr. Bell,” an attorney for children and proponent of children’s rights, was active in state and national groups, and writes frequently about children’s rights. He was passionate about child representation and human rights generally.

“Mr. Odell” was a leader in an international education organization. He was a strong proponent of children’s rights, especially education rights.

“Mr. Hatch” was a CRC proponent, currently employed by an international educational organization. He has experience at UNESCO and other organizations that are actively involved in CRC issues. He was knowledgeable about international education, and particularly the intersection of education and the CRC.

“Professor Allen” was a law professor with many decades of experience with children’s rights in the U.S. and world. He was active in international organizations, and had a long history of support for children’s rights.

Themes

Four themes emerged from the data: (1) rights; (2) tangible impact; (3) trust/fear; and (4) worldview. Subthemes were identified for each theme and presented in Table 2.

Table 2

| Themes and Subthemes of Case Two: Proponents of CRC Ratification |
|--------------------------------|-----------------|----------------|----------------|
| Rights                     | Tangible Impact | Trust/Fear     | Worldview      |
| Children’s Rights          | Optimism        | Committee      | Cultural Disconnect |
| Parental Rights            | Pessimism       | Rights of the Child | U.S. as Part of the World |
|                           | Reservations    |                 | Reservations    |
Rights

Proponents of U.S. ratification spoke a great deal about rights, including human rights generally, children’s rights, and parent rights. They fundamentally believed that children do have rights, and should have the kinds of negative and positive rights contained in the CRC. Beliefs about rights were the most prominent theme in the case; they came up frequently and inspired great passion in the participants.

Children’s Rights. Professor Dell spoke confidently about children’s rights in a number of contexts. She communicated her belief that the CRC represents a truly universal set of rights for children, and emphasized, “I think what forms the core for children really fits across so many cultures and across so many types of people’s backgrounds that they really do fit the definition of ‘universal rights’. ” She was, however, realistic about how Americans conceive of children and their rights. She was an early childhood educator and thus spoke about the education rights, in particular. She referred to the longstanding idea from the Supreme Court that children do not have a ‘right’ to a curriculum. She said,

Early on, people did not see the child as having a right to curriculum – they started to see it as a shared right between the parent and the teacher. So in some of the early cases, we got signals that the federal court system would not be looking at the child as a measure of whether the protection reached the student. They were looking at the parent as a measure of whether the right should be extended or not extended.
Dr. Sands spoke with particular interest of the educational rights of children, and the link between the CRC’s participation rights and children’s educational rights. He also made a clear link between the rights of teachers and students, saying, “I would venture to say that, given the emphasis there has been on testing since 1990, in certain rights, I think the rights of children and teachers have taken a back seat because governments want to control and measure what is not measurable.”

Mr. Hatch consistently made a connection between children’s rights and children’s betterment during the interview. He viewed rights as potentially transformative for children. He said, “Through the rights to participate, right to be literate…you create freedom – freedom from poverty, illiteracy.” Mr. Hatch was passionate about the possible impact of the rights on the lives of children, especially children in poverty.

Mr. Bell spoke in favor of extending numerous participation rights to children, and expressed frustration at opposition efforts to prevent child participation in decision making, speech, or in other capacities. He explained, “The CRC came from a Western liberal democratic tradition – like In re Gault – to empower children.” He has published several articles outlining different kinds of child participation rights, and said, “It generated remarkable personal attacks against me, especially for pushing the nanny state.” His writings were consistent with the opinions expressed during the interview and follow-up communication. Mr. Bell spoke in great detail about Article 12, which outlined children’s rights to speak on their own behalves in matters affecting them. He indicated that current state laws do not necessarily recognize the child as having this right, although many state family codes do provide for this in some manner. He
verbalized, “I personally do not think that having a lawyer without undivided loyalty to
the child can meet the UNCRC requirement of ‘the right to express those views freely in
all matters affecting the child’ but there are others who disagree.” Mr. Bell staunchly
supported extending rights and protections to children, including when those rights
require representation by an adult legal representative. Mr. Bell has represented severely
neglected and abused children in court; he believed in a direct connection between
extending rights to children and being better able to protect them from harm.

Professor Lamb was familiar with the participation rights, indicating that they
resonated with her because of her experiences as an educator. She did not find any of the
articles as particularly new or transformative on their own. Regarding Article 14,
freedom of thought, conscience and religion, she said, “It kind of states the obvious. And
I think that there are parents who get upset about the article. The truth is that children
have always had choices. It’s sort of a nonissue for me, but I know that there are parents
who are upset by that.” Freedom of association, Article 15, was also singled out by her
as meaningful. She said, “We have to consider the child’s developmental age, and at
which point they are able to pick people to associate with who are solid citizen types. I
think about it from a developmental point of view. But I think about everything from a
developmental point of view.” Thus, she envisioned an emerging set of rights and
responsibilities that mature with the maturation of the child. Professor Dell had a similar
conception of rights as those which are expressed in the CRC; she said, “It’s an evolving
standard.”

Professor Smith has written extensively about children’s rights in the United
States and around the world. His writings describe the numerous ways in which he
believes children in the United States already possess the rights enumerated in the CRC. During the interview, he pointed out the degree to which children in the United States already have many of the participation rights when he said, “We already recognize so many of the rights…the courts have spoken on many of the issues.” Professor Dell agreed with the idea that children in the United States receive a large measure of the CRC’s rights. She said, “I think we have exceeded in a lot of the rights…If we agree to the covenant, we would be agreeing to do what we already do, probably in 99% of the cases.” Professor Dell and other participants stressed their beliefs that children in the United States are well-protected and are generally provided for adequately.

*Parental Rights.* Proponents of ratification generally viewed the CRC as supportive of parental rights, rather than as a threat to them. Professor Lamb said, “The opposition says that it threatens the family. I see it as supporting the family.” Professor Smith dismissed the notion that the CRC would interfere with parental rights because this kind of civil rights structure would only be enforceable against the State. He stated that the CRC “would certainly not be enforceable against parents.” He eschewed the idea that children would start suing parents or disregarding parental authority, saying, “I just don’t see that happening.” He very confidently dismissed the concerns of opponents.

Mr. Odell is a longtime supporter of ratification and views the CRC as supportive of families. The opposition, he said, “has strong beliefs about the social fabric of society. They view this as encouraging the breakup of the family.” He continued by saying that opponents have a “sense that the federal government is intervening in the social fabric of our society.” Mr. Odell has had substantial contact with opponents in
various professional contexts, and was respectful of their concerns even though he disagreed with their position. Mr. Bell was even more critical of opponents citing parental rights concerns when he said, “Some people think there should be no second guessing of parents. That tension has been there a long time but has gotten a lot worse.” Mr. Bell acknowledged the concerns, but highlighted the growing chasm between opponents and proponents of children’s rights as well as ratification of the CRC.

Mr. Hatch questioned the opponents of ratification who fear that the United Nations could have a major role in American family life and said, “We are a strong country. How could the UN come in and tell you how to raise your children? Even the developing countries where they don’t have the resources, there it has not happened. It is unheard of.” Mr. Hatch did not really understand opponents’ concerns. He was focused on the larger issues surrounding the CRC, especially on the ways he believed it could improve the lives of children in poverty.

Summary. Case Two participants spoke frequently about both parental and children’s rights. In particular, many expressed their opinion that the CRC does not impede parental rights. Many stressed the idea that children’s rights and parental rights are not mutually exclusive, and that increased child rights do not imply decreased parent rights. Some participants asserted that the CRC is, in fact, supportive of families. Furthermore, some participants pointed to their beliefs that children already possess many of the rights set forth in the CRC.
Tangible Impact

Participants in this case voiced mixed ideas about the possible impact of ratification. Each participant thought that there would be an impact, but there was no consensus as to whether the impact would be positive or neutral. The three subthemes for tangible impact are the following: (1) optimism; (2) pessimism; and (3) reservations.

Optimism. Professor Lamb, who was confident about the positive impact of ratification, insisted that the CRC would have a dramatic impact because she believed that the CRC has brought about changes in States that have ratified. She declared, “In fact, there was just a study out about that (the impact of ratification). It documented the impact in a lot of areas…that it has translated into law in a number of countries.” Professor Smith also stressed the positive impact during the interview and especially in his writings about the CRC. His research indicated that the CRC has positively impacted the lives of children. Mr. Hatch indicated that the CRC could fundamentally change opportunities for children because the CRC “is really proactive, not reactive, enabling an environment for children.” Through his work, Mr. Hatch has worked closely in States that have ratified the CRC, and believes that it has been a useful tool for changing attitudes and policies.

Professors Smith and Lamb viewed the CRC as a framework for the U.S. to use in order to make changes, not as a magic bullet that would automatically translate in to major changes for children. Professor Smith related, “It provides the framework for the United States to follow.” Professor Lamb agreed with this notion of a framework, saying, “Once it is ratified, everyone has to roll up their sleeves and get to work because
there’s so much to do.” Mr. Hatch was also supportive of this idea. He said, “It’s a framework; it is not a law. It really gives nations a common framework to talk about children’s rights.” These participants were all aware of the potential impact of reservations, but focused on the meaning and impact of the ratification gesture rather than the specifics of enforceability. For them, it did not necessarily matter if the CRC were enforceable without further Congressional action; the document could have meaning even without direct enforceability.

Disillusionment. Some proponents expressed doubt that ratification would have any substantial positive impacts on the lives of children. The pessimism of some participants echoed in their written works, although their interview responses were more blunt than their writings. Their pessimism resulted from a combination of disillusionment with international law and exhaustion from years of dealing with opponents of children’s rights and CRC ratification. Professor Allen related, “I am not impressed with international law. It always struck me as a way for big States to get little States to do what they want.” He was pessimistic about prospects for ratification as well as the potential impact of ratification. He believed that moving forward might seem to Congresspersons as, “engaging in empty acts.” Mr. Odell echoed this sentiment by asking, “Is this paper liberalism or are we going to abide by it?” These participants were concerned about ratification without commitment to the CRC’s principles.

Dr. Sands questioned the tangible impact that ratification has brought about in other States, both in developing and developed States. For example, he said, “Child poverty hasn’t gone down by any means.” He indicated that educators around the world
have not been utilized to help improve conditions for children. He said, “There hasn’t been an effort to involve the people who essentially would make a difference if the conditions were right.” He stated that he wanted educators to be more empowered to advocate on behalf of children and to teach students about rights.

Mr. Odell has spent many years unsuccessfully lobbying for ratification, and was pessimistic about future prospects. He concluded, “Most Senators don’t think it would do much, anyway.” He indicated that no one in Washington D.C. is willing to spend the political capital required to achieve ratification, emphasizing, “Legislators will follow the easiest course…which is not voting for it.” Professor Allen agreed with this idea, but added further pessimism based on his belief that the CRC would be rendered meaningless through reservations, even if ratified. He questioned, “Why should the Senate go forward with something that is meaningless anyway?”

Reservations. The legal experts all commented on the issue of ratifying the CRC with RUDs. Professor Smith said, “I don’t think there is any way it would be ratified without a non self-execution provision.” However, he still thought that the U.S. would be obligated to strive to do better for children, even with strong RUDs. At the same time, he indicated the U.S. should “try to limit the RUDs, when possible.” He tacitly accepted the presence of RUDs.

Mr. Hatch welcomed possible reservations, perhaps because he is so familiar with the reservations other States made when ratifying. He said, “If you sign it, you can have reservations. You can say that Articles 12 through 17 will be customized to local law if
you have an objection.” Mr. Hatch pointed to reservations made by other States, and emphasized that they are extremely common.

Professor Dell strongly opposed ratification with such substantial reservations that render the CRC meaningless. She said that the United States should be prepared to adhere to it and should be honest about the consequences. She stressed, “I believe that our country should strive to have every decision it makes with regard to other countries – make that decision a real one, one that we’re committed to – as opposed to a decision that is mere words.” She continued to say that she did not think it bad that the U.S. has taken so long to ratify, particularly if the ratification delay means that the United States takes the matter more seriously. She verbalized, “If we are holding off on ratifying because we need to have assurances from Congress or agencies that we are prepared to own the consequences of that ratification, there’s a good reason for the delay.” Professor Dell had a more positive take on the United States’ failure to ratify than the other Case Two participants.

Summary. Participants expressed quite different views about the impact of ratification as well as the role of reservations. Some stated strong disillusionment about the possible impact as well as the state of international law in the U.S. more generally. Others believed it could be a valuable tool for guiding U.S. law and policy relating to children.
**Worldview**

Pro-ratification participants focused on maintaining a broad, encompassing worldview. They often referred to the international community in positive ways, and believed that the U.S. should be an integral part of the human rights world. Two major subthemes emerged from the data: (1) cultural disconnect; and (2) U.S. as part of the world.

**Cultural Disconnect.** The data were mixed about participants’ perceptions of cultural disconnectedness of the U.S. Mr. Odell noted, for instance, that there are substantial differences in the way people view children, and that these differences affect their ideas about ratification. He stressed, “They are not opposing child wellbeing, but have different ideas about it.” Mr. Bell echoed the idea of substantial differences, but framed the issue in more dramatic terms when he said, “This is a tiny part of a much larger battle over what the country should be like.” Mr. Bell consistently pointed to the divide in perspectives in the United States.

However, other participants disregarded the idea of cultural disconnectedness altogether, or downplayed the importance of it. Professor Smith, for example, declared, “I just don’t think there are ‘two Americas’.” Professor Allen said that the CRC was written so that it could accommodate the differences in traditions in the U.S. However, she stressed the idea that the United States is bound by one set of laws. She said, “There’s one law that holds in the United States.” Professor Allen also emphasized the flexibility of the CRC. She said, “I also feel that it (the CRC) is framed broadly enough to represent the pluralism that we have in America…of religious and cultural traditions.”
Professor Allen and others mentioned the fact that the CRC was written in a way that it could accommodate numerous cultural and religious traditions.

Professor Bell indicated that most people in the country could agree with the principles of the CRC if they were educated about them and given adequate assurances. She emphasized, “There’s no block of folk you can fool all the time. I don’t think the arguments made around human rights are aimed at the lowest common denominator.” Professor Bell continually stressed her belief that people should be educated and that they could make informed decisions with adequate knowledge.

_U.S. as Part of the World._ The pro-ratification participants indicated pro-international attitudes, in general. Many of them belong to international organizations, communicate and coordinate with people around the world, and generally believe in strengthening international ties. Professor Smith said, “We have a lot to learn (from other States)…We must do better for children.” Professor Lamb related, “I believe the U.S. should be partners in the world community. Not ratifying separates us from the world. The CRC guides all of UNICEF’s work and other NGO’s work…It’s at the core of all education and development work.” Professor Lamb indicated her embarrassment that the United States had failed to ratify.

Professor Smith referred to the Committee on the Rights of the Child when he said, “I’ve heard all sorts of things about the Committee…who they are and what they can do.” He welcomed the idea of an international body of experts looking at U.S. policies and laws. Professor Lamb also welcomed the input of the Committee on the Rights of the Child and said, “They make recommendations, not mandates. There’s
erroneous information out there. I’ve met people on the Committee and they seem perfectly sane.” Professor Lamb had a consistently welcoming attitude toward international coordination and commentary.

Professor Allen stressed the need to make the U.S. more a part of the international legal community. He referred to another international treaty ratified by the United States, noting his belief that the Untied States formed the language so that it does not have to adhere to the treaty. With regard to that treaty, he said, “The U.S. is completely excepted from the rules for the rest of the world.” He expressed his concern that the Untied States should be brought closer to the international community in order to improve ties for a variety of practical reasons, including better enforcement of child custody and support.

Mr. Hatch referred to his desire to make every State accountable, including the United States, when he said, “This particular instrument is going to make nations accountable. I don’t think we necessarily account for everything we do. We preach things but we don’t practice them at home.” Mr. Sands expressed his hope that the U.S. and other wealthy States would strive to do better, and would develop a more supportive relationship with poorer States. He stressed, “It’s like people who go overseas to do work. They are less inclined to help to learn to fish than to help them fish. It’s top down rather than a real mentorship.”

Professor Dell spoke of the need to ratify only if we are prepared to follow the spirit and terms of the treaty. She declared, “We intend to sign it because we intend to enforce it internally and because we intend to join with others to enforce it globally. You gotta mean what you say and say what you mean.” Professor Dell believed in the contents of the CRC, and believed that the United States would benefit from ratification.
However, she was gravely concerned that ratifying without commitment not undermine respect for the Untied States in the world.

**Summary**

Pro ratification participants all expressed a desire for greater incorporation of the U.S. in the world community. They expressed their desire for the U.S. to be taken more seriously as a world leader in human rights, especially children’s rights. Participants voiced mixed opinions about whether or not there is a cultural divide in the U.S. that has affected CRC ratification.

**Case Two Summary**

Four themes emerged from the Case Two data: rights; tangible impact; trust/fear; and worldview. Sub-themes for the rights theme were: children’s rights and parental rights. Participants frequently expressed opinions about children’s rights, often conveying their strong beliefs in the existence of these rights. Further, they sometimes expressed the belief that children’s rights and parental rights are compatible.

Participant data differed regarding the tangible impact of ratification. Three sub-themes were identified for the theme: optimism, pessimism, and reservations. Participants were sometimes very optimistic or very pessimistic about the impact of ratification in the United States. The majority of the participants accepted reservations as an inevitable part of treaty ratification.

Case Two participants expressed little fear of governmental institutions, particularly the Committee on the Rights of the Child. The participants generally
expressed trust and openness to the body as well as to the influence that ratification would have on United States governmental institutions.

Two sub-themes emerged within the worldview theme: cultural disconnect, and U.S. as part of the world. Participants expressed different opinions about the degree to which people in the United States are culturally disconnected. However, all expressed a desire for the United States to be more closely integrated with the rest of the world. All were extremely welcoming of greater cooperation and coordination.

Cross Case Analysis

The two cases, opponents and proponents of ratification had identical themes; however, the sub-themes and message of the themes differed substantially between the two cases. There was very little consistency or overlap between the two cases. The following themes emerged in both cases: (1) rights; (2) tangible impact issues; (3) worldview; and (4) fear/trust. This cross-case analysis discusses the four themes in terms of findings in each case.

Rights

Participants in the two cases had different rights paradigms for the family. Their views were incompatible, and thus difficult to reconcile. Participants in Case One only discussed children’s rights as they relate to parental rights; they often mentioned children’s rights as being in direct conflict with parental rights. They indicated that the participation rights granted to children under the CRC would undermine and dissolve parental rights. Case One participants did not acknowledge the existence of children’s
rights, apart from the rights of the family. By contrast, Case Two participants frequently spoke about the rights of children. They expressed their views of children in a fundamentally different way than Case One participants, and characterized children as independent rights-bearers. Case Two participants generally averred that the rights contained in the CRC, including the participation rights, would not diminish the rights of parents. In fact, they discussed their beliefs that the CRC is supportive of families.

Case One participants were especially concerned that the CRC could allow children to sue their parents for the rights enumerated in the document. They viewed this outcome as the natural extension of the CRC’s language. Case Two participants dismissed the idea that children could sue their parents for their rights under the CRC, and stressed that the CRC would be enforceable against the government alone.

Tangible Impact Issues

The findings of the cross-case analysis for tangible impact issues are interesting, partially because of the highly mixed findings within the cases. Two of the three participants in Case One took seriously the potential negative impact of CRC ratification. They voiced concern that it could fundamentally change U.S. law and policy. Some of the Case Two participants stated that ratification could positively affect children in the U.S., but asserted that the CRC is just a framework and a starting point for change. Other Case Two participants indicated pessimism, expressing their concern that the CRC would have little positive impact if ratified.
**Worldview**

Case One and Case Two participants differed greatly on issues involving their worldviews. Case One participants often mentioned their faith as informative to their beliefs about ratification and about child participation rights. Case Two participants rarely discussed issues of culture, religion, or upbringing. Case Two participants all asserted that the U.S. should be a more integrated part of the world community. Case one participants expressed concerns about U.S. sovereignty and the possible negative impact of internationalism.

**Fear/Trust**

Case One participants often discussed their distrust of government institutions, particularly as they relate to the family. They frequently discussed judicial activism, in particular, and felt that governmental bodies could use the CRC to intrude on the family. They were very resistant to the idea of the Committee on the Rights of the Child, and the possibility that an international body could comment on or regulate the American family.

Case Two participants did not express the same kind of fear of government overreach, judicial activism, or international intrusion. They discussed issues of trust and fear, but primarily because they wished to contrast their own views with those of ratification opponents. Their discussions of the Committee on the Rights of the Child revealed a more trusting perspective.
Summary

The cross-case analysis revealed very little overlap between the expressed views of Case One and Case Two participants. Themes for the two cases coincided to some degree, but the findings in each group were dramatically different. These findings are consistent with the broader literature, included in the next chapter.

The opponents and proponents in this study had fundamentally different ideas and perspectives on a variety of issues. Case One participants viewed parents as the rights-holders in the family, and looked upon the very idea of children’s rights with suspicion. Case Two participants acknowledged children’s rights as a fact in the United States, asserting that the CRC rights scheme actually supports parent’s rights while establishing children’s rights. Case One participants often framed the ratification discussion in terms of worldview-type issues including religion and national sovereignty. Case Two participants infrequently framed the issue that way, instead stressing inclusiveness and flexibility. Case One participants often expressed their distrust of government institutions, and feared that the CRC would arm the government with tools by which they could take away parental rights. Case Two participants did not express fear of the government, but did address the concerns of opponents of ratification. Participants in both cases expressed a variety of opinions about the possible impact of ratification on laws and policies in the United States.
CHAPTER FIVE
DISCUSSION

United States Supreme Court Justice Ruth Bader Ginsberg wrote, “A prime part of the history of our Constitution is the story of the extension of constitutional rights and protections to people once ignored and excluded” (United States v. Virginia, 1996, p. 557) when the Court forced Virginia to allow women to attend the Virginia Military Institute. In the decision, Ginsberg emphasized the adaptable nature of the United States Constitution. Indeed, the Court has played an instrumental part in expanding the breadth of the Constitution to encompass groups that were previously excluded from its protection.

The framers of the U.S. Constitution did not conceive of children as rights-holders. Instead, they viewed them as chattel, property to be managed by their fathers. The child protection movement slowly changed the lives of children, including orphans, illegitimate children, and children in poverty (Hawes, 1991). The international community and the laws and policies of the United States increasingly addressed children’s needs, which are reflected in numerous treaties, statutory changes, and caselaw (Bennett Woodhouse, 2008).

The CRC is the current incarnation of human rights thinking as applied to children. Ratification is the primary goal of many children’s rights activists, who believe strongly in its potential (Campaign for U.S. Ratification, 2010a). On the other hand, preventing ratification is a central objective of many groups in the United States, who
believe that it strips rights reserved for parents and also undermines the sovereignty of the U.S (Parentalrights.org, 2010). I found this dichotomy compelling, and thus conducted this research study in order to explore the philosophical, political, social, and religious issues that fuel the debate.

Overview of the Study

The United Nations Convention on the Rights of the Child is the most widely ratified human rights treaty in history, with 193 ratifying states. It sets forth a range of rights guaranteed for children, including provision, protection, and participation rights. The participation rights, Articles 12 through 17 were the focus of this study because they are of special interest to educators and because opponents of ratification frequently cite them as objectionable. The participation rights include staples of the United States Constitution like freedom of religion, speech, and press.

Qualitative research was selected in order to explore the research goals, and it was especially suited to the unquantifiable opinions and beliefs I investigated. Multiple case study met the practical demands of the research, exploring two independent groups united by a topic. I selected participants for each case through a variety of purposeful sampling techniques. I conducted interviews with all participants and had additional communication, usually electronic, with some. Additional data collected for the research included a wealth of documentary evidence, such as journal articles, books, blogs, published transcripts from past interviews, and other data. I analyzed all data within each case and in cross-case analysis.
The following research question guided the research: “How do proponents and opponents of ratification of the Convention on the Rights of the Child in US explain their views regarding children’s participatory rights?” The following sub-questions supported the primary research question:

1. How from participants’ perspectives does the Convention on the Rights of the Child conflict or align with cultural, religious, or legal traditions?
2. How do participants’ experiences, cultural beliefs, and religion inform their views relating to the Convention on the Rights of the Child?
3. What areas, if any, do participants identify for compromise or bridge-building between proponents and opponents in order to facilitate movement toward ratification?
4. What are participants’ beliefs about the potential impact of ratification in the United States?

Summary of the Findings

The findings discussed in Chapter Four are striking. They are significant first because they reveal a great deal about participant beliefs and second because they so closely align with multiple levels of abstraction in children’s rights thinking. I organize this summary in three categories: rights; worldview; and impact of the CRC. Each category is prominent in the findings, and is also common in public discussions of the participation rights, CRC ratification, and the broader children’s rights movements.

Preliminarily, I noted that every participant from each case was committed to children and families. This early observation informed the research process and
conclusions because I approached all participants and their views with a heightened level of respect. Professor Lee, for example, is extraordinarily dedicated to the welfare of children worldwide; his commitment is reflected in his personal and professional activities. Mr. Bell, too, has given of himself throughout his life; he has represented children in courts and served on bodies interested in changing public policies related to children. Mr. Davis and Mrs. Brown have spent years volunteering for numerous conservative causes because they truly believe that is the best way to help families. Professors Dell, Sands, and Lamb became active in early childhood education because of their love for and dedication to children. The participants do not agree on the best ways to help children, but they share a commitment to and passion for children that should not be underestimated or undervalued.

Rights

Much of the study data related to children’s rights, parental rights, and the relationship between the two. Rights issues are central to discussions of CRC ratification, as well as to children’s rights issues in general. There is a wide range of views about whether children have rights, and what the extent of those rights should be.

Opponents of ratification cite parental rights issues as a primary objection to the Convention (Farris, 2005). Many CRC opponents view children’s rights as a direct threat to parental rights (Hicks, 2010). Parental rights groups like the Home School Legal Defense Organization have mobilized against ratification of the CRC and against the philosophies that they believe it embodies. The three Case One participants spoke about parental rights issues with great passion and concern. In particular, Professor Lee cited
Martin Guggenheim during the interview. Guggenheim, a prominent former children’s rights attorney and well-known author of a book entitled *What’s Wrong with Children’s Rights* (2005), is critical of some aspects of the children’s rights movement because he believes the movement often disempowers parents. Guggenheim noted, “The children’s rights movement has focused on two sometimes intertwined but often completely separate matters. One concerns the rights of children with respect to the exercise of state power; the other, the rights of children with respect to the exercise of parental authority” (p. xi).

Perhaps Guggenheim’s observation reveals the major differences in findings between participants. Case One participant Mrs. Brown, for instance, said the participation rights “give children rights to disregard parental authority.” Opponent participants, like Mrs. Brown, expressed concerns about the enforceability of the CRC against parents. Case Two participants, on the other hand, expressed their beliefs that the rights in the CRC are enforceable against the government, not against parents. For example, Professor Smith said that the rights “would certainly not be enforceable against parents.” He and other proponent participants expressed zero concern that the rights would be used against parents; rather, they viewed them as a check on bodies of government.

The differences between participants in this study regarding the rights in the CRC are echoed in other available sources. A Heritage Foundation article, for example, articulated that the CRC “urges states to give minor children a ‘right to privacy,’ even in the household” (Fagan, 2001, para. 44). The Eagle Forum’s Phyllis Schlafly (2008) similarly stated, “This treaty would give children rights against their parents and society
to express their own views ‘freely in all matters,’ to receive information of all kinds through ‘media of the child's choice,’ to use their ‘own language,’ and to have the right to ‘rest and leisure’ (para. 4, sec. 11).

By contrast, pro-ratification organizations like the Campaign for U.S. Ratification (2010d) have countered these arguments as “myths.” John Quigley (2003), a law professor and supporter of ratification, commented on the CRC’s recognition of the important role of parents, “By recognizing the role of parents, the Convention avoids becoming an instrument whereby the state might replace the parent” (p. 403). Yanghee Lee, Chairperson for the Committee on the Rights of the Child, said, “Then there is the misunderstanding that once you ratify this convention parents will have to give up their parental rights, and then children would be running around with all kinds of rights, taking the rights away from the parents” (U.N. News Centre, 2010, para. 9). She continued by saying, “The convention calls for guidance and support of parents, and families with responsibilities is one of the major provisions of the convention” (para. 10).

However, even ratification supporters find that the language of the treaty is not clear with regard to enforceability (Renteln, 1997). Legal experts may understand the differences, but laypersons certainly have difficulty. Thus, it is not surprising or irrational that opponents of ratification have serious concerns about enforceability.

Professor David Smolin (2006), a law professor and legal scholar, addressed the divide between religious conservatives and the human rights community. He said, “Unfortunately, the alliance of mutual concern that should exist between conservative religious communities and human rights advocacy has foundered to some degree due to the sharp disagreement about U.S. ratification of the CRC” (p. 81). He has proposed a
series of RUDs designed to permit ratification and assuage the concerns of opponents. His proposed RUDs include a series of statements, including the following about the participation rights: “The United States understands Articles 12 to 17 to provide certain rights to children in relation to governments, but does not understand those Articles to in any way affect the relationship between parents and children” (2006, p. 97).

I believe that the Smolin-proposed RUD scenario is compatible with what the Campaign for U.S. Ratification (2010c), for example, asserts about the enforceability and spirit of the CRC. Such statements could address the honest concerns of opponents in a manner consistent with international law on treaty ratification. Alison Dundes Renteln (1997) stated that the dynamic between children, parents and the State “is not sufficiently worked out in the treaty itself. If the scope of the rights were more clear, this would alleviate the fears of American parents that the government would usurp their control of their own families” (pp. 638-639). Only one study participant, Case Two Professor Dell, opposed substantial reservations, although she acknowledged that they might be necessary. She expressed her concern that the United States enter honestly into all international agreements, and thus be recognized in the international community as a trustworthy State. All other participants familiar with RUDs understood and acknowledged that a variety of RUDs would likely be necessary in order to ratify the CRC.

*Developmental Standard*

Some opponents indicate, almost comically, that the CRC would enable even very young children to engage in inappropriate and outrageous acts because it groups together
all children under age 18. For instance, a World News Daily (Anderson, 2001) article repeated, “The United Nations seeks to create a universal and autonomous legal standing for children 0-18 years of age” (para. 5). Case Two opponents Mr. Davis and Mrs. Brown echoed these ideas, grouping all children together. They indicated that their interpretation of the CRC does not involve any gradual development of rights as children mature.

Proponents in Case Two had a very different conception of the rights scheme provided for in the CRC. The education professors, in particular, stressed the importance of using developmental knowledge when interpreting the rights set forth in the document. Professor Lamb, a proponent and early childhood professor, explained children’s rights in the CRC using developmental language. She said, “I think about it from a developmental point of view. But I think about everything from a developmental point of view.” Professor Dell, also an early childhood professor, said, “It’s an evolving standard.” She and other proponents interpreted the Convention to encourage a maturation of rights that gradually leads to full adult rights at age eighteen.

The Convention was drafted with intentional abstractness because different cultures define the rights and responsibilities of childhood differently. Cynthia Price Cohen and Susan Kilbourne (1998) stated that the text “is quite general to ensure that the Convention will meet the needs of diverse political, legal, and economic systems, and make it possible for differing cultures to be in compliance” (p. 642). Diverse States participated in crafting the CRC and representatives from a variety of backgrounds serve on the Committee on the Rights of the Child.
The United States already has an existing standard for Constitutional rights. The Supreme Court, in *Planned Parenthood v. Danforth* (1976), declared, "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights" (p.74). This statement indicates that there is a progression by which children attain Constitutional rights. The statutory and caselaw are not always clear with regard to the trajectory of rights-attainment, but the Supreme Court has given substantial guidance.

**Impact**

Participant beliefs regarding the impact of ratification differs between and within the two cases. Some proponents of ratification, like Professors Smith and Lamb, were positive about the possible impact. Other proponents, like Professor Sands, Mr. Odell and Professor Allen, were relatively pessimistic about the potential positive impact it would have on children’s lives in the United States. Two of the three opponents emphasized the disastrous impact it would have in the United States. Professor Lee, on the other hand, was relatively neutral about the impact because ratification would only come with substantial reservations. He said, “I just don’t think it’s going to do a huge amount of positive.”

The study findings are consistent with much of the literature about the impact of ratification. David Smolin (2003) wrote, “The CRC is popular precisely because it is abstract and unenforceable” (p. 977). Law Professor Martin Guggenheim (2006) stated, “I am less convinced that ratifying the Convention would lead to many substantive
changes in the United States.” He emphasized, “The most immediate beneficiary of ratification would be the United States” (p.57). This statement is consistent with Case One participant Professor Lee’s interview statement, “It will strengthen the hand of the U.S. diplomatically.”

None of the proponent participants indicated that the CRC would have immediate transformative effects. Instead, many thought that it could provide a framework for improving circumstances for children. Case Two proponent Mr. Hatch said, “It’s a framework; it’s not a law. It really gives nations a common framework to talk about children’s rights.” Likewise, Martha Minow (1995b), said:

Human rights in the international sphere depend upon the development of a community that believes in them rather than an authority – court or legislature – that will enforce them. Organizing to influence and shape such a community may line up means and ends in precisely the way most important for children. Without adults who believe in the importance and entitlements of children, no phase, judicial order, or legislative statement will alter their conditions (p. 297).

Case Two participants expressed similar views. For instance, Professor Lamb asserted, “Once it is ratified, everyone has to roll up their sleeves and get to work because there’s so much to do.” The participants did not indicate that the CRC would be a magic bullet, but rather it would give advocates a framework and a variety of tools.

Two of the Case One participants, Mr. Davis and Mrs. Brown, stated that the CRC would have serious, potentially devastating effects. They did not view the CRC as subtly problematic, but rather as major and grave. There was a substantial amount of documentary evidence for both participants supporting this idea. Mr. Davis’ blog entries,
for example, include serious consequences of ratification. Mrs. Brown has published numerous works that include predictions about the consequences of ratification. The wider literature by opponent groups is consistent with their predictions, as well. The Heritage Foundation (Fagan, 2001), for example, asserted that the ratification would cause grave harm to women and children and would increase a variety of social ills.

The CRC privacy rights were singled out by Mrs. Brown when she said, “It’s also debatable where this treaty would come down on abortion. We know that the ‘so called’ right to privacy was the basis for *Roe v. Wade*.” Numerous individuals and groups have questioned the CRC’s position on abortion. For instance, the president of the Catholic Family and Human Rights Institute, Austin Ruse, said the treaty “has been used by UN Committees, UN agencies and non-governmental organizations to promote abortion” (In Ertlet, 2009). However, the Chairperson of the Committee on the Rights of the Child, Yanghee Lee, has said, “There is nothing in the convention that would suggest anything that the CRC is pro abortion” (U.N. News Centre, 2010, para. 12). Many scholars question whether the CRC would have any effect on U.S. abortion policy (Tosado, 2006).

*Trust/Worldview Issues*

Opponent participants spoke about issues of trust and fear; they attributed many of the issues to worldview issues, including perspectives on sovereignty. Although the issues constitute separate themes in the findings of the two cases, they are linked closely when analyzed in light of the broader literature as well as the cross-case analysis.

Professor Lee, for example, expressed, “The point is, ‘who do you trust’ is a big thing for religious conservatives.” Mr. Davis and Mrs. Brown spoke with suspicion
about the Committee on the Rights of the Child, the judiciary, the United Nations, and other bodies. Documentary evidence associated with the opponent participants was replete with information about each of those groups. They especially cited the role of judges during the interviews and in the blogs and articles. Critics of judicial actions often charge “judicial activism,” a rather nebulous term. In general, it refers to judges usurping law-making power reserved to the other branches of government; critics sometimes charge that judges make law rather than interpreting it. However, the nuances of the term are widely debated (Roosevelt, 2008; Kmiec, 2004). Ted Olson (2010), George W. Bush’s solicitor general, said that people generally use the term when they do not like a decision, rather than for any objective reason.

Sovereignty

The Eagle Forum (2010) website forcefully declares “We oppose all encroachments against American sovereignty through United Nations treaties or conferences that try to impose global taxes, gun registration, energy restrictions, feminist goals, or regulation on our use of oceans” (sec. 1, para. 2). The Heritage Foundation (Gardner & Spring, 2003) has called for profound reform of the United Nations in addition to opposing CRC ratification. The literature associated with Mr. Davis and Mrs. Brown contains a great deal of sovereignty-related material. The interview data also reflected their concerns about the potential for the CRC to infringe upon U.S. sovereignty. Sovereignty was likely an important concern for many Senators, who prevented the CRC from coming before them for advice and consent (Dennis, 2000).
None of the Case Two participants mentioned sovereignty directly during the interviews. However, the interview data contains substantial discussion of the participants’ general beliefs that the United States should be part of the international community, and should participate completely in international bodies. The documentary evidence associated with some of the participants contains discussions of sovereignty. For example, in published materials by Professor Smith, he expresses his view that the CRC does not infringe upon U.S. sovereignty. The proponent participants expressed an internationalist approach to policy and law.

Implications

Opponents of the Convention on the Rights of the Child have successfully blocked ratification in spite of the concerted efforts of numerous ratification supporters, including major education organizations (Campaign for U.S. Ratification, 2010a). This study explored the views of both opponents and proponents regarding children’s participation rights, and found significant differences between their views. Despite the limited nature of this study, practical implications may be drawn from the data.

I believe that the concerns of opponents must be addressed in a meaningful, respectful manner if the CRC is to be ratified by the United States. Perhaps headway may be made toward ratification if RUDs are crafted and utilized wisely. This study identified some of the major concerns of opponents; I see little reason those concerns cannot be addressed in RUDs.

I also believe that opponent concerns can be addressed through concerted education efforts on the part of proponents. Again, this study identified numerous areas
in which opponents and proponents simply interpret the CRC and its implications differently. For example, opponents often do not view rights as emerging along a developmental continuum; educators, in particular, could express developmental ideas in a way that makes sense to a broad audience. Perhaps opponents’ fears can be allayed through respectful communication.

Although the path to ratification of the CRC is filled with barriers, proponents should continue to advocate for children in the United States and around the world. Early childhood educators, especially, provide insight, passion, and professionalism to advocacy efforts. They can demonstrate that the CRC is not part of a left-wing agenda to undermine family values, but rather that it is a family-supportive document that encourages governments to respect the needs and rights of children throughout the world.

Recommendations for Future Research

There is a large body of work about the United Nations Convention on the Rights of the Child, but little meaningful literature has respectfully addressed the concerns of ratification opponents. David Smolin (2006) is perhaps the most prominent religious conservative who promotes bridge building between opponents and proponents. Some of the literature addresses the specific concerns of opponents, but it usually fails to state specific proposals for RUDs or other mechanisms to assuage their fears (Todres et al., 2006). Professor Dell, a Case Two participant, and Professor Lee, a Case One participant, eloquently expressed their concerns that the CRC be presented to the American people in an honest, informative way. Professor Dell said, “There’s no block of folks you can fool all the time. I don’t think the arguments made around human rights
are aimed at the lowest common denominator.” Professor Lee indicated that the concerns of opponents are real and rational; he said that they should “not be made fun of.” I believe that comments like these could offer a framework for the development of a spirit of cooperation for future research and efforts at mediation between opponents and proponents.

I propose the following recommendations for future research based on the findings of this research study:

1. Investigate the entire CRC document for more comprehensive findings. The scope of this study was limited to the participation rights, articles 12 through 17, and perhaps a study of the entire treaty could yield valuable insights and provide guidance that might lead to ratification of the CRC by the United States.

2. Obtain the perspectives of more participants in order to further the discussion. This study was limited by recruitment challenges.

3. Conduct research to determine precisely the RUDs that could further address concerns uncovered in this study. This investigation introduced the idea of RUDs to address the concerns of ratification opponents, but more research is needed to further these efforts.

4. Analyze ways that educators can become more meaningful advocates and participants in children’s rights issues. For example, early childhood educators could help formulate meaningful developmental standards for the attainment of children’s rights.
Conclusion

Marion Wright Edelman (2009) expressed her desire that “the United States will become the locomotive rather than the caboose in honoring and protecting the rights of all children.” Her metaphor resonates strongly with me, especially after conducting this study.

The Convention on the Rights of the Child is, for me, about recognizing the innate dignity, equality, and worth of all children. I believe that ratification will help the United States stand up for children against governments that neglect and abuse them. I believe that it can encourage and inspire Americans to better tend to the full spectrum of childhood needs within our borders.

The CRC is not a magic document that will immediately transform the laws or policies of the United States. It is, however, it is a useful map. It provides committed people with a set of aspirational standards. The CRC itself is not transformative; people committed to children are the transformative force. Ghandi said, “Be the change you wish to see in this world.” Educators, attorneys, and others should continue to be the change for children.

I believe that the United States can be the locomotive, even if the CRC is never ratified. Let us lead by attending to the moral duties of educating, nourishing, and tending to children. Let us further domestic and international mandates that protect children and afford them the dignity of their personhood.
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APPENDIX A

PARTICIPANT RECRUITMENT LETTER
Dear Sir or Madam:

I write to request your participation in a research study. The purpose of this qualitative case study is to explore diverse perspectives on the participatory rights contained in the United Nations Convention on the Rights of the Child (CRC). I would very much like to include your opinions and ideas in the research study because of your expertise and involvement with the CRC. I seek to collect a diverse range of perspectives on the CRC. I plan to collect and report the information in manner respectful of all participants and the organizations with which they may be affiliated.

Should you agree to participate, I will firstly send you an informed consent document for you to sign. The document outlines the nature of participation as well as your rights as a participant. I will then send you a list of questions and issues for discussion. I will ask to schedule a taped interview, either via telephone or in person. This interview will not exceed one hour in duration. I may also ask you to discuss follow-up issues in one or two follow-up interviews, which will range from 10 to 30 minutes in duration. If possible and practical, I may also ask your permission to attend speeches or other public activities held by you or your organization.

You will be invited to select a pseudonym in order to protect your identity. I will also disguise your institutional affiliations in order to further protect your identity and the identity of any organizations with which you are associated.

Please contact me via telephone or email if you have any questions about the nature of the research or any logistics associated with participations. My email address is: marileemanning@gmail.com; my cellular telephone number is: 631-525-6734.

Sincerely,

Marilee Manning Ransom
APPENDIX B

INTERVIEW PROTOCOL
Interview Questions

1. Please tell me about yourself.
2. How do you describe your general beliefs about the CRC?
3. How do you describe your beliefs about the participation rights contained in Articles 12 through 17 of the CRC?
4. Do you find any CRC articles particularly interesting, offensive, or noteworthy? Why?
5. How do you believe that the CRC does or does not conflict with American cultural, religious, or legal traditions?
6. How do your experiences, cultural beliefs, and religion inform your views relating to the CRC?
7. Do you see any areas available for compromise and bridge building between opponents and proponents (i.e., Convention reservations)?
8. What else would you like to tell me about your views on the CRC?
APPENDIX C

TELEPHONE INTERVIEW INTRODUCTION
Telephone Interview Introduction

Title: How Do Proponents and Opponents of Ratification of the United Nations Convention on the Rights of the Child Explain Their Views Regarding Children’s Participatory Rights? A Multiple-Case Study

Investigator: Marilee Manning Ransom

As you recall, my name is Marilee Manning Ransom. I am investigating stakeholder’s perspectives on the participatory rights of the Convention on the Rights of the Child. I very much appreciate your willingness to share your unique views on this issue.

Prior to this interview, you received and returned a copy of the Informed Consent Document as well as a brief introduction to the research project. The Informed Consent outlined your rights as a participant as well as procedures relating to confidentiality and reporting. Please tell me if you have any further questions about your participation.
APPENDIX D

INFORMED CONSENT DOCUMENT
Informed Consent Document


IRB PROTOCOL NUMBER: X090406004

INVESTIGATOR: Marilee Manning Ransom

SPONSOR: The University of Alabama at Birmingham
School of Education
Department of Curriculum and Instruction

Explanation of Procedures

You are being invited to participate in a research study because of your expertise and involvement with the United Nations Convention on the Rights of the Child (CRC). The purpose of this qualitative case study is to explore how stakeholders describe their views on the participatory rights of the CRC. The participation rights are contained in Articles 12 through 17 of the CRC.

The Investigator will send you a list of questions and issues for discussion. You will then be asked to participate in a taped interview, either via telephone or in person; this interview will take no longer than one hour. You may also be asked to be participate in one or two follow-up interviews; these interviews will take approximately 10 to 30 minutes. If you are unable to be interviewed, the Investigator would appreciate email or other written communication regarding your perspectives on the research questions. The Investigator may also ask to observe speeches or other public activities that you or your organization may conduct.

Risks and Discomforts

The risks and discomforts of participating in this study are no greater than the risks and discomforts of day-to-day living.

Benefits

You may not benefit from taking part in this research. However, the research may contribute to a better understanding of perspectives on the CRC.

Alternative

Your alternative is to not participate in this study.
Confidentiality
The Investigator will give you the right to choose a pseudonym and disguise any institutional affiliations in order to protect your anonymity. Information obtained about you for this study will be kept private to the extent allowed by law, and the data will be stored in a secure place accessible only to the investigator. The data will be used toward Investigator’s doctoral dissertation, and may be published. After completion of the study, the data will be destroyed. Research information that identifies you may be shared with the UAB Institutional Review Board and others who are responsible for ensuring compliance with laws and regulations related to research, including the Office for Human Research Protections (OHRP).

Refusal or Withdrawal without Penalty
Taking part in this study is your choice. There will be no penalty if you decide to withdraw from the study. If you decide to withdraw from the study, you will not lose any benefits you are otherwise owed. You are free to withdraw from this study at any time. Your choice to leave the study will not affect your relationship with this institution.

Cost of Participation
There will be no cost to you from taking part in this study.

Payment for Participation in Research
Your participation in this study is on a volunteer basis. No payment will be given to any of the participants.

Question
If you have any questions, concerns or complaints about the research, you may contact Marilee Manning Ransom at 4344 Clairmont Avenue, Birmingham, AL 35222 or 631-525-6734.

If you have questions about your rights as a research participant, or concerns or complaints about the research, you may contact Ms. Sheila Moore. Ms. Moore is the Director of the Office of the Institutional Review Board for Human Use (OIRB). Ms. Moore may be reached at 205-934-3789 or 1-800-822-8816. If calling the toll-free number, please press the option for “all other calls” or for an operator/attendant and ask for extension 4-3789. Regular hours for the OIRB are 8:00 a.m. to 5:00 p.m. CT, Monday through Friday. You may also call this number in the event the research staff cannot be reached or you wish to talk to someone else.

Legal Rights
You are not waiving any of your legal rights by signing this informed consent document.

Page 2 of 3
Date: 3/30/10
Participant’s Initials ___
**Signatures**

Your signature below indicates that you agree to participate in this study. You will receive a copy of this signed document.

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APPENDIX E

INSTITUTIONAL REVIEW BOARD APPROVAL
UAB's Institutional Review Boards for Human Use (IRBs) have an approved Federalwide Assurance with the Office for Human Research Protections (OHRP). The Assurance number is FWA00005960 and it expires on October 26, 2010. The UAB IRBs are also in compliance with 21 CFR Parts 50 and 56 and ICH GCP Guidelines.

Principal Investigator: MANNING, MARILEE R
Co-Investigator(s):
Protocol Number: X090406004
Protocol Title: How Do Proponents and Opponents of Ratification of the United Nations Convention on the Rights of the Child Explain Their Views Regarding Children's Participatory Rights? A Multiple-Case Study

The IRB reviewed and approved the above named project on 4-2-10. The review was conducted in accordance with UAB's Assurance of Compliance approved by the Department of Health and Human Services. This Project will be subject to Annual continuing review as provided in that Assurance.

This project received EXPEDITED review.
IRB Approval Date: 4-2-10
Date IRB Approval Issued: 4-5-10

Marilyn Doss, M.A.
Vice Chair of the Institutional Review Board for Human Use (IRB)

Investigators please note:

The IRB approved consent form used in the study must contain the IRB approval date and expiration date.

IRB approval is given for one year unless otherwise noted. For projects subject to annual review research activities may not continue past the one year anniversary of the IRB approval date.

Any modifications in the study methodology, protocol and/or consent form must be submitted for review and approval to the IRB prior to implementation.

Adverse Events and/or unanticipated risks to subjects or others at UAB or other participating institutions must be reported promptly to the IRB.