

**PROMOTING GENDER EQUITY AND FOREIGN POLICY GOALS  
 THROUGH RATIFYING THE CONVENTION ON THE ELIMINATION  
 OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

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**I. INTRODUCTION**

The United States of America is internationally an economic powerhouse.<sup>1</sup> Unfortunately, as this Note will discuss, the United States does not hold the same status internationally in the context of gender equity.<sup>2</sup> The United States as it has been demonstrated in the literature and will be further demonstrated in this Note does not adequately have the societal structure<sup>3</sup> required to achieve gender equity. The Country lacking in gender equity demonstrates the importance of further discussion in this area.

The United States not only lacks in gender equity in domestic policy but it further lacks gender equity in the context of foreign policy. The Country has failed to ratify important international treaties that would substantially increase the efforts of gender equity. This Note will discuss that the United States did not ratify the Convention on the Elimination of All Forms of Discrimination Against Women<sup>4</sup> because of

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<sup>1</sup> The United States of America is ranked number 1 on the list of the world's economies. See Caleb Silver, *The Top 25 Economies of the World*, INVESTOPEDIA (2013), <https://www.investopedia.com/insights/worlds-top-economies/> (last visited May 4, 2021). According to World Bank data, the United States of America currently has a GDP (gross domestic product) of \$21.4 trillion dollars. WORLD BANK DATA, <https://databank.worldbank.org/home.aspx> (last visited March 21, 2021).

<sup>2</sup> For the purposes of this article gender equity is defined as the “fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities”. LETIZIA MENCARINI, GENDER EQUITY IN ENCYCLOPEDIA OF QUALITY OF LIFE AND WELL-BEING RESEARCH (Springer, 2014).

<sup>3</sup> Societal structure for the purposes of this article will encompass political and legal issues that revolve around the idea of gender equity. Ruth Anne Robins, Kristen K. Tiscione, & Melissa H. Weresh, *Persistent Structural Barriers to Gender Equity in the Legal Academy and the Efforts of Two Legal Writing Organizations to Break Them Down*, VILL. L. REV., VOL. 65 NO. 1150 (2020) (discussing the historical struggles for in terms of gender equity and the modern issues that need the law has been unable to address).

<sup>4</sup> 1249 U.N.T.S. 1979. For the purposes of this article, the Convention on the Elimination of All Forms of Discrimination Against Women will be referred to as the “Convention”.

political reasons in American politics,<sup>5</sup> and ratification would not be consistent with the values in American society as discussed in the literature of theories of commitment.<sup>6</sup> This Note will argue that the rationale to not ratify the Convention resulted in this country continuing to not only lag behind in the international community in the context of gender equity, but it also has a negative impact in American society.

Section II of this Note will discuss the evolution of gender equity in the United States. Subsection A will discuss gender equity in United States history leading up to the Voting Rights Act of 1965.<sup>7</sup> Subsection B will discuss the evolution of gender equity in the United States since the enactment of the Voting Rights Act of 1965.<sup>8</sup> Subsection C will discuss the importance of the Equal Rights Amendment<sup>9</sup> and why it was not passed. Section II of this Note will provide the historical framework of gender equity. Section III of this Note will discuss the impact of lack of gender equity in the United States today. The section will address the issue of how the United States lags behind in the context of gender equity in various policy and societal context today. Both sections II and III will create the framework for the current climate in the United States. Section IV will discuss the case for ratifying the Convention in the United States and it will be split into three subsections. Subsection A will discuss the Convention as a human-rights-obligation. Subsection B will discuss the rationale for why the United States has not ratified the Convention. Subsection C will explore the basis for why the United States must ratify for the Convention to promote gender equity in the country and to compete internationally.

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<sup>5</sup> Lisa Baldez, *Why Hasn't the US Ratified the UN Women's Right Convention?* APSA 2011 ANNUAL MEETING PAPER (Aug. 31, 2011), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1900265](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1900265).

<sup>6</sup> BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS* 64 (Cambridge University Press 2009).

<sup>7</sup> 52 U.S.C.A § 10101.

<sup>8</sup> *Id.*

<sup>9</sup> Alex Cohen & Wilfred U. Codrington, III, *The Equal Rights Amendment Explained*, THE BRENNAN CENTER FOR JUSTICE (Jan. 23, 2020), <https://www.brennancenter.org/our-work/research-reports/equal-rights-amendment-explained>.

## II. THE EVOLUTION OF GENDER EQUITY IN THE UNITED STATES

### A. Early United States History and Gender Equity

The United States since its inception has created substantial disparities in gender equity. Thomas Jefferson in drafting the Declaration of Independence wrote that “all men are created equal”.<sup>10</sup> There are two schools of thought that stem from the 18<sup>th</sup> Century as to the meaning of “all men are creating equal”.<sup>11</sup> The first school of thought is the word men incorporates all of humanity, while the other school of thought argues the language does not include women and children.<sup>12</sup>

In early American history, the United States determined that “all men are created equal” means to be not inclusive of women and children. Early in American history, women were unable to vote and be participants of the democratic process.<sup>13</sup> Being a part of the democratic process and being able to vote are crucial aspects of gender equity. Both processes allow participants of society to contribute equally, but also have a say in how policy is structured.

In the 18<sup>th</sup> century, women who were married could not own land, enter into contracts, nor gain guardianship of children.<sup>14</sup> Women were not constitutionally able to vote until the passage of the 19<sup>th</sup> Amendment of the United States Constitution.<sup>15</sup> Even with the passage of the 19<sup>th</sup> Amendment, women of color were not able to vote and participate in the democratic process until the United States of America passed the Voting Rights Act of 1965.<sup>16</sup>

The United States Supreme Court in its early cases, established gender equity in the law was not a concern by their decisions which are inconsistent with the ideas of gender equity. In *Minor v. Happersett*, the Court held that the 14<sup>th</sup> Amendment’s citizenship and immunities

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<sup>10</sup> THE DECLARATION OF INDEPENDENCE, para. 2 (U.S. 1776).

<sup>11</sup> Creating the United States, *The Declaration of Independence*, THE LIBRARY OF CONGRESS, <https://www.loc.gov/exhibits/creating-the-united-states/interactives/declaration-of-independence/overview.html> (last visited Apr. 2, 2021)

<sup>12</sup> *Id.*

<sup>13</sup> *The Founders and the Vote*, UNITED STATES LIBRARY OF CONGRESS, <https://www.loc.gov/classroom-materials/elections/right-to-vote/the-founders-and-the-vote/> (last visited March 21, 2021).

<sup>14</sup> CYNTHIA GRANT BOWMAN ET AL., *FEMINIST JURISPRUDENCE: CASES AND MATERIALS* 6 (5<sup>th</sup> Edition West Academic Publishing Dec. 29, 2017) (Citing NORMA BASCH, *IN THE EYES OF THE LAW: WOMEN, MARRIAGE, AND PROPERTY IN NINETEENTH CENTURY NEW YORK* 42-69 (Cornell University Press 1982).

<sup>15</sup> U.S. CONST. amend. XIX.

<sup>16</sup> 52 U.S.C.A § 10101

clause did not extend to the women's right to vote when *Minor*, a woman and a citizen, was not allowed to register to vote because the state law only allowed men to vote.<sup>17</sup> The Court through dicta suggested women "may" be citizens, but stated that since sex was never an element for citizenship, men never had an advantage over women.<sup>18</sup> The Court is suggesting that the Constitution there is a clear distinction between men and women as it pertains to citizenship in order to deny women the ability to vote.<sup>19</sup> The Court states that since women did not have the right to vote prior to the 14<sup>th</sup> Amendment, and since voting has been historically an area for the state, their holding was justified.<sup>20</sup> The Supreme Court made it clear that in the context of citizenship and voting women did not have equality under the law.

The Supreme Court years later further demonstrated the legal position of the country on gender equity in the context of employment law. In *Muller v. Oregon*, the Court held an Oregon statute that restricted the number of hours women can work was constitutional and did not violate the Equal Protection Clause nor did it violate the Due Process Clause of the 14<sup>th</sup> Amendment.<sup>21</sup> The Supreme Court rejected gender equity when it stated that women's physical characteristics and maternal duties made it reasonable for the state to pass legislation restricting the number of hours a woman can work in a day under the state's police powers.<sup>22</sup> The early Supreme Court cases made it clear that the priorities of the legal system did not include gender equity.

### **B. Modern United States History – Post Voting Rights Act Of 1965**

The 19<sup>th</sup> Amendment gave women the right to vote.<sup>23</sup> Prior to the Voting Rights Act of the 1965,<sup>24</sup> women of color were not able to be participate in the democratic process, and vote. Being excluded from the process is inconsistent with gender equity. However, since the passage of the Voting Rights Act of 1965,<sup>25</sup> women in the United States have been afforded greater rights than they previously held in society.

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<sup>17</sup> *Minor v. Happersett*, 88 U.S. 162 (1874).

<sup>18</sup> *Id.* at 165-69.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Muller v. Oregon*, 208 U.S. 412 (1908).

<sup>22</sup> *Id.* at 420.

<sup>23</sup> U.S. CONST. amend. XIX.

<sup>24</sup> 52 U.S.C.A § 10101.

<sup>25</sup> *Id.*

Even with the expansion of rights the United States continued to lag behind in terms of gender equity, and that is the result of legal cases and policies that did not account for gender equity in this era. There are many ways that the United States during its modern history failed to incorporate gender equity.

The United States in the context of the military draft has failed to incorporate gender equity since it is only male inclusive. In *Rostker v. Goldberg*, the Supreme Court held that the Military Selective Services Act<sup>26</sup> (the “MSSA”) was constitutional when the draft only extends to males, and that it did not violate the Due Process Clause of the 5<sup>th</sup> Amendment because Congress debated whether women should be included in the draft extensively on its floor.<sup>27</sup> The majority rejected extensive Congressional record demonstrating the effectiveness of women in the armed forces.<sup>28</sup> The majority incorrectly reasoned that since discrimination of women in combat was constitutional and permissible, then Congress acted appropriately when it passed the MSSA because women were not similarly situated in the military for the purposes of a draft or the registration.<sup>29</sup> The majority rejected expert opinions of those who were in support of registration of women in the military draft.<sup>30</sup> *Rostker* demonstrates the Courts disregard for gender equity in the law as there was compelling evidence that contradicted the government’s claims.<sup>31</sup>

In *United States v. Morrison*,<sup>32</sup> the Supreme Court held that a portion of the Violence Against Women’s Act<sup>33</sup> which provided a civil remedy for domestic violence victims violated the Commerce Clause of the United States Constitution.<sup>34</sup> The Court reasoned there was not a substantial nexus between domestic violence and economic activity for Congress to pass such legislation and for it to be permissible under the

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<sup>26</sup> 50 U.S.C.A. § 3802.

<sup>27</sup> *Rostker v. Goldberg*, 453 U.S. 57 (1981).

<sup>28</sup> At the time the Supreme Court decided this case, the record showed an average of 150,000 women were actively participating in the armed forces in some capacity and that number was estimated to increase to 250,000 by the year 1985. *Id.* at 90 (J. Marshall dissenting).

<sup>29</sup> *Id.* at 93 (J. Marshall dissenting).

<sup>30</sup> The 1980 House Hearings on the issue presented evidence from Assistant Secretary of Defense on the importance of women in the armed forces in non-combatant staff support. *Id.* at 99 (J. Marshall dissenting).

<sup>31</sup> See *Rostker*, 453 U.S. at 57.

<sup>32</sup> 529 U.S. 598 (2000). In *United States v. Morrison*, the constitutional claim arose from an on-campus rape case, where the victim sued the Defendant in Federal Court under the Violence Against Women’s Act civil remedy provision. *Id.* The Defendant challenged the provision to be unconstitutional. *Id.*

<sup>33</sup> 42 U.S.C.A. § 12361.

<sup>34</sup> *Morrison*, 529 U.S. at 598.

Commerce Clause of the Constitution.<sup>35</sup> The Supreme Court rejected substantial research by Congress demonstrating there was a nexus between violence against women and its impact on the interstate commerce.<sup>36</sup> The Court striking down the clear nexus between violence towards women and its connection to the economy is another demonstration of how the Court rejects gender equity.<sup>37</sup>

In the context of women's health, the Supreme Court rejected substantial evidence for providing important access to contraceptives to women by allowing for a religious exemption. In *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*,<sup>38</sup> the Supreme Court allowed for a religious exemption under the Affordable Healthcare Act<sup>39</sup> while rejecting the impact such an exemption would have on women's health.<sup>40</sup> The Supreme Court held employers can deny insurance coverage for contraceptives on the basis of their religious beliefs, creating an exemption for the employer.<sup>41</sup> The Court held that even though it did not reach the question of whether the statute violated the Religious Freedom Restoration Act, the Court held it applied.<sup>42</sup> The Court also, held that the agency complied with the procedural requirements to satisfy the statutory procedure under the Administrative Procedure Act.<sup>43</sup> The Court's majority rejected the argument that allowing such an exemption to the Affordable Healthcare Act and the contraception requirement on the basis of religion would have an impact on women's health on the individual level.<sup>44</sup> The Court rejected the evidence that an expansive exemption

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<sup>35</sup> *Id.*

<sup>36</sup> Congress found that violence against women costs the United States an estimated three billion dollars a year. Congress also found that at least 50 percent of women and children who are homeless are fleeing domestic violence. The Congressional record leading up to the passing of the Violence Against Women's Act demonstrated substantial research that there is a nexus between violence against women and interstate commerce for Congress to have authority to provide a civil remedy. *Id.* at 628-636 (J. Souter dissenting).

<sup>37</sup> *Id.* at 598.

<sup>38</sup> 140 S. Ct 2357 (2020). This case arose from a 2017 administrative rule that expanded the scope of the expanded the scope of the religious exemption available for contraceptives. *Id.* Several states brought a challenge that the rule was unconstitutional and violated the law. *Id.*

<sup>39</sup> 42 U.S.C.A. § 300gg-13

<sup>40</sup> *Little Sisters of the Poor Saints Peter and Paul Home*, 140 S. Ct at 2357.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Women with proper contraceptive access have better outcomes for their own health and the health of their children. Access to contraception prevents unintended pregnancies which leads to delayed or no prenatal care. *Id.* at 2402 (J. Ginsburg dissenting) (citing Brief for *American College of Obstetricians and Gynecologists*). Contraception can also assist in other medical conditions not related to pregnancy. *Id.* It can reduce the risk of endometrial and ovarian cancer. *Id.* (citing Brief for National Women's Law Center).

on an employer providing contraceptive coverage will also impact women on the aggregate level.<sup>45</sup> The current Court in *Little Sisters of the Poor Saints Peter & Paul Home* will not be concerned with gender equity nor will it apply gender equity in important cases where the evidence calls for such consideration.<sup>46</sup>

The United States federal code defining the unorganized the militia makes clear that it applies to males only.<sup>47</sup> Federal Courts have not answered whether the militia code is unconstitutional or discriminatory on the basis of gender.<sup>48</sup> Consistent with the U.S. code defining the unorganized militia, several state jurisdictions have statutes that also define the militia to apply to males only.<sup>49</sup> Courts in states that have adopted these laws that are discriminatory on its face have not dealt with these issues in a judicial proceeding.<sup>50</sup> While the militia is outdated and frequently not used these outdated laws that have not been addressed or looked too demonstrates the pervasiveness of the lack of gender equity in the United States.<sup>51</sup>

### C. The Equal Rights Amendment

The American legal system has a substantial hole, and constitutionally the hole has led to the denial of gender equity in society. To remedy this hole in the United States Constitution, advocates for gender equity and women's rights proposed the Equal Rights Amendment.<sup>52</sup> The advocates of the Equal Rights Amendment believed since the passage of suffrage, the addition of the amendment would fill in the gaps for gender equality by establishing constitutional protections for women which currently do not exist.<sup>53</sup>

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<sup>45</sup> The United States government estimates that between 70,500 and 126,400 women will lose coverage for contraception under the new rules. *Id.* at 2408.

<sup>46</sup> *Id.*

<sup>47</sup> See 10 U.S.C.A § 246 (a)

<sup>48</sup> The notes of decision under the 10 U.S.C.A § 246(a) does not name a case where the issue of whether the statute is discriminatory on its face has been addressed.

<sup>49</sup> See N. M. S. A. 1978, § 20-2-2 (b); Ala. Code 1975 § 31-2-5; C.G.S.A. § 27-2

<sup>50</sup> Looking at the notes of decisions of the above statutes clearly noting to be male only, there are no cases mentioned that struck down the law as being unconstitutional for being discriminatory against women. This is the same issue with the federal statute involving the definition of the unorganized militia.

<sup>51</sup> See 10 U.S.C.A § 246 (a); N. M. S. A. 1978, § 20-2-2 (b); Ala. Code 1975 § 31-2-5; C.G.S.A. § 27-2.

<sup>52</sup> The 1972 Congressional version states, "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." Cohen & Codrington, III, *supra* note 9.

<sup>53</sup> *Id.*

Even though there was a substantial need for the passage of the Equal Rights Amendment, the amendment was never ratified into the United States Constitution. One reason why the Equal Rights Amendment never ratified was Progressives and Socialists believed the protections should extend to all workers and immigrants.<sup>54</sup> They argued that the Equal Rights Amendment “was an individualistic approach inconsistent with their basic frames of reference and analysis of the social causes of inequalities”.<sup>55</sup> The argument was the proposed amendment should be inclusive of all rights for all groups.<sup>56</sup> However, this debate led to the Equal Rights Amendment never being ratified and resulted in negative outcomes for women due to never incorporating gender equity into the Constitution.

Another reason the Equal Rights Amendment was not ratified was because Title VII of the Civil Rights Act of 1964<sup>57</sup> was enacted with the provision that banned discrimination on the basis of sex in the workplace the Courts interpreted to ban protective labor legislation.<sup>58</sup> The passing of Title VII weakened the strongest reasons to ratify the Equal Rights Amendment.<sup>59</sup> The Courts expansion of existing law further weakened the arguments against ratification of the Equal Rights Amendment. *Roe v. Wade*<sup>60</sup> and the Court’s expansion of the 14<sup>th</sup> Amendment weakened the arguments for the need of the Equal Rights Amendment.<sup>61</sup> Those who opposed the Equal Rights Amendment argued that the current constitution and societal structure was sufficient and well equipped to address gender equity in the law and it was demonstrated by the Court’s expansion of some rights, therefore, a new amendment was not needed.<sup>62</sup>

The United States was presented with a need for a constitutional amendment to remedy the legal and societal issues due

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<sup>54</sup> BOWMAN ET AL., *supra* note 15, at 20 (citing Mary Becker, *The Sixties Shift to Formal Equality and the Court: An Argument for Pragmatism and Politics*, 40 WM. & MARY L. REV. 209, 214 (1998)).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> 42 U.S.C.A. § 2000e.

<sup>58</sup> BOWMAN ET AL., *supra* note 15, at 22 (citing Jo Freeman, *How “Sex” Got into Title VII: Persistent Opportunism as a Maker of Public Policy*, 9 L. INEQ. 163, 176-178, 182 (1991); Robert C. Bird, *A Fresh Look at the Legislative History of Sex Discrimination of the 1964 Civil Rights Act*, 3 WIN. & MARY J WOMEN & L, 137, 138, 157-61 (1997)).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 23-24 (citing ELIZABETH PLECK, *FAILED STRATEGIES, RENEWED HOPE, IN RIGHTS OF PASSAGE: THE PAST AND FUTURE OF THE ERA* 106, 110 (Joan Hoff-Wilson ed., 1986)).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*



to the lack of gender equity in the country but however for political and social reasons it was rejected. The rejection of gender equity in the law has led the United States to continue to have the pervasive gender equity issues among its society even in the modern day.

### III. GENDER EQUITY IN THE UNITED STATES TODAY

Up until this point this Note has laid out the legal background for gender equity, and now this Note will turn its focus on the socio-economics of gender equity in the United States today. The law in this Country lacks gender equity but the issues involving gender equity are pervasive and have impacted other areas of society beyond just the law. The United States lags behind in women's rights compared to other countries.<sup>63</sup> The United States is ranked on the Global Gender Gap Index at number fifty-three<sup>64</sup> lower than countries such as France or the United Kingdom.<sup>65</sup> This difference in how the United States lags behind in terms of gender equity demonstrates its policy priorities when contrasted to the United States' status globally in terms of economic power.

Politically the United States continues to lag behind in comparison to other countries internationally. The United States is ranked number seventy-six on the ratio between male to female that are in elected office.<sup>66</sup> The United States fails to adequately meet sufficient standards, not only in terms of who holds power in office but when in it comes to policy the Country, further demonstrates its failure to under the law adequately implement policy that conforms to gender equity.

Maternal leave is when women are able to get paid leave from employment. The United States is the only OECD<sup>67</sup> country that does

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<sup>63</sup> *Women in US Lagging Behind in Human Rights in Human Rights, UN Experts Report after 'Myth-Shattering' Visit*, U.N. NEWS (December 11, 2015), <https://news.un.org/en/story/2015/12/517932-women-us-lagging-behind-human-rights-un-experts-report-after-myth-shattering>.

<sup>64</sup> The World Economic Forum Measures this by looking at the gender-based disparities within Educational Attainment; Economic Participation and Opportunity; Health and Survival; and Political Empowerment. *Global Gender Gap Report 2020*, WORLD ECONOMIC FORUM (2020), [http://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf).

<sup>65</sup> *Id.*

<sup>66</sup> *Women in National Parliaments*, INTER-PARLIAMENTARY UNION, <http://archive.ipu.org/wmn-e/classif.htm> (last visited April 21, 2021).

<sup>67</sup> OECD is the Organization for Economic Co-operation and Development.

not provide paid maternal leave.<sup>68</sup> In 20 out of 41 countries, over half of the funds in paid parental leave is allocated to maternity leave, and in six countries all maternity leave funds is allocated to leave related to childbirth and/or child care.<sup>69</sup> Research demonstrates the lack of adequate paid maternal leave has consequences on women's health<sup>70</sup>. A study in Western Europe showed that adding ten weeks of paid maternity leave was linked to a decrease in infant mortality rates by five percent.<sup>71</sup> A study in the United States showed that less than eight weeks of paid maternity leave was linked to higher rates of depression and poorer health outcomes for mothers.<sup>72</sup> An Australian study found that women who took paid maternity leave was less likely to face emotional and physical violence from their partners.<sup>73</sup> The lack of gender equity in maternal leave policy in the United States has clearly in the research been shown to have negative health outcomes for women. The United States not only lags behind in terms of policy and the law, but the United States fails to provide gender equity in addressing concerns raised by legitimate movements.

In the context of sexual harassment in the workplace, the United States fails to adequately provide the resources to those who need it and provide gender equity to the victims of sexual harassment. The #MeToo movement is a movement that provided solidarity for women who have experienced sexual harassment.<sup>74</sup> The #MeToo movement, since its inception in the United States, has influenced the international community in many ways and has regularly been used in dozens of countries across the globe.<sup>75</sup> In some countries, the influence of the movement led to significant legislation.<sup>76</sup> For example, in France, after the movement began in 2018, the government passed a

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<sup>68</sup> Gretchen Livingston & Deja Thomas, *Among 41 Countries, Only the U.S. Lacks Paid Parental Leave*, PEW RESEARCH CENTER (Dec. 16, 2019), <https://www.pewresearch.org/fact-tank/2019/12/16/u-s-lacks-mandated-paid-parental-leave/>.

<sup>69</sup> *Id.*

<sup>70</sup> Suzanne Leigh, *National Paid Maternity Leave Makes Sense for Mothers, Babies, and Maybe the Economy*, U. OF CAL. SAN FRANCISCO (Mar. 9, 2020), <https://www.ucsf.edu/news/2020/03/416831/national-paid-maternity-leave-makes-sense-mothers-babies-and-maybe-economy>

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Understanding the Me Too Movement: A Sexual Harassment Awareness Guide*, MARYVILLE UNIVERSITY <https://online.maryville.edu/blog/understanding-the-me-too-movement-a-sexual-harassment-awareness-guide/> (last visited Apr. 8, 2021).

<sup>75</sup> Meighan Stone & Rachel Vogelstein, *Celebrating #MeToo's Global Impact*, FOREIGN POLICY (Mar. 7, 2019) <https://foreignpolicy.com/2019/03/07/metooglobalimpactinternationalwomens-day/>.

<sup>76</sup> *Id.*

comprehensive bill that extended the statute of limitations among other matters as a result of the movement.<sup>77</sup> In comparison, the United States has only passed some state law<sup>78</sup> and not as comprehensive as the legislation that was passed in France. The United States was addressing the movement significantly longer than France, and the United States' failure to pass comprehensive legislation like France demonstrates that the United States does not have gender equity as a policy priority. The United States in the context of international human rights treaties has failed to further incorporate gender equity.

#### **IV. THE CASE FOR RATIFICATION OF THE CONVENTION**

##### **A. The Convention as a Human Rights Obligation**

The Convention is an international treaty adopted by more than 100 countries with the purpose of establishing rights to protect women from persistent discriminatory practices internationally.<sup>79</sup> The Convention creates an international human rights obligation for countries that adopt it. In the preamble of the Convention, it makes clear that the discrimination against women currently exists.<sup>80</sup> The treaty defines discrimination against women in Article 1 as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>81</sup>

Further, the Convention requires a state party in Article 2 to take further steps to promote gender equity. Article 2 of the Convention states:

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<sup>77</sup> *Id.*

<sup>78</sup> Erik A. Christiansen, *How are the laws Sparked by the #MeToo Affecting Sexual Harassment?*, AMERICAN BAR ASSOCIATION (May 8, 2020) <https://www.americanbar.org/groups/litigation/publications/litigation-news/featured-articles/2020/new-state-laws-expand-workplace-protections-sexual-harassment-victims/>.

<sup>79</sup> 1249 U.N.T.S. 1979.

<sup>80</sup> *Id.*

<sup>81</sup> 1249 U.N.T.S. 1979.

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.<sup>82</sup>

The language of the Convention states that its goal is to promote gender equity in the law. However, even with these goals the United States has not ratified the treaty, and it is one of the very few countries that has not done so.<sup>83</sup> The United States, along with the Pacific Island nations of Tonga and Palua, Iran, Somalia, South Sudan and Sudan, have not ratified the Convention.<sup>84</sup> Why hasn't the United States joined the vast majority of the international community in ratifying the Convention and further promoting gender equity in American society?

### **B. Why Has The United States Not Ratified The Convention?**

The United States has failed to ratify the Convention. In not ratifying the Convention, the United States has demonstrated that gender equity is not a concern for its domestic and foreign policy. This section will explore the rationale and basis for the Country in not ratifying the Convention. The starting point for this discussion is a

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<sup>82</sup> *Id.*

<sup>83</sup> Amrita Bamrah, *34 Years After Signing, the United States still hasn't Ratified CEDAW*, CIVIL RIGHTS (July 17, 2014), <https://civilrights.org/edfund/resource/34-years-after-signing-united-states-still-hasnt-ratified-cedaw/>.

<sup>84</sup> Lisa Baldez, *U.S. Drops the ball on Women's Rights*, CNN (Mar 8, 2013), <https://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty/index.html>.

general exploration of American politics and its history in the context of international human rights.

Generally, the United States does not promulgate law and policy related to gender because of the differences among the political parties in the American political system.<sup>85</sup> Republicans and Democrats, the two main political parties in the United States, do not share the same status or norms for women.<sup>86</sup> What is important to mention is that initially both parties supported the ratification of the Convention.<sup>87</sup> Republican party leaders and conservative women since have opposed ratification of the Convention because they argue that ratification would allow the federal government to dictate local policy towards women and families, and most Americans do not support the policies that the ratification of the Convention would promote or mandate.<sup>88</sup>

The differences in the American political system has been a consistent theme in the country's history in ratifying international treaties. History has demonstrated political concerns have undermined the passage of important and timely human rights treaties. President Eisenhower in discussing the passage of the economic and social rights treaties<sup>89</sup> called them "socialism by treaty".<sup>90</sup> In discussing the Genocide Convention,<sup>91</sup> the United States had substantial debates over ratification because the South was concerned that ratification would expose them to be called for proceedings in relation to their own heinous acts like lynching and other forms of racial injustice.<sup>92</sup> The rejection of these human rights treaties demonstrates the priorities the countries have in regards to human rights. The United States historically has put political concerns over the legitimate human rights concerns and this theme has been consistent with the issue of gender equity.

One concern that the United States has in the context of the implementing international treaties is federalism.<sup>93</sup> The federal government when passing national policy has to comply with an

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<sup>85</sup> Baldez, *supra* note 5.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> 999 U.N.T.S. 1976; 993 U.N.T.S. (1976).

<sup>90</sup> BETH A. SIMMON, *MOBILIZING FOR HUMAN 45* (Cambridge University Press 2009).

<sup>91</sup> 78 U.N.T.S 1951.

<sup>92</sup> SIMMON, *supra* note 91, at 44.

<sup>93</sup> Federalism is a system of government that is controlled by two levels of government. In the United States this structure is split into both the national or federal government and the state government. *Federalism*, CORNELL L. SCH., <https://www.law.cornell.edu/wex/federalism> (last visited April 30, 2021).

international treaty must survive ordinary test.<sup>94</sup> One restriction that the national government would face is all policy that it passes would need to satisfy the requirements of the Commerce Clause of the United States Constitution.<sup>95</sup> While the structure of the Federal Government will be a concern when implementing policy, as this Note will highlight below those concerns do not outweigh the benefits of ratifying the Convention.

The rationale for the United States in not ratifying the Convention is consistent with the theory of commitment which states countries do not ratify treaties that the country itself does not support.<sup>96</sup> This is evident in the discussion above relating to the differences in the American political party system, and the discussion of the reproductive rights in the Country. This is also apparent in how the United States has actually approached gender equity in the Country through its' policy making decisions whether in the context of the #MeToo movement or in the context of American maternal leave. Even though the United States has compelling legitimate reasons for not ratifying the Convention, the case for ratification outweighs any compelling reason for not ratifying.

### **C. The Case For Ratifying The Convention**

There are theories that the Convention would not have a substantial impact on human rights, however, a more democratic country would more likely see substantial change in policy and law because the country would have more internal monitoring systems to allow for treaty compliance.<sup>97</sup> The United States is a democracy<sup>98</sup> and has substantial monitoring systems in place to see a change in policy after the ratification of the Convention.<sup>99</sup> Under the United States' Constitution treaties that are ratified by the Senate are the supreme

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<sup>94</sup> Edward T. Swaine, *Does Federalism Constrain The Treaty Power*, 103 COLUM. L. REV. 404, 422 (2003).

<sup>95</sup> *Id.* at 415-16.

<sup>96</sup> SIMMON, *supra* note 91, at 64.

<sup>97</sup> Olivia Wittenberg, *Why don't Countries Ratify Human Rights? A Case Study of Commitment to CEDAW* (Apr. 9, 2020) <https://scholar.colorado.edu/downloads/6395w8073>; SIMMON, *supra* note 91, at 67-68.

<sup>98</sup> George Thomas, *'America Is a Republic, Not a Democracy' Is a Dangerous and Wrong – Argument*, *The Atlantic* (Nov. 2, 2020) <https://www.theatlantic.com/ideas/archive/2020/11/yes-constitution-democracy/616949/>.

<sup>99</sup> 1249 U.N.T.S. 1979

law of the land.<sup>100</sup> Therefore, the United States is well equipped to ratify and implement policy that is consistent with the Convention.

If the United States were to adopt the Convention as a treaty through the ratification process then the country must adopt or promote policy that many would not support. As this section will argue, that policies that the United States fails to adopt on the basis of not having sufficient support does more harm to American Society than good. Furthermore, if the United States were to ratify the treaty there would be a change in the type of domestic policy in regards to reproductive rights and laws that clearly today distinguish between men and women such as the military draft. Changes in American law and policy would be consistent with the language of Article 2 of the Convention.<sup>101</sup> Ratification of the Convention would further gender equity in the United States. Not ratifying the Convention and making an effort to promote gender equity in policy has done more harm to American society than the arguments that ratification would infringe on the sovereignty of the United States or that most of the public would not support what the Convention stands for. Any harm that would result from ratifying the Convention does not outweigh the harm that not ratifying has had on American society.

Countries that have ratified the Convention have made great strides in terms of gender equity. For example, the Convention led to citizenship rights in Botswana, and Japan, inheritance rights in Tanzania, and property rights and political participation in Costa Rica.<sup>102</sup> The Convention has also fostered a law on gender equality in Mongolia.<sup>103</sup> The United States could follow similar suit with the ratification of the Convention and further promote gender equity in country.

The arguments made for not ratifying support the premise that ratification of the Convention would have an impact on policy and

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<sup>100</sup> *About Treaties*, UNITED STATES SENATE, <https://www.senate.gov/about/powers-procedures/treaties.htm> (last visited May 2, 2021). (Treaties are binding agreements between nations and become part of international law. Treaties to which the United States is a party also have the force of federal legislation, forming part of what the Constitution calls "the supreme Law of the Land.")

<sup>101</sup> 1249 U.N.T.S. 1979. "(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle".

<sup>102</sup> *What is the Convention on the Elimination of All of Discrimination Against Women (CEDAW)?*, UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DailyLife.aspx> (last visited April 20, 2021).

<sup>103</sup> *Id.*

further gender equity. The Court would be bound by domestic legislation implementing the Convention.<sup>104</sup> This argument would significantly increase gender equity in the United States in many contexts that are discussed above and below in this Note.

Domestic policy in the context of the #MeToo movement would drastically make strides because the Convention would call for gender equity in the workplace and other context where the #MeToo movement has expanded into.<sup>105</sup> The language of Article 1 of the Convention demonstrates this when it defines discrimination against women.<sup>106</sup> Further, ratification of the Convention would promote domestic policy such as paid maternal leave and as discussed above the lack of paid maternal leave has resulted in negative outcomes for women in the United States.<sup>107</sup> The significant negative outcomes for women is inconsistent with the language of the Convention.<sup>108</sup> Therefore, the ratification of the Convention<sup>109</sup> not only would allow for more passage of law that furthers gender equity in the United States but it would allow for more discussion of gender equity in American politics.

The discussions of gender equity may be the spark that the country needs in order to provide the constitutional guarantees that women currently lack in the United States Constitution. The failure of passing the Equal Rights Amendment would be successful with the ratification of the Convention because without such an amendment the United States would not be in compliance of the treaty.<sup>110</sup> Therefore, what is clear is that the ratification of the Convention would be more advantageous to promoting gender equity and those advantages far outweigh the current discussions for not ratifying.<sup>111</sup> The United States must ratify the Convention in order to further the goals of gender equity, and in complying with the Convention the country can not only be an economic powerhouse but they can further lead globally

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<sup>104</sup> 1249 U.N.T.S. 1979

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* “discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*



in the rankings on gender equity.<sup>112</sup> The cost-benefit analysis for not ratifying the Convention has a much greater cost, then it does benefit American society.<sup>113</sup>

## V. CONCLUSION

The United States fails to incorporate gender equity into its policy and Supreme Court cases. The failure in policy is reflected in how the United States has failed to significantly act in response to the #MeToo movement or in the context of paid maternal leave. The United States as this Note has shown has a gender equity problem. This gender equity problem is reflected in how the United States has not ratified the Convention.

The United States does not ratify the treaty because many Americans would not support the requirements of the treaty. Therefore, ratifying the treaty seems to be consistent with the theory of commitment or the notion that countries do not ratify treaties they do not internally support. However, as demonstrated in this Note the United States as a democracy has the internal monitoring systems necessary to comply with the Convention and if ratified it would be the supreme law of the land. Therefore, what this Note argues and proves is that the United States must ratify the Convention and in doing so the country would be better suited to address its failures in addressing gender equity. Ratification of the Convention outweighs any argument that those who oppose ratification because ratification of the treaty would be beneficial to women's rights in the United States.

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*