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One Cannot Own What Does Not Belong to Her

Abstract

The United States projects itself as a leader in human rights. If this is the case, what does it mean that the state has yet to ratify the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), which is otherwise known as the International Bill of Rights for Women? The country is one of six member states to the United Nations that have not ratified the treaty, and CEDAW is the only treaty that comprehensively addresses women's specific needs for rights in the private and public spheres. There is extensive academic and political work dedicated to analyzing why the US is not a member to the treaty, and the most common approach politicians and scholars take to analyze non-ratification is through the lens of the country's constitution. However, in my paper I challenge why this is and I redirect readers attention to how US cultural stereotypes of the heterosexual nuclear family structure, which is a much valued institution in the country, is a barrier to our ratification. I do not write this paper to oppose the structure; I write it to make visible, deconstruct, and criticize how the structure is framed through expectations of the division of labor between sexes. Whether parents or not, females and males are socialized from birth to value these roles and to aspire to embody them and the division of labor they entail. This gendered division of labor in parenthood, and in the private and public spheres, prevents women from accessing much needed rights. I interrogate the value of women's labor both economically and socially, and I question when and where women have control over their bodies and identities.

Keywords: *CEDAW, women's bodies, women's rights, institutionalized masculinity, motherhood, abortion, prostitution, agency, the public sphere and private sphere, domestic violence, systemic discrimination, liberal free market, gender roles, social expectations, appropriation*

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One Cannot Own What Does Not Belong to Her

Introduction

The United States is an international leader in human rights. We set global standards for women's rights, and we continuously evolve human rights so that women will have more equality with men than they presently do. This discourse is often on the tongues of policy makers, human rights activists, and individuals that live in the United States. I am a US female resident and a feminist activist, and I am forced to question *is this proposition true? Does the US truly spearhead women's rights? Is our culture ready for equality between women and men?* Throughout this paper I use the term "we" to signify the nation and state that I am a citizen in, however I criticize gender expectations in the nation, which encourage women and men to perform particular labor roles based on their sex. I am distraught to have to question why the country has not ratified the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), which is otherwise known as the International Bill of Rights for Women. The binding treaty covers basic rights against discrimination, family planning and reproductive rights, and the concept of human rights as it applies to women (i.e. rights women need that are not addressed in other human rights treaties). I interrogate why the country has failed to ratify CEDAW, and I discuss common reasons that are used to justify its non-ratification. I direct my readers' attention to marginalized issues of why it has not been ratified. This focus, which is primary throughout my paper, is on reasons that relate to preservation of family values and gendered roles in the United States, because it is these values and roles and the appropriation of women within them that has made women vulnerable to systemic social and economic discrimination, and physical violence. Collete Guillaumin, a well known feminist scholar, offers a valuable interpretation of this appropriation and I rely on her theories throughout this paper. In

Guillain's view, women are common property and are not able to control their lives or bodies. She perceives them as socialized to become wives and mothers, and in effect their lives are saturated with duties to be producers of unpaid labor power that is not recognized as having monetary worth. I use her theories to question how unpaid work and social ownership over women's bodies is normalized through gendered roles in the nuclear family structure and I conclude that this appropriation of women in the United States is combated by CEDAW. People that oppose its ratification, whether consciously or not, generally aim to preserve gender roles that are harmful to women's agency, individuality, and control of their bodies and time.

Reasons other than family values that are more commonly used to justify non-ratification, are the US's reluctance to embrace multilateralism when addressing human rights and protection of our sovereignty. Even though the United States proposed and supported the development of many international institutions it still resists the constraints of multilateralism (Kington 30). Due to the US being one of the most powerful nations in the world, it is believed by many scholars to have minimal incentives to rely on international institutions and to have minimal risk if it does not use them (Kington 30). Domestic behavior of the state can be impacted and altered by ratifying treaties, which is a reason why the US has signed onto very few. Ratification can disrupt sovereignty because treaties require that states act in ways that are not solely determined domestically. However, this is problematic because defenders of US sovereignty make claims to exceptionalism and project that our institutions are superior to international commitments (Kington 31). In the exceptionalist perspective, the United States claims to be a leader in women's rights, and thus it does not need to ratify CEDAW because it appropriately and supremely addresses their rights. However, in this paper, I prove the state does not adequately

address women's rights due its cultural restraints and I argue it could benefit from ratifying the treaty; ratification will contribute to the evolution of gendered social expectations.

Harold Hongju Koh, who served as Assistant Secretary of State of Human Rights in the US and who also supervised the production of annual reports on human rights conditions worldwide, is in great opposition to the claim that ratification of CEDAW will jeopardize state sovereignty "by superseding or overriding our national, state or local laws" (273). He advises that because there is tremendous compatibility with requirements of the treaty and existing national laws, "very few occasions will arise in which this is even arguably an issue" (273). Additionally, member states to the treaties are required to take "appropriate measures" to implement the expectations of the treaty, and these measures are determined at the discretion of member countries (Koh 273-4). Likewise, the US can make reservations, understandings, and/or declarations in relation to anything in the treaty that it does not desire to consent to. All of these reasons combined make protection of sovereignty a weak justification for not supporting the treaty.

A brief history of CEDAW and the United States interaction with it

In 1945, when the United Nations was founded, women had little ability to participate in making domestic and international laws because of discrimination and gendered social expectations of the time. Drafters of early international human rights treaties almost in totality were men, and early documents produced by the UN reflect men's needs more than women's needs. The language in human rights treaties suggests women were not in mind in the same way men were when the treaties were drafted. For instance, the Universal Declaration of Human Rights refers to people protected in the document in male terms, such as "man", "his", and

“brotherhood”, and the term “women” is only mentioned twice in the treaty (as opposed to “his” being used twenty one times).¹ However, content is also important. Human rights treaties are primarily focused on the public sphere, which is a realm that is dominated by men. Women, on the other hand, are socially assigned to the private sphere. For these reason human rights documents have not adequately addressed women’s needs. This is why in 1979 the General Assembly, the policymaking organ for the United Nations, adopted CEDAW. In 1981, the convention entered into force, which makes it the quickest entry into force out of any human rights treaty (Koh 265). Prior to its adoption there were not any treaties that comprehensively addressed the specific needs women have for cultural, social, and economic rights (Koh 265). Currently, there are one hundred eighty seven state parties to the treaty (“Chapter IV”), leaving the United States being one of only six countries that are member states to the UN that have not ratified the document; the other five states are Iran, Sudan, Somalia, and two Pacific Island nations, which are Palau and Tonga (“Frequently Asked”).

Given the widespread support for CEDAW and the fact that it’s articles coincides with almost all of our domestic laws, it is not hard to understand why the US has a long history of attempting to ratify the treaty. An obstacle to ratification of it is that the government requires a two thirds majority vote in the Senate to be in favor of the treaty which means that political minorities have the ability to block ratification (Kington 31). In 1980 Jimmy Carter signed it, and sent it to the Senate to be considered for advice and consent to pass it (Powell 354), but the Senate Foreign Relations Committee did not hold hearings about it until 1988 and 1990 and it did not pass (Kington 17). In 1993 sixty-eight Senators pressed the Clinton administration to

¹ For further proof of early treaties that use male terminology see the International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights.

make efforts to pass it, and in 1994 he submitted it to the Senate for consideration (Powell 354). The Foreign Relations Committee held hearings that voted in favor of CEDAW by a thirteen to five vote, but in 1994 the Senate came under leadership of Jesse Helms who was opposed to the treaty so it was never ratified (Kington 20). In 1999, Nancy Pelosi and nine other women who were members of the House of Representatives delivered a letter to the Committee that was signed by one hundred members of congress in support of ratification, but still it was not ratified (Kington 23). Later, under Senator Joseph Biden's leadership in 2002, the Committee held multiple hearings to attempt to get the treaty ratified, but again the efforts failed (Powell 354-5). Currently, President Obama is in full support of the treaty and during an interview he informed, "If it was simply up to me it would have already been ratified, I am a strong supporter of it. It is currently pending in the Senate. We want the Senate to pass it. The senate has had a busy agenda and it moves slowly as it is but my hope is that we'll get it done" ("Frequently Asked").

Multiple academic theorists say it is difficult to pinpoint why the US has not yet completed ratification. Harold Koh admitted that most Americans, and even most lawyers in the country cannot articulate why, given the widespread support for the treaty, it has not been ratified (263). Political minorities in the Senate block ratification out of the fear that the country will have to make widespread political changes, but their fears are ill placed. Koh explains that ratifying the treaty will only require the country to take "appropriate measures" to implement its requirements, and these measures have "already begun in numerous walks of life" (269). In fact, he informs, "The legal requirements imposed by ratifying this treaty would not be burdensome. Numerous countries with far less impressive practices regarding gender equality than the United States have ratified the treaty, including countries whom we would never consider our equals on such matters, including Iraq, Kuwait, North Korea, and Saudi Arabia" (269).

It is often asserted that the United States is a leader in human rights and particularly in women's rights. If political leaders in the US believe this claim, then we can take advantage of our ratification to address women's rights violations in other states that are members to the treaty. In 2002, Senate Joseph Biden acknowledged this when he declared, "The treaty can be a powerful tool to support women around the world in the fight for equal rights. Our voice on women's rights will be enhanced by becoming a party, because we will be empowered to call on nations to account on their own compliance with the treaty" (Kington 23-4). Had we ratified the treaty prior to our invasion in Afghanistan, our justification of using war to protect Afghan women's rights may have been more believable to the international community. Catherine Powell, who is the Associate professor of Law at Fordham Law School and the Founding Executive Director of the Human Rights Institute at Columbia Law School, spoke to this issue when she stated that "an important backdrop for these concerns is the fact that the U.S. invasion of Afghanistan was in part justified as a means to save 'women of cover'" (Powell 336).

It is contradictory that the United States, under the Bush administration, used this tactic to justify invasion. The administration advised that the war in Afghanistan was to aid women to obtain agency over their bodies in the form of giving them the right to uncover. For women to have the ability to uncover their bodies in Afghanistan was deemed so crucial that we (falsely) justified a war over it. Senator Barbra Boxer tried to appeal to the Bush administration by reminding them, "The US cannot use CEDAW as a diplomatic tool for human rights because we have not ratified it; it is very important to the women of Afghanistan that we do so" (Powell 362). Unfortunately, her persuasion did not work. The administration continued to be an opponent of US ratification of CEDAW, which works to give women control over their bodies, such as through family planning initiatives and through having equal employment opportunities

in the military. Presently, we are not a member state to the treaty, and in fact, Afghanistan has become one (Powell 377).

Ratification will demonstrate that we are committed to advancing women's rights around the globe in a way that is internationally agreed upon by member states to the treaty. By not ratifying the document, we run the risk of losing credibility as world leaders in women's rights. Koh advises, "From my direct experience as America's chief human rights official, I can testify that our continuing failure to ratify CEDAW has reduced our global standing, damaged our diplomatic relations, and hindered our ability to lead in the international human rights community". He also states that our failure to ratify the treaty creates grounds for our adversaries and even allies to "challenge our claim of moral leadership in international human rights". In his view, "non-ratification will only further our diplomatic isolation and inevitably harm our other foreign policy interests." (269).

Women's bodies and appropriated identities

In the previous pages I covered essential issues about US interaction with the International Bill of Rights for Women. The prior topics are crucial to be aware of when attempting to understand basic issues about why the US has not ratified CEDAW. However, now I am going to redirect our focus to women's labor power and our culture's gendered social expectations, which are also a barrier to ratification. In *Racism, Sexism, Power and Ideology*, Collete Guillaumin offers a valuable interpretation of gendered roles and women's agency. Guillaumin, a frequently cited feminist sociologist, believes that women do not own their bodies because women are what she calls "common property"; in her view, they are a class of people who are materially appropriated by men (177). While men have the ability to sell their labor

power because they own their bodies, Guillaumin argues that women cannot own their labor power because they do not own their bodies (177). Women are socially expected to provide unpaid labor to men and children in their homes and sometimes in their communities. They are socialized to be homemakers, childrearers, nurturers, and caregivers, and thus unpaid labor providers. Women do the majority of unpaid domestic work, which is frequently referred to as the “second shift” for women who also have paid employment (Guillaumin 195), and in unpaid labor, “there is no limit put on work, no measure of time” (Guillaumin 192). She finds, due to their socially expected behavior, women do not own their bodies and their identities become fragmented and diluted into other individualities of those who surround them, particularly their husbands and children (189). Guillaumin argues that women’s lives are appropriated “at all times and in all places, in the most ‘familial’ as in the most ‘public’ circumstances” because they are expected to “look after and feed the children, to sweep or to serve the tea, to do dishes or to answer the telephone, [and] to sew on the button...” (182). Although some of her statements are bold, her theories ring with truth. For instance, as a female in the US I visited many different families during intimate social gatherings where it is not uncommon for women to cook, clean, care for children, and do the dishes while men gather and conversate or watch sports.

Guillaumin notes that when women do sell their labor power in the market it is at a price lower than the pay men receive (179). Women do not set prices for the sale of their labor because they operate in a system, capitalism, that is dominated by men who in majority set wages and determine what women’s time and labor production is worth. Guillaumin’s text advises that gendered roles that appropriate women as unpaid laborers and/or into underpaid employment must be combatted for women to reach equality with men. Although she offers a valuable interpretation of stereotyped roles for women, she makes many one-sided claims and she ignores

what agency and power women do have. For instance, she has no proof that men alone socialize women to provide unpaid labor and to be selfless and nurturing. Women also participate in this socialization by reinforcing gendered social expectations, and in many cases, by embracing these notions of womanhood without questioning their ramifications. Guillaumin's bold claims are harmful to her argument, yet, the underlying thesis of her viewpoint is valuable and is difficult to refute: women are socially expected to provide unpaid labor in womanhood, and this womanhood exists primarily in the heterosexual nuclear family.

In the following pages I apply the valuable aspects of her theory to address US non-ratification of CEDAW. Guillaumin contends, "It is important that we regain (and not just with our minds) the possession of our *materiality*. To regain the ownership of ourselves implies that our entire class regain the ownership of itself, socially and materially" (187). CEDAW is an international tool designed to help us do this. The treaty addresses issues that pertain to (but are not limited to) equal pay for work of equal value, maternity leave, reproductive health, and family planning initiatives. All of these issues directly impact women's ability to control how they use their bodies. First, equal pay for work of equal value declares, where appropriate, that women's time and labor deserves as much economic compensation as men's work. Second, General Recommendations made by the Committee on the Elimination of Discrimination Against Women (who oversees the treaty) offer interpretations of multiple articles, some of which emphasize enforcement of laws about domestic violence. General Recommendations strive to diminish violence against women and this type of violence mentally and sometimes physically cripples women. Third, women bear children from their bodies, and thus they need legal protection of this natural part of their personhood. If maternity leave benefits are not available then women must choose between losing pay or having children, which is an unfair

gendered circumstance in capitalism. Reproductive health and family planning initiatives allow women to control when and if they become pregnant and how they experience their pregnancies. Also, once children are born women are socially expected to be the dominant domestic caregivers for them. If women control when and if they have children then they will be able to plan their motherhood more strategically.

Constitutionalism vs. culture

Opponents of CEDAW often state that ratification is not rational because the treaty is incompatible with our Constitution (Powell 335). This justification conveniently takes the gaze off culturally created discrimination and it invisibilizes how social expectations discourage women from having agency in their lives and control over their bodies. It redirects the focus from *what is wrong with US culture* to *what is wrong with the treaty's incompatibility with our Constitution?* Despite the fact that Constitutionalism is frequently used to oppose the treaty in the US, Catherine Powell argues that “the United States cannot justly argue that it is hindered from ratifying CEDAW because of its own Constitution, since it need only implement CEDAW in ways that are ‘appropriate’” to our Constitution (350). Harold Koh, who served on the Clinton Administration, informed that after a careful study he conducted he “found nothing in the substantive provisions of this treaty that even arguably jeopardizes our national interests. Those treaty provisions are entirely consistent with the letter and spirit of the United States Constitution and laws, both state and federal” (270). In an article co-authored by Joseph Biden and Barbara Boxer, the Senators advised, “ratification of the treaty would not impose a single new requirement in our laws—because our Constitution and gender discrimination laws already comply with treaty requirements” (Powell 361). However, on another occasion Biden informed

“the United States will need to enter a handful of reservations to the treaty where it is inconsistent with the Constitution of current federal law. But the United States will not need to enact any new laws. The only new burden the treaty will impose will be a duty to file a periodic report on U.S. implementation with a U.N. committee” (Kington 23). These well established political leaders all object that constitutionalism is a valid reason for non-ratification, and this reason minimizes our focus on cultural and social issues that prevent ratification.

As Catherine Powell points out, “scholars have focused mainly on cultural practices affecting non-Western women...far less attention has been given to the complex ways in which cultural claims are advanced to limit women's human rights more generally in the West, much less in the United States” (334). I highlight claims to culture that have been used in the US, and I visibilize these claims in order to interrogate them. In doing this, we can find new strategies to approach international law, human rights, and particularly women’s rights. I deconstruct the most dominantly valued relationship in the United States, which is the nuclear heterosexual family structure. From young ages boys are socialized to be masculine, to dominate the public sphere, to become economic providers for their families, and to be full time participants in the workforce. In contrast, women are socialized to manage the domestic sphere, and to become nurturing mothers and feminine wives. US family values are rooted in this division of labor and contrasting personality behavior, and CEDAW works to blur the duality of gender roles so there is more fluidity between the roles. CEDAW advises that members to the treaty should keep in mind “the social significance of maternity and the role of both parents in the family and in the upbringing of children, and [they should be] aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole” (Introduction).

Opponents of CEDAW have expressed the fear that the goal of the treaty attacks the “core of culture, family, and religious beliefs and would destroy our culture” (Powell 351). On International Women's Day in March 2000, when Senator Helm was chairman of the Senate Committee on Foreign Relations, he criticized people who requested the treaty be ratified. He scowled, “I say dream on, because it is not going to happen. Why has CEDAW...never been ratified? Because it is a bad treaty, it is a terrible treaty negotiated by radical feminists with the intent of enshrining their radical antifamily agenda into international law” (Kington 21). Other oppositions are that CEDAW “would force women into work and children into daycare by eliminating cultural norms that support the role of the mother at home”, and it is thought that the treaty is “undermining the dual-parent married family” (Powell 348). Patrick Fagan, who speaks in opposition to CEDAW and who is the Director of the Marriage and Religion Research Institute, made the accusation that “few Americans are aware that agencies within the United Nations system are involved in a campaign to undermine the foundations of society, the two-parent married family” (Powell 358). These speeches make it clear that some opponents of CEDAW aim to keep traditional gendered roles in tact.

Motherhood

Later in Patrick Fagan’s speech he warned, “UN statements denigrate the role of the stay-at-home mother as unfulfilling and damaging to her own welfare and decry national policies that support her. The UN reports instruct nations to eliminate, through legislation, cultural norms that support the role of the mother at home” (Powell 359). Senator Helms followed suit with this argument when he criticized that “this treaty is not about opportunities for women. It is about denigrating motherhood and undermining the family” (Powell 355). Catherine Powell recognizes

the flaws with these argument when she informs “by relying on cultural stereotypes of women as mothers rather than as breadwinners, CEDAW opponents have been able to provide traction for their claims that the Convention would undermine U.S. constitutionalism and sovereignty” (Powell 361). Harold Koh explains:

CEDAW does not contain any provisions seeking to regulate any constitutionally protected interests with respect to family life. The treaty only requires that parties undertake to adopt measures ‘prohibiting all discrimination against women’ and to ‘embody the principle of the equality of men and women’ in national laws ‘to ensure, through law and other appropriate means, the practical realization of this principle (272).

CEDAW does not aim to devalue motherhood; it works to revise how motherhood is framed.

The treaty attempts to give women greater agency in culture and choice about how they live and experience their work and family lives. It attempts to give them economic power over their lives so that they do not need to rely on men for income and so they will not be economically inferior to men in capitalism. Motherhood is valuable, but women should enter into it if they choose to do so, and once mothers, they should not be expected to be the dominant childrearers (read unpaid labor providers). When in this role, women are not only working without monetary compensation, they are also limited of time that could be spent doing other valuable things for them like advancing their careers or continuing their education.

We must question how cultural gender expectations prevent women from gaining rights that can give them agency. In the US women’s bodies are producers of unpaid labor in their homes, and rights that are designed to grant them access to paid labor equal to men are resisted by people who cherish these gendered roles. However, homemakers are valuable assets to society and they are not criticized in the treaty. Parenting of children is extremely important and

women should have a right to be homemakers if they choose to be so, and their efforts should be recognized as having great cultural and economic worth. Although they are not awarded monetary compensation for their work, they produce invaluable contributions to US culture and its economy, and to individual people's lives. CEDAW does not combat motherhood; it combats gender roles that influence people in society and in capitalism to be discriminatory against women. Unlike Patrick Fagan and Senator Helms, CEDAW is conscious of how traditional gender roles minimize women's agency and maximize men's agency when they are parents. For instance, Article 11.2 C asserts:

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures...to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

This provision aims to step in where culture fails to give women equal access to and success in the workforce. If they are expected to provide the majority of unpaid labor in childrearing, then establishment of social services that lighten this workload will give women more time to access and participate in paid labor. This is a choice that women will be able to make. Additionally, Article 11.2 B requires that states take appropriate measures to "introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances". This provision aims to make sure that women can equally participate in capitalism despite the fact that they carry and birth children. CEDAW highlights aspects of biological differences of sexes and their implications in capitalism so that this human created machine is

more sensitive to women's needs as child bearers.

The value of women's work

Collete Guillaumin argues that women's unpaid labor is "the utilization of one group by another", which turns women's bodies into "an instrument, manipulated and used for the purpose of increasing assets (and therefore also the freedom and prestige) of the dominant group, or even...simply of allowing this group to live in better conditions than it would be able to achieve by itself" (181). In her view, when women do the majority of housework in families and they give their time and labor power away; this gift contributes to the economic wealth of men. At the same time women decrease their access to economic independence; their available time to do paid work is depleted and they have less time to build their resume or further their academic education. CEDAW addresses these issues by requiring that states make available paid maternity leave and social services that make parenthood and the workforce better able to coexist with each other. The treaty also addresses the worth of women's work in places of employment.

In the United States women make eighty-two cents to men's dollar (Dugas). Article 11 of the Convention requires that states take "take all appropriate measures to eliminate discrimination against women in the field of employment..." CEDAW requires that women have "the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work" (Article 11.1 D). This article raises immense criticism from economic liberals in the US because it is argued to not be agreeable with the liberal free market system that is promoted by our government. In this system, women and men receive remuneration for their work based on the value of it that is determined by the market (Lowen). Supporters of the free market model believe the market is ideal for determining the worth of employees work. However, all people

are biased, and people run the market and it operates within a social framework that is prone to systematic discrimination and prejudice. This means that men and women do not have equal ability to participate in the market because women face the added barrier of discrimination because of their sex, and this discrimination is caused by socially determined gender roles in the US. Additionally, Catherine Powell is skeptical of economic liberal criticisms because the US “government intervenes in the market all the time” through “subsidies to farmers, and the bailout of savings and loans”. Powell asks why the government draws the line at ratifying CEDAW, which will give women greater freedom (363)?

A second and more controversial criticism of Article 11.1 D is that it requires equal pay for “work of equal value”. The CEDAW Committee produced a General Recommendation for this article that advises that states “consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate” (No. 13.2). Yet, General Recommendations are non-binding and there is not a structured mechanism to enforce them (Blanchfield 3). Although this Recommendation is not binding, it encourages states to interfere with discrimination based on gender biases in the market. This discrimination is created by social perceptions of the value of women’s work and men’s work. The Committee advises that states reconsider what “value” means in a capitalist system that operates not only due to currency, but also because of and for people who are discriminatory and who have social expectations. Therefore, “worth” cannot be identified by market determined economic worth only; it must also be identified by social worth, and where this worth is discriminatory, it must be deconstructed and revised.

Guillaumin advises that in the market women can “re-appropriate themselves” to counter

gendered roles through “selling on their own authority their labor power on the classical open market” (194). She argues, “it is important that [women] regain (and not just in our minds) the possession of our *materiality*” (187). Also, Guillaumin writes, “the sale or exchange of goods, and especially of that which emanates from one’s own body, which is what labor power is, constitutes proof of self-proprietorship” (192). However, once women re-appropriate themselves as paid workers, they are still hindered by social expectations in the market based on gender norms. If women have similar jobs as men, they are unlikely to receive the same remuneration because of these perceived roles and because their labor power is not as monetarily valued in the liberal free market as men’s labor. Women dominated forms of employment are also lower paying because these types of employment are not socially considered to have the same economic value as forms of employment that men dominate. In Recommendation 13.2, the CEDAW Committee encourages states to consider the value of women’s labor and men’s labor in a more critical way than the market can do (i.e. by analyzing social norms and gender expectations). However, the Recommendation is not binding (unlike the treaty) and if the US ratifies CEDAW it will be able to interpret what “appropriate measures” it must take to enforce equal pay for work of equal value.

The private and public spheres

Arati Rao, a human rights theorist, describes the dangers of gendered divisions of labor when she writes, “one important conceptual obstacle to gender justice is the notion of the division of society into the public and private sphere. The acceptance of the notion pervades human rights discourse and activity, and undergirds the human rights focus on the public sphere” (507). As mentioned earlier, when the United Nations was founded in 1945 the human rights initiatives it formed were reflective of men’s needs because that is the group of people that had

the most access to participate in and shape the institution. For this reason the base of human rights focuses on the public sphere where men dominate, yet it is most frequently in the private sphere where women are most in need of rights. Roa admits, “it is difficult to conceptualize violations of women’s rights in the private sphere in a fashion that is coherent as well as consistent with the language used to describe violations in the public sphere” (507). However, CEDAW revolutionizes rights by emphasizing women’s needs in the private sphere, something of which other human rights treaties have not done. Areas of focus on the private sphere include, but are not limited to, regulation of sex role stereotyping (Article 5), the development of childcare services and requiring paid maternity leave (Article 11), and regulating marriage and family life (Article 16). These articles give women tools to combat the appropriation of their identities and how they use their labor power. The treaty changes how human rights operate so that they are less male centric and so they consider the needs of women as well as of men.

Systemic domestic violence

The heterosexual nuclear family structure is so deeply valued in the United States that women who are survivors of relationship violence often feel reluctant to leave their abusers. In many cases, women are economically dependent on their abusers because of socially appropriated gendered roles that coerce women into this dependence. If women are reliant on their abusers for monetary security, they often fear they will not have the ability to survive outside of their abusers’ homes. Additionally, if they leave their abusers they run the risk of being stigmatized if they are mothers and/or wives, due to social disapproval of single mothers and divorced women. If women decide to leave their abuser or report the abuse, police officers may not give them the protection they are in need of. Roa informs, “Agents of the state may be

employed to send an abused woman back to the site of her abuse, the family, to ‘protect’ its ‘natural’ form and maintain family unity (and they usually are)” (518). I can speak to this tragedy from firsthand experience. After my parents divorced when I was two my mother was left with my sister and I, and she had minimal paid work experience to put on her resume because she was a homemaker. She married a man a few years after her divorce to obtain economic security and to avoid public disapproval of living as a single mother. My mother gave birth to two of her new husband’s children and during this process he became extremely abusive to her, my sister, and me; in the meantime my mother was a stay at home mom and she made no advance in her career or education. I witnessed horrific events such as him throwing her through our sliding glass door, him punching her in the stomach when she was pregnant, and him hitting her in the eye so violently that blood came out of her eye like tears would. On countless occasions the police came to our house because the neighbors called 911 after they heard her screams. One time I remember her hiding in my room to wipe the blood off her body. The police found her and she yelled over and over again “please don’t take my children”! She feared losing us to the state due to the violence that she faced because of her economic difficulty to leave the man who abused her and us daily. Time after time the police did nothing other than show up at our door. After eight years went by, when I was thirteen, I walked to the police after being abused for what I hoped would be the last time. They drove me home. I told them about the years of abuse. They gave me a business card and sent me on my way. Shortly after that I ran away, dropped out of high school, and moved out of state with my first boyfriend. He also beat me daily.

I share this history because as a survivor of abuse who has experienced state interaction with preventing domestic violence, I find that measures in place are not adequate to give women

and girls the right to live free of violence and the oppression that this violence creates. Roa is correct when she explains that state actors marginalize this violence in order to preserve the “family” which is “natural”, and this is clear from how the male police officers discriminatorily enforced assault laws throughout my life in these reports of domestic violence. CEDAW works to change this by working against discrimination and stereotyped roles in families where women have high likelihoods of being economically inferior to men who may or may not abuse them. General Recommendations made by the CEDAW Committee determine how it should be interpreted to protect women from systemic violence. The Committee advises that “Articles 2, 5, 11, 12, and 16”, require state parties “to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life” (No. 12). These articles are about national constitutions and domestic legislation, social and cultural patterns and family education, discrimination in the workforce, family planning, and rights during marriage. The Committee asserts that “gender based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” (No. 19). Phyllis Schlafly, a US constitutional lawyer, is a critic of Article 2 E, which requires that states “take appropriate measures to eliminate discrimination against women by any person, organization or enterprise”. However this provision extends to women who are victims of domestic violence. Schlafly articulates that “private relationships should be none of our government's business, much less the business of the United Nations” (Powell 360). I am a survivor of multiple forms of domestic violence, and I understand how dangerous gendered division of labor and social expectations can be for women; my history signifies there is a vital need for increased government interaction in private relationships.

Abortion

Currently, abortion is legal in the United States. Nevertheless, it is a sensitive political issue that generates enough emotion from people that politicians' advocacy for or against it can make or break her/his potential to be elected to office. Conservative religious groups and citizens, and a large body of conservative politicians are weary of ratifying the treaty because they assert it mandates international legalization of abortion. Article 16.1 E requires that states make certain that men and women have "the same rights to decide freely and responsibly on the number and spacing of their children..." The "spacing" aspect of this statement is interpreted to mean that women should have the right to abortion if they become pregnant and do not want to give birth to the child. Koh explains that, despite this article, the treaty does not in fact "mandate abortion or contraceptives on demand..." (272). In fact, he claims CEDAW is "neutral on abortion allowing policies in this area to be set by signatory states". He informs that "several countries in which abortion is illegal, among them Ireland, Rwanda, and Burkina Faso, have ratified CEDAW" (Koh 272). In addition, the CEDAW Committee advocates for "family planning services to avoid unwanted pregnancy in the first place" (Kington 24). Yet, a General Recommendation made by the Committee encourages that "when possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion" (No. 31 C), however, the Recommendation is not binding. Regardless of if CEDAW supports abortion or not, the fact this is even a question when contemplating women's rights signifies that women do not have full ownership over their bodies. When we consider Colette Guillaumin's theory that women are "common property", it is useful to think about how this relates to abortion. Fetuses are part of pregnant women's bodies. Citizens of the United States, including men, debate and declare what women should be able to legally do with this part

of their body. Therefore, during pregnancy, women are in a sense common property (at least this part of their bodies are). The political debate is unlike any that men experience about their bodies. There is no part of men's bodies that women similarly debate about them having the legal ability to remove.

Military roles and institutionalized male masculinity

The US military is a force driven by masculinity, and it is perhaps the most recognizable space that institutionalizes masculinity. People who are part of the military are expected to protect the nation, be strong, courageous, fearless, and militant. Emotion is not valued in most aspects of service. Given gender expectations in the United States, it is understanding why the military is dominated by men and why women face discrimination when they attempt to be a part of this institutionalized masculinity.² Many men, including many in positions of power in the military do not agree that women should have the same right to participate in certain combat roles. "In 1994, during the Clinton Administration, the Senate Foreign Relations Committee recommended that the full Senate ratify the treaty, subject to four reservations..." (Kington 17). One of these reservations was that the US "does not accept any obligation under the Convention to assign women to all military units and positions which may require engagement in direct combat" (Kington 18). In 1997 the CEDAW Committee created a mandate that countries that ratify the treaty must ensure that women have the ability to participate in militaries in the same way that men do, "meaning that nations would be required to send women into combat even if the military chiefs decided that it was not in the national security interest of, for example, the

² It is not uncommon for men to sexually harass, sexually assault, and/or rape women who join the forces. This can be viewed as men attempting to reappropriate women into feminine roles of vulnerability and of sexualization and to exclude them from this masculine institution.

United States of America”(Kington 22-3). Currently, the Department of Defense has regulations that exclude women from the majority of combat positions (“Women in Combat”). US opposition to women in direct combat roles prevents women from appropriating themselves as masculine beings in the same way that men can through this institution. In this case, women do not have the same right as men do to choose what to do with their bodies.

Prostitution

Prostitution is illegal in the United States, and many opponents to CEDAW argue the treaty would require the US to decriminalize prostitution. Article 6 of the treaty requires that member states “take all appropriate measures, including legislation, to suppress the traffic in women and exploitation of prostitution” (Article 6), however, this does not mean states have to legalize prostitution (“A Fact Sheet”). General Recommendation 15 explains that “poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence”. Even though the treaty does not require states to legalize this type of employment, it does recognize that women’s unequal access to other forms of employment and the systemic exploitation of their bodies coerces some of them into prostitution, which makes them vulnerable to violence and rape. The Recommendation encourages states to ensure that laws against rape, sexual assault, and other forms of violence equally protect prostitutes, and this is positive because in the US prostitutes are reluctant to report such crimes out of fear of being prosecuted for their work.

Tailoring the treaty

US domestic laws comply almost in totality with CEDAW. Also, if the US decides to ratify CEDAW, it can ratify it with reservations, understandings, and declarations (RUD). In 1994, when the Senate Foreign Relations Committee recommended that the full Senate ratify the treaty, it proposed ratification with multiple RUDs. The Reservations were one, that the US will not interfere with “private conduct except as mandated by the Constitution”, two, it will not be obligated to “assign women to all military units”, three, the US will not be required to “enact legislation establishing the doctrine of comparable worth”, and four, it will not be required to “introduce maternity leave with pay” (Kington 18).³ For reasons highlighted throughout this paper, each of these reservations conflicts with women’s ability to reappropriate themselves into new societal roles and to gain rights they are in critical need of. Koh, who served on the Clinton administration after the treaty was submitted to the Senate, claimed that the administration was unwise when it proposed these reservations (along with the understandings and declarations). He advised:

All told, these various proposals would reserve or place understandings upon all or part of Articles 2, 3, 5, 7, 8, 11, 12, 13, and 29 of the treaty, in addition to offering a general understanding about the need to protect states' rights and a blanket declaration that the first thirty articles of the treaty are not self-executing (Koh 270-1)

It is difficult to imagine that gender roles will be destabilized if all of these RUDs accompany ratification of the treaty. The US already complies with the majority of the treaty’s demands, and this hefty list of RUDs makes it so that little will change after ratification. Therefore, I (and the CEDAW Committee) discourage RUDs from being submitted with ratification.

³ For an extensive description on the understandings and declarations see page 19-20 in Hannah Kington’s article that is listed in the works cited page of this paper.

Conclusion

As political leaders Harold Koh, Joseph Biden, and Barbara Boxer informed, our Constitution is compatible with CEDAW, and we will only have to make minor changes domestically if we ratify the treaty. Nevertheless, opponents of CEDAW claim that our Constitution is incompatible with the treaty but they provide inadequate evidence for their claims. What they do succeed in is redirecting the focus from US culture to a focus on the US state. The state claims to be a leader in women's rights and an advocate for women's rights internationally, and yet it has failed to ratify the basic treaty that protects these rights internationally. Sadly, the US is one of six members of the United Nations that have not ratified the treaty, and our lack of doing this has weakened our international credibility as world leaders in human rights. Even though we have not yet ratified CEDAW, there have been extensive attempts to do this including right now. The Obama administration is in full support of the treaty and has submitted it to the Senate for review. In my paper, I ask readers to consider how US culture is an obstacle to ratification, this is something that has received much more academic and political focus in Eastern nations, yet it happens right here on our doorstep. I encourage readers to step back and analyze gender roles and their implications. *Are women and men's roles "natural"? Do women and men have agency to be whoever they want to be in a culture that has social expectations based on ones' perceived sex? What does it mean that men are expected to obtain monetary compensation for their work and in the intimate scene of the family women are expected to provide unpaid labor for those living in their households?* Once we identify these gender norms we can work to destabilize them. CEDAW offers tools and a framework to do this, but it will not change social norms the minute it is ratified. Social change is a slow process and it

requires that gendered expectations be in line with the treaties goals. We can see by our failure to ratify CEDAW that the US is not socially there yet.

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