

# Child Rights in the United States: 25 Years Later and Counting

*Yvonne Vissing*

## Abstract

The United States is now the only UN member country that has not ratified the CRC. This chapter explores the reasons for it. These include legislative, developmental, definitional and political considerations. It is proposed that legislative explanations mask the underlying tension adults feel regarding whether children are 'persons' or 'property'. There is a visible opposition group to child rights in the US that promotes the misconception that if children are given rights it means that adults will have theirs compromised. The chapter concludes that while there have been many actions taken to protect children's rights in the past, there is a child and youth rights movement occurring at the grassroots levels that will ultimately result in the US ratification of the CRC. Demographic changes in the population and greater media coverage of both national and international rights violations will facilitate both rebellion and court actions that will lead to the passage of this universal human rights treaty.

## 1 Introduction

On the twenty-fifth anniversary of the UN Convention on the Rights of the Child (CRC), the United States has still not ratified the treaty. This is despite its role in constructing it and the fact that virtually every other member country of the United Nations has ratified it or is in the process of doing so. At this point, there is no indication the treaty will be ratified in the United States (US) in the near future; the president would have to send it to the Senate for review, after which it would need to be approved by a two-thirds majority. The CRC was signed under President Bill Clinton but never ratified. President Barack Obama indicated that he would like the CRC to be ratified<sup>1</sup> but Republicans

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<sup>1</sup> Nutt S 'The Convention on the Rights of the Child is 25 Years Old: It's time for the US to ratify it' (2014) *Huffington Post*.

opposed to it made it clear the treaty would not pass.<sup>2</sup> According to Susan Kilbourne, 'The official line is that the convention is under State Department review, but the political reality is that it's not going anywhere until the political climate changes.'<sup>3</sup>

From this internationally embarrassing lack of legislative support for child and youth rights it would seem that the child rights movement is dead in the US. However, this is not the case.<sup>4</sup> A number of grassroots movements are bringing the issue of child rights to the fore. These social movements involved in debates about the CRC reflect competing definitions of what it means to be a child. Analysis of the CRC in the US is a study of conflict theory in action. It focuses on how a group of legislators and special interest groups justify oppression of children and youth in the face of worldwide recognition of the benefits of a rights-based approach. There is a child and youth rights movement in the US, but it is fractured and not well-mobilised. Should the many groups unite, they would become a powerful force that could sway legislative action to ratify the treaty.

This chapter offers a brief review of the competing definitions of childhood, the reasons the CRC has met with resistance, examples of rising child rights movements, and why they could ultimately lead to the ratification of the CRC in the USA.

## 2 Competing Definitions of Childhood

The CRC debate in the US concerns definitional issues surrounding what it means to be a child. The CRC uses the age of 18 as the defining limit of childhood, but questions about what it means to be a child fuel the debate. One issue is whether children should be considered as their own person or whether they are the property of their parents. Questions regarding whether they have agency, their degree of dependency, and the extent to which they need protection also muddy the debate. Age, like race, is a product of social construction that has been used to declare inherent differences between people and to justify their different treatment.<sup>5</sup> The definition of a child is an arbitrary, symbolic

2 *The Economist* 'Why Won't America Ratify the UN Convention on Child Rights?' 6 October 6 2013.

3 Langevin-Falcon C 'Second-class citizens?' (1998) 58(6) *Humanist* 11–17.

4 Todres J 'Who will speak for the children?' (2009).

5 Buckingham D & Bragg S 'Children and consumer culture' in Montgomery H & Kellett M *Children and Young People's World: Developing Frameworks for Integrated Practice* (2009).

determination that results in social inequality. Historically the stage was set for the current debate over the nature of children. The Roman law of *patria potestas*, Hobbes's view that children were under the unconditional domination of parents, Locke's notion of children as a blank slate to be written upon to shape their capacities<sup>6</sup> and Aries's notion that children were small adults put parents in the role to mould children's destiny. For most children, childhood was seldom the idyllic time of innocence, play and happiness. Middle-class children came to be regarded as precious and their lives became less harsh and more sheltered while poor and marginalised children experienced greater exclusion from the benefits of social capital.<sup>7</sup> Economic, social, religious and moral factors entered into the debate on what children were and how they should be treated.<sup>8</sup>

By the 1900s there was an increase in state intervention and rise of a child protection movement. The model of parental responsibility shifted to a charitable child-saving one when parents were not able to keep them fed, clothed or housed. Responsibility for addressing the needs of children ultimately shifted to the government. Disagreement between parents and the state about the best interests of the child soon emerged, especially around health, education, and discipline. The result was a tension-filled relationship between government and those who view children as parental property.<sup>9</sup>

While the twentieth century was to be seen as the century of the child,<sup>10</sup> the short-lived 1970s children's liberation movement was so ridiculed and criticised that rights equality was never realised for our youngest citizens. Children have become a social preoccupation in recent years around protection issues, especially concerning abuse, violence, criminal justice, substance use, sex-trafficking, bullying and the impact of media and technology. As children age they engage in behaviour once deemed the territory of adults. Data indicate that

6 Archard D *Children: Rights and Childhood* 3 ed (2015).

7 Zelizer V *Pricing the Priceless Child* (1994).

8 Prout A & James A *Constructing and Reconstructing Childhood* (1990); Barnes J, Katz I, Korbin J & O'Brien M *Children and Families in Communities* (2006).

9 Wells K *Childhood in a Global Perspective* (2010); Zelizer V *Pricing the Priceless Child* (1994); Cunningham H *Children and Childhood in Western Society* (1995); Bremmer R *Children and Youth in America* (1971); Kett J *Rites of Passage: Adolescence in America 1790 to the Present* (1977); Hawes J & R Hiner *Growing up in America* (1985); Nolan A *Children's Socio-Economic Rights, Democracy and the Courts* (2011); James A, Jenks C & Prout A *Theorizing Childhood* (1998); Qvortrup J *The Palgrave Handbook of Child Studies* (2011); Holloway S & Valentine G *Children's Geographies* (2000).

10 Freeman M *The Future of Children's Rights* (2014).

many American youth drink alcohol, use illicit drugs and tobacco,<sup>11</sup> engage in risky sexual practices, are involved in criminal activities either as a victim or perpetrator,<sup>12</sup> have untreated mental or physical health problems, suicidal tendencies, and are involved with bullying.<sup>13</sup> Issues of children's well-being are both a parental and community concern. How best to protect children from harm and teach them how to make good choices is a point of disagreement. The ideological pendulum swings between children being seen as victims of over-protective parental control to being controllable and in need of pharmaceutical drugs, curfews, community policing, and constant monitoring of their actions to keep them in check.<sup>14</sup>

Conflicting conceptions of childhood impact the way children are treated and how their needs and interests are addressed. Because the symbolic value of children has changed, questions arise as to when a child is responsible and how best to treat him or her. Children have often been denied the right to make decisions about matters that affect them. This stems from viewing them as immature, incapable of making rational decisions and, as such, unentitled to possess rights. The view offers justification for parents who feel they have the right to intervene in all aspects of their children's lives.

But in recent years the authoritarian model of 'sit down, shut up and do what I say' has been replaced with greater respect for understanding the world from a child's point of view.<sup>15</sup> Today children are more likely to be seen as stakeholders in their own lives who must be consulted about decisions affecting them.<sup>16</sup> Engaging them in conversation about their identity, needs, sexuality, religion, education, political involvement, use of media and how they negotiate experiences is important for both their individual well-being and the well-being of society.<sup>17</sup> 'The new sociology of childhood celebrates children as social actors and agents in their lives. Facilitating meaningful participation is a further endorsement of this position, laying to rest sepulchral perspectives of

11 Substance Abuse and Mental Health Services Administration (SAMHSA) *Youth Risk Behavior Survey* (2013).

12 Centers for Disease Control *Sexual Risk Behavior* (2014); National Network for Youth 'Consequences Faced by Unaccompanied Youth and their Costs to Society' (2014).

13 National Alliance for Mental Illness 'Facts on children's mental health in America' (2015).

14 Barnes J, Katz I, Korbin J & O'Brien M *Children and Families in Communities* (2006).

15 Mayall B *Towards a Sociology of Childhood* (2002); Tisdall K, Davis J, Hill M & Prout A (eds) *Children, Young People and Social Inclusion: Participation for What?* (2006).

16 Montgomery H & Kellett M *Children and Young People's World: Developing Frameworks for Integrated Practice* (2009).

17 Montgomery H & Kellett M *Children and Young People's World: Developing Frameworks for Integrated Practice* (2009).

children-in-waiting or human-becomings.<sup>18</sup> The shift in conception of what it means to be a child is reflected in the rights-based approach of the CRC.

### 3 United States' Resistance to the CRC

In 1989 the United States worked with UN members to craft the CRC. Under presidents Reagan and G.H. Bush, the CRC incorporated principles of the US Bill of Rights and Constitution. It was signed under President Clinton but never ratified, largely because Jesse Helms, head of the Senate Committee on Foreign Relations, misinterpreted the intent and impact of the CRC.<sup>19</sup> Senator Patrick Leahy unsuccessfully sought its ratification in 1994 and announced that 'the administration's resistance to ratifying the CRC is due to misunderstandings about the Convention. Opponents claim that it is anti-family or infringes upon states' rights. The CRC does none of these things.'<sup>20</sup>

Nations ratifying the CRC testify to the health, educational, social, psychological, and justice benefits the treaty provides for youth and families.<sup>21</sup> Many of the rights covered in the CRC are already addressed in US laws. Why, then, hasn't it been ratified? There are two main, multifaceted and interrelated reasons: one is legislative and the other, ideological. While legislative arguments are often used to explain why the treaty has not been ratified, the position taken in this chapter is that ideological justifications are what lie behind resistance to affording rights to children.

Legislatively, reasons include lack of US support for human rights treaties in general and issues related to sovereignty, federalism and treaty enforcement. Since its separation from Britain in 1776, the US has argued that individuals have rights. Its Declaration of Independence proclaims that all men are created equal, that people are endowed by the creator with certain inalienable rights, including to life, liberty and the pursuit of happiness, and that governments should help people secure these rights. Its Bill of Rights was designed to protect citizen rights, freedom of speech and religion, and the right to a fair trial. The abolition of slavery in 1885 was a human rights victory.

18 Montgomery & Kellet *Children and Young People's World: Developing Frameworks for Integrated Practice* (2009) 56.

19 Pangaea 'Street Children' (2014).

20 Sealander J *The Failed Century of the Child* (2003); Rutkow L & Lozman J 'Suffer the children?' (2006) *Harvard Human Rights Journal* 19 (Spring).

21 Lundy L 'Child wellbeing and the UNCRC' in Arie B & Casas F (eds) *Handbook of Child Wellbeing: Theories, Methods and Policies in Global Perspective* (2013) 1–32.

President Franklin Roosevelt declared that all people were entitled to freedom of speech/expression, freedom of religion, freedom from want, and freedom from fear. Eleanor Roosevelt was the first chairperson of the UN's Commission on Human Rights. The US government has pressured other nations to improve their human rights practices through formal and informal sanctions, including war. Annually the US State Department issues a report critiquing the human rights practices in other nations.<sup>22</sup>

Despite these accomplishments, the US has a history of non-support for human rights treaties.<sup>23</sup> Seventy-two international human rights treaties exist, of which the US has ratified 17.<sup>24</sup> The CRC is not the only human rights convention that the US has refused to ratify; others include the Convention on Elimination of All Forms of Discrimination against Women, the Convention against Enforced Disappearance, the Mine Ban Treaty, the Convention on Cluster Munitions, and the Convention on the Rights of Persons with Disabilities. US resistance to human rights treaties can be traced back to its constitutional system and post-Cold War ideology.<sup>25</sup> After World War II the Bricker Amendment laid the foundation to limit US endorsement of international treaties. The Universal Declaration on Human Rights was opposed by conservatives who felt it would promote socialism and communism. Economic, social and cultural rights became points of criticism. Fears grew that international treaties could lead to external courts and outside enforcement, and support for international treaties declined. Most countries, to varying degrees, do not implement all human rights treaties, and even those that have ratified the CRC may fail to support all child rights.<sup>26</sup> When countries fail to support the human rights of their own citizens, it weakens their position as human rights leaders. It is therefore perplexing to the world that the US, given its history, is not a leader in child rights.

Some argue that the US has failed to protect the rights of its own citizens as well as those of the international community. Roth states that 'on the few occasions when the US government has ratified a human rights treaty, it has done so in a way designed to preclude the treaty from having any domestic effect'.<sup>27</sup>

22 Bradley C 'The United States and human rights treaties' (2010) *Chinese Journal of International Law* 321–44.

23 McBain S 'Why is the US so reluctant to sign human rights treaties?' (2013).

24 University of Minnesota (2014) Human Rights Library.

25 Bradley C 'The United States and human rights treaties' (2010) *Chinese Journal of International Law* 321–44.

26 Liefwaard T 'Is the world keeping its promises on children's rights?' (2014).

27 Roth K 'The charade of US ratification' (2000) *The Chicago Journal of International Law*.

In a lay understanding of the US position on human rights, a Wikipedia entry on US human rights reads:

Contrary to its constitutionally-protected requirement towards respecting of human rights, the US has been internationally criticized for its violation of human rights, including denying access to basic healthcare [...] criminalization of homelessness, invading the privacy of its citizens through surveillance programs, racism, sexism, homophobia [...] police brutality [...] mistreatment of the mentally ill and juveniles in the prison system, crackdown on peaceful protestors [...] denial of voting rights [...]<sup>28</sup>

In an editorial questioning whether the US is a moral leader, Barnett observes that the US 'has championed human rights when it sees no damage to its security and economic interests. But when human rights are perceived as potentially detrimental to national interests, the United States has consistently chosen interests over values.'<sup>29</sup>

Opponents of the CRC claim that ratifying it would undermine US sovereignty by giving the UN authority to determine the 'best interests' of American children. The constitutional dispensation of federalism is also thought to be a major stumbling block to ratification.<sup>30</sup> The Bill of Rights addresses civil and political rights, but not individualised rights and human rights protections; nor does it include rights identified after 1789. States have the responsibility to oversee basic human rights and freedoms, including the entire spectrum of children's rights, from education and health care to punishment.<sup>31</sup> Even if the CRC is ratified, it is up to states to implement it. Critics therefore question whether the US should ratify the treaty, since converting its principles into practice will require the cooperation of 50 states.

Howard Davidson, at the American Bar Association's Center on Children and the Law, observes that '[t]hese concerns are neither new nor completely invalid; however, the US has adequately addressed them in other human rights

<sup>28</sup> Wikipedia 'Human Rights in the United States'.

<sup>29</sup> Barnett M 'Is America the moral leader of the world?' (2012) *CNN*.

<sup>30</sup> Blanchfield L *The United Nations Convention on the Rights of the Child* (2013); Van der Vyver J 'Children's rights, family values and federal constraints' (2012) 15(1) *Journal of Markets and Morality* 117–42.

<sup>31</sup> Van der Vyver J 'Children's rights, family values and federal constraints' (2012) 15(1) *Journal of Markets and Morality* 93.

treaties it has ratified through the use of reservations'.<sup>32</sup> Reservations are a tool that allows countries to 'harmonise' treaties with their domestic laws. The government could attach 'non-self-executing' declarations to human rights treaties, and Davidson notes the US routinely places 'federalism understandings' on human rights treaties. In this regard, it must be added that while the CRC remains unratified, the US Senate unanimously ratified the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, along with the Optional Protocol on the Involvement of Children in Armed Conflict<sup>33</sup>; however, when it did, it attached a federal understanding to it so that state/local laws will not be federalised through treaties ratified by Congress.

Indeed, Van der Vyver argues that '[r]atification of the convention could bear fruit in the long run', in that it could serve as an impetus for leaders to take account of issues affecting children: 'The CRC was not designed to force states parties to uphold the principles proclaimed in the convention. Its only enforcement mechanism is a reporting procedure [outlining what rights-protecting measures they adopted]'.<sup>34</sup>

Some argue against the US ratifying the CRC because the treaty has no enforcement teeth.<sup>35</sup> While nations are required to provide regular documentation of the treaty's implementation, failure to do so does not result in significant penalties, which is one reason why nations that have ratified it continue to violate children's rights. Nevertheless, the treaty offers a lofty policy statement to which the US could aspire.<sup>36</sup> The CRC is a tool, not a rule. It is not a criminal enforcement statute; it focuses on children's well-being, not law, and is regarded as the first step, not the last, in addressing problems faced by children. As the case of Pakistan's Malala Yousafza illustrates,<sup>37</sup> when she was viciously attacked her rights of health care, education, punishment of perpetrators, and ability to speak out on her own behalf were protected because her

32 Davidson H & Waddell A 'Has the UN Convention on the Rights of the Child made a difference?' (2012).

33 Yurchyk B 'The United States' Compliance Decisions with Regards to the UNCRC and the Two Optional Protocols: Reflections on the Theories of International Law' (2008).

34 Van der Vyver J 'Children's rights, family values and federal constraints' (2012) 15(1) *Journal of Markets and Morality* 140.

35 Davidson H & Waddell A 'Has the UN Convention on the Rights of the Child made a difference?' (2012).

36 Akehurst M A *Modern Introduction to International Law* (1993); Alston P *The Best Interests of the Child: Reconciling Culture and Human Rights* (1994); Grant J *The State of the World's Children* (1994).

37 See <http://www.malala.org>.



rights were recognised. If a nation ratifies the CRC it does not mean that all of the citizens will protect all of the children all of the time. Just as there are loopholes in nations that have endorsed the CRC, there would be loopholes in the US if it ratified the treaty. This provides an escape clause as nations are not bound to implement every aspect of the treaty. If there were international enforcement mechanisms, ratification of the treaty could supersede federal or state law and it would be opposed; conversely, it is also opposed because it does not mandate enforcement. Either way, critics oppose it because they disagree fundamentally with the rights-based assumptions inherent in the CRC.

In sum, there are ways for the legislative stumbling blocks to be overcome if there were a will to do so. The obstacles to ensuring children their rights are actually more ideological than legislative. The legislative process has been used as a smokescreen to justify what amounts to an underlying discriminatory view of children. The ideological reasons critics have given for not endorsing the CRC include the contentions that sufficient child laws are currently in place, that children are not safer in CRC-endorsing states, and that children are incapable of responsible rights management and need parental protection. It is the way that children are perceived that needs to be reframed in order for a rights-based approach to be embraced and implemented.

Critics argue that US ratification of the CRC is unnecessary because safeguards already exist for protecting children's rights.<sup>38</sup> Some suggest that US laws generally comply with the CRC.<sup>39</sup> Clark, for instance, finds it 'doubtful that [CRC ratification] would represent much of an improvement'.<sup>40</sup> Levesque argues that such commentaries are narrow and disregard the benefits of ratification: 'The concept of children's rights has received little attention in the United States despite its role in helping craft the CRC.'<sup>41</sup> Unlike with race and gender, there is no system to define and legislate on children's rights. There has been a lack of discourse regarding child rights as human rights, as has been the case with other vulnerable populations. Saying that people already have rights under the law has been used as justification for not requiring explicit rights statements for people of different gender, race, religion,

38 Mason M 'The us and the international children's rights campaign: Leader or laggard?' (2005) *Journal of Social History* (Summer) 955–64.

39 Cohen C & Davidson H *Children's Rights in America: UNCRC Compared with US Law* (1990); American Bar Association Report of the American Bar Association Working Group on the UNCRC (1993).

40 Clark H 'Children and the Constitution' (1992) *University of Illinois Law Review* 41.

41 Mason M 'The us and the international children's rights campaign: Leader or laggard?' (2005) *Journal of Social History* (Summer) 956.

(dis)abilities, and sexual preference. It is curious that the elderly, at one end of the age continuum, should have their rights protected but children, at the other end, should not. Mason believes this is due to America's ambivalent attitude towards children. She argues that oppression is part of America's historical landscape and includes not just ageism but sexism, racism and classism.

US citizens are more likely to be aware of child exploitation around the world than at home. News articles discuss child labour in creating consumer goods, the plight of child soldiers, and profiles of children trafficked into the sex industry or forced into marriage. The public is aware that child maltreatment occurs in nations that have ratified the CRC and asks why the US should bother ratifying it if countries supporting the treaty allow children to be maltreated. Critics see ratification as a useless gesture if it won't do what it seeks to do – to protect children from harm. This tendency to see violations of child rights globally, rather than nationally, leads to assumptions that children's rights are already protected in the US.

Davidson, however, argues that not all CRC protections are addressed by current US laws. He provides a list of treaty articles in which he finds the US is in non-compliance:

- article 19, 34, and 39 (child protection, sexual exploitation, victimisation);
- article 20 and 25 (children deprived of a family environment/in placement);
- article 21 (adoption);
- article 23 (children with disabilities);
- article 24 (children's health care);
- article 28(i)(e), (2) (school truancy, dropout, discipline);
- article 32 (child labour); and
- articles 37 and 40 (juvenile justice).

Davidson finds either that the rights protected in these articles have not been addressed in US laws or have been deemed inadequate to protect children. Some federal laws exist but state laws can alter them and make them stronger, weaker or preclude implementation. For instance, in articles 37 and 40 on juvenile justice, minors do not have the same rights as adults in the criminal justice system.<sup>42</sup> It is still legally possible for juveniles who commit a crime to be sentenced, like an adult, to life imprisonment without parole. The Supreme

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42 Friedman B 'Protecting truth: An argument for juvenile rights' (2011) *UCLA Law Review* 58, Disc. 165; De la Vega C & Leighton M *Sentencing our Children to Die in Prison* (2007); Kids In Need of Defense (KIND); Amnesty International (2014) 'Demand Juvenile Justice'.

Court<sup>43</sup> found that mandatory life sentences without parole for juveniles under the age of 18 violated their 8th Amendment rights. At the time of the ruling, 28 of 50 states allowed for mandatory life without parole sentences for 2,500 minor prisoners.<sup>44</sup> Until 2005, execution of juveniles was allowed, making the US the only nation allowing such a practice. The Supreme Court ruled the practice was a cruel and unusual punishment and barred by the Constitution.<sup>45</sup>

In another example, corporal punishment is banned in the CRC but legal in 19 of the 50 states (38%) in the US.<sup>46</sup> How an abused child fares in one state may be quite different to the experience of a child in an identical situation in another state. There is a lack of equity in child abuse prevention according to where a child lives, even though there may be federal laws to protect him or her.

Because the CRC advocates for children to have rights, critics argue that the treaty is anti-family, could take rights away from parents, and encourage children to become independent, disregard parental authority or even sue their parents.<sup>47</sup> Opponents to the CRC target articles 3, 9, 18 and 40, which focus on the 'best interests of the child'. They are concerned that these articles may conflict with their definitions of what is best for children's health, discipline and education. Article 16, which states that 'no child shall be subjected to arbitrary or unlawful interference with his or her privacy', concerns critics who feel it could remove parental rights to search their children's rooms or know if their child had had an abortion. Article 13(1) gives children the right to freedom of expression, which critics interpret as meaning youth could speak their mind without regard for parental authority. Article 14(1), respecting the right of the child to freedom of thought, conscience and religion, could allow children to object to their parents' religious beliefs/training. Article 17 is opposed by critics who want to control what children could read or view; the education protections of article 28(1) are opposed by those fearing it could impact home schooling, private schools, or the materials that are taught. Article 19(1), protecting children from abuse, neglect or maltreatment, angers parents who believe in corporal discipline and punishment, while article 15(1), protecting children's

43 *Miller v Alabama* Certiorari to the Court of Criminal Appeals of Alabama. No. 10–9646. Argued at US Supreme Court March 20, 2012 – Decided June 25, 2012.

44 YouthLaw (2014) US Supreme Court.

45 Death Penalty Information Center (2005).

46 Adwar C 'These are the 19 states that still allow schools to hit kids' *Business Insider* 28 March 2014; Wolfe D 'Revisiting child abuse reporting laws' (2012) 12(2) *Social Work* 14; Stop Hitting 'US Corporal punishment and Paddling Statistics by State and Race' (2014); [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/manda.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf) (accessed 18 December 2015).

47 Blanchfield L *The United Nations Convention on the Rights of the Child* (2013).

right to freedom of association and peaceful assembly, is seen as giving children the right to join cults or gangs.<sup>48</sup>

However, Jonathan Todres found that at least 19 of the CRC articles protect the rights of parents as well as those of children.<sup>49</sup> Arguing that parental rights will be eliminated by the CRC is simply not true, as demonstrated by a review of US law and the practices in ratifying nations. If anything, the treaty has been found to encourage positive parent-child communication and joint decision-making regarding matters that influence the child's well-being.

Opposition to the CRC is not just about the treaty, federalism, sovereignty, or the legislative process; it also concerns how a certain interest group views the agency of children, the nature of the parent-child relationship, and how to use the political arena. Critics of the CRC mobilise political support to protect their beliefs. They endorse candidates at the local, state and national levels who represent their views. They have active social media campaigns to promote their views, file legislation and create laws. Critics believe the US Supreme Court has ruled that no government should interfere with the parent-child relationship. They feel giving children rights would negate the importance of parental rights. Under the Supremacy Clause of the US Constitution, no treaty can override the Constitution.<sup>50</sup>

Perhaps the most vocal critic of the CRC is Michael Farris and his organisation, Parental Rights.Org. Members are politically conservative, religiously fundamental, and often home-school their children. They use social media effectively.<sup>51</sup> Well-funded and well-organised, they have proposed Senate bill SR 519 to block the ratification of the CRC in the US Senate and filed a constitutional Parental Rights Amendment (PRA) that would allow parental rights to trump those of children. The PRA gives parents control of decision-making in their children's upbringing, education and care. This would be problematic for youth who wish to make their own decisions, or who are abused or neglected; it would also be problematic in cases where the parent's judgment is questionable. The PRA seeks to diminish principles of international law that may affect parents, and as a Constitutional Amendment it would take precedence over the CRC, state laws, or rights designed to protect minors.<sup>52</sup>

48 Blanchfield L *The United Nations Convention on the Rights of the Child* (2013).

49 Todres J 'Independent children and the legal construction of childhood' (2014) 23 *Southern California Interdisciplinary Law Journal* 261–304; *The Economist* 'Why Won't America Ratify the UN Convention on Child Rights?' 6 October 2013.

50 *Reid v Covert* 354 U.S. 1 (1957).

51 Vissing Y & Burris S 'An analysis of child and parent rights: What Google teaches us' (2016).

52 First Focus 'Proposing an amendment to the Constitution of the United States relating to parental rights' (2014) September 9.

Whereas the definition of children and what it means to be a child has changed over time, critics hold on to a dated conception of childhood according to which children are immature and unable to use their rights appropriately. Yet the tensions between autonomy and dependence, personhood and property, are present not just in the political arena but the scholarly field too.<sup>53</sup> One school of thought continues to see children as vulnerable, developmentally immature and dependent upon adults to care for and guide them until they are older and able to successfully care for themselves. Adults, in this perspective, are seen as necessary to protect children and negotiate their worlds for them.<sup>54</sup> Another dominant viewpoint regards children as empowered individuals with the agency to make decisions for themselves and engage in social processes that influence their lives.

Scholars, like the general public, are not immune to the ideological complications associated with a changing definition of what it means to be a child in contemporary society. Some scholars argue that the issue of limiting access to child rights has more to do with preserving existing power relationships and structural inequalities than with ensuring the protection and well-being of children.<sup>55</sup> They recommend broadening the understanding of child rights and giving children more power in an age-appropriate manner. Others promote a developmental model of rights in which children have protections but also rights by which they can become more proactive as they get older and gain further competences.<sup>56</sup> Lister and Moosa-Mitha describe children's rights as 'differently equal' and part of a 'differentiated universalism'.<sup>57</sup>

Critics and advocates of the CRC both believe they have the best interests of children at heart. It is obvious that children need to experience love and be protected, especially when they are vulnerable. Vulnerable people of any

53 Archard D *Children: Rights and Childhood* (2015); Archard D & Macleod C *The Moral and Political Status of Children* (2002); Freeman M 'Why it remains important to take children's rights seriously' (2007) 15 *International Journal of Children's Rights* 5–23; Campbell T 'The rights of the minor: As person, as child, as juvenile, as future adult' (1992) 6(1) *International Journal of Law, Policy and the Family* 1–23.

54 Gran B & Bryant R 'Children's rights' in Blau J & Frezzo M *Sociology and Human Rights: A Bill of Rights for the 21st Century* (2012) 223–35.

55 John M *Children's Rights and Power* (2003).

56 Walker N, Brooks C & Wrightsman L *Children's Rights in the United States* (1999); Erlen J 'The child's choice: An essential component in treatment decisions' (1987) 15 *Children's Health Care* 156–60; Billick S 'Developmental competency' (1986) 14 *Bulletin of the American Academy of Psychiatry and Law* 301–08.

57 Lister R 'Unpacking Children's Citizenship' in Invernizzi A & Williams J *Children and Citizenship* (2008); Moosa-Mitha M 'A difference centered alternative to theorization of children's citizenship rights' (2005) 9(4) *Citizenship Studies* 369–88.

age or situation – such as the elderly, the sick and the oppressed – need protection and assistance. The human condition is one of interdependence and connection. But the issue of dependence is a separate issue from having rights. One may be dependent and need protection from others without having one's rights negated. The self-regulation argument seems mute in that people of all ages, demographic characteristics, and conditions are sometimes able to make good, informed choices and sometimes unable to; sometimes they are able to self-direct themselves better than others. To decide that competences determine who has rights would be a dangerous and difficult precedent to set for a society. No universal standard exists for knowledge or ability being the sole criteria for determining rights.

Historically, there are many examples of people being fearful of rights being given to a group that previously did not have them. This fear is almost always unfounded. Giving one group rights does not take away the rights of another group. Consider the US conflicts around giving women equality, eliminating slavery and segregation or allowing gays the right to marry. It took 70 years for women to gain voting rights and 250 years to abolish slavery. Fearmongers predicted that the social order would be adversely affected if rights were given to these two oppressed population groups, yet legalising rights have had a positive effect. Childhood is one of the last areas where true and uniform human rights need to be established. Children experience institutionalised, socially structured inequality that has been a part of the nation's history. They are seen as fundamentally different from adults, and adults assume they have the right and authority to protect children as they, rather than children, deems best. Despite data indicating that child rights can lead to happier families, healthier children, greater child engagement and more democratic behaviour,<sup>58</sup> opposition groups reject these arguments.

The study of the US refusal to ratify the CRC underscores how different groups try to impose their views of reality on others to justify why childhood oppression is necessary. The CRC is important because it protects the right of children to have their positions considered and their voices heard in every decision – just as every other group is entitled to have its rights considered. Having a bill of rights for children does not automatically protect them from discrimination any more than it has women, minorities, gays or the elderly. But it forces all conversations at least to consider the needs of our youngest and

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58 Lundy L 'Child wellbeing and the UNCRC' in Arieh B & Casas F (eds) *Handbook of Child Wellbeing: Theories, Methods and Policies in Global Perspective* (2013) 1–32; Tisdall K, Davis J, Hill M & Prout A (eds) *Children, Young People and Social Inclusion: Participation for What?* (2006).

most vulnerable citizens on whom our future depends. This fact alone should be a reason for the US to support the CRC.

#### 4 The Rising Child and Youth Rights Movements in the USA

Although the United States has not ratified the CRC, it is seeing a slow but steady increase in child rights activities. These include national organisations, local and grassroots organisations, state and local resolutions, and a variety of pro-child and youth rights initiatives. They have not been tightly united or mobilised around the issue of ratifying the CRC. Instead, these organisations' approach is typically to engage with a particular issue without linking it to the treaty. For instance, the National Coalition for the Homeless addresses housing issues; Head Start focuses on education. While both address child poverty, they do so in different and uncoordinated ways. Merging a variety of silo organisations and activities into a comprehensive system takes time, resources, and effort.

The story of child protection in the US has generally been one of progress, not failure.<sup>59</sup> Myers divides this history into three periods: the first, from colonial times to 1875, an era before child protection; the second, 1875–1962, which marked the growth of organised child protection efforts; and the third, the period since 1962 of formal, government programming. During colonial days, there were movements to condemn child labour, require education, and provide the state the right to intervene when children's rights were violated.

During the second phase, the world's first organisation devoted to child protection, the New York Society for the Prevention of Cruelty to Children, was established<sup>60</sup> and by 1900 there were over 161 societies in the United States for the protection of children. The Children's Bureau (1912) and American Youth Congress (1935) were created, the UN Universal Declaration of Human Rights was endorsed and in 1959 the US voted unanimously to adopt the Declaration of the Rights of the Child,<sup>61</sup> which required parents and governments to ensure rights for children.<sup>62</sup> Supreme Court decisions of *Brown v Topeka Board*

59 Myers J 'A short history of child protection in America' (2008) 42(3) *Family Law Quarterly* 449–63.

60 Myers J 'A short history of child protection in America' (2008) 42(3) *Family Law Quarterly* 449–63.

61 Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), at 19, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc A/4354 (Nov. 20, 1959).

62 Glendon M A *World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (2001); Henkin L *How Nations Behave* (1979).

of *Education*, *Tinker v Des Moines* and *In re Gault* supported child rights<sup>63</sup> and set the stage for the creation of more child rights legislation.<sup>64</sup> Federal organisations emerged to protect children, including the Department of Education, Office of Juvenile Justice, Head Start, Administration for Children and Families, Childhelp, and the Child Welfare Information Gateway. Professions have emerged to incorporate child protections into their missions.

In stage three of Meyer's model, NGOs and grass-root organisations have seemed to take the lead on children's rights issues. Two main organisations working towards ratification of the CRC in the US are The Campaign for the US Ratification of the Convention on the Rights of the Child<sup>65</sup> and First Focus.<sup>66</sup> They used the twenty-fifth anniversary of the treaty to mobilise resources to increase the chances of its ratification. More than 125 national organisations asked the White House to send the CRC to the Senate for review in order to start the ratification process. But this has not occurred. Pro-child rights groups report spending valuable time refuting claims by opposition groups and less on promoting CRC facts and the positive outcomes that occur when children have rights. Better use of social media on child rights could counter the negative information disseminated by opposition groups.

There has also been an emergence of youth rights groups.<sup>67</sup> These groups have the potential to mobilise more youth around rights-based initiatives, but so far have lacked the skills and organisational resources to do so. Mainstream organisations have also taken it upon themselves to promote child rights opportunities. For instance, the Muhammad Ali Center created a 2015 youth rights equality conference<sup>68</sup> child and youth rights centres and conferences can be found at prestigious universities such as Vanderbilt University, Harvard, Yale, Emory University and Brooklyn College<sup>69</sup> and youth rights conferences are regularly sponsored by organisations like Amnesty International.<sup>70</sup> Salem State University created a multidisciplinary Center for Childhood and Youth Studies that includes a child studies certification and specialised courses on child rights that have led to the creation of child rights films, a speaker series, a film series, a book series, youth rights hero award, research, consultations,

63 Sealander J *The Failed Century of the Child* (2003); Friedman B 'Protecting truth: An argument for juvenile rights' (2011) 58 *UCLA Law Review Disc.* 165.

64 Johnson M 'Hull House' in Grossman J *The Encyclopedia of Chicago* (2004).

65 See <http://www.childrightscampaign.org>.

66 See <http://firstfocus.org>.

67 See <http://www.youthrights.org>.

68 See <https://alicenter.org/news/2015-youth-rights-conference-race-to-equality>.

69 See <http://law.wayne.edu/keithcenter/programs/youth-civil-rights.php>.

70 See <http://law.wayne.edu/keithcenter/programs/youth-civil-rights.php>.



conferences and workshops. It is also working to create Rights Respecting Schools, a designation usually provided only to CRC member nation schools. The commitment made at the city level to become a Child and Youth Rights Respecting Community has facilitated the creation of series of community partnerships. While laudable, most operate without reference to and knowledge of what the other programmes are doing.

There are also efforts in state and local communities to promote child rights. Some states and municipalities have passed child rights resolutions. Massachusetts is preparing to pass Senate Bill 2080 to create a state commission on children and youth. Hawaii put forward HR 48 and HCR 69, Urging Adoption of the UNCRC by the state and nation. Rhode Island put forward S1003 Memorializing the President and Congress to ratify the UNCRC and R8143, S30313 Urging the Adoption of UNCRC by the US. In South Carolina S790 Concurrent Resolution supports the CRC and requests agencies providing services to children to aim to achieve the goals of the Convention. Vermont put forward JRS33 to Ratify UNCRC. States have stepped forward to show commitment to children; September 24–30, 1990, was proclaimed World Summit for Children Week by governors in Colorado, Idaho, Kentucky, Nevada, New Mexico, New York, North Carolina and South Carolina.

At the municipal level, cities are developing child rights-oriented resolutions, policies and services. The City Council of New York put forward Res. 1891 calling on city agencies to ensure their activities and funding processes comply with the CRC. Salem, Massachusetts passed a 2014 resolution designating the city as a Child and Youth Rights Respecting Community, and an annual proclamation recognising November 20 as Universal Children's Day. On February 9, 2010, the Santa Clara County California Board of Supervisors endorsed the Bill of Rights for Children and Youth.<sup>71</sup> Since that time, six Santa Clara County cities, 12 school districts, 15 governmental entities, and 60 community-based organisations endorsed a Bill of Rights for Children and Youth. San Mateo County, California, adopted a children's bill of rights in 2008. Cities, schools and non-profit organisations have implemented it and it guides decisions, policies and funding. The county's Bill of Rights for Children and Youth has become a model for the state of California and was approved by the state legislature in 2009. In 2006 Portland, Oregon became the first US city to adopt a Bill of Rights for Children. Six months later Multnomah County joined it. The first right in their document is 'We, the Children and Youth of Portland and Multnomah County, are entitled to a voice and opinion in decisions that will

71 Bunnett D 'Changing the paradigm: a bill of rights for children and youth' (2009) *Big Ideas: Game-Changers for Children* 101–09.

impact our lives'.<sup>72</sup> A 2013 election in Takoma Park, Maryland gave 16-year-olds the right to vote. Children are not allowed to vote in the United States until the age of 18, compared with Scotland where youth at 16 voted in the national referendum on separation.<sup>73</sup>

Many groups have contributed greatly to improving the well-being of children and youth by using a child rights framework, whether explicitly stated or not. Laudable as their efforts and intentions are, they have not created a groundswell of support for child and youth rights. If they joined forces, it is likely they would achieve more child rights successes. What would it take for this to occur?

It may require a good push from young people themselves. It doesn't take a crystal ball to see that children and youth are smart, good learners and will use their knowledge to change their lives for the better. They will challenge those who refuse to let them do so. Just as it took 245 years for slavery to be abolished and 70 years for women to get voting rights, it will take time for children's rights to be accepted in the US. But it will come about due to several factors.

Unfolding demographic forces place children and youth at the forefront of a rapidly changing society that will have major implications for intergroup relations, ethnic identities and electoral politics.<sup>74</sup> Census Bureau projections indicate that by 2043, Latino children will form the dominant population group in the US. Moreover, the numbers of multi-racial or hybrid-identity children are increasing, and this racial and ethnic diversity will continue to grow. Cultural diversity is on the rise as well, due in part to immigration and intermarriage, and it not unusual to find children who are 'American' and have perhaps four other national or ethnic identities. This gives children a sense of global citizenship as they identify with more than one race, country or culture.<sup>75</sup>

The feeling of being a citizen of the world is enhanced through the use of technology, travel and consumerism. Young people forge identities through local-global dialogues with music, language, sports, food and fashion. The strictures of racial and cultural absolutes become permeable as children and

72 Bunnett D 'Changing the paradigm: a bill of rights for children and youth' (2009) *Big Ideas: Game-Changers for Children* 101–09.

73 Brennan J 'Let 16 year olds vote' (2014) *CNN*; Nobel A 'Maryland teens lead national movement to lower voting age' (2013) *Washington Times*.

74 Johnson K, Shaefer A, Lichter D, & Rogers L *The Increasing Diversity of American Youth: Children Lead the Way to a New Era* (2014) Carsey Institute.

75 Starkey H *Learning to Live Together: Struggles for Citizenship and Human Rights Education* (2015).

youth are exposed to new ways of living, thinking and doing.<sup>76</sup> Social media empowers them to talk in real-time to others around the world. They exchange information, ideas, and news on Facebook and hundreds of other websites. They learn about the power of youth protests in Mexico, South Africa, Ireland, or the Middle East, the rights violations of children from Latin America who cross the border, or how 15-year-old Joshua Wong led 120,000 people in a Chinese democracy protest.<sup>77</sup> Where people were once limited to knowing just about the area in which they lived, children now are being socialised to have a global awareness from early in life. This global view will only increase as they age. Given that youth in other UN countries have their rights protected through the CRC, it is only a matter of time before US youth demand the same.

Young people have always transformed the course of history. The Children's Crusade during the 1960s Civil Rights Movement in the US was a pivotal event that broke the back of legalised segregation. They have been actively involved in the peace, LGBTQ, environmental, anti-war, labor, Occupy, women's and reproductive rights movements.<sup>78</sup> Youth-inspired and led social movements have been largely invisible,<sup>79</sup> but social media is fixing that.

The notion that there is a war against youth, especially poor or non-white youth,<sup>80</sup> is now more than a whisper in the wind and it has the potential to become a hurricane. People upset about how children are treated have started taking action, especially when the criminal justice and judicial systems are not responsive. The murder of Florida teenager Trayvon Martin was a watershed event.<sup>81</sup> Then there was the police killing of 16-year-old Kimani Gray and 12-year-old Tamir Rice. When teenager Michael Brown was killed in Ferguson, Missouri and the white officer was acquitted, riots took place. The Black Lives Matter and Black Youth Project campaigns emerged and thousands of people have taken to the street to protest unjust treatment. It is noteworthy that Brown's parents traveled to Geneva to meet with the United Nations Committee Against Torture to ask for help.<sup>82</sup> This action taught the nation about

76 Masson J 'Child protection' in Montgomery H & Kellett M *Children and Young People's World: Developing Frameworks for Integrated Practice* (2009).

77 Chan W & Yang Y 'Echoing Tiananmen, 17-year-old Hong Kong student prepares' (2014) *CNN*.

78 NC Civic Education Consortium *The Power of Youth: Movements Past and Present*.

79 Costanza-Chock S 'Youth and social movements: Key lessons for allies' (2012).

80 Giroux H 'The fire this time: Youth and the spectacle of postracial violence' *Truthout* 26 May 2015.

81 See <http://www.trayvonmartinfoundation.org/>.

82 Levs J 'Michael Brown's parents address the UN: We need the world to know' *CNN* 12 November 2014.

the existence of international human and child rights treaties that protected people in other countries. In a Baltimore City Detention Center, juveniles awaiting trial for adult crimes were illegally kept in solitary confinement, one for 143 days – a practice that violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention Against Torture.<sup>83</sup> Social media exposes experiences of youth like Nobel Peace Prize winner Malala, who fought for her right to be educated and free from violence. All of a sudden people are paying attention to the fact that the UN has human rights protections that the US does not adhere to.<sup>84</sup>

Youth rebellions over lack of rights has always been commonplace in homes and communities. With social media, youth are able to share experiences with others and gain support. As with all social movements in which a group in power has to relinquish old attitudes and practices, change will not come easily. But change always comes. Whether through formal CRC ratification, policies and laws, informally on the streets, or in the minds of youth, their desire to seize rights will continue to increase. We can either work with them by creating a new social contract to smoothly and proactively give rights, or as a nation we can refuse to do so and wait for their uprising. It is this author's opinion that working to empower and engage them to use their rights responsibly would be wiser than waiting for them to rebel. As Doek notes,

[i]t is undoubtedly important that we invest to the maximum extent of our available resources the implementation of the rights of the child in order to prepare the child for a responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples ethnic, national and religious groups and persons of indigenous people.<sup>85</sup>

'There are two ways to change a democracy – one is to change its leaders and the other is to change its people. And the people are changing.'<sup>86</sup> In confirmation

83 Giroux H 'The fire this time: Youth and the spectacle of postracial violence' *Truthout* 26 May 2015.

84 Nolan A & Kilkelly U 'Children's rights under regional human rights law: A tale of harmonisation?' in Buckley C, Donald A & Leach P (eds) *Harmonisation of International Human Rights Law* (2015).

85 Doek J 'Citizen child: A struggle for recognition' in Invernizzi A & Williams J *Children and Citizenship* (2008) xvi.

86 Blake J 'Ferguson could be America's future' (2014) *CNN*.

of that view, there is a youth protest video from Mexico which had a million YouTube views in which someone says,

[i]t's like a storm, getting stronger. It's the first time in a long time that young people have raised their voice [...] I believe in the movement. I believe young people, we have great power in our hands. We have information and media that other groups do not have [...] I think we can do something great.<sup>87</sup>

Young people. Seasoned professionals. Advocates. Politicians. Government organisations. NGOs. Volunteers. All kinds of people are working on behalf of children's well-being. What if they were brought together in a consolidated movement?

Social movement theory can contextualise the child rights movement. People who start social movements share a problem or an experience of deprivation or exploitation. They weigh alternatives and make a rational choice about what they believe will be the best course of action. Framing the issue to capture emotional and material support is essential to the success or failure of a movement. Resources like money, space, materials, volunteers and employees help them realise their goal. They need organisational know-how, strategic planning, data collection and analysis, social networking, marketing, and social visibility (especially through social media). Partnerships, allies, recruits, group solidarity and moral support are essential. Political aptitude to know who to align with, when, how, and around what actions is vital. Building a social movement that inspires people to genuinely care about children's rights may be especially challenging, given the strength of an ideological conception of children as being incapable and in need of parental authority.<sup>88</sup>

Giroux notes that any collective struggle must include an understanding of how to use power in the interest of democratic authority and values. Merging democratic authority with the power of the people ensures freedom and justice. Child rights advocates, especially at grassroots level, must do this to move a rights agenda forward. Power is not understood in a vertical fashion, where it means control or domination *over* some individual or group. Power is a *horizontal* concept that results when individuals act together. It is this horizontal notion of power that must be part of any collective struggle to overturn what

87 Shoichet C 'Mexico Student Protest Movement' (2012) *CNN*; Schoichet C & Torres M 'Social Media fuels Mexico protests' (2012) *CNN*.

88 Vissing Y *Introduction to Sociology* (2012).

Giroux calls 'the authoritarian nightmare that currently engulfs US society'.<sup>89</sup> He states that young people in the US, especially poor people of colour, are faced with a sense of hopelessness about the future that is almost unparalleled in recent history. It is a prescription for despair and violence. If youth can collaborate with others there is opportunity for developing new modes of understanding, insight and an alternative sense of the future, one that could include better protection of child rights and perhaps the ratification of the CRC.

The CRC inspires us to think differently about children.<sup>90</sup> The treaty could benefit all children and lay a foundation to eliminate many of our social problems. It provides a framework that legislators can use to advocate for laws, policies and practices that ensure all children are protected. It would empower us to look at issues we have not addressed before and consider children in every decision made. This will require a shift in 'deeply held assumptions about children's needs, children's development, protection of children and children's agency'.<sup>91</sup> Instead of viewing children as citizens of tomorrow, the shift recognises children as having agency and being full citizens today.

This chapter has shown that within the US there have been endorsements of child rights legislation, the creation of child protection organisations, and a variety of groups that advocate for the rights of children and youth. The general public may well be more in support of child rights than it seems to be; however, no national data are available to verify this. It appears to this author that the crux of opposition to the CRC is ideologically based. Opponents to a personhood view of children and youth have effectively secured the support of enough political legislators to prevent the treaty from being considered in the Senate. Critics have waged an effective social media campaign to promote their rationale for opposing the treaty.

However, as demographic changes occur in America to make non-white individuals a majority group, as technology increases self-perception in youth as global citizens, and as the oppression foisted upon minorities is rejected, the prospects for ratification of the CRC improve significantly: legislators in power today will not be there tomorrow. The choice the nation faces is to proactively embrace these inevitable social changes and encourage youth to seize positive citizenship rights opportunities, or to alienate the youth and see rights change

89 Giroux H 'The fire this time: youth and the spectacle of postracial violence' *Truthout* 26 May 2015.

90 Lansdown G *The Evolving Capacities of the Child* (2005); Cipriani D *Children's Rights and the Minimum Age of Criminal Responsibility* (2009).

91 Invernizzi A & Williams J *Children and Citizenship* (2008) xv; Lister R 'Unpacking Children's Citizenship' in Invernizzi A & Williams J *Children and Citizenship* (2008).

forced in a conflictual manner. Just as other social movements in the US have steadily come to realise the rights of oppressed groups, so a child rights agenda is likely to have its day. It will only take time.

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