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Afterword to Symposium

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AFTERWORD

*Kathryn Grant Madigan**

In 1995, Madeleine Albright, acting as the United States Delegate to the United Nations, signed the Convention on the Rights of the Child (“CRC”) on behalf of then President Clinton and the United States, signifying our intent to consider ratification.¹ Over a decade has passed since then and it has yet to be forwarded for action to the Senate Foreign Relations Committee.

During my year as President of the New York State Bar Association, I was privileged to participate in a number of programs and initiatives designed to draw attention to the importance of United States ratification of this celebrated international treaty in securing for the children in our country the human rights protection extended to most children throughout the world. As noted in this treatise, the United States stands alone with Somalia as the only two nations and a party to the United Nations who has failed to ratify the CRC. Unlike Somalia, we have a functioning central government. Our continuing failure to ratify the CRC puts our nation’s standing in the international community, as well as our children and families, at risk.

We are indebted to the vital work of Albany Law School Associate Professor Maria Grahn-Farley and her students in her International Child Rights class for their comprehensive analysis of the CRC as it relates to the laws of the State of New York. Their work was essential in demonstrating not only how essential it is for the United States to participate in the international discourse in promoting human rights protection for children worldwide, but in making a compelling case that our task after ratification is building on the existing framework of state law, rather than imposing new legislative and regulatory mandates on our states. The analysis in this volume reveals that the fundamental principles of the CRC are indeed quite compatible with most child protection laws here in the United States.

The United States has historically displayed caution regarding

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¹ Carolyn Davis, *Basic Rights: U.N. Treaty Upholds A Principle That Most Americans Take for Granted: The Right of Children to A Life From Hunger, Homelessness, Slavery, Torture, Conscription, and Brutal Labor*, CLEVELAND PLAIN DEALER, Feb. 26, 1995, at 1C.

international agreements.² And since 1995, we have confronted a number of procedural and political barriers in efforts to ratify the CRC.³ Ironically, the United States played an active role in the initial drafting sessions throughout the Reagan years.⁴ Provisions regarding a child's right to freedom of thought, speech, association, religion, and privacy were largely inserted at the request of the Reagan Administration.⁵ While critics have characterized the CRC as a threat to families here in the United States, ratification would in fact help save children's lives and strengthen our families. Others have suggested that ratification of the CRC would violate fundamental principles of federalism or states' rights, forcing states to significantly alter current legislative policy.⁶ However, to the extent that there are differences, it can be addressed through a process that would ensure state sovereignty.

The passage of time has also resolved a number of articulated concerns, particularly in the juvenile justice arena. For example, the CRC prohibits the use of capital punishment for those under age 18, which presented a major obstacle to United States ratification.⁷ In 2005, the U.S. Supreme Court held, in *Roper v. Simmons*,⁸ that capital punishment in juvenile justice cases was unconstitutional.⁹ To the extent that other differences are presented, they can be addressed in a manner that should not prevent ratification.

The CRC has also received support from a wide array of bar associations and other organizations throughout the United States concerned about our nation's children and children around the

² Anu Bradford, *International Antitrust Negotiations and the False Hope of the WTO*, 48 HARV. INT'L L.J. 38, 406 n.101 (2007).

³ Michelle Z. Hall, *Convention on the Rights of the Child: Has America Closed Its Eyes?*, 17 N.Y.L. SCH. J. HUM. RTS. 923, 923 (2001); Laura C. Clemens, *International Parental Child Abduction: Time For The United States To Take A Stand*, 30 SYRACUSE J. INT'L. L. & COM. 151, 169 (2003).

⁴ Cara L. Finan, *Convention on the Rights of the Child: A Potentially Effective Remedy in Cases of International Child Abduction*, 34 SANTA CLARA L. REV. 1007, 1033 n.199 (1994).

⁵ Campaign for the U.S. Ratification of the Convention on the Rights of the Child, *The Path to Promoting Universal Child Welfare*, http://www.childrights.org/crcindex.php?sNav=getinformed_snav.php&sDat=chronology_dat.php (last visited April 6, 2010) (stating that provisions regarding a child's right to freedom of thought, speech, association, religion and privacy were largely inserted by U.S. delegates at the request of President Reagan's Administration).

⁶ See generally Susan Kilbourne, *The Convention on the Rights of the Child: Federalism Issues for the United States*, 5 GEO. J. FIGHTING POVERTY 327 (1998).

⁷ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, available at <http://www2.ohcr.org/english/law/crc.htm#> [hereinafter CRC].

⁸ *Roper v. Simmons*, 543 U.S. 551 (2005).

⁹ *Id.* at 579.

world. The New York State Bar Association (“NYSBA”) endorsed a Resolution in support of the CRC in 1995.¹⁰ The 2007 Presidential Summit “Breaking the Cycle for Our Youth at Risk” brought a standing room only crowd of judges, lawyers, and advocates to address a number of juvenile justice issues, including ratification of the CRC. The New York State Bar Association Committee on Children and the Law, chaired by the Honorable Edward O. Spain continues to support ratification through efforts to educate the bar and general public about the CRC, most recently with a Report and Recommendation in support of New York joining the rest of the country in extending to the protection of the Family Court to children under the age of 18. New York currently requires children over the age of 16 to be adjudicated in the adult criminal courts.¹¹ As noted by both Maria Grahn-Farley and Alexandra Harrington in this volume, the activities of the NYSBA can be a model for other organizations in fostering essential partnerships with academe, child advocates, and policy makers in protecting and supporting our children and families.

In 1991, the American Bar Association (“ABA”) endorsed ratification of the CRC in principle and then again in 1994, with several clarifying reservations, understandings, and declarations. Today the ABA is at the forefront in protecting our nation’s children through such programs as the ABA Commission on Youth at Risk.

While in the past, representatives from the radical Christian right branded the CRC as an attack on United States families,¹² the CRC now has the support of many American faith-based groups, as well as such mainstream national organizations as the American Red Cross, the Association of Junior Leagues, Cooperative for Assistance and Relief Everywhere, Inc. (“CARE”), Girl Scouts of America, March of Dimes, Save the Children, Young Men’s Christian Association (“YMCA”),¹³ and others. The “Campaign for U.S. Ratification of the CRC,” which was established in 2003 in Wash-

¹⁰ Association of the Bar of the City of New York, American Bar Association Section of International Law and Practice, Report With Recommendation, Council Summary, <http://www.abanet.org/intlaw/policy/institutions/UNfunding.doc> (last visited Apr. 6, 2010).

¹¹ Monya Bunch, *Juvenile Transfer Proceedings: A Case for Restorative Justice Values*, 47 How. L.J. 909, 929 n.130 (2004).

¹² See generally Susan Kilbourne, *Opposition to U.S. Ratification of the United Nations Convention on the Rights of the Child: Responses to Parental Rights Arguments*, 4 LOY. PVERTY L.J. 55 (1998).

¹³ See Howard Davidson, *The Convention On The Rights Of The Child: A Call For U.S. Participation*, 32 A.B.A. HUM. RTS. 1 (2005).

ington DC, has also performed yeoman service in helping to build a groundswell of national support for the CRC.

The recent national elections in the United States present an historic opportunity to bring about consideration of the CRC by the United States Senate and, ultimately, ratification. At a time when our moral standing in the international community has been tainted, ratification will enable us to regain our status as an international leader in human rights. Our children and families deserve nothing less.