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HOPE FOR THE FUTURE: OVERCOMING JURISDICTIONAL CONCERNS TO ACHIEVE UNITED STATES RATIFICATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

KERRI ANN LAW

INTRODUCTION

"It is sad being homeless because you have no food or money," writes Darryl, a nine year old living temporarily in a welfare hotel in New York City. "You have no bed to lay on. It is terbbele because you get look at and you feel mad because . . . you are on well-faire, . . . you look all bummy your shoes are dirt you can't washup because you have no apartment. This is how I feel."[1]

Darryl's situation is not unique. Although the United States is one of the the wealthiest nations in the world, one out of every five American children is poor.[2] Over 5.5 million American children are hungry, and another 6 million are at risk of going hungry.[3] Estimates further suggest that 100,000 to 500,000 homeless children are on the streets every night.[4] And today the plight of America's children only continues to worsen.[5]

In view of these problems, it is incumbent upon the United States to sign and ratify the United Nations Convention on the Rights of the Child[6] ("CRC"). The CRC, adopted by the United Nations General Assembly on November 20, 1989, and set into force on September 2, 1990,[7] provides a comprehensive list of civil, political, economic, social, cultural, and humanitarian rights for children.[8] Despite playing a major

1. Nina Bernstein, *A Child's Garden of Curses Growing up in Poverty: Darryl Davis Endures*, N.Y. Newsday, Apr. 6, 1988, at 4.

2. *See* A.B.A. Presidential Working Group on the Unmet Legal Needs of Children and their Families, America's Children, at Risk at v (1993) [hereinafter Children at Risk].

3. *See* Margaret Brodkin & Coleman Advocates for Children and Youth, Every Kid Counts: 31 Ways to Save Our Children 59 (1993).

4. *See id.* at 142.

5. *See* Children's Defense Fund, America's Children Falling Behind: The United States and the Convention on the Rights of the Child 19 (1992) [hereinafter America's Children] (stating that child poverty has "soared even higher as a result of the 1990-1992 recession").

6. G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/736 (1989), 28 I.L.M. 1456 (1989) [hereinafter CRC].

7. *See* Lawrence L. Stentzel, II, *Prospects for United States Ratification of the Convention on the Rights of the Child*, 48 Wash. & Lee L. Rev. 1285, 1285 (1991). Article 49 of the CRC provides that the Convention will "enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession." CRC, *supra* note 6, art. 49, 28 I.L.M. at 1475.

8. *See* Cynthia P. Cohen, *Introductory Note: United Nations Convention on the Rights of the Child*, 28 I.L.M. 1448, 1448 (1989). A child is defined in the CRC as "every human being below the age of eighteen years . . . ." *Id.*, art. 1, 28 I.L.M. at 1459.

role in drafting the CRC,[9] the United States has neither signed nor ratified the Convention, unlike three-quarters of the other Member States of the United Nations.[10]

The notion that children are entitled to special care and protection can be traced back to the 1924 Declaration of Geneva, the first international agreement to protect children's rights.[11] In 1948, the General Assembly approved the Universal Declaration of Human Rights, which contains two articles pertaining to children.[12] The first instrument giving official recognition of human rights exclusively to children—the Declaration of the Rights of the Child[13]—was adopted by the United Nations in 1959.

The 1959 Declaration motivated the international community to make a binding agreement to protect children. Poland submitted a model text to the United Nations Commission on Human Rights, which put the Declaration in treaty form.[14] The Commission then established a Working Group to revise the proposal.[15] On March 8, 1989, after three major revisions, the Working Group presented the final text of the CRC to the United Nations General Assembly.[16] On November 20, 1989, the General Assembly adopted the CRC, and on September 2, 1990, after ratification by far more than the twenty required nations, the CRC took effect.[17] As one author notes, "No other multilateral human rights treaty has ever taken effect so soon after it was originally proposed for ratification."[18]

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9. *See* Cynthia P. Cohen & Per Miljeteig-Olssen, *Status Report: United Nations Convention on the Rights of the Child*, 7 N.Y.L. Sch. J. Hum. Rts. 367, 378 (1991). The United States was the driving force behind articles 13, 14, 15, 16, and 17. *See id.*

10. *See* Elizabeth M. Calciano, Note, *United Nations Convention on the Rights of the Child: Will It Help Children in the United States?*, 15 Hastings Int'l & Comp. L. Rev. 515, 515 (1992).

11. *See* Walter H. Bennett, Jr., *A Critique of the Emerging Convention on the Rights of the Child*, 20 Cornell Int'l L.J. 1, 16-17 (1987).

12. G.A. Res. 217A(III), U.N. GAOR 3d Comm., 3d Sess., pt. 1, at 7, U.N. Doc. A/810 (1948). Article 25 speaks of special protection for children and article 26 addresses children's right to education. *See id.* at 76.

13. G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, Agenda Item 64 at 19, U.N. Doc. A/4354 (1959).

14. *See* Cohen, *supra* note 8, at 1448; Cohen & Miljeteig-Olssen, *supra* note 9, at 368.

15. *See* Stentzel, *supra* note 7, at 1285. The Working Group consisted of representatives from 43 nations and several non-government organizations. *See id.* The representatives from the Eastern bloc concentrated on economic, social, and cultural rights while the representatives from the United States targeted civil and political rights. *See* Cohen, *supra* note 8, at 1449; Cohen & Miljeteig-Olssen, *supra* note 9, at 378. Non-governmental organizations were directly responsible for including the following rights in the CRC: protection against traditional practices such as female circumcision (art. 24(3)); protection against sexual exploitation (art. 34-36); protection for indigenous children (art. 30); rehabilitation for victims of abuse and exploitation (art. 39); and guidelines for use of school discipline (art. 28(2)). *See* Cohen, *supra* note 8, at 1449.

16. *See* Jennifer D. Tinkler, Note, *The Juvenile Justice System in the United States and the United Nations Convention on the Rights of the Child*, 12 B.C. Third World L.J. 469, 472 (1992).

17. *See* Stentzel, *supra* note 7, at 1285.

18. *Id.*

If other nations have so readily accepted the CRC,[19] why has the United States not ratified the CRC, especially since it played a major role in drafting the Convention? One of the primary concerns appears to be that many of the CRC's rights fall within the jurisdiction of the individual state governments rather than that of the federal government.[20] While much of United States law, both state and federal, complies with the CRC's standards, there are nevertheless some direct conflicts between United States laws and articles of the Convention.[21] Moreover, there are areas where United States law is in accord with the Convention, yet the implementation of these laws falls far short of what the CRC contemplates.[22]

While the federal government has the power to ratify the treaty and, thus, supersede existing laws,[23] the Senate has been reluctant to use its federal treaty power to infringe on the individual states' powers.[24] The President of the United States and the United States Senate, however, could make reservations to the treaty which would address areas of the CRC with which the United States has concerns. Specifically, the United States should include a reservation to the CRC which addresses the jurisdictional concerns.

This Note examines why the United States has not ratified the CRC and suggests that it do so. Part I explores areas where United States laws do not conform with the standards set forth by the CRC. Part II discusses the issue of state sovereignty. Part III suggests that the United States ratify the CRC with a reservation in order to overcome jurisdictional concerns. This Note concludes that the United States should improve the situation of children in the United States by ratifying the CRC with a federal reservation.

I. COMPARISON OF UNITED STATES LAWS WITH ARTICLES OF THE CONVENTION

While many United States laws "demonstrate formal compliance [with

19. Currently the United States remains one of approximately thirty countries in the world which has not even signed the CRC. *See* Cohen & Miljeteig-Olssen, *supra* note 9, at 378.

20. *See* Lawrence L. Stentzel, II, *Federal-State Implications of the Convention*, *in* Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law 57, 57 (Cynthia P. Cohen & Howard A. Davidson eds., 1990); *see also* Cohen & Miljeteig-Olssen, *supra* note 9, at 379.

21. *See infra* part I.A.

22. *See infra* part I.B.

23. The President of the United States has the power to ratify the Convention, with the advice and consent of two-thirds of the Senate present. *See* U.S. Const. art. II, § 2, cl. 2. If ratified, the treaty would supersede state law and would also supersede federal law if the treaty was ratified later in time than the act of Congress. *See id.* at art. VI, cl. 2; *see also* Laurence H. Tribe, *American Constitutional Law* § 4-5, at 225-26 (2d ed. 1988).

24. *See* Stentzel, *supra* note 20, at 57. Because of jurisdictional concerns, the United States has often failed to ratify human rights treaties. *See id.*

the CRC] beyond that of most ratifying nations[,]"[25] there are three main areas of United States laws which directly conflict with the CRC.[26] Moreover, even where United States law is in accord with the rights provided in the Convention, there are four primary areas where the United States has failed to implement or enforce those laws, thus, further clashing with the CRC's standards.[27]

A. *Direct Conflicts Between United States Law and Standards of the CRC*

While a majority of the laws in the United States comply with the CRC's standards, United States laws directly conflict with the CRC in three main areas: juvenile penal codes, education, and the child's right to be heard.

1. Juvenile Justice Provisions

One of the most controversial differences between the provisions of the CRC and United States laws pertains to capital punishment.[28] Article 37(a) of the CRC expressly prohibits capital punishment for offenses committed by people under the age of eighteen.[29] The United States, on the other hand, allows capital punishment of minors and adults for offenses committed while they were under eighteen.[30]

The United States is one of only six countries in the world which permits the execution of minors.[31] In the United States, seventeen states do not have a statutory minimum age for capital punishment,[32] and eight

25. Daniel L. Skoler, *The U.N. Children's Convention: International triumph, national challenge,* 15 Fam. Advoc., Spring 1993, at 38, 40.

26. *See infra* part I.A.

27. *See infra* part I.B.

28. *See* Cohen & Miljeteig-Olssen, *supra* note 9, at 380; Stentzel, *supra* note 7, at 1288.

29. *See* CRC, *supra* note 6, art. 37(a), 28 I.L.M. at 1469-70. Art. 37(a) provides that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age." *Id.* at 1470.

30. *See* Children at Risk, *supra* note 2, at 66.

31. *See* America's Children, *supra* note 5, at 33. The five other countries which allow the execution of minors are Bangladesh, Iraq, Iran, Nigeria, and Pakistan. *See id.*

32. *See* Thompson v. Oklahoma, 487 U.S. 815, 826-27 n.26 (1988) (listing 19 states that do not have a statutory minimum for capital punishment). Since *Thompson*, three state have revised their statutes with respect to capital punishment. *See* Mo. Ann. Stat. § 565.020(2) (Vernon Supp. 1993); Vt. Stat. Ann. tit. 13, § 2303 (Supp. 1993); Wyo. Stat. § 6-2-101 (Supp. 1993). State statutes still failing to provide a statutory minimum include: Ala. Code §§ 13A-5-39, 13A-5-40, 13A-6-2 (1982); Ariz. Rev. Stat. Ann. §§ 13-703 to 706 (Supp. 1993); Ark. Code Ann. §§ 5-4-104(b), 5-4-601 to 617 (Michie 1993); Del. Code Ann. tit. 11, § 4209 (1987); Fla. Stat. Ann. §§ 775.082 (West 1992), 921.141 (West 1985 & Supp. 1994); Idaho Code §§ 18-4001 to 4004 (1987), 19-2515 (1979); La. Code Crim. Proc. Ann. art. 905-5.9 (West 1984 & Supp. 1994); La. Rev. Stat. Ann. §§ 14:30(c) (West Supp. 1994), 14:113 (West 1986); Miss. Code Ann. §§ 97-3-21 (Supp. 1993), 97-7-67 (1973); Mont. Code Ann. §§ 45-5-102, 46-18-301 to 310 (1993); Okla. Stat. Ann. tit. 21, § 701.10-.15 (West 1983 & Supp. 1994); 18 Pa. Cons. Stat. Ann. § 1102(a) (1983), 42 Pa. Cons. Stat. Ann. § 9711 (1982 & Supp. 1993); S.C. Code Ann.

states statutorily authorize capital punishment for juveniles ages sixteen or seventeen.[33] In *Stanford v. Kentucky*,[34] the United States Supreme Court held that the execution of sixteen and seventeen year old offenders does not violate the Eighth Amendment prohibition against cruel and unusual punishment.[35]

With the exception of Iran and Iraq, the United States has executed more juveniles than any other nation.[36] As of December 31, 1991, 33 juveniles were on death row.[37] The United States' unwillingness to prohibit capital punishment of minors directly conflicts with article 37(a) of the CRC.

United States laws and CRC standards also differ on the use of and time frame for imprisonment. The CRC provides that "arrest, detention or imprisonment shall be used only as a measure of last resort."[38] In the United States, however, several states allow pre-trial institutionalized confinement of minors[39] — an action that is not necessarily a measure of "last resort."

Every year in the United States, the government detains approximately 900,000 youths before trial.[40] Without considering possible alternatives,

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§ 16-3-20 (Law. Co-op. Supp. 1993); S.D. Codified Laws Ann. § 23A-27A-1 to 41 (1988 & Supp. 1993); Utah Code Ann. §§ 76-3-206 to 207 (Supp. 1993); Va. Code Ann. §§ 16.1-269 (Michie Supp. 1993), 19.2-264.2 (Michie 1990); Wash. Rev. Code Ann. §§ 10.95.010-.900 (West 1990 & Supp. 1994).

33. *See Thompson*, 487 U.S. at 829 n.30; *see also* Ga. Code Ann. § 17-9-3 (1982) (age 16); Ind. Code Ann. § 35-50-2-3 (Burns Supp. 1994) (age 16); Ky. Rev. Stat. Ann. § 640.040(1) (Michie/Bobbs-Merrill 1990) (age 16); Mo. Ann. Stat. § 565.020(2) (Vernon Supp. 1993) (age 16); Nev. Rev. Stat. Ann. § 176.025 (Michie 1992) (age 16); N.C. Gen. Stat. § 14-17 (Supp. 1993) (age 17); Tex. Penal Code Ann. § 8.07(d) (West Supp. 1994) (age 17); Wyo. Stat. § 6-2-101 (Supp. 1993) (age 16).

34. 492 U.S. 361 (1989).

35. *See id.* at 380. In 1988, however, the Supreme Court overturned the death sentence of a juvenile who committed the offense at age fifteen. *See* Thompson v. Oklahoma, 487 U.S. 815 (1988). Four of the judges found that the death penalty for a fifteen-year-old was "cruel and unusual punishment." *See id.* at 838. A fifth judge found the penalty improper on other grounds. *See id.* at 849 (O'Connor, J., concurring). Consequently, whether the execution of children under 15 violates the eight amendment remains undecided. *See* America's Children, *supra* note 5, at 35. Even if the Supreme Court finds in the future that this practice constitutes an Eighth Amendment violation and commutes death sentences to life imprisonment without the possibility of parol, however, the United States would still violate article 37(a) of the CRC. Article 37(a) provides that "[n]either capital punishment *nor life imprisonment without possibility of release* shall be imposed for offenses committed by persons below eighteen years of age." CRC, *supra* note 6, art. 37(a), 28 I.L.M. at 1469-70 (emphasis added).

36. *See* America's Children, *supra* note 5, at 33.

37. *See id.*

38. CRC, *supra* note 6, art. 37(b), 28 I.L.M. at 1469-70.

39. *See* Claudia Worrell, *Pretrial Detention of Juveniles: Denial of Equal Protection Masked by the* Parens Patriae *Doctrine*, 95 Yale L. J. 174, 176-78 (1985); *see, e.g.*, Kan. Stat. Ann. § 38-1632(a) (1993) (permitting officials to detain juveniles for up to 48 hours prior to a hearing); Minn. Stat. Ann. § 260.171(b) (West 1992) (allowing child to be locked up for up to 36 hours prior to a hearing).

40. *See* Worrell, *supra* note 39, at 174. Moreover, a 1985 study conducted for the Department of Justice's Office of Juvenile Justice and Delinquency Prevention found that

states generally use pre-trial confinement punitively.[41] States have also allowed pre-trial confinement where the minor has no criminal record. In 1984, the Supreme Court upheld a New York statute that allowed pre-trial confinement of juvenile offenders, even though the offenders had not been convicted of any criminal offense.[42] The Court reasoned that by detaining juvenile offenders there is a decreased risk of additional crime.[43] California confines neglected and dependent children to adult jails, even though they have not committed an offense, and alternative dispositions are supposedly available.[44] Confinement, therefore, has not been used as a measure of "last resort."

The CRC also provides that confinement should be "for the shortest appropriate period of time."[45] This language requires that the "real needs" of the child be considered when determining sentence.[46] In the United States, however, one-third of the states require sentences to be determined solely on the basis of the offense committed, rather than on the basis of the individual needs of the child.[47]

The provisions of the CRC and United States laws also conflict with respect to the goals of a juvenile penal system. Article 40(1) of the CRC mandates that the goals of juvenile justice codes be rehabilitative, not punitive.[48] By contrast, the legal trend in the United States has been toward abandoning rehabilitation in favor of punishment.[49] In fact, several states have amended their statutes to deemphasize rehabilitation in favor of punishment.[50] Washington, for example, has enacted a "just

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only 10% of approximately 479,000 juveniles in United States prisons had committed serious offenses. *See* America's Children, *supra* note 5, at 29. More than 19,000 had not committed *any* offense. *Id.*

41. *See* Worrell, *supra* note 39, at 174-78.

42. *See* Schall v. Martin, 467 U.S. 253, 255-57 (1984).

43. *See id.* at 263-68.

44. *See* Tinkler, *supra* note 16, at 491.

45. CRC, *supra* note 6, art. 37(b), 28 I.L.M. at 1469-70.

46. *See* U.N. Doc. E/CN.4/1349*, p 6. (1980) *in* The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires" 458 (Sharon Detrick ed. 1992). The basic working text adopted by the 1980 Working Group states that "[a]ny . . . punishment shall be adequate to the particular phase of [the child's] development." *Id.*

47. *See* Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference it Makes*, 68 B.U. L. Rev. 821, 851 (1988).

48. *See* CRC, *supra* note 6, art. 40(1), 28 I.L.M. at 1471. Article 40(1) of the CRC provides:

> States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Id.

49. *See* Feld, *supra* note 47, at 822.

50. *See* Barry C. Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Courts*, 69 Minn. L. Rev. 141, 251 (1984).

deserts" sentencing model, focusing primarily on punishment.[51] Consequently, contemporary juvenile courts "[prescribe] the appropriate sentence on the basis of 'just deserts' rather than 'real needs,' [reflecting] a movement away from a rehabilitation-treatment based model."[52]

Another provision of the CRC which conflicts with United States laws pertains to capacity. Article 40(3)(a) of the CRC requires States Parties ("Parties") to establish a "minimum age below which children shall be presumed not to have the capacity to infringe the penal law."[53] In the United States, several states comply with the CRC, setting forth a minimum age for delinquency.[54] Several other states, however, fail to set forth a minimum age for criminal culpability.[55] Moreover, while infancy is a lack of capacity defense to any criminal charge in some states, this statutory approach does not satisfy the CRC standard.[56] The CRC mandates that states specifically establish a minimum age in their statutes.[57]

2. Education

Education is another area where United States laws conflict with CRC standards. Article 28(1) of the CRC explicitly recognizes the child's right to education,[58] and article 29 requires Parties to direct education of the child to "development of the child's . . . abilities to their fullest potential."[59] Conversely, the United States Supreme Court has held that education is not a fundamental right.[60] Moreover, the Court stated that if it ever determines education to be a fundamental right, it would be the

51. *See id.*; *see also* Wash. Rev. Code Ann. § 13.40.010 (West Supp. 1991).

52. *Id.* The Supreme Court, in *In re Gault*, 387 U.S. 1 (1967), held that the Fourteenth Amendment provides to juveniles those procedural safeguards already enjoyed by adults. *See id.* at 31-57. The Court, however, also abolished many of the distinctions between juvenile and adult courts. *See id.; see also* Feld, *supra* note 47, at 821.

53. CRC, *supra* note 6, art. 40(3)(a), 28 I.L.M. at 1471.

54. *See* America's Children, *supra* note 5, at 30; *see e.g.*, N.Y. Fam. Ct. Act § 301.2(1) (McKinney 1983) (defining a juvenile delinquent as a child over age seven).

55. *See* Merril Sobie, *Rights of the Child Charged with Violating the Law, Articles 37 and 40, in* Children's Rights in America: U.N. Convention on the Rights of the Child Compared with U.S. Laws 315, 317(Cynthia P. Cohen & Howard A. Davidson eds., 1990); *see e.g.*, Ga. Code Ann. §§ 15-11-2 (Supp. 1993), 15-11-5 (1990); Idaho Code §§ 16-1802, 16-1803 (Supp. 1993); Me. Rev. Stat. Ann. tit. 15, §§ 3003, 3101 (West 1980 & Supp. 1993).

56. *See* America's Children, *supra* note 5, at 30.

57. *See* CRC, supra note 6, art. 40(3)(a), 28 I.L.M. at 1471.

58. *See id.*, art. 28(1), 28 I.L.M. at 1467.

59. *See id.*, art. 29(a), 28 I.L.M. at 1468.

60. In San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), the Supreme Court considered an Equal Protection challenge to a state statute allocating a certain amount of money per student and providing that school districts could raise additional revenue through local property taxes not to exceed a certain percentage of assessed property tax. *See id.* at 9-10. The petitioners argued that the state statute violated the Equal Protection Clause of the Fourteenth Amendment since poorer districts could not raise as much money as wealthier districts. *See id.* at 6. The Supreme Court, however, upheld the statute noting that it did not amount to state discrimination of a suspect class or state depreciation of a fundamental right. *See id.* at 18, 35, 40.

right only to "basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process."[61] Consequently, because the CRC provides a right to maximum skills, not minimal skills, even if education was found to be a fundamental right, the United States would still be in conflict.

United States laws and the CRC also differ with respect to school discipline. Article 28(2) of the CRC provides that Parties "take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention."[62] This article is interpreted in conjunction with articles 19(1) and 37(a) of the CRC.[63] Article 19(1) protects children from "all forms of physical or mental violence, injury or abuse, neglect or . . . maltreatment . . . while in the care of . . . any . . . person who has the care of the child."[64] Article 37(a) provides that no child should be "subjected to torture or other cruel, inhuman, or degrading treatment or punishment."[65] These three articles require Parties to outlaw corporal punishment.[66] Corporal punishment is "physical violence," and arguably includes "mental violence, injury or abuse" or "degrading treatment" as well.

While there is a growing trend in the United States to prohibit in-school corporal punishment, many states still allow it.[67] Most professionals, however, consider it ineffective.[68] The United States Supreme Court has also refused to prohibit in-school corporal punishment, holding that it is not a violation of the Eighth Amendment's prohibition against cruel and unusual punishment.[69] Because the United States does not recognize a child's right to education and allows corporal punishment, United States laws directly conflict with the provisions of the CRC.

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61. *Id.* at 37. In dicta, the Court indicated that it would be a different case if a child was completely denied an education, *see id.*, and explained that in such a case, the Court *would* probably find a right to "basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in political process." *Id.*

62. *Id.*, art. 28(2), 28 I.L.M. at 1467.

63. *See* Susan H. Bitensky, *Educating the Child for a Productive Life: Articles 28 and 29, in* Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law 167, 174 (Cynthia P. Cohen & Howard A. Davidson eds., 1990).

64. CRC, *supra* note 6, art. 19(1), 28 I.L.M. at 1463.

65. *Id.*, art. 37, 28 I.L.M. at 1469-70.

66. *See* Bitensky, *supra* note 63, at 174.

67. Statistics show that 30 states permit school-administered corporal punishment. *See* William Celis 3d, *More States Are Laying School Paddle to Rest*, N.Y. Times, Aug. 16, 1990, at A1, col. 2.

68. *See* Brodkin, *supra* note 3, at 47-48.

69. *See, e.g.*, Ingraham v. Wright, 430 U.S. 651, 664, 672 (1977) (holding that the Eighth Amendment's prohibition against cruel and unusual punishment does not apply to corporal punishment in public schools and that notice and a hearing prior to the imposition of corporal punishment is not necessary).

3. The Right to be Heard and Represented

The CRC provides that children capable of forming their own views have the right to express those views in any matter which affects them.[70] It further provides that children have the right to be heard directly or through a representative in any judicial or administrative proceeding.[71] In the United States, by contrast, many proceedings directly affecting children do not provide children with an opportunity to be heard.[72]

Almost all states allow parents to commit children to mental institutions without a hearing.[73] In *Parham v. J.R.*,[74] the Supreme Court reversed a federal decree granting children the right to a hearing regarding their psychiatric hospitalization.[75] While the Court required that "some kind of inquiry should be made by a 'neutral factfinder' to determine whether the statutory [psychiatric admissions standards] are satisfied[,]"[76] it refused to provide the child the right to a hearing.[77] Because it permits involuntary commitment of children without guaranteeing them an opportunity to be heard, this holding directly conflicts with the CRC. Many critics argue that parents misuse mental health facilities as placements for "troublesome or rebellious" children instead of for those who truly need the help.[78] Consequently, failure to grant children a hearing increases the risk of inappropriate commitments.

Similarly, American children's positions are rarely represented adequately, if at all, in custody disputes during divorce proceedings.[79] Only a few states give preference to the child's choice of custodian,[80] and only a few states mandate appointment of a representative for the child in divorce-related custody suits.[81] While the proceedings provide the parents an opportunity to speak, they generally do not provide the same

70. *See* CRC, *supra* note 6, art. 12(1), 28 I.L.M. at 1461. Article 12(1) provides that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." *Id.*

71. *See id.*, art. 12(2), 28 I.L.M. at 1461. Article 12(2) provides that "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law." *Id.*

72. *See* America's Children, *supra* note 5, at 45-47.

73. *See* Howard A. Davidson, *The Child's Right to Be Heard and Represented: Article 12, in* Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law 151, 161 (Cynthia P. Cohen & Howard A. Davidson eds., 1990).

74. 442 U.S. 584 (1979).

75. *See id.* at 620-21.

76. *Id.* at 606.

77. *See id.* at 607 ("A state is free to require such a hearing, but due process is not violated by use of informal, traditional medical investigative techniques.").

78. *See* Davidson, *supra* note 73, at 162.

79. *See* America's Children, *supra* note 5, at 45.

80. *See id.*

81. *See* Davidson, *supra* note 73, at 159-59; *see, e.g.*, Wis. Stat. Ann. § 767.045 (West 1993) (requiring state to appoint a guardian ad litem for child involved in contested divorce proceeding).

opportunity for the child.[82] This is true despite the fact that the child is the subject of the proceedings. Thus, because American laws do not afford children opportunities to express their views in all matters directly affecting them, United States laws again conflict with the CRC.

B. *Failure to Implement and Enforce United States Laws*

The CRC mandates that Parties to the Convention translate the rights afforded to children into reality.[83] To do this, Parties are required to "undertake all appropriate legislative, administrative, and other [necessary] measures."[84] With respect to economic, social, and cultural rights, the CRC further provides that Parties "undertake such measures [necessary to implement the rights recognized for children] to the maximum extent of their available resources."[85]

While most United States laws comply with the CRC standards, the states do not adequately enforce these laws or take any "other measures" necessary to protect their children.[86] Consequently, although the United States is one of the wealthiest nations in the world and has substantial resources available to protect its children, American children are suffering. Studies show that the plight of America's children has worsened since 1980, and statistics indicate that America's children are increasingly at risk of being subjected to a quality of life below the accepted standards of the CRC.[87]

1. Adequate Standard of Living

Articles 26 and 27 of the CRC, concerning the child's most basic needs, provide that children have the right to an adequate standard of living.[88] While parents have primary responsibility to provide for their children,[89] the CRC expects Parties to "take appropriate measures to assist parents . . . and shall in case of need provide material assistance . . . particularly with regard to nutrition, clothing and housing."[90] While the United States government would probably agree that all children deserve at least an adequate standard of living,[91] it is not taking the measures necessary to ensure this right for its children.[92] Thus, the "implementa-

82. *See* America's Children, *supra* note 5, at 45.
83. *See* CRC, *supra* note 6, art. 4, 28 I.L.M. at 1459.
84. *Id.*
85. *Id.*
86. *See infra* notes 88-164 and accompanying text.
87. *See* Children at Risk, *supra* note 2, at vii.
88. *See* CRC, *supra* note 6, art. 26-27, 28 I.L.M. at 1466-67.
89. *See id.*, art. 27(2), 28 I.L.M. at 1467.
90. *Id.*, art. 27(3), 28 I.L.M. at 1467.
91. *See* James Weill, *Assuring an Adequate Standard of Living for the Child: Articles 26 and 27*, *in* Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law 197 (Cynthia P. Cohen & Howard A. Davidson eds., 1990).
92. *See id.*; America's Children, *supra* note 5, at 19; *see also* Cohen & Miljeteig-Olssen, *supra* note 9, at 380.

tion [of the right to an adequate standard of living] falls far short of what the Convention apparently contemplates."[93]

The United States has the highest child poverty rate of any country in the industrialized world.[94] One out of every five children is poor.[95] Over 5.5 million American children are hungry,[96] and another six million are on the verge of going hungry.[97] There are between 100,000 and 500,000 homeless children on the streets every night.[98] Every day, twenty-seven children die from the effects of poverty.[99] The United States, therefore, is not "[providing] material assistance . . . particularly with regard to nutrition, clothing and housing"[100] to children in need.

The declining living conditions of American children can be attributed, in part, to budget cuts, freezes, and failures to adjust to new economic realities.[101] These government actions have made it increasingly difficult for parents to assume "primary responsibility" for their children.[102] For example, the federal government has not adjusted the minimum wage, which has been eroded by inflation, to reflect the changing times.[103] Thus, parents earning minimum wage may be unable to provide financially for their children. The federal government has also failed to enforce child support awards.[104] Single parents often depend on court ordered financial support from the absent parent to provide adequately for the child.[105] When the single parent cannot collect payments from the absent parent, the child suffers.[106] Thus, the government's meager

93. Weill, supra note 91, at 197.

94. A 1988 report concluded that the United States has a poverty rate of two to three times that of Switzerland, Sweden, Norway, West Germany, United Kingdom, and a slightly higher rate than Australia. *See id.* at 200 (citing Smeeding, Torrey & Rein, *Patterns of Income and Poverty: The Economic Status of Children and the Elderly in Eight Countries, in* The Vulnerable (J. Palmer et al. eds., 1988)).

95. *See* Children at Risk, *supra* note 2, at v. In 1991, a family of three in the United States was poor if its total annual income was less than $10,860. *See* America's Children, *supra* note 5, at 19. The poverty threshold for a family of four was $13,924. *See id.*

96. *See* Brodkin, *supra* note 3, at 59.

97. *See id.*

98. *See id.* at 142.

99. *See id.* at 28. Approximately 10,000 children die annually as a result of living in poverty. *See* America's Children, *supra* note 5, at 19. Poor children who survive face a greater risk of health, developmental, and educational problems than other children. *See* America's Children, *supra* note 5, at 19; Brodkin, *supra* note 3, at 59.

100. CRC, *supra* note 6, art. 27(3), 28 I.L.M. at 1467.

101. *See* American's Children, *supra* note 5, at 22. Government freezes and cuts have weakened the following programs: unemployment insurance; Aid to Families with Dependent Children (AFDC); Social Security for children of elderly, deceased, or disabled parents; Supplemental Security Income for parents or children with disabilities. *See id.*

102. *Id.* at 21-22.

103. *See id.* at 21. In fact, during 1973-91, the average weekly pay for wage and salary worker, excluding manager and executives, fell 19%, retreating to levels of the 1950s. *See id.*

104. *See id.* However, approximately two-thirds of all families with an absent parent receive no child support award. *See id.*

105. *See id.*

106. *See id.*

support enforcement efforts contribute to the declining situation of children.[107]

2. Health Care and Child Care

The CRC also provides children with the right to adequate health care.[108] Article 24 specifically requires that States Parties ensure "access to . . . health care services,"[109] and article 3 provides that standards be set for health and child care.[110]

In contrast to most other countries, "the United States has no public health care system that assures the care of mothers and children."[111] American parents are not guaranteed health care for their children,[112] and nearly ten million children lack any kind of health coverage.[113] Although the federal government initiated a program in 1990 to supply health care to more low income families,[114] it set no minimum standards of care.[115] Thus, the federal program conflicts with article 3.

Even if children are insured, they may still lack "access" to health care services, which is guaranteed by article 24 of the CRC.[116] In the United States, over 43 million people, half of whom are children and women of child-bearing age, live in areas found by the government to have a shortage of physicians and clinics.[117] Thus, a lack of doctors and health care facilities, particularly in rural areas and inner cities, is a major problem in the United States.[118]

The United States also falls far short of providing adequate health care to its youngest citizens and thus further conflicts with the CRC. Article 24 of the CRC provides that ratifying nations have a duty to ensure children "the highest attainable standard of health."[119]This mandates that Parties take "measures . . . [t]o diminish infant and child mortality[,] . . . to ensure the provision of necessary . . . health care to all children with emphasis on . . . primary health care[, and to] ensure appropriate pre-

107. *See id.*

108. *See* CRC, *supra* note 6, art. 24(1), 28 I.L.M. at 1465.

109. *Id.*

110. *See id.*, art. 3(3), 28 I.L.M. at 1459. Article 3(3) also provides that standards be set for child care. *See id.* However, United States child care is often unregulated. *See* Children at Risk, *supra* note 2, at 15. An estimated 2.6 million children attend completely unregulated child care settings, which are not required to meet even minimal health and safety standards. *See id.*

111. America's Children, *supra* note 5, at 14.

112. *See* Children at Risk, *supra* note 2, at ix. This is subject to change if President Clinton's new health plan is implemented and if it provides adequate health care for children.

113. *See* America's Children, *supra* note 5, at 14.

114. *See* Child Care & Development Block Grant, 42 U.S.C. §§ 9858-9858q (West Supp. 1993).

115. *See id.*

116. *See* CRC, *supra* note 6, art. 24(1), 28 I.L.M. at 1465.

117. *See* America's Children, *supra* note 5, at 14.

118. *See id.*

119. CRC, *supra* note 6, art. 24(1), 28 I.L.M. at 1465.

natal and post-natal care."[120] Article 24 is considered in conjunction with article 6,[121] which proclaims that "every child has the inherent right to life."[122]

While the United States has ample economic resources and modern medical technology, it ranks nineteenth in the world in infant mortality rate.[123] One reason for the high mortality rate is inadequate prenatal care at the early stages of pregnancy.[124] In the United States, approximately one in every four women do not receive any early care.[125] Every year, therefore, one million babies are born to women who do not receive early care,[126] increasing the probability of complications. Many babies are also born underweight and unhealthy.[127] In 1990, the United States ranked thirty-first in the world in preventing low birth weight.[128] Approximately 250,000 American babies are born underweight every year.[129]

The CRC also strongly emphasizes the importance of primary health care.[130] Poor children in the United States, however, are not likely to see a doctor in a given year.[131] Thus, the United States is not doing enough

120. *Id.*, art. 24(2), 28 I.L.M. at 1466.

121. *See* Kay A. Johnson & Molly McNulty, *Assuring Adequate Health and Rehabilitative Care for the Child: Articles 6, 23, 24 and 25, in* Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law 219, 223 (Cynthia P. Cohen & Howard A. Davidson eds., 1990).

122. CRC, *supra* note 6, art. 6(1), 28 I.L.M. at 1460. Article 6, promulgated by UNICEF, is interpreted in the context of article 1 and the preamble and is not intended to address abortion. *See* Philip E. Veerman, *The Rights of the Child and the Changing Image of Childhood* 189 (1992). Article 1 provides that a child is any "human being below the age of eighteen." CRC, *supra* note 6, art. 1, 28 I.L.M. at 1459. The Working Group purposely did not address when childhood begins, as national legislation differs greatly on the issue of abortion. *See* Veerman, *supra* note 122, at 181, 185. The Working Group feared that if they took a strong position on abortion they would alienate nations with views contrary from that set forth in the CRC from ratifying the Convention. *See id.* Consequently, they decided to leave it to the individual states to define "human being." *See id.* However, several representatives strongly believed that the unborn needed special protections, focusing primarily on prenatal maternal health care and on protections from human experimentation. *See* Cohen, *supra* note 8, at 1450. The Working Group, to avoid making abortion an issue, protected the unborn by adding language to the non-binding preamble indicating that children need protection "before as well as after birth." *See* U.N. Doc. E/CN.4/1989/48 pp. 8-15 (1989) *in* The United Nation Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires" 108-10 (Sharon Detrick ed. 1992). Article 6, interpreted in the context of article 1 and the preamble was intended to protect children from disease and to combat infant mortality. *See* Veerman, *supra* note 122, at 189.

123. *See* America's Children, *supra* note 5, at 15.

124. *See* Children at Risk, *supra* note 2, at 36.

125. *See* America's Children, *supra* note 5, at 15.

126. *See id.*

127. *See* Children at Risk, *supra* note 2, at 36.

128. *See* America's Children, *supra* note 5, at 15.

129. *See id.*

130. *See* CRC, *supra* note 6, art. 24 (2), 28 I.L.M. at 1466. Article 24(2) proclaims that State Parties take measures "[t]o ensure . . . health care to all children with *emphasis on . . . primary health care.*" *Id.* (emphasis added).

131. *See* America's Children, *supra* note 5, at 16.

to provide adequate health care for its children.

3. Child Labor

The CRC provides that children have the right "to be protected from economic exploitation and from performing any work . . . likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."[132] To ensure this right, the CRC calls for Parties to take "legislative, administrative, social and educational measures" to protect children from exploitation and harmful labor.[133] Parties must set a minimum age for employment, regulate the hours and conditions of employment, and set "appropriate penalties or other sanctions to ensure the effective enforcement of the present article."[134]

In the United States, the federal Fair Labor Standards Act[135] ("FLSA") achieves some of the goals of the CRC. For example, the FLSA sets a minimum age for employment, regulates the hours of employment for minors, and prohibits certain hazardous jobs to children.[136] While on the surface the United States appears to comply with article 32, the federal government does not adequately enforce child labor laws.[137]

Since 1983, illegal child labor has tripled in the United States.[138] In 1992 alone American employers illegally employed as many as 2 million children.[139] Moreover, many of the illegally employed children are placed in extremely dangerous jobs.[140] For example, nearly 800,000 children work in agriculture, the industry with the highest rate of injuries and deaths nationwide.[141] During 1988-1989, nearly 100,000 fifteen-year olds were employed in mining and construction—two other hazardous occupations.[142]

One reason for the increase in illegal child labor is that the government is not adequately staffed to enforce child labor laws.[143] The Labor Department, which enforces the FLSA, has fewer than 900 investigators nationwide.[144] In 1991, staff cuts further hindered this department.[145]

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132. CRC, *supra* note 6, art. 32(1), 28 I.L.M. at 1468.
133. *Id.*, art. 32(2), 28 I.L.M. at 1469.
134. *Id.*, art. 32(2)(a)-(c).
135. 29 U.S.C. §§ 201-219 (1988 & Supp. IV 1992).
136. *See id.* For example, it mandates that children under 16 cannot perform hazardous work in agriculture. *See id.* § 213(c)(2); America's Children, *supra* note 5, at 37. Children ages seventeen and eighteen, however, are permitted to work in agriculture, even though it is the occupation with the highest rate of injuries and deaths. *See* America's Children, *supra* note 5, at 37.
137. *See* America's Children, *supra* note 5, at 37-38.
138. *See* Children at Risk, *supra* note 2, at 40.
139. *See id.*
140. *See* America's Children, *supra* note 5, at 37.
141. *See id.* (citing Statistics of the United Farm Workers).
142. *See id.* at 38.
143. *See id.* at 38.
144. *See id.*

Moreover, even if the department discovers a violation, the fine assessed on the employer is often too small to halt the illegal process.[146] Because fines are minimal and child labor is cheap, it is economically advantageous for the employer to employ children illegally. Employers, therefore, are not discouraged from violating the FLSA.[147]

Consequently, United States laws do not satisfy CRC standards.

4. Child Abuse and Neglect

The CRC requires Parties to protect children from abuse and neglect,[148] by taking "all appropriate legislative, administrative, social and educational measures."[149] While the United States has enacted both state and federal child welfare laws to protect children from abuse and neglect, the laws have proven inadequate.[150]

In 1990, the United States Advisory Board on child abuse and neglect concluded that " 'child abuse and neglect in the United States . . . represents a national emergency.' "[151] The number of children reported abused and neglected has almost tripled since 1980.[152] In 1991, a child was reported to have been abused or neglected nearly every twelve seconds.[153] Approximately 1400 children died from maltreatment in 1991, an increase from the past six years in which such data was collected.[154]

The United States has not been responsive to the increase in child abuse and neglect. First, children have not received the support needed from the court system. In *DeShaney v. Winnebago County Department of*

145. *See id.* The staff was cut by almost ten percent. *See id.*

146. *See id.* In 1987 and 1988, the average fine for employers who violated the Fair Labor Standards Act was $740 per employer. *See id.* In the first six months of 1991, the average fine was less than $600. *See id.* These fines occurred even though recent legislation has "raised the maximum civil penalty for employers violating child labor laws to $10,000 . . . ." *Id.* Moreover, while the penalties have increased, more than half of employers fined contest the penalty and of those two-thirds receive reductions. *See id.*

147. *See id.* at 38.

148. Article 19 sets forth that "States Parties shall . . . protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." CRC, *supra* note 7, art 19(1), 28 I.L.M. at 1463.

149. *Id.*

150. *See* America's Children, *supra* note 5, at 25. While state laws have traditionally regulated this area, in 1974 Congress enacted the Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified at 42 U.S.C. §§ 5101-5117d (1988 & Supp. IV 1992)), which gives states funds for adhering to federal standards. *See* 42 U.S.C. § 5106(a) (1988 & Supp. IV 1992). Unfortunately, these statutes have not proven to decrease the problem of child maltreatment. *See* America's Children, *supra* note 5, at 25.

151. America's Children, *supra* note 5, at 25. This Board consists of national child protection experts. *See id.*

152. *See id.*

153. *See id.*

154. *See id.*

Social Services,[155] the United States Supreme Court held that children have no constitutional right to protection by a state agency from abuse in their homes.[156] In 1992, the Supreme Court in *Suter v. Artist M.*[157] reduced children's right to sue to enforce the federal statutory laws designed to protect them.[158]

Second, the inadequate child welfare system contributes to the rise in child maltreatment.[159] In 1991, the National Commission on Children reported that, " '[i]f the nation had deliberately designed a system that would frustrate the professionals who staff it, anger the public who finance it, and abandon the children who depend on it, it could not have done a better job than the present child welfare system.' "[160] The child welfare system is "overwhelmed and unable to serve appropriately the children who come to its attention."[161] Consequently, the often unqualified staff does not have ample time to make appropriate decisions regarding child welfare.[162] As a result, welfare agencies move children frequently, which impedes child development.[163] Furthermore, the federal government has failed to monitor out-of-home care and to ensure that states have resources to provide children with the necessary care.[164]

Since the United States is not adequately protecting its children from abuse and neglect, it again falls short of the CRC standards.

II. STATE SOVEREIGNTY: DEFINING THE POWER OF INDIVIDUAL STATES

Although the Constitution grants the United States government the power to ratify a treaty, the Senate has been reluctant to use this power where the subject matters of the treaty are traditionally under state control.

A. *Subject Matters Under State Control*

Many of the standards set forth by the CRC pertain to areas traditionally regulated in the United States by the individual states, as opposed to

155. 489 U.S. 189 (1989).

156. *See id.* at 202. The Court made this finding even though the authorities were repeatedly notified that the child was being abused. *See id.* at 193.

157. 112 S. Ct. 1360 (1992).

158. *See id.* at 1370 (holding that the Adoption Assistance Child Welfare Act does not create an implied private cause of action).

159. *See* America's Children, *supra* note 5, at 27-28.

160. *Id.* at 25. The National Commission on children is a bipartisan commission appointed by the President and congressional leaders. *See id.*

161. *Id.*

162. *See id.* at 27. The CRC protects children in welfare systems. *See* CRC, *supra* note 6, art. 20, 28 I.L.M. at 1464 (providing for children temporarily or permanently displaced from the home).

163. *See* America's Children, *supra* note 5, at 27 (stating that studies show a lack of permanence impedes child development).

164. *See id.* at 28.

the federal government.[165] While this does not interfere with the federal government's constitutional right to ratify the treaty,[166] it does suggest that Congress would have to enact legislation necessary to carry out the treaty in areas traditionally regulated by the states.[167] The federal government, however, has been unwilling to ratify treaties that usurp the states' powers.[168] Consequently, there is likely to be much debate in the Senate over jurisdictional concerns before the CRC is ratified.[169] To understand the jurisdictional concerns, it is necessary to set forth the areas addressed by the CRC which are traditionally regulated by the states.

While the Constitution enumerates the powers of the federal government,[170] it does not define the powers reserved to the states.[171] The Tenth Amendment, which provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,"[172] has not provided much guidance in defining the powers of the states.[173] Conse-

165. *See infra* notes 177-94 and accompanying text.

166. *See supra* note 23 and accompanying text.

167. Article 4 of the CRC requires States Parties to translate the rights afforded to children into reality. *See* CRC, *supra* note 6, art. 4, 28 I.L.M. at 1459. To do this, states should "undertake all appropriate legislative, administrative, and other [necessary] measures." *Id.* If the United States ratifies the CRC, it will likely declare it non self-executing. *See* Daniel L. Skoler, *Throughout the World, Children Cry... We Want Rights, Too*, 17 Hum. Rts. 30, 56 (1990), *available in* Westlaw, Ambar-tp file. A treaty is non-self executing if it requires legislation to implement the treaty's provisions and to be binding United States law. *See* Black's Law Dictionary 1360 (6th ed. 1990). Thus, if the CRC is ratified, the United States would have to implement any necessary legislation, even if the matter is traditionally under state control. *See* Tribe, *supra* 23, § 4-5 at 226.

168. *See* Stentzel, *supra* note 20, at 57.

169. *See id.*

170. *See* U.S. Const. art. I, § 8, cl. 1-18.

171. By contrast, the United States Constitution has specifically prohibited the states from possessing certain powers. *See* U.S. Const. art. I, § 10, cl. 1-3.

172. U.S. Const. amend. X.

173. For example, the Supreme Court has vacillated on whether the Tenth Amendment could limit the power of the federal government to regulate the hours and conditions of state employees, which they have regulated under the guise of the federal commerce clause power. In Maryland v. Wirtz, 392 U.S. 183 (1968), the Supreme Court held that the federal government could regulate the hours and conditions of state and local school and hospital employees. In National League of Cities v. Usery, 426 U.S. 833 (1976), the Supreme Court overruled *Wirtz* and held that the amendment to the Fair Labor Standards Act ("FLSA"), which extended the minimum age and maximum hour provisions to state employees, was not within its commerce clause power. *See id.* at 852-55. The Court explained that the amendments displaced the state's ability to "structure employer-employee relationships in such areas of [traditional government functions]." *Id.* at 851. Only nine years later, in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), the Supreme Court again reversed its position and thus overruled *National League of Cities*. *See id.* at 531. In *Garcia*, the Court held that the FLSA did apply to an employee of a municipally owned and operated mass transit system. *See id.* at 555-57. Thus, between 1968 and 1985, the Supreme Court reversed its position three times regarding states' rights.

Currently, however, the Supreme Court has rejected all of the tests used prior to *Garcia*, and thus the Tenth Amendment is not a limitation on the federal governments power to regulate child labor. *See* John E. Nowak & Ronald D. Rotunda, Constitutional Law

quently, the states' powers are "inherent powers."[174]

Traditionally, the states have retained the police power,[175] and have had primary responsibility for regulating the public health, safety, and general welfare of its citizens.[176] The rights provided by the CRC pertaining to general child welfare are thus areas regulated by the individual states in the United States.

The three areas of the CRC with which United States law conflicts—juvenile justice provisions,[177] education,[178] and the child's right to be heard[179]—are all primarily within the jurisdiction of the states.[180] Similarly, the areas where the United States conflicts with the CRC because it is not implementing or enforcing its laws are also primarily within the jurisdiction of the states.

The states' police power embraces reasonable regulations designed to protect the public welfare.[181] State laws often require parents to support their children, and "[i]t is hardly unreasonable for the state[s] to provide such remedies as it can to help parents meet these responsibilities."[182]

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§ 4.10, at 187 (4th ed. 1991). Nevertheless, it is possible that the Supreme Court could again apply some of the principles of *National League of Cities* and limit federal power in this area. *See id.*

174. *See* Black's Law Dictionary 782 (6th ed. 1990).

175. *See* Sinnot v. Davenport, 63 U.S. (1 How.) 227, 233 (1859).

176. *See* Jacobson v. Massachusetts, 197 U.S. 11, 25 (1905) ("According to settled principles the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety."); *see generally Sinnot*, 63 U.S. at 233-34 ("[A]ll laws for the protection of life, health, and property . . . are [within the power of the states].").

177. *See* discussion *supra* part I.A.1.

178. *See* discussion *supra* part I.A.2.

179. *See* discussion *supra* part I.A.3.

180. The states, for example, are responsible for regulating crime. *See* Screws v. United States, 325 U.S. 91, 109 (1945) ("Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States."). The only restriction on this power is that the states must respect the relevant Constitutional provisions, such as the Due Process Clause of the Fourteenth Amendment, when creating their juvenile statutes. *See* Gulf, Colorado and Santa Fe Ry. v. Hefley, 158 U.S. 98, 103 (1895) ("[W]ere there no congressional legislation in respect to the matter, the state act could be held applicable to interstate shipments as a police regulation."); Homer H. Clark, Jr., *Children and the Constitution*, 1992 U. Ill. L. Rev. 1, 4-6 (1992); *see, e.g.*, In Re Gault, 387 U.S. 1 (1967) (holding that procedural safeguards of 14th Amendment are applicable to juvenile criminal offenders). Similarly, education is within the control of the states. *See* Epperson v. Arkansas, 393 U.S. 97, 104 (1968) ("By and large, public education in our Nation is committed to the control of state and local authorities."). The Supreme Court has even acknowledged that "[n]o single tradition in public education is more deeply rooted than local control over the operation of schools." Milliken v. Bradley, 418 U.S. 717, 741 (1974). Finally, the states are also primarily responsible for regulating the child's right to be heard. *See* Clark, *supra*, at 36 n.296. In custody proceedings, for example, it is the states' responsibility to decide whether to give the courts the discretion to make a child a party to the proceeding. *See id.*

181. *See supra* note 176 and accompanying text.

182. Homer H. Clark, Jr., The Law of Domestic Relations in the United States 362 (2d ed. 1988).

Thus, state governments are responsible for allocating resources to guarantee an adequate standard of living to their citizens.[183] Moreover, even where there are federal programs providing citizens with a subsistent standard of living, the federal government does not pre-empt the area of regulation, but simply provides funds to the states.[184] Similarly, health care is often supported with state resources,[185] and state governments also have been responsible for enacting legislation to combat child abuse and neglect.[186]

Finally, the states have asserted that they are responsible for regulating the hours and conditions of employment.[187] Thus, states would allege that they are entitled to control child labor. In 1918, in *Hammer v. Dagenhart*,[188] the Supreme Court agreed, holding that the federal government could not use its Commerce Clause power to prohibit the interstate sale of the products of child labor.[189] Twenty years later, in *United States v. Darby*,[190] however, the Supreme Court changed its position[191] and upheld the Fair Labor Standards Act which regulated the hours and conditions of employees.[192] While the federal government presently has the power to regulate employment conditions,[193] the states continue to challenge this allocation of power and the Supreme Court has vacillated on this issue.[194] As a result, child labor may be another area where the federal government would be reluctant to create stronger regulations which would further usurp state power.

183. *See generally* Stentzel, *supra* note 7, at 1292 (explaining that subsistence standard of living is second generation right "frequently associated with state intervention in the allocation of resources").

184. For example, states must comply with federal provisions to receive Aid to Families with Dependent Children, even though child support is an area traditionally regulated by states. *See* Clark, *supra* note 180, at 3.

185. *See generally* Clark, *supra* note 180, at 31-36 (discussing health as a "fundamental element" in child welfare); Stentzel, *supra* note 7, at 1293 (discussing health care as a secondary right "frequently identified with state intervention in the allocation of resources").

186. *See* Clark, *supra* note 180, at 11.

187. *See e.g.*, Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 533 (1985) (asserting that mass transit system was "local" and therefore note subject to FLSA); National League of Cities v. Usery, 426 U.S. 833, 837 (1976) (challenging amendments to Fair Labor Standards Act on grounds that it violated 10th Amendment); Maryland v. Wirtz, 392 U.S. 183, 187 (1968) (discussing state's challenge to the power of the federal government to regulate hours and conditions of state and local government employees).

188. 247 U.S. 251 (1918).

189. *See id.* at 276.

190. 312 U.S. 100 (1941).

191. *See id.* at 116-17 ("Hammer v.Dagenhart[ ] was a departure from the principles which have prevailed in the interpretation of the Commerce Clause .... It should be and now is overruled.").

192. *See id.* at 125.

193. The most recent decision on this matter, Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), upheld a federal statute regulating the employment conditions of state employees. *See id.* at 555-57.

194. *See supra* note 173 and accompanying text.

B. *Using Treaty Power to Infringe on State Sovereignty*

While the federal government has the power to ratify a treaty even if the subject matter is otherwise under state control, the federal government has not used its treaty power to infringe on state power.[195] According to the United States Constitution, the treaty, if ratified, would be a legal equivalent to an Act of Congress.[196] The Supreme Court has held that where there exists a conflict between a treaty and a federal statute, "the last expression of the sovereign will must control."[197] Thus, if a treaty conflicts with a prior act of Congress, courts give effect to the treaty.[198]

Under the Supremacy Clause of the Constitution, a valid treaty always supersedes conflicting state law, even on matters otherwise within state control.[199] In *Missouri v. Holland*,[200] the Supreme Court stated that if a treaty is valid, a statute enacted to ensure compliance with the treaty is also valid pursuant to the government's power under the Necessary and Proper Clause.[201] Thus, even if Congress could not have enacted the statute in the absence of the treaty, a federal statute enacted in order to conform to a treaty is valid.[202]

Nevertheless, while Congress has the power to ratify a Convention and enact any appropriate legislation necessary to carry it out, even in areas traditionally regulated by states, the federal government has proven reluctant to use its treaty power to usurp state sovereignty.[203] The Senate has often encountered opposition when ratifying human rights treaties because some senators believe the treaties "infringe on prerogatives of the states in the United States federal system."[204] In 1952, Senator Bricker proposed to amend the Constitution to prevent "the government from

195. *See infra* note 203-08 and accompanying text.

196. The Supremacy Clause of the Constitution provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land . . . ." U.S. Const. art. VI, cl.2.

197. Chae Chan Ping v. United States, 130 U.S. 581, 600 (1889) (Chinese Exclusion Case).

198. *See e.g.*, Ackermann v. Levine, 788 F.2d 830, 840 (2d Cir. 1986) (holding old Federal Rule of Civil Procedure 4 was superseded by Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial matters).

199. *See* Missouri v. Holland, 252 U.S. 416, 434 (1920); Ware v. Hylton, 3 U.S. 199, 237 (1796).

200. 252 U.S. 416 (1920).

201. *See id.* The Supreme Court upheld the Migratory Bird Act which was enacted pursuant to a treaty between the United States and Great Britain, even though a district court has struck down a similar act before the treaty was ratified. *See id.* at 432. The Supreme Court reasoned that since the treaty was valid "there [is] no dispute about the validity of the statute under Article I, § 8, as a necessary and proper means to execute the powers of the Government." *Id.*

202. *See id.*

203. *See* Stentzel, *supra* note 20, at 57; David Weissbrodt, *United States Ratification of the Human Rights Covenants*, 63 Minn. L. Rev. 35, 38-39 n.45 (1978).

204. *Id.* at 38.

entering into international agreements that might infringe on the powers of the states."[205] Section 2 of the proposed Bricker Amendment stated that "[a] treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of treaty."[206] Thus, if the proposal had been enacted, the federal government would not have been allowed to use its treaty power nor its powers under the Necessary and Proper Clause to infringe on matters traditionally regulated by the states. Although the proposal failed by one vote, to "secure the defeat of the Amendment, Secretary of State Dulles was forced to make a commitment that the United States did 'not intend to become a party to any such covenant [on human rights] or present it as a treaty for consideration by the Senate.' "[207] Since the defeat of the Bricker Amendment, Treaty Packages sent to the Senate contain provisions which address jurisdictional concerns.[208] Thus, if the United States is going to ratify the CRC, the jurisdictional concerns will also have to be adequately addressed.

III. A PROPOSED SOLUTION TO THE PROBLEMS OF RATIFICATION: USING A FEDERAL RESERVATION TO OVERCOME JURISDICTIONAL CONCERNS

United States legislators may not agree with all of the standards set forth by the CRC. Specifically, members of the Senate may oppose ratification of the CRC since the federal government would have to enact legislation to ensure compliance with it, even on matters otherwise within state control. Although Congress may disagree with certain aspects of the Convention, it should still ratify it. The United States often disagrees with provisions in international agreements. As a result, it ratifies them with reservations, addressing specific provisions that the United States will not follow.[209] Congress should do so in this instance and ratify the CRC with a federal reservation.

A. *Reservations to Treaties*

Multilateral treaties cover a wide variety of subject matters.[210] Since World War II, the number of nations participating in treaties has grown enormously.[211] Developing rules applicable to all parties to an international agreement is exceedingly difficult, and has led to the use of

205. *Id.* at 38-39.

206. John A. Bricker & Charles A. Webb, *The Bricker Amendment: Treaty Law vs. Domestic Constitutional Law*, 29 Notre Dame Law. 529, 536 (1954) (quoting Senate Joint Resolution 1, 99 Cong. Rec. 160, 161 (Jan. 7, 1953)).

207. Weissbrodt, *supra* note 203, at 39 n.45 (citations omitted).

208. *See id.* at 48-50.

209. *See* Skoler, *supra* note 25, at 40.

210. *See* Richard W. Edwards, Jr., *Reservations to Treaties*, 10 Mich. J. Int'l L. 362, 362-63 (1989).

211. *See id.* at 363.

reservations.[212]

According to the Vienna Convention,[213]a reservation is a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or [modify a legal obligation otherwise imposed by the treaty]."[214] Reservations are valid unless they defeat the object and purpose of the treaty or are expressly prohibited by the treaty.[215] Reservations must also be in writing and communicated to all parties to the treaty.[216]

In most cases, unless the treaty otherwise provides, the treaty and the reservation are effective when at least one other nation has accepted the reservation.[217] An acceptance, unlike an objection, need not be expressly stated.[218] A nation accepts a reservation if it does not object to it within twelve months after notification of the reservation, or by the date it consented to be bound by the treaty, whichever is later.[219] If a nation objects, the objection affects only the relationship between the objecting and reserving parties.[220] It does not affect the treaty obligation between the reserving party and any other parties to the treaty.[221]

Unless the treaty otherwise provides, the reserving nation may also

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212. *See id.*

213. The Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter Vienna Convention], has a section specifically devoted to reservations. *See* Edwards, *supra* note 210, at 364. The Convention sets forth rules for treaties. *See* Vienna Convention, *supra*. The Restatement of the Law of Foreign Relations is basically in accord with the Vienna Convention. *See* Restatement (Third) of the Foreign Relations of the United States §§ 313-14 (1987) [hereinafter Restatement].

214. Vienna Convention, *supra* note 192, art. 2(1)(d), 1155 U.N.T.S. at 333.

215. *See id.*, art. 19, 1155 U.N.T.S. at 336-37.

216. *See id.*, art. 23, 1155 U.N.T.S. at 338.

217. *See id.*, art. 20(4)(c), 1155 U.N.T.S. at 337. If a reservation is expressly authorized by the treaty, unless it provides otherwise, the reservation does not require acceptance by other States. *See id.*, art. 20(1). If a treaty is between a limited number of nations and is meant to be ratified only in its entirety, a reservation requires acceptance by all parties to the treaty. *See id.*, art. 20(2). If a treaty is a constituent instrument of an international organization, unless otherwise provided, the competent organ of the organization must accept the reservation. *See id.*, art. 20(3). At one time, it was widely believed that unanimous consent was required to admit a reservation. The Vienna Convention abolished this when it created the new system. *See* Belinda Clark, *The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women*, 85 Am. J. Int'l L. 281, 281 (1991).

218. *See* Vienna Convention, *supra* note 213, art. 20(5), 1155 U.N.T.S. at 337.

219. *See id.* A reservation which is accepted modifies the agreement between the reserving and the accepting party to the extent of the reservation. *See id.*, art. 21(3). It does not modify relations between other parties to the treaty. *See id.*, art. 21(2).

220. *See id.*, art. 21(1). An objection must be made in writing. *See id.*, art. 23(1), 1155 U.N.T.S. at 338. If a State has objected to the reservation, but does not oppose the entry into force of the treaty between itself and the reserving party, the provisions to which the reservation relate do not apply between these two parties. *See id.*, art. 21(3), 1155 U.N.T.S. at 337. However, all other provisions do apply.

221. *See id.*, art. 21(2).

withdraw its reservation.[222] Withdrawals can be made at any time[223] and must be in writing.[224] The reserving nation wishing to withdraw the reservation does not need the consent of parties who had originally accepted the reservation.[225]

While the United States has not ratified the Vienna Convention, it has complied with the Convention regarding reservations.[226] In the United States, either the President or the Senate can use a reservation to modify a treaty.[227] A reservation proposed by the President requires the consent of two-thirds of the Senate.[228] If the Senate rejects the reservation, the President cannot enter into the treaty with that reservation.[229] Conversely, if the Senate proposes the reservation, the President can either accept it or decline to proceed with ratification.[230] If the President accepts it, the President "generally includes a verbatim recitation of any proposed reservation . . . contained in the Senate resolution of consent, both in the instrument notifying the other [nation] or the depositary of United States ratification . . . and in the proclamation of the treaty."[231] If a treaty is ratified with a valid reservation, "the reservation is part of the treaty and is law of the United States."[232]

B. *Ratifying the CRC with a Federal Reservation*

Article 51 of the CRC permits States Parties to make reservations to the Convention so long as they are not incompatible with the object and purpose of the CRC.[233] Reservations are to be deposited with the Secretary General of the United Nations, who will circulate the text of the reservations to all States Parties.[234] A reservation can be withdrawn at any time by notifying the Secretary General.[235] These provisions allow the United States to formulate reservations to address their concerns with the CRC, as long as they do not defeat the object and purpose of the CRC.

The President has often proposed a federal reservation to overcome jurisdictional concerns when ratifying human rights treaties.[236] Because

222. *See id.*, art. 22(1), 1155 U.N.T.S. at 338.
223. *See id.*, art. 22(2).
224. *See id.*, art. 23(4).
225. *See id.*, art. 22(1), 1155 U.N.T.S. at 337.
226. *See* Edwards, *supra* note 210, at 366.
227. *See* Restatement, *supra* note 213, § 314 cmts. a-b; *see also* Haver v. Yaker, 76 U.S. (9 Wall.) 32, 35 (1869) (recognizing power of the Senate to make a treaty with an amendment or modification).
228. *See* Restatement, *supra* note 213, § 314 cmt. a.
229. *See id.*
230. *See id.* § 314 cmt. b.
231. *Id.*
232. *Id.*
233. *See* CRC, *supra* note 6, art. 51(2), 28 I.L.M. at 1475-76.
234. *See id.* art. 51(1).
235. *See id.* art. 50(3).
236. *See* Stentzel, *supra* note 20, at 57; Natalie H. Kaufman, Human Rights Treaties

the main obstacle to ratification of the CRC is that much of the subject matter pertains to areas within state control, a federal reservation should also be proposed with respect to the CRC.[237]

A federal reservation proclaims that the United States will implement all the provisions of the Convention for which the federal government has jurisdiction, but will merely encourage, rather than require, states to take appropriate measures to implement legislation over subject matters within their own control.[238] Federal reservations have often been used by nations with a federal system that want to preclude a treaty's application to their constituent units.[239]

The United States, for example, proposed that a federal-state clause be included in the text of the American Convention on Human Rights.[240] The proposal was accepted and codified as article 28 of the Convention.[241] In contrast, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[242] does not have a federal-state clause within its text. To overcome the jurisdictional concerns regarding this Convention, the treaty package sent to the Senate for the Torture Convention included a federal reservation.[243]

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and the Senate 170-71 (1990); Massimo Coccia, *Reservations to Multilateral Treaties on Human Rights*, 15 Cal. W. Int'l L.J. 1, 39 (1985).

237. *See* Stentzel, *supra* note 20, at 57; Skoler, *supra* note 167, at *8, *available in* Westlaw, Ambar-tp File. Another alternative would be for the states to independently affirm their intent to abide by provisions of the CRC. *See* Cohen & Miljeteig-Olssen, *supra* note 9, at 380-81. Several cities have already accomplished this. *See id.* (citing Resolutions of the City of New York, Nov. 21, 1989; Resolution of the City of Cambridge, Nov. 5, 1990; Resolution of the City of Minneapolis, Dec. 28, 1990; Resolution of the City of Savannah, Jan. 10, 1991). This independent support on the state level for the CRC would minimize the jurisdictional concerns for the Senate. *See id.* The problem with this, however, is that it would be an extremely lengthy process.

238. *See* Stentzel, *supra* note 20, at 58; Kaufman, *supra* note 236, at 171.

239. *See* Edwards, *supra* note 210, at 363; John P. Humphrey, Human Rights and the United Nations: A Great Adventure 128 (1984) (referring to federal reservations as "federal-state clauses" when they are part of the text of the agreement, and noting that such clauses are often unfair to unitary jurisdiction countries).

240. *See* Stentzel, *supra* note 20, at 60.

241. American Convention on Human Rights, *opened for signature* Nov. 22, 1969, 1144 U.N.T.S. 152 (entered into force July 18, 1978). Article 28 of the Convention states:

> 1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
>
> 2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent unites may adopt appropriate provisions for the fulfillment of this Convention.

Id. art. 28.

242. G.A. Res. 39/46, U.N. GAOR 3d Comm., 39th Sess., Supp. No. 51, 93rd Mtg., Agenda Item 99, at 197, U.N. Doc. A/39/51 (1984).

243. *See* Stentzel, *supra* note 20, at 58; Coccia, *supra* note 236, at 39. The proposed reservation provides:

> The United States shall implement the Convention to the extent that the Fed-

Similarly, the treaty packages for the International Covenant on Civil and Political Rights[244] and the International Covenant on Economic, Social and Cultural Rights[245] contained federal reservations.[246] These treaties, however, contained anti-federal clauses within their texts.[247] The anti-federal clause provides that the treaties "[extends] to all parts of federal states without any limitations or exceptions."[248] Thus, the treaty packages sent to the Senate contained federal reservations specifically designed to disavow the anti-federal clause.

One purpose of a federal reservation is to facilitate the advice and consent of the Senate.[249] It also serves a political function by leaving states the discretion to comply with the treaty obligations regarding matters which they traditionally regulate.[250]

The CRC does not have an anti-federal clause, nor does it have a federal-state clause, although the United States had proposed one.[251] Thus,

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eral Government exercises legislative and judicial jurisdiction over the matters covered therein; to the extent that constituent units exercise jurisdiction over such matters, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of the Convention.

Stentzel, *supra* note 20, at 58 (quoting Department of State, Message from the President of the U.S., S. Treaty Doc. 100-20, 100th Cong., 2d Sess. 2-3 (1988)).

244. G.A. Res 2200B, U.N. GAOR 3d Comm., 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6546 (1966) [hereinafter ICCPR].

245. G.A. Res. 2200A, U.N. GAOR 3d. Comm., 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6546 (1966) [hereinafter ICESCR].

246. *See* Stentzel, *supra* note 20, at 59; Coccia, *supra* note 236, at 39.

247. *See* ICCPR, *supra* note 244, art. 50; ICESCR, *supra* note 245, art. 28.

248. *See* ICCPR, *supra* note 244, art. 50; ICESCR, *supra* note 245, art. 28.

249. *See* Stentzel, *supra* note 20, at 62; Coccia, *supra* note 236, at 42. Moreover, since the Senate has asked the President to promptly seek their advice and consent, the Senate appears ready to address ratification of the CRC. *See* Treasury, Postal Service and General Government Appropriations Act of 1991, Pub. L. No. 101-509, § 632, 104 Stat. 1389, 1480-81 (1990).

250. *See* Stentzel, *supra* note 20, at 62.

251. *See* U.N. Doc. E/CN.4/1987/25, at 34 (1987) *in* The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires" 569 (Sharon Detrick ed. 1992) [hereinafter 1987 proposal]; U.N. Doc. E/CN.4/1988/28, p. 48 *in* The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires" 569-70 (Sharon Detrick ed. 1992) [hereinafter 1988 proposal]. In 1987, the United States submitted the following proposal to be designated article 23 of the CRC:

> Where a State Party is constituted as a federal State, the national Government of such State Party shall undertake appropriate measures to implement the provisions of this Convention in so far as it exercises legislative and judicial jurisdiction over the subject matter thereof. In so far as the subject matter of the provisions of this Convention falls within the jurisdiction of the constituent units of the federal State, the national Government shall take suitable measures, in accordance with its constitution and is laws, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Convention.

1987 proposal, *supra*, at 569. In 1988, the Working Group again considered the United States proposal. *See* 1988 proposal, *supra*, at 569-70. During the 1988 meeting, several nations expressed concern that the wording of the federal-state clause would considerably narrow the application of the CRC in federal states, thus establishing inconsistent stan-

to ensure the advice and consent of the Senate, the United States treaty package for the CRC should contain a federal reservation.[252]

CONCLUSION

American children would greatly benefit from the United States' ratification of the CRC. Before ratification will occur, however, there is likely to be much debate in the Senate focusing on the jurisdiction concerns raised by the CRC. To facilitate ratification, the United States should make a federal reservation to the CRC, assuring compliance with standards that fall within the jurisdiction of the federal government, and encouraging the states to do the same for matters within their jurisdiction.

While America's children would receive the greatest benefit if the United States ratified the CRC in its entirety, the United States' history in ratifying human rights treaties shows that this is not likely. American children, however, will benefit even if the United States ratifies the CRC with a federal reservation. United States ratification of the CRC would show that the United States is dedicated to human rights issues, especially those involving children. Ratification would also create an awareness that the United States is committed to improving the situation of its children. Moreover, because the United States would have to report to the Committee on the Rights of the Child if it ratifies the CRC,[253] ratification would force the United States to look at the situation of American children more often. The conditions of children in the United States would be monitored more closely, and would be less likely to continue to decline. To show its commitment to American children and improve their living conditions, the United States must ratify the United Nations Convention on the Rights of the Child.

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dards in federal states and non-federal states. *See id.* at 570. Consequently, the United States representative withdrew the proposal. *See id.* The Working Group did note, however, that this might be a matter for a reservation to the CRC. *See id.*

252. *See* Stentzel, *supra* note 20, at 60.

253. Article 43 of the CRC proclaims that Parties to the Convention must establish a committee to examine the progress made by each individual Party. *See* CRC, *supra* note 6, art. 43, 28 I.L.M. at 1472. Each nation is expected to submit a report to the Committee on the Rights of the Child that explain how it is complying with the CRC. *See id.* art. 44, 28 I.L.M. at 1473. The nation must also make this report available to the public. *See id.*