

THE RELIGIOUS RIGHT AND THE OPPOSITION TO U.S. RATIFICATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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INTRODUCTION

The United Nations Convention on the Rights of the Child (CRC) was adopted unanimously by the U.N. General Assembly on November 20, 1989, eleven days after the Berlin Wall fell.¹ In the months surrounding the CRC vote, all of the European communist allies of the former Soviet Union collapsed, and the latter was itself in the throes of dissolution.² The USSR and its allies, the threat of which had been a core theme of American political life for more than forty years, were disintegrating. But, at the exact moment that the communist world in Europe was collapsing, some Americans associated with the religious right had already identified a dangerous new international threat: an assault on the “traditional family.” The United Nations, which many Americans had previously accused of being the willing handmaiden of expansionist and atheistic communism, was instantly transformed into a villain engaged in an intentional campaign to destroy the traditional American family. The CRC, which was adopted unanimously and was quickly ratified by every country in the world except the United States and Somalia, became fodder in the American “culture wars” that had been announced by the religious right and its allies.³ For example, the conservative Heritage Foundation’s principal

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¹ Convention on the Rights of the Child art. 24, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

² On the day the United Nations voted unanimously to adopt the CRC in New York City, 200,000 people had gathered in Prague in a massive demonstration against the communist government. The dramatic changes taking place at this time are exemplified by the case of Václav Havel, who, in February 1989, was incarcerated in a Czechoslovak prison, but who, in December 1989, was the newly elected president of his country and was residing in Hradčany Castle.

³ For the leading early treatment of the subject, see JAMES DAVISON HUNTER, *THE CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* (1991). This work was published in the same year that the Soviet Union finally disintegrated. For other important treatments of the religious right, see WILLIAM MARTIN, *WITH GOD ON OUR SIDE: THE RISE OF THE RELIGIOUS RIGHT IN AMERICA* (1996) (a sympathetic and perceptive account) and SARA DIAMOND, *NOT BY POLITICS ALONE: THE ENDURING INFLUENCE OF THE CHRISTIAN RIGHT* (1998) (a

expert on family issues and the CRC put it succinctly: “The United Nations has become the tool of a powerful feminist-socialist alliance that has worked deliberately to promote a radical restructuring of society.”⁴ A representative of the Family Research Council, founded by the Reverend James Dobson, criticized the CRC by saying, “I know some conservatives want to pull out of the United Nations, and treat it as irrelevant. The problem is, we can’t. For if we do, enemies of the family will create and use international law to undermine the family.”⁵ The “religious right,” here represented by the Heritage Foundation and the Family Research Council, has firmly opposed the CRC since at least the mid-1990s and has successfully blocked its ratification.

Ironically, the drafting of the CRC (1979–1989) largely overlapped the presidential administration of Ronald Reagan (1981–1989), who has long been a favorite of American conservatives and the religious right. The U.S. State Department, during the administrations of Reagan and George H.W. Bush, played an active and extremely influential role in shaping the text of the document, which was completed during the first year of the Bush administration.⁶ American diplomats, working in tandem with a broad range of American non-governmental organizations (NGOs), had been successful in virtually every contentious part of the Convention. The final document was accepted unanimously in the General Assembly, and the vast majority of states ratified the CRC within the first twelve months of its adoption. The Holy See, whose opposition to birth control and abortion could be questioned by none, and whose support for families and “traditional values” was equally beyond

critical and perceptive account). For a study of related religion and culture issues during the Cold War, see STEPHEN J. WHITFIELD, *THE CULTURE OF THE COLD WAR* (2d ed. 1996).

⁴ Patrick F. Fagan, *How U.N. Conventions on Women's and Children's Rights Undermine Family, Religion, and Sovereignty*, HERITAGE FOUND. BACKGROUNDER No. 1407, Feb. 5, 2001, <http://www.heritage.org/Research/InternationalOrganizations/BG1407.cfm>. For further information on Fagan, see *infra* note 32.

⁵ William Saunders, *The UN Threat to the Family: Bad Treaties Make Bad Law*, FAMILY RES. COUNCIL No. 88, <https://www.frc.org/get.cfm?i=PD02G1>. For further information on Saunders, see *infra* note 32.

⁶ See Cynthia Price Cohen, *The Role of the United States in the Drafting of the Convention on the Rights of the Child*, 20 EMORY INT'L L. REV. 185, 190–92 (2006); Cynthia Price Cohen, *Role of the United States in Drafting the Convention on the Rights of the Child: Creating a New World for Children*, 4 LOYOLA POVERTY L.J. 9 (1998). According to Susan Kilbourne, “Delegations from the U.S. State Department, under the Reagan and Bush Administrations, participated actively in the drafting processes of all but two of the Convention’s articles and were instrumental in the inclusion of four articles” Susan Kilbourne, *U.S. Failure to Ratify the U.N. Convention on the Rights of the Child: Playing Politics with Children's Rights*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 437, 438 (1996); see also Cohen, *The Role of the United States in the Drafting of the Convention on the Rights of the Child*, *supra*, at 190; THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE “TRAVAUX PREPARATOIRES” (Sharon Detrick ed., 1992).

doubt, ratified the CRC less than six months later, on April 20, 1990.⁷ Thus, within a year, almost all countries of the world had ratified the CRC, making it the most universally admired and least controversial human rights convention that had yet been drafted or adopted.

Yet only five years later, the CRC appeared to have no prospects for ratification in the United States because of the hostile reaction that had come from the American religious right, which had quickly reached the conclusion that the Convention was anti-family, anti-religion, and anti-American. What happened? How could a treaty negotiated by the Reagan administration and that was accepted virtually universally in the world (including by the Vatican) be not only rejected by religious conservatives, but rejected with such vehemence that they succeeded in preventing it even from being referred to the U.S. Senate for its advice and consent? How could the religious right and the United States be so thoroughly out of touch with the Holy See and every other country in the world except for the failed state of Somalia?⁸

Although the Reagan and Bush administrations had negotiated and voted for the CRC at the United Nations, the first President Bush neither signed it nor forwarded it to the Senate for its advice and consent. President Bush certainly did not take an active interest in promoting the CRC. The year 1989, for him, was not a time to focus on the rights of children, but on the unfolding “new world order” and the “peace dividend.” When Saddam Hussein invaded Kuwait, prompting a counter-invasion in 1991 by the United States and its coalition partners, the CRC could not have been further from his mind. For whatever reason, the CRC seems not to have captured the interest of the Bush administration. In his 560-page memoir on foreign policy, written in conjunction with his principal foreign policy adviser, Brent Scowcroft, President Bush never even mentioned the CRC.⁹

⁷ Office of the United Nations High Commissioner for Human Rights, Ratifications and Reservations: Convention on the Rights of the Child, <http://www.ohchr.org/english/countries/ratification/11.htm> (last updated Jan. 26, 2006) [hereinafter Ratifications and Reservations]. Other states that might also be considered theocracies intent on preserving conservative religious values similarly ratified the CRC, including Iran, Sudan, and Afghanistan, as well as countries particularly sensitive to issues of national sovereignty, including China, Serbia, and Russia. *Id.*

⁸ Coincidentally, the taxi driver who took me from the Atlanta airport to Emory University in October 2005, where the first version of this paper was delivered, happened to be from Somalia. When he asked me what I was doing at Emory, I responded that I would be participating in a conference discussing a U.N. Convention that had been ratified by all countries of the world except the United States and Somalia. He responded, “Ah, my country is crazy.”

⁹ GEORGE BUSH & BRENT SCOWCROFT, *A WORLD TRANSFORMED* (1998).

The supporters of the CRC, unlike its opponents, failed to mount an effective grass roots campaign and did not employ the same style of alarmist rhetoric.¹⁰ Indeed, the rhetorical firepower and allusions regarding international conspiracies against the United States led to the replacement, whether consciously or coincidentally, of the term “cold war” with “culture wars.”¹¹ With the final collapse of the Soviet Union in 1991, some began to look elsewhere for an organizing principle to guide American politics. Patrick Buchanan, the man who had challenged incumbent President Bush in his own party, gave voice in 1992 to what had increasingly become identified as a major political issue: the culture wars.¹² In a speech to the Republican Convention in 1992, Buchanan identified the conflict that had, for many Americans, replaced the Cold War:

My friends, this election is about much more than who gets what. It is about who we are. It is about what we believe. It is about what we stand for as Americans. There is a religious war going on in our country for the soul of America. It is a cultural war, as critical to the kind of nation we will one day be as was the Cold War itself.¹³

Buchanan described the battlegrounds of the new cultural war as including the issues of abortion, homosexual rights, pornography, prayer in schools, “Judeo-

¹⁰ Kilbourne, *supra* note 6, at 458–60.

¹¹ Between 1947 and 1991, anti-communism united the political left and right in the United States, with the public debate focusing not on a disagreement about communist doctrine, but on which ideas and policies would be most effective in combating the communist menace. Although communism did not disappear from the world after 1991, most notably persisting in China and Cuba as well as in Laos, Vietnam, North Korea, and Cambodia, its potential threat to the American way of life essentially evaporated, to be replaced at first by cultural war issues and subsequently by terrorism.

¹² Although President Bush was at the peak of his popularity when American and coalition troops successfully ousted the Iraqi army from Kuwait, his troubles at home continued to mount. He was widely perceived as being insufficiently Reaganesque, prompting conservatives in his own party to attack him from the right. Patrick Buchanan, the television commentator and former White House official during the Nixon administration, challenged Bush for the Republican presidential nomination. Although President Bush beat Buchanan in the 1992 New Hampshire primary, the strength of the latter’s showing revealed the President’s vulnerability with the right-wing of his own party, a problem that Reagan had not encountered. Buchanan ultimately captured 3,000,000 Republican votes in the primaries, enough to affect an election, which made him a person of importance within the party. It is generally conceded that in the presidential election of 1992, President Bush, like President Carter before him, lost a significant percentage of the religious conservatives’ votes.

President Bush’s son, George W. Bush, was responsible for liaison between the evangelical Christian community and his father’s presidential campaign in 1988. The Bush campaign did not give the younger Bush the same role in 1992, which is commonly thought to be one of the factors that contributed to his father’s loss of the evangelical vote and ultimate defeat.

¹³ Patrick J. Buchanan, Speech at the Republican National Convention (Aug. 17, 1992) (transcript available at <http://www.buchanan.org/pa-92-0817-rnc.html>).

Christian values,” the institution of marriage, and whether “12-year-olds should have a right to sue their parents.”¹⁴ Buchanan’s “culture war” speech overshadowed most other events at the 1992 Republican National Convention and has been interpreted as both galvanizing the religious right and as alienating many Americans who saw it as too extreme. Though the term “culture war” already existed in the political lexicon, it was Patrick Buchanan’s call to arms that entrenched it in public discussion.¹⁵

The religious right did not support George Bush for re-election with the same enthusiasm that they had supported him with as the heir to the Reagan mantle in his first campaign. Bill Clinton defeated George Bush in 1992, partly through the assistance of third-party candidate Ross Perot, who cut into Bush’s support. Throughout the 1992 election, however, one of the galvanizing symbols for the conservative opponents of Clinton was his wife, Hillary, who was a direct target of many of the barbs during the campaign—including several delivered by Buchanan himself in his convention speech.¹⁶ For some political opponents of Clinton, particularly on the religious right, it was galling to think that the First Lady was a liberal, well-educated, opinionated, successful, and articulate woman who supported the very issues that had been identified as battlegrounds in the culture wars: access to contraceptives, rights of children, child care outside the home, rights of abortion, rights for homosexuals, women in the military, and rights for women.

Following the final vote on the CRC in 1989, the American Bar Association began to analyze the Convention with respect to its potential legal effect in the United States,¹⁷ while NGOs favoring the CRC lobbied both the White House and Congress to promote ratification. Notable among those who supported ratification were Marian Wright Edelman, the Founder of the influential Children’s Defense Fund (CDF), as well as Hillary Rodham Clinton, the First Lady of Arkansas who was also the CDF’s Chairman of the

¹⁴ *Id.*

¹⁵ See HUNTER, *supra* note 3.

¹⁶ “And what does Hillary believe? Well, Hillary believes that 12-year-olds should have a right to sue their parents, and she has compared marriage as an institution to slavery—and life on an Indian reservation.” Buchanan, *supra* note 13. It was unusual in American politics for political opponents to so blatantly attack the spouse of a presidential candidate, though it was neither the first nor the last time that this would happen.

¹⁷ See AM. BAR ASS’N CTR. ON CHILDREN AND THE LAW, CHILDREN’S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW (Cynthia Price Cohen & Howard A. Davidson eds., 1990); AM. BAR ASS’N WORKING GROUP ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, REPORT OF THE ABA WORKING GROUP ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (1993).

Board from 1986 to 1992.¹⁸ For most Americans, however, the question of U.S. ratification of the Convention remained a matter of little interest during the last years of the Bush administration and the first years of that of President Clinton.¹⁹ For practical purposes the CRC lay dormant.

On February 10, 1995, the Clinton administration awakened the slumbering CRC and announced that the United States would sign it in the first step of the ratification process. In a move that could not but help galvanize the religious right, the announcement was made by none other than the person whom it had already vilified as a feminist enemy of the traditional family, First Lady Hillary Clinton. The following week, on February 16, the U.S. Ambassador to the United Nations, Madeleine Albright, signed the Convention on behalf of the United States.²⁰ That same day, Senator Bill Bradley of New Jersey made an impassioned plea for President Clinton to forward the CRC to the Senate for its advice and consent.²¹ The religious right opponents mobilized instantly and launched grass-roots “action alerts” and letter-writing campaigns, urging Senators and members of Congress to voice their opposition.²²

The first results of the opposition’s letter-writing campaign were felt almost immediately. On February 24, only eight days after the CRC was signed in New York City, Senate Majority Leader Robert J. Dole announced that “in the past several days, I have received thousands of calls from all over the country in opposition to this Convention. My office has not received one call for it.”²³ Majority Leader Dole warned that he would oppose the CRC unless some important questions about it were answered, specifically about the meaning of articles 13, 14, and 15 (pertaining to freedom of expression, religion, and association, respectively), which had been the subject of particular anxiety in the letters he had received. Apparently neither he nor the letter writers were aware that those three articles had been proposed and strenuously promoted by the U.S. State Department during the Reagan administration. Majority Leader Dole, who was preparing his own candidacy for the presidency, assured the country and the conservative opponents of the

¹⁸ For a long list of other groups supporting ratification, see Kilbourne, *supra* note 6, at 458 n.105.

¹⁹ As noted above, President George H.W. Bush did not even mention the CRC in his foreign policy memoirs. See *supra* text accompanying note 9.

²⁰ Ratifications and Reservations, *supra* note 7.

²¹ 141 CONG. REC. S2902-03 (daily ed. Feb. 16, 1995) (statement of Sen. Bradley).

²² Kilbourne, *supra* note 6, at 439–40. The rhetoric and arguments used in this grass-roots campaign against the CRC came from the religious right and are discussed below.

²³ 141 CONG. REC. S3081 (daily ed. Feb. 24, 1995) (statement of Sen. Dole).

CRC that the Committee on Foreign Relations would give the CRC “the careful review it deserves.”²⁴

But Senator Dole’s cautious approach to considering the CRC carefully would not prevail. Senator Jesse Helms, the Chairman of the Foreign Relations Committee, subsequently announced that not only would it not receive a “careful review,” he would guarantee that it received no review whatsoever. Senator Helms declared his predetermined and absolute opposition in a particularly strident speech that warned President Clinton not even to consider sending the CRC to the Senate.²⁵ He contemptuously ridiculed it as being a “bag of worms,” an effort to “chip away at the U.S. Constitution,” as leaving the United States “open to hostile attacks,” as “grotesque,” and as a “strange document.”²⁶ Like Majority Leader Dole, Senator Helms noted the overwhelming constituent opposition to the treaty, asserting that he had received 5,000 letters in opposition and only one in support.²⁷ He concluded by asserting that “as long as I am chairman of the Senate Committee on Foreign Relations, it is going to be very difficult for this treaty even to be given a hearing.”²⁸ Under the rules of the Senate and for all practical purposes, the CRC had no chance of being agreed to during Senator Helms’ tenure as Chairman. The arguments and rhetoric used in the religious right’s attacks have prevented it from ever being forwarded to the Senate.

I. THE CULTURE WAR AND OPPOSITION TO THE CHILDREN’S CONVENTION

Although there was no possibility of Senate approval during Helms’ tenure on the Foreign Relations Committee, several writers and organizations on the religious right nevertheless treated the CRC as if it were a clear and present danger to their country and their families. Several different arguments about the CRC were raised and debated, including some reasonable questions about its effect on U.S. federalism. But what appears to have galvanized opponents were the same “culture war” issues that were identified in Pat Buchanan’s 1992 speech: contraception, abortion, homosexuality, parental discipline of children, the assault on the family, children born out of wedlock, unmarried

²⁴ *Id.*

²⁵ 141 CONG. REC. S8400-8401 (daily ed. June 14, 1995) (statement of Sen. Helms).

²⁶ *Id.* at S8400, 8401. Senator Helms also was quoted as insisting that the CRC is an “insane interpretation of international law.” *Id.* at 8401; Robin Wright, *Globally Embraced Child Rights Treaty Languishes in U.S.*, L.A. TIMES, Nov. 18, 1999, at A15.

²⁷ 141 CONG. REC. S8400 (daily ed. June 14, 1995).

²⁸ *Id.* at S8401.

cohabitation, and mothers working outside the home.²⁹ While aspects of the CRC lightly touched upon some of these issues, the opponents of the CRC interpreted the Convention as if it had been explicitly and intentionally designed to promote all of these evils. Bill Saunders, of the Family Research Council, argued this explicitly:

Nearly all the evils we face can be hidden in this language [of the CRC]: Abortion, contraception as health care, pornographic sex education, abortion as a method of family planning, stigmatization of traditional religious beliefs and educational practices, and the exportation of the culture of death to the developing world.³⁰

With the same rhetorical anger and allusions that had been used to denounce communists in the 1950s, the culture warriors attacked the CRC and its proponents.³¹ This can be seen by examining five representative texts that illustrate the rhetoric and arguments that have been employed by CRC opponents. By considering how these authors framed and debated the issues, we will see how the culture war rhetoric is less of a battle regarding substantive issues—though serious substantive issues are indeed in dispute—and more of a symbolic struggle that is divorced from the actual language or effect of the CRC. What is remarkable, from an international perspective, is that the rhetorical battle of contrived symbols could so fully overwhelm and forestall a rational and detailed discussion of the substantive underlying issues.

Five texts written between 1993 and 2001, by important opponents of the CRC that are affiliated with influential religious right lobbying and public advocacy organizations, reveal how the issues were framed in such a way as to alarm their constituencies and to stimulate the letter-writing campaign that immediately impressed Majority Leader Dole and Foreign Relations Chairman Helms. Although only one of these texts was written before 1995, they repeatedly raise the same set of fears.³² These authors are affiliated with

²⁹ See Buchanan, *supra* note 13.

³⁰ Saunders, *supra* note 5.

³¹ See *supra* note 23 and accompanying text.

³² The five texts are:

CHRISTOPHER J. KLICKA, NAT'L CTR. FOR HOME EDUC., *THE UN CONVENTION ON THE RIGHTS OF THE CHILD: THE MOST DANGEROUS ATTACK ON PARENTS' RIGHTS IN THE HISTORY OF THE UNITED STATES* (1999), <http://www.hslda.org/docs/nche/000000/00000020.asp>. Klicka has been associated for years with the Home School Legal Defense Association, which encourages mothers to stay at home and give their children a well-founded moral and Christian education. See Home School Legal Defense Association, Attorneys: Christopher

institutions that are influential in the religious right and are particularly associated with the “pro-family” movement: the Heritage Foundation, Concerned Women for America, the Family Research Council, the Home School Legal Defense Association, and the Eagle Forum.

II. ARGUMENTS OF CRC OPPONENTS

Three principal and interrelated themes that emerge in the religious right’s opposition to the CRC are as follows: first, presuming that proponents of the CRC are enemies of the traditional family and are engaged in a concerted effort to destroy parental rights; second, expansively interpreting CRC provisions that were designed to protect the expressive and religious rights of children while simultaneously ignoring or minimizing CRC provisions that protect parental rights and interests; and third, assuming that the ratification of the CRC would completely undermine American sovereignty by empowering

J. Klicka, <http://www.hslda.org/about/staff/attorneys/Klicka.asp> (last visited Mar. 23, 2006); Home School Legal Defense Association, *Our Mission*, <http://www.hslda.org/about/mission.asp> (last visited Mar. 23, 2006).

Phyllis Schlafly, *The New World Order Wants Your Children*, PHYLLIS SCHLAFLY REP., Mar. 1993, <http://www.eagleforum.org/psr/1993/mar93/psrmar93.html>. Schlafly first came into national prominence as the author of a short polemic written in support of Barry Goldwater’s campaign for the presidency in 1964. *See* PHYLLIS SCHLAFLY, *A CHOICE NOT AN ECHO* (1964). She and her organization, “Stop ERA Now,” are widely credited with having stopped the movement for ratification of the Equal Rights Amendment. Stop ERA Now was renamed the “Eagle Forum,” and she continues as a prominent spokeswoman on the religious and political right. *See* Phyllis Schlafly, <http://www.eagleforum.org/misc/bio.html> (last visited Mar. 23, 2006).

Concerned Women for America, *U.N. Rights of the Child* (Aug. 7, 1997), <http://www.cwfa.org/articledisplay.asp?id=1839&department=CWA&categoryid=nation%Short>. Concerned Women for America was founded by Beverly LaHaye in 1979. LaHaye and her husband, Tim LaHaye, are two of the most influential figures on the religious right. *See* Concerned Women for America, *CWA Leadership: Mrs. Beverly LaHaye*, <http://gideon.cwfa.org/leadership.asp> (last visited Feb. 27, 2006).

Fagan, *supra* note 4. It is important to note that the emphasis of Fagan’s article is not the CRC itself, but how some U.N. bodies and institutions have interpreted and applied conventions. Fagan has been a Research Fellow in Family and Cultural Issues at the Heritage Foundation, one of the leading conservative think tanks that has long emphasized religious, cultural, and family issues.

Saunders, *supra* note 5. Saunders has been the Senior Fellow and Director of the Center for Human Life and Bioethics at the Family Research Council. The Family Research Council was founded by the Reverend James Dobson, one of the most influential figures on the religious right. *See* Family Research Council, *The Family Research Council Team: Bill Saunders*, <http://www.frc.org/get.cfm?i=BY03F01> (last visited Mar. 23, 2006); Family Research Council, *FRC History and Mission: Over 20 Years Defending Family, Faith, and Freedom*, http://www.frc.org/get.cfm?c=HISTORY_ABOUT (last visited Mar. 23, 2006).

the United Nations (and governmental bureaucrats) to interfere in the relations between parent and child.

1. *The CRC is described as a campaign by the enemies of traditional families to destroy parental rights.*

Perhaps the most salient characteristic in the writings of the CRC opponents is their use of the rhetoric of war, battles, struggles, and conflict. Whereas most people who were involved in the efforts to draft and ratify the CRC would presumably have thought that they were undertaking a campaign to help the most vulnerable people in the world, opponents describe CRC supporters as cruelly hostile towards children and parents. Thus the opponents of the CRC do not describe it as “well-meaning but misguided” or as “a good effort but fatally flawed,” but as part of an insidious, calculated, and intentional attack on families and society. The announcement that the United States would sign the CRC was presented not as a policy decision, but as a declaration of war: “On February 14, 1995, the Clinton Administration through Hillary Clinton declared war on parents’ rights in America.”³³ Although the CRC was negotiated during the Reagan and Bush administrations, the CRC opponents mention neither of the conservative presidents; rather, they tie the CRC to the unpopular Clinton administration and gave Hillary Clinton (who was, after all, living in Arkansas during the time the CRC was negotiated), a leading and dangerous role. Beverly LaHaye’s Concerned Women for America, asserts:

The Clinton administration has made ratification of the children’s treaty a major policy objective. That is not surprising, given the fact that Hillary Rodham Clinton is a former chairman of the Washington-based Children’s Defense Fund, where she supported the radical legal doctrine of children’s rights and promoted this U.N. Convention.³⁴

Phyllis Schlafly begins her report on the CRC by saying that the Clinton administration “want[s] government to take over the raising of children” and that the CRC is a vehicle to help accomplish it.³⁵ Christopher Klicka, who accused Hillary Clinton of declaring war on parents’ rights, like Schlafly, never informs his readers that the CRC was drafted and approved by the Reagan and Bush administrations and not by the Clinton administration.

³³ KLICKA, *supra* note 32.

³⁴ Concerned Women for America, *supra* note 32.

³⁵ Schlafly, *supra* note 32.

Neither of the presidents responsible for the CRC is ever mentioned in his paper.³⁶ Hillary Clinton is identified by name three times; Bush and Reagan not at all.³⁷

Patrick Fagan of the Heritage Foundation and William Saunders of the Family Research Council do not evoke the specter of Hillary Clinton, though they do distort the role of the Clinton administration. Both authors omit any reference to the Reagan and Bush administrations in the ten-year drafting process. According to Saunders, “Many of the anti-family, anti-life positions we are fighting against were developed in a series of international meetings that the Clinton administration was very much involved in and very much supportive of.”³⁸ Although Saunders is referencing the U.N. meetings that occurred after the election of 1992, he alternates between criticizing provisions of the CRC, drafted under Reagan and Bush, and the U.N. meetings during the Clinton administration (which are specifically condemned). Fagan adopts the same tactic:

President Bill Clinton signed the CRC on February 23, 1995, but the United States Senate has not ratified it, and the CEDAW [Convention on the Elimination of Discrimination Against Women] has not been signed or ratified by the United States. Leaders in Congress and past Administrations considered both treaties too controversial. . . . Nevertheless, under President Clinton, U.S. representatives supported the general thrust of these treaties throughout the international debate over women’s and children’s rights, and became a major force behind the implementation efforts.³⁹

After first tying the CRC to the Clinton administration, they then associate it with the United Nations and its supposed assault on traditional families. Patrick Fagan, the Heritage Foundation’s expert on families, begins his commentary on the CRC by declaring:

Few Americans are aware that agencies within the United Nations system are involved in a campaign to undermine the foundations of society—the two-parent married family, religions that espouse the

³⁶ See generally *id.*

³⁷ See generally *id.*

³⁸ See Saunders, *supra* note 5.

³⁹ Fagan, *supra* note 4. It should be noted that Fagan’s article was written in 2001, after Clinton had left office, and when George W. Bush was in the first month of his presidency.

primary importance of marriage and traditional sexual morality, and the legal and social structures that protect these institutions.⁴⁰

Fagan sees the attempts to implement the CRC as “push[ing] policy changes that would ultimately deconstruct the two-parent married family and counter traditional religious norms.”⁴¹ Provisions of the CRC that were drafted in an effort to help those who are the most vulnerable are interpreted instead as intentional attacks on the traditional family. For example, rather than applauding the CRC’s interest in protecting innocent children who are born out of wedlock from suffering societal discrimination, Fagan treats the CRC’s solicitude as an assault on marriage. “The U.N. is not just ‘concerned’ about the elevated status given stay-at-home mothers. It seeks to deconstruct the status given the family by telling states to normalize out-of-wedlock birth” (Shortly thereafter Fagan assures us that he does not approve of discrimination against children born out of wedlock, but he has already made his point about the real priority.) Even though the CRC takes no position on contraceptives, Fagan nevertheless argues that some supporters of the CRC who also wish to ensure that contraceptives are available (which obviously does not include the Holy See) are necessarily promoting “unconstrained consensual sex.” In this culture war language, Fagan sees an equivalence between “availability” of contraceptives and unconstrained licentiousness:

Yet the U.N. actively promotes sex outside of marriage as an acceptable cultural norm, and this agenda is made clear in its policies on abortion, contraception, gender definitions, prostitution, and pornography. The U.N. encourages governments to lend legal and financial support to the effort to change long-held and wise cultural norms. Whereas traditional cultures regulate sexual intercourse by shepherding the act toward marriage, the U.N. promotes unconstrained consensual sex coupled with larger social insurance ‘safety nets’ to address the problematic effects. If the U.N. can change the sexual norms of youth, it can change the structure of the family.⁴²

Rather than candidly discussing the CRC, these five opponents have placed it in a culture war.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

2. *Its opponents expansively interpret CRC provisions identifying rights for children and narrowly those provisions identifying powers and responsibilities of parents.*

To buttress their argument that the CRC is anti-family, its opponents systematically offer expansive interpretations of CRC provisions that were designed to protect the expressive, associational, and religious rights of children while, at the same time, they either completely ignore the provisions regarding parental rights and authority or interpret such provisions as being a meaningless sham.

The CRC opponents identify several articles that they particularly dislike, though there are three that have attracted disproportionate attention: Articles 13, 14, and 15—the same three that were invoked in Majority Leader Dole’s first cautionary speech on the CRC.⁴³ Fagan, who highlights his skepticism by placing the words “rights” and “right” in pejorative quotation marks, is typical in this regard:

Among the broad “rights” of children articulated in the CRC are freedom of expression; freedom to receive and impart all information and ideas, either orally, in writing, or in print, in the form of art, or through any other media of the child’s choice; freedom of association; and freedom of peaceful assembly. The language of the treaty could be interpreted to prohibit parents, for example, from putting software on their children’s computers to filter out pornography if their children opposed their intervention. Once this “right” is embedded in domestic law, children could easily gain access to legal help from NGOs or government agencies to challenge their parents in court.⁴⁴

Phyllis Schlafly insists that the CRC would give the federal government, with regard to children’s rights, “too broad a grant of power over our children.”⁴⁵ She makes the alarmist declaration that “it is reasonable to infer that many of these rights are to be enforced against the parents, probably with the help of government.”⁴⁶ She seems particularly concerned that governments will become involved in taking children away from their parents’ religions and placing them in cults. She asks, with alarm, whether “the government will

⁴³ 141 CONG. REC. S3081 (daily ed. Feb. 24, 1995) (statement of Sen. Dole).

⁴⁴ Fagan, *supra* note 4.

⁴⁵ Schlafly, *supra* note 32.

⁴⁶ *Id.*

assist the child to join a cult or select a different church from the one his parents attend?”⁴⁷ She believes that “the U.N. Treaty declares ‘rights of the child’ against parents, the family, private institutions, and society as a whole.”⁴⁸

Christopher Klicka uses dramatic language to suggest that the United Nations would come between parents and their children, particularly with regard to expressive, associational, and religious choices:

[T]his Treaty would virtually undermine parents’ rights as we know it in the United States. Parents no longer would have the basic right to control what their children watch on TV, whom they associate with, and what church they attend. Parents could be prosecuted and children be taken away simply because they spank their children or refuse to honor the various rights that the children are guaranteed as cited above.

There is no doubt that this Treaty is completely devastating to the traditional parents’ rights which our nation was founded upon.⁴⁹

Klicka here does not think that it is necessary to provide evidence or argument to support these alarmist assertions. Nor does he think it is necessary to support with evidence the assertion that “our nation” was founded on the principal of “traditional parents’ rights.”

As mentioned above, it is particularly curious that these three articles, which were designed to protect rights of expression, religious freedom, and association, should be specifically and repeatedly identified as anti-parent, given that they were proposed by the Reagan administration as essential rights that needed to be protected.⁵⁰ Moreover, had the amendments been proposed by others and had either the Reagan or Bush administrations seen any reason to object to them, they would not have been adopted. “All drafting decisions were made by consensus.”⁵¹

While reading dire implications into the articles acknowledging the (limited) rights of children to express themselves, to associate, and to religious freedom, the CRC opponents either downplay or ignore the CRC provisions

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ KLICKA, *supra* note 32.

⁵⁰ See Cohen, *The Role of the United States in the Drafting of the Convention on the Rights of the Child*, *supra* note 6, at 190–92.

⁵¹ *Id.* at 19.

that directly contradict their alarmist interpretations. For example, the CRC opponents, for practical purposes, do not cite the following language from the Convention's Preamble:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding⁵²

Just as the role of Ronald Reagan's State Department is ignored, so is the express language of the Preamble that flatly contradicts the opponents' interpretation of the CRC. Moreover, the CRC opponents either ignore or downplay Article 5, which arguably is the single most important provision addressing their concerns:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.⁵³

Article 5 thus explicitly requires States to respect the rights, duties, and responsibilities of parents and qualifies the rights of children—including those of expression, association, and religion—to be understood *in the context of the "evolving capacities of the child."*⁵⁴ It is the parents, not United Nations bureaucrats, who are specifically recognized as bearing the rights and duties in this regard. To interpreters interested in giving a thoughtful and balanced interpretation of the CRC, Article 5 plays an important role.

Unfortunately, the commentators by and large do not quote or even refer to Article 5. The exception to this general neglect is Klicka, though his approach

⁵² CRC, *supra* note 1, pmb1.

⁵³ *Id.* art. 5.

⁵⁴ *Id.* (emphasis added).

is simply to dismiss it by suggesting that it offers “nothing more than ‘lip service.’”⁵⁵

Thus we have a peculiar method of interpreting a convention: anything that can be characterized as being even remotely harmful to parental interests is interpreted in the least favorable light possible, whereas anything that expressly supports parental rights is either completely ignored or disparaged. This particular form of interpretation turns the document into the dreaded evil that must then be combated. Clearly we are not observing a sober and insightful interpretation of a document if the words of the document do not matter. The CRC is simply being used as fodder in the culture wars where facts and reasonable standards of interpretation play a back seat role to the preferred vilification of perceived opponents.

3. *The opponents describe the United Nations and the CRC as a real danger to the sovereignty of the United States.*

A prominent underlying theme throughout the CRC opponents’ writings is the specter of a dangerous United Nations that will insert itself not only between parents and their children, but between American citizens and their country. The CRC is portrayed as being a threat to American sovereignty. Concerned Women for America, for example, are particularly alarmed that Congress would be “answerable” to the United Nations.⁵⁶ Phyllis Schlafly asserts that if the CRC is ratified, it will become “the supreme law of the land” and that this “could imperil American sovereignty.”⁵⁷ Although she cites no other ratified human rights treaty to support her claim, she warns people that if the CRC is ratified, American judges will start applying international law and that “ACLU lawyers [will] bring a series of test cases to see how far the courts will extend its provisions.”⁵⁸ Schlafly has no evidence or examples of any American lawyer having convinced any American court that a human rights treaty created a new cognizable right in the United States.

Christopher Klicka, who, like Schlafly, has a law degree, seriously misstates the law when he cites the Supremacy Clause as a basis for suggesting that ratification of the CRC will mean that all pertinent laws in the United States will be superseded by the CRC. He insists, again without evidence, that

⁵⁵ KLIICKA, *supra* note 32.

⁵⁶ Concerned Women for America, *supra* note 32.

⁵⁷ Schlafly, *supra* note 32.

⁵⁸ *Id.*

“otherwise valid state laws pertaining to education and parents’ rights throughout the states which conflict with the provisions of the Treaty will be nullified by our own U.S. Constitution.”⁵⁹ Either Klicka is ignorant of basic, black-letter law that human rights treaties in the United States have not been self-executing—Congress must explicitly declare that provisions prevail over any countervailing domestic law—or he is consciously misinforming his intended audience, which he describes as “home schoolers, as parents and as lovers of freedom.”⁶⁰

CONCLUSION

Outside the United States, the Convention on the Rights of the Child has proved itself to be one of the most popular and well-respected human rights treaties in the United Nation’s history. The CRC, which had not heretofore been the subject of any significant controversy internationally, became a highly polemical and vituperative battleground in the United States once it was signed by President Clinton, whose wife, Hillary, had been a longtime supporter of legal and social efforts to promote the interests of children. Almost immediately following U.S. signing of the CRC in 1995, the religious right and its allies launched a campaign of opposition that has successfully prevented the CRC from even being referred to the Senate for its advice and consent. While the religious opponents of the CRC in the United States perceive their actions and language as constituting a needed defense of the traditional family, their impassioned and militant language—*about a children’s convention no less*—appears as excessive to most of the world’s observers. That such seemingly unbalanced rhetoric was capable of stopping ratification in the United States must be incomprehensible to the outside observer.

It is apparent that these CRC opponents are not engaged in a sober analysis of the merits of a human rights convention; rather, they are engaged in a cultural war over the perceived role of parents. While we can question the excessiveness of their rhetoric and the inconsistencies of their arguments, it is important also to try to identify the underlying values that prompt their war metaphors and battle imagery. There are two themes that seem to be underlying their worldview that may help explain what they are doing. First,

⁵⁹ KLIKA, *supra* note 32.

⁶⁰ *Id.* Though scholars argue that nothing in the Constitution suggests that human rights treaties are not self-executing, in fact they have not been so since the 1950s. LOUIS HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 198–204 (2d ed. 1996).

they have in mind what we might call an “idealized, conventional family” that leads them to ignore almost completely the plight of children who do not fit within this traditional family. Second, there appears to be an underlying fear that if children are allowed rights of expression and access to information, that they, as parents, will lose their children. They thus approach the question not from the perspective of the world as it comes to vulnerable children, but as parents who are attempting to shore up an image of an idealized, conventional family where two heterosexual parents are raising children in conformity with the parental ideals of religion and right behavior. The CRC opponents are unconcerned that, for vast numbers of children in the world, the problem is not the threat that the United Nations will interfere in the relationship between parent and child, but that children do not have adequate food, education, health care, or any parents at all.

Coinciding as it did with the collapse of Communism in 1989, the CRC became a symbol of choice in the new American culture wars that replaced the cold war. In many ways it served as a Rorschach inkblot test in which the “pro-family” movement was unimpressed by the stated values of the CRC drafters or the reasons advocated by the Reagan administration, but rather with supposed attacks on the traditional family. The rhetoric they employed to describe the CRC (which was, after all, expressly designed to promote the “best interests of the child”) was one of threats, plots, and assaults on parents and children. Bill Saunders of the Family Research Council concluded his criticism with language that no doubt resonates with those who find dark forces in Rorschach inkblots: “[T]o fully appreciate this threat you have to understand that there are forces out there who are determined to undermine the traditional family. If we give them enough rope, they will hang us. I suggest we cut the rope.”⁶¹

⁶¹ Saunders, *supra* note 5.