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## FOREWORD

### DEFENDING CHILDHOOD: DEVELOPING A CHILD-CENTERED LAW AND POLICY AGENDA

*Barbara Bennett Woodhouse\**

The past decades have seen an erosion of the secure environment we hope to provide to our children and youth. The myth of childhood as a time of safety and innocence has been challenged by issues such as child abuse and neglect, family dissolution, child poverty, educational, economic, and racial divides, and the backlash against juvenile crime. For its inaugural conference on *Defending Childhood: Developing a Child-Centered Law and Policy Agenda*, held in December 2001, the Center on Children and the Law, at the University of Florida's Fredric G. Levin College of Law, convened a national conference to examine the problems facing children and youth and to explore evidence-based solutions.

The Center owes its existence to the vision of the late David H. Levin, who dedicated his career in family law to improving the lives of families and children. He was unable to attend this inaugural conference and passed away shortly afterwards. He will be missed. However, the articles in this volume are a small part of the lasting legacy he created by endowing the Center's activities.

The mission of the Center on Children and the Law is simply stated but not easily accomplished: to promote quality scholarship, skilled advocacy, and sound laws and policies for children and youth. The Center's philosophy is strongly interdisciplinary, because sound policy and effective advocacy depend on sound research and effective collaboration with other professions. Because we believe that scholarship and practice must be integrally related, our activities span the gamut from clinics dealing with actual children's cases to participation in state, national, and international reform efforts. The Center promotes skilled advocacy through its Certificate in Family Law, a program for J.D. students, which offers a structured course of study in family and children's law that integrates the traditional classroom with the world of practice. It provides opportunities, through its program of Children's Fellows, for students to

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\* David H. Levin Chair in Family Law, Levin College of Law, University of Florida, Director of the Center on Children and the Law and Co-Director of the Institute for Child and Adolescent Research and Evaluation at University of Florida. Special thanks to Cindy Zimmerman for all her help in putting on our first annual conference.

participate in appellate advocacy and advanced research. Finally, the Center aims to promote the highest quality scholarship on issues facing children and families by convening conferences such as the one that was the catalyst for the articles in this issue.

For our first annual conference, we thought it appropriate to define our topic broadly so we could utilize this opportunity to bring a number of scholars together to help us in mapping out our agenda for the future. We invited scholars from many fields, including law, medicine, sociology, history, psychology, and education, to share perspectives about critical issues facing children and youth and to develop a research, practice, and policy agenda for the coming decade. Topics included child welfare, family policy, juvenile justice, sexism and racism, children's educational and medical issues, and the ethical treatment of children and youth. Each participant was asked to contribute a short essay stating what he or she believed to be the most crucial challenge facing children in the coming decade, and these essays were collected and distributed at the conference. When Miguel Collazo, Editor in Chief of the *Journal of Law and Public Policy*, approached me about the possibility of a journal issue devoted to children and the law, I gave him the conference proceedings, and the rest is history. We are delighted that the *Journal* has provided this platform by inviting some of our speakers to develop their ideas into the articles you see in the following pages.

The articles printed in this issue reflect the wide variety of perspectives and approaches that characterized our sessions. Let me introduce the authors in alphabetical order and describe their respective careers and contributions.

Margaret Brinig is the Edward R. Howry Distinguished Professor at the University of Iowa. She is a member of the Executive Council of the International Society of Family Law and of both the American and Canadian Law and Economics Associations. Author of numerous books and articles, Professor Brinig holds degrees in both law and economics. Professor Brinig has made lasting contributions to the study of family law by insisting on the importance of empirical research as a basis for generating sound laws and policies. In this article, she identifies three areas in which policymakers often rely upon anecdote or ideology rather than calling for and paying attention to high quality social science research. She analyzes the shortcomings of current research and suggests ways in which researchers might perfect their studies so that data could replace speculation as a basis for policymaking. Her article should be required reading for every politician as well as for every scholar.

Jaap Doek is a Professor of Family and Juvenile Law at the Vrije (Free) University of Amsterdam. He was a juvenile court judge from 1977-1985 and Dean of the Law Faculty at Vrije University from 1988-1992. In 1999,

Professor Doek was elected to a four-year term on the U.N. Committee on the Rights of the Child, and in 2001, he became Chairperson of that Committee. It was a great honor and privilege to have Professor Doek at our inaugural conference. In his essay, he introduces American readers to the workings of the U.N. Convention on the Rights of the Child (CRC) and the Committee he heads, which is charged with implementation of the CRC. As Professor Doek points out, the CRC has been ratified by every nation in the international community with the exception of the United States. Much of the opposition to the CRC that has blocked its ratification in the United States is based on misconceptions about how the CRC operates. This essay should dispel the notion that ratification of the CRC would result in a U.N. takeover of the American system of family law. But while the CRC is not the Trojan Horse its detractors have feared, the CRC is definitely a wedge that opens the door to reform by placing children's issues on the national and international agenda. Its provisions, while not self-executing, are intended to promote changes from within national and local systems in the treatment and status of children. Professor Doek shows us how the CRC and the Committee on the Rights of the Child can be used to insure that children's needs and concerns are included on the national and international policy agenda.

Susan Mangold has devoted her career to understanding the systems that serve or disserve our children. At Harvard, she was co-founder of the Children's Rights Project, and she served for five years as a staff attorney at the Juvenile Law Center, in Philadelphia, representing children in individual abuse and neglect cases and in class actions. She is Professor of Law at the State University of New York, where she is also the Coordinator of the Family Law Concentration. Her past writings have explored the public-private partnerships that characterized early child welfare interventions in the United States, and she has documented how this history has affected the ways in which these systems operate. In her article, she explores the public-private dichotomy on which much of child welfare law and theory are premised. As she shows, state intrusion in the private sphere of family can have unintended negative consequences, as well as positive outcomes. Addressing an issue of great timeliness and concern, she explores the potential impact of the recent child sexual abuse scandals within the Catholic Church on the functioning of child abuse reporting systems. She predicts these scandals will produce a major shift in the way we perceive the public role in responding to private abuses of power. She suggests that our systems for protection of children must expand to require reporting of abuse by persons in authority, such as clergy, but without importing the massive intrusion on family privacy of the traditional child protection system into this different arena.

Claudia Wright is Associate Skills Professor at University of Florida's Fredric G. Levin College of Law, and she is the founder and supervising attorney of Gator TeamChild, one of the Virgil Hawkins Civil Clinics that is closely affiliated with the Center on Children and the Law. Professor Wright had a distinguished career in public interest law, including participation in key class actions and advocacy aimed at prison reform, before entering the academy. The clinic she created, Gator TeamChild, represents children and youth in every kind of case from delinquency and special education, to abuse and neglect. In its first three years, it has graduated over a hundred law students superbly trained to advocate for the rights of children and families. Professor Wright's article is an example of the importance of bringing the voices of those who are engaged in actual street level advocacy into the scholarly discussion. Using concrete examples from her caseload, as well as case law and constitutional doctrine, she shows why children need attorneys in dependency cases as well as in delinquency cases. She also argues that mandating representation for children in both of these settings will promote rather than impede the functioning of the unified family court. It has been a privilege for me to work with Claudia Wright and she is a role model and inspiration to me as well as to her students and her young clients.

These articles provide a flavor of the discussion that occurred at our inaugural conference. Based on insights of the presenters and of the participants, at the close of the conference, we reviewed what we had learned. Let me describe the principles of a Child-Centered Law and Policy Agenda that we identified and intend to pursue in the coming years.

### 1. Listening to Children's Voices.

In order to build a system that will be responsive to children's needs, we must learn to listen to children's voices. We must do this in the academy, in the courts, and in political life. In the academy, we must foster the child-centered study of childhood and youth within the academy. This will involve designing research projects that come as close as possible to reflecting children's experiences. It will involve a commitment to understanding — not by "intuition" but with serious studies such as Professor Brinig would design — how adult actions and decisions affect children's lives. In the courts, this will involve providing children with the opportunity to be heard, either personally or through a representative, in all matters affecting them. This principle is already embodied in juvenile justice cases such as *In re Gault*, and in the U.N. Convention on the Rights of the Child; but as Professors Wright and Doek point out, it must be expanded to every other setting in which children's lives and children's rights are at stake. In political and social life, we must begin to see

children as active agents rather than as passive objects. Children are not only our future, but also our present.

## 2. Building a Child-Centered Social Policy.

Many speakers at our conference stressed, as did Professor Doek, the importance of meeting children's "irreducible needs." This base-line concept crosses many boundaries of law and policy. In America and across the globe, children's irreducible needs consist at minimum of (a) loving care and family loyalty; (b) food, clothing and housing; (c) access to medical care in a medical home; and (d) education in the form of challenging task that teach relevant skills. In many nations, a child's right to have his or her needs met is enshrined in international law and national constitutions. The U.S. Constitution is silent as to "positive rights" such as these. However, we must muster the political will to create laws and policies that place children's needs foremost. We must also work to insure that, once on the books, those laws are correctly and faithfully implemented. The conference speakers recommended strengthening and simplifying existing income supports and fiscal and tax policies to ensure children's needs are met *within* their own families and communities. We must support caregivers and value the work of caring for our children. Children have a right to protection from harm, and the failures of our systems to prevent abuse and neglect demand our immediate attention. However, reliance on the child protection system and out-of-home care to solve fundamental problems caused by family poverty is no substitute for a child-centered social policy.

## 3. Fostering Child-Centered Systems Reform.

Our conference echoed the widespread calls for reform of systems serving children and youth. The child protection system mentioned above is not the only system in crisis. Our juvenile justice systems and our education and healthcare systems have consistently failed to accomplish their intended missions. We must replace rhetoric with well designed empirical research. We need to design evidence-based interventions that properly evaluate and protect against risk both to and from children. Our child welfare systems have swung between extremes of under-intervention and over-intervention but have shortchanged prevention. We know that providing mothers and children with basic healthcare, home visiting, early childhood education and other relatively cheap and simple measures are cost-effective but we do not fund them. In the arena of juvenile justice, recent decades have seen a sharp escalation in harshness towards juvenile offenders despite clear and convincing evidence that less draconian

measures are more effective in reducing recidivism as well as more cost-effective and humane. Why do we reject evidence-based solutions for punitive measures? A consensus emerged in our discussions that a sea of change is necessary in our collective thinking if we are to achieve truly child-centered systems reform. American voters and policymakers must begin to see each person under 18 as a “child” and each child as “our child.” As long as the children in the systems are viewed as “other people’s children,” systems reforms that work will elude us.

#### 4. Promoting Team-Based, Interdisciplinary Approaches.

In keeping with the Center on Children and the Law’s interdisciplinary philosophy, the voices around the table included those of physicians, historians, psychologists, sociologists, writers, and teachers. Interdisciplinarity is essential to a child-centered agenda because no single discipline holds all the answers. Children’s legal interests are defined by, and inextricably intertwined with, their medical, psychological, educational, and social needs. Another virtue of this approach is that it promotes a broad-based conversation in which no single value or ideology is allowed to dominate entirely. Values of efficiency and justice, pragmatism and idealism coexist in an interdisciplinary setting. In addition, the conferees committed to the importance of vertical integration. By this we mean a working structure that brings the insights of practice, research, and theory together to formulate sound laws and policies. Professor Wright’s piece is an illustration of this principle in operation.

#### 5. Challenging Entrenched Injustice and Discrimination.

Last, but most importantly, a child-centered agenda must be committed to challenging and combating, rather than replicating, the effects of sexism, racism, and poverty on children and their families. All children must have equal opportunity regardless of their gender or sexuality, race or ethnicity, religion, language and cultural group, disability, or socioeconomic status. Defending childhood entails making it safe to be different and depends on recognizing and valuing the richness of children’s diversity as well as respecting each child’s uniqueness. As many of our speakers pointed out, entrenched discrimination of whatever description is especially damaging to children who are growing organisms eager for acceptance and respect. Children experience discrimination in distinctive and very fundamental terms. We need to listen to the voices of minority children and marginalized children to understand their perspectives on justice and equality and to respond effectively to their needs. We need to foster respect for children’s rights as an essential

component of human rights. The drafters of the U.N. Convention on the Rights of the Child took on this task of defining children's human rights, and it is to be hoped that Americans can join in the worldwide movement for children's rights.

In closing, I would like to thank the editorial board of the *Journal of Law and Public Policy* for devoting an issue to Defending Childhood, and I would like to thank all those who gave of their time and talent to attend and speak at the inaugural conference of the Center on Children and the Law.<sup>1</sup> The ideas contained in this introduction are not original with me but are borrowed shamelessly from their astute comments and writings. I wish I could say we had discovered a silver bullet, but I cannot. Many of the problems we identified had been around as long as we could remember, and many of the solutions we proposed had been proposed decades and even centuries ago. It would be understandable if we all developed "empathy fatigue" and decided to give up on any hope of a truly child-centered law and policy agenda. However, imagine where we would be today if others who came before had gotten discouraged and simply stopped fighting. In closing the conference I borrowed another bit of wisdom from former Surgeon General Dr. Joycelyn Elders who said something similar about a public health agenda. "Working to improve the welfare of children is like dancing with a bear. You can get very tired, but you can't afford to sit down."

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1. In addition to the authors of the articles in this issue, I owe thanks to everyone who attended our first annual conference, and especially to the conference panelists, Tonya Brito, Richard Bucciarelli, Iris Burke, Emily Buss, Paul Butler, John Cech, Tom Dikel, Bob Dillinger, Nancy Dowd, Katherine Federle, Mark Fondacaro, Frank Furstenberg, Jr., Alison Gerencser, Norma Green, Michael Grossberg, James Hauser, Berta Esperanza Hernández-Truyol, Patricia Hilliard-Nunn, Dorothy Johnson, Janella Leibovitz, Carlos Martinez, Raymond McNeal, Wade Myers, Ed Mulvey, Kenneth Nunn, Tom Oakland, Juan Perea, Dick Repucci, Dorothy Roberts, Sharon Rush, Sherrie Russell-Brown, Elizabeth Scott, Connie Shehan, Elizabeth Shenkman, Chris Slobogin, Steve Willis, Jennifer Woolard, and Danaya Wright, for the ideas and insights from which I borrow liberally in these remarks.



