

To Ratify or Not to Ratify the UN Convention on the Rights of the Child: Gains and Losses

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1 Introduction

The UN Convention on the Rights of the Child (CRC)¹ is the most widely ratified human rights instrument in the world.² Indeed, since its adoption in 1989, it has been ratified by every country in the world—with the sole exception of the United States.³ It comes as a great surprise to many who are not human rights experts to learn that the U.S. stands apart from the world in not ratifying the CRC. The United States hosts the United Nations, the organization which adopted the CRC. Across the world—or at least in countries which are democratic or where people strive for a fair society—the U.S. is largely perceived as the land of freedom and home to human rights.⁴ Moreover, as John Witte explains, “American human rights lawyers and nongovernmental organizations (NGOs) were among the principal architects of [the CRC] and have been the most forceful for children’s rights at home and abroad.”⁵ But what does the U.S. failure to ratify the CRC mean for its policies, internally and internationally, and ultimately for the children of the United States?

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- 1 Convention on the Rights of the Child, New York, Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.unicef.org/child-rights-convention/convention-text> [hereafter CRC].
 - 2 The significance of ratification cannot be understated. Ratification means that a signatory agrees to be bound by the treaty. Ratification, <https://ask.un.org/faq/14594>. By contrast, signing the CRC means that the United States has expressed “willingness ... to continue the treaty-making process.” “It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.” Arts.10 and 18, Vienna Convention on the Law of Treaties 1969.
 - 3 Status of Ratification by Country, <https://indicators.ohchr.org/>.
 - 4 Jonathan Todres, “Incorporating the CRC and Its Optional Protocols in the United States,” in *Incorporating the United Nations Convention on the Rights of the Child into National Law*, ed. Ursula Kilkelly et al. (Cambridge, UK: Intersentia, 2021), 123–44.
 - 5 John Witte, Jr., *Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties* (Cambridge: Cambridge University Press, 2019), 238.

This chapter examines the genesis and importance of the CRC and the controversy around it in the United States, and suggests that the standard explanations for the U.S. nonratification are oversimplified. We note that both the European Union (EU) and the United States are federalist systems, and that the EU itself has ratified some instruments and not others, while U.S. cities and local governments have embraced some UN conventions. We then note that decisions surrounding the welfare of children are guided by the best interests of children in both the United States and EU countries. We illustrate that choosing how best to protect children in the United States and elsewhere is context dependent and that substantively divergent decisions can nonetheless serve the best interests of children. We ground this discussion by looking at one of the most vulnerable groups in any society: children who cannot be raised by their families of origin, whether they are in foster care or have been adopted. We conclude by applauding Professor Witte's long-running contributions to our comparative understanding of institutions supporting the family and the welfare of family units—for which children and vulnerable persons are better off.

2 Genesis and Importance of the CRC

By the adoption of the CRC,⁶ children's rights acquired a date and a place of birth: New York, November 20, 1989. The CRC resulted from a decade of debates, negotiations, and compromises in which the nations of the world participated. It reflects, in many ways, the “wisdom of the crowd.” Importantly, the CRC came after two world wars, in which thousands of children were victims of the most horrendous atrocities.⁷ While some see the CRC as birthing children's rights, the idea of rights for children is decades older. Children's rights are often linked to scholars such as Eglantyne Jebb⁸ and Janusz Korczak.⁹ Indeed, the

6 CRC. See also “The United Nations Convention on the Rights of the Child,” R40484, Congressional Research Service (July 15, 2015).

7 Many countries in the developed world had practices that mistreated children, often the children of poor or unmarried mothers. These range from Switzerland's *Verdingkinder*, meaning contracted-out children, to Ireland's export of children for adoption, to orphan trains in the United States. See Ursula M. Baer, “Switzerland's Apology for Compulsory Government-Welfare Measures: A Social Justice Turn?,” *Social Justice* 43, no. 3 (2016): 68–90; and Jeanne F. Cook, “A History of Placing-Out: The Orphan Trains,” *Child Welfare* 74, no. 1 (Special Issue, Jan./Feb. 1995):181–97, <https://www.jstor.org/stable/45399030>. Ibid.

8 Eglantyne Jebb, https://en.wikipedia.org/wiki/Eglantyne_Jebb.

9 Janusz Korczak, https://en.wikipedia.org/wiki/Janusz_Korczak.

concept of children's rights has roots in the U.S. decades prior to the drafting and negotiation of the CRC.¹⁰

Over decades of implementation, the CRC has contributed to bettering the lives of many children. The CRC has fostered policies that treat children as human beings, worthy of respect and a dignified life. Principal among these innovations is the notion of children's voice. The norm at stake is crucial: essentially, a dialogue with the child on matters that affect her life, an approach that treats children with respect, bearing in mind limitations, such as age and maturity.

Although the first call to give children special protection was adopted in Geneva in 1924,¹¹ followed in 1959 by the UN Declaration on the Child,¹² these revolved around children's well-being and protection. These declarations did not adopt "dignity rights,"¹³ such as the child's right to *both* express their views on matters which affect their lives *and* have their views be given due weight, contained in Article 12 of the CRC.¹⁴

Other provisions that make the CRC unique are the articles related to children's identity. Children are regarded as members of the families they are born into.¹⁵ The CRC celebrates every child as an individual by asking states to protect their individual characteristics.¹⁶ Articles 7 and 8 provide that children have the right to know and preserve their identity (name and nationality) and their family relations.¹⁷ Article 9 of the CRC protects children from separation from their parents against the parents' will, unless separation is in the child's best interest.¹⁸ Despite nonratification, the U.S. has long had practices that reflect these norms. For example, there has been a movement to open adoptions, although such arrangements are not enforced in the U.S. By contrast, some European countries allow for practices of anonymous birth ('*sous x*') or baby boxes, which have been criticized by the UN Committee on the Rights of the Child.¹⁹

10 Martin Guggenheim, *What's Wrong with Children's Rights* (Cambridge, MA: Harvard University Press, 2007).

11 Witte, *Church, State, and Family*, 238.

12 UN Declaration on the Rights of the Child (1959), <https://archive.crin.org/en/library/legal-database/un-declaration-rights-child-1959.html>.

13 *Ibid.*

14 CRC, Article 12.

15 *Ibid.*, Articles 9 and 10.

16 *Ibid.*, Articles 7 and 8.

17 *Ibid.*

18 *Ibid.*, Article 9.

19 Sophia Jones, "U.N. Committee Calls for an End to Centuries-Old Practice Of 'Baby Boxes,'" N.P.R. (Nov. 26, 2012), <https://www.npr.org/sections/thetwo-way/2012/11/26/165942545/u-n-committee-calls-for-an-end-to-centuries-old-practice-of-baby-boxes>.

Continuity with one's family of origin is prized under the CRC. In many countries, including welfare states (Europe and North America), children end up in care not as a result of child abuse but because of poverty and a lack of support to prevent them from entering care. If children cannot be raised by their family, Article 20 gives them the right to special protection and care of the state (foster care, adoption, or suitable institutional care), requiring that "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."²⁰

Other guarantees include:

- the right to "form [] his or her own views" and "the right to express those views freely";
- the "right ... to seek, receive and impart information ... of all kinds";
- the "right ... to freedom of thought, conscience and religion";
- the "rights ... to freedom of association and to freedom of peaceful assembly";
- the right to "his or her privacy, ... or correspondence"; and
- the right to "mass media" and "access to information and material ... aimed at the promotion of his or her social, spiritual and moral well-being."²¹

These child-centric guarantees are tempered by "the strong presumption of the CRC, stated in Articles 5 and 27, that the state must respect the rights and duties of parents to provide direction to their children in exercising all of their rights, including freedom rights."²²

Of course, under the Due Process Clause in the 14th Amendment to the U.S. Constitution, parents are entitled to the custody and care of their children, free from state interference, absent a risk of harm to their the child.²³ Some read these guarantees as unfettered, but they are not: they are bounded by risk to the child.²⁴ State interference varies between states and sometimes within the same country, as in the United States.²⁵

The CRC and other conventions exert a powerful norming force on questions of child welfare. This happens in two ways: countries adopt laws informed by the CRC, and decisions affecting child welfare in countries that have ratified

20 CRC, Article 20, ¶ 3.

21 Ibid.

22 Witte, *Church, State, and Family*, 249.

23 See Robin Fretwell Wilson and Shaakirrah Sanders, "By Faith Alone: When Religion and Child Welfare Collide," in *The Contested Place of Religion in Family Law*, ed. Robin Fretwell Wilson (Cambridge: Cambridge University Press, 2018), 344–45.

24 Ibid.

25 Neil Gilbert, Nigel Parton, and Marit Skivenes, eds., *Child Protection Systems: International Trends and Orientation* (New York: Oxford University Press, 2011).

the CRC are made in the shadow of the CRC's provisions. Let's consider each in turn.

First, the laws themselves. Within Europe, countries make their own policies in family law and in child protection that reflect their individual cultural identities. Yet these laws reflect the provisions of the CRC.²⁶ In the 1990s, the decade of the ratification of the CRC, most welfare states started to revise their legislation, policies, and practices around children in state care to ensure that these complied with the CRC.²⁷ The CRC—and the European Human Rights Convention (EHRC),²⁸ discussed next—provides a framework around which legislation and policies are constructed to promote human rights values across the region and, in some cases, to protect families from invasive state interference. Thus, most child protection policies in Europe are shaped by concepts animating the CRC, such as protection from harm, the best interests of the child, and the child's right to be heard. However, the evidence from ratifying countries to support such concerns is broadly missing.

Second, the CRC and other conventions shape outcomes. European countries are compelled to respect the European Human Rights Convention (EHRC),²⁹ which itself protects the right to family life against state invasive policies or practices and gives the right to a fair trial.³⁰ The judges of the European Human Rights Court draw on the CRC when examining possible breaches of the EHRC in cases involving children.³¹ Norway, for example, has been asked to review its practice of removing children swiftly from their families without providing services to the family.³² Most countries in Europe, in contrast to Norway, have a significantly higher threshold for removing children. The majority of the children in care across European nations are not placed for adoption but

26 Géraldine Van Bueren, *Child Rights in Europe: Convergence and Divergence in Judicial Protection* (Strasbourg: Council of Europe, 2007).

27 Gilbert et al., 25.

28 The European Convention on Human Rights, 1950, https://www.echr.coe.int/documents/convention_eng.pdf.

29 Convention for the Protection of Human Rights and Fundamental Freedoms, Sep. 3, 1953, https://www.echr.coe.int/Documents/Convention_ENG.pdf (hereafter EHRC).

30 Van Bueren, *Child Rights in Europe*.

31 Ursula Kilkelly, ed., *The Child and the European Convention on Human Rights*, 2nd ed. (London: Routledge, 2017).

32 Saadet Firdevs Apari, "Norway's Child Welfare Agency Comes under Fire," May 26, 2022, <https://www.aa.com.tr/en/europe/norway-s-child-welfare-agency-comes-under-fire/2597801>.

are put in foster or residential care, maintaining their identity and according with their right to stay in contact with their families.³³

Still, the two conventions—the EHRC and CRC—provide a framework around which legislation and policies are constructed to promote human rights values across the region and, in some cases, to protect families from invasive state interference. Most child protection policies in Europe are shaped by the CRC and, hence, by concepts such as protection from harm, the best interests of the child, or the child's right to be heard. All U.S. states currently express their child protection policies primarily in terms of the best interests of the child.³⁴

3 The Ratification Controversy

In many ways, the ratification controversy stems from politics. The CRC is seen as part of a movement to bring international law to bear on U.S. domestic law.³⁵ Like the U.S. decision not to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)—ratified by 185 countries since its adoption by the United Nations in 1979³⁶—“American exceptionalism” and the U.S. commitment to going it alone, or “unilateralism,” surely have contributed.

The U.S. attitude toward international human rights law, particularly “the positive nature of rights,”³⁷ also helps to explain why the U.S. has not ratified the CRC. We could imagine that ratification might hold some appeal to social conservatives *if* pitched as a device to protect families from state interference. But children's rights in the U.S. are still nascent. As one barometer: it was worthy of remark that the U.S. Supreme Court, in its landmark same-sex marriage

33 Gilbert et al., *Child Protection Systems*.

34 See, for example, Robin Fretwell Wilson, ed., *Reconceiving the Family: Critique on the American Law Institute's Principles of the Law of Family Dissolution* (Cambridge: Cambridge University Press, 2006); and Jennifer Wolf, “Child's Best Interest in Custody Cases,” Jun. 23, 2021, <https://www.verywellfamily.com/best-interests-of-the-child-standard-overview-2997765>.

35 See Robin Fretwell Wilson, “Family Law Isolationism and ‘Church, State, and Family,’” *Journal of Law and Religion* 34 (2019): 490–95.

36 Hannah Elizabeth Kington, “Why Has the United States Never Ratified the UN Convention on the Elimination of All Forms of Discrimination against Women?,” Honors College Capstone Experience/Thesis Projects, Western Kentucky University, 2009, https://digitalcommons.wku.edu/cgi/viewcontent.cgi?article=1159&context=stu_hon_theses.

37 Guggenheim, *What's Wrong with Children's Rights*, 14.

decision, *Obergefell v. Hodges*, invoked the interests of children in their parents' marrying.³⁸

The CRC has been opposed by religious groups and social conservatives opposed to government intervention in the family, as John Witte aptly shows in his work. CRC skeptics see the family as a private domain outside the government's reach. Witte probes critics' fear that freedoms granted children in the CRC would restrict the authority of parents to shape and mold their children.

Since the publication of Witte's volume *Church, State, and Family*, the question of children's rights has gotten increasingly bogged down in the culture war and political identity.³⁹ The entwining of children's rights with the culture war in the United States can only make ratification an even harder sell.

Family law developments, such as the rise of parental rights and fathers' rights, have also helped to stall ratification. In *What's Wrong with Children's Rights?*, Martin Guggenheim undertakes a thorough analysis of U.S. attitudes toward children's rights and the conceptual barriers that hinder the implementation of children's rights. The conundrum of children's rights versus parents' rights continues to divide lawyers in the U.S.,⁴⁰ creating a barrier to ratification. Ideological opposition to what it might mean to give prominence to children's voices, as Article 12 does, has also played a role. Hearing children's views is seen by some as diminishing adult authority. Critics worry that "categorically stated children's rights" will not bend to the presumption that the CRC's guarantees are read together with the rights of parents to direct the custody and care of their children over time.⁴¹

In sum, in the United States, children's voices and their relational or identity rights, which are enshrined in the CRC, are not regarded as important as they would be in countries which take the CRC as the bedrock of their child protection and adoption legislation. These observations form part of the received wisdom about nonratification of the CRC by the United States.

Often overlooked, however, are the structural difficulties with ratification. Ratification of the CRC—if binding on the political units within the ratifying country—is especially hard for a federalist system. In the U.S. federalist system, many areas of policy—not the least of which are domestic relations—are in the control of state legislatures. States are often lauded by jurists as

38 *Obergefeld v. Hodges*, 567 U.S. 644, 667 (2015). "A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education."

39 Phillip Elliott, "Most Parents Don't Like School Culture Wars, New Polling Shows," *Time*, Jan. 25, 2023, <https://time.com/6250139/parents-school-culture-wars-polling/>.

40 *Ibid.*

41 Witte, *Church, State, and Family*, 249.

laboratories of experimentation. In Justice Louis D. Brandeis's famous articulation, "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."⁴²

As we show in Part 4, below, U.S. states have adopted radically different approaches on just one child welfare question: the placement of children for adoption by private adoption agencies. They do this under their respective sovereignty as lawmakers protecting the general welfare of citizens in each of the fifty states. This means that the construction of U.S. family law is bottom-up—unlike, say, in a country with a federal family law system, like Australia. We can best think of family law in the United States as fifty-plus sets of positive law enacted by fifty states, the District of Columbia, and U.S. territories, as well as the sovereign Indian nations within the U.S. Of course, no unifying treaty like the EHRC is being discussed in the United States. In this sense, perception and reality diverge.

As the next part shows, the norms at stake in the CRC—that children should be treated with respect and should be consulted on matters affecting their welfare, when sufficiently mature—are well established in U.S. law.⁴³

4 The Ratification Controversy Is Oversimplified: Decisions Are Guided by Best Interests of Children Everywhere

As authors, we are divided on how critical it is for the U.S. to ratify the CRC. For one of us, the ideal would be for the U.S. not to reject ratification but to engage in dialogue and consider ratification with reservations. Many countries have done this, recognizing the specific identity of the country and joining the dialogue table at Geneva. For the other of us, ratification is less important than having U.S. states incorporate key principles of the CRC into their own laws.

Nonetheless, we agree as authors that on substantive family law questions, governments in good faith can adopt very different structures and still serve the welfare of children, as the next part makes concrete. For both of us, the CRC serves as a valuable repository of theory and best practices that can underpin and inform laws, practice, and thinking about children. We believe the ratification controversy is overstated in two respects: there are structural similarities between the EU and U.S. that are often not teased out, and there are similarities in the conceptual foundations of child welfare laws in the U.S. and Europe.

⁴² *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932).

⁴³ Wilson, "Family Law Isolationism and 'Church, State, and Family,'" 491.

First, structurally: the EU and the U.S. are both federalist systems. Europe is not a single federal entity. Member countries make their own policies in family law and child protection that reflect their individual cultural identities and commitments. In this way, the EU is more like the U.S. than not. U.S. states are the analogue to countries in Europe. We can thus think of the CRC ratification as fifty states not having ratified the CRC. Nothing prevents U.S. subunits from embracing the CRC's norms and making them part of domestic law, much as U.S. cities and states have done with CEDAW.⁴⁴

Importantly, the European Union has not ratified the CRC either, even as all member states have. Of course, the EU was initially only an economic union, and now it has expanded its areas of influence. However, the EU has ratified the UN Convention for Persons with Disability, which is a more recent convention than the CRC. This Convention resembles the CRC in many ways because it contains both political and economic rights for disabled persons.

The U.S. has ratified other treaties—notably those on human trafficking, given effect in the U.S. federal human trafficking laws—suggesting that non-ratification of the CRC may come from the CRC's breadth. The CRC touches nearly every experience of family life, and its ratification, *if* binding, would implicate the states' regulation of the general welfare of persons in countless domains.

We note again that the CRC does not form the basis for taking decisions of countries to court. It has no implementation mechanism. Instead, in Europe the CRC gains its force from a collateral treaty, the EHRC. The EHRC can issue binding decisions, much as the U.S. Supreme Court can do with respect to U.S. states.

Second, conceptually: the CRC is best thought of as a source of authority for best practices. The CRC may serve as a base for soft law or shaming of countries. The UN prepares country reports, which help move countries to better protect children's rights. In this regard, the ratification question carries far more importance in the minds of lawmakers and the public than we would predict actual ratification would have.

Consider just one of the CRC's prized tenets—children's voices. These are given effect in the U.S. through various devices. When states do intervene in a family, or the parents are not aligned in a custody matter, some states permit the child to have appointed counsel.⁴⁵ Children have guardians *ad litem*

44 Cities for CEDAW, <http://citiesforcedaw.org/>.

45 Melissa Kucinski, "Why and How to Account for the Child's Views in Custody Cases," *Family Advocate* 43 (May 10, 2021).

appointed in child welfare matters in most, if not all, states in the U.S.⁴⁶ Judges will solicit children's views, often in camera, to protect the minor's privacy.⁴⁷ None of this means that the court *must* follow the child's views, only that the resulting decision is best informed by children themselves when they are of sufficient maturity to express a reasoned view.

In the United States, decisions about child custody are guided by the best interests of the child in all fifty states.⁴⁸ In states that give content to best-interest determinations through the primary caretaker or other standard, those laws have been explained in terms of the best interests of the child.⁴⁹

In Europe, most countries are exploring, beyond ratification, stronger ways to implement the CRC by incorporating its provisions into domestic law. Between the European drive to incorporate the CRC and the U.S. reluctance to ratify it sits the UK, a country which has ratified the CRC but has not incorporated it into law. Explaining the government position to the Joint Committee on Human Rights, Edward Timpson (then the Minister of State for Children and Families at the Department for Education) stated that "there was no 'block' upon incorporation, but rather that the position of the Government is that it was confident that the laws and policies that ... [the Government] ... has in place already are strong enough to comply with the Convention."⁵⁰

While Wales and Scotland draw on children's rights in their policies for children, Westminster has opposed Scotland's attempt to incorporate the CRC into its domestic law.⁵¹ As in the U.S., the idea exists that children's rights are "a scary set of tenets or concepts,"⁵² and it is possible that the very idea of rights worries governments. In the UK, such concerns are surprising, given that

46 Gilbert et al., *Child Protection Systems*.

47 Kucinski, "Why and How to Account for the Child's Views in Custody Cases."

48 Wilson, *Reconceiving the Family*.

49 Robin Fretwell Wilson, "Trusting Mothers: A Critique of the American Law Institute's Treatment of De Facto Parents," *Hofstra Law Review* 38 (2010): 1103–89.

50 John Dunford, "Children and Young People's Guide: Review of the Office of the Children's Commissioner" (England, 2010), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/626561/DfE-00573-2010.pdf.

51 Scottish Government, Supreme Court Judgement: Statement by Deputy First Minister John Swinney, Oct. 6, 2021, <https://www.gov.scot/publications/deputy-first-minister-john-swinney-statement-supreme-court-judgement-6-october-2021/>.

52 House of Lords, House of Commons Joint Committee on Human Rights, "The UK's Compliance with the UN Convention on the Rights of the Child: Eighth Report of Session 2014–15," p.12, <https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/144.pdf> ("Dr Atkinson, the outgoing Children's Commissioner ... said that she did not necessarily favour full incorporation of the CRC as it would 'probably take up too much parliamentary time and not necessarily be realised.' She suggested an incremental process: What you do—almost by stealth, setting precedents from the High Court and Supreme Court

children's capacity to make decisions with regard to their life outside parental competence is regulated by the so-called Gillick competence,⁵³ by which professionals can assess whether a child (under sixteen) can make relevant decisions about their medical care. This predates the adoption of the CRC and is by no means the outcome of ratifying the CRC.

As we explain in the next part, choosing how to serve the best interest of a child is culturally and contextually dependent. Many different good-faith decisions can be made, all serving the welfare of children.

5 Making These Observations Concrete: Children in Care

In the U.S. and Europe, there is a basic philosophical difference over how best to care for children when their family of origin cannot do so. In the U.S., adoption is often regarded as the ideal type of placement because it gives children stability.⁵⁴ Thus, the core concepts around which the child protection system in the U.S. is constructed are safety and permanency, with a drive toward adoption. In child protection systems in continental Europe (the UK is an exception), adoption is regarded as a measure of last resort because blood ties and identity rights are seen as more important, or the bar for removing parental responsibility is higher.⁵⁵ But even in EU countries where adoption occupies a privileged position, adoption serves only a small proportion of the children taken into care.

Instead of focusing on permanency and adoption, countries that adopt a children's rights approach aim to achieve continuity and stability in a child's upbringing, both of them being conditions for good development.⁵⁶ In practice,

benches—is nibble away. You get people to recognise that the rights of the child are not a scary set of tenets or concepts, but inherent in a civilised society.”).

53 The standard used in England and Wales to decide whether a child (a person under sixteen years of age) is able to consent to their own medical treatment, without the need for parental permission or knowledge: https://en.wikipedia.org/wiki/Gillick_competence.

54 W. Bradford Wilcox and Robin Fretwell Wilson, “Bringing Up Baby: Adoption, Marriage, and the Best Interests of the Child,” *William & Mary Bill of Rights Journal* 14 (2006): 883–908.

55 Kenneth Burns, Tarja Psvv, and Marit Skivenes, eds., *Child Welfare Removals by the State: A Cross-Country Analysis of Decision-Making Systems* (Oxford: Oxford University Press, 2017); and June Thoburn and Brigid Featherstone, “Adoption, Child Rescue, Maltreatment, and Poverty,” in *The Routledge Handbook of Critical Social Work*, ed. Stephen A. Webb (London: Routledge, 2019), 401.

56 American Academy of Pediatrics, Committee on Early Childhood, Adoption & Dependent Care, “Developmental Issues for Young Children in Foster Care,” *Pediatrics* 106, no. 5

this is translated into child protection systems with more residential and foster care (for example, in Germany, Italy, and Spain). Such approaches address care in comprehensive and relational ways (for example, the social pedagogy approach in Germany),⁵⁷ achieving stability through continuity rather than placement of children with foster families, which often leads to separation of siblings.⁵⁸ Residential care can be a force for keeping siblings together.

Again, contrast the U.S. During the 1990s, there was an increasing focus on child safety and adoption.⁵⁹ In 1997, the U.S. enacted the Adoption and Safe Families Act (ASFA).⁶⁰ This legislation has elements that mirror CRC concepts, such as being guided by the best interest of the child or the fact that children should have lawyers or guardians *ad litem* representing their views.⁶¹

The U.S. has also pursued, for decades, intercountry adoption of children⁶² (particularly babies) in the aftermath of war or other circumstances of upheaval or political instability, a trend which started after World War II. This trend is almost entirely excluded by Article 21(b) of the CRC.⁶³

In short, structurally, the two systems for caring for children are different in the U.S. and Europe. We elaborate on them below with examples and then ask the obvious: can anyone say with certainty *ex ante* which better serves the interest of children as a group or individually?

5.1 Romania

A revealing way to explain these differences and their impact on children is to look at Romania's child protection policy and politics after the collapse of

(2000); 1145–50, <https://doi.org/10.1542/peds.106.5.1145>. To be sure, adoption may give continuity to infants who are adopted. With older children in the care of the state, foster care with an ongoing connection to the child's family of origin may give greater continuity. Of course, open adoption can give continuity with a child's family of origin.

57 Jessica Kingsley, "Social Pedagogy and Working with Children and Young People," *The British Journal of Social Work* 42 (Jun. 2012): 799–801, <https://doi.org/10.1093/bjsw/bcs078>.

58 Nicole Weinstein, "One in Three Children in Care Separated from Their Siblings, Research Finds," *Children & Young People Now*, Jan. 30, 2023, <https://www.cypnow.co.uk/news/article/one-in-three-children-in-care-separated-from-siblings-research-finds>.

59 Guggenheim, *What's Wrong with Children's Rights*, 10.

60 Adoption and Safe Families Act, <https://www.govinfo.gov/content/pkg/BILLS-105hr867/enr/pdf/BILLS-105hr867enr.pdf>.

61 Gilbert et al., *Child Protection Systems*.

62 Judith Gibbons and Karen Smith-Rotabi, eds., *Intercountry Adoption: Policies, Practices, and Outcomes* (London: Routledge, 2012); and Michael W. Ambrose and Anna Mary Coburn, "Report on Intercountry Adoption in Romania" (2001), https://pdf.usaid.gov/pdf_docs/PNACW989.pdf.

63 UNICEF, International Child Development Centre, "Intercountry Adoption," 1998, <https://www.unicef-irc.org/publications/102-intercountry-adoption.html>.

the communist regime in 1990. Not long after the adoption of the CRC, images of malnourished children in institutions in Romania⁶⁴ shocked viewers all over the world just days after the execution of the country's dictator, Nicolae Ceausescu. These images attracted an unprecedented volume of international aid from all Western European countries and an equal interest in children for adoption. Soon, Romania was regarded as "the last reservoir of Caucasian babies,"⁶⁵ a phrase which illustrates how children were marketed through corrupt intercountry adoption practices.⁶⁶

Although Romania ratified the CRC as early as 1990, Article 21(b), according to which intercountry adoption may be a solution for children who cannot be adopted or looked after in a suitable manner in their country of origin, was mistranslated in the official publication of Romania's law journal.⁶⁷ Between 1997 and 2001, Romania became one of the largest suppliers of children in the world after Russia and China, with thousands of children leaving the country, some with forged documents⁶⁸ (mainly to the U.S. and economically developed European countries) through an intrinsically flawed and corrupt system.⁶⁹ However, when Romania started to reform its child protection system (a condition for the country's accession to the European Union) with support from international donors (the European Union, USAID, and others), the pressure from the adoption lobby groups (adoption agencies, law firms, and prospective adoptive parents) reached the U.S. Congress and the highest decision-making levels in the two countries, with Romania's accession to NATO being threatened.⁷⁰

The EU claimed that Romania's international adoption system allowed for decisions which were not in the best interests of children,⁷¹ while the claims of the American pro-adoption lobby were "misguided since they fail to take proper account of these international obligations" and "flawed, not least

64 Mariela Neagu, *Voices from the Silent Cradles: Life Histories of Romania's Looked After Children* (Bristol, UK: Policy Press, 2021).

65 Gail Kligman, *The Politics of Duplicity: Controlling Reproduction in Ceausescu's Romania* (Berkeley: University of California Press, 1998).

66 Ambrose and Coburn, "Report on Intercountry Adoption in Romania."

67 Mariela Neagu, "Children by Request: Romania's Children between Rights and International Politics," *International Journal of Law, Policy and the Family* 29, no. 2 (2015): 215–36.

68 Sue Lloyd-Roberts, "Romania—Buying Babies," BBC Newsnight, Mar. 1, 2000, <https://www.youtube.com/watch?v=IQKttELI5-U>.

69 IGAIA (Independent Group for Analysis of Inter-country Adoption), "Re-Organising the International Adoption and Child Protection System," 2002.

70 Tom Gallagher, *Romania and the European Union: How the Weak Vanquished the Strong* (Manchester: Manchester University Press, 2009).

71 Neagu, *supra* note 67, at 215–36.

because they rely on a distorted notion of what constitutes ‘abandonment’ and the status of ‘orphan.’”⁷² The European Commission appointed an independent panel of high-level experts from five different European countries to advise the government of Romania in drafting its Children’s Rights Act and its Adoption Law, ensuring their compliance with the CRC.⁷³ The new legislation excluded intercountry adoption almost entirely, as it was not regarded as a child protection measure. Children who were not adopted were protected in foster care or in children’s homes. Romania’s children became subject to opposing ideological views, with the EU advocating for the protection of children against corrupt practices, while other countries advocated primarily for the interests of their citizens (as prospective adoptive parents), or the interests of adoption agencies. This led to ideological war between EU and the U.S. At the same time, UNICEF, the agency providing humanitarian aid for children, took a more ambiguous position, which supported intercountry adoption of children who are not being raised in a family environment, stating that long-term state care should not be preferred to a permanent family. The difference of opinion between the two approaches became obvious when the U.S. State Department organized an expert dialogue with the members of the EU Independent Panel.⁷⁴

This dialogue highlighted the U.S. approach to children’s welfare to ensure children’s safety and stability through “permanent” families (that is, adoption).⁷⁵ Europe took a holistic approach, which included special care outside families, with due regard being paid to other rights, including identity rights and the child’s right to be heard. The case of two Italian couples, who adopted two girls from a charitable children’s home in Romania without meeting them, illustrates the importance of listening to the children.⁷⁶ The charity where the girls were placed took the case to the European Court of Human Rights.⁷⁷ The girls, age ten when the adoption agency lawyers went to collect them from the children’s home, and age thirteen at the time of the EHRC decision, were allowed to stay in the children’s home because “their interests lay in not having imposed upon them against their will new emotional relations with

72 Andrew Bainham, “The Politics of Child Protection in Romania,” *International Journal of Children’s Rights* 17 (2009): 527–42, <https://doi.org/10.1163/092755609X12466074858754>.

73 Neagu, *supra* note 67.

74 Roelie Post, *Romania: For Export: Only the Untold Story of the Romanian “Orphans”* (St. Anna Parochie, Netherlands: Hoekstra, 2007).

75 Jill Duerr Berrick, *The Impossible Imperative: Navigating the Competing Principles of Child Protection* (New York: Oxford University Press, 2017).

76 Van Bueren, *supra* note 26.

77 Post, *Romania: For Export*.

people with whom they had no biological ties and whom they perceived as strangers.”⁷⁸

Beyond being an example of the child’s right to be heard, this decision points out indirectly the weakness of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption⁷⁹ (an international private law convention regarded as an ethical standard for intercountry adoption procedures) which does not require a pre-adoption placement, a standard practice in domestic adoption. Perhaps the most significant weakness of child protection systems is the insufficient capacity to listen to children and the lack of mechanisms, trusted by children, for children to report when things go wrong while they are in any type of care. This is particularly challenging for child protection systems which rely largely on foster care placements. Reflecting on her journey in care in the U.S., a woman who had been through dozens of placements after her adoption failed concluded that nobody really listened to her,⁸⁰ a statement which is in stark contrast with the fundamental question in moral philosophy, “what are you going through?”⁸¹ After all, moral philosophy and its fundamental principle of viewing humans as ends in themselves is a bedrock of the human rights conventions, including the CRC.

Beyond its philosophical underpinnings, the CRC is old enough to be investigated as to how it has worked in practice. One of the authors has worked with CRC both in policy and in research with Romanian-born children and young people who grew up in state care. Her study⁸² is based on the analysis of forty life histories of Romanian-born young people in their twenties who grew up in different types of care: children’s homes, foster care, and adoption, including international adoption. These reflective narratives provide insights about how children perceive different types of care and about how care can interfere with children’s identity formation. The study suggests that the quality of care (highest in domestic adoption but not in international adoption) was closely linked to quality of life in adulthood. Although stigmatization was reported in all types of placement, having parents or caregivers who listened to them was an important protective factor during their childhood. Interestingly, those who

78 Pini and others v. Romania, nos. 78028/01 and 78030/01, judgments of Jun. 22, 2004, ECHR.

79 Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>.

80 Jennifer Brown, Shannon Najmabadi, and Olivia Prentzel, “Failed Twice: Colorado Foster Kids Who Are Adopted Often End Up Back in the Child Welfare System,” *Colorado Sun*, Nov. 14, 2022, <https://coloradosun.com/2022/11/14/colorado-failed-adoptions-foster-kids-welfare/>.

81 Simone Weil, *Waiting for God* (London: Routledge, 2009).

82 Kington, “Why Has the United States Never Ratified.”

were not happy in their foster care placements but who had social workers who took them seriously and helped them go to other placements (kinship care, residential care, or guardianship), had smoother transitions to adulthood compared to those who stayed in unhappy foster care placements.⁸³ These findings support the CRC, particularly the importance of Article 12 on the child's right to be heard.

Furthermore, the study found that intercountry adoption was the most radical intervention in a child's identity, and the interviewees in that group struggled most in adulthood in their relationships with their adoptive parents, in navigating between two cultures, and in their personal and professional lives. This was in stark contrast with young people who had a similar start in childhood but who were adopted in Romania. Those adopted in Romania, whose adoption did not imply such a profound change of their habitat, were all in good relationships with their adoptive parents, irrespective of conflicts some had during adolescence with their adoptive parents. They were all supported to attend university, and at the time of the interview they had all experienced at least one healthy romantic relationship. The reunion with their birth families (when it took place) did not change the quality of the relationship they had with their adoptive parents and adoption did not constitute a barrier to achieving flourishing lives in adulthood. While intercountry adoption in Romania had been contested because of its endemic corrupt practices, these findings suggest its complexity and impact on young people in the long run. Had Romania respected the letter of Article 21(b), hardly any of its children would have left the country. Moreover, research indicates that this is a common outcome and that many intercountry adoptees struggle with significant mental health issues.⁸⁴

In an increasingly interconnected world, intercountry adoption has plummeted constantly since 2004. This is due not only to countries developing their child protection systems but also to increased awareness and evidence about its use to disguise human trafficking—as well as poor practices such as rehoming, citizenship issues, or poor-quality home studies in the receiving countries, including the U.S.⁸⁵ In 2020, the Netherlands (a receiving country and home to the Hague Convention, which regulates intercountry adoption) suspended

83 Ibid.

84 Anders Hjern, Frank Lindblad, and Bo Vinnerljung, "Suicide, Psychiatric Illness, and Social Maladjustment in Intercountry Adoptees in Sweden: A Cohort Study," *The Lancet* 360 (2002): 443–48.

85 Susan Jacobs and Maureen Flatley, "The Truth about Intercountry Adoption's Decline," *The Imprint: Youth & Family News*, Apr. 23, 2019, <https://imprintnews.org/adoption/the-truth-about-intercountry-adoptions-decline/34658#0>.

adoptions from abroad, and voices of grown-up intercountry adoptees played a major role in influencing that decision.⁸⁶ Moreover, in September 2022 the United Nations issued a statement asking states to prevent and eliminate illegal intercountry adoptions.⁸⁷ All these actions suggest that the concerns expressed by countries while negotiating the CRC article related to intercountry adoption were justified.⁸⁸

5.2 *The U.S. Preference for Adoption by Private Agencies*

In the United States, it can be really hard to free children for placement. The Adoption and Safe Families Act (ASFA) strives for reunification, as we note above. Under ASFA, “states must file a petition to terminate parental rights and concurrently, identify, recruit, process and approve a qualified adoptive family on behalf of any child, regardless of age, that has been in foster care for 15 out of the most recent 22 months.”⁸⁹

States vary wildly in the proportion of children in foster care who ultimately are freed for adoption by termination of parental rights (TPR).⁹⁰ Within the first five years in foster care, the proportion of children freed for adoption ranges from 9 percent to 44 percent.⁹¹ When we look at the midrange between fifteen and twenty-two months under ASFA—seventeen months—the proportion of children freed for adoption ranges from 16 percent to 89 percent.⁹² When children exit foster care before seventeen months, their experiences also vary: “77 percent exit to a parent or relative’s care (either with or without guardianship).”⁹³ For some children (Native Americans), kinship placement is mandated by statute.⁹⁴ The percentage of foster children adopted by a non-relative increases after the seventeen-month mark. One quarter will reunite with their parent or exit to care by a relative, while 47 percent will leave to

86 Cinta Zanidya, “International Adoption in the Netherlands: ‘Not a Fairytale,’” *The Groningen Observer*, Feb. 10, 2022, <https://groningenobserver.com/international-adoption-in-the-netherlands-not-a-fairytale/>.

87 The Office of the High Commissioner of Human Rights, “Illegal Intercountry Adoptions Must Be Prevented and Eliminated: UN Experts,” U.N. Press Release, HCHR, Sep. 29, 2022, <https://perma.cc/44W8-F75B>.

88 UNICEF, “Intercountry Adoption.”

89 “Summary of the Adoption and Safe Families Act of 1997,” *Adoption in Child Time*, Mar. 10, 2018, <https://adoptioninchildtime.org/bondingbook/summary-of-the-adoption-and-safe-families-act-of-1997-pl-105-89>.

90 *Ibid.*

91 *Ibid.*

92 *Ibid.*

93 *Ibid.*

94 Indian Child Welfare Act (ICWA) of 1978, 25 U.S.C. 1902 (2016).

a permanent adoption.⁹⁵ Sadly, the fortunes of children vary by race.⁹⁶ This variability in approach among the states illustrates that the U.S. has fifty-plus different child welfare systems.

Four other concrete policy examples illustrate just how difficult it would be to bring conformity among the states in approaches to caring for children in need of families. First, in a handful of states, birth mothers have the ability to guide the placement of their children with adoptive families, by law.⁹⁷ In other states, this phenomenon occurs in practice, if not by law.⁹⁸

One of us, Wilson, is adopted. As she recently explained:

A birth mother who feels unable to raise a child should be able to have confidence that if she chooses adoption, the child will be raised in a family that provides the best opportunities.

I have no idea what considerations my birth mother had to take into account when deciding to give me up for adoption. But I can say this: as a mother myself, I know it must take incredible courage to break the bond with one's child. When a birth mother comes to this difficult juncture, we need to do all that we can to respect and honor her wishes.

95 "Summary of the Adoption and Safe Families Act of 1997."

96 Ibid. ("White and multiracial children are more likely than children of other races to experience TPR, while Asian and Hispanic children are most likely to have TPR occur within 17 months.")

97 See, for example, S.C. Department of Social Services, Human Services Policy & Procedures Manual § 401.17 ("The Department will respect birth parent preferences in the selection of an adoptive family in so far as they are in the best interest of the child involved."); Arizona Administrative Code § 21-5-409 ("The adoption agency may advise the parent that it will use the entity's best efforts to honor any placement preferences the birth parent may have, to the extent such preferences are consistent with the best interests of the child."); and Robin Fretwell Wilson, "Opinion: How to Make Adoption Easier in Utah—And Everywhere Else," *Deseret News*, Feb. 15, 2023, <https://www.deseret.com/2023/2/15/23599709/adoption-expenses-agencies-placement-utah>.

98 See, "Finding a Family," American Adoptions, <https://www.americanadoptions.com/pregnant/finding-a-family-for-your-baby>. Note that under the Multi-Ethnic Placement Act (MEPA), state child welfare agencies and contractors involved in adoption or foster care placements or child welfare agency contracts must use diligent recruitment efforts. MEPA established that a MEPA violation also violates of Title VI. Title VI and Title IV prohibit race matching. MEPA and Title VI do not address discrimination on the basis of religion, age, gender, culture, or any other characteristic. On religious matching, see, generally, Laura J. Schwartz, "Religious Matching for Adoption: Unraveling the Interests Behind the 'Best Interests' Standard," *Family Law Quarterly* 25 (1991): 171–92, <https://www.jstor.org/stable/25739869>.

Some states allow birth mothers to express preferences and guide the placement of a child being relinquished for private adoption. Adoption agencies are allowed and encouraged to follow the good-faith wishes of the birth mother as to optimal placement.⁹⁹ Allowing a birth mother to direct, insofar as it is possible, the placement of a child in a family that makes sense to her can be a novel way of helping mothers make the difficult choice to relinquish a child. The CRC would seem to support allowing birth mothers to express their wishes as a device to ensure family connection.

Second, open adoption, where the birth mother can remain in contact with the adopted child and adoptive family, is very common in the U.S.¹⁰⁰ It is a voluntary situation but is often employed, and maintains the child's connection to her heritage and roots. But it is not enforced anywhere, as we note above.

Third, adoption agencies actively encourage adoption from foster care, with an emphasis on adoption of siblings.¹⁰¹ This aims to maintain continuity and some connection to the family of origin.

Finally, adoption, more than foster care, is predominantly facilitated in the U.S. by private rather than public entities. As one example, in Utah in 2019, the most recent national adoption data available indicate that 1,281 children were adopted. Almost half of those adoptions were facilitated by private adoption agencies.

Some states allow contracting adoption agencies to follow their religious convictions in placement. Other states say agencies may not make distinctions in placement, which has hastened the closure of religious agencies in some states.¹⁰² The United States Supreme Court in *Fulton v. City of Philadelphia* held that government refusals to contract with religious agencies violated First Amendment guarantees of free exercise of religion if the government has

99 See, for example, "How to Give My Baby Up for Adoption—7 Steps," Adoption Network, <https://adoptionnetwork.com/birth-mothers/adoption-planning-guide/adoption-process-for-birth-mothers/>.

100 "What is Open Adoption?," Gladney Center for Adoption, Jul. 3, 2017, <https://adoption.org/what-is-open-adoption>. "According to Creating A Family (www.creatingafamily.org), closed domestic adoptions only make up 5% of adoptions that take place. 40% of adoptions are mediated and 55% of those adoptions are open. The percentage of adoption agencies that offer open adoption has also increased to 95%." <https://www.birthmotherschoice.com/2017/10/20/what-is-open-adoption/>.

101 See, for example, <https://bethany.org/help-a-child/adoption/us-foster-care-adoption>.

102 "Solomon's Decree: Conflicts in Adoption and Child Placement Policy," The Cato Institute, <https://www.cato.org/events/solomons-decree-conflicts-adoption-child-placement-policy>; *A Matter of Conviction: Moral Clashes Over Same-Sex Adoption*, 22 *BYU J. PUB. L.* 475 (2008).

discretion to make exceptions for contractors and refuses to do so for a religious agency.¹⁰³

The distinction between state agencies and private contractors that form the backbone of the U.S. adoption and foster system is an important distinction. The CRC, if ratified and binding, would reach state actors but not private companies. Private citizens and organizations rarely qualify as state actors. “Numerous private entities in America obtain government licenses, government contracts, or government-granted monopolies.”¹⁰⁴ Those arrangements do not transform such an entity into a state actor, as the U.S. Supreme Court’s “many state-action cases amply demonstrate.”¹⁰⁵

Further, being highly regulated by the government “does not by itself convert [private] action into that of the State for the purposes of the Fourteenth Amendment.”¹⁰⁶ Nor does the receipt of public funding, even if it constitutes the bulk of an organization’s operating expenses.¹⁰⁷ “Nor does combining the two factors; being highly regulated *and* publicly funded does not make a private organization’s actions government actions.”¹⁰⁸

The importance of adoption has leapt in the United States after *Dobbs v. Jackson Women’s Health Organization*¹⁰⁹ overturned *Roe v. Wade*. U.S. states may now regulate abortion without federal oversight, a fact that has created a patchwork of differing regimes across the country. After *Dobbs*, it’s likely that the number of adoptions in the U.S. will increase in the coming years.¹¹⁰

Now, it is self-defeating for the adoption placement system as a whole to turn away an otherwise qualified couple. And it is equally self-defeating for

103 *Fulton v. City of Philadelphia*, (Slip Opinion) October Term, 2020.

104 *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1932 (2019).

105 *Ibid.*

106 *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350 (1972)); accord, *Manhattan*, 139 S. Ct. at 1932 (“New York State’s extensive regulation of MNN’s operation of the public access channels does not make MNN a state actor”).

107 See *Blum*, 457 U.S. at 1011 (holding that a nursing home that accepted “substantial funding” from the state was not a state actor); accord *Rendell-Baker v. Kohn*, 457 U.S. 830, 840 (1982) (holding that a private school’s “receipt of public funds does not make the discharge decisions acts of the State”).

108 Douglas Laycock et al., “The Respect for Marriage Act: Living Together Despite Our Deepest Differences,” *University of Illinois Law Review* (forthcoming, 2023).

109 597 U.S. ___ (2022).

110 Abortions have plummeted, but it is too soon to know whether adoptions have increased. Compare Kelsey Butler, “Legal Abortions in US Down 5,000 Per Month Since the End of *Roe*,” *Bloomberg News*, Apr. 11, 2023 (“In the six months since the US Supreme Court overturned *Roe v. Wade*, there were 5,377 fewer abortions on average per month, according to a new report.”).

the adoption placement system as a whole to close adoption agencies that are serving otherwise qualified couples.

Both gay couples and traditionally religious families represent a sizable fraction of all those who adopt.¹¹¹ We do not want to drive faith-based agencies from this space. They are extremely valuable in the placement of children into loving families. Protecting the vulnerable is not only a Christian commitment but is shared, to our knowledge, by virtually every faith tradition. One obvious solution: place all the adoption agencies that serve a state's residents—whether birth mothers or prospective adoptive parents—into a consortium. Every qualified prospective family will know that there is an agency available to serve them. This consortium then guarantees every perspective adoptive family the respect they deserve.

If one wants to understand the continued and deep isolationism of U.S. family law, it *ironically* stems from the fact that the states themselves stake out very different substantive approaches to difficult questions, acting as laboratories of experimentation.¹¹²

5.3 *Brief Synopsis*

As this part of our chapter shows, countries have substantive differences in how they structure their systems to care for children when their families of origin cannot. It is difficult to say that one structure is necessarily superior to another, given the many contextual and cultural factors that shape such systems and lead countries to adopt them. Importantly, particular approaches may be better for particular types of children: infants, sibling groups, children removed from a family of origin by reasons of abuse, children removed from a family of origin for reasons of neglect, and other ruptures.

Empirically, over time, we might learn that foster care can accommodate more children or that children fare better in group placements rather than individual adoptions. But absent that empirical basis, it is difficult to say *ex ante* that one approach—adoption or foster care—is less valid than the other. It seems that countries and governments should be able to decide where the emphasis should be placed.

111 "Who Adopts the Most?," Gladney Center for Adoption, <https://adoption.org/who-adopts-the-most>. Of course, gay couples may be religious and religious communities include LGBT members.

112 See Wilson and Sanders, "By Faith Alone: When Religion and Child Welfare Collide," 344–45.

6 Conclusion: John Witte's Fitting Legacy

Extending our comparative understanding of how to promote family welfare is a fitting legacy for someone of John Witte's stature and influence. The ratification debate over whether to embrace the CRC is only one domain in which his work has added to a nuanced appreciation of what is at stake.

The CRC provides important tenets for policy makers and practitioners in how to think about children's needs beyond the basics of being fed and clothed. One of the reasons the CRC has enjoyed such wide ratification is the extensive negotiations that took place among delegations from all over the world for about ten years. Its concepts are derived from what makes us dignified humans.

In many ways, the CRC has passed the test of time. We have ample evidence that when the spirit of the CRC has been followed, it has guided practitioners and policy makers in making decisions for children which contributed to better childhoods—implicitly improving their chances of becoming healthy and active citizens.¹¹³ In an equitable world, the CRC should be regarded as a moral tool and not an ideological one, to guide us to improve the lives of children and lay the foundations for healthier future societies.

This is important for all countries but even more for countries with declining birth rates and aging populations where children are an increasingly scarce and precious asset, and where children's mental health has become a public health concern.¹¹⁴

113 Kington, "Why Has the United States Never Ratified."

114 Organization for Economic Co-operation and Development, "Children and Young People's Mental Health in the Digital Age," Sep. 29, 2022, <https://www.oecd.org/els/health-systems/Children-and-Young-People-Mental-Health-in-the-Digital-Age.pdf>.