

Of Politics and Policy: Can the U.S. Maintain its Credibility Abroad While Ignoring the Needs of its Children at Home?—Revisiting the U.N. Convention on the Rights of the Child as a Transnational Framework for Local Governing

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I. Introduction

A. Needs of Children that Make Headlines in the U.S.

Americans from every political persuasion want the president of the United States, as an institution¹ to set sustainable domestic policy, carry the mantle as leader of

¹ The institution is more than just the man. It is his (or her) appointments to judicial and agency offices, it is the policy positions taken in the “bully pulpit” during the States of the Union, Radio Address and Executive Orders. John Yoo, *How the Presidency Regained Its Balance*, N.Y. TIMES (Sept. 17, 2006) at <http://select.nytimes.com/search/restricted/article?res=F20D1FFA38550C748DDDA00894DE404482>.

But the president has broader goals than even fighting terrorism -- he has long intended to make reinvigorating the presidency a priority. Vice President Dick Cheney has rightly deplored the "erosion of the powers and the ability of the president of the United States to

the free world and head the world's only superpower with high credibility and near-boundless international political capital² in foreign policy.³ Much has happened since 9-11 to affect the view and the manner, in which the office of the president discharges this

do his job" and noted that "we are weaker today as an institution because of the unwise compromises that have been made over the last 30 to 35 years.

The Elections; Transcript of President-Elect's News Conference in Houston N.Y. TIMES (Nov. 10, 1988) at <http://select.nytimes.com/search/restricted/article?res=FB071FFA3A5A0C738DDDA80994D0484D81>. George Herbert Walker Bush demonstrating an understanding that issues can be called to the nation's attention by virtue of being the president of the United States. "I will do everything I possibly can. That's not legislative, necessary, it's using the bully pulpit of the White House to speak out against the kinds of incidents you're talking about.") It sets up the League of Nations, peace accords at Camp David, blows of tsunami relief until public pressure builds. David Crary, *(Are We Stingy? Yes) Americans Open Wallets for Tsunami Relief* AP ONLINE, Jan. 4, 2005. *Tsunami Relief Effort Must be Done Right, Used as Model For Future, Says Special Envoy at Headquarters Conference: UN Humanitarian Affairs Office, Business Roundtable Host Meeting on Public Private Disaster Relief* M2 PRESSWIRE, Apr. 26, 2005 (former President Clinton extols the virtues of public-private partnerships in aid relief). It is the measure by which the world views the country and the American spirit. It therefore wields enormous influence long after the man (or woman) leaves office. For a discussion of the presidency as an institution, see Robert J. Spitzer, *Clinton's Impeachment Will Have Few Consequences for the Presidency*, PS: POLITICAL SCIENCE & POLITICS, Sept. 1, 1999; Christopher S. Kelley, *Shysters, Sycophants, and Sexual Deviants: the Hollywood Presidency in the 1990s in White House Studies*, June 22, 2003. (showing Hollywood films depicting the institution of the presidency in a mostly negative light).

² See e.g., Myron H. Nordquist, *Panel Discussion on International Environmental Crimes: Problems of Enforceable Norms and Accountability*, 3 ILSA J. INT'L & COMP. L. 697, 700-701 (1997) (stating that foreign policy goals and political capital have affects on each other); Athan Theoharis, THE THREAT TO CIVIL LIBERTIES, IN COLD WAR CRITICS: ALTERNATIVES TO AMERICAN FOREIGN POLICY THE TRUMAN YEARS 283-93 (Thomas G. Paterson ed., 1971) (discussing an instance when a president was unwilling to use political capital); Scott Simon, Interview: Joseph Nye discussing his book THE PARADOX OF POWER: WHY THE WORLD'S ONLY SUPERPOWER CAN'T GO IT ALONE", *Weekend Edition - Saturday (NPR)*, April 13, 2002. (The world is facing issues that the U.S. cannot deal with by itself. International cooperation is essential. See also, Joseph S. Nye, Jr., THE PARADOX OF AMERICAN POWER: WHY THE WORLD'S ONLY SUPERPOWER CAN'T GO IT ALONE (New York: Oxford University Press, 2002). In critiquing Nye and other authors view of the United States as the lone super power, Professor Walter A. McDougall suggests:

Most imperial outcomes are at best ambivalent and complicated. Rome's glory began to fade by dint of its own corruption even before the days of Caesar Augustus. But residual civic pride, habits of statesmanship and the grit to exterminate rebels permitted its empire to survive another five centuries. Britannia's glory began to fade by dint of its industrial decline and moral self-doubt. But courage in the face of adversity, tactical virtuosity and a stiff upper lip permitted its empire to survive another five decades. Now that September 11 has obliged Americans to confess to an empire, our task is somehow to resist corruption, decline and self-doubt, thereby proving John Quincy Adams wrong when he warned America might become "dictatress of the world" only to lose her own spirit.

See Walter A. McDougall, POWER STEERING. (Books).(THE PARADOX OF AMERICAN POWER: WHY THE WORLD'S ONLY SUPERPOWER CAN'T GO IT ALONE' and THE IDEAS THAT CONQUERED THE WORLD: PEACE, DEMOCRACY, AND FREE MARKETS IN THE TWENTY-FIRST CENTURY)(Book Review)", THE NATIONAL INTEREST, Dec. 22, 2002.

³ Warren Hoge, *U.S. Shift Kicked Off Frantic Diplomacy at U.N.*, <http://www.nytimes.com> (Aug. 14, 2006) (U.S. while not abandoning Israel acknowledged that it had to be a part of multilateral plans to create a cease-fire between the State of Israel and the terrorist group Hezbollah occupying Lebanon).

responsibility. The United States has had only one post 9-11 administration and citizens are frustrated by its ineffective balancing of the competing issues. Many feel that our credibility has been squandered.⁴ It certainly has taken a beating.⁵ To be sure, there is so much that is affecting America: putting out the latest fire⁶ and other natural disasters,⁷

⁴ See e.g., Pew Research Center. *A Year After Iraq War: Mistrust of America in Europe Ever Higher, Muslim Anger Persists* (Mar. 16, 2004) at <http://pewglobal.org/reports/display.php?ReportID=206> (“Opinion of the United States in France and Germany is at least as negative now as at the war’s conclusion, and British views are decidedly more critical.”); Jeff Gerth, *The Reach of War: Propaganda; Military’s Information War Is Vast and Often Secretive* N.Y. TIMES at <http://select.nytimes.com/search/restricted/article?res=FA0A17FE35550C728DDDAB0994DD404482> (Dec. 11. 2005).

The center is not part of a news organization, but a military operation, and those writers and producers are soldiers. The 1,200-strong psychological operations unit based at Fort Bragg turns out what its officers call “truthful messages” to support the United States government’s objectives, though its commander acknowledges that those stories are one-sided and their American sponsorship is hidden.

“We call our stuff information and the enemy’s propaganda,” said Col. Jack N. Summe, then the commander of the Fourth Psychological Operations Group, during a tour in June. Even in the Pentagon, “some public affairs professionals see us unfavorably,” and inaccurately, he said, as “lying, dirty tricksters.”

The fact that our foreign policy makers even approve this kind of manipulation says something about the loss of credibility around the world. With Radio Marti, most of the country and most of the world understands our efforts at propaganda. Castro, in our view is marginalized. Our latest foreign policy goals have been controversial since their inception born out of the Preemptive Strike policy of this administration. Our credibility has been weakened ever since. See Pew Research Center, *Bush Unpopular in Europe, Seen As Unilateralist* (Aug. 15, 2001) at <http://pewglobal.org/reports/print.php?PageID=39>.

⁵ See e.g., Frank Rich, *The White House Stages Its 'Daily Show'*, N.Y. TIMES (Feb. 20, 2005) at <http://select.nytimes.com/search/restricted/article?res=F20D14F9395E0C738EDDAB0894DD404482>. (sartorially discussing attempts of federal policy makers to change the image of the United States around the world). “A Pentagon Office of Strategic Influence, intended to provide propagandistic news items, some of them possibly false, to foreign news media was shut down in 2002 when it became an embarrassing political liability. But much more quietly, another Pentagon propaganda arm, the Pentagon Channel, has recently been added as a free channel for American viewers of the Dish Network. Can a Social Security Channel be far behind?” *Id.* See Pew Research Center, *U.S. Image Still Poor* (Jun. 21, 2005) at <http://pewglobal.org/reports/display.php?PageID=796> (“Opinion of the U.S. in Russia is now about evenly divided, with 47% favorable and 44% unfavorable. Positive views of the U.S. in Russia have risen 11 points in the past year. But U.S. favorability ratings in France and Germany are somewhat lower than last year and there has been a larger decline in Great Britain (58% now, 70% last year). Young people in Great Britain, France, and Germany have more negative views of America than do people in other age groups.”)

⁶ Literally! See, Kirk Johnson, *Wildfires, Though Scattered, Leave a Big Mark*, N.Y. TIMES at <http://select.nytimes.com/search/restricted/article?res=F60B12F83B5A0C748EDDA10894DE404482>. See *California Banks Respond to Wildfire Crisis; Members of California Bankers Association Provide Much-Needed Relief to Victims*, BUSINESS WIRE, Nov. 5, 2003. Communities are still attempting to rebuild after over \$10 billion in damages. See *The Home Depot, Earth Day Network and Environmental*

threats of terror,⁸ global warming⁹ phenomena,¹⁰ an aging population,¹¹ waning consumer confidence¹² in an uncertain¹³ and interdependent¹⁴ world economy, as well as the

Groups Launch Effort to Reforest Nearly 60,000 Acres of California Ravaged by Wildfires; \$1 Million Donation Supports Volunteer Efforts in 300 Local Events to Help Communities Become and Remain Fire Resistant, PR NEWSWIRE, Apr. 1, 2004. This makes everyone's insurance rates soar. *Fitch: Insured Losses Continue to Grow for California Wildfires*, BUSINESS WIRE, Oct. 29, 2003.

⁷ A variety of responses occurred in the aftermath of Hurricane Katrina, from charges of governmental corruption. See Adam Nossiter, *New Orleans Population Is Reduced Nearly 60%*, N.Y. TIMES, Oct. 7, 2006, at <http://www.nytimes.com/2006/10/07/us/07population.html>; 2 *Calif. Men Indicted in Katrina Fraud*, A.P., Oct. 7, 2006 at <http://www.nytimes.com/aponline/us/AP-Katrina-Fraud-Cases.html>; *Cronies at the Till*, N.Y. TIMES, Sept. 27, 2005, at <http://select.nytimes.com/search/restricted/article?res=F00D1EF63E540C748EDDA00894DD404482> (citing a company with ties to governor of Mississippi who was formerly the chairman of the Republican National Committee and other investigations that found 80 percent of the \$1.5 billion in contracts signed by FEMA for Katrina work were awarded without bidding or with limited competition.) John M. Broder, *In Storm's Ruins, a Rush to Rebuild and Reopen for Business*, N.Y. TIMES, Sept. 10, 2005, at A1 (charges of awarding contracts to friends of top administration officials) to the immediate response by the Internal Revenue Service to offer tax credits as a result of law enacted by Congress.) See *H&R Block: Katrina Tax Relief Act Protects Tax Credits and Eliminates Loss Limits for Katrina Victims; H&R Block is Helping Victims Access Lost Documents, Claim Credits and Deductions; Proposal Also Benefits Contributors and Volunteers*, BUSINESS WIRE Sept. 22, 2005 (discussing the Katrina Tax Relief Act of 2005); Debbie Elliott, *Katrina Victims Still Struggling to Find Way Home*, Weekend All Things Considered (NPR), Aug. 27, 2006. (showing the effects of Hurricane Katrina are still devastating over one year later). There are just some things the federal government must take the lead on and maintain it if the United States is to have a uniform response to natural disasters and moments of crisis.

The mismanagement in the wake of Hurricane Katrina has already compelled a hard review of the nation's management of emergencies. This review will probably result in the expansion of federal responsibility to prepare for and respond to the most significant emergencies, with an emphasis placed on proactive response to state and local governments. Such a response will require the federal government "to anticipate state and local requirements [during an emergency], move commodities and assets into the area on its own initiative, and shore up or even help reconstitute critical state and local emergency management and response structures."

Robert H. Jerry, Steven E. Roberts, *Regulating the Business of Insurance: Federalism in an Age of Difficult Risk*, 41 WAKE FOREST L. REV. 835, 860-61 (2006). Then came the blame game. See Z. Byron Wolf, *Tell Ex-FEMA Head: Keep Your Chin up, 'Brownie': The Public Face of Government's Post-Katrina Failings Tries to Turn the Tables* at <http://abcnews.go.com/US/storony.id=1605034&page=1> (pointing out move from "doin' a heck of a job" to acknowledgement that the "government was facing a catastrophe within a catastrophe.").

⁸ The response was immediate. Laws were passed and a national plan was put in place to provide information to the people. See Homeland Security Act of 2002, 6 U.S.C. § 111 (Supp. II) (establishing the Department of Homeland Security). The President was able to secure laws to "protect America." Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified in scattered sections of U.S.C.), and the administrative agency charged with day-to-day operations immediately responded with an additional system designed to keep Americans vigilant. See U.S. Dep't of Homeland Sec., Citizen Guidance on the Homeland Security Advisory System 1, <http://www.dhs.gov/interweb/assetlibrary/CitizenGuidanceHSAS2.pdf> (providing recommendations for citizens according to each color-coded threat level, including level orange (high risk) and level red (severe risk)). As time moved away from September 11, 2001, responses to the terror threats ranged from constant

vigilance and public disclosure. See *Michael Bloomberg Mayor of New York City Michael Bloomberg Holds a News Conference Regarding Terror Threats to the New York Subway System*, Washington Transcript Service, Oct. 6, 2005, to reflection, see Stanley Gaines, Jr. *Terror threat perception and its consequences in contemporary Britain*, BRIT. J. OF PSYCH., Nov. 1, 2005, (discussing the need of social psychologists to examine the antecedents and consequences of terrorist threat perception) to nonchalance, see *Terror Threat: Italy Shrugs, Security High*, U.P. I., Aug. 13, 2004, (Italians going about their daily lives in the middle of terrorist threats).

⁹The global warming debate has been ongoing. It is now a part of national debates for local elections.

What's your view on global warming?

CASEY: It exists and we must take action to slow, stop and reverse global warming pollution. Rick Santorum refuses to listen to the overwhelming scientific evidence and says that global warming does not exist.

SANTORUM: While the EPA acknowledges that a warming trend of about 1 degree Fahrenheit has been recorded since the late 19th century, scientists have not decisively concluded the cause of this trend. I believe we must be cautious in reacting to this issue because making drastic public policy changes could pose serious consequences to our economy and our quality of life.

Geoff Yuda, *Casey and Santorum: Where they Stand*, 28-OCT PA. LAW. 26 (2006) (a portion of the debate on international issues in the Pennsylvania 2006 U.S. Senate Race); see also Bradford Mank, *Standing and Global Warming: is Injury to All Injury to None?*, ENV'T'L LAW, Jan. 1, 2005.

¹⁰ Daniel Akst, *The Give and Take of 'Socially Responsible'* N.Y. TIMES, Oct. 8, 2006, at <http://www.nytimes.com/2006/10/08/business/mutfund/08social.html> (discussing mutual fund's ballot issue to consider dropping stocks of those companies who contribute to "climate change").

Laurie Goodstein, *Evangelical Leaders Join Global Warming Initiative*, N.Y. TIMES at (Feb 8, 2006) at <http://select.nytimes.com/search/restricted/article?res=F30D17FC3F5A0C7B8CDDAB0894DE404482>.

"Despite opposition from some of their colleagues, 86 evangelical Christian leaders have decided to back a major initiative to fight global warming, saying "millions of people could die in this century because of climate change, most of them our poorest global neighbors.""

See an "An Inconvenient Truth" documentary; Bill McAuliffe, *Movie Star Al Gore? Who Knew? His Documentary Film on Global Warming is Proving to be a Hot Summer Release*, STAR TRIBUNE (Minneapolis, MN), June 10, 2006; but see Sean Hannity, Alan Colmes, *Al Gore's Film: Documentary or Hype?*, Hannity & Colmes (Fox News Network), May 17, 2006 (criticizing the hype around the documentary as well as its tenets).

¹¹This includes concerns over social security. See Richard W. Stevenson, *Bush Panel Outlines 3 Plans for Social Security Overhaul*, N.Y. TIMES (Nov. 30, 2001) at

<http://select.nytimes.com/search/restricted/article?res=F20C17F93E590C738FDDA80994D9404482>,

("[t]he 16-member commission has itself been divided over how best to modernize Social Security and prepare it for the financial strain that will accompany the retirement of the baby boom generation in the next several decades"); see Stevenson, *The Nation: Social Security Check; It's Agreed: We Have a Crisis. Unless We Don't*. N.Y. TIMES, Jul 29, 2001, at

<http://select.nytimes.com/search/restricted/article?res=F50D10F63E590C7A8EDDAE0894D9404482>.

Issues involved with elder care are also a concern. See e.g., Rachel Emmons Silverman, *Latest Custody Battle: Who Gets Mom: As Population Ages, Lawyers See Rise in Adult-Guardianship Cases, Laws to Curb 'Parent Snatching'*, WALL STREET J. at D1. Aug. 17, 2006. The case of 104-year-old doyenne Brooke Astor brings attention to the elder care issue. See Jeanne King, *Son Cut Off in Battle of New York Bluebloods*, at www.yahoo.com (Sept. 1, 2006); see also *The Brooke Astor Effect*, editorial, N.Y. TIMES Aug. 7, 2006, at

<http://select.nytimes.com/search/restricted/article?res=F10D1FFD355B0C748CDDA10894DE404482> (how the Brooke Astor elder abuse lawsuit is bringing attention to the issue throughout the country). See Sheryl Wudunn, *Economic Threat Of Aging Populace*, Sept. 2, 1997 N.Y. TIMES,

<http://query.nytimes.com/gst/fullpage.html?sec=health&res=9C07E4D71630F931A3575AC0A961958260>.

recurring issues of wealth disparity¹⁵--and these are just a few of the concerns that make headlines in the United States.¹⁶

¹² See, e.g., Consumer Confidence Tumbles To Lowest Level Since October, N.Y. TIMES, Aug. 19, 2006, (citing fears of terrorism and higher gas prices as primary causes) *at* <http://select.nytimes.com/search/restricted/article?res=F40E14FA3E5A0C7A8DDDA10894DE404482>. The housing market is also “cooling off” in many parts of the country.

¹³ “A president who has rarely dwelled on the impact of globalization for American workers was suddenly looking over his shoulder at China and India, and committing the federal government for 70,000 teachers and 30,000 scientists to prepare American students for a new era of competition. It was, in short, a speech rooted in some harsh global and political realities....” David E. Sanger, *Bush’s Bold Visions Have Given Way to New Reality*, N.Y. TIMES, Feb. 1, 2006, *at* <http://www.nytimes.com/2006/02/01/politics/01assess.html?pagewanted=print>. (analyzing the 2006 State of the Union).

¹⁴ *Extreme Poverty in Asia will pose a serious threat to the environment the next decade...Asian Poverty ‘Threatening Environment’: World Bank ICUN*, N.Y. TIMES, *at* http://news.yahoo.com/afp/20060809/sc_afp/adbasiaenvironment_060809073647 (focusing on China, India, Pakistan, Laos, Sri Lanka, and Bangladesh and finding that poverty is isolating previous gains).

The Monterrey Consensus of the International Conference on Financing for Development Annex states

8. In the increasingly globalizing interdependent world economy, a holistic approach to the interconnected national, international and systemic challenges of financing for development--sustainable, gender-sensitive, people-centred development--in all parts of the globe is essential. Such an approach must open up opportunities for all and help to ensure that resources are created and used effectively and that strong, accountable institutions are established at all levels. To that end, collective and coherent action is needed in each interrelated area of our agenda, involving all stakeholders in active partnership.

See United Nations Report of the International Conference on Financing for Development Monterrey, Mexico March 18-22, 2002, 10-WTR L. & BUS. REV. AM. 85, 87 (2004).

Former President Clinton discusses further encouragement of an interdependent world. *Clinton Sets out Challenges for Interdependent World*, M2 PRESSWIRE, Mar. 28, 2006.

¹⁵ *Poverty Rate Didn’t Rise in 2005 For First Time in Five Years*, A.P., Aug. 29, 2006, *at* http://online.wsj.com/article_print/SB115685774878148338.html. (showing the median income as \$46,300 and 46.6million without health insurance. A reduction in poverty rate but an “increase in inequality” between rich and poor is the real story. *Id.* “Most people who leave welfare for work are leaving for jobs that pay \$7 or \$8 an hour. Under the best circumstances, they are, just getting by.” (Joan Entmacher, vice president of National Women’s Law Center commenting on the reduction of those who received welfare payments in 1996 (4.4 million) through today (1.9 million). *Id.*

Current wealth disparities between black and white Americans also had unbelievably immoral and racist beginnings: centuries of unpaid labor during the period of slavery, worth billions or even trillions of dollars, "have resulted in financial advantages for whites and disadvantages for blacks that have been transferred across generations."

Note, *A Look Inward: Blurring the Moral Line Between the Wealthy Professional and the Typical Criminal* 119 HARV. L. REV. 2165, 2183 (2006). Wealth disparity must also include factors in poverty as well as

We can only hope that world policy makers are addressing security concerns¹⁷ before the general public has to experience a tragedy.¹⁸ Further, we know that there is no uniform approach to dealing with these issues. Reasonable people can differ.¹⁹ Even as Europe strives for a single common market and Americans are still enjoying record low interest rates, still one cannot predict the extent to which bankers in Asia will²⁰ control the levers of the United States economy given the amount of U.S. debt they own.²¹ One might argue that the current administration is doing the best it can do and those problems that do not make national headlines will simply be dealt with later by future administrations. However, neglected issues²² and the consequences of those that are

income. See, Andy Barlow and James Head, *Wealth Inequality Panel*, 3 HASTINGS RACE & POVERTY L.J. 159, 167 (2006) For more discussion related to poverty and policy, see Part III in this article.

¹⁶ Debate about Brown and his saying the White House knew about it. This is now a proposal to dismantle FEMA for not being able to respond to Hurricane Katrina emergencies in a proactive, if not timely, fashion.

¹⁷ See, e.g. GAO Pub. NO. GAO-04-152, BIOTERRORISM: PUBLIC HEALTH RESPONSE TO ANTHRAX INCIDENTS OF 2001, 4-5 (2003), available at www.gao.gov/new.items/d04152.pdf (noting public demanded a federal government response to defend the country against future Anthrax attacks).

¹⁷ See CDF ACTION COUNCIL, A NATION AND CENTURY DEFINING TIME: WHERE IS AMERICA GOING? HOW YOU CAN MAKE A DIFFERENCE, AN ACTION GUIDE, at 1 (2004) [Hereinafter CDFAC ANNUAL REPORT] available at <http://www.cdfactioncouncil.org/actionguide/2004.pdf>.

¹⁸ Michael R. Blood, *L.A. Mayor, Chief Disagree on Terror Plot*, A.P., Feb. 11, 2006 (discussing Bush's announcement of a thwarted terrorist plot in Los Angeles); see Mark D. Kielsgard, *A Human Rights Approach to Counter-Terrorism*, 36 CAL. W. INT'L L.J. 249 (2006) (discussing the effects of terrorism on governmental responses to human rights).

¹⁹ For some politicians, accountability in policy decisions requires removal if not handled properly. David W. Chen, *Standing Apart From His Party, Kean Calls for House Speaker to Step Down*, Oct. 7, 2006, at <http://www.nytimes.com/2006/10/07/nyregion/07kean.html>. “[New Jersey State Senator Thomas H. Kean Jr., was one of the first Republicans to call on Defense Secretary Donald H. Rumsfeld to resign over his handling of the war in Iraq. He has also criticized Mr. Bush for his handling of Hurricane Katrina and the ballooning federal deficit.”

²⁰ See Pew Research Center. *Publics of Asian Powers Hold Negative Views of One Another: China's Neighbors Worry About Its Growing Military Strength* (Sept. 21, 2006) at <http://pewglobal.org/reports/display.php?ReportID=255> (A solid majority of the Indian public believes China will replace the U.S. as the world's dominant superpower at some point in the next 50 years).

²¹ Greg Hitt and Murray Heibert, *U.S. Trade Deficit Ballooned to a Record in 2005?: Widening Gap With China Likely to Revive Demands That Beijing Take Action*, WALL STREET J. at A1 at http://online.wsj.com/article_print/SB13957739134570709.html (trade deficit allows China to lend more money to US. And buy U.S. debt).

²² Law enforcement officers are beginning to think of creative ways to deal with long-standing neglected issues. See, e.g., Jason Ryan, *Credit Cards Key to Fighting Online Child Prom*, ABC NEWS, Sept. 19, 2006, at <http://abcnews.go.com/US>. Attorney General Gonzales now says he wants to rid the Internet of child pornography before he leaves office. See Declan McCullagh, *Gonzales calls for mandatory Web*

addressed in an ill-conceived manner have both short and long term impact on the United States. What is more, since we do not have a one-dimensional government, policy makers²³ have to focus on many concerns at once. The most serious problems may not grab headlines but this does not make the issues less important. Consider the plight of American children.

B. Needs of Children That do Not Make Headlines in the U.S.

It has been said “[a]fter all, facts are facts, and although we may quote one to another with a chuckle the words of the Wise Statesman, ‘lies-damned lies-and statistics,’ still there are some easy figures the simplest must understand, and the astutest cannot wriggle out of.”²⁴ It is difficult to ignore that since 1999, the poverty rate of U.S. children under six years old²⁵ has steadily increased.²⁶ As of 2004, according to the U.S.

labeling law, at http://news.com.com/Gonzales+calls+for+mandatory+Web+labeling+law/2100-1028_3-6063554.html (Gonzalez proposes that Web site operators posting sexually explicit information must place official government warning labels on their pages or risk being imprisoned for up to five years). Dateline NBC has now been running a segment designed to catch dozens of pedophiles attempting to follow up on Internet chats with underage children only to be met by the police. See ‘To Catch a Predator’ with Chris Hansen, at <http://www.dateline.msnbc.com>. Hansen also has a blog that documents his efforts. *Id.*

²³ Includes any one who has decision making authority in the federal government, but particularly in the executive branch and in independent administrative agencies.

²⁴ Leonard Courtney, speech, Aug. 1895, N.Y., *To My Fellow-Disciples at Saratoga Springs*, printed in *The National Review* (London, 1895) at [ww.quoteagarden.com/statistics.html](http://www.quoteagarden.com/statistics.html).

²⁵ Scientists, care givers, and other observers have found that children as young as three years of age can suffer irreparably by not having a supportive and nurturing environment in which to grow and develop.

Healthy growth and development includes:

An intact, cohesive, nuclear family, dependable under stress

A relationship with at least one parent who is consistently nurturing, loving, enjoying, teaching and coping

Easy access to supportive extended family members

A supportive community, whether it be a neighborhood, religious, ethnic or political group

Parents exposed to childrearing during the years of their own growth and development through explicit and implicit education for parenthood

A perception of opportunity during childhood with a tangible basis for hope of an attractive future

Predictability about the adult environment that enables a child to take advantage of opportunities in the environment.

Starting Points: Meeting the Needs of Our Youngest Children, Carnegie Council on Adolescent Development vii-viii, xiii-xiv (1994) cited in Douglas E. Abrams, Sarah H. Ramsey, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 2 (2003). This sounds quite similar to the United Nations Convention on the Rights of the Child. Perhaps the tenets will permeate the recommendations of advocates

Department of Commerce, Bureau of the Census, 37 million people live below the poverty line;²⁷ more than 13 million of them are children.²⁸ This is an increase of 1.4 million since 2000. This is a systemic problem and presumably, U.S. policymakers do not share the heartlessness in Stalin's quip, "The death of one man is a tragedy. The death of millions is a statistic."²⁹ Therefore at some level, policy makers must see the need to deal with these awful numbers.

Because poverty in the United States substantially increases the likelihood of death before an American child reaches age two, one would think that world's richest nation could prevent this with relative ease.³⁰ Relying on U.S. Census Bureau statistics, the Children's Defense Fund calculates that every two minutes, an Anglo-American child is born into poverty; every 40 minutes another child dies before his or her first birthday.³¹ Every two minutes a Latino child is born into poverty and every two hours another child dies before his or her first birthday.³² Similarly, every 40 minutes and nine hours respectively for Asian children,³³ and every thirty-six minutes and every twenty-two

irrespective of whether the President ever sends it to the United States Senate for ratification. Of course, the battle is to get the tenets to permeate national policy.

²⁶ See CDFAC ANNUAL REPORT, *supra* note 15 at 169. See also, Timothy M. Smeeding, *Poor People in Rich Nations: The United States in Comparative Perspective* (Luxembourg Income Study, Working Paper No. 419, 2005). But see *Poverty Rate Didn't Rise in 2005 For First Time in Five Years* WALL STREET J., A.P., Aug. 29, 2006, at http://online.wsj.com/article_print/SB115685774878148338.html.

²⁷ According to the latest census data, in 2004, the poverty threshold for a family of four with two parents was \$19,157 a year. This equates to \$1,596 per month or \$52 per day.

²⁸ More than half of Latino children and nearly half of Black/African-American children are poor, CDFAC ANNUAL REPORT at 4, while 30 percent of Anglo-American children remain poor. *Id.*

²⁹ Reported quote of Joseph Stalin to Winston Churchill in 1945, at www.quote garden.com/statistics.html.

³⁰ Joe Drape, *Barbaro's Injury Gives Synthetic Surface Urgency*, Oct. 8, 2006, at <http://www.nytimes.com/2006/10/08/sports/othersports/08racing.html>.

(noting that tragic death of Dale Earnhardt as well as the injury to Barbaro leads to action to prevent catastrophic injury in the future). How much more should we use the knowledge and the technological advances to prevent child deaths?

³¹ See *Statistics--Moments in America for Children*, "Moments in America For White Children," *Children Defense Fund Statistics*, Aug. 2004, at <http://www.childrensdefense.org/data/moments.asp>. To date, the statistics have not changed.

³² *Id.* To date, the statistics have not changed. See *Statistics--Moments in America for Latino Children*.

³³ *Id.* To date, the statistics have not changed. See *Statistics--Moments in America for Asian Children*.

hours for Native American children.³⁴ The parallel of life and death would seem unimaginable in the United States. Yet when comparing us against the world there is no real comfort in our efforts either.³⁵

Specifically, when considering the grip of poverty³⁶ and its manifestation of mortality in the U.S. versus the rest of the world, we find such statistics as African-American infant mortality rates in Washington, D.C. exceeding those in 50 nations.³⁷ What is more, the U.S. still ranks 140th of 172 countries in maternal mortality and made no improvement in infant mortality.³⁸ The U.S. is ranked twelfth in living standards among our poorest one-fifth,³⁹ thirteenth in the gap between rich and poor,⁴⁰ fourteenth in efforts to lift children out of poverty,⁴¹ sixteenth in low-birth weight rates,⁴² eighteenth in

³⁴ *Id.* To date, the statistics have not changed. See *Statistics--Moments in America for American Indian Children*.

³⁵ See Smeeding, *supra* note 23.

³⁶ See Part III for discussion of poverty. The definition of poverty is an uncomplicated one on some levels. The fact that it is mired in politics in the United States makes it difficult to have a comprehensive discussion about it. The world through the Millennium Development Goals have sought to accomplish this. See Part IV for a discussion of this.

³⁷ This includes the Bahamas, Barbados, Cuba, Dominica, and Oman. See CDFAC ANNUAL REPORT, *supra* note ___ at 20. See also *Where America Stands, Children Defense Fund Statistics*, Aug. 2004, available at <http://www.childrensdefense.org./data/america.aspx>. Every hour, an African-American child dies before his or her first birthday. See *Moments in America for Children, Moments in America for Black Children, Children Defense Fund Statistics*, Aug. 2004, at <http://www.childrensdefense.org/about/default.aspx>. The mission of the CDF is to

Leave No Child Behind® and to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective voice for all the children of America who cannot vote, lobby, or speak for themselves. We pay particular attention to the needs of poor and minority children and those with disabilities. CDF educates the nation about the needs of children and encourages preventative investment before they get sick, into trouble, drop out of school, or suffer family breakdown. CDF began in 1973 and is a private, nonprofit organization supported by foundation and corporate grants and individual donations. We have never taken government funds.

See CDFAC ANNUAL REPORT, *supra* note __, Mission.

³⁸ Still 160th out of 193. See CDFAC ANNUAL REPORT, *supra* note ___ at 20.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

the percent of children in poverty.⁴³ Shouldn't we be first in preventing their ills?⁴⁴ Given our vast resources, form of government,⁴⁵ and capabilities among our professional populations, does not our moral compass further require that we not be satisfied with these "tragedies"?⁴⁶ Poverty leads to all sorts of social harms. If these children born into poverty will be tomorrow's leaders, then unless policy changes are made, our current course will further erode hope in the future of the United States of America.

Current federal responses and some state ones⁴⁷ appear to only provide band-aids for these ills, or to ignore them altogether.⁴⁸ As opposed to moving aggressively to stem the tide of these statistics in 2006, federal policy makers proposed and Congress approved further cuts in health care, child care, foster care, and student loans,⁴⁹ among others--all to the detriment of young people and children (and their families). Even after pledging to help children succeed in the 2006 State of the Union Address,⁵⁰ President

⁴³ CDFAC ANNUAL REPORT, *supra* note ____, at 20.

⁴⁴ *Suffer the Children: The U.S. and the U.N. Convention on the Rights of the Child*, HUMANIST NETWORK NEWS, Aug. 9, 2006, at <http://humanisticstudies.org/enews/?id=255&article=1>. "There now exists the ironic situation that religious organizations do not want to act in the best interest[s] of children. How long will the U.S. continue to let religious organizations dictate policy and refuse to recognize the rights of the child?" *Id.*

⁴⁵ For an insightful review of some of the Founders' application of this premise, *see generally*, David McCullough, JOHN ADAMS (Simon & Schuster 2001) (Adams appeared to wrestle with his counterparts on this point).

⁴⁶ John Kenneth Galbraith found that poverty in the United States should be the "heaviest burden on our social conscience." *See* John Kenneth Galbraith, A VIEW FROM THE STANDS: OF PEOPLE, POLITICS, MILITARY POWER, AND THE ARTS 35 (1986).

⁴⁷ While the Florida Governor's website dealing with the state budget, <http://www.ebudget.state.fl.us/>, touts the 2006-07 fiscal year as a time of surplus and prosperity, only military and emergency preparedness are featured as priorities. With respect to children, the state budget put forth by the governor focused primarily on increasing adoptions, creating an automated child support system, and improving foster care—hardly a visionary effort.

⁴⁸ Professor Mark Rank has argued that the United States policy makers have labored under the illusion that individual people are responsible for their impoverished circumstances. *See* Mark R. Rank, ONE NATION, UNDERPRIVILEGED: WHY AMERICAN POVERTY AFFECTS US ALL (2004). Classifying such thinking as the "Old Paradigm" Rank calls for a broader definition of poverty to which the U.S. policy makers must play a key role to eliminate. To not do so and quickly only adds to our shame. *See* Mark R. Rank, Toward a New Understanding of American Poverty, 20 WASH U. J. L. & POLY 17, 42-50. (2006).

⁴⁹ *See* P.L. 109-362.

⁵⁰ STATE OF THE UNION ADDRESS, Jan. 31, 2006. *See* www.whitehouse.gov.

Bush's 2007 budget proposed deeper budget decreases⁵¹ to the same programs.⁵² In short, the resources to help children are being reduced at a time in the U.S. when the rest of the world realizes that those resources need to be reallocated to further strengthen the support and fulfill the needs of children. Further reductions in the provision of those needs are not the expected behavior of a society who places a premium on the well being of its children. The reality is development resources, national security, and human rights for all persons whether they can provide for themselves or not, form the triangle that supports the foundation of any highly functioning society. Therefore, constant reinforcement is necessary—especially for those who are in need of the most protection. Neglecting our as well as the world's children creates undue risks to everyone.

C. Children's Needs Around the World

⁵¹“The budget bears all the hallmarks of a Bush presidency, putting national security and tax cuts above all other considerations....” David E. Sanger, *Bush's \$2.77 Trillion Budget Plan Calls for Medicare Cuts*, N.Y. TIMES, at <http://www.nytimes.com/2006/02/06/politics/06cnd-budget.html?ei=5094&ch=637e4f0a81>. (Feb. 6, 2006). Bush's budget proposals have been criticized before:

The \$2.23 trillion budget unveiled by the Bush administration yesterday is the furthest thing from a fiscally conservative document. It shifts taxes from today's citizens to those of the future. Rather than truly giving state governments the power to be flexible, it sticks them with the responsibility for delivering the bad news to poor people who will be denied a health care safety net. The gargantuan defense budget is bloated with money for old-style weaponry needed only by defense contractors and military empire builders. President Bush's underlying budget philosophy can be seen in the contrast of two alarmingly aggressive proposals. In one, the administration invites states to slash Medicaid programs for many of the poor. It cynically eases the burden of deficit-ridden governors by offering them an initial budget sweetener along with the undoubtedly tempting management "freedom" to make severe cutbacks in health care benefits on their own.

The Imbalanced Budget, N.Y. TIMES, Feb. 4, 2003, at <http://select.nytimes.com/search/restricted/article?res=F50C1FFC3A5C0C778CDDAB0894DB404482>.

⁵² Allan Murray, *Think the Deficit is Bad Now? Just Wait*. N.Y. TIMES, Feb. 12, 2006, at http://online.wsj.com/article_print/SB113970318485671788.html. ([A] look beneath the numbers shows that while Mr. Bush may succeed in bringing the deficit down a bit in the next year or two, there's a ticking time bomb waiting to be triggered soon after, as the baby-boom generation starts to retire.”

With nearly half of the world's population under 25, the well-being of young people must come into sharp focus in the minds of policy makers on the international stage. We are bewildered by the alarming number of young people susceptible to extreme fundamentalist rhetoric encouraging them to find "paradise" now by blowing themselves up.⁵³ Consider however the world around these youth. Currently 200 million youth live in poverty, 88 million unemployed, and 10 million living with HIV/AIDS.⁵⁴ Almost 3/5 of the population that are five years old will die by 2014 if these statistics aren't met head on today.⁵⁵ What is more, every year worldwide, nearly 11 million children die—30,000 per day, 1,200 every hour,⁵⁶ before their fifth birthday.⁵⁷

⁵³ See e.g., Richard J. Pech and Bret W. Slade, *Imitative Terrorism: a Diagnostic Framework for Identifying Catalysts and Designing Interventions*, in FORESIGHT Vol. 7, Issue 1 at 47 – 60, Feb. 2005, (arguing a number of cultures are becoming increasingly susceptible to fundamentalism); Asoka Bandarage, *Beyond Globalization and Ethno-religious Fundamentalism*, Vol. 47, No.1, 35-41, Mar. 2004.

Then you have Saudi Arabia, what happens there? That country is on the edge of collapse. It has this raging young population boom of young people who are poor. They already realize they're not going to be as well-off as their parents. There's [sic] just not enough jobs for them. They're angry at the pro western tendencies they see in this oil elite. They are very susceptible to fundamentalism. The Islamic faith, like any other faith, has got some really powerful and important ideas in it and it can be misused as easily as Christianity or Judaism, or any other religion. It is particularly powerful among people who are poor and angry. It's misusage has been terrible there. We're going to see more of that without question.

MC Paul Barman, *Peak Oil Recoil Paul Roberts*, at http://frontwheeldrive.com/paul_roberts.html.

See e.g., *Goethe-Institut Dossier on the Key Subject: Cultures on the Move - Cultural Globalization*, at <http://www.goethe.de/ges/pok/prj/mig/kgl/en113210.htm> (discussing integration of young Turks into German culture).

⁵⁴Kofi Annan, IN LARGER FREEDOM: TOWARDS DEVELOPMENT, SECURITY AND HUMAN RIGHTS FOR ALL (2006) at <http://www.un.org/largerfreedom/html>. [hereinafter IN LARGER FREEDOM] ¶¶ 26 and 46. See MILLENNIUM DEVELOPMENT GOALS REPORT 2005 at 1-6 [hereinafter MDG PROGRESS REPORT]; see Tragedy of HIV/AIDS Box.

⁵⁵ *Id.*

⁵⁶ See Why Do MDGs Matter? at www.millenniumcampaign.org.

⁵⁷ MDG PROGRESS REPORT at 18.

More than 500,000 women die in childbirth. Figures from 1990-2001 show that more than one billion people⁵⁸ subsist on \$1US per day,⁵⁹ resulting in 25% of children under five being malnourished.⁶⁰ In a 2002 study, focusing specifically on youth: 18% of all youth or 209 million young people more than five years old live on \$1US per day and 515 million on less than \$2US per day.⁶¹ Such a standard of living is unthinkable among U.S. youth.

The good news is that worldwide, this has been reduced overall with 47 million statistically less hungry in East Asia since 1990.⁶² In particular, China and India are enjoying improved access to health care education and housing.⁶³ The bad news is there are 34 million more hungry people in Sub-Saharan Africa owing to poor access to food production and popular growth outpacing efforts.⁶⁴ In other areas, devastating economic conditions have resulted in poorer families in still poorer countries with less infrastructure to avoid death by poverty.⁶⁵ Children depend upon their families and families in many developing countries, still depend upon their children to assist the family economy by working every day. This continues to be an obstacle to those children's ability to receive a complete primary education.⁶⁶ Children of the richest 20% of households are three times more likely to be in school than children from the poorest

⁵⁸ That is one in six human beings thus face chronic hunger, disease and environmental hazards. Stats show that mosquito bearing malaria kill a child who otherwise does not have to die if s/he had access to a bed net and \$1US in treatment. See *IN LARGER FREEDOM* ¶26.

⁵⁹ MDG PROGRESS REPORT at 6. This is the definition for extreme poverty.

⁶⁰ *Id.* See Underweight Chart at 8.

⁶¹ WORLD YOUTH REPORT 2005: YOUNG PEOPLE TODAY AND IN 2015, Oct. 2005, at 3 [Hereinafter WORLD YOUTH REPORT].

⁶² MDG PROGRESS REPORT at 8.

⁶³ MDG PROGRESS REPORT at 7. This is represented as 300 million more middle class in India out of 1 billion.

⁶⁴ *Id.* at 8 (showing setbacks on hunger nearly outweighing the progress.)

⁶⁵ *In Larger Freedom supra* note ___ ¶ 26.

⁶⁶ See *India Ban on Child Labor: Who Will Clean the Houses?* AMELIA GENTLEMEN INTERNATIONAL HERALD TRIBUNE, Sept. 12, 2006. Beginning October 12, 2006, India law prohibits child labor for children under 14 as domestics. Now will be the time for monitoring and enforcement.

20% of households.⁶⁷ Consequently, this affects poorer rather than richer children. Moreover, children of educated mothers are more than twice as likely to be in school as children of mothers with no formal education. Therefore, this disproportionately affects poorer families. An increasing inequality in economic growth only exacerbates the problem.⁶⁸ Priorities are shifting further out of favor for the poorest and sickest of us. While the past has provided the most dramatic reduction in extreme poverty outcomes, the poorest areas get worse⁶⁹ and policymakers are losing focus and heart as a result.⁷⁰

It is universally accepted that regarding access to a quality education is a large factor in reducing the slide into poverty and its attendant ills. One hundred million youth are presently engaged in university-level studies.⁷¹ However 113 million are not in school,⁷² 60% of which are girls.⁷³ An estimated 876 million adults are illiterate, 64% of which are women⁷⁴ and 130 million of which are youth.⁷⁵ These persons do not have the ability to control national policy, have little input into the discussion of it, and will likely

⁶⁷ MDG PROGRESS REPORT, *supra* note _____ at 12.

⁶⁸ See discussion of Millennium Development Goal #8 in Part VI. Kevin Phillips, *WEALTH AND DEMOCRACY: A POLITICAL HISTORY OF THE AMERICAN RICH* (Random House 2002); David Wessel, *Escalator Ride-As Rich-Poor Gap Widens in the U.S., Class Mobility Stalls, Those in Bottom Rung Enjoy Better Odds in Europe; How Parents Confer an Edge, Immigrants See Fast Advance*, WALL STREET J., May 13, 2005 at 1.

⁶⁹ For example eight out of ten children out of school live in Sub-Saharan Africa or South East Asia. MDG PROGRESS REPORT at 8. (AIDS and natural disasters and continued conflicts only further exacerbates the shift in world priorities).

⁷⁰ I draw this conclusion from the worsening stats and failure of the participants to fully fund the Goals.

⁷¹ MDG PROGRESS REPORT at 10. They are not taking the “Millennium Development Goals-Plus” strategy that the Secretary General advocates—do more than what the goals call for. See *IN LARGER FREEDOM*, *supra* note _____ ¶35.

⁷² WORLD YOUTH REPORT, *supra* note 55 at 3.

⁷³ See MDG CAMPAIGN TOOLKIT (2006) at 4.

⁷⁴ See *id.* at 4.

⁷⁵ WORLD YOUTH REPORT, *supra* note _____ at 3. On this point the Millennium Campaign Toolkit appears to conflict with the World Youth Report. The former classifies the 130 million number as girls only. Reviewing the source of the material then is necessary to verify where the statistics came from. The Department of Economic and Social Affairs (DESA) of the U.N. Secretariat is responsible for these numbers whereas, the United Nations Development Program is responsible for the Millennium Campaign Toolkit’s accuracy. In either case, the statistic is an awful reflection of the condition, but mislabeling them could harm the veracity of all of the numbers cited. The Campaign Toolkit is to be updated to conform to the accurate reflection in the World Youth Report.

be unable to affect change on their own. The impact of poverty stricken youth is felt by those who are not considered poor not only in the form of taxing their hard-earned dollars and contributing to an unmanageable social welfare system, (cynically) but also spiritual toll on the psyche of the community—however defined (psychologically).

The child who is not a delinquent, who pays attention in school, is also affected by national policy making that reduces structural investment in such important areas as education,⁷⁶ healthcare,⁷⁷ and job creation.⁷⁸ Even with all of the threats facing society people still need to live and enjoy a certain quality of life, be assured by the world around them, and dream of an existence better than the one currently existing (whatever that may be for each person). Through the American ideal, for example, we need to be consistently inspired that life gets better with age and there is some higher, broader quality of life that allows not only for basic needs to be met but also for desires to be fulfilled with the excess or disposable income that increases our choices in life.⁷⁹ We have come to expect that life for our children will be better than ours which is/was better than our parents. This is reinforced, if not assured, by governmental practice and policy to meet that ideal. This is an implicit promise from government to U.S. citizen.

D. World Efforts at Reallocation of Resources to Deal With Unmet Needs—Generally

⁷⁶ For example, after school activities, fieldtrips, physical education that were prevalent in average public school curricula are all but the exclusive province of much wealthier school districts.

⁷⁷ See Sofia Gruskin & Daniel Tarantola, HEALTH AND HUMAN RIGHTS 311, 313-14 (2001).

⁷⁸ Vocational training, career days that featured professionals from the local community were also a staple of American public schools.

⁷⁹ *But see e.g.*, H. Lillian Omand, *School Choice Legislation: A Supply-Side Market Effects Analysis*, 20 J.L. & POL. 77, 95 (2004). “The idea that educational choice is already affordable to middle-income families is an oversimplification: many middle-income families have less disposable income than low-income families after paying higher taxes, higher housing costs, and, often, student loan payments and/or daycare costs that enable them to be in the middle-income bracket.” *Id.*

Given that there is no world executive or legislative branch of enforcement powers it is nothing short of amazing that the world has gotten as far as it has on dealing with unmet needs. Since 1994, the world through the United Nations Convention on the Rights of the⁸⁰ Child⁸¹ (Convention or CRC) planned conferences and working groups⁸² in attempting to make policy changes to meet the basic needs of children, the forced a drastic acceleration in the human rights of children. There was much opposition to the Convention's ratification in the United States, but this should be revisited in light of the Millennium Development Goals.⁸³

Nevertheless in 2000, the state parties to the Convention further contextualized children's needs by creating Millennium Development Goals⁸⁴ (MDGs or Goals) arising out of the Millennium Declaration, designed in part to hone the lofty tenets of the Convention into manageable targets to achieve an increase in worldwide resources for children by 2015.⁸⁵ The world is less than 10 years away from achieving these benchmarks of success. The point should not be lost that the statistics previously referred in this article exist in light of near-universal ratification of the Convention. Imagine

⁸⁰ This is as opposed to "the Convention on the Rights of *a* Child." A random search on any Internet search engine and research database will yield a number of references contained in literature as well as scholarly publications that misquote the name of the Convention. The article "the" is a definite article "[u]sed before singular or plural nouns and noun phrases that denote *particular* persons or things." WEBSTER'S II: NEW COLLEGE DICTIONARY 1143 (Houghton Mifflin Co. 1995) (emphasis added). "A" is an indefinite article "[u]sed before nouns and pronoun phrases that denote a single, but *unspecified*, person or thing." *Id.* at 1 (emphasis added). "*The Child*" denotes that the status of children is as a particular actor with legal standing and as a class of persons recognized on the international stage.

⁸¹ G.A. Res. 44/25 44 U.N. GAOR.Supp.No.49. U.N. Doc. A/44/736 (Nov. 20, 1989). (entered into force September 2, 1990).

⁸² See Part VI on MDGs.

⁸³ See *id.* for further discussion.

⁸⁴ See HUMAN DEVELOPMENT REPORT 2003: MILLENNIUM DEVELOPMENT GOALS. UNDP available at <http://www.developmentgoals.org>. The UNICEF Annual Report acknowledges eight goals, see page 7 of UNICEF Annual Report, but only records seven, omitting: Develop a global partnership for development. See CDFAC ANNUAL REPORT, *supra* note __ at 25. MDG #8 primarily requires the assistance of wealthy nations as the catalyst. See also, <http://www.un.org/millenniumgoals/index.asp>.

⁸⁵ *Id.*

however if there were no movement on human rights that resulted in the Convention and the MGDs! Ironically, it is unlikely that the world will be successful without the United States assistance in achieving these Goals. The United States has enormous power and should put its legitimacy to use by way of the bully pulpit⁸⁶ on the world stage followed quickly by its resources.

E. U.S. Efforts at Reallocation to Deal with Unmet Needs--Generally

The U.S. unlike the world has a governmental structure that provides levels of enforcement. A centralized federal government with power emanating from state governments is a hallmark of the organization of the United States. Top-down mandates and bottom-up tailored articulations⁸⁷ of the needs in each individual state should flow

⁸⁶ Even cabinet officials can use their executive office as a bully pulpit. *Reagan's Man for Education*, N.Y. TIMES, Dec. 22, 1985, at <http://select.nytimes.com/search/restricted/article?res=F30C1EFA3E5F0C718EDDAB0994DD484D81>

Bennett, who is 42 years old, occupies the lowliest of Cabinet positions - one that even he will readily agree is by no means essential to the survival of the Republic. Yet he has turned it into a bully pulpit for advancing a conservative approach to education. Last fall he made a highly publicized tour of public schools, teaching several social studies classes on subjects such as the Constitution and the Federalist Papers.

(discussing Secretary of Education during the Reagan years, William J. Bennett). Edward L. Glaeser, *Paternalism and Psychology*, 73 U. CHI. L. REV. 133, 155-56 (showing arguable misuse of the bully pulpit by the Bush administration. “[R]ecent public relations spending by the Department of Education for the No Child Left Behind Act went, in part, to a columnist, Armstrong Williams, who regularly promoted the devotion of both the President and the Secretary of Education to improving the quality of education for America’s children. The commotion surrounding this expenditure should remind us that the ability of incumbents to ensure victory through the powers of office, which include the bully pulpit, is a constant risk in democracy. Advocating soft paternalism is akin to advocating an increased role of the incumbent government as an agent of persuasion. Given how attractive it is to use persuasion for political advantage, an increased investment in soft paternalism seems to carry great risks.”); see Joel K. Goldstein, *Justice O’Connor’s Twenty-Five Year Expectation: the Legitimacy of Durational Limits in Grutter*, 67 OHIO ST. L.J. 83, 142 (2006) (“Had President Eisenhower used his bully pulpit to support desegregation rather than distancing himself from Brown, perhaps school integration would have proceeded more smoothly than it did. Real progress was made only after the 1964 Civil Rights Act and subsequent legislation provided the tools to integrate schools, and the President provided support.”); see also Robert K. Fleck, *Electoral Incentives, Public Policy, and the New Deal Realignment*, 65 S. ECON. J. 377, 383-84 (1999) (showing Roosevelt using bully pulpit to pressure states into New Deal compromises).

⁸⁷ See e.g., Robert Tanner, *Governors Bristle at Bush Guard Proposal*, N.Y. TIMES, Aug. 5, 2006. Any national proposal to federalize guard met with resistance. Governor’s want federal government to work with them in emergency situations, not merely take over.

seamlessly between the two levels of government. Whether it is block grants to assist states in taking care of its poor or the creation of state programs to deal with federal government reform of the welfare system, constant flow and iterations of policy are supposed to make our society better. The U. S. does not have the same challenges as other states with federalized forms of government.⁸⁸ Yet the states and the federal government are at constant loggerheads on the visions related to the children among other things.⁸⁹ The president's primary answer to child poverty, for example, is the loftily conceived if not the ill-fated No-Child-Left-Behind Act (NCLBA).⁹⁰ Recently the National Conference of State Legislatures (NCSL) essentially told the president that the Act made unworkable and made several recommendations to change it—including fully funding the law!⁹¹

Outside of the president's NCLBA, an examination of U.S. policy makers' efforts to deal with U.S. unmet needs find most states are struggling to develop methods to

⁸⁸ Mexico is a reforming democracy that constantly has to contend with armed rebels. Germany is still adjusting to absorbing the former East Germany into its economy and is grappling with the employment and racially polarizing problems. Brazil, who is leading the way in research and develop in reducing dependence on oil of late, is also aggressively targeting hunger and homelessness after decades of neglect with far fewer resources than the United States has. Brazil is not without its class and racial problems. See Hernandez, *supra* note _____. The United States still hides from its racial issues.

⁸⁹ See e.g., Sam Dillon, *Panel's Report Urges Higher Education Shake-Up*, N.Y. TIMES, Aug. 11, 2006, (Bush Administration action on call for standardized testing in public universities called "chilling"); Karen W. Arenson, *Panel Explores Standard Tests For Colleges*, N.Y. TIMES, Feb. 9, 2006. "There is no way you can mandate a single set of tests, to make a federalist higher education system."

⁹⁰ 20 U.S.C.S. § 6301 (2004). Bush's message begins, "[T]oo many children in America are segregated by low expectations illiteracy and self-doubt. In a constantly changing world that is demanding increasingly complex skills for its workforce, children are literally being left behind." Foreword, NCLB at <http://www.whitehouse.gov/news/reports/no-child-left-behind.html>.

For a critique regarding the programs the NCLBA deemphasizes, see Serin Ngai, *Painting Over the Arts: How the No Child Left Behind Act Fails to Provide Children With a High-Quality Education*, 4 SEATTLE J. FOR SOC. JUST. 657 (2006). Many have documented the lack of cultural fluency in public institutions to go beyond measuring to fixing the ills that the Act is attempting to cure beyond the quantitative measuring process. See Richard F. Elmore, *Details, Details, Details*, 29 N.Y.U. REV. L. & SOC. CHANGE 315, 316-18 (2003).

⁹¹ It was passed as an unfunded mandate. See NCSL, Taskforce on NCLB (Feb. 2005) at http://www.ncsl.org/programs/educ/nclb_report.htm.

reduce mounting budget shortfalls.⁹² Education is usually the subject of the attempts. One governor signed a law that finds that state education law trumps the NCLBA when there is a conflict.⁹³ One state is even considering amending its constitution to allow its legislature to spend less on schools,⁹⁴ while another endeavors to avoid reducing class size owing to its budgetary issues.⁹⁵ The U.S. Department of the Interior, Bureau of Land Management recently put forth a plan that aims to sell an unprecedented amount of public lands to build schools in rural areas over the next 10-15 years even as others decry the act as merely a temporary fix with costly outcomes for the future.⁹⁶ There is little in the way of a coherent or consistent federal plan to assist the states in dealing with the fact that a substantial population of our children is having reduced opportunities for a *sustainable* let alone a successful future.

U.S. cities and counties (and parishes) like state and federal governments are nearly overcome with implementing mandates while arguably feeling the impact of competing policy issues and priorities. We constantly read about security issues⁹⁷ that often make headlines; providing basic services for children with fewer resources often

⁹² CDF ANNUAL REPORT *supra* note _____.

⁹³ Michelle R. Davis and Jeff Archer, *Complaint Targets Utah NCLB Law*, EDUCATION WEEK, May 11, 2005, at <http://edweek.org/ew/articles/2005/04/12/31conn.h24html>.

⁹⁴ CDF ANNUAL REPORT *supra* note _____.

⁹⁵ Will of the people constitutional amendment small class sizes in Florida, Jeb Bush trying to do everything to delay compliance.

⁹⁶ *How the West Was Sold*, L.A. TIMES, Jul. 31, 2006 at B10.

⁹⁷ Eric Lipton, *New Rules Set for Giving Out Antiterror Aid*, N.Y. TIMES, Jan. 3, 2006, at <http://select.nytimes.com/search/restricted/article?res=F70D15FF3A540C708CDDA80894DE404482>. (low risk targets previously received a disproportionate amount of aid because the security requests were not tied to risks.); see *Risk Wins a Round Over Politics*, Jan. 4, 2006, N.Y. TIMES at <http://select.nytimes.com/search/restricted/article?res=F5071FFA3A540C778CDDA80894DE404482> (showing change in rules in allocation after loss in Senate). “Senators from small low-risk states, led by Susan Collins, Republican of Maine, scored an unfortunate victory last year when they blocked an amendment, backed by all six senators from New York, California and Texas, that would have distributed more antiterrorism money on the basis of risk. As a result, states like Wyoming -- and Maine -- still get too much money, and places like New York City and Washington, D.C., get too little.” *Id.*

does not. Children are leaderless and virtually lobbyless and the impact of lack of voice can be extreme when it comes to local budgeting priorities. When child services are cut or otherwise underfunded, often nothing is done because there is no institutional infrastructure to resolve the chronic issues in lean budgetary times.⁹⁸ Enter the anticlimactic State of the Union Address of 2006.⁹⁹

The reception to the president's address was regarded as largely unimpressive for his limited recognition of policy initiatives aimed at improving the plight of our children. Education funding was cut for the first time in ten years for example.¹⁰⁰ Instead the president announced the American Competitiveness Initiative (ACI).¹⁰¹ ACI focused on economic growth versus meeting the basic needs of children.¹⁰² On the other hand, the First Lady's Helping America's Youth Conference¹⁰³ (Youth Conference) while laudable in providing a variety of panelists generated no concrete policy initiatives as participants, merely reflexively lamented the state of today's children citing the same statistics that are

⁹⁸ Using tobacco settlement money to account for budget shortfalls and/or pet priorities. See e.g., John M. Broder, *Despite Signs of Economic Recovery, States' Budgets Are Still Reeling*, N.Y. TIMES, Jan. 5 2004, at <http://select.nytimes.com/search/restricted/article?res=F00F15F83E550C768CDDA80894DC404482> "After three consecutive years of dismal fiscal news at the state level, officials are beginning to detect signs that the worst may be over. But state budgets will continue to be stressed by slow job growth and rapidly rising health care costs, and battles in state capitals over taxing and spending will continue to rage, analysts say."

⁹⁹ STATE OF THE UNION ADDRESS, Jan. 31, 2006 (announcing American Competitive Initiative) at http://online.wsj.com/article_print/SB113875776024561662.html. See *Most Americans Consider the State of the Nation as 'Poor'* WALL STREET J. (68% of U.S. adults rate country as "poor") at http://online.wsj.com/article_print/SB113820420831656013.html.

¹⁰⁰ CDFAC ANNUAL REPORT *supra* note ____ at 97.

¹⁰¹ AMERICAN COMPETITIVENESS INITIATIVE at 4.

<http://www.whitehouse.gov/stateoftheunion/2006/aci/print/index.html>. (earmarking \$5.9 billion--\$1.3 billion in new funding, \$4.6 billion in research and development tax incentives—to research and development, education and “encouraging entrepreneurship” over 10 years). In so doing, the president touted the American economy as the “envy of the world.” *Id.*

¹⁰² *Id.*

¹⁰³ *Helping America's Youth Conference* at <http://www.helpingyouthconference.org/speech/session1.htm>. Segments included addressing youth challenges to connecting with community at the local. The conference featured a panel of physicians and a web cast. This appeared to be the extent of the Executive Branch's effort in this cause outside of the No Child Left Behind Act.

in this article.¹⁰⁴ The question becomes what do we do now? The Youth Conference’s “we must do better” mantra did not make it into any of the speech’s policy points. The Department of Health and Human Services¹⁰⁵ has neither been given a charge with respect to children nor directed to take up this burgeoning problem of child poverty (in the US). While the Secretary of Education attempted to relax standards in the NCLBA in the face of legal challenges,¹⁰⁶ our children need much more. Even as federal policy makers push to increase the nation’s security¹⁰⁷ now and in the future by directing a substantial portion of the country’s resources and assets toward the president’s self-styled¹⁰⁸ “war on terror”¹⁰⁹ while maintaining unprecedented tax cuts simultaneously,¹¹⁰ current administration policies have only further weakened¹¹¹ our ability to improve the

¹⁰⁴ See Part I.

¹⁰⁵ Charged with oversight of discrimination in healthcare for example has not been doing an effective job owing to no real mandate from the White House to change its practices. See e.g., Sara Rosenbaum, Joel Teitelbaum, *Civil Rights Enforcement in the Modern Healthcare System: Reinvigorating the Role of the Federal Government in the Aftermath of Alexander v. Sandoval*, 3 YALE J. HEALTH POL’Y, L. & ETHICS 215, 230 (2003) (discussing the fact that racial inequality in healthcare had not been a national priority).

¹⁰⁶ Jeff Archer, *Connecticut Pledges First State Legal Challenge to NCLB Law*, EDUCATION WEEK, Apr. 13, 2005, at <http://www.edweek.org/ewarticles/2005/04/13/31.conn.h24.html>; *Pontiac v. Spellings*, Apr. 20, 2005, at <http://www.nea.org/lawsuit/images/nclbcomplaint.pdf>.

¹⁰⁷ For a critique of policy decisions that make up U.S. national security policy, see Charles V. Peña, *Bush’s National Security Strategy: A Global Security Strategy That Undermines National Security*, 6 J. L. & SOC. CHALLENGES 45 (2006). They may have consequences on issues such as diversity in the nation’s post-secondary institutions. See, e.g., Flávia R. da Silva-Benson, *New United States Immigration Policies and How the Curtailment of Student Visas Will Affect the Interests of Diversity in American Society*, 38 NEW ENG. L. REV. 807 (2004). Also, national security interests must be balanced in relation to American’s civil and political liberties. See Nadine Strossen, *Civil Liberties*, 4 GEO. MASON U. CIV. RTS. L.J. 253 (1994).

¹⁰⁸ See Winston P. Nagan & Craig Hammer, *Patriotism, Nationalism, and War on Terror: A Mild Plea in Avoidance*, 56 FLA. L. REV. 933, 985-86 (2004); See also *President’s Message to Congress Continuation of the National Emergency with Respect to Persons Who Commit, Threaten to Commit, or Support Terrorism*, 40 WEEKLY COMP. PRES. DOC. 2084, Sept. 21, 2004.

¹⁰⁹ As opposed to the war on terrorism. Telling children who have no hope that they could get a one way ticket to heaven if they blow up someone.

¹¹⁰ See notes 45 and 46, *supra*.

¹¹¹ Deborah Solomon and John D. McKinnon, *Bush Would Boost Defense, Security in Budget Plan: Social Programs Face Cuts in Proposal For Fiscal 2007; Worries Over Heating Bills Bush’s Budget Pleases Few*, N.Y. TIMES, “Federal spending has grown twice as fast under President Bush as under President Clinton” Brian Riedl, Budget analyst for Heritage Foundation, a conservative think tank. Harry Reid and Senator Minority Leader, “After creating record deficits and debt with his budget-busting tax breaks, the president is asking our seniors, our students, and our families to clean up his fiscal mess with painful cuts in healthcare and student aid.” By not funding them on seeking new sources of funding, the progress that improve our health the programs are weakened.

health, safety, and welfare of the country. With increasing reports of stress among our youth,¹¹² and the need for psychological counseling for our children,¹¹³ it can make one wonder what are our children going to do when it is their turn to govern—to take care of us as we retire and look forward to passing on the mantle of leadership?

Part I sets up the discussion. Part II explores the impact of vocabulary and point of view. Part III discusses the role of poverty in respect for children. Part IV discusses the evolution of human rights that led to the Convention’s ratification, and considers the opposition to its passage. Next the section posits how the Convention can be used as a stabilizing framework to institutionalize assistance of uplifting our children in spite of the opposition. Parts V and VI address the MDGs’ progress and status. Part VII discusses the “local” efforts by focusing on what towns, cities, counties, and parishes are doing to address the needs of children in the United States that appear to be working in isolation given the lack of attention at the federal level. This article suggests, that within the United States, until federal policy makers consider its leadership in this area a priority, local governments must assume the charge within it communities for as long as they can in an effort to create a wake up call at the federal level for a national¹¹⁴ discussion that

¹¹² Alex Williams, *The Lost Summer*, Jun 4, 2006, at <http://select.nytimes.com/search/restricted/article?res=F1071EFF3C550C778CDDAF0894DE404482> (discussing the stress youth feel to be competitive for college).

¹¹³ See e.g., Rukmini Callimachi, *Katrina's Children Struggle With Fears, Katrina's Children Struggle With Fears; Many Expected to Develop Post-Traumatic Stress Disorder*, N.Y. TIMES, Apr. 23, 2006 at <http://abcnews.go.com/US/wireStory?id=1880321>; Joe Berger, *Demoting Advanced Placement*, N.Y. TIMES, Oct. 4, 2006, at <http://www.nytimes.com/2006/10/04/education/04EDUCATION.html> (discussing the anxiety and the need for counseling of students going through the college admissions process); Christopher Bodeen, *Suicide a Sign of China Students' Stress, Teen's Suicide Underscores Concerns About Stress of Exams for Students in China*, Jun. 7, 2006 at <http://abcnews.go.com/International/wireStory?id=2049305>.

¹¹⁴ See, e.g., U.S. General Accounting Office, Pub. No. GAO-02-886T, HOMELAND SECURITY: PROPOSAL FOR CABINET AGENCY HAS MERIT, BUT IMPLEMENTATION WILL BE PIVOTAL TO SUCCESS, at 28 (2002), available at <http://www.gao.gov/new.items/d02886t.pdf>. Here, the GAO argues that “Federal initiatives should be construed as national, not federal in nature.” *Id.*

will lead to the ratification of the Convention and/or an adoption of the Millennium Development Goals as its own.

Part VIII asserts that this cannot be a permanent solution. Ultimately federal policy makers have to craft a federal solution to deal with the unmet needs of our children and the part the Convention could play in unifying a national policy towards children in the United States. And our president, as an institution, has a duty to participate in if lead world efforts to protect the world's children. Doing so protects our children.

II. Talking the Same Language about Children: Four approaches

To establish a framework for addressing this issue we must be sure the vocabulary, the lexicon used is consistent. That is, how one defines children is important to the application of policy that will result in remedies of the various ills described. Do we see the child as he is right now or what she is going to be in the future?

For example, defining youth as between the ages of 15 to 24 is a widely used statistical convention but defining the point at which a child transitions into adulthood is more elusive.¹¹⁵ Here, world government policy and focus differ in range.¹¹⁶ Effectiveness can depend upon a policy maker's understanding and appreciation of the various problems as they affect their policy choices. Whether the policy makers see the issue as a crisis or a back-burner issue has an effect. Perceiving the child in current terms or in various stages of development will determine if one supports the consistent allocation of structural investment to assist the various stages of transition through now to

¹¹⁵What is the definition of "young people" for example? Bazillion "street kids" have been defined as reaching adulthood at 10 years of age for example. This would not apply in the U.S.

¹¹⁶Youth Policy Act in India addresses persons from age 15 to 35. B. Bradford Brown and Reed W. Larson, *The Kaleidoscope of Adolescence: the Experiences of the World's Youth at the Beginning of the 21st Century* in *WORLD'S YOUTH ADOLESCENCE IN EIGHT REGIONS OF THE GLOBE*, Brown, Larson and T.S. Sarawathi, eds., Cambridge University Press (2002).

the future. Another philosophy is to incrementally increase funding¹¹⁷ and then provide a great deal of resources over a shorter period of time when the problem is classified as a crises or an epidemic.¹¹⁸ Children's current needs are at times addressed but usually as byproducts of more important issues.¹¹⁹

A child's ability to transition into adulthood and emerge out of poverty simultaneously by providing for him or herself may be made more difficult by governmental policy which does not contain the infrastructure necessary to make that transition probable. This is most directly felt in (monetarily) poorer societies. As these statistics suggest poverty is multidimensional. A child, a youth, a young person living in poverty particularly as a member of a poorer society, not only suffers from a lack of income,¹²⁰ but also in many other areas including access to adequate and safe drinking water, shelter, sanitation, healthcare, education, and a nurturing home environment free from violence that allows for maturation on a systemic basis. The lack of such can lead to "illiteracy, malnutrition, low life expectancy, poor maternal health, the prevalence of preventable diseases"¹²¹ So should policy makers deal with the child as she is now and address those needs by funding now and locking away such funding for future development of the child? If so, what will that mean for other "in the now" appropriations? Which wins in leaner budgetary times?

The response should be: those who make the policy decisions and who are stakeholders must direct the resources to their fellow citizens who are extremely poor and

¹¹⁷ Cleveland Ferguson III, *Incrementalism, Ideology, and Social Choice: Should the U.S. Ratify the U.N. Convention on the Rights of the Child?—A Practical Perspective*, 1 FAMU L. REV.15, 55-58 (2006).

¹¹⁸ *Id.* at 59-60.

¹¹⁹ For example, the need to be secure may be addressed in overall counter-terrorism strategy.

¹²⁰ Income is not the only measure of poverty. See D. Hume and A. Shepard, *Conceptualizing Chronic Poverty*, WORLD DEVELOPMENT vol. 31, NO. 3 March 2003.

¹²¹ Maputo. *Action Plan for the Reduction of Absolute Poverty (2001-2005)* Mozambique 2001 at 11.

those in the shrinking middle-class for whom hope is disappearing for them to ever achieve poverty reduction¹²² and sustained economic growth.

The Cold War saw resources pouring into the lives of children in an effort to win the race against Communism and the ideology of state control of access to resources. The interdependent economic structure of the post-Cold War world¹²³ today is murkier. There is no Iron Curtin. The barriers to communication between all states are broken down but so are the mechanisms that may have prevented the effects of another state's poverty influences. Isolationism cannot protect against the educational choices, famine, and cheaper labor¹²⁴ that were previously kept away from our door step. Today's Administration's policy focuses on encouraging democracies around the world.¹²⁵ Free societies begin with their children.¹²⁶ This means that we have a responsibility to improve

¹²² E. Pernia, *Pro-Poor Growth: What is it and How is it Important?* ECONOMIC RESEARCH DEVELOPMENT POLICY BRIEF, No. 17. Manila Asia Development Bank 2003.

¹²³ For example, in the United States, it should be no less true of second generation (post-Cold War) families who have built on the first generation's efforts, who have moved from "subsistence" (learning the language, moving out of the ghetto, etc.) to a relatively enjoyable quality of life. *See generally*, Francis Fukuyama, *The End of History and the Last Man* (1989). In this case, these youth need the promise of a hopeful future to expand on *existence* to make their contribution to the cycle of life, to be empowered to become the policy maker of the future, and perhaps to be close to those who are still just *subsisting* and take them along as well.

¹²⁴ MNEs no longer have to contend with the labor unions of the U.S. Communism is not around as a block, so long as these MNEs have good relationships with the governments then they can exploit the people in the name of a market capital economy and producing shareholder value at the expense of the environment and the social safety nets of the people. "Whiles some smaller U.S. manufacturers complain about China trade, major American multinationals—which have benefited from lower costs of producing and outsourcing they have been muted in their criticisms." *See Hitt supra* note __. (U.S. economy is still negatively affected by the shipment of manufacturing and other high wage jobs overseas).

¹²⁵ Steven R. Weisman, Diplomatic Memo; *Democracy Push By Bush Attracts Doubters in Party*, N.Y. TIMES Mar 17, 2006, at <http://select.nytimes.com/search/restricted/article?res=F70F10FE35550C748DDDA0894DE404482>. *See e.g.*, *See* MARTIN DIXON & ROBERT MCCORQUODALE, CASES & MATERIALS ON INTERNATIONAL LAW 175 (4th ed. 2003).

¹²⁶ Hugh Downs, *Perspective on Children Most Vulnerable, Least Protected 134 Heads of State Have Signed it; the United States Should Ratify the U.N. Convention on the Rights of the Child*, L.A. TIMES, Feb. 10, 1991, at 5 (quoting President George Herbert Walker Bush's remark in 1988). A similar phrase was uttered by Dietrich Bonhoeffer, who died protesting Adolph Hitler's holocaust: "The test of the morality of society is what it does for its children." CDFAC ANNUAL REPORT, *supra* note __, at 22. *See* Jeffrey Goldhagen, *Children's Rights and the United Nations Convention on the Rights of the Child* in PEDIATRICS,

the lives of children “over there” so they don’t become human bombs “over here.” To begin we must understand the vocabulary behind the statistics. What is more, we must be clear that we are talking about young people in two categories: those born into poverty and those who represent the 60% who are neither rich nor poor. The hallmark of individual progress in society is access and choice. These young people’s parents may not have health insurance. Their local school board may be forced to cut physical education, arts and after school programs—during a time when the young person needs to develop positive routines (i.e., daily exercise) and is looking for inspiration in the development of life choices (joining an athletic program, deciding that art, music or the appreciation of either should be a part of their life into adulthood).¹²⁷ These budgetary decisions do not necessarily lead to impoverished circumstances for that child but take a psychic toll on the hope and the clarity to reach the American Dream.

A. The Vocabulary

The fact that the United Nations Convention the Rights of the Child ended the 20th Century and the MDGs began the 21st Century bodes well for the continued delineation of human rights. Advocates then, must seize the attention of policy makers and speak the same language in the process: that is define the newest “actor” on the international stage in a way that all can understand, if not agree.

The concept of inalienable human rights deserving protection (as opposed to mere declaration) is really a body of international law--a *jus cogens*--that emerged over the last 50 years. Maturing from state to state relations, to the recognition of intergovernmental

Sept. 2003, 742. “The United States...venerate[s] and romanticize[s] childhood, while at the same time, we abuse, molest, incarcerate, subjugate, segregate, and exploit our children.” *Id.*

¹²⁷ See Sam Dillon, *In Schools Across U.S., the Melting Pot Overflows*, N.Y. TIMES, Aug. 27, 2006, (school board not prepared for incoming class in any way).

organizations (IGOs), to the recognition of nongovernmental organizations interacting with both states and IGOs, to individuals having the ability to be recognized in international law—is a great thing.¹²⁸ To recognize the child as having international character as a political actor is an even more enormous accomplishment. To the heart of the matter, social scientists, policy makers, and other theorists have treated the issue of children using four broad categories or core approaches: generations, adolescents, youth, and children. In different ways they each contribute to a better understanding of young people.¹²⁹ Therefore the agreement to a single term of description may not be absolutely necessary as opposed to familiarization with each to the point of being able to recognize it.

1. Generations

Looking at young people from a longitudinal perspective is a hallmark of the “generations” approach. Those who use this approach analyze children in terms of generation gaps: e.g. the Sixties Generation,¹³⁰ Generation X, Generation Y, Generation O, the Napster Generation,¹³¹ and “age sets”.¹³² This allows scientists and policy makers to draw general conclusions about the state of an age group from a historical and political

¹²⁸ See, e.g., David Sweis, *The Availability of Damages to Foreign Nationals for Violation of the Consular Relations Treaty*, 19 N.Y. INT’L L. REV. 63, 63 (2006); Curtis A. Bradley and Jack L. Goldsmith, III, *The Current Illegitimacy of International Human Rights Litigation*, 66 FORDHAM L. REV. 319, 345 (1997); Bradley and Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 10 HARV. L. REV. 815, 842 (1997).

¹²⁹ WORLD YOUTH REPORT, *supra* note ____ at 113.

¹³⁰ Protests movements like the one against Vietnam, highlighted by the Kent State uprising, or the simmering threats and tests of asserting cultural identity such as the Black Panther Movement, Sandinistas in Nicaragua and the student protests in Tiananmen Square are all examples of this.

¹³¹ See Arthur Austin, *The Postmodern Buzz in Law School Rankings*, 27 VT. L. REV. 49, 56 (2002) (discussing the “Napster Generation” “They are smart, quick at grasping the angles, get serious test scores, and have access to plenty of disposable income” They go to schools with high credentials but do not focus on character building.”

¹³² Such as baby boomers. R.G. Braungart, *Historical Generations and Generation Units: A Global Pattern of Youth Movements*, in LIFE COURSE AND GENERATIONAL POLITICS (1993), Richard G. Braungart and Margaret M. Braungart., eds, Lanham, Maryland U. P. of Amer.

context which allows one to theorize about which generations were most politically astute, etc. The value of this approach has been questioned. Many researchers find this approach problematic because the young people who receive the most attention are those that can be tracked and determined by census and are empowered to give voice to their concerns: the “haves.” Youth from middle to upper-class backgrounds who have the requisite cultural capital and social network connections to enter the public sphere as generational spokespersons or activists scarcely allows one to gauge the direction or consciousness of an entire generation. There is a fair amount of research on young people as political actors; some work has concentrated on the present, some on the future, and some on the relationship between the two.¹³³ Attention has been focused on voting behavior, volunteerism,¹³⁴ and the sources and effect of political socialization, especially civic education in schools. Others are focused on reactive and publicly demonstrative efforts of advocacy.¹³⁵ Each reflects a state of engagement of young people at a particular time with no real nexus to a particular methodology with which to prescribe a policy shift.

¹³³ L.R. Sherrod, C. Flanagan, and J. Youniss. *Dimensions of Citizenship and Opportunities for Youth Development: the What, Why, When, Where and Who of Citizenship Development*. APPLIED DEVELOPMENTAL SCIENCE, Vol. 6, No. 4 (2002) at 264-72.

¹³⁴ Peace Corps, 1000 Points of Light and Ameri-Corp come to mind.

¹³⁵ Dr. Bernard Lafayette and the Montgomery Freedom Rides is an American example. *See also* A. Mische, *Projecting Democracy: the Construction of Citizenship Across Youth Networks in Brazil*, in CITIZENSHIP, IDENTITY AND SOCIAL HISTORY (1996), Charles Tilly, ed. Cambridge: Cambridge U.P. The involvement of South African youth in the anti-apartheid struggle, which fluctuated between violent and non-violent activity, is examined in M. Marks, *YOUNG WARRIORS: YOUTH POLITICS, IDENTITY AND VIOLENCE IN SOUTH AFRICA*. Johannesburg; Witwatersrand U. P. (2001). For an account of youth social protest in the former Yugoslavia focusing directly on media and popular culture, *see* M. Collin, *GUERRILLA RADIO: ROCK ‘N’ ROLL RADIO AND SERBIA’S UNDERGROUND RESISTANCE*. N.Y.: Thunder’s Mouth Press/Nation Books. (2001).

This then does not always get at the core of generational issues but rather catalogs the reactions alone. Further leaving out a cadre of subsets such as the “have-nots”¹³⁶ as if the generation were homogenous is not accurate.

2. Adolescents

A second approach comes under the label adolescent. It is in wider use than the generational perspective. The classification focuses on the development, experiences, and the civic and political engagement¹³⁷ of young people. Identity formation and the development of a value system during this stage of life have far-reaching implications particularly considering the age of much of the world’s population. This population is impressionably susceptible to change.

With this approach, young people are viewed as “adults in the making”; the emphasis is on “becoming” rather than “being.” The state of young people’s political formation¹³⁸ and the design of influence in marketing campaigns of governmental and commercial enterprises¹³⁹ used to urge resistance or acquiescence to power structures is studied. The manifestation of cultural expressions and practices through popular media such as music, the development of personal style, attention to drugs, and criminality, and adult behaviors are all used. The criticisms with this concept is that the public institutions who use this model speak in terms of young people who tend to constitute the focus of this perspective, including ethnic and racial minorities, the working class, or

¹³⁶ No access to personal computers, educational programs that empower civic responsibility, e.g., Kids Vote, struggling for basic necessities whose parents cannot afford to take off work to go to Parent-Teacher Association meetings, etc.

¹³⁷ WORLD YOUTH REPORT, *supra* note ____ at 114.

¹³⁸ See L.R. Sherrod, C. Flanagan, and J. Youniss, *supra* note 129.

¹³⁹ The Executive Branch’s Ad Council which promulgates the “this is your brain on drugs” messages from time to time, or Nancy Reagan’s Say No to Drugs Campaign, or the more in-your-face Truth anti-tobacco campaign are examples.

girls and young women, are often marginalized and stigmatized within the public sphere and at the formal institutional level¹⁴⁰ because voice is not given to the personal circumstances that contribute to the life choices they make. That is they lack the cultural competence to effectively analyze their issues.¹⁴¹ Further, adolescence can be considered as being a largely Anglo-Western notion and may not be applicable to other parts of the world where rites of passage may define the transition into adulthood using other, perhaps more individualized and intuitive methods less capable of measuring on a uniform scale.

3. Youth

The core of this approach is that young people are in a state of both “being” and “becoming.” It is necessary to acknowledge their status as social and political actors in the present as well as their status as “adults-in-the-making.” While “youth” is acknowledged as a heterogeneous category¹⁴² the classification is inherently susceptible to manipulation. Urban youth versus suburban youth can be code for minorities versus Anglo children.¹⁴³ Programs designed for either then can be colored to suit the utterer’s agenda.¹⁴⁴

¹⁴⁰ WORLD YOUTH REPORT, *supra* note ____ at 115.

¹⁴¹ See e.g., YOUNG BLACK CHILDREN’S DEVELOPMENT AFFECTED BY MESSAGE OF RACE, Center for Advancement of Health, at [www. Hbus.org/newsrelease/racialID-9-17-02.cmf](http://www.Hbus.org/newsrelease/racialID-9-17-02.cmf), (studying racial socialization in Baltimore, MD home environment as a method to educate policy makers behavioral or developmental changes between 3 and 4.5 years of age.). The directors and producers of *The Wire* (www.hbo.com/thewire) now in its fourth season, strives to bring awareness to these issues to popular culture with the express desire to spur a dialogue about the state of American children.

¹⁴² It challenges the definition of “youth” as a stage in life and the notion of young people as primarily “adults in the making”; the preference for the term “youth” rather than “adolescent” is to some extent an implied criticism of the tendency to focus on what youth may “become” rather than on what they may currently “be.” WORLD YOUTH REPORT, *supra* note __ at 117.

¹⁴³ *But see*, Michael Winerip, *On Education, How a Cleveland Suburb Spurs Black Achievement*, N.Y. TIMES, Feb. 12, 2006.

¹⁴⁴ See e.g. . P. Mizen, *Putting the Politics Back Into Youth Studies: Keynesianism, Monetarism, and the Changing State of Youth*,. J. OF YOUTH STUDIES, vol. 5, No. 1, Mar. 2002 at 5-20. (showing youth identity

The drawback is the overwhelming tendency to view the definition as youth versus adolescents. This has had the effect of limiting dialogue and thus research has been inhibited in terms of the development of new and productive ways of thinking about youth politics.¹⁴⁵ Are young people social problems or apathetic consumers? It depends on who the researcher is talking about in many cases. Heterogeneous application need not shift because the discipline or context changes. Currently it does. The discussion of youth on issues such as curricular content, is different than the discussion regarding juvenile justice systems, for example. Who therefore controls or directs the idea of youth is the open question. One thing is certain, it is not youth.¹⁴⁶ The premise of focusing on the “being” and “becoming” is extremely helpful to develop policy for both. If it is possible then to take the politics of the classification out of the mix and utilize it in conjunction with “adolescents” and the following core approach as the United Nations seems to have achieved with the MDGs,¹⁴⁷ then measurable progress can be achieved for young people.

4. The Child

The fourth perspective relates to children’s rights and citizenship defining young people as “the child.”¹⁴⁸ This has the effect of giving a definitive form to the human being who needs nurture through to their transition to independence on a graduating scale

is subject to manipulation by governments, media, school, social workers, marketing and other commercial enterprises.)

¹⁴⁴ See e.g., The N (owned by Viacom) at www.the-n.com (striving to deal with identity issues and value judgments for problems in the “now”). The digital cable channel starts out as Noggin in the morning targeting pre-schoolers and transitions to older crowd in the afternoon.

¹⁴⁵ B. Arneil. *Becoming Versus Being: A critical Analysis of the Child in Liberal Theory.* *The Moral And Political Status of Children*, David Archard and Clin M. MacLeod, eds., *Oxford University Press* 2002.

¹⁴⁶ *Id.*, *supra* note 140.

¹⁴⁷ See, .e.g., YOUTH AND THE MILLENNIUM DEVELOPMENT GOALS: CHALLENGES AND OPPORTUNITIES FOR IMPLEMENTATION, FINAL REPORT OF THE AD HOC WORKING GROUP FOR YOUTH AND THE MDGS. (Apr. 2005).

¹⁴⁸ The definition is usually biologically focused and applies through age 18 rather than politically constructed.

of maturity. This is a more recent approach than the others—one that evolved directly from normative agendas and advocacy concerns in adolescent political development or youth studies.¹⁴⁹

The children’s rights approach then is an extension of this definition and focuses on various local, national and international legal instruments such as the U.N. Convention on the Rights of the Child as they apply to the lives of children and young people. Children’s status as citizens are viewed and valued through “their participatory practices in different arenas including local councils, national parliaments, schools, and social service agencies, with a lesser focus on their involvement in relatively autonomous peer groups and youth organizations.”¹⁵⁰ To avoid foisting adult apparatus on children or merely soliciting the minister of Parliament’s daughter or the governor’s nephew as representatives of all children in the state, depending upon their maturity various young persons can contribute to the political discussion of their needs.

While the exact ages at which certain kinds of rights are extended,¹⁵¹ statuses are attained, and dependence and protection are superseded by autonomy will vary across time and space (and certainly between genders) the processes of doing so are universal¹⁵² transcending culture, religion and language.

Designation of “the child” as a legal “actor” on the international stage having the same standing as state did for centuries was a monumental factor in developing the human rights of children into law. This paper continues then, an integrated approach and uses of

¹⁴⁹ See e.g. S. Stephens, ed. CHILDREN AND THE POLITICS OF CULTURE. (Princeton, N.J.) Princeton U. P. (1995).

¹⁵⁰ WORLD YOUTH REPORT, *supra* note ____ at 116.

¹⁵¹ See Ferguson, 1 FAMU L. Rev. at footnote 78.

¹⁵² WORLD YOUTH REPORT, *supra* note ____ at 117.

“the child”, children, youth, and young people with this ideal as its core. The same process is employed using some version of all the approaches in the Convention.

III. Defining Poverty in the Context of “the Child”

Once defining the child, the second important step is to determine what poverty consists of (if not define it) to truly deal with this issue. Whether one uses an absolute definition or a pliable one, the same questions should be answered: Does poverty include the emotional deficit the child experiences post 9-11 or just the one living in squalor with little to no food, etc.? Twenty thousand people in the latter category die daily.¹⁵³ But even the children in the most powerful states feel vulnerable to terrorism and the attendant stresses, which reduce the quality of life, mental health, and overall security.¹⁵⁴ The Convention targets both. With the United States being absolutely the wealthiest nation in the world, it is clear that our poverty rates are not a result of a lack of resources,¹⁵⁵ (unlike many developing countries) yet our poverty rates remain among the highest when compared with other developed countries.¹⁵⁶

Researchers, generally agree that poverty is multidimensional and can be defined as a lack of basic essentials. Extending to the emotional as well as the financial as it relates to children is important to capture the essence of the problem. Therefore poverty

¹⁵³ IN LARGER FREEDOM, *supra* note _____ ¶ 9.

¹⁵⁴ *Id.* at ¶8. See *Sept. 11, 2001-2006: Revisiting the Families; Getting Past the Pain of 9/11, In Steps Both Big and Small*, N.Y. TIMES, Sept. 11, 2006, at <http://select.nytimes.com/search/restricted/article?res=F00C10F73F550C728DDDA00894DE404482>.

¹⁵⁵ See Factsheet, *Country Background, Country*, VIEWSWIRE (Economist Intelligent Unit, London, U.K.), Mar. 28, 2006.

¹⁵⁶ See John Iceland, *POVERTY IN AMERICA: A HANDBOOK* (2d. ed 2006); Timothy M. Smeeding, *POOR PEOPLE IN RICH NATIONS: THE UNITED STATES IN COMPARATIVE PERSPECTIVE* (Luxembourg Income Study, Working Paper No. 419, 2005).

should be measured not only by income,¹⁵⁷ but also by access to public goods such as education,¹⁵⁸ healthcare,¹⁵⁹ a safe water supply,¹⁶⁰ and adequate roads,¹⁶¹ the ability to be free from violence,¹⁶² growing up in a nurturing family environment,¹⁶³ to play,¹⁶⁴ and have access to age appropriate information.¹⁶⁵ Simply yelling at the poor that they must do better would no longer suffice to placate the intellectual safe in his ivory tower.¹⁶⁶

This article urges that in addition to a broader definition of poverty in the minds of policy makers must also be accompanied by a basic set of factors (such as the ones described) that should be applied in the formulation of child development strategies, with steps taken to move beyond the limited focus on monetary indicators toward the adoption of a more comprehensive approach to addressing the full range of problems faced by young people and their families. An integrated approach should reflect consideration of all of the

¹⁵⁷ Toby Seddon, *Drugs, Crime and Social Exclusion*, 46 BRIT. J. CRIMINOLOGY 680, 681(2006) Poverty can be defined as when “[I]ndividuals, families and groups can be said to be in poverty when ... their resources are so seriously below those commanded by the average individual or family that they are, in effect, excluded from ordinary living patterns, customs and activities.”

¹⁵⁸ See Convention *supra* note _____, arts. 28-29. Education represents one of the surest ways to escape all forms of poverty. CDFAC ANNUAL REPORT, *supra* note _____ at 88. The alternative consequences of not having access full a full education are well documented. *Id.* With a broader definition of poverty then, it would be really apparent to even the most cynical quantitative analyst that the NCLBA cannot be the total response of the federal government for our youth.

¹⁵⁹ See Convention, *supra* note _____, art. 24.

¹⁶⁰ See Convention, *supra* note _____, art. 27.

¹⁶¹ See Convention, *supra* note _____, art. 27.

¹⁶² See Convention, *supra* note _____, art. 40.

¹⁶³ See Convention, *supra* note _____, art. 5, 7-10, 21, 25.

¹⁶⁴ See Convention, *supra* note _____, art. 31. *Every Child Has A Right to Play*, 2006 WLNR 1702703.

¹⁶⁵ See Convention, *supra* note _____, art. 17.

¹⁶⁶ See e.g., Juan Williams, *Getting Past Katrina*, N.Y. TIMES, Sept. 1, 2006 at http://www.nytimes.com/2006/09/01/opinion/01williams.html?_r=1&oref=slogin&pagewan. (identifying confronting the poverty of spirit as an anti-poverty program since poverty has been on the rise since 2001, yet moralizes that the poor must help themselves and are overly dependant on government aid.) Poorer countries are not shying away from their part. The MDGs are not a mere request for a handout. Goals 1-7 require governments to put the requisite policies in place and requires them to do the heavy lifting. See e.g., MDG CAMPAIGN TOOLKIT 2.3. In fact there is a “No Excuses” campaign within the MDGS: “We know what to do. We know when to do it. We know who should do it. We have adequate resources. We can monitor progress. There is no excuse not to fulfill the Millennium Development Goals” *Id.* at 2.4.

priority areas for youth development¹⁶⁷ that may be relevant to young people in their local and national contexts from the basic to the complex. Further, the youth component should form part of a broader national “pro-poor growth” strategy that includes infrastructure development and agricultural policy changes aimed at helping those in poverty. This then is the baseline for this article’s use of statistics and critique for dramatic shifts in public policy on the issue of a unifying approach to the needs of children. This article encourages the notion as articulated by Professor Rank citing John Kenneth Galbraith that U.S. policy makers should stop defining poverty to suit their strategic needs and deal squarely with the root causes of the needs in an honest way.¹⁶⁸ Then apply them to their moral compass and step in and help the world finish the MDGs in a timely fashion. In the process, policy makers should revisit ratification of the Convention as a means to keep the issues before us until they are remedied.

IV. The Convention: History, Happenings, and Hissy Fits

A. Convention is an Evolution in Human Rights Law

The Convention is binding law prescribing the rights of the child as a juridical entity recognized in international law. The Convention was adopted without a vote, on November 20, 1989.¹⁶⁹ This culminates sixty-five years of formal international legal recognition of the human rights of children. Coming into force out of a relatively recent¹⁷⁰ line of United Nations Human Rights treaties,¹⁷¹ the Convention was open for

¹⁶⁷ This has been identified in the World Programme of Action for Youth and General Assembly resolution 58/133 of 2003.

¹⁶⁸ See Mark R. Rank, *Toward a New Understanding of American Poverty*, 20 WASH. U. J.L. & POL’Y 17, 18 (2006).

¹⁶⁹ See Convention, *supra* note 15.

¹⁷⁰ See MARTIN DIXON & ROBERT MCCORQUODALE, *supra*, note _____ (observing that human rights laws were not universally accepted by States prior to the adoption of the United Nations Charter).

signature on January 26, 1990,¹⁷² and would go into effect upon the depositing of the twentieth instrument of ratification with the Secretary-General of the United Nations.¹⁷³ Desire for a comprehensive human rights instrument dedicated to enumerating and protecting the rights of children had been bandied about for decades. The Convention entered into force on September 2, 1990.¹⁷⁴ The Convention's ontology began with the (nonbinding) the 1924 Declaration of Geneva¹⁷⁵ adopted by the League of Nations.¹⁷⁶ In 1948, the United Nations gave official recognition to the human rights of children by adopting the (equally nonbinding) Universal Declaration of Human Rights, which stated that children were "entitled to special care and assistance."¹⁷⁷ The next evolution of the world's consciousness came in the form of the (still nonbinding) Declaration of the Rights of the Child.¹⁷⁸ It was a ten-principle document¹⁷⁹ that expanded the rights set

¹⁷¹ The International Covenant on Civil and Political Rights came into force in 1966, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc A/6316 (1966), along with the International Covenant on Social, Economic and Cultural Rights, G.A. Res. 2200A, U.N. GAOR 21st Sess., No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (Jan. 3 1976), and the International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969), reprinted in 5 I.L.M. 350 (1966). Next followed the Convention on the Elimination of All Forms of Discrimination Against Women in 1979, G.A. Res. 180, U.N. GAOR, 34th Sess., U.N. Doc A/34180 (1979). Later the Convention Against Torture, and Other Cruel, Inhuman and Degrading Treatment came into force just before the Convention at issue, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85, 23 I.L.M. 1027 (entered into force June 26, 1987).

¹⁷² See STATUS OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, 29 I.L.M. 1339, 1339 (1990).

¹⁷³ See *id.* The first deposit of State Parties ratifying the Convention was made by Ghana on February 5, 1990. The twentieth deposit occurred on August 3, 1990 and was made by the governments of Bangladesh, Benin and Sudan. *Id.*

¹⁷⁴ See *id.* This was thirty days following the deposit of the twentieth instrument of ratification or accession—though it seems the Convention may have been entered into a day earlier; *but see* Office of the United Nations High Commissioner for Human Rights, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES, June 3, 2004 (showing Bangladesh, Benin, and Sudan ratification dates being on September 2, 1990).

¹⁷⁵ (also known as the Geneva Declaration of the Rights of the Child) For a quick timeline, see UNICEF ANNUAL REPORT, *supra* note 3, at 2 (*The World Comes to Recognize the Importance of Childhood* timeline).

¹⁷⁶ See Cynthia Price Cohen, *The Human Rights of Children*, 12 CAP. U. L. REV. 369, 369 (1983).

¹⁷⁷ Universal Declaration of Human Rights, Article 25(2) (*Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948*).

¹⁷⁸ 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4059 (1959).

¹⁷⁹ See Convention, *supra* note 15, art. 25.

forth in the 1924 Declaration. These documents further made world leaders aware of the need to protect and provide for children. While the language was general and lofty, it served to move the world's consciousness to binding responsibility. They were followed by two broad covenants promulgated in the 1960s.¹⁸⁰ Even then, the United States was not moved to embrace the covenants fully.¹⁸¹

Designating 1979 as the International Year of the Child, the United Nations decided that a Working Group should be formed under the former UN Commission for Human Rights¹⁸² to draft a Convention dedicated to the rights of the child.¹⁸³ Following the completion of the first draft in 1988,¹⁸⁴ the Working Group requested that the Secretary-General conduct a "technical review" of the Convention, which would then be distributed to delegations, prior to the second reading meetings of the Working Group.¹⁸⁵ This process led to several amendments, including a switch to gender-free language, coupled with recommendations from delegations and nongovernmental organizations, resulting in

¹⁸⁰ The first legally binding provisions protecting children's rights appeared in two covenants the U.N. adopted in 1966. The first, the International Covenant on Civil and Political Rights, provides that "[e]very child shall have without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." 999 U.N.T.S. 171 (entered into force Mar. 23, 1977). The second, the International Covenant on Economic, Social and Cultural Rights, provides, among other things, that "[s]pecial measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions." 993 U.N.T.S. 2 (entered into force Jan. 3, 1976).

¹⁸¹ The United States has signed both covenants, but has only ratified the first. Several dozen other international instruments also carry provisions relating to children.

¹⁸² *Annan Sets Up Panel to Mesh UN Systems Humanitarian and Development Work*, Feb. 16, 2006, at <http://www.un.org/apps/news/story/.asp?NewsID=17525&Cr=millennium&Cr1=development> (restructuring UN to deal with humanitarian aid issues including the fulfillment of the MDGs).

¹⁸³ See U.N. ESCOR Supp. (No. 16) U.N. Doc. E/CN.4/1349 (1979). Actually, Poland proposed that an international treaty be drafted that would put into legally binding language the principles set forth in the 1959 Declaration. *Id.*

¹⁸⁴ See U.N. Doc. E/CN.4/1988/28 (1988) and U.N. Doc. E/CN.4/1989WG.1/WP.1 (1988).

¹⁸⁵ Cynthia Price Cohen, *Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child*, 12 HUM. RTS. Q. 136 (1990).

extensive alterations being made in the first reading text. Sacrifices in language were made, and not everyone got everything they wanted in the draft of the Convention.¹⁸⁶

Importantly, several protections remained in the draft, such as: protection against traditional practices like female circumcision,¹⁸⁷ selling one's child into sexual exploitation¹⁸⁸ for food, also the protection of rights of indigenous children,¹⁸⁹ standards for the administration of school discipline,¹⁹⁰ and rehabilitation for victims of various types of abuse and exploitation.¹⁹¹ The Working Group built upon the tenets of the 1948 and 1959 Declarations and manifested a near-complete recognition by the world for children's rights. The Convention on the Rights of the Child was the natural next step in this evolution. Commanding an untold amount of cooperation and consultation—this is an amazing transnational process based on acknowledging a need to make an ideal legitimately come into being by providing for the needs of children into law as inalienable rights. This transnational framework—cutting across nations and cultures within states¹⁹² to agree to a rubric with other states¹⁹³ is an effective model that should work in a federalized system of governing such as the United States.

Rights which were previously protected only as general concepts but did not rise to the level of widely observable customs were clearly spelled out as to their applicability to children in the second draft. The Working Group strove to provide greater

¹⁸⁶ *Id.*

¹⁸⁷ *See* Convention, *supra* note 15, art. 24 § 33.

¹⁸⁸ *Id.* arts. 34-36.

¹⁸⁹ *E.g., id.* arts. 17(d), 29(d), 30.

¹⁹⁰ *Id.* art. 28 § 2.

¹⁹¹ *Id.* art. 39.

¹⁹² That is, transnational. The Free Dictionary.com defines the word as: 1. Reaching beyond or transcending national boundaries and 2. Relating to or involving several nations or nationalities.

¹⁹³ International then just isn't enough. The Free Dictionary.com defines the word as: Of, relating to, or involving two or more nations.

clarification of the juvenile justice standards;¹⁹⁴ the relationship between the individual child, the family and the state;¹⁹⁵ the child's right to privacy;¹⁹⁶ and the extent to which other civil and political rights belong to children.¹⁹⁷ All were housed in the Convention under the protective, underlying principle of the "best interests of the child."

In response to permanently raising awareness of the plight of children in the eyes of governments and policy makers, the CRC, the most comprehensive human rights treaty ever created relating to children, was ratified 15 years ago by all but the United States and Somalia.¹⁹⁸ The latter now working toward a fully functional government in 2005 has moved towards ratification leaving the United States alone.

The Convention, spawned a number of worldwide follow-up meetings, including the 1990 World Summit for Children, the 1994 Year of the Family, the 1999 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor,¹⁹⁹ the 2000 U.N. Millennium Development Goals, and the 2002 Building A World Fit For Children summit at the United Nations. Next the Millennium Project was created and member states had the opportunity to assess their progress at the 2005 Conference. Thus, international consensus was not only maintained, but the awareness and necessity of children's rights around the world was increased.

As will be discussed later in this article, the United States signed the treaty in 1995; however, President Clinton did not seek the advice and consent of the United

¹⁹⁴ See Convention, *supra* note 15, arts. 37, 40.

¹⁹⁵ See, e.g., *id.* arts. 5, 9-11, 18-21.

¹⁹⁶ *Id.* art. 16.

¹⁹⁷ See, e.g., *id.* arts. 2, 6, 12-15, 25, 37, 40.

¹⁹⁸ Those efforts are seemingly being undermined as refugees are starting for Kenya now that another major city has been seized from control of the 14th attempted government since 1991. See *Somalis Protest Against New Leaders in Kismayo*, Oct. 7, 2006, at <http://today.reuters.com/News/Crises/Article.aspx?storyId=L0736569>

¹⁹⁹ See UNICEF ANNUAL REPORT, *supra* note 3, at 2.

States Senate despite having a majority of his own party in the 104th Congress (Senate) and the possibility of Republican support. He certainly had interest group support.

This part will discuss the Convention and its universal features.

B. Needs of Children Accorded the Status of Inalienable Rights

States, IGOs, NGOs, and multinational enterprises all have rights under international law. With the enactment of the Convention, the child obtained rights that now must be recognized by participating governments. To some degree, the Convention codifies many universal rights that have long been recognized in international human rights law but never before explicitly asserted as applying equally to children.²⁰⁰ Drafters took the third (youth) and fourth (“the child”) approaches in dealing with children,²⁰¹ looked at the statistics, delineated the needs and were successful in classifying them as rights based on the Convention being opened for signature.²⁰² The rights can be classified in five broad groupings: social, economic, cultural, protective, and civil and political rights. The social rights include the right to life, optimal survival (as opposed to mere subsistence) that includes play, family life, access to the best possible healthcare,

²⁰⁰ It is interesting to note which treaties and declarations the United States *is* a party to that include these rights: the right to life, freedom of expression, education, due process and nondiscrimination, for adults. The United States is not a party to the Convention on the Elimination of Discrimination Against Women (CEDAW). However, despite a 13-4 vote in favor of ratification by the Senate Foreign Relations Committee. No explanation has been given as to why the Convention has not been forwarded to the full Senate for its consideration. *See Senate Foreign Relations Subcommittee on International Operations Committee Hearing*, 107th Cong. (2001) [hereinafter *Operations Hearing*] (statement of Sen. Barbara Boxer, ranking member), *available at* 2001 WL 553997. Some universal human rights *do not* extend to children. The child was not accorded the right to vote or the autonomy to make decisions independently of those who have responsibility for them. The Convention states that parents have both the right and responsibility to provide direction and guidance to children. Although parental direction and guidance must be provided in accord with the *child's evolving capacities*, it does not give children the rights to self-determination that are reserved for adults. *See* Convention, *supra* note 15, art. 5. *See also* Jonathan Todres, *Women's Rights and Children's Rights: A Partnership With Benefits for Both*, 10 CARDOZO WOMEN'S L.J. 603 (2004), for a full discussion of Convention on the Elimination of Discrimination Against Women.

²⁰¹ *See* sections 3 and 4 of pervious part.

²⁰² *See* generally, Ferguson 1 FAMU L. Rev. 15.

and education.²⁰³ Economic rights include the right to an adequate standard of living for proper development, to benefit from social security, and to be protected from economic exploitation. The right to respect for culture, language, and religion make up cultural rights, along with the abolition of any traditional practices likely to be prejudicial to the child's health. Protective rights²⁰⁴ include: the right to promotion of the child's best interests,²⁰⁵ to protection from sexual exploitation, armed conflict,²⁰⁶ harmful drugs, abuse and neglect, and the right to rehabilitative care following neglect, exploitation, or abuse. Finally, civil and political rights include the right to be heard or taken seriously, freedom from discrimination in the exercise of rights on any grounds, freedom of expression,²⁰⁷ the right to privacy,²⁰⁸ the right to information,²⁰⁹ and the right to respect for physical and personal integrity and freedom from all forms of violence, or cruel or degrading treatment.

These groups of rights are based upon the universal needs of children, without regard to culture, ethnicity, socio-political, or socio-economic class. When identifying the needs of children, scholars and practitioners have used still another set of groupings. Under a framework of children's needs the groupings are: physical; social, economic and cultural; and intellectual, psychological, and emotional. Both sets of groupings

²⁰³ This is so unless it is not in the child's best interests. *See* Convention, *supra* note _____ art. 3.

²⁰⁴ "Creating a protective environment, based on the ideal childhood of the Convention, is not just about changes in laws and policies; it is also about altering attitudes, traditions, customs and behaviours that continue to undermine children's rights[.]" UNICEF ANNUAL REPORT, *supra* note 3, at 7.

²⁰⁵ This is not blindly regarded to the exclusion of all other considerations however. *See* Rebeca Rios-Kohn, *The Convention on the Rights of the Child: Progress and Challenges*, 5 GEO. J. ON FIGHTING POVERTY 139, 144 (1998). Considering the best interests of the child, "[h]owever, . . . does not guarantee that a child's interest will always prevail; it only guarantees that the child's interest will be fully considered and given due weight in relation to competing interests." *Id.*

²⁰⁶ This ranges from kidnapping to being pressed into military service.

²⁰⁷ This occurs in accordance with one's age and maturity. *See* Convention, *supra* note __ art. 12.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

essentially identify the same needs. The Convention translated those needs into rights once it came into force and the states became parties to it.²¹⁰

C. Juridical Status Imputes Requirements of Governments to Talk with Supporters and Critics About the Convention

That said, states' parties must (among other requirements) specifically engage in three activities: 1) implement the Convention without discrimination for all children,²¹¹ 2) by whatever means make the Convention "widely known" to both children and adults,²¹² and 3) report regularly to the entity²¹³ established to monitor and collect data on compliance with the Convention.²¹⁴

Some applied the Convention by amending their constitutions or legal codes to address children's rights.²¹⁵ For example, South Africa's post-apartheid constitution recognizes the rights of children to basic nutrition, education, health, social services, and protection from exploitation.²¹⁶ Tunisia's Code for the Protection of Children now contains 123 articles that harmonized its laws to the Convention.²¹⁷ The Philippines introduced laws protecting children from sexual exploitation.²¹⁸ Sri Lanka increased the age of sexual consent from twelve to sixteen.²¹⁹ Columbia enacted a Minor's Code that protects a child's right of

²¹⁰ See *id.* at note 78.

²¹¹ See Convention, *supra* note ____, art. 42.

²¹² See Convention, *supra* note ____, art.43.

²¹³ See *id.* and discussion *supra* Part ____.

²¹⁴ See Convention, *supra* note ____, art.43.

²¹⁵ See Robin Wright, *Globally Embraced Child Rights Treaty Languishes in U.S. Accord: Conservatives' Opposition—And Some say White House Inaction—Has Kept the Pact From Being Submitted to the Senate/It Has Been Ratified by 191 Nations*, L.A. Times, Nov. 18, 1999 at A15.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*; Sri Lanka recently celebrated a day of peace designed to temporarily assuage the psychological damage of civil war and post tsunami recovery, Junko Mitani "A Day of Celebrating Peace for Sri Lankan Children Caught in War, UNICEF: http://www.unicef.org/infobycountry/sri_lanka_36012.html, though it

expression.²²⁰ Honduras retrained judges, mayors, and government staff members after its 1996 Children's Rights Code went into effect.²²¹

Those that would use the ratification of the Convention as cosmetic policy shift not only run the risk of violating the Convention but also the shame of the hypocrisy.²²² So far, only the United States has been able to afford the political capital, but its statistics are beating a steady path to the door of the White House daily.

D. How Objections in the Drafting of the Language of the Convention Were Dealt With—Worldwide

President Bush the Elder was dissuaded from signing the Convention on the notion that Article 6(1) so put into flux the rights of the unborn child. Some argued that with access to medical care²²³ having to be made available to children, that children would essentially be running out to get abortions. For the child who is in need of immunizations, but the parents cannot afford healthcare coverage, yet the child can't attend school without being inoculated would seem to be the more immediate concern for the working family. The concern that a "woman's right to choose" would be harmed has simply not been documented as a meaningful rationale not ratify the Convention. For those nations in which this was a political issue for them, they simply submitted an understanding or reservation detailing the fact that state (national) law would preempt any other interpretation of the Convention.

The fact that the Convention provides the right to foster care and adoption,

still has trouble with child abduction by rebel forces. Sri Lanka must do a better job of protecting its children and complying with Article 38. *See Militia Abducting Hundreds in Sri Lanka* A.P. (Oct. 5, 2006).

²²⁰ *See* Wright, *supra* note 212.

²²¹ *Id.*

²²² *See* note 62, *supra*.

²²³ *See* Convention, *supra* note ____ art. 24.

freedom of religion, and the minimum age for participation in armed combat were all controversial topics that led to objections during the rounds of drafting.²²⁴ The rights of the unborn child were dealt with in the drafting of Article 1 of the Convention in that compromise language was reached by quoting the 1959 Declaration, which refers to "appropriate legal protection, before as well as after birth."²²⁵ Sacrifices were certainly made to get the Convention as widely ratified as possible.²²⁶ Nevertheless, the Working Group dealt with each objection in turn, and each country initially voicing objections ratified the Convention.²²⁷

The objections by a politically powerful few enabled President Bush the Elder to buck a groundswell of grassroots support of ratification in the United States,²²⁸ when it opened for signature in 1989. Instead of acknowledging the Convention as a milestone in human rights, or its goals of improving the education, living conditions, healthcare, and treatment of the estimated two billion people under the age of eighteen,²²⁹ the elder Bush's administration piddled. The Convention was not without individual support of

²²⁴ See Cohen at _____.

²²⁵ *Id.* (citing requirements for consanguinity and inheritance within the inter-related extended family).

²²⁶ Some say this resulted in the loss of important language regarding other rights and initiatives. See, e.g., Cynthia Price Cohen, Introductory Note, *United Nations: Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49 at 165, U.N. Doc. A/44 736 (1989), reprinted in 28 I.L.M. 1448, 1451-52 (1989) (citing pressure to get the Convention prepared in accordance with agreed-upon deadlines as well as to maintain a consensus, inclusion of the concept of "double jeopardy", protection for alien children, those who were a part of "forced internal migration" and medical experimentation was not included. Also forgone was the establishment of an international ombudsperson.). Citing conflicts with the Koran, Islamic delegations lodged objections to freedom of religion, adoption, and foster care issues. In their view, only adults may choose a religion, and the concept of Kafala requires specific rules related to enabling children to become a part of one's family that are wholly different from Western ideals of adoption. *Id.* See Convention, *supra* note ____ arts. 20-21 ("compromise" language). See also U.N. Doc. E/CN.4/1989/48 (1989).

²²⁸ This represents at least 150 groups who advocated for signature and ratification by the United States. See Paul Taylor, *Senators Press Bush to Sign UN Children's Rights Treaty*, WASH. POST, Apr. 19, 1991, at A21.

²²⁹ This represents one-third of the world's population. See *World Population Information*, U.S. Census Bureau, available at <http://www.census.gov/ipc/www/world.html>.

high-ranking²³⁰ and distinguished United States Senators.²³¹ Famous newsmakers also lent their voices in a bevy of media coverage.²³²

Some reports indicated that the former elder President Bush wanted to sign the Convention,²³³ but ultimately decided against it, citing conflicts with “individual state laws.”²³⁴ In response to the critics of the Convention, the virtues were extolled. Former U.S. Senator Bill Bradley (D-NJ), in his capacity as co-chairman of the effort to ratify the Convention in the United States, stated: “[i]n some countries, [ratifying the Convention would mean] they’ll no longer sell children into slavery or use them for cannon fodder. Kids have to have an identity—an official identity as a person. We have to move to dramatically improve health care as well as education. All of those things are a part of the commitments under the convention.”²³⁵

²³⁰ Former Senate President Robert J. Dole (R-Kan.) supported the Convention. Arguably he could have scheduled it for a vote if the President would have presented it

²³¹ Richard G. Lugar (R-Ind.) Senator Lugar is the current Chairman of the Senate Foreign Relations Committee. See biography of Senator Dick Lugar, <http://lugar.senate.gov/bio.html>. “The world looks to [the United States] to take a leadership role on issues like this. For us to be a non-player is intolerable.” Taylor, *supra* note 177 (quoting Christopher J. Dodd (D-CT)). Senator Dodd was also the primary sponsor of the Act to Leave No Child Behind: a comprehensive (albeit incremental) approach to improve the quality of U.S. children in 2005. See S. 448, 108th Cong. (2003).

²³¹

Child neglect in the United States is a tragedy, yet the government is not held legally responsible. If our children were dying in plane crashes, were being driven from their homes by arson or given guns by terrorists, public outrage would result in a flood of investigations, indictments and hearings. Our crisis is passive—it stems not from action but from inaction. The Convention gives us the opportunity to make the welfare of our children a point of law.

Senator Mark O. Hatfield (R-Ore.) also supported the Convention.

²³² Hugh Downs, *Perspective on Children Most Vulnerable, Least Protected 134 Heads of State Have Signed it; the United States Should Ratify the U.N. Convention on the Rights of the Child*, L.A. TIMES, Feb. 10, 1991, at M5. Mr. Downs was the chairman of the U.S. Committee for UNICEF

²³³ See Lee, *supra* note 41. (“[b]ut White House lawyers are still reviewing potential conflicts between the wording of the treaty and federal and state laws regarding military service and criminal punishment for teenagers”).

²³⁴ See Timothy J. McNulty, *U.S. Out in Cold, Won’t Sign Pact on Children*, CHI. TRIB., Sept. 30, 1990, at 4. (noting the convention does not define when life begins and proscribes the death penalty).

²³⁵ See Wendy Benedetto, *USA Needs Commitment to its Kids, Bradley Says*, USA TODAY, Sept. 24, 1990, at A13.

It was not until the United States formally signed the Convention in 1995, but the Clinton Administration did not submit it to the United States Senate for ratification because of opposition from the former U.S. Senator Jesse Helms, then chairman of the Senate Foreign Relations Committee, citing incompatibility with universal law as he saw it,²³⁶ and conservative groups²³⁷ that believed the treaty infringed on U.S. sovereignty and the rights of parents to raise their children.

²³⁶ The Convention was “insane interpretation of international law” and “incompatible with the God-given right and responsibility of parents to raise their children.” See Wright, *supra* note ____.

²³⁷ LifeSite declares

[the Convention] could undermine the family by granting to children a list of radical "rights" which would be primarily enforced against the parents. These new fundamental rights would include "the right to privacy," "the right to freedom of thought and association," and the right to "freedom of expression."

See the full text at <http://www.lifesite.net/waronfamily/unicef/homeschoolalert.html>. Congressional Action: The United Nations Convention on the Rights of the Child.

The Family Research Council is a conservative advocacy group. The FRC is a conservative advocacy group.

Next year, Senator Jesse Helms of North Carolina is going to be retiring, but so long as Senator Helms was head of the Foreign Relations Committee, this treaty [the Convention] was never going to be ratified. Now that he is no longer Chairman of the Committee and will not be in the Senate, we face a much riskier situation.

William Saunders, Esq., *The U.N. Threat to the Family: Bad Treaties Make Bad Law* (2005), <http://www.frc.org/get.cfm?iPD02G1>.

The Concerned Women for America stated:

The Convention basically states that children are autonomous, and it takes away the right of a parent to be involved in crucial decisions in people's lives. It essentially makes the government the parent. It gives children unlimited rights, such as freedom of expression. It's also against abuse of children and, while we're opposed to abuse, what is abuse? Does that include spanking of a child? A family should be able to discipline a child as it sees fit.

Wright, *supra* note ____ (quoting Denesha Reid, director of public policy, Concerned Women for America).

The Christian Coalition had a talking points campaign against the Convention. four on the Christian Coalition's "10 Legislative Goals" for 1995, "Pass a 'parental rights act' to limit the government's role in child-rearing decisions. Defeat the U.N. Convention on the Rights of the Child, a human rights treaty that the coalition contends interferes with the parent-child relationship." See *Christian Coalition Unveils 10 Legislative Goals*, L.A. TIMES, May 20, 1995, at B4.

This opposition had been cited as a reason for Clinton's withholding submittal to the United States Senate.²³⁸ Further concern about the Convention was that it bans the death penalty for those under age eighteen.²³⁹ Critics of the Clinton administration decision believed that he bore part of the blame, because he did not seek to win support for the Convention, either with the public or in the Senate as he did for example on welfare reform. He chose not to use the bully pulpit and he clearly had a command of it. He currently uses his former presidential status to deal with some of the concomitant ills in not ratifying the treaty.²⁴⁰

Currently, it appears that President Bush the Younger is not interested in sending the Convention to the Senate for ratification either,²⁴¹ though he did sign and send the

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Unfortunately, despite its virtues, the Convention's been lumped into a whole agenda of issues that involve opposing the United Nations. There's also a constituency that doesn't think we should be involved or subject to any international instrument such as a treaty. There's not a political environment to support it at the moment. Submitted it would be a suicide mission.

[Joe Mettimano, deputy director of public policy at the U.S. Committee for UNICEF] Wright, *supra* note 41. See also John W. Osborn, Jr., *Convention on Children's Rights*, L.A. TIMES, Dec. 8, 1999, at B8.

²³⁹ See *What's News*, WALL STREET J., Oct. 1, 1990, at A1. See also Convention, *supra* note 15, art. 37(a). See Human Rights Watch, *Iran: Juvenile Offenders Face the Hangman's Noose*, Human Rights News (Sept. 23, 2006) at http://hrw.org/english/docs/2006/09/22/iran14247_txt.htm. (showing Iran still executes policy of death by hanging of children. Pakistan, China and the United States have executed juveniles between 2001-2005.) The United States Supreme Court has since ruled it unconstitutional to execute juveniles. See *Roper v. Simmons*, No. 03-633.

²⁴⁰ See William J. Clinton Foundation at www.clintonfoundation.org.

²⁴¹ See, e.g., William Orme, *U.S. Quits Treaty on Global Court Diplomacy: The Bush Administration Won't Back the Move for a Criminal Tribunal*. *U.N. Official Call the Action Unprecedented*, L.A. TIMES, May 7, 2002, at A3. See also *State Department Briefing*, Richard A. Boucher, State Department Spokesman, Jul. 6, 2000, available at 2000 WL 897420 (addressing the Convention).

Boucher: I'd also add to what I said yesterday. I was asked about the convention of the right of the child, and I think we said no decision had been made on submitting that one to the Senate for its advice and consent. But the administration does intend to submit both the optional protocol on the involvement of children in armed conflict and the option protocol on the sale of children, child prostitution and child pornography to the Senate for ratification later this month. This was done in such a way that the protocols can be notified—can be ratified independently of the convention.

Question: So the two protocols, not the convention, not the treaty?

Boucher: The two protocols. We intend to submit and we intend to seek ratification. They can be ratified without the convention.

Optional Protocol²⁴² to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which passed with an understanding.²⁴³ Even with that, opposition remains strong against any discussion of the Convention itself.²⁴⁴ The current president while endorsing the protocols has gone out of his way to express that he does not endorse the Convention and has sought to withdraw the United States' signature from the Convention.

E. Criticisms Legitimate or Slippery Slope Arguments?

The criticisms, which seem to be largely based upon perception,²⁴⁵ focus on anti-parent sentiment and abortion rights issues.²⁴⁶ From a local governing perspective however, ultimately, the Convention provides the framework to have the dialogue about policy choice on behalf of children. The stats empirically identify the problems. This article has surveyed the roadblocks and objections and how to overcome them.

Instead of the federal government hiding behind the jurisdictional objections—child law is state law—and recognize that states are not equipped to develop a uniform, standardized approach to these issues, the President should engage the nation from the

Id. See also H. Con. Res. 348 (condemning the use of child soldiers); 149 Cong. Rec. H10139-04, H10145 (daily ed. Oct. 30, 2003) (statement of Rep. Young) (showing how Optional Protocol to the Convention limits the way in which funds can be appropriated for defense, relief, and reconstruction of Iraq and Afghanistan).

²⁴² See *United Nations General Assembly: Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography*, 39 I.L.M. 1285 (Nov. 2000); 8 INT'L HUMAN RTS. REP 288 (2001) and 8 INT'L HUM. RTS. REP. 293 (2001).

²⁴³ 148 Cong. Rec. S5716-04, S5717 (daily ed. Jun. 18, 2002) (statement of Sen. Reid). Among the understandings were "(1) no assumption of obligations under the Convention on the Right of the Child. The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol." *Id.*

²⁴⁴ See, e.g., 150 Cong. Rec. E512-04, E512 (daily ed. Apr. 2, 2004) (statement of Rep. Paul) (warning against the "transjudicialism in conforming American law to ungratified treaties such as the Convention).

²⁴⁵ With the exception of the abolition of the death penalty for those eighteen years of age and younger. See Convention, *supra* note _____, art. 37.

²⁴⁶ See *id.*

bully pulpit and be singularly focused through to a national solution. The will was there for the creation of the Department of Homeland Security to deal with terrorism and attempt to coordinate U.S. security concerns. It was refined by the inclusion of a National Intelligence Director cabinet-level post. No less effort should be put in our future survival as without our children! What will be fit for protection in the United States if our most precious resource is continually mishandled and the protection of our children remains on this steady decline. No one can say or cite to any statistic that says the state of our youth is improving. Their opportunities are growing and a bright future thus lies ahead for all of our children. Because our policy makers are intent on focusing on what our children will be in the future, they are virtually blind to the fact that a uniform approach is necessary to deal with who they are now and empower them to take hold of what they can be in their future. And when all else fails, as a matter of international law, the United States could certainly file a reservation, if in fact the United States found that even under the textual approach it could not, as a matter of federal policy, justify support for any article based upon the plain meaning of the statute. Therefore, the probative value of the objections to ratification of the Convention seems to be significantly outweighed by the prejudicial effect of rejecting it on behalf of U.S. children.

F. What the U.S. Can Learn from Worldwide Objections: Sit the Critics Down for a Conversation About Unifying Policy With the Advocates

Critics of the Convention omit that this country formed the League of Nations as well as shaped the United Nations. We have an entire executive branch department—the Department of State that is skillful with providing advice to policy makers on the

implementation and application of treaty participation. Today's interdependency requires international engagement. Specifically, the Convention has no more power over U.S. law than the United States will allow.²⁴⁷

The criticism that there is some organ in the United Nations that could trump domestic law and thus force or at least impinge upon the rights of the United States is nonsense.²⁴⁸ Detractors of the Convention suggest that the Committee on the Rights of the Child (Committee) is such an entity that would somehow trample on U.S. sovereignty—this is little more than an hissy fit.

Practically, the Committee is a *monitoring* body with no authority over domestic law. It collects information that allows statistics to be catalogued and enables opportunities for increased awareness on just how bad a job is being done on behalf of children.²⁴⁹ Hypocrisy cannot hide for long and ignorance of the ills simply cannot be claimed by policy makers as a result. No country to date has reported being taken over by the Committee despite submitting data to it consistently and despite the fact that many nations have rewritten their constitutions to reflect the articles within the Convention. Therefore, it seems that education on the tenets of the Convention as well as its enforcement mechanisms is needed to clear away the misinformation and to give the

²⁴⁷ Louis Henkin, *U.S. Ratification of Human Rights Convention: the Ghost of Senator Bricker*, 89 AM. J. INT'L L. 341, 344 (1995). On the off chance that the United States will ratify the Convention during the current administration, wholesale reservations could sustain the charge that the United States "is pretending to assume international obligations but in fact is undertaking nothing." *Id.*

²⁴⁸ See *supra* note 233. In an effort to ensure that President Clinton did not send the Convention to the United States Senate in 1993, the group warned that "10 experts would be parenting U.S. children." *Id.* (referring to the Committee on the Rights of the Child). See Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331. Arguably, any reader could naturally come to the same conclusions and paraphrasings under the other, prevalent approaches to treaty interpretation (founding fathers, teleological) because there is so much legislative history that should ensure that any reading of the Convention should not lead to an absurd result.

²⁴⁹ For an overview of the work of the Committee, see *Report of the Committee on the Rights of the Child*, U.N. Doc. CRC/C/100 (2000); Karp, *Reporting & The Committee on the Rights of the Child* (A. Bayefsky ed.); Sardenberg, *Committee on the Rights of the Child, Basic Process*, 6 TRANSNAT'L LAW & CONTEMP. PROBS. (1996).

Convention the vetting it needs to help shore up U.S. federal public policy in respect to its children.

G. Absent the Conversation: Solace for Advocates through Custom and General Principles of International Law?

Discussion of the unwillingness to ratify the Convention does not necessarily end the story. International law has two basic sources: international agreements, i.e., treaties and conventions and customary international law that have the force of law.²⁵⁰ The former is binding upon signature by the head of state and ratification by the legislative body in many cases. The latter affects all nations. The Convention is an international agreement, which creates law for the nations that ratify it subject to any valid reservations, understandings or declarations (RUDs) attached by a ratifying nation.

Customary international law “results from a general and consistent practice of states followed by them that forms a sense of legal obligation,” and binds nations that have not dissented from the rule while it was developing.²⁵¹ The Convention is signed in the United States and by virtue of the number of ratifying states is at least customary international law. At present, the United States is ignoring the effect of both. And because it is the world’s only super power it is being allowed to get away with it by other states. Its people should not be so kind given the stakes. Individually, students continue to do mission work and give their summers to assist with the ongoing efforts around the world to implement the Convention and the MDGs. But there has not been a renewed call for ratification of the convention.

²⁵⁰ See *supra* note 124.

²⁵¹ Restatement (Third) Foreign Relations Law of the United States §102 & cmt. D.

The current administration has signed Optional Protocols²⁵² that have since been in force (though still excepting any influence of the CRC). But given the reach of the tenets of the CRC into international law, and the extent of the commitment by much of the world to the MDGs, these principles should go a long way into shaming the United States for not formally being a part of this effort.²⁵³ The world has moved forward²⁵⁴ the United States is moving backwards by virtue of the increase in the proportion of poor children (despite the decline in the overall poverty rate in 2005). At some point it will have to deal with “Stalin’s statistics” and determine if even the death of one child is tragic enough to respond with an institutional shift in policy.

What is more, for all of the urgings to not read anything into law and language used in law, one would think that the textual approach to interpretation using the plain meaning of the language, and the thoroughly documented legislative history of the Convention would usher each critic out of the President’s door with great ferocity.²⁵⁵ Instead, silence appears the only current response.

V. World Efforts at Reallocation of Resources to Deal With Unmet Needs— Specifically: the Millennium Declaration

When 189 member states of the United Nations signed the Millennium arising out of the Millennium Summit September 2000, the purpose was to declare then achieve the Millennium Development Goals (MDGs or Goals) by 2015. The Declaration

²⁵² Others have too, however children being pressed into service still occurs. See Burma ‘Forcing Boys to Fight’ <http://news.bbc.co.uk/2/hi/asia-pacific/213986.stm> (according to Human Rights Watch Report, My Gun is as Tall as Me, 70,000 soldiers are under 18. See also *Nepal: Children Still Living in Fear of Madist Rebels*, Sept. 11, 2006, at <http://www.irinnews.org/report.asp?ReportID-55506&SelectRegion-Asia>. (forcing children into military service by Nepalese rebels.)

²⁵³ Remember Feeney and But see the latest rulings on international law by the United States Supreme Court.

²⁵⁴ See generally, IN LARGER FREEDOM, *supra* note ____.

²⁵⁵ See e.g., *supra* notes 233 and 244.

consolidated a set of eight interconnected development goals into a global agenda with time-bound targets and quantifiable indicators. This consensus “road map” for how to proceed emerged with the help of an aware population, NGOs and governments. The MDGs is a guide that encompasses the tenets of human rights, good governance and democracy.

This is not to say that the Goals are not without their shortfalls. They are in fact a starting point. But given the varying ability of each member state to implement them alone allows the MDGs to represent a common ground to provide a unified effort. .By using the legitimacy that the MDGs provide, civil society organizations,²⁵⁶ health, legal and other professionals can confer and assist their governments with these Goals. Falling short is not an option but if that ultimately happens, it is better than the current efforts of U.S. policy makers.

It is an administration’s prerogative to pick and choose which treaties and conventions it will support. The process of doing so is a major component of U.S. foreign policy. The reach of customary international law is murkier to the extent of its force of law versus treaty obligations. Eventually, however, the United States will get to the point where it is the “emperor with no clothes”!²⁵⁷ Every area of the world is actively involved (as a participant or a recipient) in the MDGs. The federal government is not. The next section reviews the Goals.

VI. Millennium Development Goals Furthering the Convention But Falling Off the Mark

²⁵⁶ The MDGs Campaigning Toolkit outlines how civil society organizations are to assist. *See id.* at 25-27. The concept of civil society organizations is further discussed in Part VI.

²⁵⁷ For a synopsis of the expression, *see* http://en.wikipedia.org/wiki/The_Emperor's_New_Clothes.

The next evolution of children's rights led to the development of interconnected, worldwide goals to keep state parties on track with implementing the tenets of the Convention and contextualizing the rights therein into their domestic practices: the Millennium Development Goals. The Millennium Development Goals (MDGs) serve as time-bound tools to which state parties will further apply the Convention against quantifiable indicators. Importantly, the MDGs are neither corrosive to state sovereignty nor demagoguery to parents' roles to raise their children. Each of the MDGs relates directly or indirectly to the well-being of children and young people. Those nations who bound themselves to guarantee (at some point) that all children would have the food, shelter, water, education and healthcare they needed as a fundamental premise of the state knew that there was much more to be done to achieve this. Continuing from the Convention, the world moved to the UN Millennium Declaration.²⁵⁸ In it, world leaders²⁵⁹ created eight²⁶⁰ MDGs at the September 2000 Millennium Summit,²⁶¹ in part to divide the UN Millennium Declaration into manageable pieces. It contextualizes the promise made by world leaders in 2000 to focus their resources for the next fifteen years to meet the needs of the world's poorest, and thus raise the standard of living for all peoples.

World leaders pledge to eradicate extreme poverty and hunger, achieve universal primary education, promote gender equality and empower women, reduce child mortality, improve maternal health, combat HIV/AIDS malaria and other diseases, ensure

²⁵⁸ A/RES/55/2 United National Millennium Declaration 055751.

²⁵⁹ World's nations and world's leading development institutions, e.g., the World Bank.

²⁶⁰ See HUMAN DEVELOPMENT REPORT 2003: MILLENNIUM DEVELOPMENT GOALS. UNDP *available at* <http://www.developmentgoals.org>. The UNICEF Annual Report acknowledges eight goals, see page 7 of UNICEF Annual Report, but only records seven, omitting: Develop a global partnership for development. See CDFAC ANNUAL REPORT, *supra* note at 25.

²⁶¹ See www.undp.org or www.un.org/millenniumgoals.

environmental sustainability and develop a partnership for development. From each goal a target or set of targets were formed measuring/marketing the progress²⁶² from 1990-2015.

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In 2002, the children had their opportunity to lend their voices to the chorus of consensus. During the UN's Special Session on Children, the delegates agreed to four principles: promoting healthy lives, providing quality education, protecting against abuse, exploitation and violence, combating HIV/AIDS,²⁶⁴ again sounding a familiar set of themes.²⁶⁵ These themes do not appear to be so susceptible to political abuse that it is worth denying U.S. leadership in regards to these principles. To observe that the funding necessary to meet these needs could be covered by the amount of the increase in the United States' defense spending for fiscal year 2004 puts the surreal imbalance between capability and lack of desire into perspective.²⁶⁶

As a part of the implementation strategy, the diplomats not only took back the tenets of the MDGs to their governments but also to the people. Since the United Nations Commission on Sustainable Development in 2004, youth have been involved.

By doing so they established the MDG campaign complete with website and programmatic tips to make the MDGs substantively a part of the consciousness of each nation. The Millennium Campaign works closely with civil society groups, locally, nationally and internationally. Therefore, anyone or can walk and chew gum at the same

²⁶² MDG PROGRESS REPORT, *supra* note ____.

²⁶³ Some by 2020.

²⁶⁴ See *Building A World Fit for Children*, UNICEF, May 8, 2002, at 17.

²⁶⁵ Cf. CDFAC Annual Report, *supra* note __, at 43 (CDFAC goals in section titled *A National Policy Vision for Children Achievable by 2010*. There really seems to be consensus around the world about how to better the lives of children and families—uniformly embraced everywhere but in the United States.)

²⁶⁶ See CDFAC ANNUAL REPORT, *supra* note _____. (criticizing the swift U.S. commitment of the original \$87 billion to rebuilding Iraq.)

time can participate in alleviating the world's suffering.²⁶⁷ Organizers created a "tool kit" to help youth, NGOs government officials and any other interested parties²⁶⁸ to be aware and an immediately active participant in the MDG process. It is under the banner of "No Excuses" applying pressure on poor countries as well as those with high GNPs.²⁶⁹ This is a part of the movement of civil society²⁷⁰ encouraging citizens and like-minded professionals to make the MDG a means and not an end²⁷¹ and to persuade its governments to develop national goals.²⁷² The United Nations is the monitoring body assisting this campaign²⁷³

In September 2005, world leaders convened to assess the progress of these goals in the wake of 1/3 of the time having elapsed. The record is mixed. Asia outpaced all others in dealing with Goal #1 for example. In some cases the lack of money, in others the leadership took a toll on accomplishing these goals. Progress has been made even in tsunami torn Southeast Asia. AIDS research is progressing. But much more needs to be done. In Secretary General Kofi Annan's address, "In Larger Freedom" he stated that \$37.4 billion per year would meet the goals. The World Bank estimates that an additional \$40 to \$70 billion dollars a year in development aid is needed if the goals are to be reached within the given time frame.²⁷⁴ When you consider what the U.S. federal

²⁶⁷ See www.millenniumcampaign.org for more information.

²⁶⁸ Document some of the stars' participation around the world (J's comment, why don't they help in the U.S.?)

²⁶⁹ See MDGS CAMPAIGNING TOOLKIT at 13-19.

²⁷⁰ See *id.* at 22. This includes volunteer groups, NGOs, and other bottom-up advocates. See generally, Ben Saul, *In the Shadow of Human Rights: Human Duties, Obligations, and Responsibility*, 32 COLUM. HUM. RTS. L. REV. 565, 568 (2001).

²⁷¹ See 2.1. *The Millennium Declaration* in THE MDGS CAMPAIGNING TOOLKIT at 3.

²⁷² See *id.* at 23.

²⁷³ See *id.* at 20-21. The Secretary General established the Millennium Project in 2002 to generate realistic methods for governments to establish national strategies to achieve the MDGs. See, e.g., Chandrika Bahadur, Margaret Kruk, Guido Schmidt-Traub, et. al, PREPARING NATIONAL STRATEGIES TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS: A HANDBOOK (October 2005).

²⁷⁴ The MDGs Campaigning Toolkit puts the figure at \$100 million.

government spends on other things \$70 billion or even the \$100 million figure now being tossed around by advocacy groups is a mere pittance in cost given the benefit that would be received. At the same time, the U.S. has no reliable national policy framework for organizing principles beyond the American Competitive Initiative.

The world has made a variety of improvements however incremental because it had a unified plan, broken into goals and then narrowed as targeted action. To be sure, because these statistics exist in light of near-universal ratification of the Convention, one should be measured in enthusiasm about the progress thus far, because so much more can and needs to be done. Still, it is worth examining each Goal and Target in turn.

A. MDG #1: Eradicate Extreme Poverty and Hunger

Goal #1 seeks to eradicate extreme poverty and hunger. There are two targets: from 1990 to 2015, halve the proportion of people whose income is less than one dollar per day, the second to reduce suffering from hunger. The need for the goal and targets was based upon the estimate that 110.1 million young people were undernourished,²⁷⁵ 238 million were living on less than \$1U.S. a day,²⁷⁶ and 462 million were living on less than \$2US a day.²⁷⁷

1. Target #1

During the period of 1990-2001, 250,000,000 moved beyond \$1US per day,²⁷⁸ and there was a reduction in extreme poverty in all parts of the world except Sub-Saharan

²⁷⁵ 800 million undernourished over all according to the MDGS CAMPAIGN TOOLKIT at 4.

²⁷⁶ Out of 1.2 billion living on less than \$1U.S. per day. *See id.* at 4.

²⁷⁷ *See conflict* in numbers in note 57 and note 71 for discussion.

²⁷⁸ Though we don't know how sustained it is now, this can be attributed to "sustained growth in China and acceleration of the economy in India, being the two most populous countries in the world.

Africa where there was an increase in extreme poverty rates.²⁷⁹ And the average income fell from sixty-two cents in 1990 to sixty cents in 2001.²⁸⁰ Africa is still lagging and the Asian Bank Development Report states that Southeast Asia is beginning to slip in its progress.²⁸¹

2. Target #2

The indicator that created this target is the prevalence of underweight children under five years of age. Target 2's aim is to halve the proportion of people who suffer from hunger between 1990 and 2015. There have been dramatic declines in chronic hunger;²⁸² however progress is slowing as the world focuses on other MDGs. While some of this is attributable to natural disasters and conflicts,²⁸³ much of the suffering has to do with shifting priorities and so the long slide away from progress may begin again. What is more, eight hundred million people are still undernourished and 153 million children have been reported as underweight.²⁸⁴

B. MDG #2: Achieve Universal Education

Goal two is to achieve universal education. Educated people have more tools with which to make life decisions. The World Declaration on Education for All, in 1990 affirmed the international commitment to universalizing primary education and massively reducing illiteracy before the end of the decade. In the *World Programme of Action for Youth to the Year 2000 and Beyond*, education is listed first among the 10 priority areas

²⁷⁹ MDG PROGRESS REPORT, *supra* note ____ at 6.

²⁸⁰ *Id.* at 7.

²⁸¹ *See e.g., Children in East Africa Risk Death From Drought: U.N.*, Reuters, May 15, 2006 at www.nytimes.com.

²⁸² This is measured in terms of the proportion of people lacking food needed to meet their daily needs. MDG PROGRESS REPORT, *supra* note _____ at 7.

²⁸³ *See* charts at MDG PROGRESS REPORT at 9.

²⁸⁴ *See id.*

for youth development. The Dakar Framework for Action identified six major goals for education, two of which became MDGs later that year. These two goals incorporate the following targets: (a) ensure that by 2015, all children will be able to complete a full course of primary schooling; and (b) eliminate gender disparities in primary and secondary education, preferably by 2005, and at all levels of education by no later than 2014. This should lead to creating more productive members of society. With 115 million children of primary school age who are not attending school²⁸⁵ they have no chance at this process. Further, 97% of those live in developing countries.²⁸⁶ Needless to say, the early deadline has been missed.

In 2002, the World Bank launched the Fast Track Initiative to provide immediate and incremental technical and financial support to countries that have appropriate educational policies but are not on track to achieve universal primary education by 2015. The current level of international assistance appears to be insufficient to achieve universal primary education by 2015.

It has been said that real progress will depend on the extent to which educational rights and commitments translate into enforceable legislation and well-conceived policies, plans and programs. These need to be vigorously promoted state-by-state if the momentum is to progress. Governments are setting specific national education goals, including gender-related targets. Various countries have integrated programs in their educational curricula that address racism and violence, promote multicultural values and tolerance, and allow youth to be educated in their native languages.

²⁸⁵ MDG PROGRESS REPORT, *supra* note at 10.

²⁸⁶ See MDGS CAMPAIGNING TOOLKIT, *supra* note ___ at 4.

In the past decade there has been a growing emphasis on “life competencies” within the education system. The rising popularity of alternative approaches and modalities such as non-formal learning, lifelong learning, distance education, e-learning, peer education and on-the-job training shows that the concept of education is increasingly expanding beyond the traditional classroom. Perhaps the U.S. primary school system could benefit from some of these successes given the dollars available.

1. Target #1

This target was born out of a focus on literacy between 14 to 24 years old. It seeks to ensure that by 2015, children²⁸⁷ everywhere will be able to complete a full course of primary school. All areas, with the exception of to the Commonwealth of Independent States and Europe improved in this area from 1990 to 2015. Despite this, Sub-Saharan Africa has more than one-third of its primary school age children not attending.²⁸⁸ Once the world gets them enrolled they must remain there so the family economy must be able to support that.²⁸⁹

C. MDG #3: Promote Gender Equality and Empower Women

The *raison d’etre* of this goal is to promote gender equality and empower women. Where there have been a number of international instruments relating to gender issues the U.S. hasn’t participated in the formal adoption of many.²⁹⁰ The MDG Report 2005 states “Having an equal voice in the decisions that affect their lives--from within the family to

²⁸⁷ That is, this includes both genders.

²⁸⁸ MDG PROGRESS REPORT, *supra* note ____ at 10.

²⁸⁹ *Id.* at 12. (discussing the gender disparity and treatment)

²⁹⁰ See Part _____ for discussion.

the loftiest realms of governments—is a key element of women’s empowerment.”²⁹¹

Enough said.

1. Target #1

The reason for this target was the disparity in the ratio of literate women to men 14 to 24 years old. That said, target one requires the elimination of gender disparity in primary and secondary education preferably by 2005 and in all levels of education no later than 2015. This has not been realized by 2005.²⁹² Sixty-four percent of the world’s estimated illiterate adults are women.²⁹³ In geographical areas where there are resources disparities, we find boys chosen to receive these resources over girls. Many populations are dealing with issues such as separate lavatory facilities and gender stereotypes in the classroom, let alone ABC’s and 123s.²⁹⁴ And, 60% of the 113 million children not in primary schools are girls.²⁹⁵ Men still dominate decision-making positions, higher skilled-high paying jobs.²⁹⁶ A third or more seats in national parliaments held by women exist in only nine countries! More work needs to be done in this area; it starts with education.

D. MDG #4: Reduce Child Mortality

As has been stated more than 10 million children die of preventable causes, or 30,000 per day every day. Child mortality is closely linked to poverty. Advances in

²⁹¹ MDG PROGRESS REPORT, *supra* note ____ at 14. (cites only 16% of all seats of parliaments as held by women).

²⁹² Though half of the reporting developing countries have in primary education. *See* chart on page 15. MDG PROGRESS REPORT, *supra* note _____ at 15-16 (charts).

²⁹³ MDGS CAMPAIGNING TOOLKIT, *supra* note _____ at 4.

²⁹⁴ MDG PROGRESS REPORT, *supra* note ____ at 14.

²⁹⁵ MDGS CAMPAIGNING TOOLKIT, *supra* note at 4.

²⁹⁶ MDG PROGRESS REPORT, *supra* note ____ at 15-16 *See* Charts.

infant and child survival have come more slowly to people in poor countries and to the poorest people in wealthier countries.²⁹⁷ More voice must be given to this preventable ill.

1. Target #1

This target focuses the world's attention on reducing by 2/3 from 1990 to 2015 the mortality rate for persons the under 5 years of age. This is one target where region wide substantial progress has been made, but county to county progress has slowed.²⁹⁸ For example, nearly ½ of all deaths among children under age 5 occur in sub-Saharan Africa.²⁹⁹ More must be done continent-wide given all it has provided to the rest of the world.

E. MDG #5: Improve Maternal Health

The issue that brought this to the attention of the world is the maternal mortality ratio. This goal seeks to improve maternal health. "A mother's health increases the likelihood that the child will be in poverty and become objects of exploitation."³⁰⁰ Every year, 500,000 women die as a result of pregnancy and childbirth.³⁰¹ This is unconscionable.

1. Target #1

This target is designed to reduce by ¾ from 1990 to 2015, the maternal mortality ratio. This target creates family planning controversies for many in the United States,³⁰²

²⁹⁷ *Id.* at 18.

²⁹⁸ *Id.* at 18.

²⁹⁹ *Id.* at 19 (showing some of the primary reasons for this: weak health systems, conflicts and AIDS).

³⁰⁰ *Id.* at 22.

³⁰¹ MDG CAMPAIGNING TOOLKIT, *supra* note _____ at 5.

³⁰² *See* MDG PROGRESS REPORT, *supra* note _____ at 23 (showing success in Bangladesh and in Egypt).

but still sees a woman in sub-Saharan Africa with a one in 16 chance of dying in pregnancy or childbirth!³⁰³

F. MDG #6: Combat HIV/AIDS, Malaria and Other Diseases

The rationale for this goal is the HIV prevalence among pregnant women aged 14 to 24 years old. With 22 million people having died from AIDS in 2000, and 13 million children losing their parents to the disease, goal #6 seeks to combat HIV/AIDS, malaria and other diseases. The work on HIV/AIDS is well documented.³⁰⁴ Everyone from former President Clinton, to Bill and Melinda Gates and Bono bring continued awareness of the plight to the fore.³⁰⁵ Other diseases such as tuberculosis have developed drug-resistant strains.³⁰⁶ The three hundred million cases of malaria³⁰⁷ and 60 million people infected with tuberculosis may be helped by the Bill and Melinda Gates Foundation's recent commitment to eradicating both diseases.³⁰⁸ Still the number of people infected is a travesty when you consider both are preventable by relatively simple measures.

1. Target #1

This target seeks to halve by 2015 the spread of HIV/AIDS and reverse it. With three women living with HIV/AIDS for every man in the worst affected countries³⁰⁹ it is incumbent that efforts continue to be undertaken to stem the tide of this epidemic. Ninety

³⁰³ MDG CAMPAIGNING TOOLKIT, *supra* note _____ at 5.

³⁰⁴ MDG PROGRESS REPORT, *supra* note at 24.

³⁰⁵ Stephanie Strom, *Bill Gates' Charity Races to Spend Buffet Billions*, N.Y. TIMES, Aug. 13, 2005, (foundation to add global development to help poor in developing countries). By contrast, to support the fight against AIDS and extreme poverty, the president's 2007 budget cuts development assistance as well as mother and children programs. See Carol Welch, <http://www.millenniumcampaign.org>, Feb. 9, 2006.

³⁰⁶ MDG PROGRESS REPORT, *supra* note ____ at 24.

³⁰⁷ 90% of these cases are in sub-Saharan Africa.

³⁰⁸ See also *Soros Gives \$50,000,000 to Tackle African Poverty*. WASH. POST, Sept. 10, 2006, at <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/13AR2006091300113.html?sub=AR> (examining philanthropic efforts by wealthy to spur achievement of MDGs).

³⁰⁹ MDG PROGRESS REPORT, *supra* note ____ at 25.

percent of the 40 million people living with HIV virus reside in developing countries, 75% in sub-Saharan Africa.

2. Target #2

Here, those who have pledged to do so seek to have halted its spread by 2015 and to begin to reverse the incidence of malaria and other major diseases. It is extraordinary to note that something as simple as mosquito net distribution is substantially effective at stemming the tide of malaria.³¹⁰

G. Goal #7: Ensure Environmental Sustainability

This goal seeks to ensure environmental sustainability. With the data global warming ever the more alarming, the world is moving on without the U.S. signature on the Kyoto Treaty.³¹¹ The goal seeks to encourage the more prudent use of natural resources.³¹² This goes to the heart of to lack of safe drinking water; 2.4 billion lacked access to adequate sanitation. “The rural poor are most immediately affected because their day-to-day subsistence and livelihoods more often depend on the natural resources around them.”³¹³ In fact, soil degradation affects the livelihood of as many as one billion people.³¹⁴

1. Target #1

This target seeks to integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resources. This

³¹⁰ See *id.* at 28. See chart.

³¹¹ High-income countries with 14% of the world’s population are reported to generate 44% of CO₂ emissions.

³¹² MDG PROGRESS REPORT, *supra* note ____ at 30.

³¹³ *Id.*

³¹⁴ MDGS CAMPAIGNING TOOLKIT, *supra* note _____ at 5.

includes regions whose land for deforestation of the rainforests and the loss of ecosystem must be replaced by other sustainable long term economic growth and incentives. Not only is this in the best interest of the economy but also the future sustainability of our children.³¹⁵ There are also issues with ecosystem, energy production, of greenhouse gases, and continued ozone depletion.³¹⁶

2. Target #2

This target determines to halve by 2015, the population of people without sustainable access to safe drinking water and basic sanitation. While access to safe drinking water has improved more needs to be done. Awareness of the lack thereof will likely help,³¹⁷ to the extent policy makers are not focused on the issue.

3. Target #3

Target #3 aims to have achieved a significant improvement in the lives of at least 100 million slum-dwellers by 2020. By 2007, the number of people living in cities is expected to exceed the rural population in developing regions,³¹⁸ with almost one billion living in slums. It will be difficult to answer many of the MDGs if by next year the problems will be exacerbated by city living.³¹⁹

³¹⁵ MDG PROGRESS REPORT, *supra* note at 30. Developing Areas that Contain Forests.

³¹⁶ *See generally, id.* at 31-32.

³¹⁷ Jay-Z Tour to Stress Water Crisis: Rapper Jay-Z is to Use is Forthcoming World Tour to Visit Poor Regions Where Clean Water is Lacking, BBC News (brining awareness to water crisis) at <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hientertainment/4779>; “WASH” Strategy Improves Access to Safe Water, Sanitation in Niger, www.unicef.org/infobycountry/Niger_35633.html (discussing method for increasing safe drinking water in Niger).

³¹⁸ *See* chart on MDG PROGRESS REPORT, *supra* note at 34.

³¹⁹ *Id.*

H. Goal #8: Develop a Partnership for Development

This goal was based upon an unemployment indicator specifically targeting the disparity in gender unemployment and those between the ages of 15-24 years. The goal is to develop a global partnership for development. The struggle to win the poverty war and eliminate its concomitant ills requires not only community understanding but also community participation in responsible development. Interdependence requires careful consideration of the impact of one's decisions on another. No country can live the lie of isolationism in the 21st Century. Caring for yourself requires that you care for other people's children. Caring for your children therefore requires that you care for others' children. Developing countries cannot expect handouts but should expect helping hands. This may include partial debt forgiveness, trade, reduction of consumption, spurring industries, thorough basic education, medical support and presentation of ecological assets. With a renewed focus on this goal over the past year, it seems that governments are moving in this direction. With many interrelated targets, it will be ever more important for the United States to become involved if this Goal is to be achieved. The targets are expansive, have a number of elusive policy-oriented challenges, and shifting common ground as to root causes that date from slavery and colonization³²⁰ of

³²⁰ See e.g., James Traub, *The Way we Live Now: 8-3-03; The Tug of Paternalism*, N.Y. TIMES, Aug. 3, 2003, at <http://select.nytimes.com/search/restricted/article?res=F60812FF3D5A0C708CDDA10894DB404482>

Look at the example of Sierra Leone and Great Britain, its former colonial master. The British have no meaningful "interests" to protect in Sierra Leone. The expatriate community is long gone, and the country is almost irrelevant commercially. The only thing that remains is ephemeral -- a historic relationship. But for the British, that was enough. In the spring of 2000, when a precarious peace entrusted to a U.N. force collapsed, Prime Minister Tony Blair sent troops into Sierra Leone. A contingent of 800 soldiers deterred an attack on Freetown, the capital, and most of them quickly returned home, demonstrating that such interventions can achieve a great deal with minimal effort.

developing countries to the psychological trauma to the exportation of the natural resources needed to get the money to address the targets. Discussion beyond the enumeration of the targets therefore is beyond the scope of this particular paper. The targets are to 1. Address the special needs of the least developed countries, individual countries and small island developing states, 2. Develop further an open, rule-based, predictable, non-discriminating trading and financial system, 3. Deal comprehensively with developing countries' debt, 4. In cooperating with developing countries, develop and implement strategies for decent and productive work for youth,³²¹ 5. In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries, and 6. In cooperation with the private sector, increase awareness the benefits of new technologies, especially information and communications.

The terrible rub for this MDG is just how deep the systemic change may work against the other Goals. For example, while children in the United States can arguably be anything they want in terms of a profession, all other things being equal, there just may not be a market for one's services. In development countries, children cannot be anything they want *and* there is no market for their services. So what is one to do once one finishes formal education?

Over the past decade, the international community has strengthened its commitment to addressing youth employment. In 1995, governments called for special attention to youth unemployment in the Copenhagen Declaration on Social Development

It was once said that "The sun never set on the British Empire." See Susan Wise Bauer, *THE STORY OF THE WORLD, VOL. IV: THE MODERN AGE 1850-2000 CH. 1. SEC. VICTORIA'S ENGLAND*, available at <http://peacehillpress.net/sotw4/chapter1.html>.

³²¹ As an example, the increase in the numbers of youth in secondary and tertiary education is a positive development; however, labor markets in many countries are presently unable to accommodate the expanding pools of skilled young graduates. In a number of settings this is partially attributable to the failure to coordinate education provision with labor market needs, but it is perhaps more fundamentally linked to the fact that large number of youth is now coming of age and is trying to find work.

and Programme of Action of the World Summit for Social Development. Six years later, youth organizations adopted the Dakar Youth Empowerment Strategy, 2001.³²² The Millennium Declaration reflects the commitment of heads of State and Government to develop and implement strategies that give young people everywhere real opportunities to find decent and productive work. This objective was subsequently integrated into the MDGs eighth goal, which relates to developing a global partnership for development, explicitly referring to creating employment opportunities for young people. Next came the Youth Employment Network.

The Youth Employment Network (YEN), comprising the United Nations, ILO and World Bank as core partners, was established following the Millennium Summit to initiate action on the ground, with the result that the youth employment issue has gained momentum at the national level. Recommendations based on four global policy priorities—employability, entrepreneurship, equal opportunities for young women and men and employment creation—were issued in 2001 through the Secretary General’s office. The YEN is now supporting the efforts of 13 lead countries committed to the development and execution of strategies for youth employment, as well as those of a number of other countries currently at various stages in the planning or implementation of national action plans in this context.³²³ Nevertheless, there are signs of success.

I. MDGs Effect on “Local” Legislation

The MDGs and targets resolve much of the ambivalence surrounding the measurement of poverty. The MDGs acknowledge the multidimensional nature of

³²² Also see the letter of the Government of Senegal to the United Nations General Assembly conveying the results of the Fourth World Youth Forum, *cited in A/C.3/56/2*.

³²³ The 13 countries are Azerbaijan, Brazil, Egypt, Indonesia, the Islamic Republic of Iran, Mali, Namibia, Nigeria, Rwanda, Senegal, Sri Lanka, the Syrian Arab Republic and the United Kingdom.

poverty and establish benchmarks not only for increasing income levels but also for improving access to food, basic education and literacy, educational opportunities for girls, quality healthcare, and adequate sanitation in the form of good drinking water. The Millennium Declaration and the MDGs reflect the international consensus on the importance of poverty eradication as a major development objective. If in the civil society these goals can be properly localized then they and their targets could be achievable.³²⁴

Civil society: charities, volunteer groups, religious organizations[hereinafter Civil Society Organizations or CSOs]—essentially any non-governmental unit—can plug into the MDGs achievement process despite the lack of a formal commitment U.S. policy makers. CSOs have been provided with a number of aids: the MDG Campaign Toolkit, the Millennium Project Handbook, and the Millennium Campaign Website.³²⁵ Among those aids includes how to plan a campaign within one’s state,³²⁶ how to use the existing tools advocacy tools within one’s state,³²⁷ and even provide campaign developmental skills lessons.³²⁸ The Toolkit provides the problems as represented by the statistics and matches them with the applicable MDG³²⁹ Next the Toolkit matches the targets and provides ideas as to how CSOs can meet them in their states by using examples of states who have begun implementation and integration of the MDGs by target into their

³²⁴ See MDGS CAMPAIGNING TOOLKIT, *supra* note ___ at 6.

³²⁵ See www.millenniumcampaign.org. MDG Campaign Toolkit Section 2.8.

³²⁶ See MDG CAMPAIGNING TOOLKIT, *supra* note ___ at 35-69.

³²⁷ See *id.* at 70-119.

³²⁸ See *id.* at 120-148.

³²⁹ See MDG CAMPAIGNING TOOLKIT, *supra* note _____ Section 2.2.

national development campaigns.³³⁰ Many governments have formally translated the goals into national ones to strengthen their national campaigns.³³¹

In Bulgaria for example, the policy makers looked at Goal #1 and determined how much the average monthly income needed to be to achieve it.³³² They could identify the net enrollment rate increase needed or reductions needed to meet Goal #2 through Goal #8.³³³ Vietnam went as far as creating the Vietnam Development Goals.³³⁴ There, the MDGs were divided into eleven VDGs and individualized targets with some slated for achievement in 2005 and others through 2020³³⁵ in accordance with the MDGs deadlines. Further, links to other campaigns are available at the Millennium Campaign Website and is updated daily. Individuals and groups can sign up to become members of the Campaign and help spread awareness throughout their states with the information provided, which can always be verified by going to the source material.

These MDG aids are supported by the U.N. The United Nations Development Program (UNDP) provides a variety of support mechanism including monitoring, assessment and using its leverage to bring the private sector, willing governments and Civil Society together around a particular Target or Goal.³³⁶

Germany,³³⁷ Canada, Australia,³³⁸ New Zealand, Switzerland and Japan are all considered major participants in the promotion of the MDGs. It bears mentioning the

³³⁰ See *id.* at Section 2.4

³³¹ These aids are constantly being refined. See *e.g.*, Chandrika Bahadur, Maragaret Kruk, Guido Schmidt-Traub et al, PREPARING NATIONAL STRATEGIES TO ACHIEVE DEVELOPMENT GOALS: A HANDBOOK (Oct. 2005).

³³² Other examples are published daily at <http://www.millenniumcampaign.org>.

³³³ See MDGS CAMPAIGNING TOOLKIT, *supra note* ___ at 7.

³³⁴ See *id.* at 10-11.

³³⁵ *Id.*

³³⁶ See *id.* at section 2.5.

³³⁷ See *e.g.*, <http://www.millenniumcampaigns.org/site/pp.asp?C=grKVL2NE&6=1334487> (Germany increasing aid, debt relief and informing its citizens about the MDGs as a part of the national agenda.)

localizing efforts to meet the needs of children living in the United States, as to date, the city of Los Angeles, California³³⁹ is the only governmental partner in attempting to promote the MDGs in the United States.³⁴⁰

VII. “Local” Efforts to Meet the Needs of Children in the U.S.

Currently, the United States has no uniform context in which to provide the needs of children. In many cases, children’s needs outlined in the Introduction of this article have not risen to the consciousness of policy makers let alone ascribed the level of rights accorded the level of those needs as rights. Over the last several years, child advocates have been tirelessly arguing for the development of a framework that considers the direct and immediate needs of children in the midst of other policy considerations and systematically funds them.

Governors, educators, parents and others have roundly criticized the only system-wide policy position the current administration clings to: the NCLBA.³⁴¹ It has come under withering criticism as calls for delay in implementation, suspension and repeal are mainstay responses.

³³⁸ In addition to arming its citizens with government-sponsored power points to bring the message of implementation of MDGs to every town, the government has pledged to double its aid across the board (though it is not enough to keep the MDGs on course). www.millenniumcampaign.org.

³³⁹ See MDGS CAMPAIGNING TOOLKIT, *supra* note ___ at 24.

³⁴⁰ With the United States making minor commitments to the MDGS, faith leaders formally requested that the president’s advisor on development to the National Security Council formally endorse the MDGs and participate by restructuring U.S. foreign policy assistance. Carol Welch, *Interfaith Leaders Press MDGs*, Feb. 2, 2006, at www.millenniumcampaign.org.

³⁴¹ “Our leaders in Washington and the state capitals have not trusted teachers, principals and superintendents to grade and assess their own students rigorously. And so, over the last decade, politicians have enacted many new testing and rating systems—most notably the federal No Child Left Behind Law in 2002—to ensure that there is an accurate and scientific measure of how students and schools perform. No more touchy-feely glop.... Unfortunately, it may be that the more we test and the more rating we do, the less we know.” Michael Winierip, *On Education; Are Schools Passing or Failing? Now There’s a Third Choice Both*, N.Y. TIMES, Feb. 12, 2006.

The trap here is that if the United States pawns off the needs of the child to his or her parents and extended family, even those who may not be in the direst of straits will lose their optimism about life if there are no programs and policies that support them in the effort.³⁴² Allocations that only go to the poorest in good budgetary times and the richest because they can still pay for their needs even in the leanest of budgetary times largely ignores those in the middle. More analysis needs to be done and the organizations that currently provide analysis need do so under a framework that aspires rather than assigns, rewards and demotes its participants with no safety net or rubric for positive empowerment over than negative reinforcement. The United States could benefit from a goal-oriented comprehensive framework and the world would benefit from U.S. participation if not leadership. It bears considering what mayors, city councils, local policy makers and parents have done on the issue of considering the direct and immediate needs of children in their spheres of influence. Perhaps there is a methodology available to attract federal policy maker attention.

A. Why is it Important to Survey Local Government Action?

Children's law in the United States is primarily state law which is least removed from the sufferer of the many problems identified. Drawing attention to local government efforts in the United States is in keeping with the current climate of local

³⁴² There are a number of famous efforts, The Harlem Children's Zone, helps about 200 children per year. The Children's Defense Fund is a tireless advocate and resource for children's causes. Clearly they cannot improve every child's life one by one alone. Other less publicized efforts include: Micheal Winerip, *On Education, How a Cleveland Suburb Spurs Black Achievement*, N.Y. TIMES, Feb. 12, 2006; Ralph Loos, *Private School for Black Boys is Planned*, THE TENNESSEAN, Sept. 26, 2006, at <http://www.tennessean.com> (assisting 100 students and their families with education in an effort to improve their lives). In a state with hundreds of thousands of children, how many can this program help? Bill Gates is now attempting to reinvent high school learning processes. See *Windows HS: Microsoft Designs a School System*, at <http://www.cnn.com/2006/TECH/ptech/09/07/schooloffutureap/index.html>.

control and may give citizens the best opportunity to have an immediate impact on their daily lives.

Even if the Convention is not ratified or while the battle may be taken up again after the presidential election of 2008 that will leave seven years to implement the Millennium Development Goals that apply to the United States just as much as to the rest of the world. While the Convention could serve as a tool, the MDGs could serve as an organizing set of principles that do not have the taint of politics upon them as the Convention may. Arguably the Convention and the MDGs rise to the level of customary international law in the United States and gives those grassroots advocates moved to work on implementation the opportunity to do so in their spheres of influence under an organized framework. The United States can express massive policy changes from the bully pulpit or mandates from the top-down. Why not take a bottom-up approach to meeting the needs of our children in the meantime?

B. Steps to Improve the Lives of Children

It was once said that “[a]ll politics is local.”³⁴³ International law works because cooperating states³⁴⁴ regard it as law. Federal law works because states regard the federal form of government as legitimate.³⁴⁵ State law works because its citizens are organized

³⁴³ See Thomas P. O’Neill, William Novak, *MAN OF THE HOUSE; THE LIFE AND POLITICAL MEMOIRS OF SPEAKER TIP O’NEILL* (Random House 1987) (clarifying that the Speaker got the quote from his father rather than the Speaker being the source of it).

³⁴⁴ Anne-Marie Slaughter and William Burke-White, *The Future of International Law is Domestic (Or, the European Way of Law)* 47 *HARV. INT’L L.J.* 327 (discussing monism and dualism) “Monists argue that international law and domestic law are part of the same system, in which international law is hierarchically prior to domestic law. Dualists, in contrast, claim that international and domestic law are part of two distinct systems and that domestic law is generally prior to international law.” *Id.* at note 1. See generally J. G. Starke, *Monism and Dualism in the Theory of International Law*, 17 *BRIT. Y.B. INT’L L.* 66 (1936). Regardless of which approach you subscribed to you would be captured into this rubric.

³⁴⁵ This was a large point of the Civil War.

into further political subdivisions³⁴⁶ understand its function, and are close enough to policy makers to have an effect on law that affects their daily lives.

It has often been said that public officials need to have their constituents' best interests at heart, not just the priorities of the special interests. The well-being of children is too important for local governments not to attempt to show leadership. Local leadership with elected officials as change agents is essential. Without making some form of these suggested changes a part of local government culture, leaders run the risk of having to restart these initiatives every election, so that when the next budget crises hits, children again become less of a priority, interest wanes, and our collective situation becomes more grave. Until federal policy makers are persuaded to rethink their actions toward child health, safety, and welfare, here are some steps that can be taken locally to respond to the statistics put forth in this article.³⁴⁷

1. Consistent Awareness: A Children's Ombudsman

Citizens do not often have time to individually represent children and argue for their needs everyday. That is why we have representatives. However, it is also true that children do not typically have lobbyists; hence their voices are rarely heard in city council chambers. Children could benefit from a consistent, neutral and empowered advocate who can not only track and report findings on a regular basis, but also can mediate the most critical cases when agencies are unable to or do not recognize the need.

³⁴⁶ Counties, parishes and municipalities as well as special purpose districts are examples.

³⁴⁷ See, e.g. note 51, *supra* note _____. State attorney of New York taking the ability to affect change on behalf of shareholders as a part of his mandate and now asking the Federal government to step in and continue the work.

An ombudsman for children at the local government level³⁴⁸ could bring attention to issues that agencies do not have the wherewithal to monitor, or that children's commissions have not cited in requests for funding. Some local governments have ombudsmen to scrutinize councils and agencies. The ombudsman should be proficient in understanding the machinations of local government, the budget process, as well as state and private children's agencies. The position would be even more effective with an investigative staff that has the ability to publish its findings regularly.

Locally, for the ombudsman to be truly effective the position should be appointed at the city council level or by the mayor. The position would be taken more seriously with a direct line to the city leadership. Should intervention become necessary, the ombudsman would be strategically situated to ensure positive results as well as having a bully pulpit to create awareness about children who should receive services. Children's issues would be well documented and have a regular and prominent place on the legislative agenda considered by the city council as it plans budgets in the future. A series of ombudsmen for children could be effective in providing testimony to state legislative committees reviewing children's to encourage the redirection of dollars to fill gaps so children's concerns would be better funded—particularly in times of surplus.

In times where there is no surplus or “windfalls” as the state budget suggests, political leaders would do better to understand that all children should have access to basic necessities: adequate food, water, sanitation, shelter, healthcare, education, a stable

³⁴⁸ The Ombudsman Association (TOA) has thorough materials that are being used by dispute resolution and mediation programs throughout the United States. Others include the U.S. Ombudsman Association, the International Ombudsman Association and the Association of College and University Ombudsmen. Christina M. Kuta, UNIVERSITIES, CORPORATIONS, AND STATES USE THEM—NOW IT'S TIME TO PROTECT THEM: AN ANALYSIS OF THE PUBLIC AND PRIVATE SECTOR OMBUDSMAN AND THE CONTINUED NEED FOR A PRIVILEGED RELATIONSHIP 389 (2003). Several Fortune 500 companies offer workshops on Ombuds programs though the use of TOAs materials. Currently, no such training is being offered at the federal government level for ombuds related to children's programs.

family life, the opportunity to safely mature from child to adult, and a pollution-free environment in which to do so.

Some children have guardians-ad-litem in the court system to help assist the judge in determining the best interests of the child. It is time that local governments and political leaders enjoy that advantage and accord that same gravity to children. In case of extreme need individual cases should be taken up and dealt with by the Ombudsmen office.

2. Develop a Children’s Services Council Administrative Arm of City Council and County Commission

Many counties throughout the United States have some form of enabling legislation for a Children’s Services Council (CSC) that is dedicated in some way to improving the lives of children or prioritizing funding for their well being. For those cities and counties with councils, some needs are being met. However the anecdotes that lead this article originated from a city that has a well-funded council. Some are not. Current allocations simply do not permit the councils to provide assist to everyone who has a need. Enacting an ordinance to create such a council in conjunction with an ombudsman would improve the situation.

C. Embracing Public Private Partnerships – Law Schools Collaborate With Communities

Local law schools can be a great resource for child advocacy work. Many have child advocacy clinics; others have policy centers dedicated to the needs of children. Law schools are training students to utilize a collaborative, more comprehensive model in the provision of child services. Law schools could further their commitment to the communities in which they are housed by creating more Child Advocacy Centers that not

only offer guardian and attorney-ad-litem programs, but also offer family law, juvenile law, special needs, and research and policy institutes.³⁴⁹ Research and policy institutes dedicated to analyzing, testifying, and offering positive legislation on healthcare, education, and other basic needs of children would be very important in not only helping the persons in need but also educating the surrounding communities.³⁵⁰ The next evolution of these legal clinics and centers is the idea of a transnational center: part think-tank, part live client clinic, part advocate, and part clearinghouse of information. It combines the understanding and delivery systems of local, state, and federal efforts in the United States with successful programs from other nations that may lack a federal form of government but have a number of different cultures, ethnicities—nations—within their borders. It encourages the identification of cultural, political and legal norms and attempts to use the empirical data to maximize efficiency in the delivery of services to “the child” in the legal category’s various groups, i.e., generations, adolescents, youth and children.

A Center for the Transnational³⁵¹ Needs of Children (Center or CTNC) would enrich the focus of the traditional children and families clinics at many law schools. A CTNC would be dedicated to assist public and private child and social service agencies in resolving specific cases and beginning to research and report in areas wherein local governments could be more effective in the delivery of child services.

³⁴⁹ See, e.g., DANIELLA LEVINE, *To Assert Children’s Legal Rights or Promote Children’s Needs, How to Attain Both Goals*, 64 FDMLR 2023 (1996).

³⁵⁰ *Id.*

³⁵¹ Purposefully as opposed to international. See note _____ *supra*.

1. Developing a Center Based Upon the Convention

a. Mission

In a law school setting the mission of the Center for the Transnational Needs of Children (CTNC or Center) would utilize the Convention and prepare law students to serve underserved communities by training in the promotion of reallocation of existing resources to institutionalize a solution-oriented framework to completely meet the basic needs of children so they to have access to adequate water, food, clothing, shelter, basic education, and the ability to mature into adulthood in a secure environment with family and other loved ones, by 2015 in keeping with the MDGs.

b. Process

A Center, located in a number of law schools could accomplish this mission by facilitating relationships that allow students to work with practitioners in a variety of disciplines at the local government, state, federal and international level. The world has rallied behind the Millennium Development Goals deadline of 2015, of which these basic needs are a part, to better ensure these needs are met.

A Center could aid existing local government efforts in institutionalizing sensitivity to these basic needs of children by being a leader in the Academy of legal education in collaborating with innovative professionals, local governments, and the international community to highlight the best of globalization in meeting the needs of those in the worst position. Currently, sub-Saharan Africa and Southeast Asia need the most assistance in this reengineering of local services. The United States of America's

urban core features the most urgent requirement to reallocate resources for the benefit of children. This leaves people of African descent in need of the most assistance.³⁵²

A Center could provide students with the opportunities to learn how law intersects with other professional disciplines, governments and their subdivisions to create, support, and advance these unmet needs on behalf of children. By working in this nexus, the Center could promote the ethical, intellectual, and practical training needed to effectuate the necessary incremental and ideological policy changes. This could be accomplished through rigorous international research, publication, testimony provided to those in a position to make the necessary changes come to fruition as well as policy initiatives created with partnerships to strengthen the Center's efforts.

c. Objectives, Targets and Payoffs

To accomplish this, such a center could develop definitive targets to accomplish its mission including: 1. Foster a collaborative environment with public and private entities to address the local through international needs of children and youth, enabling

³⁵² See Charles Smith, *Racism and Community Planning: Building Equity or Waiting for Explosions*, 8 STAN. L. & POL'Y REV. 61, 65 (1997); see also Melissa Cole, *The Color-Blind Constitution, Civil Rights-Talk, and a Multicultural Discourse for a Post-Reparations World*, 25 N.Y.U. REV. L. & SOC. CHANGE 127, 128.

In a contemporary, 'color-blind' society, the segregation laws of just a few decades ago have been confined to history and, as a result, the legal arguments based on this legacy have lost their utility. Instead, in a stunning example of the dissonance between legal rhetoric and reality, Boalt Hall, limited by the dictates of Proposition 209, admitted only fourteen students of African descent to the Class of 2000, a decrease of 81% from the previous year. More stunning still, only one student of African descent enrolled.

For perspectives with high percentages of peoples of African descent, see Tanya Kateri Hernández, *To be Brown in Brazil: Education and Segregation Latin American Style*, 29 N.Y.U. REV. L. & SOC. CHANGE 683 (discussing generally the impact of race and skin color on the ability to have access to services in Brazil) Other documented efforts include, Edward Telles, *Residential Segregation by Skin Color in Brazil*, 57 AM. SOC. REV. 186 (1992) (analyzing causes of pervasive residential segregation in metropolitan areas); Cristina Torres Parodi, EQUIDAD EN SALUD: UNA MIRADA DESDE LA PERSPECTIVA DE LA ETNICIDAD 14 (2001), at http://ciss.insp.mx/migracion/site_library/raza17.doc (describing spatial segregation in Latin America); see J.A. Lindgren Alves, *The Durban Conference Against Racism and Everyone's Responsibilities*, 37 U.S.F. L. REV. 971, 990 (2003) (discussing the Durban Declaration Against Racism).

the law student, lawyer (attorney ad-litem/guardian ad-litem), judge, healthcare professional, social science professional, and policy maker devise concrete solutions to stanching or reallocating shrinking resources on behalf of children and families, 2. Partner with other centers for justice, educational institutions, non-governmental organizations, the United Nations, and other stakeholders in the promotion of sustainable environments for children and families, 3. Identify other areas in public policy that detrimentally affect underserved, underemployed, and underrepresented communities and determine ways to combat these societal ills using the collaborative model of legal assistance, 4. Offer symposia, continuing education credits, manuals, and other opportunities for practitioners and policy makers to orient their methodology on meeting children's needs in a proactive manner, 5. Document these efforts to extend beyond the metropolitan area to engender international support through publication and public testimony, and 6. Utilize the transnational model of the working group to institutionalize the best solutions towards globalized progress on behalf of children. Specifically, the Center could form and work in an international working group to facilitate the working group process in the United States of America.

This proposal could be used to add to existing family law centers that currently attempt to fill the gaps in children services that local government and state and national policy miss.

D. Legal Professionals

In conjunction with law schools and providers of childcare, lawyers can use their social training to effect positive change. Legislatures are weighing some of the most far-reaching, ideologically driven policy choices affecting modern government—from

budget shortfalls and immigration policy to healthcare and education crises to widening trade gaps and homeland security concerns.³⁵³ While neither the quality of lawyering nor the process of making law is monolithic, among the aims of virtually every law school is to train its students to develop independent (and ethical) professional judgment, through some process consisting of legal writing, common law synthesis, statutory interpretation, policy analysis, and clinical skills-training through rigorous conditions.³⁵⁴ All of these skills serve clients and courts and they reduce overall transaction costs to society.³⁵⁵ Common law synthesis, for example, not only leads to an understanding of the law on behalf of the paying client, but also, as an officer of the court, will aid the lawyer in assisting the understanding of judges in how the law should be applied. Statutory interpretation will aid the attorney in drafting agreements in a manner that will result in fewer negotiations ending in unnecessary litigation as opposed to consummated deals, because the drafter will be in a position to understand what the law is and how the prescriptions, proscriptions, and prohibitions contained in legislative language affect business relationships.³⁵⁶

The understanding of policy as reflected through regulation, executive order or other official declaration empowers the advocate to more accurately predict how the

³⁵³ The National Conference of State Legislatures 2004 Fall Forum and Special Meeting focused on each of these topics. See <http://www.ncsl.org/programs/seminars/forum/Index.htm>.

³⁵⁴ For a thoughtful discussion on this topic, see generally, Alice M. Nobel-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report Into a Doctrinal Course*, 3 NEV. L.J. 32 (2002); Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 CLINICAL L. REV. 149 (2004) (advocating for the further diversification of skill set through applied problem solving in first year and clinical courses). But cf., Angela Olivia Burton, *Cultivating, Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm Into the Clinical Setting*, 11 CLINICAL L. REV. 15, 15 (2004) (finding the law school curriculum to be primarily focused on “rule-based inductive, deductive, and categorical reasoning process and linguistic precision”), arguably not bad qualities for a lawyer-legislator! See Cleveland Ferguson III, *Increasing the Number of Lawyer-Legislator Begins With an Understanding of Campaign Finance Regulation*, 79-OCT Fla. B.J. 66 (Oct. 2005).

³⁵⁵ *Id.*

³⁵⁶ *Id.*

practical effects of choices made in government affect the constituents they represent before they occur. Daily application of this skill set is in part what persuades many to believe the *juris doctor* degree is the most diversified of all post-secondary degrees.³⁵⁷ These new attorneys³⁵⁸ and other legally trained professionals³⁵⁹ use of the Convention could reorient the individual relationship between the legal advocate, the child, and the child's familial and community relationships.

In the face of unwillingness by the current administration to ratify the convention, local governments could adopt local Charters for Children. This has the effect of further educating the community. Law student will become staff attorneys at legislative and executive committees and policy institutes. They will also become more sensitized members of branches of government.³⁶⁰

³⁵⁷ See e.g. Ryan Moore, *Entrepreneur Offers Words of Encouragement* THE INDIANAPOLIS NEWS/INDIANAPOLIS STAR, Nov. 6, 2003, at S02. This is concluded by virtue of a purely empirical study that shows the number of lawyers previously in state legislatures was more than any other profession. This trend exists in Canada as well. See e.g., Bonnie Goldberg, *From Law to Public Office; Why Does Politics Lure Lawyers? Law Seen as a 'Passport Degree'* TORONTO STAR, November 8, 2003, at C11.

³⁵⁸

Lawyers must view the nation's children, as a group and as individuals, as their clients in the broadest sense. Attorneys should advocate on behalf of children long before problems develop that place a child before a court. Whether their clients are individuals seeking advice from small town general practitioners or large corporations served by major law firms, good attorneys often help their clients to solve problems and resolve disputes *before* the escalate enough to land the client in court. America's children need the same kind of help.

We hope that all sorts of attorneys will commit themselves to represent children: major law firms, law departments in major corporations, existing public interest and pro bono projects, law school faculty and students in clinical training programs, small practitioners, government attorneys, and even those who are not actively engaged in practicing law, whether because they have entered a related field or are retired.

See American Bar Association Working Group on the Unmet Legal Needs of Children and Their Families, *America's Children at Risk: A National Agenda for Legal Action* 3-8 (1993) *quoted in* Douglas E. Abrams, Sarah H. Ramsey *Children and the Law: Doctrine, Policy and Practice* 11 (Second edition 2003).

³⁵⁹ For those who do not actually want to pursue law and a more cynical view, see Arthur Austin, *The Postmodern buzz in Law School Rankings*, 27 VT. L. REV. 49,57 (2002) (discussing the "Napster Generation" and declaring that "[l]egal education is "the default for college seniors who have no idea what they want to do after graduation.")

³⁶⁰ See Ferguson, *supra* note 229.

E. Local Governing With a Charter for Children: An Outgrowth of the Convention

Local governments could make a quantum leap forward by adopting their own framework: a charter for children.³⁶¹ This statement would put the citizens³⁶² on notice that in every budgetary decision made by the council, the needs of children will be considered.

A charter could read:

“We the Mayor and Commissioners of the City of _____, proclaim

1. Our children should have access to adequate food, water, and clothing
2. Our children should have access to adequate shelter with a working sanitary system.
3. Our children should be surrounded by a loving family (biological, substitute or otherwise) in a stable social and economic environment.
4. Our children should have knowledge of their own language, religion and culture.
5. Our children should be educated and prepared to be competitive in the interdependent world market.
6. Our children should be kept safe from all forms of harm.
7. Our children should have the opportunity to mature into adulthood, having access to information as appropriate to assist in their development as productive citizens.
8. Our children should live in an environment free of pollution.

In each decision affecting the lives of children we pledge to consider the above principles and will strive to fund the appropriate services in supporting their families to meet these needs.”

From this charter, each office which reviews the budget before it is submitted to the city council could include a children’s impact statement that identifies the impact on the lives of children when applicable. These are powerful, simple statements that should resonate as common sense to developed, democratic forms of government.

³⁶¹ See e.g., *supra* note 200. (Rockland County Resolution).

³⁶² And the policy makers

Given the state of affairs, one could ask “Is there any purpose for committing to this concept? Is the problem too widespread?” The world’s response is along the order of “think globally, act locally” as many countries are in hot pursuit of these very tenets. Governments of 189 countries are actively engaged in making the eight Millennium Development Goals, which are similar to the suggested charter above, a reality by 2015. Currently, United States federal policy does not officially recognize these goals. This lack of official recognition does not prevent city leaders from moving forward to improve the lives of their children.

VIII. Local Governments Only a Partial Response to Institutionalizing Change for Children

If children who are mature enough to be trained to spot issues of their peers as well as to self-assess their development in a manner that enables them to communicate to take a direct part in shaping the recommendations as to how local governments could better meet their needs, then the policy makers would need to be made to listen regularly.³⁶³ Significant stakeholders have begun to take the lead to train their staffs in considering the needs of children as a priority in their provision of services.

This bottom up approach will likely get the attention it needs from the top to develop sustainable national policy. The problem with society relying on local government, i.e., all towns, cities, counties, parishes and states were not created equally. Competition among the states for federal dollars, lack of uniform resources, uneven distribute of goods and services³⁶⁴ between communities lead to charges of favoritism,³⁶⁵

³⁶³ Novel programs such as teen court, community channel focus groups with youth are both examples.

³⁶⁴ Think property taxes in richer districts leading to “better” schools. We always subdivide and get away from the elements we don’t like when we have the ability to do so.

³⁶⁵ School admissions policy comes to mind.

racism,³⁶⁶ the paralysis of analysis³⁶⁷ or gridlock³⁶⁸ in any legislative initiative.³⁶⁹ What is more, national policy should not have to depend on where someone is living: the problem gets worse, we move out and it further erodes the tax base, creates brain drain, white flight and all of the other requisite excuses for why urban centers cannot be fixed.

This is where the moral leadership and the bully pulpit on the federal level most effectively contribute as an equalizing factor: to say “No more! Our children are too important.” This is where a national pronouncement, i.e., ratification of the Convention and the implementation of the MDGs here in the United States would be beneficial.

We could address health care policy from a different paradigm rather than merely acknowledging the market economy approach to setting prices for drugs but complain about the broken Medicaid/Medicare programs.³⁷⁰ Katrina disaster relief aid comes quickly in all forms rebuilding infrastructure so families can get back home, youth in school, and rebuild the psyche of the community. Levees are reinforced rather than lies. Federal programs and conference like Help America’s Youth that seek to continue the discussion can make long-lasting efforts under the transnational working group model.

Some local governments are using their constitutional power to seek special purpose districts for the purposes of more efficiently providing child services in the face

³⁶⁶ Separate but equal comes to mind.

³⁶⁷ See e.g., Sewell Chan, *Mayor Offers Plan to Ease Traffic Congestion on Staten Island*, N.Y. TIMES at <http://select.nytimes.com/search/restricted/article?res=F50C1EF63F540C7B8EDDAA0894DE404482> Mar. 28, 2006.

³⁶⁸ This is the constant knock against Congress, whose perception for getting things done is as low as the president’s approval ratings.

³⁶⁹ This leads to incrementalist approaches to policy. See generally, Ferguson, 1 FAMU L.R. 15, *supra* note

³⁷⁰ Marcus Kabel and Stephen Majors, *Wal-Mart Expands Generic Drug Plan*, WASH. POST, Oct. 6, 2006, at <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/05/AR2006100500696.html> (Target Stores plan to match Wal-Mart’s efforts.) How can companies see that it is in their best interests to think outside of the box and federal policy makers refuse to? See Mark Schlesinger, *Reprivatizing the Public Household? Medical care in the Context of American Public Values*, 29 HEALTH POL. POL’Y & L 969, 973 (2004).

of a lack of national consensus being spurred on by the president. Other local governments cannot achieve even this small victory so the efforts of those that can are mere drop in the bucket for the needs of all U.S. children. Some local government officials may have been moved by personal experience others more pointedly cajoled by advocacy organizations. Despite the success of any of these initiatives, the problem of child poverty is larger than any local government. These issues require national leadership. Without the president and Congress seeking a strong federal (read national) consensus through budgetary support (development), continued provision for security (multilateral cooperation against terrorism) and a constant promotion of human rights (federal policy planning for “the child’s existence,³⁷¹ a youth’s transition from adolescence to adulthood with humane standardized testing bundled with well funded transition-building apparatuses,³⁷² and structural investment (for the poor and middle class) in a higher quality of life, we run the risk of losing generations of our children who will be ill-equipped to lead and lose still others to ideological manipulation that could have otherwise been prevented because their living conditions help them choose to seek the “afterlife” because they have little to live for now.

IX. Conclusion

The world’s pursuit of the MDGs could use the voice and the resources of the United States and its president. Many students, celebrities, non-profits, and at least one local government are responding to the transnational call. In this interdependent world we can ill afford not to help, if not lead. If we are to maintain and win back our

³⁷¹ Health insurance for families and day care centers for those who need them.

³⁷² Again, I go back to the after school programs, physical education, fine arts and field trips that were a part of the public school systems in the 1970s and 1980s.

international credibility, we cannot accept a truth that we are only moved by the tragedies that affect us immediately or personally but our compassion compels us to act on behalf of those whose face is represented only by the numbers recorded in governmental reports. And so, if our collective global future is to flourish, we must consider the least of us and ensure that those who cannot protect themselves nor provide for themselves are not abandoned to despair and hopelessness and relegated to Stalin's "statistic."