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## 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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**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**

*Cleveland Ferguson III\**

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 institution,<sup>1</sup> to set sustainable domestic policy, carry the mantle as

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1. John Yoo, *How the Presidency Regained Its Balance*, N.Y. TIMES, Sept. 17, 2006 (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.)

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 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.

*Id.* Christopher S. Kelley & Kevan M. Yenerall, *Shysters, Sycophants, and Sexual Deviants: the Hollywood Presidency in the 1990s*, WHITE HOUSE STUD. (2003) (showing Hollywood films

leader of the free world, and head the world's only superpower<sup>2</sup> with high credibility<sup>3</sup> and near-boundless international political capital<sup>4</sup> in foreign policy.<sup>5</sup>

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depicting the institution of the presidency in a mostly negative light); see *The Elections; Transcript of President-Elect's News Conference in Houston* N.Y. TIMES, Nov. 10, 1988, at B2 (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."); see also David Crary, *Americans Open Wallets for Tsunami Relief*, A.P. (Jan. 4, 2005), available at <http://www.militaryphotos.net/forums/showpost.php?s=97fd6e5e7b49f254f5321a6831c9c8e9&p=611531&postcount=1> (it sets up the League of Nations, peace accords at Camp David, blows of tsunami relief until public pressure builds); Press Release, UN Humanitarian Affairs Office, *Tsunami Relief Effort Must be Done Right, Used as Model For Future, Says Special Envoy at Headquarters Conference: UN Humanitarian Affairs Office, Bus. Roundtable Host Mtg. on Pub./Private Disaster Relief* (Apr. 26, 2005), available at <http://www.un.org/News/Press/docs/2005/iha1038.doc.htm> (former President Clinton extols the virtues of public-private partnerships in aid relief); see Robert J. Spitzer, *Clinton's Impeachment Will Have Few Consequences for the Presidency*, 32 PS: POL. SCI. & POL. 541 (Sept. 1999) (Provides a discussion of the presidency as an institution. 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.).

2. See Superpower, Wikipedia, <http://en.wikipedia.org/wiki/Superpower> (last visited May 17, 2007). By this I mean:

A superpower is a state with a leading position in the international system and the ability to influence events and project power on a worldwide scale; it is considered a higher level of power than a great power. It was a term first applied in 1943 to the United States, the Soviet Union, and (mostly, but not only) in retrospect to the British Empire. Following World War II, the power of the British Empire waned, and the Soviet Union and the United States were regarded as the only two superpowers, then engaged in the Cold War.

*Id.* (Citing to Wikipedia is maligned by some scholars, but it is interesting to note that it is often the first entry to any Google search of terms. Needless to say, comparing information from a variety of sources has always been an important research step. In this article, Wikipedia citations are used for their descriptive enunciations of the words or phrases cited and not for substantive points.); see, e.g., Pranab Bardan, *China, India Superpower? Not so Fast!: Despite Impressive Growth, the Rising Asian Giants Have Feet of Clay*, YALEGLOBAL, Oct. 25, 2005, available at <http://yaleglobal.yale.edu/display.article?id=6407> (discussing the rampant poverty and living conditions of the countries' poor); see Gabor Steingart, *A Superpower in Decline: America's Middle Class Has Become Globalization's Loser*, SPIEGEL ONLINE, Oct. 24, 2006, available at <http://www.spiegel.de/international/0,1518,druck-439766,00.html>; see also *infra* Sections I, IV.

3. See, e.g., Catherine Powell, *United States Human Rights Policy in the 21st Century in an Age of Multilateralism*, 46 ST. LOUIS U. L.J. 421, 427-28 (2002) (discussing how the United States could increase its credibility by signing and ratifying human rights treaties).

4. ATHAN THEOHARIS, *THE THREAT TO CIVIL LIBERTIES, IN COLD WAR CRITICS: ALTERNATIVES TO AMERICAN FOREIGN POLICY IN THE TRUMAN YEARS 283-93* (Thomas G. Paterson ed., 1971)

Much has happened since September 11, 2001 (hereinafter “9-11”) to affect the view and the manner in which the office of the president discharges this responsibility. The United States has had only one post 9-11 administration, and citizens are frustrated by its ineffective balancing of the competing issues.<sup>6</sup> Many feel that our credibility has been squandered.<sup>7</sup> It certainly has taken a

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(discussing an instance when a president was unwilling to use political capital); *Weekend Edition Saturday: Joseph Nye Discusses His Book “The Paradox of Power: Why the World’s Only Superpower Can’t Go It Alone”* (National Public Radio Apr. 13, 2002), available at <http://www.npr.org/ramfiles/atc/20020311.atc.14.ram> (The world is facing issues that the U.S. cannot deal with by itself. International cooperation is essential.). In critiquing Nye and other authors’ views 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*, in NAT’L INTEREST, Winter 2002, 113, at 119; 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, 700-01 (1997) (stating that foreign policy goals and political capital have affects on each other); see, also, JOSEPH S. NYE, JR., *THE PARADOX OF AMERICAN POWER: WHY THE WORLD’S ONLY SUPERPOWER CAN’T GO IT ALONE* (2002).

5. Warren Hoge, *U.S. Shift Kicked Off Frantic Diplomacy at U.N.*, N.Y. TIMES, Aug. 14, 2006, at A1 (While not abandoning Israel, the U.S. 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).

6. See *Exit Poll Results Show Disapproval of Bush: 43 Percent of Voters Strongly Disapprove of Bush; Iraq High on List of Concerns*, ABC NEWS (Nov. 7, 2006), available at <http://abcnews.go.com/Politics/print?id=2635898> (This exit poll data captured some of those frustrations in prose. The Democratic Party took control of both Houses of Congress as a result of this frustration.); see *Exit Polls*, CNN.COM, <http://www.cnn.com/ELECTION/2006/pages/results/states/US/H/00/epolls.0.html> (last visited May 17, 2007) (for more extensive statistical data). But see *Beware of Exit Polls: Biased and Inaccurate Predictions Have Led to Poor GOP Exit Poll Showings in the Past Three National Elections*, GOP.COM (Nov. 7, 2006), available at <http://www.gop.com/News/Read.aspx?ID=6718>.

7. Jeff Gerth, *The Reach of War: Propaganda; Military’s Information War is Vast and Often Secretive*, N.Y. TIMES, Dec. 11, 2005.

beating.<sup>8</sup> To be certain, there is so much that is affecting America: putting out the latest fire<sup>9</sup> and other natural disasters,<sup>10</sup> threats of terrorism,<sup>11</sup> global

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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."

*Id.* See Pew Global Attitudes Project, *Bush Unpopular in Europe, Seen As Unilateralist*, Aug. 15, 2001, available at <http://pewglobal.org/reports/print.php?PageID=39> (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, e.g., The Pew Global Attitudes Project, Pew Research Center for the People & the Press, *A Year After Iraq War: Mistrust of America in Europe Ever Higher, Muslim Anger Persists* (Mar. 16, 2004), available at <http://pewglobal.org/reports/pdf/206.pdf> ("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.").

8. See, e.g., Frank Rich, *The White House Stages Its 'Daily Show'*, N.Y. TIMES, Feb. 20, 2005 (satirically 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.*

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

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Germany have more negative views of America than do people in other age groups.

See *Mistrust of America in Europe Ever Higher*, *supra* note 7, at 6.

9. *California Banks Respond to Wildfire Crisis; Members of California Bankers Association Provide Much-Needed Relief to Victims*, BUSINESS WIRE, Nov. 5, 2003, available at [http://findarticles.com/p/articles/mi\\_m0EIN/is\\_2003\\_Nov\\_5/ai\\_109774440](http://findarticles.com/p/articles/mi_m0EIN/is_2003_Nov_5/ai_109774440); *The Home Depot, Earth Day Network and Environmental 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*, EARTHDAYNETWORK, Apr. 1, 2004, available at [http://www.earthday.net/news/04-01-04\\_release.aspx](http://www.earthday.net/news/04-01-04_release.aspx) (communities are still attempting to rebuild after over \$10 billion in damages); *Fitch: Insured Losses Continue to Grow for California Wildfires*, BUSINESS WIRE, Oct. 29, 2003, available at [http://findarticles.com/p/articles/mi\\_m0EIN/is\\_2003\\_Oct\\_29/ai\\_109409446](http://findarticles.com/p/articles/mi_m0EIN/is_2003_Oct_29/ai_109409446) (this makes everyone's insurance rates soar); see Kirk Johnson, *Wildfires, Though Scattered, Leave a Big Mark*, N.Y. TIMES, Aug. 27, 2006.

10. *Cronies at the Till*, N.Y. TIMES, Sept. 27, 2005, at A24 (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); *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, available at [http://findarticles.com/p/articles/mi\\_m0EIN/is\\_2005\\_Sept\\_22/ai\\_n15626087](http://findarticles.com/p/articles/mi_m0EIN/is_2005_Sept_22/ai_n15626087) (to the immediate response by the Internal Revenue Service to offer tax credits as a result of law enacted by Congress; discussing the Katrina Tax Relief Act of 2005); *Weekend All Things Considered: Katrina Victims Still Struggling to Find Way Home* (National Public Radio radio broadcast Aug. 27, 2006), available at <http://www.npr.org/templates/story/story.php?storyId=5720114> (showing the effects of Hurricane Katrina are still devastating over one year later); Robert H. Jerry, II & Steven E. Roberts, *Regulating the Business of Insurance: Federalism in an Age of Difficult Risk*, 41 WAKE FOREST L. REV. 835 (2006) (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.

warming<sup>12</sup> phenomena,<sup>13</sup> an aging population,<sup>14</sup> waning consumer confidence<sup>15</sup> in an uncertain<sup>16</sup> and interdependent<sup>17</sup> world economy, as well as the recurring

*Id.* at 860-61. See Adam Nossiter, *New Orleans Population Is Reduced Nearly 60%*, N.Y. TIMES, Oct. 7, 2006, at A9 (a variety of responses occurred in the aftermath of Hurricane Katrina, from charges of governmental corruption); see Z. Byron Wolf, *Democrats Tell Ex-FEMA Head: Keep Your Chin up, 'Brownie': The Public Face of Government's Post-Katrina Failings Tries to Turn the Tables*, ABC NEWS, Feb. 10, 2006, available at <http://abcnews.go.com/US/print?id=1605034> (then came the blame game; pointing out move from "doin' a heck of a job" to acknowledgement that the "government was facing a 'catastrophe within a catastrophe.'"); see also 2 *Calif. Men Indicted in Katrina Fraud*, LAS VEGAS SUN, Oct. 6, 2006, available at <http://www.lasvegassun.com/sunbin/stories/nat-gen/2006/oct/06/100604233.html>.

11. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of 18, 50 U.S.C.) (The President was able to secure laws to "protect America."); *Michael Bloomberg Holds a News Conference Regarding Terror Threats to the New York Subway System*, POL./CONGRESSIONAL TRANSCRIPT WIRE, Oct. 6, 2005 (as time moved away from September 11, 2001, responses to the terror threats ranged from constant vigilance and public disclosure to reflection); Stanley Gaines, Jr., *Terror Threat Perception and Its Consequences in Contemporary Britain*, BRIT. J. OF PSYCHOL., Nov. 1, 2005, at 389 (discussing the need of social psychologists to examine the antecedents and consequences of terrorist threat perception); Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (after the Bipartisan 9/11 Commission urged better coordination, Congress followed its previous responses with the creation of the Office of the National Intelligence Director); Scott Shane, *Negroponte Confirmed as Director of National Intelligence*, N.Y. TIMES, Apr. 22, 2005, at A19 (a position which took the President sixty days to fill); see Homeland Security Act of 2002, 6 U.S.C. § 111 (2000) (establishing the Department of Homeland Security. The response was immediate. Laws were passed and a national plan was put in place to provide information to the people); see also U.S. Dep't of Homeland Sec., *Citizen Guidance on the Homeland Security Advisory System 1*, <http://www.dhs.gov/xlibrary/assets/CitizenGuidanceHSAS2.pdf> (last visited May 17, 2007) (the administrative agency charged with day-to-day operations immediately responded with an additional system designed to keep Americans vigilant; providing recommendations for citizens according to each color-coded threat level, including level orange (high risk) and level red (severe risk)); but cf. Eric J. Lyman, *Terror Threat: Italy Shrugs, Security High*, U. PRESS INT'L, Aug. 13, 2004 (Italians going about their daily lives in the middle of terrorist threats.).

12. Geoff Yuda, *Casey and Santorum: Where they Stand*, 28 PA. LAW. 26, 29 (Oct. 2006) (The global warming debate has been ongoing. It is now a part of national debates for local elections. A portion of the debate on international issues in the Pennsylvania 2006 U.S. Senate Race.)

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

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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.

*Id.* See also Bradford C. Mank, *Standing and Global Warming: Is Injury to All Injury to None?*, 35 ENVTL. L. 1 (2005).

13. Daniel Akst, *The Give and Take of 'Socially Responsible'*, N.Y. TIMES, Oct. 8, 2006 (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, Feb. 8, 2006, at A12 (statement of evangelical Christian leaders) ("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.'"); Bill McAuliffe, *Movie Star Al Gore? Who Knew? His Documentary Film on Global Warming is Proving to be a Hot Summer Release*, STAR TRIB., June 10, 2006, at 1A; see also AN INCONVENIENT TRUTH (Paramount Classics 2006); but see *Fox Hannity & Colmes: Al Gore's Film: Documentary or Hype?* (Fox News Network television broadcast May 17, 2006) (criticizing the hype around the documentary as well as its tenets).

14. Richard W. Stevenson, *The Nation: Social Security Check; It's Agreed: We Have a Crisis. Unless We Don't.*, N.Y. TIMES, July 29, 2001; Jeanne King, *Son Cut Off in Battle of New York Bluebloods*, REUTERS NEWS, Sept. 1, 2006, available at <http://au.news.yahoo.com/060901/11/10d15.html> (the case of 104-year-old doyenne Brooke Astor brings attention to the elder care issue); see Richard W. Stevenson, *Bush Panel Outlines 3 Plans for Social Security Overhaul*, N.Y. TIMES, Nov. 30, 2001 (discussing concerns over social security) ("[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, e.g., Rachel Emma Silverman, *Latest Custody Battle: Who Gets Mom—As Population Ages, Lawyers See Rise in Adult-Guardianship Cases; Laws to Curb 'Parent Snatching'*, WALL ST. J., Aug. 17, 2006, at D1 (issues involved with elder care are also a concern); see also Editorial, *The Brooke Astor Effect*, N.Y. TIMES, Aug. 7, 2006, at A14 (how the Brooke Astor elder abuse lawsuit is bringing attention to the issue throughout the country); but cf. Sheryl WuDunn, *International Business: The Face of the Future in Japan; Economic Threat Of Aging Populace*, N.Y. TIMES, Sept. 2, 1997, at D1.

15. See, e.g., *Consumer Confidence Tumbles To Lowest Level Since October*, N.Y. TIMES, Aug. 19, 2006, at C4 (citing fears of terrorism and higher gas prices as primary causes).

16. David E. Sanger, *Bush's Bold Visions Have Given Way to New Reality*, N.Y. TIMES, Feb. 1, 2006, at A1 (analyzing the 2006 State of the Union).

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 . . . .

*Id.* See also Peter Kiernan, *Petro-hysteria Grips a Superpower*, ASIA TIMES, July 1, 2006, available at [http://www.atimes.com/atimes/Middle\\_East/HG01Ak02.html](http://www.atimes.com/atimes/Middle_East/HG01Ak02.html) (discussing the



issues of wealth disparity<sup>18</sup>—and these are just a few of the concerns that make headlines in the United States.

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uncertainty of energy prices and political instability in the Middle East and its effects on U.S. policy).

17. *Asian Poverty 'Threatening Environment': World Bank IUCN*, TODAY, Aug. 9, 2006, <http://news.sawf.org/Business/17896.aspx> (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:

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, 18-22 March 2002*, 10 L. & BUS. REV. AM. 85, 87 (2004); *see also* Press Release, London Business School, Clinton Sets out Challenges for Interdependent World (Mar. 28, 2006), *available at* [http://forum.london.edu/lbsspress.nsf/AllDocs/9BBFE47EE1F943EF8025713F00580EBA/\\$File/C LINTON.pdf](http://forum.london.edu/lbsspress.nsf/AllDocs/9BBFE47EE1F943EF8025713F00580EBA/$File/C LINTON.pdf) (former President Clinton discusses further encouragement of an interdependent world).

18. *Poverty Rate Didn't Rise in 2005 for First Time in Five Years*, MONEY BLOGS, Aug. 29, 2006, <http://www.themoneyblogs.com/poorandstupid/my.blog/the-ap-on-the-poverty-rate.html> (showing the median income as \$46,300 and 46.6 million without health insurance. A reduction in poverty rate but an “increase in inequality” between rich and poor is the real story. “‘Most of the people who leave welfare for work are leaving for jobs that pay \$7 or \$8 an hour,’ said Joan Entmacher, vice president of the National Women’s Law Center. . . . ‘Under the best of circumstances, they are just getting by.’” Commenting on the reduction of those who received welfare payments in 1996 (4.4 million) through today (1.9 million)).

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.”

*See Note, A Look Inward: Blurring the Moral Line Between the Wealthy Professional and the Typical Criminal*, 119 HARV. L. REV. 2165, 2183 (2006); *see* Andy Barlow & James Head, *Wealth Inequality Panel*, 3 HASTINGS RACE & POVERTY L.J. 159, 167 (2006) (wealth disparity must also include factors in poverty as well as income); *see also infra* Section III (discussion related to poverty and policy).

We can only hope that policy makers are addressing security concerns<sup>19</sup> before the general public has to experience a tragedy.<sup>20</sup> Further, we know that there is no uniform approach to dealing with these issues. Reasonable people can differ.<sup>21</sup> Even as Europe strives for a single common market<sup>22</sup> and the United States is still enjoying record low interest rates, still one cannot predict the extent to which bankers in Asia<sup>23</sup> will control the levers of the United States economy given the amount of United States debt they own.<sup>24</sup> 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 issues<sup>25</sup> and the consequences of those that

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19. See, e.g., BIOTERRORISM: PUBLIC HEALTH RESPONSE TO ANTHRAX INCIDENTS OF 2001, GAO PUB. NO. GAO-04-152, at 4-5 (2003), available at <http://www.gao.gov/new.items/d04152.pdf> (noting public demanded a federal government response to defend the country against future anthrax attacks); see also CHILDREN'S DEFENSE FUND ACTION COUNS., A NATION AND CENTURY DEFINING TIME: WHERE IS AMERICA GOING? HOW YOU CAN MAKE A DIFFERENCE, AN ACTION GUIDE 1 (2004), available at <http://www.cdfactioncouncil.org/actionguide/2004.pdf> [hereinafter CDFAC ANNUAL REPORT].

20. See Mark D. Kielsgard, *A Human Rights Approach to Counter-Terrorism*, 36 CAL. W. INT'L L.J. 249, 249-250 (2006) (discussing the effects of terrorism on governmental responses to human rights).

21. 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*, N.Y. TIMES, Oct. 7, 2006, at B1 (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.).

22. Craig S. Smith, *Europe's Direction Is Unclear, Much as Germany's Is After Vote*, N.Y. TIMES, Sept. 20, 2005, at A9; see, e.g., *French Say Firm 'No' to EU Treaty*, BBC NEWS, May 30, 2005, available at <http://news.bbc.co.uk/2/hi/europe/4592243.stm>.

23. See *Publics of Asian Powers Hold Negative Views of One Another: China's Neighbors Worry About Its Growing Military Strength*, PEW GLOBAL ATTITUDES PROJECT, Sept. 21, 2006, available 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.").

24. Greg Hitt & Murray Hiebert, *U.S. Trade Deficit Ballooned to a Record in 2005: Widening Gap With China Likely to Revive Demands That Beijing Take Action*, WALL ST. J., Feb. 11, 2006, at A1, available at <http://online.wsj.com/article/SB113957739134570709.html> (trade deficit allows China to lend more money to US. and buy U.S. debt).

25. 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 Porn*, ABC NEWS, Sept. 19, 2006, available at <http://abcnews.go.com/US/story?id=2464088&page=1>; see Declan McCullagh, *Gonzales Calls For Mandatory Web Labeling Law*, CNET NEWS, Apr. 20, 2006, available at [http://news.com.com/Gonzales+calls+for+mandatory+Web+labeling+law/2100-1028\\_3-6063554.html](http://news.com.com/Gonzales+calls+for+mandatory+Web+labeling+law/2100-1028_3-6063554.html) (Gonzalez proposes that website operators posting sexually explicit information must place official government warning labels on their pages or risk being imprisoned

are addressed in an ill-conceived manner have both a short and long term impact on the United States. Even more, since we do not have a one-dimensional government, policy makers<sup>26</sup> 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, ‘[I]jes-damned lies-and statistics,’ still there are some easy figures the simplest must understand, and the astutest cannot wriggle out of.”<sup>27</sup> It is difficult to ignore that since 1999, the poverty rate of children in the United States under six years old<sup>28</sup> has steadily

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 Chris Hansen, *‘To Catch a Predator’ A Deadly Turn in Texas, Part 2 of the Texas investigation: For the first time, police track down potential predators at their homes. . . and one makes a tragic decision*, MSNBC, Feb. 20, 2007, available at <http://www.msnbc.msn.com/id/17247963> (Hansen also has a blog that documents his efforts.).

26. This includes any one who has decision making authority in the federal government, but particularly in the Executive branch and in independent administrative agencies.

27. Leonard Courtney, *To My Fellow-Disciples at Saratoga Springs (1895)*, in THE NAT’L REV., at 25, available at <http://www.quote garden.com/statistics.html> (last modified July 28, 2006).

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

CARNEGIE COUNS. ON ADOLESCENT DEV., CARNEGIE CORP. OF N.Y., *STARTING POINTS: MEETING THE NEEDS OF OUR YOUNGEST CHILDREN*, vii-viii, xiii-xiv (1994), *reprinted in* DOUGLAS E. ABRAMS & SARAH H. RAMSEY, *CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 1* (2000) (This is similar to the United Nations Convention on the Rights of the Child. Perhaps the tenets will permeate the recommendations of advocates irrespective of whether the President ever

increased.<sup>29</sup> As of 2004, according to the U.S. Department of Commerce, Bureau of the Census, 37 million people live below the poverty line;<sup>30</sup> more than 13 million of them are children.<sup>31</sup> This is an increase of 1.4 million since 2000. This is a systemic problem, and presumably United States policy makers do not share the heartlessness in Stalin's quip, "[t]he death of one man is a tragedy. The death of millions is a statistic."<sup>32</sup> Therefore at some level, policy makers must see the need to deal with these startling numbers.

Because poverty in the United States substantially increases the likelihood of death before an American child reaches age two, one would think that the world's richest nation could prevent this with relative ease.<sup>33</sup> Relying on United States Census Bureau statistics, the Children's Defense Fund calculates that a child is born into poverty every 36 seconds.<sup>34</sup> Specifically, when considering the grip of poverty<sup>35</sup> and its manifestation of mortality in the United States versus the rest of the world, we find alarming statistics, such as the African-American infant mortality rate in Washington, D.C. to exceed the rate in 50 nations.<sup>36</sup> What is more, the United States still ranks 140th of 172 countries in

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sends it to the United States Senate for ratification. Of course, the battle is to get the tenets to permeate national policy.)

29. See CDFAC ANNUAL REPORT, *supra* note 19; see also Timothy M. Smeeding, *Poor People in Rich Nations: The United States in Comparative Perspective*, CTR. FOR POL. RESEARCH, available at [http://www-cpr.maxwell.syr.edu/faculty/smeeding/pdf/JEP%20V5\\_2006.pdf](http://www-cpr.maxwell.syr.edu/faculty/smeeding/pdf/JEP%20V5_2006.pdf); but see Robert Guy Mathews, *Median Household Income Rises 1.1%*, WALL ST. J., Aug. 30, 2006, at A2, available at [http://online.wsj.com/article\\_print/SB115685774878148338.html](http://online.wsj.com/article_print/SB115685774878148338.html).

30. U.S. Census Bureau, Poverty: 2004 Highlights, <http://www.census.gov/hhes/www/poverty/poverty04/pov04hi.html> (last modified Aug. 30, 2005) [hereinafter Poverty: 2004 Highlights]; see U.S. Census Bureau, Poverty Thresholds for 2004, <http://www.census.gov/hhes/www/poverty/threshld/thresh04.html> (last visited May 18, 2007) (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.).

31. Poverty: 2004 Highlights, *supra* note 30.

32. Joseph Stalin, Comment to Winston Churchill at Potsdam (1945), <http://www.quotegarden.com/statistics.html> (last modified July 28, 2006).

33. Joe Drape, *Barbaro's Injury Gives Synthetic Surface Urgency*, N.Y. TIMES, Oct. 8, 2006, at 9 (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?

34. See Children's Defense Fund, Moments in America for Children (May 2007), available at [http://www.childrensdefense.org/site/PageServer?pagename=research\\_national\\_data\\_moments](http://www.childrensdefense.org/site/PageServer?pagename=research_national_data_moments).

35. See *infra* Section III. 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. See *infra* Section VI (the world through the Millennium Development Goals have sought to accomplish this).

36. CDFAC ANNUAL REPORT, *supra* note 19, at 20; see also CHILDREN'S DEFENSE FUND, *Where America Stands* (Aug. 2004), available at

maternal mortality and made no improvement in infant mortality.<sup>37</sup> According to the Children's Defense Fund Action Council, the United States is ranked "twelfth in living standards among our poorest one-fifth, thirteenth in the gap between rich and poor, fourteenth in efforts to lift children out of poverty, sixteenth in low-birth weight rates, [and] eighteenth in the percent of children in poverty."<sup>38</sup> Should we not be first in preventing their ills?<sup>39</sup> Given our vast resources, form of government,<sup>40</sup> and capabilities among our professional populations, does not our moral compass further require that we not be satisfied with these "tragedies"?<sup>41</sup> Poverty leads to all sorts of social harms. If these children born into poverty will be tomorrow's leaders, then unless policy

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[http://www.childrensdefense.org/site/PageServer?pagename=data\\_america](http://www.childrensdefense.org/site/PageServer?pagename=data_america). 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, available 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.

The CDF Action Council 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. The CDF Action Council 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.

The CDF Action Council began in 1969 and is an organization under Section 501(c)(4) of the Internal Revenue Code.

CDFAC ANNUAL REPORT, *supra* note 19, at Mission.

37. *See* CDFAC ANNUAL REPORT, *supra* note 19 (still 160th out of 193).

38. *Id.*

39. Elaine Friedman, *Suffer the Children: The U.S. and the U.N. Convention on the Rights of the Child*, INST. FOR HUM. STUD., Aug. 9, 2006, available at <http://humaniststudies.org/enews/?id=255&article=1> ("There now exists the ironic situation that religious organizations do not want to act in the best interests of children. How long will the U.S. continue to let religious organizations dictate policy and refuse to recognize the rights of the child?").

40. *See generally* DAVID McCULLOUGH, JOHN ADAMS (2001) (providing an insightful review of some of Founder's application of this premise; Adams appeared to wrestle with his counterparts on this point).

41. *See* JOHN KENNETH GALBRAITH, A VIEW FROM THE STANDS: OF PEOPLE, POLITICS, MILITARY POWER, AND THE ARTS (1986) (Finding that poverty in the United States should be the "heaviest burden on our social conscience.").

changes are made, our current course will further erode hope in the future of the United States of America as a respected world leader.

Current federal and select state responses<sup>42</sup> appear only to provide “band-aids” for these ills, or to ignore them altogether.<sup>43</sup> 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,<sup>44</sup> 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,<sup>45</sup> President Bush’s 2007 budget proposed deeper budget decreases<sup>46</sup> to the same programs.<sup>47</sup> In short, the resources to help

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42. See *The Crist / Kottkamp Administration Fiscal Year 2007-08 Budget Recommendations*, <http://www.ebudget.state.fl.us> (last visited May 18, 2007) (While the Florida Governor’s website dealing with the state budget 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.).

43. See Mark R. Rank, *ONE NATION, UNDERPRIVILEGED: WHY AMERICAN POVERTY AFFECTS US ALL* (2004) (arguing that the United States policy makers have labored under the illusion that individual people are responsible for their impoverished circumstances); see also Mark R. Rank, *Toward a New Understanding of American Poverty*, 20 WASH. U. J.L. & POL’Y 17, 42-50 (2006) (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.).

44. See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2005).

45. See President George W. Bush, State of the Union Address, 42 WEEKLY COMP. PRES. DOC. 145 (Jan. 31, 2006).

46. David E. Sanger, *Bush’s \$2.77 Trillion Budget Plan Calls for Medicare Cuts*, N.Y. TIMES, Feb. 6, 2006, available at <http://www.nytimes.com/2006/02/06/politics/06cnd-budget.html?ex=1296882000&en=6dffdedfcfe8bfef&ei=5088&partner=rssnyt&emc=rss> (“The budget bears all the hallmarks of the Bush presidency, putting national security and tax cuts above all other considerations . . .”). 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.

children are being reduced at a time in the United States 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 that 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 children, as well as the world's, creates undue risks to everyone in our interdependent, globalized "Pangaea."

### *C. Needs of Children Around the World*

With nearly half of the world's population under age 25,<sup>48</sup> the well-being of young people must come into sharp focus in the minds of policy makers in the international arena. The alarming number of young people susceptible to extreme fundamentalist rhetoric, which encourages them to find "paradise" now by blowing themselves up is bewildering.<sup>49</sup> Consider, however, the world

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Editorial, *The Imbalanced Budget*, N.Y. TIMES, Feb. 4, 2003.

47. Allan Murray, *Think the Deficit is Bad Now? Just Wait*, WALL ST. J., Feb. 12, 2006, at 1 ("[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.").

48. THORAYA AHMED OBAID, UNFPA STATE OF THE WORLD POPULATION 2003, MAKING ONE BILLION COUNT: INVESTING IN ADOLESCENTS' HEALTH AND RIGHTS 1 (2003), available at [http://www.unfpa.org/swp/2003/pdf/english/swp2003\\_eng.pdf](http://www.unfpa.org/swp/2003/pdf/english/swp2003_eng.pdf).

49. Asoka Bandarage, *Beyond Globalization and Ethno-religious Fundamentalism*, 47 DEV. 35 (2004). Journalist Paul Roberts makes a similar argument:

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 prowestern [sic] 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 [sic] misuse has been terrible there. We're going to see more of that without question.

MC Paul Barman, *Peak Oil Recoil Paul Roberts*, FRONTWHEELDRIVE.COM (2005), available at [http://frontwheeldrive.com/paul\\_roberts.html](http://frontwheeldrive.com/paul_roberts.html); see Richard J. Pech & Bret W. Slade, *Imitative Terrorism: a Diagnostic Framework for Identifying Catalysts and Designing Interventions*, 7

around these youth. Currently 200 million youth live in poverty, 88 million are unemployed, and 10 million live with HIV/AIDS.<sup>50</sup> Almost three-fifths of the population of the age of five will die by 2014 if these statistics are not addressed immediately.<sup>51</sup> Moreover, every year worldwide nearly eleven million children die—30,000 per day, 1,200 every hour,<sup>52</sup> before their fifth birthday.<sup>53</sup> More than 500,000 women die in childbirth each year.<sup>54</sup> Figures from 1990-2001 demonstrate that more than one billion people<sup>55</sup> subsist on one dollar per day,<sup>56</sup> resulting in 25 percent of children under the age of five in developing areas being malnourished.<sup>57</sup> In a 2002 study focusing specifically on youth, 18 percent of all youth, or 209 million, “live on less than \$1US per day, and 515 million live on less than \$2US per day.”<sup>58</sup> Such a standard of living is unthinkable among United States youth.

The good news is that worldwide, this has been reduced overall with 47 million statistically less hungry in East Asia since 1990.<sup>59</sup> In particular, China

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FORESIGHT 47, 47-60 (2005) (arguing that a number of cultures are becoming increasingly susceptible to fundamentalism); see also *Goethe-Institut, Cultural Globalization: Cultures on the Move*, <http://www.goethe.de/ges/pok/prj/mig/kgf/en971572.htm> (Nov. 2005) (discussing integration of young Turks into German culture).

50. The Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶¶ 26, 46, delivered to the Security Council and the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/270/78/pdf/N0527078.pdf?OpenElement> [hereinafter *In Larger Freedom*]; see also U.N. DEP. OF ECON. & SOC. AFFAIRS, *The Millennium Development Goals Report 2005*, at 24, available at <http://millenniumindicators.un.org/unsd/mi/pdf/MDG%20Book.pdf> [hereinafter *MDG Progress Report*].

51. *MDG Progress Report*, supra note 50, at 24-26.

52. See Millennium Campaign, *The Goals, Goal 4: Reduce Child Mortality*, <http://www.millenniumcampaign.org/site/pp.asp?c=grKVL2NLE&b=186384> (last visited May 18, 2007).

53. *MDG Progress Report*, supra note 50, at 18.

54. *Id.* at 22.

55. That is, one in six human beings face chronic hunger, disease, and environmental hazards. Statistics show that mosquito-bearing malaria kills children who otherwise does not have to die if he or she had access to a bed net or one dollar in treatment. See *In Larger Freedom*, supra note 50, at ¶ 26.

56. *MDG Progress Report*, supra note 50, at 6 (defining extreme poverty).

57. *Id.* at 6, 8.

58. U.N. DEP'T OF ECON. & SOC. AFFAIRS, *WORLD YOUTH REPORT 2005: YOUNG PEOPLE TODAY, AND IN 2015* at 3, U.N. Doc. ST/ESA/301, U.N. Sales No.E.05.IV.6 (2005), available at <http://www.un.org/esa/socdev/unyin/documents/wyr05book.pdf> [hereinafter *WORLD YOUTH REPORT*].

59. *MDG Progress Report*, supra note 50, at 8.



and India are enjoying improved access to health care, education, and housing.<sup>60</sup> The bad news is there are 34 million more hungry people in Sub-Saharan Africa owing to poor access to food production and population growth outpacing efforts.<sup>61</sup> In other areas, devastating economic conditions have resulted in poorer families in still poorer countries with less infrastructure to avoid death by poverty.<sup>62</sup> 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.<sup>63</sup>

A complete education should lead to an increased desire for more opportunities for work and personal development. If these opportunities are few, brain-drain can be a reaction to it. A sustainable non-agrarian centered way of life for a nation could be detrimentally affected brain-drain.<sup>64</sup> Children of the richest 20 percent of households are three times more likely to be in school than children from the poorest 20 percent of households.<sup>65</sup> Consequently, this affects poor rather than rich children. Moreover, children of educated mothers are more than twice as likely to be in school than children of mothers with no formal education. Therefore, this disproportionately affects poorer families. An increasing inequality in economic growth only exacerbates the problem.<sup>66</sup> 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

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60. See *MDG Progress Report*, *supra* note 50, at 7 (represented as 300 million more middle class in India out of 1 billion).

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

62. See *In Larger Freedom*, *supra* note 50, ¶ 26.

63. See Amelia Gentleman, *Indian Ban on Child Labor: Who Will Clean the Houses?*, INT'L HERALD TRIB., Sept. 12, 2006, available at [http://www.iht.com/bin/print\\_ipub.php?file=/articles/2006/09/06/news/letter.php](http://www.iht.com/bin/print_ipub.php?file=/articles/2006/09/06/news/letter.php). Beginning October 12, 2006, India law prohibits child labor for children under 14 as domestic servants. Now will be the time for monitoring and enforcement.

64. See, e.g., William J. Carrington & Enrica Detragiache, *How Extensive Is the Brain Drain?* 36 INT'L MONETARY FUND FIN. & DEV. 46 (1999) (providing a comprehensive look at the impact of brain-drain).

65. *MDG Progress Report*, *supra* note 50, at 12.

66. See KEVIN PHILLIPS, *WEALTH AND DEMOCRACY: A POLITICAL HISTORY OF THE AMERICAN RICH* (2002); David Wessel, *Moving Up: Challenges to the American Dream*, WALL ST. J., May 13, 2005, at 1; see generally *MDG Progress Report*, *supra* note 50, at 36.

outcomes, the poorest areas get worse<sup>67</sup> and policy makers are losing focus and heart as a result.<sup>68</sup>

It is universally accepted that 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.<sup>69</sup> However 113 million are not in school,<sup>70</sup> 60 percent of which are girls.<sup>71</sup> An estimated 876 million adults are illiterate, 64 percent of which are women<sup>72</sup> and 130 million of which are youth.<sup>73</sup> These persons do not have the ability to control national policy, have little input into the discussion of it, and will likely be unable to affect change on their own. The impact of poverty stricken youth is felt by those who are considered poor not only in the form of taxing their hard-earned dollars and contributing to an unmanageable social welfare system (cynically), but also in the spiritual toll on the psyche of the community (psychologically)—however defined.

The child who is not a delinquent and pays attention in school is also affected by national policy changes that reduce structural investment in important areas such as education,<sup>74</sup> healthcare,<sup>75</sup> and job creation.<sup>76</sup> Even with

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67. For example, eight out of ten children who are not in school live in Sub-Saharan Africa or South East Asia. *MDG Progress Report*, *supra* note 50, at 8. AIDS, natural disasters, and continued conflicts only further exacerbates the shift in world priorities.

68. I draw this conclusion from the worsening statistics and failure of the participants to fully fund the Millennium Development Goals.

69. WORLD YOUTH REPORT, *supra* note 58, at 3. They are not taking the “Millennium Development Goals-Plus” strategy that the Secretary General advocates, which is to do more than what the goals call for. See *In Larger Freedom*, *supra* note 50, ¶ 35.

70. WORLD YOUTH REPORT, *supra* note 58, at 3.

71. CIVICUS: WORLD ALLIANCE FOR CITIZEN PARTICIPATION AND MILLENNIUM CAMPAIGN OFFICE, MILLENNIUM CAMPAIGN TOOLKIT (2002), available at <http://www.civicus.org/mdg/title.htm> (goal 3 is specifically aimed at gender equality and empowering women) [hereinafter *MDG Campaigning Toolkit*].

72. *Id.*

73. WORLD YOUTH REPORT, *supra* note 58, 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.

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

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). For example, through the American ideal 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.<sup>77</sup> We have come to expect that life for our children will be better than ours, which is better than our parents' life. This is reinforced, if not assured, by governmental practice and policy to meet that ideal. This is an implicit promise from government to United States citizen.

*D. World Efforts at Reallocation of Resources to Deal With Unmet Needs of "the Child"—Generally*

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 the<sup>78</sup> Child<sup>79</sup> ("CRC") planned conferences and working groups<sup>80</sup> in attempting to make policy changes to meet the basic needs of children. This created a drastic acceleration in legitimizing their human rights. There was much opposition to the CRC's ratification in the United

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75. See SOFIA GRUSKIN & DANIEL TARANTOLA, *Health and Human Rights*, in PERSPECTIVES ON HEALTH AND HUMAN RIGHTS 3 (Sofia Gruskin et al. eds., 2005).

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

77. *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.").

78. This is 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 (1999) (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.

79. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 149, U.N. Doc. A/44/736 (Nov. 20, 1989) (entered into force Sept. 2, 1990), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N89/294/51/img/N8929451.pdf?OpenElement>.

80. See *infra* Section VI.

States, but this should be revisited in light of the Millennium Development Goals (“MDG”).<sup>81</sup>

Nevertheless, in 2000, the state parties to the CRC further contextualized the necessity to meet children’s needs by creating MDGs. Arising out of the Millennium Declaration, the MDGs were designed in part to hone the lofty tenets of the CRC into manageable targets to achieve an increase in worldwide resources for children by 2015.<sup>82</sup> The world is less than ten years away from achieving these benchmarks of success. The point should not be lost that the statistics previously referred to in this article exist in light of near-universal ratification of the CRC. Imagine, however, if there were no movement on human rights that resulted in the CRC and the MDGs! Ironically, it is unlikely that the world will be successful without the United States’ assistance in achieving the goals of the CRC or the MDGs. The United States has enormous power and should put its legitimacy to use, by way of the bully pulpit,<sup>83</sup> on the world stage.

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81. *See id.*

82. *See* U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2003, MILLENNIUM DEVELOPMENT GOALS: A COMPACT AMONG NATIONS TO END HUMAN POVERTY (2003), available at [http://hdr.undp.org/reports/global/2003/pdf/hdr03\\_complete.pdf](http://hdr.undp.org/reports/global/2003/pdf/hdr03_complete.pdf); *see also* CDFAC Annual Report, *supra* note 19, at 25 (Goal #8 primarily requires the assistance of wealthy nations as the catalyst); *see also* UNICEF, THE STATE OF THE WORLD’S CHILDREN 2005: CHILDHOOD UNDER THREAT (2005), available at [http://www.unicef.org/sowc05/english/sowc05\\_chapters.pdf](http://www.unicef.org/sowc05/english/sowc05_chapters.pdf) (acknowledging eight goals, but only recording seven, omitting “[d]evelop a global partnership for development”) [hereinafter UNICEF, *The State of the World’s Children 2005*]; *see generally* UN Millennium Development Goals, <http://www.un.org/millenniumgoals> (last visited May 18, 2007).

83. *Compare* Edward B. Fiske, *Reagan’s Man for Education*, N.Y. TIMES, Dec. 22, 1985, § 6 (discussing Secretary of Education during the Reagan years, William J. Bennett and how even cabinet officials can use their executive office as a bully pulpit) (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.), *and* Edward L. Glaeser, *Paternalism and Psychology*, 73 U. CHI. L. REV. 133, 155-56 (2006) (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.”), *with* 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

*E. U.S. Efforts at Reallocation to Deal with Unmet Needs of “the Child”—Generally*

The United States, unlike the world, has a governmental structure that provides levels of enforcement. A centralized federal government with power emanating from the various state governments is a hallmark of the organization of the United States. Federal top-down mandates and bottom-up<sup>84</sup> tailored articulations<sup>85</sup> of the needs in each individual state should flow seamlessly between the two levels of government. Whether it is block grants<sup>86</sup> 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 improve the health, safety, and prosperity of society. The United States does not have the same challenges as other nations with federalized forms of government.<sup>87</sup> Yet, the states and the federal government are at constant loggerheads on the visions related to the children among other things.<sup>88</sup> The President’s primary answer to child poverty, for example,<sup>89</sup> is the

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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.”), and 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).

84. See, e.g., Lisa Baertlein, *Schwarzenegger Takes Center States in U.S. Health Reform*, Reuters, Jan. 12, 2007, available at <http://abcnews.go.com/Politics/print?id=2791815> (not waiting on Congress to come up with healthcare reform).

85. See, e.g., Robert Tanner, *Governors Bristle at Bush Guard Proposal*, WASH. POST, 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.).

86. See MARGY WALLER, BROOKINGS INST. POL’Y BRIEF, CTR. ON CHILDREN & FAMILIES #34, BLOCK GRANTS: FLEXIBILITY VS. STABILITY IN SOCIAL SERVICES (2005), available at <http://www.brookings.edu/printme.wbs?page=/es/research/projects/wrb/publications/pb/pb34.htm> (for a policy brief on block grants).

87. 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 Tanya Katerí Hernández, *To Be Brown in Brazil: Education and Segregation Latin American Style*, 29 N.Y.U. REV. L. & SOC. CHANGE 683 (2005) (discussing the United States still hides from its racial issues).

88. See, e.g., Sam Dillon, *Federal Panel Hammers Out Report on Recommendations to Shake Up Higher Education*, N.Y. TIMES, Aug. 11, 2006, at A11 (Bush Administration’s action on call for standardized testing in public universities called “chilling”); see also Karen W. Arenson, *Panel Explores Standard Tests For Colleges*, N.Y. TIMES, Feb. 9, 2006, at A1 (“There is no way you can mandate a single set of tests, to have a federalist higher education system . . .”).

89. As compared to other developed nations answers to education or healthcare needs, the United States is not near the top. See, e.g., Dirk Krueger & Krishna B. Kumar, *Skill-Specific*

loftily conceived, if not the ill-fated, No-Child-Left-Behind Act (“NCLBA”).<sup>90</sup> Recently the National Conference of State Legislatures (“NCSL”) essentially told the President that the Act is unworkable and made several recommendations to change it—including fully funding the law!<sup>91</sup>

Outside of the President’s NCLBA, an examination of United States policy makers’ efforts to deal with unmet needs finds most states struggling to develop methods to reduce mounting budget shortfalls.<sup>92</sup> Education is usually the subject of the attempts. One governor signed a law which finds that state education law trumps the NCLBA when there is a conflict.<sup>93</sup> One state is even considering amending their constitution to allow its legislature to spend less on schools,<sup>94</sup> while another endeavors to avoid reducing class size due to its budgetary issues. 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 ten to fifteen years even as others decry the act as merely a temporary fix with costly outcomes for the future.<sup>95</sup> 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 has reduced opportunities for a *sustainable*, let alone a successful, future.

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*Rather Than General Education: A Reason for US–Europe Growth Differences?*, 9 J. ECON. GROWTH 167 (2004); see also Rob Stein, *For Americans, Getting Sick Has Its Price: Survey Says U.S. Patients Pay More, Get Less Than Those in Other Western Nations*, WASH. POST, Nov. 4, 2005, at A02, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/03/AR2005110301143.html>.

90. 20 U.S.C. § 6301 *et seq.* (2002). President George W. Bush, *No Child Left Behind, Foreward*, <http://www.whitehouse.gov/news/reports/no-child-left-behind.html> (last visited May 18, 2007) (President 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 from its workforce, children are literally being left behind.”); see also 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) (critique regarding the programs the NCLBA deemphasizes). 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 also 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 NATIONAL CONFERENCE OF STATE LEGISLATURES, NCSL TASKFORCE ON NO CHILD LEFT BEHIND REPORT EXECUTIVE SUMMARY (2005), available at [http://www.ncsl.org/programs/press/2005/NCLB\\_exec\\_summary.htm](http://www.ncsl.org/programs/press/2005/NCLB_exec_summary.htm).

92. See CDFAC ANNUAL REPORT, *supra* note 19.

93. Michelle R. Davis & Jeff Archer, *Complaint Targets Utah NCLB Law*, EDUC. WEEK, May 11, 2005, at 22.

94. See CDFAC ANNUAL REPORT *supra* note 19.

95. Cf. Editorial, *How the West Was Sold*, L.A. TIMES, July 31, 2006, at B10.

United States cities and counties (or parishes),<sup>96</sup> 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 issues<sup>97</sup> that often make headlines; providing basic services for children with few resources often do not make headlines. Children are leaderless and virtually lobbyless, and the impact of their 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.<sup>98</sup> Which is demonstrated by the anticlimactic State of the Union Address of 2006.<sup>99</sup>

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. For example, education funding was cut for the first

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96. See New Orleans Public Schools, <http://www.nops.k12.la.us> (last visited May 18, 2007) (providing for requests for proposal to repair schools even as they attempt to educate the child of New Orleans).

97. Eric Lipton, *New Rules Set for Giving Out Antiterror Aid*, N.Y. TIMES, Jan. 3, 2006, at A1 (low risk targets previously received a disproportionate amount of aid because the security requests were not tied to risks); see Editorial, *Risk Wins a Round Over Politics*, N.Y. TIMES, Jan. 4, 2006, at A1 (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.*

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 A1.

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.

*Id.*

99. President George W. Bush, State of the Union Address, 42 WEEKLY COMP. PRES. DOC. 145 (Jan. 31, 2006) (announcing American Competitive Initiative); see *Most Americans Consider State of the Nation as 'Poor'* WALL ST. J., available at <http://online.wsj.com/article/SB113820420831656013.html> (68 percent of U.S. adults rate country as "poor").

time in ten years.<sup>100</sup> Instead, the president announced the American Competitiveness Initiative (“ACI”).<sup>101</sup> ACI, which purported to be an initiative for children, focused on economic growth versus meeting the basic needs of children.<sup>102</sup> On the other hand, the First Lady’s Helping America’s Youth Conference (“Youth Conference”),<sup>103</sup> while laudable in providing a variety of panelists, generated no concrete policy initiatives as participants, and merely reflexively lamented the state of today’s children.<sup>104</sup> 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 State of the Union’s policy points. The Department of Health and Human Services<sup>105</sup> 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,<sup>106</sup> children need much more. Even as federal policy makers push to increase the nation’s security<sup>107</sup> by directing a

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100. CDFAC ANNUAL REPORT, *supra* note 20, at 97.

101. DOMESTIC POL’Y COUNS., OFF. OF SCI. & TECH. POL’Y, AMERICAN COMPETITIVENESS INITIATIVE 3 (Feb. 2, 2006), *available at* <http://www.whitehouse.gov/stateoftheunion/2006/aci/aci06-booklet.pdf> (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 encourag[ing] entrepreneurship” over 10 years). In so doing, the President touted the American economy as the “envy of the world.” *Id.*

102. *Id.*

103. White House Conference on Helping America’s Youth, <http://www.cyfc.umn.edu/hay.html> (last modified Oct. 27, 2005). Segments included addressing youth challenges to connecting with community at the local level. 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.

104. *See supra* Section I.

105. For example, the Department was charged with overseeing discrimination in healthcare and has not been effective 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*, EDUC. WEEK, Apr. 13, 2005, at 38; *Sch. Dist. of Pontiac v. Spellings*, No. Civ. A. 05-CV-71535-D, 2005 WL 3149545 (E.D. Mich. Nov. 23, 2005).

107. For a critique of policy decisions that make up U.S. national security policy, *see* Charles V. Pena, *Bush’s National Security Strategy: A Global Security Strategy That Undermines National Security*, 6 J. L. & SOC. CHALLENGES 45 (2004). 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).



substantial portion of the country's resources and assets toward the president's self-styled<sup>108</sup> "war on terror,"<sup>109</sup> while simultaneously maintaining unprecedented tax cuts,<sup>110</sup> current administration policies have only further weakened<sup>111</sup> our ability to improve the health, safety, and welfare of the country. With increasing reports of stress among our youth,<sup>112</sup> and the need for psychological counseling for our children,<sup>113</sup> one wonders what our children are 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?

Section I has set up the discussion. Section II explores the impact of generalized vocabulary and point of view used in the social and behavioral sciences in dealing with children. Section III discusses the role of poverty with respect to children, and Section IV discusses the evolution of human rights that led to the CRC's ratification. This section posits how the CRC can be used as a stabilizing framework to institutionalize assistance of uplifting our children. Sections V and VI address the MDGs' progress and status. Section 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. Because

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108. See Winston P. Nagan & Craig Hammer, *Patriotism, Nationalism, and the War on Terror: A Mild Plea in Avoidance*, 56 FLA. L. REV. 933, 985-86 (2004); see also *Message to the Congress on Continuation of the National Emergency with Respect to Persons Who Commit, Threaten to Commit, or Support Terrorism*, [http://findarticles.com/p/articles/mi\\_m2889/is\\_38\\_38/ai\\_93612143](http://findarticles.com/p/articles/mi_m2889/is_38_38/ai_93612143) (Sept. 19, 2002).

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 MCCULLOUGH, *supra* note 40; see also GALBRAITH, *supra* note 41.

111. Deborah Solomon & John D. McKinnon, *Bush Would Boost Defense, Security in Budget Plan: Social Programs Face Cuts in Proposal For Fiscal 2007; Worries Over Heating Bills*, WALL ST. J., Feb. 7, 2006, at A1, available at [http://online.wsj.com/public/article/SB113923342926565990-h7\\_AC\\_F5NikZLUr0OfCf2ViiGJk\\_20070206.html?mod=tff\\_main\\_tff\\_top](http://online.wsj.com/public/article/SB113923342926565990-h7_AC_F5NikZLUr0OfCf2ViiGJk_20070206.html?mod=tff_main_tff_top). "Federal spending has grown twice as fast under President Bush as under President Clinton," said Brian Riedl, a budget analyst at the Heritage Foundation, a conservative think tank . . ." Harry Reid, a Senator Minority Leader, was quoted in this article as stating, "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 health care and student aid." *Id.*

112. Alex Williams, *The Lost Summer*, N.Y. TIMES, June 4, 2006, at 91 (discussing the stress youth feel to be competitive for college).

113. Joe Berger, *Demoting Advanced Placement*, N.Y. TIMES, Oct. 4, 2006, available at <http://www.nytimes.com/2006/10/04/education/04EDUCATION.html?ex=1317614400&en=4e083d423267fc84&ei=5088&partner=rssnyt&emc=rss> (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*, ABC NEWS, June 7, 2006, available at <http://abcnews.go.com/International/wireStory?id=2049305&CMP=OTC-RSSFeeds0312>; see, e.g., Rukmini Callimachi, *Katrina's Children Struggle With Fears*, ABC NEWS, Apr. 23, 2006.

of the lack of attention at the federal level, these towns, cities, counties, and parishes are working on their own. This article suggests that within the United States, until federal policy makers consider their leadership in this area a priority, local governments must assume the charge within their communities for as long as they can. This is in an effort to create a wake up call at the federal level for a national<sup>114</sup> discussion that will lead to the ratification of the CRC and/or the adoption of the MDGs. Section 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 CRC could play in unifying a national policy towards children in the United States. Our president, as an institution, has a duty to participate in, if not lead, world efforts to protect children. The article concludes by exhorting federal policy makers to recognize their role in developing solutions to child poverty issues and to assist not only United States children, but also the world in achieving the MDGs by the primary target date of 2015.

## II. TALKING THE SAME LANGUAGE ABOUT CHILDREN: FOUR APPROACHES

To establish a framework for addressing this issue we must be sure the vocabulary and lexicon used are consistent. How one defines children is important to the application of policy that will result in remedies of the various ills described. The question becomes, “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.<sup>115</sup> Here, world government policy and focus differ in range.<sup>116</sup> 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

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114. U.S. Gen. Accounting Off., *Homeland Security: Proposal for Cabinet Agency has Merit, but Implementation will be Pivotal to Success: Hearing on GAO-02-886T Before the Subcomm. on Technology, Terrorism and Governmental Information, Comm. on the Judiciary (June 2002), available at <http://www.gao.gov/new.items/d02886t.pdf>* (GAO arguing that, “federal initiatives should be conceived as national, not federal in nature.”).

115. What is the definition of “young people”? For example, Brazilian “street kids” have been defined as reaching adulthood at 10 years of age, but this would not apply in the U.S.

116. See, e.g., B. Bradford Brown & Reed W. Larson, *The Kaleidoscope of Adolescence: Experiences of the World’s Youth at the Beginning of the 21st Century*, in *THE WORLD’S YOUTH: ADOLESCENCE IN EIGHT REGIONS OF THE GLOBE* 1, 5 (B. Bradford Brown et al. eds., 2002) (Youth Policy Act in India addresses persons from age 15 to 35 as adolescents).

assist the various stages of transition from now to the future. Another philosophy is to incrementally increase funding<sup>117</sup> and then provide a great deal of resources over a shorter period of time, when the problem is classified as a crisis or an epidemic.<sup>118</sup> Still, in other situations, children's current needs are at times addressed, but usually as byproducts of "more important issues."<sup>119</sup>

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 previously addressed 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,<sup>120</sup> but also in many other areas, including access to adequate and safe drinking water, shelter, sanitation, healthcare, education, and a nurturing home environment free of violence that allows for maturation on a systemic basis. The lack of such can lead to illiteracy, malnutrition, low life expectancy, poor maternal health, and the prevalence of preventable diseases.<sup>121</sup> 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 those in the shrinking middle-class for whom hope is disappearing for them to ever achieve poverty reduction<sup>122</sup> and sustained economic growth.

During the Cold War, western governments poured resources into the lives of children in an effort to win the race against Communism and the ideology of state control of access to resources. Today, the interdependent economic

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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 FLA. A&M L. REV. (forthcoming) (manuscript at 56-58, on file with author), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=931931](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931931).

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. Shepherd, *Conceptualizing Chronic Poverty*, 31 WORLD DEV. 403 (2003).

121. Action Plan for the Reduction of Absolute Poverty and the Promotion of Economic Growth, <http://www.govmoz.gov.mz/parpa/source/cap4.doc> (last visited May 18, 2007).

122. See ERNESTO M. PERNIA, ASIAN DEV. BANK, PRO-POOR GROWTH: WHAT IS IT AND HOW IS IT IMPORTANT?, ERD POL'Y BRIEF No. 17 (2003), available at [http://www.asiandevbank.org/Documents/EDRC/Policy\\_Briefs/PB017.pdf](http://www.asiandevbank.org/Documents/EDRC/Policy_Briefs/PB017.pdf).

structure of the post-Cold War world<sup>123</sup> is murkier. Neither the Iron Curtain nor “Bamboo Curtain” plays much of a role in the 21st Century.<sup>124</sup> The barriers to communication between all states are substantially removed but so are the mechanisms that may have prevented the effects of another state’s poverty influences. Isolationism cannot be an excuse against the educational choices, famine, and cheaper labor<sup>125</sup> that were previously kept away from our door step. Today’s Administration’s policy focuses on encouraging democracies around the world.<sup>126</sup> Free societies begin with their children.<sup>127</sup> This means that we have a responsibility to improve the lives of children “over there” so they don’t become human bombs “over here.” To begin we must understand the vocabulary behind

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* (1992). 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. See generally Elaine Sit, *Broken Promises: The Status of Expropriated Property in the People’s Republic of China*, 3 *ASIAN L.J.* 111 (1996) (discussing how the property rights were effected after the Bamboo Curtain was destroyed); see generally Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 *YALE L.J.* 443 (2001) (discussing how human rights were affected after the Iron Curtain).

125. MNEs no longer have to contend with the labor unions of the U.S. Communism is no longer an obstacle, 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 produce shareholder value at the expense of the environment and the social safety nets of the people. “While some smaller U.S. manufacturers complain about Chinese trade, major American multinationals—which have benefited from the lower costs of producing and outsourcing there—have been muted in their criticism.” Hitt, *supra* note 24, at A1 (Noting that the U.S. economy is still negatively affected by the shipment of manufacturing and other high wage jobs overseas.).

126. Steven R. Weisman, *Diplomatic Memo: Democracy Push By Bush Attracts Doubters in Party*, N.Y. TIMES, Mar. 17, 2006, available at <http://nytimes.com/2006/03/17/politics/17democracy.html?ei=5090&en=e97f251aa4d0caa5&ex=1300251600&partner=rssuserland&emc=rss&pagewanted=all>; see, e.g., MARTIN DIXON & ROBERT MCCORQUODALE, *CASES & MATERIALS ON INTERNATIONAL LAW* 175 (4th ed. 2003).

127. Hugh Downs, *Perspective on Children: Most Vulnerable, Least Protected*, L.A. TIMES, Feb. 10, 1991, at M5 (quoting President George W. Bush’s remark in 1988) (“Our national character can be measured by how we care for our children.”). A similar phrase was uttered by Dietrich Bonhoeffer, who died protesting Adolph Hitler’s holocaust: “The test of the morality of a society is what it does for its children.” CDFAC ANNUAL REPORT, *supra* note 19, at 22. See Jeffrey Goldhagen, *Children’s Rights and the United Nations Convention on the Rights of the Child*, in 112 *PEDIATRICS* 742, 742 (2003) (“[T]he United States . . . venerate[s] and romanticize[s] childhood, while at the same time, we abuse, molest, incarcerate, subjugate, segregate, and exploit our children.”).

the statistics and break down generalizations<sup>128</sup> to manageable targets. What is more, we must be clear that when we are talking about young people in two categories: those born into poverty and those who represent the 60 percent 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 the time when a young person needs to develop positive routines (i.e., daily exercise) and is looking for inspiration<sup>129</sup> 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).<sup>130</sup> 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 CRC ended the 20th Century and the MDGs began the 21st Century bodes well for the continued delineation of human rights.<sup>131</sup> Advocates must seize the attention of policy makers and speak the same language in the process, defining the newest “actor” on the international stage in a way that all can understand, if not agree.

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128. See, e.g., Mark Leibovich, *The Socialist Senator*, N.Y. TIMES, Jan. 21, 2007, at 34 (following U.S. Senator Bernie Sanders around a Vermont High School to interest them in policy discussions about issues facing U.S. youth). One such discussion generated this retort from a high school senior:

Why should people who can afford to go to college pay for people who can't?  
Why should people who are successful in this society be burdened by people  
who aren't? It's just a fact of life. Some people will succeed, and some people  
won't. And it's just the way it's going to be and has always been.

*Id.* at 34 (Sanders then proceeded to engage the class in the discussion. This is the type of discussion that should be had at all levels of government. Then, the solutions should be provided and implemented for the underlying ills.).

129. See, e.g., Elissa Gootman, *Taking the Middle Schoolers Out of the Middle*, N.Y. TIMES, Jan. 22, 2007, at A1 (featuring progressive implementation of the “nurturing cocoon” of elementary school into middle school in New York City and Philadelphia). This is contrasted with the feeling of abandonment on display in some schools in the City of New Orleans. See Adam Nossiter, *Students After the Storm, Left Alone and Angry*, N.Y. TIMES, Nov. 1, 2006, at A1, available at <http://www.nytimes.com/2006/11/01/education/01orleans.html?ex=1320037200&en=34edc4ba98444a6c&ei=5088&partner=rssnyt&emc=rss>.

130. See Sam Dillon, *In Schools Across U.S., the Melting Pot Overflows*, N.Y. TIMES, Aug. 27, 2006, at 1 (school board not prepared for incoming class in any way).

131. See *infra* Section IV.

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 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.<sup>132</sup> 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, these categories or approaches, “each contribute to a better understanding of young people . . . .”<sup>133</sup> Therefore, the agreement to a single description is not absolutely necessary as long as each point is able to be recognized.

### 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,<sup>134</sup> Generation X,<sup>135</sup> Generation Y,<sup>136</sup> and the Napster Generation,<sup>137</sup> which seem to be giving way to the classification: Generation Next,<sup>138</sup> and less descriptively, “age sets.”<sup>139</sup>

132. Curtis A. Bradley & Jack L. Goldsmith, III, *The Current Illegitimacy of International Human Rights Litigation*, 66 *FORDHAM L. REV.* 319, 345 (1997); Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 *HARV. L. REV.* 815, 842 (1997); see generally 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).

133. *WORLD YOUTH REPORT*, *supra* note 58, at 113.

134. For example, the protest movements 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.

135. Born between 1966-1980.

136. Hybrid group roughly between 1966-1988.

137. See Arthur Austin, *The Postmodern Buzz in Law School Rankings*, 27 *VT. L. REV.* 49, 56 (2002) (describing the Napster Generation; “[t]hey are smart, quick at grasping the angles, get serious test scores, and have access to plenty of disposable income.”).

138. See Judy Woodruff, *Generation Next: Speak Up and Be Heard*, <http://www.pbs.org/newshour/generation-next> (last visited May 18, 2007) (a thoughtful approach to considering the views of more than five-hundred 16-25 year olds in the United States); see The Pew Research Ctr., *How Young People View Their Lives, Futures and Politics: A Portrait of “Generation Next”* (Jan. 9, 2007), available at <http://people-press.org/reports/pdf/300.pdf> (a Pew Research Poll done in conjunction with this documentary showing that this generation is more tolerant, less cynical about government, more technologically savvy and more embracing of globalization) [hereinafter *Generation Next*].

These descriptions allow scientists and policy makers to draw general conclusions about the state of an age group from a historical and political 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 the “haves,” which are those that can be tracked, be determined by census, and are empowered to voice their concerns. 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”<sup>140</sup> scarcely allows one to gauge the direction or consciousness of an entire generation. As Justice Breyer recounted, paraphrasing James Madison, it is important that government does not err by making policy decisions based on a few who become the sum total of the voice of the generation.<sup>141</sup>

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.<sup>142</sup> Attention has been focused on voting behavior, volunteerism,<sup>143</sup> and the sources and effect of political socialization, especially civic education in schools. Others are focused on reactive and publicly demonstrative efforts of advocacy.<sup>144</sup> 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. Therefore, this does not always get at the

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139. Such as baby boomers. See also R.G. Braungart, *Historical Generations and Generation Units: A Global Pattern of Youth Movements*, in LIFE COURSE AND GENERATIONAL POLITICS (Richard G. Braungart & Margaret M. Braungart eds., 1993).

140. WORLD YOUTH REPORT, *supra* note 58, at 113.

141. STEPHEN G. BREYER, ACTIVE LIBERTY: INTERPRETING OUR DEMOCRATIC CONSTITUTION 28-29 (2005).

142. L.R. Sherrod, C. Flanagan, & J. Youniss, *Dimensions of Citizenship and Opportunities for Youth Development: the What, Why, When, Where and Who of Citizenship Development*, 6 APPLIED DEV. SCI. 264 (2002).

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

144. See Bernard LaFayette, Jr. & David C. Jenhnson, THE BRIEFING BOOKLET: AN ORIENTATION TO THE KINGIAN NONVIOLENCE CONFLICT RECONCILIATION PROGRAM & THE LEADERS MANUAL—A STRUCTURED GUIDE AND INTRODUCTION TO KINGIAN NONVIOLENCE THE PHILOSOPHY AND METHODOLOGY 15 (2005) (displaying Dr. Bernard Lafayette and the Montgomery Freedom Rides as another American example); see DONNA ELAM, ED.D., WHY THEY MARCHED: THE STRUGGLE FOR THE RIGHT TO VOTE 14-19 (James Powe ed., 2005); see also Ann Mische, *Projecting Democracy: The Formation of Citizenship Across Youth Networks in Brazil*, in CITIZENSHIP, IDENTITY AND SOCIAL HISTORY 131 (Charles Tilly ed., 1996); see M. MARKS, YOUNG WARRIORS: YOUTH POLITICS, IDENTITY AND VIOLENCE IN SOUTH AFRICA (2001) (examining involvement of South African youth in the anti-apartheid struggle, which fluctuated between violent and non-violent activity); see MATTHEW COLLIN, GUERRILLA RADIO: ROCK 'N' ROLL RADIO AND SERBIA'S UNDERGROUND RESISTANCE (2002) (an account of youth social protest in the former Yugoslavia focusing directly on media and popular culture).

core of generational issues but rather catalogs the reactions of a few generational issues, leaving out a cadre of subsets such as the “have-nots.”<sup>145</sup> The “have-nots” are those not accurately represented by such data. The generational approach ignores heterogeneous factors in favor of generalizations. Due to the United States of America being more of a salad bowl than a melting pot, distinctions and diversity of individuality are lost.

## 2. Adolescents

A second approach comes under the label adolescent. It is more widely used than the generational perspective. This classification focuses on the development, experiences, and the civic and political engagement<sup>146</sup> 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.’”<sup>147</sup> The state of young people’s political formation,<sup>148</sup> the design of influence in marketing campaigns of governmental, and commercial enterprises<sup>149</sup> used to urge resistance or acquiescence to power structures is studied.<sup>150</sup> 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 girls and young women, are often marginalized and stigmatized within the public sphere and at the formal institutional level”<sup>151</sup> because a voice is not given to the personal circumstances that contribute to the life choices they make. They lack

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145. 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.

146. WORLD YOUTH REPORT, *supra* note 58, at 114.

147. *Id.*

148. See L.R. SHERROD, *supra* note 142.

149. Examples of these marketing campaigns are: “This is Your Brain on Drugs” message promulgated by The Executive Branch’s Ad Council occasionally, Nancy Reagan’s “Say No to Drugs” campaign, or the more in-your-face “Truth” anti-tobacco campaign.

150. See, e.g., Margaret Talbot, *Little Hotties: Barbie’s New Rivals*, NEW YORKER, Dec. 4, 2006, at 74-83 (discussing the lengths to which marketing is designed to appeal directly to children, using the legal battles between Mattel and MGA’s Barbie v. Bratz dolls as an example in an effort to depict the generational distinction between the two dolls).

151. WORLD YOUTH REPORT, *supra* note 58, at 115.



the cultural competence to effectively analyze their issues.<sup>152</sup> Further, adolescence can be considered as largely an Anglo-Western notion and may not be “applicable to other parts of the world”<sup>153</sup> where rites of passage may define the transition into adulthood using other 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.”<sup>154</sup> While “youth” is acknowledged as a heterogeneous category,<sup>155</sup> the classification is inherently susceptible to manipulation. Urban youth versus suburban youth can be code for minorities versus Anglo children.<sup>156</sup> Programs designed for either can be colored to suit the utterer’s agenda.<sup>157</sup>

The drawback is the overwhelming tendency to view the definition as youth versus adolescents.<sup>158</sup> This “has limited research and activities in the field of youth and inhibited the development of new and productive ways of thinking about youth politics.”<sup>159</sup> Are young people social problems or apathetic consumers? It depends on whom the researcher is discussing in many cases.

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152. See, e.g., CTR. FOR ADV. OF HEALTH, *Young Black Children’s Development Affected by Messages on Race*, Sept. 17, 2002, available at <http://www.hbns.org/newsrelease/racialid9-17-02.cfm> (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); see also HBO: *The Wire*, <http://www.hbo.com/thewire> (last visited May 18, 2007) (directors and producers of *The Wire*, now in its fourth season, strives to bring awareness of these issues to popular culture; with the express desire to spur a dialogue about the state of American children).

153. WORLD YOUTH REPORT, *supra* note 58, at 115.

154. *Id.* at 117.

155. *Id.* (challenging 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”).

156. But see Michael Winerip, *On Education; How a Cleveland Suburb Spurs Black Achievement*, N.Y. TIMES, Dec. 14, 2005, at B8.

157. See, e.g., Phillip Mizen, *Putting the Politics Back into Youth Studies: Keynesianism, Monetarism, and the Changing State of Youth*, 5 J. OF YOUTH STUD. 5 (2002) (showing youth identity is subject to manipulation by governments, media, school, social workers, marketing, and other commercial enterprises).

158. WORLD YOUTH REPORT, *supra* note 58, at 117. Compare Noggin (owned by Viacom), <http://www.noggin.com/parents> (last visited May 18, 2007) (describing television programming that starts out in the morning targeting preschoolers), with The N (also owned by Viacom), <http://www.the-n.com/footerPage.php?id=50> (last visited May 18, 2007) (describing television programming on the same channel that transitions to targeting an older crowd in the afternoon).

159. WORLD YOUTH REPORT, *supra* note 58, at 117.

Heterogeneous application need not shift because the discipline or context changes, as currently it does. The discussion of youth on issues regarding curricular content is different from the discussion regarding juvenile justice systems, for example. Who controls or directs the idea of youth is the open question. One thing is certain: it is not youth.<sup>160</sup> The premise of focusing on the “being” and “becoming” is extremely helpful to develop policy for both. If it is possible to depoliticize the classification of “youth” and utilize it in conjunction with “adolescents” and follow core approaches the United Nations seems to have achieved with the MDGs,<sup>161</sup> 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.”<sup>162</sup> This has the effect of giving a definitive form to the human being who needs nurturing on a graduating scale of maturity from childhood through his or her transition to independence. 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.<sup>163</sup>

The children’s rights approach is an extension of this definition and focuses on various local, national, and international legal instruments, such as the CRC on the Rights of the Child, as they apply to the lives of children and young people. The status of children as citizens is 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.”<sup>164</sup> To avoid foisting adult apparatuses 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.

“[W]hile the exact ages at which certain kinds of rights are extended, statuses are attained, and dependence and protection are superseded by

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160. Barbara Arneil, *Becoming Versus Being: A Critical Analysis of the Child in Liberal Theory*, in *THE MORAL AND POLITICAL STATUS OF CHILDREN* 72 (David Archard & Colin M. Macloed, eds., 2002) (finding that children are defined “in terms of what they lack” reflecting “a negative image of the positive adult form.”).

161. See, e.g., U.N. Ad Hoc Working Group for Youth and the MDGs, *Final Report: Youth and the Millennium Development Goals: Challenges and Opportunities for Implementation*, (Apr. 2005), available at <http://www.mdgyouthpaper.org/mdgyouthpaper.pdf>.

162. The definition is usually biologically focused, rather than politically constructed, and applies through age eighteen.

163. See, e.g., *CHILDREN AND THE POLITICS OF CULTURE* xx (Sharon Stephens ed., 1995).

164. *WORLD YOUTH REPORT*, *supra* note 58, at 116.

autonomy will vary across time and space (and certainly between genders), these processes are universal”<sup>165</sup> transcending culture, religion, and language. Designation of “the child” as a legal “actor” on the international stage, with the same standing as nation-states have had for centuries, was a monumental factor in developing a law recognizing the human rights of children. With that ideal as its core, this paper continues an integrated approach and the uses of “the child,” children, youth, and young people. The same process is employed using some version of all the approaches in the CRC.

### III. DEFINING POVERTY IN THE CONTEXT OF “THE CHILD”

After determining who “the child” is and how this juridical person is viewed, the second important step, in order to truly deal with this issue, is to determine what poverty consists of (if not, define it). Whether one uses an absolute definition or a malleable one, the same questions should be asked: 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.? 20,000 people in the latter category die daily.<sup>166</sup> 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.<sup>167</sup> The CRC targets both types of poverty. With the United States being absolutely the wealthiest nation in the world, it is clear that our poverty rates are not merely a result of a lack of resources (unlike many developing countries),<sup>168</sup> yet our poverty rates remain among the highest when compared with other developed countries.<sup>169</sup> The World Bank describes poverty in this way:

Poverty is hunger. Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to school and not knowing how to read. Poverty is not having a job, is fear for the future, living one day at a time. Poverty is losing a child to illness

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165. *Id.* at 117.

166. *In Larger Freedom*, *supra* note 50, ¶ 9.

167. *See id.* ¶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 A14.

168. *See, e.g.*, Anup Shah, Causes of Poverty, Poverty Facts and Stats, <http://www.globalissues.org/TradeRelated/Facts.asp> (last modified Nov. 24, 2006).

169. *See* JOHN ICELAND, POVERTY IN AMERICA: A HANDBOOK 62-63 (2d. ed 2006); Timothy M. Smeeding, *Poor People in Rich Nations: The United States in Comparative Perspective*, J. OF ECON. PERSPECTIVE 17 (Winter 2006), available at [http://www-cpr.maxwell.syr.edu/faculty/smeeding/pdf/JEP%20V5\\_2006.pdf](http://www-cpr.maxwell.syr.edu/faculty/smeeding/pdf/JEP%20V5_2006.pdf).

brought about by unclean water. Poverty is powerlessness, lack of representation and freedom.<sup>170</sup>

Researchers generally agree that poverty is multidimensional and can be defined as a lack of basic essentials. However, extending the definition to the emotional as well as the financial, as it relates to children, is important to capture the essence of the problem. Therefore, poverty should be measured not only by income,<sup>171</sup> but also by access to public goods such as education,<sup>172</sup> healthcare,<sup>173</sup> a safe water supply,<sup>174</sup> the ability to be free from violence,<sup>175</sup> to grow up in a nurturing family environment,<sup>176</sup> to play,<sup>177</sup> and to have access to age appropriate information.<sup>178</sup> Simply yelling at the poor that they must do better would no longer suffice to placate the intellectual, who is safe in his ivory tower.<sup>179</sup> This article urges that in addition to a broader definition of poverty in the minds of policy makers, there must also be a basic set of factors that should be applied to the formulation of child development strategies. When steps are 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 can be successful. An integrated approach should reflect consideration of all of the priority areas for

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170. World Bank, Understanding Poverty, <http://go.worldbank.org/RQBDCUTUXW0> (last visited May 18, 2007).

171. Toby Seddon, *Drugs, Crime and Social Exclusion*, 46 BRIT. J. CRIMINOLOGY 680, 681 (2006) (“Individuals, 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.”).

172. Convention on the Rights of the Child, *supra* note 79, ¶¶ 28-29.

173. *Id.* ¶ 24.

174. *Id.* ¶ 27.

175. *Id.* ¶ 40.

176. *Id.* ¶¶ 5, 7-10, 21, 25.

177. *Id.* ¶ 31.

178. Convention on the Rights of the Child, *supra* note 79, ¶ 17.

179. See Juan Williams, *Getting Past Katrina*, N.Y. TIMES, Sept. 1, 2006, at A (identifying confronting the poverty of spirit as an anti-poverty program since poverty has been on the rise since 2001, but also states 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. See *MDG Campaigning Toolkit*, *supra* note 71, at 2.3 (goals 1-7 require governments to put the requisite policies in place and require them to do the heavy lifting). In fact, there is a “No Excuses” campaign within the MDG: “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.” *MDG Campaigning Toolkit*, *supra* note 7, at 2.4.

youth development<sup>180</sup> that may be relevant to young people in their local and national contexts. 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 is the baseline for the article's use of statistics and demand for a dramatic shift in public policy on the issue of a unifying approach to the needs of children. Professor Rank, citing John Kenneth Galbraith, argues that United States 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.<sup>181</sup> In the process, policy makers should revisit ratification of the CRC as a means to keep the issues fresh until they are remedied.

#### IV. THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A CREDIBLE DOCUMENT WITH INCREDIBLE PROMISE

##### *A. The CRC Marks an Evolution in Human Rights Law*

The CRC is binding law. It prescribes the rights of the child as a juridical entity recognized in international law. The CRC was adopted without a vote on November 20, 1989.<sup>182</sup> The CRC is a culmination of 65 years of formal international legal recognition of the human rights of children.<sup>183</sup> Coming into force out of a relatively recent line of United Nations Human Rights treaties,<sup>184</sup> the CRC was open for signature on January 26, 1990,<sup>185</sup> and went into effect

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180. See World Programme of Action for Youth and General Assembly, G.A. Res. 58/133, U.N. Doc. A/RES/58/133 (Jan. 26, 2004).

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

182. Convention on the Rights of the Child, *supra* note 79.

183. See LAWRENCE J. LEBLANC, *THE CONVENTION ON THE RIGHTS OF THE CHILD: UNITED NATIONS LAWMAKING ON HUMAN RIGHTS* (1995) (providing reasoning behind the adoption of the CRC).

184. The International Covenant on Civil and Political Rights came into force in 1966, G.A. Res. 2200A, at 52, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966), along with the International Covenant on Social, Economic and Cultural Rights, G.A. Res. 2200A, at 49, U.N. GAOR 21st Sess., No. 16, 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 ("CEDAW"), G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc A/RES/34/180 (Dec. 18, 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).

185. See *Status of the United Nations Convention on the Rights of the Child*, 29 I.L.M. 1339, 1339 (1990).

after the twentieth instrument of ratification was deposited with the Secretary-General of the United Nations.<sup>186</sup> Desire for a comprehensive human rights instrument dedicated to enumerating and protecting the rights of children had been discussed for decades. The CRC entered into force on September 2, 1990.<sup>187</sup> The ontology of the CRC began with the Geneva Declaration of the Rights of the Child,<sup>188</sup> which was adopted by the League of Nations in 1924.<sup>189</sup> In 1948, the United Nations gave official recognition to the human rights of children by adopting the Universal Declaration of Human Rights, which stated that children were “entitled to special care and assistance.”<sup>190</sup> The next evolution of the world’s consciousness came in the form of the Declaration of the Rights of the Child.<sup>191</sup> It was a ten-principle document<sup>192</sup> that expanded the rights set 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. These documents were followed by two broad covenants promulgated in the 1960s.<sup>193</sup> Even then, the United States had not moved to fully embrace the covenants.<sup>194</sup>

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186. *Id.* (The first deposit of State Parties ratifying the CRC 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.)

187. *Id.* (This was thirty days following the deposit of the twentieth instrument of ratification or accession—though it seems the CRC may have been entered into a day earlier.); *but see* Off. of the U.N. High Comm’r for Hum. Rts., *Status of Ratifications of the Principal International Human Rights Treaties*, June 9, 2004, available at <http://www.unhcr.ch/pdf/report.pdf> (showing Bangladesh, Benin, and Sudan ratification dates being on September 2, 1990).

188. There have been a series of debates about the utility of declarations versus treaties and how to effectively move the world forward to a better understanding of human rights law. Declarations “address themselves immediately (without long ratification delays) to the whole of the UN membership and, as the case may be, to other actors and organs of society at national and international levels, thus expressing the notion of collective and universal responsibility.” Theo van Boven, *The Future Codification of Human Rights: Status of Deliberations—A Critical Analysis*, 10 HUM. RTS. L.J. 1, 8 (1989). Some of the declarations were quite purposeful in this regard to give momentum to the development of human rights law.

189. Geneva Declaration of the Rights of the Child, adopted Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924), available at <http://www1.umn.edu/humanrts/instree/childrights.html>; see also Cynthia Price Cohen, *The Human Rights of Children*, 12 CAP. U. L. REV. 369, 369 (1983).

190. Universal Declaration of Human Rights, G.A. Res. 217A, art. 25(2), U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 10, 1948).

191. Declaration of the Rights of the Child of 1959, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354 (Nov. 20, 1959).

192. *Id.*

193. 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,

Designating 1979 as the International Year of the Child, at the behest of the government of Poland, the United Nations decided that a Working Group should be formed under the former UN Commission for Human Rights<sup>195</sup> to draft a convention dedicated to the rights of the child.<sup>196</sup> Following the completion of the first draft in 1988,<sup>197</sup> 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.<sup>198</sup> This process led to several amendments, including a switch to gender-free language, coupled with recommendations from delegations and nongovernmental organizations, resulting in extensive alterations being made in the first reading text. Accordingly, some sacrifices were made in the language which resulted in all parties not getting what they wanted in the draft of the CRC.<sup>199</sup> Normative inconsistency was thus identified and to the extent it could not be harmonized, the notes were saved for future documents, perhaps even protocols.<sup>200</sup>

Importantly, several protections remained in the draft, including protection against traditional practices like female circumcision,<sup>201</sup> selling one’s child into

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provides that “[e]very child shall have, without any discrimination as to race, colour, 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.” International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 24, U.N. Doc. A/6316 (Dec. 19, 1966) (entered into force Mar. 23, 1976). 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.” International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), art. 10, P 3, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (entered into force Jan. 3, 1976).

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

195. U.N. News Ctr., *Annan Sets up Panel to Mesh UN System’s Humanitarian and Development Work* (Feb. 16, 2006), available at <http://www.un.org/apps/news/storyAr.asp?NewsID=17525&Cr=millennium&Cr1=development> (restructuring U.N. to deal with humanitarian aid issues including the fulfillment of the MDG’s).

196. Cynthia Price Cohen, *The Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child*, 12 HUM. RTS. Q. 137 (1990). Poland proposed that an international treaty be drafted that would put into legally binding language the principles set forth in the 1959 Declaration. *Id.* at 139.

197. See U.N. Econ. & Social Couns., Comm’n on Hum. Rts., *Report of the working group on a draft convention of the Rights of the Child*, U.N. Doc. E/CN/4/1988/28 (1988), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G88/122/84/pdf/G8812284.pdf?OpenElement>.

198. See Cohen, *supra* note 198.

199. *Id.* at 141.

200. See van Boven, *supra* note 187.

201. See Convention on the Rights of the Child, *supra* note 79, ¶ 24.

sexual exploitation,<sup>202</sup> the protection of rights of indigenous children,<sup>203</sup> standards for the administration of school discipline,<sup>204</sup> and rehabilitation for victims of various types of abuse and exploitation.<sup>205</sup> The Working Group was built upon the tenets of the 1948 and 1959 Declarations, and manifested a near-complete recognition by the world for children's rights. The CRC was the next natural 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 states<sup>206</sup> to agree to a rubric with other states,<sup>207</sup> is an effective model that should work in a federalized system of governing such as the United States.

Although there were different forms of enabling legislation to implement the CRC—that is, some took a strictly youth perspective or adolescent premise, all but the United States agreed that “the child” has juridical status at the state level. In so doing, the International Working Group facilitated the transnational understanding that 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 clarification of the juvenile justice standards,<sup>208</sup> the relationship between the individual child, the family and the state,<sup>209</sup> the child's right to privacy,<sup>210</sup> and the extent to which other civil and political rights belong to children.<sup>211</sup> All were housed in the CRC under the protective,

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202. *See id.* ¶¶ 34-36.

203. *See id.* ¶¶ 17(d), 29(d), 30.

204. *See id.* ¶ 28.

205. *See id.* ¶ 39.

206. Transnational is defined as: “1. Reaching beyond or transcending national boundaries . . . 2. Relating to or involving several nations or nationalities . . .” THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, *available at* <http://dictionary.reference.com/browse/transnational> (last visited May 18, 2007) [hereinafter AMERICAN HERITAGE].

207. International then just isn't enough. International is defined as: Of, relating to, or involving two or more nations . . .” THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (2006), *available at* <http://dictionary.reference.com/browse/international> (last visited May 10, 2007) [hereinafter AMERICAN HERITAGE DICTIONARY].

208. *See* Convention on the Rights of the Child, *supra* note 79, ¶¶ 37, 40.

209. *See, e.g., id.* ¶¶ 5, 9-11, 18-21.

210. *See id.* ¶ 16.

211. *See, e.g., id.* ¶¶ 2, 6, 12-15, 25, 37, 40.



underlying principle of the “best interests of the child”—a standard born out of United States common law!<sup>212</sup>

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.<sup>213</sup> While Somalia has been working toward a fully functional government since 2005; the United States has no such excuse.<sup>214</sup>

The CRC spawned a number of worldwide follow-up meetings, including the 1990 World Summit for Children, the 1994 International Year of the Family, the 1999 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,<sup>215</sup> the 2000 U.N. Millennium Development Goals, and the 2002 commitment to 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.<sup>216</sup>

#### *B. “The Child’s” Needs Inalienable Rights Pursuant to the Convention*

States, IGOs, NGOs, and multinational enterprises all have rights under international law—a formulation that has developed over centuries. With the enactment of the CRC, the child obtained rights that must now be recognized by participating governments. To some degree, the CRC codifies many universal rights that were the subject of the instruments that catalogued international human rights laws, but never before explicitly asserted as applying equally to children.<sup>217</sup> Drafters took the third (“youth”) and fourth (“the child”) approaches

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212. I frequently ask attorneys and judges what they think this means and I never receive the same response. All of the responses can be summed up by Justice Stewart’s “I know it when I see it” pronouncement.

213. 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 Sahra Abdi Ahmed, *Somalis Protest Against New Leaders in Kismayo*, REUTERS, Oct. 7, 2006, available at <http://today.reuters.com/News/CrisesArticle.aspx?storyId=L0736569>.

214. See, e.g., Jeffrey Gettleman, *New Somali Government Faces the Age-Old Problem of Clans*, N.Y. TIMES, Jan. 22, 2007, at A1.

215. UNICEF, *The State of the World’s Children 2005*, *supra* note 82, at 2.

216. 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 States Senate, despite having a majority of his own party in the 104th Congress (Senate) and the possibility of Republican support.

217. 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, and due process and

in dealing with children,<sup>218</sup> looked at the statistics, delineated the needs, and were successful in classifying them as rights based on the CRC being opened for signature.<sup>219</sup> The rights can be classified in five broad groupings: social, economic, cultural, protective, civil, and political rights. Social rights are: the right to life, optimal survival (as opposed to mere subsistence) that includes play, family life, access to the best possible healthcare, and education.<sup>220</sup> Economic rights are: 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 rights<sup>221</sup> include the right to promotion of the child's best interests,<sup>222</sup> to protection from sexual exploitation, armed conflict,<sup>223</sup> harmful drugs, abuse and neglect, and the right to rehabilitative care following neglect, exploitation, or abuse. Finally, civil and political rights include the

nondiscrimination, for adults. The United States is not a party to the Convention on the Elimination of Discrimination Against Women ("CEDAW"), despite a 13-4 vote in favor of ratification by the Senate Foreign Relations Committee. No explanation has been given as to why the CRC has not been forwarded to the full Senate for its consideration. *See U.N. Human Rights Comm'n: The Road Ahead, Hearing Before the Subcomm. on International Operations and Terrorism*, 107th Cong. 107-55 (2001), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_senate\\_hearings&docid=f:73071.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:73071.wais) [hereinafter *Operations Hearing*] (statement of Sen. Barbara Boxer, ranking member). 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 CRC 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 on the Rights of the Child, *supra* note 79, ¶ 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).

218. *See supra* Sections III, IV.

219. *See generally* Ferguson, *supra* note 117.

220. This is so unless it is not in the child's best interests. *See* Convention on the Rights of the Child, *supra* note 79, ¶ 3.

221. "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, *The State of the World's Children 2005*, *supra* note 82, at 7.

222. 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 POVERTY L. & POL'Y 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.").

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

right to be heard or taken seriously, freedom from discrimination in the exercise of rights on any grounds, freedom of expression,<sup>224</sup> the right to privacy,<sup>225</sup> the right to information,<sup>226</sup> the right to respect for physical and personal integrity, freedom from all forms of violence, and/or cruel or degrading treatment.

The aforementioned 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 essentially identify the same needs. The CRC translated those needs into rights when it came into force.<sup>227</sup> This is the hallmark of the rights-based approach to international human rights law—translating specific, identifiable needs into rights which are then recorded in law. No longer can there be malleable disputes about what is or is not customary international law. No longer will there be a need to consult scholars about whether these tenets are among the *jus cogens* or whether these norms are indeed at the top of the hierarchy of international law.<sup>228</sup> The discussion of whether child's needs are now recognizable rights in law as it relates to the signatories to the CRC is over.

### *C. "The Child's" Juridical Status Requires Governments to Fulfill the Needs of its Children*

This is because the CRC accords juridical—legal and protectable status—to “the child” based on age and then graduated maturity. State parties must (among other requirements) specifically engage in three activities: 1) universally implement the CRC without discrimination for all children,<sup>229</sup> 2) make the CRC “widely known” to both children and adults,<sup>230</sup> and 3) report regularly to the Committee on the Rights of the Child,<sup>231</sup> which monitors states and collects data on compliance with the CRC.<sup>232</sup> While the transition from pre-CRC policy to

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224. This occurs in accordance with one's age and maturity. See Convention on the Rights of the Child, *supra* note 79, ¶ 12.

225. *Id.*

226. *Id.*

227. *Id.*

228. For a succinct discussion of the analysis of human rights, see Jeremy Levitt, *Conflict Prevention, Management, and Resolution: Africa—Regional Strategies for the Prevention of Displacement and Protection of Displaced Persons: The Cases of the OAU, ECOWAS, SADC, and IGAD*, 11 DUKE J. COMP. & INT'L L. 39, 51-52 (2001).

229. See Convention on the Rights of the Child, *supra* note 79, ¶ 42.

230. See *id.* ¶ 43.

231. See *id.*

232. See *id.*

post-CRC policy has been neither quick nor smooth for any state party, states who are signatories in many areas of the world—particularly those in need of aid—do not appear to be engaged in window dressing.

Regardless of whether the state followed common law or civil law traditions, many passed enabling legislation to spur needed changes in the administrative and social processes of their laws. Signatories used the CRC to frame amendments to state constitutions to address children's rights.<sup>233</sup> For example, Columbia enacted a Minor's Code that protects a child's right of expression,<sup>234</sup> while the government of Honduras retrained judges, and other government officials in accordance with its newly fashioned Children's Rights Code.<sup>235</sup> The Philippines introduced laws protecting children from sexual exploitation.<sup>236</sup> South Africa's government recognized the rights of all children to basic nutrition, education, health, social services, and protection from exploitation in their Constitution.<sup>237</sup> Tunisia's Code for the Protection of Children substantially harmonized its laws to conform to the CRC.<sup>238</sup> Australia has developed Internet-based materials to empower grass roots organizations to help with implementing the CRC. Others took direct and specifically focused measures. Sri Lanka, which continues to have difficulty protecting its children, increased the age of sexual consent from twelve to sixteen.<sup>239</sup>

233. See Robin Wright, *Globally Embraced Child Rights Treaty Languishes in U.S.*, L.A. TIMES, Nov. 18, 1999, at A15.

234. See *id.*; see also Comm. On the Rts. Of the Child, 42nd Sess., *State Party Examination of Columbia's Third Periodic Report*, May 26, 2006, available at [http://www.crin.org/docs/crc42\\_Colombia.doc](http://www.crin.org/docs/crc42_Colombia.doc).

235. *But see Casa Alianza Lamenta las Muertes Violentas y Ejecuciones de Niños, Niñas y Jóvenes en Honduras* [House Alliance Laments the Violent Deaths and Executions of Boys, Girls, and Young People in Honduras], <http://www.casa-alianza.org/es/news.php?item.5> (last modified July 2006).

236. See Childhope Asia, *Community Mobilization Against Child Prostitution*, <http://www.childhope.org.ph/programs-and-projects.html> (last visited May 18, 2007).

237. *Id.* Although the justice system is having great difficulty in adjusting to the tenets with respect to administering penalties for crimes committed by children, the debate about it is raging and is a functional example of the transition needed to realize positive change. See, e.g., Children Rights Information Network, *South Africa: Justice System Grapples to Deal with Children*, <http://www.crin.org/resources/infoDetail.asp?ID=9712&flag=news> (last modified Aug. 7, 2006).

238. Convention on the Human Rights of the Child, Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention*, U.N. Doc. CRC/C/15/Add.39 (June 21, 1995), available at [http://193.194.138.190/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.39.En?OpenDocument](http://193.194.138.190/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.39.En?OpenDocument).

239. Sri Lanka recently celebrated a day of peace designed to temporarily assuage the psychological damage of civil war and post tsunami recovery, though it 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. Junko Mitani, *A Day of Celebrating Peace for Sri Lankan Children Caught in Conflict*, UNICEF, Sept. 26, 2006, available at

Those that would use ratification of the CRC as a superficial or merely cosmetic policy shift not only run the risk of violating the CRC, but of facing accusations of hypocrisy from the world community.<sup>240</sup> So far, only the United States has proven to have the political capital necessary to dodge ratifying the CRC, but it is becoming increasingly difficult to ignore incriminating statistics.

*D. The Convention and Customary International Law Requires the United States to Fulfill the Needs of its Children*

As previously mentioned, neither President Bush Senior nor Junior signed or sent the signed<sup>241</sup> Convention to the United States Senate for ratification.<sup>242</sup> Opposition to the CRC lingered into Clinton's presidency,<sup>243</sup> though he now uses his influence to deal with some of the concomitant ills the CRC was designed to prevent.<sup>244</sup>

Currently, it appears that President Bush Junior is not interested in sending the CRC to the Senate for ratification,<sup>245</sup> given the instructions he has given his

[http://www.unicef.org/infobycountry/sri\\_lanka\\_36012.html](http://www.unicef.org/infobycountry/sri_lanka_36012.html); see Anthony Deutsch, *Militia Abducting Hundreds in Sri Lanka*, B. GLOBE, Oct. 5, 2006, available at [http://www.boston.com/news/world/asia/articles/2006/10/05/militia\\_abducting\\_hundreds\\_in\\_sri\\_lanka](http://www.boston.com/news/world/asia/articles/2006/10/05/militia_abducting_hundreds_in_sri_lanka).

240. WORLD YOUTH REPORT, *supra* note 58, at 3.

241. The CRC was presented by Secretary of State Madeleine Albright to President Clinton for his signature in 1995. He signed it on February 16, 1995, but felt that the opposition to him was too strong and thus ratification would have been unlikely. It is not clear that he ever tried to win support for the CRC. There are no policy discussions on file. John V. Surr & Patricia Hoffman Kostell, *Children Everywhere Need our Support for their Rights*, J. NAT'L ASSOC. EDUC. YOUNG CHILD (Sept. 2004), available at <http://www.journal.naeyc.org/btj/200409/surr.asp>.

242. See Ferguson, *supra* note 117, at 42-48.

243.

'Unfortunately, despite its virtues, the convention's been lumped into a whole agenda of issues that involve opposing the United Nations', said Joe Mettimano, deputy director of public policy at the U.S. Committee for UNICEF. '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. Submitting it would be a suicide mission.'

Wright, *supra* note 233; see also John W. Osborn, Jr., Editorial, *Convention on Children's Rights*, L.A. TIMES, Dec. 8, 1999, at A16.

244. See William J. Clinton Foundation, <http://www.clintonfoundation.org> (last visited May 18, 2007).

245. See, e.g., William Orme, *U.S. Quits Treaty on Global Court*, L.A. TIMES, May 7, 2002, at A3; see also Richard A. Boucher, State Department Spokesman, State Dept. Regular News Briefing (July 6, 2000), 2000 WL 897420 (addressing the CRC).

policy makers.<sup>246</sup> Nevertheless, he did sign and send the Optional Protocol<sup>247</sup> to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict to the Senate,<sup>248</sup> which passed with an understanding.<sup>249</sup>

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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 optional 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.

*Id.* See also 149 CONG. REC. H10145 (daily ed. Oct. 30, 2003) (condemning the use of child soldiers); 149 CONG. REC. H10145 (daily ed. Oct. 30, 2003) (statement of Rep. Young) (showing how Optional Protocol to the CRC limits the way in which funds can be appropriated for defense, relief, and reconstruction of Iraq and Afghanistan).

246. See, e.g., Concerned Women for America, World Summit for Children, Feb. 1, 2001, <http://www.cwfa.org/articles/1929/CWA/nation/index.htm> (last modified Jan. 1, 2002) (statement of Deputy Assistant Secretary of State E. Michael Southwick) (“[I]t is misleading and inappropriate to use the Convention as a litmus test to measure a nation’s commitment to children . . .”). Nevertheless, four months later, the administration seeks to urge the General Assembly of the United Nations to protect children:

[W]e suggest strengthening the language in the Special Session for Children Outcome Document. Specifically, we propose that the protection of children affected by armed conflict should include education, reunification and support for families, and community-based actions for psychological and social rehabilitation. As for the sexual exploitation of children, we strongly suggest increased focus on both preventing children from being drawn into the sex trade, and on helping those who have already been victims.

Press Release, E. Michael Southwick, Statement in the Preparatory Committee for the General Assembly Special Session on Children (June 12, 2001), *available at* [http://www.usunewyork.usmission.gov/01\\_082.htm](http://www.usunewyork.usmission.gov/01_082.htm).

247. See Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, U.N. Doc. A/RES/54/263 (May 25, 2000) (entered into force Feb. 12, 2002), *available at* <http://www.ohchr.org/english/law/crc-conflict.htm> [hereinafter Conflict Optional Protocol]; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, U.N. Doc. A/RES/54/263 (May 25, 2000) (entered into force Jan. 18, 2002), *available at* <http://www.ohchr.org/english/law/crc-sale.htm> [hereinafter Sale Optional Protocol].

### 1. The Mandate of Customary International Law

Notwithstanding the failure to ratify the CRC, international law has two basic sources: international agreements, i.e., treaties, conventions, and customary international law that have the force of law.<sup>250</sup> To anyone who believes in hard power alone,<sup>251</sup> every other lofty element in international law whether grounded in universal law, positivism, natural law, or relativism is both theoretical and debatable. Treaties and conventions are binding upon signature by the head of state and ratified by the legislative body in many cases. Customary international law affects all nations with greater force than mere comity.<sup>252</sup> The CRC 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.<sup>253</sup>

"Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation" and binds nations that have not dissented from the rule while it was developing.<sup>254</sup> Therefore, President Clinton's signature on the CRC and President Bush's failure to withdraw Clinton's signature (as he did with the International Criminal Court treaty), combined with the widely adopted and active implementation of the necessary legal reforms among the signatories required by the CRC, would lend support to the view that the CRC operates somewhere between binding treaty law and customary international law. This would hold true even if policy

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248. Other nations have signed the conflict protocol as well, but children are still being pressed into military service. See *Burma 'Forcing Boys to Fight'*, BBC NEWS, Oct. 16, 2002, available at <http://news.bbc.co.uk/2/hi/asia-pacific/2331431.stm> ("70,000 soldiers are estimated to be under the age of 18 . . ."); see also *Nepal: Children Still Living in Fear of Maoist Rebels*, IRIN Humanitarian News and Analysis from Africa, Asia and the Middle East, Sept. 11, 2006, available at <http://www.irinnews.org/report.aspx?reportid=60860> (forcing children into military service by Nepalese rebels).

249. 148 CONG. REC. S5717 (daily ed. Jun. 18, 2002) (statement of Sen. Reid). Among the understandings were "(1) NO ASSUMPTION OF OBLIGATIONS UNDER CONVENTION ON THE RIGHTS 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.*

250. See Ferguson, *supra* note 117.

251. This current administration has heretofore found little use for soft power, especially if it does nothing to advance its agenda. See generally Harold Hongju Koh, *On American Exceptionalism*, 55 STAN. L. REV. 1479, 1480-87 (2003).

252. For example, the operation of airports, seaports and the flow international mail would cease to exist if there were no real enforceable sanctions for interference without the need to renew treaty relations for every change in government around the world.

253. See generally Convention on the Rights of the Child, *supra* note 79.

254. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102(2) (1987); see also *id.* § 102 cmt. d.

makers would reject the argument that children's needs are *jus cogens*. It is hard to ignore that, by failing to ratify the CRC, the United States shares company with Somalia, a state with a government that is barely functioning.<sup>255</sup>

At present, the United States is ignoring the effect of both. And because it is the world's only superpower, it is being allowed to get away with it by other states. Its people should not be so kind given the stakes. Local governments and advocates have the responsibility to implement the CRC in their spheres of influence. Students, for example, continue to do mission work and give their summers to assist with the ongoing efforts around the world to implement the CRC and the MDGs, but there has not been a renewed call for ratification of the CRC.

*E. How Some View Children Should Not Prevent "Local" Use of the Convention*

The criticisms, which seem to be largely based upon the perceptions<sup>256</sup> of a few, focus on anti-parent sentiment, raising the specter of international tribunal regulation<sup>257</sup> and abortion rights issues.<sup>258</sup> Some criticisms have been as shrill as to suggest that if the CRC is ratified in the United States, teenagers would immediately start having sex or get abortions.<sup>259</sup> These criticisms, combined with fear mongering and sound-bites by some *en vogue* advocacy groups, utilize no evidence upon which to base any opposition. Lack of ratification of the CRC leads one to truly wonder where the federal will is on behalf of children. That is, the policy makers who have listened to these types of arguments in the last three administrations do not care to take up the cause of the CRC's ratification.

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255. See Koh, *supra* note 251, at 1485. For a more colorful description of the President's latest plan, see Maureen Dowd, *A Risky Game of Risk*, N.Y. TIMES, Jan. 13, 2007, at A6. For an analysis of potential problems with assimilating Iraq into the rule of law construct, see Berta Esperanza Hernández-Truyol, *The Rule of Law and Human Rights*, 16 FLA. J. INT'L L. 167, 180-93 (2004).

256. With the exception being the abolition of the death penalty for those eighteen years of age and younger. In 2005, the U.S. Supreme Court declared the death penalty for children under the age of eighteen to be unconstitutional and based their decision, in part, on grounds of customary international law. See *Roper v. Simmons*, 543 U.S. 551, 575-79 (2005); see also Convention on the Rights of the Child, *supra* note 79, ¶ 37.

257. The argument is that the Convention on the Rights of the Child will take away the right of parents to rear their children. See Ferguson, *supra* note 117, at 33-36.

258. See *id.*

259. See *Generation Next*, *supra* note 138. The poll, done in conjunction with a documentary by Judy Woodruff entitled *Generation Next: Speak Up and Be Heard*, suggests that as many as 75% of all Generation Nexters were currently having casual sex. Therefore, is the argument that ratification of the Convention would raise the number to 100%?



The federal government should stop hiding behind the jurisdictional objections—such as child law is primarily state law<sup>260</sup> or that the death penalty is protected by the Supreme Court—and recognize that states are not equipped to develop a uniform, standardized approach to these issues. The President should engage the nation and raise the state of our children to a national discussion away from the bully pulpit and towards a singularly focused national solution.<sup>261</sup>

When a national discussion was created about our physical security, the will was there on the part of federal policy makers to create the Department of Homeland Security to deal with terrorism and attempt to coordinate United States security concerns. This was refined by the inclusion of a National Intelligence Director cabinet-level post. No less effort should be put in our future survival as fulfilling the needs of our children! What will be fit for protection in the United States if our most precious resource that ensures our future security is continually mishandled and eroded?

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.<sup>262</sup> However, 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. The world has moved forward<sup>263</sup> and 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, the nation 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.

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260. See Berta Hernández-Truyol & Justin Luna, *Children and Immigration: International, Local and Social Responsibilities*, 15 B. U. PUB. INT. L.J. 297, 304 (2006) (discussing how the U.S. standard in family law is the “best interest of the child” test).

261. This is something the President is trying to address in his “New Way Forward” Plan in Iraq, though many are finding that being included in the discussion now is too little, too late. See generally Press Release, Office of the Press Secretary, Fact Sheet: The New Way Forward in Iraq (Jan. 10, 2007), available at <http://www.whitehouse.gov/news/releases/2007/01/20070110-3.html>.

262. Vienna Convention on the Law of Treaties, art. 2(d), May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan 27, 1980), available at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).

263. See generally *In Larger Freedom*, supra note 50.

What is more, for all of the urgings not to read anything into law and the language used in the law, one would think that the textual approach to interpretation using the plain meaning of the language, coupled with the thoroughly documented legislative history of the CRC would usher each critic out of the President's door with great ferocity.<sup>264</sup> Instead, silence appears to be the only current response.

However, from a local governing perspective, ultimately, the CRC provides the framework to have a dialogue about policy choice on behalf of children. The statistics previously addressed empirically identify the problems. Much of the implementation of the CRC would need to occur on the local level. Despite the allocation of federal dollars through the block grant process, local governments (states, counties, parishes and municipalities) need to be in a position to reallocate their existing resources, property taxes, user fees, impact fees, and human capital to more readily put the locale in a position to demand federal attention to the ills children face from not having their basic needs met 100% of the time.

#### V. WORLD EFFORTS AT REALLOCATION OF RESOURCES TO DEAL WITH UNMET NEEDS—THE MILLENNIUM DECLARATION

When 189 member states of the United Nations signed the Millennium Declaration arising out of the Millennium Summit in September of 2000, the purpose was to declare and ultimately to achieve the MDGs by 2015. The Declaration 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 are guides that encompass the tenets of human rights, good governance and democracy.<sup>265</sup>

This is not to say that the Goals are not without their shortfalls. In fact, they are simply 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,<sup>266</sup> health, legal, and other professionals can confer and assist their governments with these Goals. Falling short is not an option but if

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264. See generally Levitt, *supra* notes 228, at 51-52; see also Mitani, *supra* note 239.

265. United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/Res/55/2 (Sept. 8, 2000).

266. The "MDG Campaigning Toolkit" outlines how civil society organizations are to assist. See *MDG Campaigning Toolkit*, *supra* note 71. The concept of civil society organizations is further discussed in Part VI.

that ultimately happens, it is better than the current efforts of United States 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 United States 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 the expression "the emperor with no clothes" will be fairly accurate.<sup>267</sup> Every area of the world except the United States federal government is actively involved (as a participant or a recipient) in the MDGs.

#### VI. MILLENNIUM DEVELOPMENT GOALS FURTHERING THE CONVENTION BUT FALLING OFF THE MARK

As previously stated, 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 CRC and contextualizing the rights therein into their domestic practices: the MDGs. The MDGs serve as time-bound tools to which state parties will further apply the CRC against quantifiable indicators. Importantly, the MDGs are neither corrosive to state sovereignty nor manipulative to parents' roles in raising their children. Each of the MDGs relates directly or indirectly to the well-being of children and young people to assist families in caring for their children and governments to care for the families that are the other parties in the social contract. 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 CRC, the world moved to the UN Millennium Declaration.<sup>268</sup> In it, world leaders<sup>269</sup> created eight<sup>270</sup> MDGs at the September

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267. See [http://en.wikipedia.org/wiki/The\\_emperor\\_has\\_no\\_clothes#References](http://en.wikipedia.org/wiki/The_emperor_has_no_clothes#References) (last visited May 19, 2007) (For a synopsis of the expression "the emperor has no clothes").

268. United Nations Millennium Declaration, *supra* note 265.

269. Included were 189 member states of the United Nations, as well as some of the world's leading developmental institutions, such as the World Bank.

270. See generally *Overview of HUMAN DEVELOPMENT REPORT (2003)*, available at [http://hdr.undp.org/reports/global/2003/pdf/hdr03\\_overview.pdf](http://hdr.undp.org/reports/global/2003/pdf/hdr03_overview.pdf). The UNICEF Annual Report acknowledges eight goals, but only records seven, omitting: Develop a global partnership for development. Compare UNICEF, *The State of the World's Children 2005*, *supra* note 82, at 7, with U.N. Millennium Development Goals, <http://www.un.org/millenniumgoals> (last visited May 19, 2007).

2000 Millennium Summit,<sup>271</sup> 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 pledged 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 environmental sustainability, and develop a partnership for development. From each goal a target or set of targets were formed measuring/marketing the progress<sup>272</sup> from 1990-2015.

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, and combating HIV/AIDS,<sup>273</sup> again sounding a familiar set of themes.<sup>274</sup> These themes do not appear to be so susceptible to political abuse. 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.<sup>275</sup>

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. 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 who can walk and chew gum at the same time can participate in alleviating the world's suffering.<sup>276</sup> Organizers created a "tool kit" to help youth, NGOs, government officials and any other interested parties to be aware and be an immediately active participant

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271. See United Nations Millennium Declaration, *supra* note 265; Millennium Development Goals, About the MDGs: Basics, <http://www.undp.org/mdg/basics.shtml> (last visited May 19, 2007).

272. *MDG Progress Report*, *supra* note 50.

273. See UNICEF, BUILDING A WORLD FIT FOR CHILDREN 17 (2003), available at [http://www.unicef.org/publications/files/pub\\_build\\_wffc\\_en.pdf](http://www.unicef.org/publications/files/pub_build_wffc_en.pdf).

274. Cf. CDFAC ANNUAL REPORT, *supra* note 19, at 43-44 (explaining 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.).

275. *Id.* (criticizing the swift U.S. commitment of the original \$87 billion to rebuilding Iraq).

276. See generally Millennium Campaign, [www.millenniumcampaign.org](http://www.millenniumcampaign.org) (providing background information and news promoting the Millennium Development Goals) (last visited May 19, 2007).

in the MDG process. It is under the banner of “No Excuses” that they apply pressure on poor countries as well as those with high Gross National Products.<sup>277</sup> Part of the movement of civil society<sup>278</sup> is to encourage citizens and like-minded professionals to make the MDG a means and not an end,<sup>279</sup> and to persuade its governments to develop national goals.<sup>280</sup> The United Nations is the monitoring body assisting this campaign.<sup>281</sup>

In September 2005, world leaders convened to assess the progress of these goals after one-third the time elapsed. The record is mixed. Asia outpaced all others in dealing with Goal #1 for example. In some cases the lack of money or lack of 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 to reach the MDGs within the given time frame.<sup>282</sup> When you consider what the United States federal government, \$70 billion, or even the \$100 billion 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 United States 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 CRC, one should be measured in enthusiasm about the progress thus far because so much more can and needs to be done. Part of the reduction in progress is the competing tensions of these goals which would call into question the order in which they are pursued and whose agenda dictates such pursuit. Is it the World Bank driving the agenda? Is it those in

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277. See *MDG Campaigning Toolkit*, *supra* note 71, at 14-18.

278. See *id.* at 23. 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) (discussing the status and make-up of civil society).

279. See *MDG Campaigning Toolkit*, *supra* note 71, at 3.

280. See *id.* at 23.

281. *Id.* at 19-20. The Secretary General established the Millennium Project in 2002 to generate realistic methods for governments to establish national strategies to achieve the MDGs. *E.g.*, CHANDRIKA BAHADUR ET. AL, PREPARING NATIONAL STRATEGIES TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS: A HANDBOOK (2005), available at [http://www.undp.org/poverty/docs/mdg-support/handbook/handbook11605\\_with\\_cover.pdf](http://www.undp.org/poverty/docs/mdg-support/handbook/handbook11605_with_cover.pdf).

282. *MDG Campaigning Toolkit*, *supra* note 71, at 3 (However, the MDG Campaigning Toolkit puts the figure at \$100 million.).

government? Civil Society? These are a few examples that speak to the issues differently. 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, to 1) reduce the proportion of people whose income is less than one dollar per day by half, and 2) reduce suffering from hunger. The need for the goal and its targets was based upon the estimate that “110.1 million young people were undernourished,<sup>283</sup> 238 million were living on less than \$1US a day,<sup>284</sup> and 462 million were living on less than \$2US a day.”<sup>285</sup>

##### 1. Target #1

During the period of 1990-2001, 250 million people moved beyond one dollar per day,<sup>286</sup> and there was a reduction in extreme poverty in all parts of the world except Sub-Saharan Africa, where there was an increase in extreme poverty rates.<sup>287</sup> The average income fell from sixty-two cents in 1990 to sixty cents in 2001.<sup>288</sup> Many African countries are failing to receive assistance due to lack of resources.<sup>289</sup> According to the Asian Development Bank’s Annual Report of the Bank 2005, “[s]ignificant challenges remain in poverty reduction . . .” in Southeast Asia.<sup>290</sup>

##### 2. Target #2

The indicator that created this target is the prevalence of underweight children under five years of age.<sup>291</sup> Target two’s aim is to “[h]alve, between 1990 and 2015, the proportion of people who suffer from hunger.”<sup>292</sup> There

283. WORLD YOUTH REPORT, *supra* note 58, at 18. The MDG Campaigning Toolkit places the number at 800 million undernourished people overall. *MDG Campaigning Toolkit*, *supra* note 71, at 4.

284. WORLD YOUTH REPORT, *supra* note 58, at 18. The total number of people living on less than one dollar per day is 1.2 billion. *MDG Campaigning Toolkit*, *supra* note 71, at 4.

285. WORLD YOUTH REPORT, *supra* note 58, at 18.

286. *MDG Progress Report*, *supra* note 50, at 6 (Though we don’t know how sustained it is now, this can be attributed to “[s]ustained growth in China and acceleration of the economy in India, [being] the two most populous countries in the world . . .”).

287. *Id.* at 6.

288. *Id.* at 7.

289. See, e.g., *Children in East Africa Risk Death from Drought: UN*, REUTERS, May 15, 2006.

290. ASIAN DEV. BANK, ANNUAL REPORT OF THE BANK 94 (2005) (discussing Southeast Asia), available at [http://www.adb.org/Documents/reports/annual\\_report/2005/ADB-Annual-Report-2005.pdf](http://www.adb.org/Documents/reports/annual_report/2005/ADB-Annual-Report-2005.pdf).

291. *MDG Progress Report*, *supra* note 50, at 8.

292. *Id.* at 7.

have been dramatic declines in chronic hunger;<sup>293</sup> however, progress is slowing as the world focuses on other MDGs. While some of this delay is attributable to natural disasters and conflicts,<sup>294</sup> much of the suffering has to do with shifting priorities. What is more, over eight hundred million people are still malnourished in developing countries and “[o]ver 150 million children under age 5 in the developing world are underweight . . . .”<sup>295</sup>

### *B. MDG #2: Achieve Universal Education*

Goal two is to achieve universal education.<sup>296</sup> Educated people have more tools with which to make life decisions. In 1990, the World Declaration on Education for All affirmed the international commitment to universalizing primary education and massively reducing illiteracy before the end of the decade.<sup>297</sup> In the *World Programme of Action for Youth to the Year 2000 and Beyond*, education is listed first among the ten priority areas for youth development.<sup>298</sup> The Dakar Framework for Action identified six major goals for education, two of which became MDGs later that year.<sup>299</sup> These two goals incorporate the following targets: (a) “[e]nsure that, by 2015, children everywhere . . . will be able to complete a full course of primary schooling” and (b) “[e]liminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.”<sup>300</sup> These targets should lead to creating more productive members of society. The 115 million children, of primary school age, who are not attending school<sup>301</sup> have no chance at this process. Further, 97 percent of those live in developing countries.<sup>302</sup> Needless to say, the early deadline was missed.

In 2002, the World Bank launched the Fast Track Initiative to provide immediate and incremental technical and financial support to countries that have

293. *Id.* (explaining chronic hunger is “measured in terms of the proportion of people lacking the food needed to meet their daily needs . . .”).

294. *Id.* at 9.

295. *Id.* at 8.

296. *Id.* at 10.

297. U.N. Educ., Sci. & Cultural Org. [UNESCO], World Conf. on Educ. for all Mtg. Basic Learning Needs, *World Declaration on Education for All* (Mar. 1990), available at [http://www.unesco.org/education/pdf/JOMTIE\\_E.PDF](http://www.unesco.org/education/pdf/JOMTIE_E.PDF).

298. World Conference of Ministers Responsible for Youth, *The World Programme of Action for Youth to the Year 2000 and Beyond* (Mar. 1997), available at <http://www.un.org/events/youth98/backinfo/ywpa2000.htm>.

299. U.N. Educ., Sci. & Cultural Org. [UNESCO], *Dakar Framework for Action* (Apr. 2000), available at <http://unesdoc.unesco.org/images/0012/001202/120240e.pdf>.

300. *MDG Progress Report*, *supra* note 50, at 10, 14.

301. *Id.* at 10.

302. *See MDG Campaigning Toolkit*, *supra* note 71, at 4.

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.

### 1. Real Progress

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.

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.

### 2. Target #1

This target was born out of a focus on literacy between 14 to 24 years old. It seeks to “[e]nsure that, by 2015, children everywhere<sup>303</sup> . . . will be able to complete a full course of primary schooling.”<sup>304</sup> All areas, with the exception of the Commonwealth of Independent States-Europe and Eastern Asia, improved in this area from 1990 to 2001.<sup>305</sup> Despite this, in Sub-Saharan Africa more than one-third of its primary school age children are not attending school.<sup>306</sup> Once the world gets them enrolled, the children must remain in school, thus the family economy must be able to support their attendance.<sup>307</sup>

In response to this Goal, the state of Mali attacked its educational woes with rigor. In doing so, it has a student/teacher ratio as high as 126:1.<sup>308</sup> In Sub-Saharan Africa, two out of five adults are illiterate, and “[n]o nation has ever achieved rapid and sustained economic growth with a population so poorly

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303. Including both genders.

304. *MDG Progress Report*, *supra* note 50, at 10.

305. *Id.*

306. *Id.*

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

308. See, e.g., Sharon LaFraniere, *Crowds of Pupils but Little Else in African Schools*, N.Y. TIMES, Dec. 30, 2006, at A1.



educated . . . .”<sup>309</sup> What is more, World Bank estimates it will take Sub-Saharan Africa fifty years to truly meet this MDG.

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

The *raison d’etre* of this goal is to promote gender equality and empower women.<sup>310</sup> Where there have been a number of international instruments relating to gender issues, the United States has not participated in the formal adoption of many of them. The MDG Report 2005 states “[h]aving an equal voice in the decisions that affect their lives — from within the family to the loftiest realms of government — is a key element of women’s empowerment.”<sup>311</sup>

#### 1. Target #1

The reason for this target was the disparity in the ratio of literate women to men fourteen to twenty-four years old. That said, target one is to “[e]liminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.”<sup>312</sup> By 2005, target one had not yet been achieved.<sup>313</sup> Sixty-four percent of the world’s estimated illiterate adults are women.<sup>314</sup> In geographical areas where there are resources disparities, we find boys chosen to receive these resources over girls.<sup>315</sup> Many populations are dealing with issues such as separate lavatory facilities and gender stereotypes in the classroom, let alone ABC’s and 123s.<sup>316</sup> Sixty percent of the 113 million children not in primary schools are girls.<sup>317</sup> Men still dominate decision-making positions, higher skilled-high paying jobs.<sup>318</sup> Only nine countries have parliaments where one-third or more seats are held by women. More work needs to be done in this area; it starts with education.

### D. MDG #4: Reduce Child Mortality

As has been stated, nearly 11,000,000 children die of preventable causes every year, or 30,000 per day.<sup>319</sup> “Child mortality is closely linked to poverty:

309. *Id.*

310. *MDG Progress Report*, *supra* note 50, at 10.

311. *MDG Progress Report*, *supra* note 50, at 14. (“[W]omen still occupy only 16 per cent of seats worldwide.”).

312. *Id.*

313. *Id.* at 15 (“Of some 65 developing countries with full data, about half have achieved gender parity in primary education . . . .”).

314. *MDG Campaigning Toolkit*, *supra* note 71, at 4.

315. *MDG Progress Report*, *supra* note 50, at 14.

316. *Id.*

317. *MDG Campaigning Toolkit*, *supra* note 71, at 4.

318. *MDG Progress Report*, *supra* note 50, at 15-16.

319. *Id.* at 18.

advances in infant and child survival have come more slowly to people in poor countries and to the poorest people in wealthier countries.”<sup>320</sup> More voice must be given to this preventable ill.

#### 1. Target #1

This target focuses the world’s attention on reducing “by two thirds, between 1990 and 2015, the under-five mortality rate.”<sup>321</sup> This is one target where region wide substantial progress has been made, but this progress has slowed.<sup>322</sup> For example, nearly half of all deaths among children under age five occur in sub-Saharan Africa.<sup>323</sup> 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 death can be particularly devastating to the children left behind, who are more apt to fall into poverty and to become the objects of exploitation.”<sup>324</sup> Every year, 500,000 women die as a result of pregnancy and childbirth.<sup>325</sup> This is unconscionable.

#### 1. Target #1

This target is designed to reduce by three-fourths from 1990 to 2015, the maternal mortality ratio. This target creates family planning controversies for many in the United States,<sup>326</sup> but still sees a woman in sub-Saharan Africa with a one in sixteen chance of dying in pregnancy or childbirth.<sup>327</sup>

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

The rationale for this goal is the HIV prevalence among pregnant women aged fourteen to twenty-four years old. With 22,000,000 AIDS related deaths in 2000, and 13,000,000 children losing their parents to the disease, Goal #6 seeks to combat HIV/AIDS, malaria and other diseases. The work on HIV/AIDS is

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320. *Id.*

321. *Id.*

322. *Id.*

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

324. *MDG Progress Report, supra* note 50, at 22.

325. *MDG Campaigning Toolkit, supra* note 71, at 5.

326. *See MDG Progress Report, supra* note 50, at 23 (showing success in Bangladesh and in Egypt).

327. *MDG Campaigning Toolkit, supra* note 71, at 5.

well documented.<sup>328</sup> Well recognized individuals such as President Clinton, Bill and Melinda Gates, and Bono bring continued awareness of the plight of AIDS to the forefront.<sup>329</sup> Yet, other diseases such as tuberculosis have developed drug-resistant strains.<sup>330</sup> The 300 million cases of malaria<sup>331</sup> and 60 million people infected with tuberculosis may be helped by the Bill and Melinda Gates Foundation's recent commitment to eradicating both diseases.<sup>332</sup> Still the number of people infected with tuberculosis and malaria 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 countries,<sup>333</sup> it is incumbent that efforts continue to be undertaken to stem the tide of this epidemic. Ninety percent of the 40 million people living with HIV virus reside in developing countries, 75 percent reside in sub-Saharan Africa.

#### 2. Target #2

This target seeks to halt the spread of malaria 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.<sup>334</sup>

#### G. Goal #7: Ensure Environmental Sustainability

This goal seeks to ensure environmental sustainability. With global warming data ever the more alarming, the world is moving on without the United States signature on the Kyoto Treaty.<sup>335</sup> The goal seeks to encourage the

328. *MDG Progress Report*, *supra* note 50, at 24.

329. Stephanie Strom, *Bill Gates's Charity Races to Spend Buffet Billions*, N.Y. TIMES, Aug. 13, 2006, available at <http://www.nytimes.com/2006/08/13/us/13gates.html?ex=1313121600&en=e8013a74148252cf&ei=5088&partner=rssnyt&emc=rss#> (foundation to add global development to help poor in developing countries).

330. *MDG Progress Report*, *supra* note 50, at 24.

331. *MDG Campaigning Toolkit*, *supra* note 71, at 5.

332. See also Karen DeYoung, *Gates, Rockefeller Charities Join to Fight African Hunger*, WASH. POST, Sept. 13, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/12/AR2006091201384.html> (examining philanthropic efforts by wealthy to spur achievement of MDGs).

333. *MDG Progress Report*, *supra* note 50, at 25.

334. See *id.* at 28.

335. *MDG Campaigning Toolkit*, *supra* note 71, at 6 (reporting high-income countries with 14% of the world's population are reported to generate 44% of CO<sub>2</sub> emissions).

more prudent use of natural resources.<sup>336</sup> At the heart of this issues is the lack of safe drinking water. “The rural poor are most immediately affected because their day-to-day subsistence and livelihoods more often depend on the natural resources around them.”<sup>337</sup> For example, soil degradation affects the livelihood of as many as one billion people.<sup>338</sup>

### 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 includes regions whose land suffered a loss of ecosystem, such as rainforest deforestation, that 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.<sup>339</sup> There are also issues with ecosystem, energy production, greenhouse gases, and continued ozone depletion.<sup>340</sup>

### 2. Target #2

By 2015, Target #3 determines to halve, 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,<sup>341</sup> 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,<sup>342</sup> with almost one billion people living in slums. It will be difficult to answer many of the MDGs if during this year the problems are exacerbated by city living.<sup>343</sup>

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336. *MDG Progress Report*, *supra* note 50, at 30.

337. *Id.*

338. *MDG Campaigning Toolkit*, *supra* note 71, at 5.

339. *MDG Progress Report*, *supra* note 50, at 30.

340. *See generally id.* at 31-32.

341. *Jay-Z Tour to Stress Water Crisis*, BBC NEWS, Aug. 10, 2006, available at <http://news.bbc.co.uk/2/hi/entertainment/4779239.stm> (bringing awareness to water crisis); UNICEF, ‘WASH’ strategy improves access to safe water, sanitation in Niger, Sept. 2006, available at [http://www.unicef.org/infobycountry/niger\\_35633.html](http://www.unicef.org/infobycountry/niger_35633.html) (discussing method for increasing safe drinking water in Niger).

342. *MDG Progress Report*, *supra* note 50, at 34.

343. *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, shifting common ground, and root causes that include slavery and date from the colonization<sup>344</sup> of developing countries, as well as the psychological trauma caused by the exportation of the natural resources needed to get the money to address the targets. In depth discussion beyond the enumeration of the targets, therefore, is beyond the scope of this particular paper. The targets are designed to address the special needs of the least developed countries as well as small island developing states. The targets are also designed to develop and further open, rule-based, predictable, and non-discriminating trading and financial system; deal comprehensively with developing countries' debt; cooperate with developing countries in developing

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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.

James Traub, *The Way We Live Now: 8-3-03; The Tug of Paternalism*, N.Y. TIMES, Aug. 3, 2003, at 9.

and implementing strategies for decent and productive work for youth;<sup>345</sup> cooperate with pharmaceutical companies to provide access to affordable essential drugs in developing countries; and in cooperation with the private sector, increase awareness to 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 developing 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 and Programme of Action of the World Summit for Social Development. Six years later, youth organizations in Senegal adopted the Dakar Youth Empowerment Strategy.<sup>346</sup> 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

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345. 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.

346. *See also* Letter Dated 4 October 2001 from the Permanent Representative of Senegal to the United Nations addressed to the Secretary-General, U.N. GAOR, 56th Sess., U.N. Doc. A/C.3/56/2 (Oct. 4, 2001) (*prepared by* Papa Louis Fall), *available at* <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/572/22/img/N0157222.pdf?OpenElement> (explaining the results of the Fourth World Youth Forum in a letter of the Government of Senegal to the United Nations General Assembly).

office. The YEN is now supporting the efforts of thirteen 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 policies in this context.<sup>347</sup> Surprisingly, 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 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 developmental objective. If in civilized society these goals can be embraced locally, then they and their targets may be achievable.<sup>348</sup>

Civil society organizations ("CSOs") such as charities, volunteer groups, and religious organizations—essentially any non-governmental unit—can plug into the MDGs achievement process despite the lack of a formal commitment by United States policy makers. CSOs have been provided with a number of aids: the MDG Campaign Toolkit, the Millennium Project Handbook, and the Millennium Campaign Website.<sup>349</sup> Among those aids includes how to plan a campaign within one's state,<sup>350</sup> how to use the existing advocacy tools within one's state,<sup>351</sup> and even provide campaign developmental skills lessons.<sup>352</sup> The Toolkit provides the problems as represented by the statistics and matches them with the applicable MDG.<sup>353</sup> Next the Toolkit matches the targets and provides ideas as to how CSOs can meet them in their states by using examples of states that have begun implementation and integration of the MDGs into their national

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

348. See *MDG Campaigning Toolkit*, *supra* note 71, at 6.

349. See Millennium Campaign, *supra* note 276.

350. See *MDG Campaigning Toolkit*, *supra* note 71, at 35-69.

351. See *id.* at 70-119.

352. *Id.* at 120-148.

353. *Id.* at 4-6.

development campaigns.<sup>354</sup> Many governments have formally translated the goals into national ones to strengthen their national campaigns.<sup>355</sup>

For example, in Bugaria the policy makers looked at Goal #1 and determined how much the average monthly income needed to be to achieve it.<sup>356</sup> They could identify the net enrollment rate increase needed or reductions needed to meet Goal #2 through Goal #8.<sup>357</sup> Vietnam went as far as to create the Vietnam Development Goals.<sup>358</sup> There, the MDGs were divided into eleven goals with individualized targets with some slated for achievement in 2005, and others in subsequent years through 2020 in accordance with the MDGs deadlines.<sup>359</sup> Further, links to other campaigns are available at the Millennium Campaign Website, which is updated regularly. 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 United Nations. The United Nations Development Program (“UNDP”) provides a variety of support mechanisms including monitoring, assessment, and using its leverage to bring the private sector, willing governments, and civil service groups together around a particular Target or Goal.<sup>360</sup>

Germany,<sup>361</sup> Canada, Australia, New Zealand, Switzerland, and Japan are all considered major participants in the promotion of the MDGs. To date, the city of Los Angeles, California<sup>362</sup> is the only governmental partner attempting to promote the MDGs<sup>363</sup> in the United States.<sup>364</sup>

354. *Id.* at 16-19.

355. *See, e.g.*, CHANDRIKA BHADUR ET AL., PREPARING NATIONAL STRATEGIES TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS: A HANDBOOK x (2005) (noting that these aids are constantly being refined).

356. *See* Millennium Campaign, *supra* note 276 (noting that other examples are regularly published on the website).

357. *See MDG Campaigning Toolkit, supra* note 71, at 7-8.

358. *Id.* at 10-11.

359. *Id.*

360. *Id.* at 20-21.

361. *See* German Millennium Campaign Page, <http://www.millenniumcampaign.org/site/pp.asp?c=grKVL2NLE&b=221303> (last visited May 19, 2007) (noting that Germany is increasing aid, providing debt relief, and informing its citizens about the MDGs as a part of its national agenda).

362. *See MDG Campaigning Toolkit, supra* note 71, at 24.

363. In terms of promoting the MDGs without the United States, it is important that one be careful not to treat similar problems in the United States with the same method in other nations. One of my students who is a part of MDG efforts in Ghana experienced a workshop where she intended to be a part of training teams empowering Ghanaian women. The group expected 250 women and wives based upon the invitations they handed out. She was ready. When the audience



## VII. A DISCUSSION OF "LOCAL" EFFORTS TO MEET THE NEEDS OF CHILDREN IN THE UNITED STATES

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 been ascribed the level of rights accorded to the level of those needs as rights. Over the last several years—in the midst of other policy considerations—child advocates have been tirelessly arguing for and systematically funding the development of a framework that considers the direct and immediate needs of children.

Governors, educators, parents, and others have roundly criticized the only system-wide policy position the current administration clings to: the NCLBA.<sup>365</sup> It has come under withering criticism as calls for delay in implementation, suspension, and repeal are mainstay responses.

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.<sup>366</sup> Allocations that only go to the poorest, in

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showed up to here the group's presentation, 248 of them were men. The wives and daughters gave their husbands and fathers the invitations because they had house work and child care responsibilities and there was no one to replace them. The experience ended up being more educational for my student and the MDG organizers than the women in the particular town in Ghana they were attempting to empower.

364. With the United States making minor commitments to the MDGs, faith leaders formally requested that the president's advisor on development at the National Security Council formally endorse the MDGs and participate, in part, by restructuring U.S. foreign assistance. See Carol Welch, *Interfaith Leaders Press for Millennium Goals*, Jan. 30, 2006, available at <http://www.millenniumcampaign.org/site/apps/nl/content3.asp?c=grKVL2NLE&b=190470&ct=1952461>.

365.

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.

See Michael Winerip, *ON EDUCATION; Are Schools Passing or Failing? Now There's a Third Choice Both*, N.Y. TIMES, Nov. 2, 2005.

366. There are a number of famous efforts, including the Harlem Children's Zone, which helps about 200 children per year. In addition, the Children's Defense Fund is a tireless advocate and resource for children's causes. Clearly they cannot alone improve every child's life one-by-one.

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 to do so under a framework that aspires rather than assigns, rewards and demotes its participants with no safety net or rubric for positive empowerment other than negative reinforcement. The United States could benefit from a goal-oriented comprehensive framework and the world would benefit from United States 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, as most of the direction for local standards in respect to children come from case law.<sup>367</sup>

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

Children's law in the United States is primarily state law, which is least removed from those suffering from many of the problems identified. Drawing attention to local government efforts in the United States keeps with the current climate of local control, and may give citizens the best opportunity to have an immediate impact on their daily lives.

While the battle to ratify the CRC may be taken up again after the presidential election of 2008, that will only leave seven years to implement the Millennium Development Goals that apply to the United States. While the CRC could serve as a tool, it may be tainted by political ideas. On the other hand, the MDGs could serve as an organizing set of principles that are not tainted by politics. Arguably, the CRC and the MDGs rise to the level of customary international law in the United States and give those grassroots advocates, moved to work on implementation, the opportunity to do so under an organized framework and within their spheres of influence. The United States can express massive policy changes from the bully pulpit or mandates from the top-down.

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Other less publicized efforts include Winerip, *supra* note 365 (reporting about a community's efforts to better educate its minority students); Ralph Loos, *Private school for black boys planned in Nashville*, TENNESSEAN, Sept. 26, 2006, available at <http://www.wbir.com/news/local/story.aspx?storyid=38177> (Detailing efforts to assist 100 students and their families with education in an effort to improve their lives. However, in a state with hundreds of thousands of children, how many can this program help?); *see also* *Microsoft-designed school opens*, MSNBC, Sept. 7, 2006, available at <http://www.msnbc.msn.com/id/14724570> (detailing Bill Gates' attempts to reinvent high school learning processes).

367. *See generally* Michele Goodwin, *Sex, Theory, & Practice: Reconciling Davis v. Monroe & The Harms Caused by Children*, 51 DEPAUL L. REV. 805 (discussing a case that required school boards to provide care for children because of the receipt of federal funds).

Why not take a bottom-up approach to meeting the needs of our children in the meantime?

*B. Some Recommendations for How Local Governments Could Improve the Lives of Their Children in the Absence of Federal Help or a National Discussion*

It was once said that “[a]ll politics is local.”<sup>368</sup> International law works because cooperating states<sup>369</sup> regard it as law. Federal law works because states regard the federal form of government as legitimate.<sup>370</sup> State law works because its citizens are organized into further political subdivisions,<sup>371</sup> 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 to ignore. Therefore, local leadership with elected officials acting 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<sup>372</sup> 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.

1. Local Governments Need Consistent Awareness: A Child’s Ombudsman

Citizens do not often have time to individually represent children and argue for their needs everyday, which is why there are 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,

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368. See THOMAS P. O’NEILL, *MAN OF THE HOUSE: THE LIFE AND POLITICAL MEMOIRS OF SPEAKER TIP O’NEILL WITH WILLIAM NOVAK* 26 (1987) (clarifying that the expression came from his father rather than the Speaker being the source of the quote).

369. See generally Anne-Marie Slaughter & William Burke-White, *The Future of International Law is Domestic (or, The European Way of Law)*, 47 HARV. INT’L L.J. 327, 327 n.1 (2006) (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.”); see also J. G. Starke, *Monism and Dualism in the Theory of International Law*, 17 BRIT. Y.B. INT’L L. 66 (1936).

370. This was a large point of the Civil War.

371. Counties, parishes, municipalities, and special purpose districts are examples.

372. See, e.g., *MDG Progress Report*, *supra* note 50 (an example of federal policy action that needs to be revisited).

neutral and empowered advocate who can not only track and report findings on a regular basis, but can also mediate the most critical cases when agencies are unable to or do not recognize the need. An ombudsman for children at the local government level<sup>373</sup> 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.

For the ombudsman to be truly effective locally, 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 issues, to encourage the redirection of dollars to fill gaps so that 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 family life, and the opportunity to safely mature from child to adult, in a pollution-free environment. 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.

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373. 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. 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. *See also* Christina M. Kuta, Comment, *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*, 27 S. ILL. U. L.J. 389 (2003).

## 2. Local Governments Should Develop a Children's Services Council as an Administrative Arm of the City Council or the 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, and current allocations simply do not permit the councils to provide assistance to everyone who has a need. Enacting an ordinance to create such a council in conjunction with an ombudsman would improve the situation.

### *C. Local Governments Should Embrace Public Private Partnerships – Law Schools Should Collaborate with its Communities*

Local law schools can be a great resource for child advocacy work. All classes should be infused with the transnational legal process.<sup>374</sup> 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.<sup>375</sup> 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.<sup>376</sup> 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 and ethnicities within their borders. It encourages the identification of cultural, political and legal norms and attempts

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374. The American Association of Law Schools dedicated an entire conference to this concept at the 2006 AALS Workshop on Transnational Law. For an interesting set of papers discussing a variety of suggestions about how to infuse a transnational legal process into a law school curriculum, see generally Ali Ahmad, *Educating Lawyers for Transnational Challenges: The Challenge of Islamic Law*, 55 J. LEGAL EDUC. 475-599 (2005).

375. See, e.g., Daniella Levine, *To Assert Children's Legal Rights or Promote Children's Needs: How to Attain Both Goals*, 64 FORDHAM L. REV. 2023 (1996) (highlighting areas of concern for further exploration if realistic policy decisions involving child representation are to be attained).

376. *Id.*

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).

More specifically, a Center for the Transnational<sup>377</sup> Needs of Children (“Center” or “CTNC”) would enrich the focus of the traditional children and family clinics at many law schools. A CTNC would be dedicated to assisting 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.

### 1. Developing a Center for the Transnational Needs of Children Based Upon the Convention

#### a. Mission

In a law school setting, the mission of the Center or CTNC would be to utilize the CRC and prepare law students to serve underserved communities by training in the promotion of reallocation of existing resources to institutionalize a solution-oriented framework. This would enable these future lawyers to completely meet the basic needs of children, so that they have access to adequate water, food, clothing, shelter, and basic education, as well as the ability to mature into adulthood in a secure environment with family and other loved ones. In keeping with the MDGs, this policy should be implemented by 2015.

#### b. Process

If located in a number of law schools, a Center 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.

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. This could be accomplished by 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. However, the United States’ urban core features the most urgent requirement to reallocate resources for the benefit of

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377. This word is purposefully selected over “international.” See AMERICAN HERITAGE, *supra* note 207; See AMERICAN HERITAGE DICTIONARY, *supra* note 208.

children. This leaves people of African descent in need of the most assistance.<sup>378</sup>

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, and 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

A Center could develop definitive targets to accomplish its mission by: 1) fostering a collaborative environment with public and private entities to address the local and international needs of children and youth, enabling the law student, lawyer (attorney ad-litem/guardian ad-litem), judge, healthcare professional, social science professional, and policy maker to devise concrete solutions to stanching or reallocating shrinking resources on behalf of children and families; 2) partnering with other centers for justice, educational institutions, non-

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378. See Charles Smith, *Racism and Community Planning: Building Equity or Waiting for Explosions*, 8 STAN. L. & POL'Y REV. 61, 65 (1997).

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.

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. For perspectives with high percentages of peoples of African descent, see Hernández, *supra* note 87 (discussing generally the impact of race and skin color on the ability to have access to services in Brazil); see also Edward E. 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* [Fairness in Health: A Glance from the Perspective of Ethnicity], Mar. 2001, at 14, available at [http://ciss.insp.mx/migracion/site\\_library/raza17.doc](http://ciss.insp.mx/migracion/site_library/raza17.doc) (describing spatial segregation in Latin America); see also J.A. Lindgren Alves, *The Durban Conference Against Racism and Everyone's Responsibilities*, 37 U.S.F. L. REV. 971, 989-91 (2003) (discussing the Durban Declaration Against Racism).

governmental organizations, the United Nations, and other stakeholders in the promotion of sustainable environments for children and families; 3) identifying 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) offering 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) documenting these efforts to extend beyond the metropolitan area to engender international support through publication and public testimony; and 6) utilizing 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. This proposal could be used to add to existing family law centers that currently attempt to fill the gaps in child services that local government and state and national policies miss.

#### *D. Legal Professionals Should Assist Local Governments*

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.<sup>379</sup> 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.<sup>380</sup> All of these skills serve clients, courts, and reduce overall

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379. The National Conference of State Legislatures 2004 Fall Forum and Special Meeting focused on each of these topics.

380. Cleveland Ferguson III, *Increasing the Number of Lawyer-Legislators Begins With an Understanding of Campaign Finance Regulation*, 79 FLA. B.J. 66 (2005). For a thoughtful discussion on this topic, see 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, 32-60 (2002); Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 CLINICAL L. REV. 149, 149-207 (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 processes and linguistic precision. Arguably not bad qualities for a lawyer-legislator!”).



transaction costs to society.<sup>381</sup> 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.<sup>382</sup>

The understanding of policy as reflected through regulation, executive order, or other official declaration empowers the advocate to more accurately predict how the 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.<sup>383</sup> These new attorneys<sup>384</sup> and other

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381. Ferguson, *supra* note 380.

382. *Id.*

383. *Id.*; see, e.g., Ryan Moore, *Entrepreneur Offers Words of Encouragement*, INDIANAPOLIS NEWS/INDIANAPOLIS STAR, Nov. 6, 2003, at S02, available at <http://www.legal.cmgworldwide.com/pdfs/jf/staronline.pdf>. 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, Nov. 8, 2003, at C11, available at <http://www.workopolis.com/servlet/Content/torontostar/20031112/publicoffice?section=TORSTAR>.

384.

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* they escalate enough to land the client in court. America's children need the same kind of help.

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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.

legally trained professionals,<sup>385</sup> use of the CRC 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 CRC, local governments could adopt local Charters for Children. This has the effect of further educating the community."<sup>386</sup> Law students will become "staff attorneys at legislative and executive committees and policy institutes."<sup>387</sup> They will also become more sensitized members of branches of government.<sup>388</sup>

#### *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.<sup>389</sup> This statement would put the citizens<sup>390</sup> 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.

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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 (2d ed. 2003).

385. 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 legal education is "the default for college seniors who have no idea what they want to do after graduation.") (quoting Richard Morgan, *Ruminations on College Life*, CHRON. OF HIGHER EDUC., Oct. 4, 2002, at A12).

386. Ferguson, *supra* note 117, at 63.

387. *Id.*

388. *Id.*

389. See, e.g., Rockland County Res. 651, 149th Leg., (N.Y. 2002).

390. And the policy makers.

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.

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 MDGs, 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 EFFORTS ARE ONLY A PARTIAL RESPONSE TO INSTITUTIONALIZING CHANGE FOR CHILDREN

If children, who are mature enough, are trained to spot issues of their peers as well as to self-assess their development in a manner that enables them to communicate and 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.<sup>391</sup> Significant stakeholders have begun to take the lead to train their staff 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, such as towns, cities, counties, parishes and states, is that they

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391. Novel programs such as teen court and community channel focus groups with youths are both examples.

were not created equally. Competition among the states for federal dollars, lack of uniform resources, and uneven distribution of goods and services<sup>392</sup> between communities lead to charges of favoritism,<sup>393</sup> racism,<sup>394</sup> and the paralysis of analysis<sup>395</sup> or gridlock<sup>396</sup> in any legislative initiative.<sup>397</sup> What is more, national policy should not have to depend on where someone is living; the problem just gets worse—the tax base is further eroded when portions of society move out, and brain drain, white flight, and all of the other requisite excuses for why urban centers cannot be fixed are created.

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, like the ratification of the CRC and the implementation of the MDGs here in the United States would be beneficial.

The United States could address health care policy from a different paradigm rather than merely acknowledging the market economy approach to setting prices for drugs while complaining about the broken Medicaid/Medicare programs.<sup>398</sup> Katrina disaster relief aid comes quickly to mind in all forms: rebuilding infrastructure so families can get back home and youth back in school, and rebuilding the psyche of the community. Levees are reinforced rather than lies. Federal programs and conferences, 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 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 a mere drop in the bucket for the needs of all United States children.

392. Think of property taxes in richer districts leading to “better” schools. Society always subdivides to get away from the elements it does not like when it has the ability to do so.

393. School admissions policies come to mind.

394. Separate but equal comes to mind.

395. See, e.g., Sewell Chan, *Mayor Offers Plan to Ease Traffic Congestion on Staten Island*, N.Y. TIMES, Mar. 28, 2006, at B1-B4.

396. This is the constant criticism for Congress, whose reputation for getting things done is as low as the president’s approval ratings.

397. This leads to incrementalist approaches to policy. See generally Ferguson, *supra* note 117.

398. Marcus Kabel & Stephen Majors, *Wal-Mart Expands Generic Drug Plan*, WASH. POST, Oct. 5, 2006, available 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 interest to think outside of the box, yet federal policy makers refuse to? See Mark Schlesinger, *Reprivatizing the Public Household? Medical Care in the Context of American Public Values*, 29 J. HEALTH POL. POL’Y & L. 969, 973 (2004).

Some local government officials may have been moved by personal experience, while 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. As it stands, 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. The president and Congress need to seek 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",<sup>399</sup> promoting a youth's transition from adolescence to adulthood with humane standardized testing bundled with well funded transition-building apparatuses<sup>400</sup> and structural investment for the poor and middle class to have in a higher quality of life).

#### IX. CONCLUSION: THE ANSWER IS NOT LIKELY

Children in the United States, however we view them, need at minimum a national discussion that leads to their needs being completely and immediately met. Without national leadership the effect of local government efforts will be uneven at best. The United States needs a national approach, one led *and inspired* by the President (and carried out by his or her policy makers) that leads to more than a mere call for uniform standards. The president's leadership must lead to similar national action that created mechanisms for the physical protection and preservation of its national security.

Further, 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 the United States is to maintain and win back its international credibility, it cannot accept as truth that its people are only moved by the tragedies that affect them immediately or personally, but instead that its compassion compels it to act on behalf of those whose face is represented only by the numbers recorded in governmental reports.<sup>401</sup> If the collective global future of the United States is to

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

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

401. See Peter J. Spiro, *The New Sovereignists: American Exceptionalism and Its False Prophets*, FOREIGN AFFAIRS, Nov.-Dec. 2006, at 9, available at

flourish, it must consider the least of its society and ensure that those who cannot protect themselves nor provide for themselves are not abandoned to despair and hopelessness, thus relegated to Stalin's "statistic." It is not likely that the United States can otherwise maintain its credibility abroad without meeting the needs of its children at home irrespective of failing to ratify the U.N. Convention on the Rights of the Child.

