
Cleveland Ferguson III

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I. INTRODUCTION: LIES, DAMNED LIES, AND STATISTICS

Popular culture credits Mark Twain with popularizing the phrase, "There are lies, damn lies, and statistics." The oft-quoted line underscores the reality that the same empirical data can be manipulated for opposing purposes. Polling data can be manipulated in some cases to mean the opposite of what was expressed to the sampling group on the turn of a phrase. However, it is hard to dismiss or misconstrue that since 2003, almost 30,000 children under five years of age die every day worldwide from preventable causes, while nearly a half-million more children have died of HIV/AIDS. Consider these alarming statistics: in 2004, one in three children had no sanitation facilities in the home, one in five had no access to safe water, one in six remained "severely hungry," and one in seven had "no access to health care." What's more, 140 million children never had an elementary school education; 300 million had no "access to information."

1. Some say (including Twain) the phrase was first uttered by Benjamin Disraeli, the first Earl of Beaconfield or Henry Labouchère, journalist and politician. See Lies, damned lies, and statistics, http://en.wikipedia.org/wiki/Lies%2C_damned_lies%2C_and_statistics. See also DARRELL HUFF, HOW TO LIE WITH STATISTICS (1954).

2. Think back to the 2004 presidential debates. As a part of their coverage, several news organizations created “fact-checking desks” in an effort to help the public determine whose quoted statistics were most accurate, in making their decisions of who to vote for. The segment seemed to take on an air of vetting the integrity of the candidates based upon how many correct statistics were used. Some say this was absolutely necessary when it was learned that one candidate's speechwriters had resorted to "making up" names and visits as "anecdotal" evidence of the strengths and weaknesses of public policy in the 2000 Election. See, e.g., R. Randall Kelso, Narcissism, Generation X, The Corporate Elite and the Religious Right Within the Modern Republican Party: A Set of "Friendly" Observations for President Bush, 24 CARDOZo L. REV. 1971, 1975 n.12 (exposition on Bush campaign's exploitation of Gore as a "serial exaggerator"). This ended up hurting Vice President Gore's credibility.


4. Id. at 74. These children were under the age of fifteen. 15 million children have been orphaned by HIV/AIDS. In Botswana, Lesotho, Swaziland, Zambia, and Zimbabwe, life expectancy has been shortened by more than fifteen years. See id. at 10, fig. 1.1.

5. Id. at 36. See also id. at 19 fig. 2.1 (Severe deprivation among children in the developing world, by different deprivations); and at 21 fig. 2.2 (Severe deprivation . . . among children in the developing world, by region). These figures contain 2004 data.

6. Id. at 20, 22.


8. UNICEF ANNUAL REPORT, supra note 3, at 10.

and 640 million had no "adequate shelter."11 Such are a few of the statistics published by the United Nation's Children Fund in its "State of the World's Children 2005: Childhood Under Threat Annual Report."12 Child poverty and the other ills analyzed in the Annual Report were not localized to the developing world.13

The UNICEF14 Annual Report, focusing on the worldwide state of children, was published in the face of all but two states in the world ratifying the United Nations Convention on the Rights of the Child.15 Until late 2004, one of these states did not have a functioning govern-

10. Id. at 22.

11. See id. at 20, 22.


13. Id. at 27 (showing Canada, the United Kingdom, and the United States among others with high child poverty rates). See also id. at 2 fig. 2.4.

14. In the spirit of full disclosure, so one can determine the veracity of these statistics, one should always know the mission or the stated purpose of the organization proffering them. In part, UNICEF's Mission statement reads:

UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour [sic] towards children. UNICEF insists that survival, protection and development of children are universal development imperatives that are integral to human progress. UNICEF mobilizes political will and material resources to help countries, particularly developing countries, ensure a "first call for children" and to build their capacity to form appropriate policies and deliver services for children and their families.


A handful of reasons have been offered for why the United States signed the Convention in 1995, but has still not ratified it. But, as this article will suggest, none of these concerns appear to be insurmountable. Further, with the leadership position (morally grounded or not) this country has maintained throughout its history—from the Monroe Doctrine to the Marshall Plan, and from the New


17. At the time the Convention came into force, UNICEF reported that the United States had a worse record for immunizing infants than many developing countries. See Tracey Walmer, Summit Goal: End ‘Silent Emergencies’; World Leaders Gather at U.N. Summit, USA TODAY, Sept. 26, 1990, at A5.

18. See discussion infra Part VII.


See Secretary George Marshall’s speech introducing the Marshall Plan in 1947:

Aside from the demoralizing effect on the world at large and the possibilities of disturbances arising as a result of the desperation of the people concerned, the consequences to the economy of the United States should be apparent to all. It is logical that the United States should do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace. Our policy is directed not against any country or doctrine but against hunger, poverty, desperation, and chaos. Its purpose should be the revival of working economy in the world so as to permit the emergence of political and social conditions in which free institutions can exist. Such assistance, I am convinced, must not be on a piecemeal basis as various crises develop. Any assistance that this Government may render in the future should provide a cure rather than a mere palliative. Any government that is willing to assist in the task of recovery will find full cooperation, I am sure, on the part of the
Deal\textsuperscript{21} to the Great Society,\textsuperscript{22} (it is questionable whether the newest U.S. doctrine of preemptive strike is in keeping with these other, much-heralded [or maligned] policy positions and doctrines of the past)—it is hard to imagine why policy-makers in the United States do not embrace the broad visionary policy goals of the Convention for the betterment of the world in general and U.S. children in particular. In fact, the United States should use the Convention to initiate a leadership effort in galvanizing the estimated $40-$70 billion\textsuperscript{23} UNICEF's Annual Report suggests it will take to address the United Nations Millennium Development Goals (MDGs) by 2015.\textsuperscript{24} The Convention should be the "Line of Demarcation" between meeting a child’s needs and death.\textsuperscript{25} But in order to truly successfully attain these goals would

United States Government. Any government which maneuvers to block the recovery of other countries cannot expect help from us. Furthermore, governments, political parties, or groups which seek to perpetuate human misery in order to profit therefrom politically or otherwise will encounter the opposition of the United States.


21. As a part of the New Deal, FDR stated:

I see a great nation, upon a great continent, blessed with great wealth of natural resources.... But here is the challenge to our democracy: In this nation I see tens of millions of citizens... who at this very moment denied the greater part of what the very lowest standards of today call the necessities of life. I see millions of families trying to live on incomes so meager that the pall of family disaster hangs over them day by day.


24. The MDGs will be discussed more thoroughly in Part VI. However, they are the latest in a series of world wide revolutionary steps taken to underscore and crystallize the tenets of the Convention, to further protect the child.

25. For UNICEF, its Line of Demarcation appears to be that

\textit{Children have the right to survival, food and nutrition, health and shelter... the right to be encouraged and educated, both informally and formally, from...}
almost certainly require that the United States address its failure to meet the needs of its children.

According to the Children's Defense Fund Action Council's 2004 Annual Report, African-American infant mortality rates in Washington, D.C. alone exceed that of fifty different nations. In addition, every two minutes an Anglo-American child is born into poverty, and every forty minutes another dies before his or her first birthday. According to the same report, while every two minutes a Latino child is born into poverty, it is every two hours that another dies before his or her first birthday. Similarly, the same is true every forty minutes and nine hours respectively for Asian children, and every thirty-six minutes and every twenty-two hours for Native American children. All of these are statistics of the United States!

Further, the UNICEF Annual Report showed that the United States ranked 140th of 172 countries in maternal mortality and 160th

birth. . . have the right to a loving, understanding family environment where the primary concern is their best interests, that provides guidance appropriate to their evolving capacities and prepares them to live an individual life in society in a spirit of peace, dignity, tolerance, freedom, equality and solidarity. . . must be afforded the opportunity, to recreation and play, and to engage in sport and cultural activities rather than be subjected to violence and exploitation. Where they experience work, it should be as a positive contribution to the family and community that increases their own self-respect and sense of empowerment, and contributes to their learning rather than detracts from it.

UNICEF ANNUAL REPORT, supra note 3, at 11.

26. This includes the Bahamas, Barbados, Cuba, Dominica, and Oman. See CDF ACTION COUNCIL, A NATION AND CENTURY DEFINING TIME: WHERE IS AMERICA GOING? HOW YOU CAN MAKE A DIFFERENCE, AN ACTION GUIDE, at 20 (2004) [hereinafter CDFAC ANNUAL REPORT], available at http://www.cdfactioncouncil.org/actionguide/2004.pdf. Every hour, an African-American child dies before his or her first birthday. Children's Defense Fund, Data: Moments in America for Children (Nov. 2005), http://www.childrensdefense.org/data/moments.aspx. [hereinafter Moments] (statistics - Moments in America for Black Children). The mission of the CDF is to Leave No Child Behind® and to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective voice for all the children of America who cannot vote, lobby, or speak for themselves. We pay particular attention to the needs of poor and minority children and those with disabilities. CDF educates the nation about the needs of children and encourages preventative investment before they get sick, into trouble, drop out of school, or suffer family breakdown. CDF began in 1973 and is a private, nonprofit organization supported by foundation and corporate grants and individual donations. We have never taken government funds.


27. See Moments, supra note 26 (statistics - Moments in America for White Children).

28. Id. (statistics - Moments in America for Latino Children).

29. Id. (statistics - Moments in America for Asian Children).

30. Id. (statistics - Moments in America for American Indian Children).
out of 193 in infant mortality rates. The United States is ranked twelfth in living standards of the poorest one-fifth of children, thirteenth in the gap between rich and poor children, fourteenth in efforts to lift children out of poverty, sixteenth in low-birthweight rates, eighteenth in the percentage of children in poverty, and absolutely last in protecting our children against gun violence. Pretty damnable lies.

These and other statistics are more than mere words on paper; they represent the state of our nation and its future. Ironically, the first president who had the opportunity to sign the Convention in 1990 opened the preceding year's Conference on Children in New York with the remark, "our national character can be measured by how we care for our children," however, he neither signed the Convention nor submitted it to the United States Senate for its advice and consent, despite widespread political and grassroots support for the document dubbed the "Magna Carta for children." One wonders what the epitaph would be for any industrialized nation who would be forced to relinquish its sovereignty and independence because it has been gut-

31. CDFAC ANNUAL REPORT, supra note 26, at 20.
32. Id.
33. Id.
34. Id.
35. Id.
36. CDFAC ANNUAL REPORT, supra note 26, at 20.
37. Id.
38. This article does not address the allocation of power by parent, child and the state as much as advocate for government support of the family by acknowledging the child's needs that is presumably translated into rights (food, water, shelter, education). Essentially the state should be the "guarantor of the resources necessary to the minimum enjoyment of liberty." See John E. Coons et al., Deciding What's Best for Children, 7 NOTRE DAME J. L. ETHICS & PUB. POL'Y 465, 475 (1993) (discussing various models of allocation of power and responsibility between the state, the parent and the child). Id. at 471-75.
Could one conceive of such an epitaph for the United States: "Here lies a once-great nation, a shadow of its former self—because it could not take care of its children?"

This article explores what these statistics actually mean from a policy perspective and thus will focus on the relationship between the state (the federal government) and the family. It will outline the tenets of the Convention on the Rights of the Child. It will then highlight the machinations of the Convention's formation (it really is quite a feat that such a seemingly controversial document made it out of the United Nations General Assembly by unanimous consent!) and some nations' present positions in respect to its ratification. It will then address some of the most pervasive objections raised by the language of the Convention in the United States. It will discuss ways to improve understanding of the Convention’s application of children’s needs to government policy and practice, to raise awareness of the relationship between public policy and the rights of children, and to promote insight into how policy and practice can be improved to effect greater respect for the rights defined in the Convention.

The article will then posit some reasons for the slip in maintaining high standards of progress called for in the Convention’s widespread passage that was further defined by the Millennium Development Goals. It will then argue that if the United States were to ratify the Convention and take a leadership role, that it would stunt the decline of children and stabilize the negative slide UNICEF's re-


43. The myriad of random contestants with no sense of current events, geography, or history come to mind as exposed through the “scientific” investigatory techniques of Jay Leno's Jay-Walking, or the popular game show Street Smarts. See Jay Walking Video Page, http://talkshows.about.com/cs/jayleno/v/jaywalking.htm.; Street Smarts Show Summary, http://www.tv.com/street-smarts/show/2894/summary.html (comedy game show where contestants prove how smart they are by predicting how dumb other people can be).

44. See, e.g., notes 25-28 supra.

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

46. See discussion infra Part VII.
The article will discuss whether barring submission of the Convention for ratification to the United States Senate, the prevalent methodologies for U.S. federal policy making: incrementalism, the use of an ideological approach, or the wisdom of social choice theory, will offer assistance in achieving the aims of the Convention. In the face of unlikely ratification during the current administration's term, the article will also offer local level advice and propose solutions about what individuals can do to advance the Convention's tenets in practice from the grass roots level, in hopes of raising awareness. This article will suggest that a national approach—rather than a federal approach—in using the Convention to change the consciousness of American society will be a sure way to make care for children uniform in the United States and for the rest of the world through U.S. leadership.

II. POST 9-11 STATE AND FEDERAL POLICY TOWARDS CHILDREN

After the terrorist attacks on September 11, 2001, U.S. federal policy has ranged from reactionary to preemptive, all in the name of national security. The current administration uses the specter of future, similar tragedies as its motivation to direct America's finite resources and the nation's (federal policy) attention towards "defense-related" activities.

47. See, e.g., supra notes 20-21. Like it or not, the world is tethered to the United States constantly maintaining its role as a super power not only in terms of its military might but also its humanitarian capacity. One hopes that the current administration will retain this position as it attempts to recover from its initial missteps in responding to the South Asian tsunami disaster. Because of our history, neither neo-isolationism nor half-hearted commitments by the United States federal government on the international stage will be acceptable.


50. Id. See also President's Message to Congress Continuation of the National Emergency with Respect to Persons Who Commit, Threaten to Commit, or Support Terrorism, 40 Weekly Comp. Pres. Doc. 2084 (Sept. 21, 2004).

Nevertheless, news accounts are littered with local leaders attempting to solve problems in the face of abdicated authority on the federal level,\textsuperscript{52} or otherwise attempting to fend off burdens that the Bush Administration intends to avoid,\textsuperscript{53} calling attention to the fact that federal policy solutions are needed to address domestic issues in a uniform way. The alternative is Balkanized regulation, uneven results, and a "muddling through" of incremental patchwork responses to systemic concerns for the other non-crisis-oriented (though looming) issues that fall through the federal policy cracks.\textsuperscript{54} In short, federal policy makers take their cues from the current administration's actions and directives. They argue that unless the concern is defense or security-related, then it is an issue for the states. As a result, our children appear to be in a chasm because U.S. federal policy fails to establish a consistent, uniform national effort to ensure their childhood is free from basic maladies.\textsuperscript{55}

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year military budget increase from 2003 to 2004 ($48.8 billion) would close the poverty gap for American children for a year – the military budget submitted for fiscal year 2004 is $453.7 billion). Current federal debt is $7.18 trillion – a staggering amount to consider when calculating the time value of money for a child who is five years old now and who would be paying taxes with a job by age 15. \textit{See Bureau of the Public Debt, http://www.publicdebt.treas.gov/opd/opdpenny.htm} (federal debt information).
\end{flushleft}

\textsuperscript{52} Patrick O'Gilfoil Healy, \textit{Spitzer, in a Shift, Will Yield Inquiries to U.S. Regulators}, \textit{N.Y Times}, Dec. 25, 2004, at A1 (being concerned that the numbers of small efforts at the New York state level would lead to "balkanize[d] regulations" and believing that federal level agencies would be "more aggressive about rooting out fraud and wrongdoing" as a result of Spitzer's efforts on the state level).

\textsuperscript{53} Pam Belluck, \textit{Governors Unite in Medicaid Fight}, \textit{N.Y Times}, Dec. 26, 2004, at A1 (costing state and federal government $300 billion a year, Medicaid is nation's largest health insurance program). "Fearful that President Bush plans to shift more Medicaid costs to the states, the nation's governors are mounting a bipartisan lobbying effort to stave off new federal limits on the program." \textit{Id}.


\textsuperscript{55} The one program designed to help states initially was Title XXI of the Social Security Act, the State Children's Health Insurance Program (SCHIP). The Balanced Budget Act of 1997, Pub. L. 105-33, 42 U.S.C. § 1397 (2004). Further, the U.S. Surgeon General articulated policy statements to reduce the racial difference in health status by 2010. \textit{See Healthy People 2010}, U.S. Dept't of Health & Human Servs., (2000), \textit{available at} http://www.healthypeople.gov/document/. \textit{See also} Margo Edmunds et al., \textit{All Over the Map: A Progress Report on the State Children's Health Insurance Program}, Children's Defense Fund (2000), \textit{available at} http://www.childrensdefense.org/childhealth/resources/chip_report.pdf. The program, post September 11th, is basically splintered into more than fifty different programs with states cutting back on funding to meet the budgeting concerns every year. \textit{See also} CDFAC ANNUAL REPORT, \textit{supra} note 26, at 31-34.
A. Resulting Effects on the State Level

As a result of a continued lack of national consensus on fulfilling the basic needs of the child, the horror stories of individual states continue to make national news. Child protection services from Florida to Arizona, and from Texas to Indiana have been the subject of shocking, demoralizing and intolerable incidences over the last several years. Some state tragedies are crossing international borders.

On the state level, the problems related to local services are consistently identified, but not easily solved. Some issues are just too large for cash-strapped states to handle, and so an incremental set of patchwork standards are enacted to attempt to get the state through that particular fiscal year. At other times, statewide reorganization of bureaucratic apparatus is too costly to employ. As governors propose and

56. See, e.g., Bill O'Reilly, Protecting America's Children, Fox News: The O'Reilly Factor, July, 18, 2002, http://www.foxnews.com/story/0,2933,58101,00.html (bringing further national attention to a gut-wrenching lapse by Department of Children and Family Services (DCF) and Child Protection Services through an interview of one of the Miami Herald reporters who broke the story, and former Florida Congressman on the infamous Rilya Wilson Missing Persons case, wherein the four-year old disappeared in the custody of foster care parents approved by the Florida Child Protection Services). The South Florida Sun-Sentinel was able to locate the whereabouts of a number of children who were a part of Florida's foster care system in a matter of days in the face of the DCF claiming to have no information about the same children. See Sally Kestin et al., Lost Kids Easily Found: Sun-Sentinel turns up nine of DCF's Missing Children, SUN-SENTINEL, Aug. 11, 2002, at A1.


58. See, e.g., Polly Ross Hughes, No Unity on Fixing Children's Services / Some Contend More Money Won't Solve All Problems, HOUS. CHRON., Nov. 1, 2004, at A1; Tracy Idell Hamilton, Bill Aims to Fix Kid-Care Agency; But the Money to Reform Child Protective Services Still Must be Found, SAN ANTONIO EXPRESS-NEWS, Dec. 8, 2004, at A1 (suggesting an increase in funding alone would not protect Texas children).

59. See, e.g., 113th General Assembly: How the Bills Fared: Bills Sent to Governor, INDIANAPOLIS STAR, Mar. 6, 2004, at B3 (detailing state legislative efforts to overhaul Child Protection Services).

60. See, e.g. Sandra Hernandez, U.S. Official to Address Adoptions Her Trip to Costa Rica is Expected to Bring Greater Accountability to International Cases, SOUTH FLORIDA SUN-SENTINEL, Jan. 17, 2004, at B3 (underscoring need for attention to illegal adoption rings like the one uncovered in Coral Springs, Florida); see also Angelina Jolie's Adoption Agent Admits Fraud, WORLD ENT. NEWS NETWORK, June, 25, 2004, http://www.wpni.com/entertainment/story.aspx?contentid=250A8089-C831-4878-9B6A-DAAD6A057C4B (reporting that "poor women" were paid "as little as $100 for their children").

state legislatures enact incremental solutions to get through the fiscal year, the children continue to fall through the cracks,\textsuperscript{62} largely because there is no national perspective or consensus in solving the myriad of issues that face children. As occupier of the most respected bully pulpit in the world, President Bush should include a national discussion as a part of his security package that would lead to the ratification of the Convention. The President of the United States should be the natural and national leader on these issues. However, that will take a fundamental shift in thinking not currently present among his policy advisors.

III. CHILDREN'S LACK OF ADVOCACY

It has also been said in various ways that children are the leaderless, the lobby-less, and the unrepresented, because they do not have a vote in electoral politics.\textsuperscript{63} No other constituency lacks all three outlets for representation. Regarded for thousands of years as property,\textsuperscript{64} "to be seen and not heard,"\textsuperscript{65} or worse, children have consistently been overlooked by many cultures around the world. Further, none of the arguments of self-empowerment and self-reliance—the pull-yourself-up-by-your-own-bootstraps counterarguments to government intervention or leadership—address the child who must depend

\textsuperscript{62} See Lindblom, supra note 54; Good Morning America (ABC television broadcast Nov. 20, 2004) ("U.S. officials think more than $10 million dollars changed hands as part of an illegal adoption ring in Washington state.").

\textsuperscript{63} Jonathan Todres, Emerging Limitations on the Rights of the Child: The U.N. Convention on the Rights of the Child and its Early Case Law, 30 COLUM. HUM. RTS. L. REV. 159, 159 (1998) (citing GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD \textit{xx} (1995), and Adam Lopatka, An Introduction to the United Nations Convention on the Rights of the Child, 6 TRANSNAT'L L. & CONTEMP. PROBS. 251, 254 (1996) ("[i]n general, they are less able to draw attention to violations of their rights because they do not have the right to vote and many also lack the verbal skills or contacts necessary to make themselves heard").

\textsuperscript{64} Ernest A. Sanchez & Sherrie Kibler-Sanchez, Empowering Children in Mediation, 42 FAM. CT. REV. 554, 554 (2004); David M. Simlin, A Tale of Two Treaties: Furthering Social Justice Through Redemptive Myths of Childhood, 17 EMORY INT'L L. REV. 967, 968 (2003).

\textsuperscript{65} See Joan-Margaret Kun, Rejecting the Adage "Children Should be Seen and Not Heard" – the Mature Minor Doctrine, 16 PACE L. REV. 423, 452 (1996).
on others: the family to nurture; society to educate and advocate; government entities to ensure health, safety, and communal welfare.

The literature details, and the dismal statistics in the UNICEF and CDFAC Annual Reports highlight, that children cannot meet their needs on their own—something even the conservative advocacy groups who object to the Convention's ratification in the United States know. What these groups fail to acknowledge is that not all families have two parents with jobs providing income to address the basic needs of a household, let alone disposable income for "extras." In this failure, a disconnect in logic is born—advocating the maintenance of the family unit while simultaneously lobbying for the erosion of basic services needed to support non-nuclear, under-capitalized family units.

What's more, families, however they are configured—nuclear, single parentage, guardianships, or others—distracted with natural disasters, civil war, terrorism, economic pressures, hunger, lack of adequate shelter, and other formidable obstacles, will further be in a worse position to appropriately respond to each of these concerns if each local government has a different set and level of legislative and fiscal priorities with few focused on the direct care and provisions of basic services for "the child." Without adult support, and support of the adults charged with the care and responsibility over children, the child's basic needs cannot be met on his or her own until a certain level of maturity is reached. The Convention on the Rights of the Child standardizes this understanding from a national perspective and provides an ontological, fundamental framework to reorient the priorities of federal policy makers so that uniform services can be maintained and upgraded as necessary without regard to changes in other federal or administrative priorities.

66. The definition of family in this instance should be comprehensive and include a variety of configurations. This is in contrast to U.S. Policy makers' latest definition of family: family is "marriage between a man and a woman." Kacy Bishop, Comment, Politics Before Policy: The Bush Administration, International Family Planning, and Foreign Policy, 29 N.C. J. INT'L L. & COM. REG. 521, 531 (2004).

67. Organizations such as CDF do an excellent job at advocacy, so much so President Bush used its trademarked "Leave No Child Behind" to give heft to his educational package. See CDFAC ANNUAL REPORT, supra note 26, at 3.

68. This covers education, day care, recreational activities and all other basic necessities not handled by traditional health and safety verbiage or models.

69. See note 55, supra.
IV. What Does the Convention Contain?

A. Rights Groupings Largely Based Upon the Needs of Children

To some degree, the Convention codifies many universal rights that have long been recognized in international human rights law but never before explicitly asserted as applying equally to children. The rights can be classified in five broad groupings: social, economic, cultural, protective, and civil and political rights. The social rights include the right to life, optimal survival (as opposed to mere subsistence) that includes play, family life, access to the best possible healthcare, and education. Economic rights include the right to an adequate standard of living for proper development, to benefit from social security, and to be protected from economic exploitation. The right to respect for culture, language, and religion make up cultural rights, along with the abolition of any traditional practices likely to be prejudicial to the child's health. Protective rights include: the right to promotion of the child's best interests, to protection from sexual

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

71. This is so unless it is not in the child's best interests. See Convention art. 3.

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

73. This is not blindly regarded to the exclusion of all other considerations however. See Rebeca Rios-Kohn, The Convention on the Rights of the Child: Progress and Challenges, 5 Geo. J. on Fighting Poverty 139, 144 (1998). Considering the best interests of the child, "[h]owever, . . . does not guarantee that a child's interest will always prevail; it only guarantees that the child's interest will be fully considered and given due weight in relation to competing interests." Id.
exploitation, armed conflict,\textsuperscript{74} harmful drugs, abuse and neglect, and the right to rehabilitative care following neglect, exploitation, or abuse. Finally, civil and political rights include the right to be heard or taken seriously, freedom from discrimination in the exercise of rights on any grounds, freedom of expression,\textsuperscript{75} the right to privacy,\textsuperscript{76} the right to information,\textsuperscript{77} the right to respect for physical and personal integrity, and freedom from all forms of violence, or cruel or degrading treatment.

These groups of rights are based upon the universal needs of children, without regard to culture, ethnicity, socio-political, or socio-economic class. When identifying the needs of children, scholars and practitioners have used still another set of groupings. Under a framework of children's needs the groupings are: physical; social, economic and cultural; and intellectual, psychological, and emotional. Both sets of groupings essentially identify the same needs. The Convention translated those needs into rights once it came into force and the states became parties to it.\textsuperscript{78}

\textbf{B. Organization of the Convention}

Along with the Preamble, the Convention is divided into three parts and contains fifty-four articles. Importantly, the preamble surveys the decades-long journey of identifying the various documents

\textsuperscript{74} This ranges from kidnapping to being pressed into military service.
\textsuperscript{75} This occurs in accordance with one's age and maturity. See Convention art. 12.
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Gerison Lansdown, Jeffrey Goldhagen and Tony Waterston developed a course for health professionals that breaks down children's needs into rights. There is no hierarchy, and most important, they are universal. See GERISON LANSDOWN ET AL., CHILDREN'S RIGHTS AND CHILD HEALTH – THE INTERFACE: A COURSE FOR HEALTH PROFESSIONALS (Jan. 2004), available at http://www.aap.org/commpeds/resources/childrensrights.htm. This text is used for courses by the American Academy of Pediatrics and the Royal College of Paediatrics and Child Health. These needs are also addressed by a number of articles throughout the Convention, and in some cases an article covers multiple needs. For example, Article five supports parental guidance and the child's evolving capacities which supports needs in all three categories: protection from exploitation and abuse under physical needs, a family environment – whether biological or a substitute family, under social, economic and cultural needs, and access to appropriate guidance and support under intellectual, psychological and emotional needs. As a part of an International Health and Human Rights Seminar at Florida Coastal School of Law, in Jacksonville, Florida, the author adapted this exercise for use by law students. As a part of the course, participants are encouraged to outline the basic needs of children. While law students may use language a bit different from medical students, ultimately the chart emerges with the same needs. The chart below represents the final product as suggested by the Child Health Text's exercise.
declaring that international human rights not only exist, but also must be honored by all states.\textsuperscript{79} It specifically reaffirms that childhood\textsuperscript{80} is entitled to special care and assistance, \ldots that \ldots the family,\textsuperscript{81} as the fundamental group of society and the natural environment for the growth and well-being of all of its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community, \ldots [and] that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.\ldots \textsuperscript{82}

<table>
<thead>
<tr>
<th>Physical Needs</th>
<th>Social, Economic and Cultural Needs</th>
<th>Intellectual, Psychological and Emotional Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shelter</td>
<td>Knowledge of and respect for own language, religion and culture</td>
<td>Opportunities for play</td>
</tr>
<tr>
<td>Health care</td>
<td>Stable social and economic environment</td>
<td>Access to education</td>
</tr>
<tr>
<td>Water and sanitation</td>
<td>Recognition of and respect for emerging competencies Opportunities to be listened to and respected</td>
<td>Access to age appropriate information</td>
</tr>
<tr>
<td>Protection from environmental pollution</td>
<td>Access to appropriate guidance and support</td>
<td>Stimulation</td>
</tr>
<tr>
<td>Adequate food</td>
<td>Access to age appropriate information</td>
<td>Access to appropriate guidance and support</td>
</tr>
<tr>
<td>Adequate clothing</td>
<td>Respect for privacy and confidentiality</td>
<td>Respect for privacy and confidentiality</td>
</tr>
<tr>
<td>Protection from violence</td>
<td>Access to education</td>
<td>Recognition of and respect for emerging competencies</td>
</tr>
<tr>
<td>Protection from exploitation and abuse</td>
<td>Opportunities for friendship</td>
<td>Opportunities to be listened to and respected</td>
</tr>
<tr>
<td></td>
<td>Opportunities for play</td>
<td>A family environment,\textsuperscript{‡} whether the biological or a substitute family</td>
</tr>
</tbody>
</table>

The table shows that once one boiled down the very essence of children's needs and see that they are codified in the Convention, the needs become the rights of children—the chart is compelling and simple. And, these needs—these rights cannot be met without adult support—family and state.

\textsuperscript{79} See Convention, \textit{supra} note 15, pmbl.

\textsuperscript{80} The Convention later defines "childhood" in Article 1.

\textsuperscript{81} This is meant in the broadest sense of the concept. A detailed discussion follows, \textit{infra}.

\textsuperscript{82} Convention, \textit{supra} note 15, pmbl.
Part I (Articles 1-41) contains the specifically enumerated rights of the child.\textsuperscript{83} Part II (Articles 42-45) creates the entity that will monitor the state parties' progress upon implementation of the Convention.\textsuperscript{84} Part III (Articles 46-54) contains the procedural apparatus for placing the Convention in force upon ratification as well as provides a process for reservations of the Convention.\textsuperscript{85}

1. Part I: Enumerated Children's Rights

Using the textual approach as prescribed by the Vienna Convention,\textsuperscript{86} and reading the plain language of the Convention, one can observe that among the most basic articles, six of them establish a methodology that applies to the entire Convention. Article 2 requires that state parties will not discriminate against children,\textsuperscript{87} and makes it the state's responsibility to protect children from any form of discrimination. Article 3 requires the states to employ a "best interests" standard in caring for the child in respect to those family members in charge of taking care of the child.\textsuperscript{88} Article 6 states that all children have the right to live and requires the state to both ensure the child's survival as well as his or her development.\textsuperscript{89} Article 12 requires that in accordance with the child's age and maturity, the child must be permitted to have and express an opinion and have it be considered by his or her caregivers.\textsuperscript{90} Article 16 states that a child has a right to privacy and respect for confidentiality.\textsuperscript{91} Article 24 expresses that a child has the right to the best possible health and access to health services to ensure it. If these rights were respected as a matter of national policy, the lives of all children and their families would be greatly improved.

\textsuperscript{83} This will be discussed in the next section.

\textsuperscript{84} The Committee on the Rights of the Child. \textit{See infra} Part VI.C.

\textsuperscript{85} \textit{See discussion infra} Part VI.

\textsuperscript{86} \textit{See} Vienna Convention on the Law of Treaties, \textit{opened for signature} May 23, 1969, 1155 U.N.T.S. 331. Arguably, any reader could naturally come to the same conclusions and paraphrasings under the other, prevalent approaches to treaty interpretation (founding fathers, teleological) because there is so much legislative history that should ensure that any reading of the Convention should not lead to an absurd result.

\textsuperscript{87} This is defined as "every human being below the age of eighteen years unless the law applicable to the child, majority is attained earlier." Convention \textit{supra} note 15, art. 1.

\textsuperscript{88} Convention, \textit{supra} note 15, art. 3.

\textsuperscript{89} \textit{See} Convention, \textit{supra} note 15.

\textsuperscript{90} \textit{Id.}

\textsuperscript{91} \textit{Id.}
2. Part I: Enumerated Family Rights in Respect to Children

Objections by some conservative advocacy groups in the United States are that the Convention should not be ratified because it is anti-family and anti-parent. However, there are specific articles within the Convention that relate to both. Article 5 unequivocally recognizes parents' rights and duties to provide direction and guidance to children. Article 9 stresses the right of children not to be separated from their parents unless necessary for their best interests. Article 18 stresses the obligations of governments to provide support and help to parents as they fulfill their roles of promoting and protecting their children's rights. The plain language of these articles could not be clearer. It is usually the politics of one's ideology that mixes plain meaning with personal agendas.

3. Other Specifically Enumerated Rights

Along with Article 24, other rights contained in the Convention, if respected, would likely result in better health and development for children including: the right to protection from all forms of violence, sexual abuse, arbitrary detention, the right to education and play, the right to knowledge of identity, and the right not to suffer cruel or inhuman treatment or punishment.

4. Part II: the Convention's Enumerated Requirements of Governments

States' parties must specifically engage in three activities: 1) implement the Convention without discrimination for all children, 2) by whatever means make the Convention "widely known" to both chil-

92. Id.
93. Id.
94. Convention, supra note 15, art. 1.
95. See Lansdown, supra note 78. These tenets serve as the framework for the courses taught by the American Academy of Pediatrics as well as the Royal College of Paediatrics and Child Health.
96. See Convention, supra note 15, arts. 1, 37.
97. See id., art. 34.
98. See id., art. 35.
99. See id., arts. 28, 31.
100. See Convention, supra note 15, arts. 8, 28. This means that the child is literally entitled to the right to a name!
101. See id., art. 37.
children and adults, and 3) report regularly to the entity established to monitor and collect data on compliance with the Convention. According to UNICEF,

Governments should provide budgetary support for child protection, adopt appropriate social welfare policies to protect children's rights, and ratify with few or no reservations international conventions concerning children's rights and protection. Ratification of the two Optional Protocols to the Convention on the Rights of the Child would be an important demonstration of the commitment to protect children from armed conflict and exploitation. Governments should implement laws to protect children from abuse, exploitation and violence, vigorously and consistently prosecute perpetrators of crimes against children, and avoid criminalizing child victims. Governments should challenge attitudes, prejudices and beliefs that facilitate or lead to abuses. They should commit to preserving the dignity of children and engage the public to accept their responsibility to protect them.

5. UNICEF's "Terms of Childhood"

In viewing the rights enumerated in the Convention as a set of standards or principles, UNICEF crafted its 2005 Annual Report using the articles as a textual basis—perhaps even in a way that a strict constructionist could not deny would serve as a foundation to launch the achieving of these standards. It is worth reviewing this basic

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102. See discussion infra Part VI.C.
103. But see infra note 200.
104. See UNICEF Annual Report, supra note 3, at 6 (emphasis added).
105. Florida, regarded as having one of the best state regulatory models in the United States, went through this exercise with its administrative agencies. Each agency had to review its regulations and match it up with a state statute to justify the regulation's existence. Those that could not be identified were repealed in favor of uniform rules that would better enable the Florida citizen (or at least his or her attorneys) to understand the procedure in which relief could be pursued. Very few procedural rules exist outside of the uniform rules as a result. See F. Scott Boyd, Overview of the Administrative Procedure Act, in Florida Administrative Practice §2.1 (6th ed. 2001); Jim Rossi, The 1996 Revised Florida Administrative Procedure Act: A Survey of Major Provisions, 24 FLA. ST. U. L. REV. 283 (1997).
106. This is not unlike the process used in federal or state administrative law wherein Congress (or the state legislature) enacts legislation and then creates an administrative agency of experts to promulgate regulations to execute the daily minutiae of the Act. See, e.g., Donald P. Rothschild, A Proposed "Tonic" With Florida Lime to Celebrate Our New Federalism: How to Deal With the "Headache" of Preemption, 38 U. MIAMI L. REV. 829, 850 (1984). Continuing with the administrative regulatory model then, at this level, each State Party in effect is in the position of the legislative body that must now adopt a culture that requires its existing institutions to implement the principles of the Convention. This requires more of a conscious social change than merely creating a new federal agency to have charge over the issue. By adopting a culture then, States create a national
statutory interpretive approach, because it demystifies the charge that international organizations only want to use the Convention to trample on U.S. sovereignty. According to UNICEF's Annual Report, every child has the right to: non-discrimination;\textsuperscript{107} actions taken in their best interests;\textsuperscript{108} survival and development;\textsuperscript{109} identity;\textsuperscript{110} family relations and parental guidance;\textsuperscript{111} protection from illicit transfer and illegal adoption;\textsuperscript{112} freedom of expression, thought, conscience and religion;\textsuperscript{113} freedom of association and peaceful assembly;\textsuperscript{114} state protection of privacy, home, family, and correspondence;\textsuperscript{115} access to appropriate information;\textsuperscript{116} protection from abuse and neglect;\textsuperscript{117} special protection and assistance if deprived of the family environment;\textsuperscript{118} protection from armed conflict;\textsuperscript{119} special care if disabled;\textsuperscript{120} health and access to healthcare services;\textsuperscript{121} benefit from social security;\textsuperscript{122} a decent standard of living;\textsuperscript{123} education;\textsuperscript{124} rest and leisure, play and recreation, consciousness rather than a federal one to deal with these issues. This concept will be addressed further in the article.

\textsuperscript{107} UNICEF ANNUAL REPORT, supra note 3, at 4 (citing Convention, arts. 2, 30 as support for this standard).
\textsuperscript{108} Id. at 4 (citing Convention, arts. 3, 18 as support for this standard).
\textsuperscript{109} Id. at 4 (citing Convention, art. 6 as support for this standard).
\textsuperscript{110} Id. at 4 (citing Convention, arts. 7-8 as support for this standard).
\textsuperscript{111} UNICEF ANNUAL REPORT, supra note 3, at 4 (citing Convention, arts. 5, 7-10, 21, 25 as support for this standard).
\textsuperscript{112} Id. (citing Convention, arts. 11, 21 as support for this standard).
\textsuperscript{113} Id. (citing Convention, arts. 12, 14 as support for this standard).
\textsuperscript{114} Id. (citing Convention art. 15 as support for this standard).
\textsuperscript{115} Id. (citing Convention art. 16 as support for this standard).
\textsuperscript{116} UNICEF ANNUAL REPORT, supra note 3, at 4 (citing Convention art. 17 as support for this standard).
\textsuperscript{118} UNICEF ANNUAL REPORT, supra note 3, at 4 (citing Convention arts. 20, 22 as support for this standard).
\textsuperscript{119} Id. (citing Convention arts. 22, 38-39 as support for this standard. This standard ultimately led to the Optional Protocol to the Convention on banning the recruitment of children to serve in armed conflicts. See supra note 118.
\textsuperscript{120} UNICEF ANNUAL REPORT, supra note 3, at 4 (citing the Convention art. 23 as support for this standard).
\textsuperscript{121} Id. at 4 (citing Convention art. 24 as support for this standard).
\textsuperscript{122} Id. at 4 (citing Convention art. 26 as support for this standard).
\textsuperscript{123} Id. at 4 (citing Convention art. 27 as support for this standard).
\textsuperscript{124} Id. at 4 (citing Convention arts. 28-29 as support for this standard).
culture and the arts;\textsuperscript{125} protection from child labor, trafficking, sexual and other forms of exploitation, and drug abuse;\textsuperscript{126} protection from torture and deprivation of liberty;\textsuperscript{127} and dignity and work, even if the child has infringed the law,\textsuperscript{128} as a standard or principle of living. If these standards are not synonymous with how the United States views its children on a fundamental level, then it should likely be the United States to change and reflect these ideals.

C. Relationship Between Children's Needs and Rights

Once enough states became parties to the Convention, the child's basic needs became specifically enumerated rights recognized in international law. One is hard-pressed to understand the disaffection by those opposed to the Convention's plain language. The language is simple. It is specific. It is positive. It promotes a philosophy of respect for the child because it recognizes the child as the subject of legal rights. It provides a practical framework for addressing as large a range of needs as the General Assembly could achieve consensus on through its working groups that put the Convention together.\textsuperscript{129} Ultimately, it provides a universal set of standards and opens up a dialogue about the treatment of children worldwide. Additionally, the Convention provides an opportunity for all those involved in children's health and well-being to work together toward improving children's living standards by advancing children's rights.\textsuperscript{130} Thus, implementation and ratification of the Convention would change the status of children in the United States by providing fundamental rights that ensure their health and development and optimal fulfillment of potential.

\textsuperscript{125} UNICEF ANNUAL REPORT, supra note 3, at 4 (citing Convention art. 31 as support for this standard).

\textsuperscript{126} Id. at 4 (citing Convention arts. 32-36, 39 as support for this standard).

\textsuperscript{127} Id. at 4 (citing Convention arts. 37-39 as support for this standard).

\textsuperscript{128} Id. at 4 (citing Convention art. 40 as support for this standard).

\textsuperscript{129} Some say this resulted in the loss of important language regarding other rights and initiatives. See, e.g., Cynthia Price Cohen, Introductory Note, United Nations: Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49 at 165, U.N. Doc. A/44 736 (1989), reprinted in 28 I.L.M. 1448, 1451-52 (1989) (citing pressure to get the Convention prepared in accordance with agreed-upon deadlines as well as to maintain a consensus, inclusion of the concept of "double jeopardy", protection for alien children, those who were a part of "forced internal migration" and medical experimentation was not included. Also forgone was the establishment of an international ombudsperson.).

\textsuperscript{130} Arguably, this includes families, physicians, lawyers, service providers, and non-profit organizations.
V. What Other States Have Done Since Ratifying the Convention

Efforts to move in this direction include more than fifty states amending their constitutions or legal codes to address children's rights. South Africa's post-apartheid constitution recognizes the rights of children to basic nutrition, education, health, social services, and protection from exploitation. Tunisia's Code for the Protection of Children now contains 123 articles that conform its laws to the Convention. The Philippines introduced laws protecting children from sexual exploitation. Sri Lanka increased the age of sexual consent from twelve to sixteen. Columbia enacted a Minor's Code that protects a child's right of expression. Honduras retrained 75 judges, 293 mayors, and 300 government staff members after its 1996 Children's Rights Code went into effect. Despite the groundswell of support across the political spectrum for the United States to become a party to the Convention, President George H.W. Bush would not sign it. The United States stands out as the lone hold-out in the face of historic acknowledgement of the child as an actor with rights on the international stage.

VI. History of International Attempts to Support Children

The Convention was adopted, without a vote, on November 20, 1989, bringing to fruition the efforts of sixty-five years of formal international legal recognition of the human rights of children. Coming into force out of a relatively recent line of United Nations Human Rights treaties, the Convention was open for signature on January

131. See Wright, supra note 41.
132. Id.
133. Id.
134. Id.
135. Id.
136. See Wright, supra note 41.
137. Id.
138. See infra Part VII.
139. See Convention, supra note 15.
140. See MARTIN DIXON & ROBERT MCCORQUODALE, CASES & MATERIALS ON INTERNATIONAL LAW 175 (4th ed. 2003) (observing that human rights laws were not universally accepted by States prior to the adoption of the United Nations Charter).
26, 1990, and would go into effect upon the depositing of the twentieth instrument of ratification with the Secretary-General of the United Nations. The Convention entered into force on September 2, 1990. The Convention’s roots proudly are traced back to the 1924 Declaration of Geneva (also known as the Geneva Declaration of the Rights of the Child) adopted by the League of Nations. This Declaration stated, “Mankind owes to the child the best that it has to give.” 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.” The next evolution of the world’s consciousness came in the form of the Declaration of the Rights of the Child. It was a ten-principle document that expanded the rights set forth in the 1924 Declaration.


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

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

145. For a quick timeline, see UNICEF ANNUAL REPORT, supra note 3, at 2 (The World Comes to Recognize the Importance of Childhood timeline).


147. Id.


150. See Convention, supra note 15, art. 25.

in 1988, 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. This process led to several amendments, including a switch to gender-free language, coupled with recommendations from delegations and non-governmental organizations, resulting in extensive alterations being made in the first reading text. Sacrifices in language were made, and not everyone got everything they wanted in the draft of the Convention.

Importantly, several protections remained in the draft, such as: protection against "traditional practices" (i.e., female circumcision), sexual exploitation, protection of rights of indigenous children, standards for the administration of school discipline, and rehabilitation for victims of various types of abuse and exploitation. The Working Group built upon the tenets of the 1948 and 1959 Declarations and manifested a near-complete recognition by the world for children's rights. The Convention on the Rights of the Child was the natural next step in this evolution.

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; the relationship between the individual child, the family and the state; the child's right to privacy; and the extent to which other civil and political rights belong to children. All were housed in the Convention under the protective, underlying principle of the "best interests of the child." The Convention, once adopted and entered into force, spawned a number of world meetings, including the 1990 World Summit for Children, the 1994 Year of the

154. Id.
155. See Convention, supra note 15, art. 24 § 33.
156. Id. arts. 34-36.
157. E.g., id. arts. 17(d), 29(d), 30.
158. Id. art. 28 § 2.
159. Id. art. 39.
160. See Convention, supra note 15, arts. 37, 40.
161. See, e.g., id. arts. 5, 9-11, 18-21.
162. Id. art. 16.
163. See, e.g., id. arts. 2, 6, 12-15, 25, 37, 40.
Family, the 1999 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, the 2000 U.N. Millennium Development Goals, and the 2002 Building A World Fit For Children summit at the United Nations. Thus, international consensus was not only maintained, but the awareness and necessity of children's rights around the world was increased.

A. Objections in the Drafting of the Language of the Convention—Worldwide

The rights of the unborn child, the right to foster care and adoption, freedom of religion, and the minimum age for participation in armed combat were all controversial topics that led to objections during the rounds of drafting. The rights of the unborn child were dealt with in the drafting of Article 1 of the Convention in that compromise language was reached by quoting the 1959 Declaration, which refers to "appropriate legal protection, before as well as after birth." Citing conflicts with the Koran, Islamic delegations lodged objections to freedom of religion, adoption, and foster care issues. In their view, only adults may choose a religion, and the concept of Kafala requires specific rules related to enabling children to become a part of one's family that are wholly different than Western ideals of adoption. Nevertheless, the Working Group dealt with each objection in turn, and each country initially voicing objections ratified the Convention.

B. Millennium Development Goals Furthering the Convention

The next evolution of children's rights led to the development of worldwide goals to keep state parties on track with implementing the tenets of the Convention and contextualizing the rights therein into their domestic practices: the Millennium Development Goals. The Millennium Development Goals (MDGs) serve as the tools by which state parties will further apply the Convention. Importantly, the MDGs are neither corrosive to state sovereignty nor demagoguery to

164. See UNICEF ANNUAL REPORT, supra note 3, at 2.
165. See Convention, supra note 15, pmbl.
166. See Cohen, supra note 130, at 1451.
167. Id.
168. Id. (citing requirements for consanguinity and inheritance within the inter-related extended family).
parents' roles in raising their children. There are eight\textsuperscript{170} goals that are to be achieved by 2015.\textsuperscript{171} They are: 1. Eradicate extreme poverty and hunger, 2. Achieve universal primary education, 3. Promote gender equity and empower women, 4. Reduce child mortality, 5. Improve maternal health, 6. Combat HIV/AIDS, malaria and other diseases, and 7. Ensure environmental sustainability. While there have been great strides made since the Convention came into force,\textsuperscript{172} the UNICEF Annual Report sounds the alarm across the international stage that state parties are falling behind.\textsuperscript{173} Enter stage left: U.S. leadership. So far, the United States has not responded to the cue.

In 2002, the children had an 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,\textsuperscript{174} again sounding a familiar set of themes.\textsuperscript{175} These themes do not appear to be so susceptible to political abuse that it is worth denying U.S. leadership in regards to these principles. To observe that the funding necessary to meet these needs could be covered by the amount of the increase in the U.S. defense spending for fiscal year 2004 puts the surreal imbalance between capability and lack of desire into perspective.\textsuperscript{176}


\textsuperscript{172}. See UNICEF Annual Report, supra note 3, at 7. UNICEF records that over the last ten years under-five mortality rates have recorded double digit declines with underweight statistics falling slightly. A major achievement was recorded in the reduction of polio cases from 350,000 to 700 in 2003. Id.

\textsuperscript{173}. See id. at 8 (finding results "mixed" or seriously "off track").


\textsuperscript{175}. Cf. CDFAC Annual Report, supra note 26, at 43 (CDFAC goals in section titled \textit{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.

\textsuperscript{176}. CDFAC Annual Report, supra note 26, at 41 (criticizing the swift U.S. commitment of $87 billion to rebuilding Iraq).
VII. United States Reaction to the Convention: Criticisms and Counterarguments

Bucking a groundswell of grassroots support of ratification in the United States, the U.S. Government neither signed nor ratified the Convention when it opened for signature in 1989. Instead of acknowledging the Convention as a milestone in human rights, or its goals of improving the education, living conditions, healthcare, and treatment of the estimated two billion people under the age of eighteen, the elder Bush's administration piddled. The Convention was not without individual support of high-ranking and distinguished politicians, including United States Senators: Robert J. Dole (R-Kan.), Richard G. Lugar (R-Ind.), Mark O. Hatfield (R-Ore.), and Christopher J. Dodd (D-CT). Famous newsmakers also lent their voices in a bevy of media coverage. For example, one newsmaker stated:

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

Some reports indicated that the former elder President Bush wanted to sign the Convention, but ultimately decided against it,


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

182. See Lee, supra note 41. (“[b]ut White House lawyers are still reviewing potential conflicts between the wording of the treaty and federal and state laws regarding military service and criminal punishment for teenagers”).
citing conflicts with "individual state laws." In response to the critics of the Convention, the virtues were extolled. Senator Bill Bradley (D-NJ), in his capacity as co-chairman of the effort to ratify the Convention in the United States, stated: "[i]n some countries, [ratifying the Convention would mean] they'll no longer sell children into slavery or use them for cannon fodder. Kids have to have an identity—an official identity as a person. We have to move to dramatically improve health care as well as education. All of those things are a part of the commitments under the convention." Nonetheless, the Bush administration continued to piddle.

The United States formally signed the Convention in 1995, but the Clinton Administration did not submit it to the United States Senate for ratification because of opposition from Senator Jesse Helms (R-N.C.), Chairman of the Senate Foreign Relations Committee, and conservative groups that believed the treaty infringed on U.S. sovereignty and the rights of parents to raise their children.

Senator Helms warned the White House not to submit the Convention, which in his words was an "insane interpretation of international law" and "incompatible with the God-given right and responsibility of parents to raise their children." Among the opposition to ratification of the Convention include: the Family Research Council (FRC), Concerned Women for America, the Christian Coalition.


185. See Wright, supra note 41.

186. Id.

187. The FRC is a conservative advocacy group.

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


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

Wright, supra note 41 (quoting Denesha Reid, director of public policy, Concerned Women for America).
This opposition had been cited as a reason for Clinton's withholding submittal to the United States Senate. Included in the opposition, is that the Convention does not define a fetus as a child with rights, and it bans the death penalty for those under age eighteen. While Helms looked to turn over a more cooperative leaf during Clinton's second term, no movement occurred on the Convention. Critics of the Clinton administration decision believed that he bore part of the blame, because he did not seek to win support for the Convention, either with the public or in the Senate.

Additionally, other treaties and conventions are still awaiting ratification. They include the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. The Senate Foreign Relations Committee endorsed it thirteen to four (under Senator Helms) in 1994, but the full Senate has never acted on it. About


190. See Taylor, supra note 177 ("Will the U.N. decide it is 'neglect' not to establish government day-care centers?") (quoting Phyllis Schlafly, head of the Eagle Forum).

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


193. When the president announced your nomination last month, I must confess that I hoped then, as I still do, that Mr. Clinton's second administration will be somewhat more cooperative in dealing with Congress on foreign policy matters. I hasten to add that that is a two way street that all of us should travel. Cooperation, if there's not a two way street, becomes an impasse, and we don't want that anymore.


195. Senator Barbara Boxer (D-CA) questioned the Undersecretary of State for Global Affairs in particular about the Convention as well as the Convention for the Elimination of Discrimination Against Women, during a Senate Foreign Relations Committee Meeting. The Undersecretary assured the Senator the administration was "...looking at and considering all aspects of these conventions." See Operations Hearing, supra note 70 (statement of Sen. Boxer).
forty-nine others are awaiting ratification. Currently, it appears that the younger current President Bush is not interested in sending the Convention to the Senate for ratification either, though he did sign and send the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which passed with an understanding. Even with that, opposition remains strong against any discussion of the Convention itself.

A. Criticisms by Advocacy Groups in the United States

The criticisms, which seem to be largely based upon perception are: 1) the Convention is "anti-family," 2) it is anti-parent, 3) anti-child. 


Boucher: I'd also add to what I said yesterday. I was asked about the Convention of the Right of the Child, and I think we said no decision had been made on submitting that one to the Senate for its advice and consent. But the administration does intend to submit both the optional protocol on the involvement of children in armed conflict and the option protocol on the sale of children, child prostitution and child pornography to the Senate for ratification later this month. This was done in such a way that the protocols can be 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 H. Con. Res. 348 (condemning the use of child soldiers); 149 Cong. Rec. H10139-04, H10145 (daily ed. Oct. 30, 2003) (statement of Rep. Young) (showing how Optional Protocol to the Convention limits the way in which funds can be appropriated for defense, relief, and reconstruction of Iraq and Afghanistan).


200. With the exception of the abolition of the death penalty for those eighteen years of age and younger. See Convention, supra note 15, art. 37.

201. A counter argument follows:

The Convention asserts the role of the family in children's lives. The family is the fundamental unit of society and the natural environment for the growth and well being of its members, particularly children. Under the Convention, countries are obliged to respect parents' primary responsibility for providing care and guidance for their children and to support parents in this regard by providing material assistance and support. States are also obliged to prevent children from being separated from
it challenges the ability of U.S. parents to raise their children, 4) it disallows corporal punishment, 5) it challenges reproductive rights, 6) abortions would be illegal, and 6) more generally, the Convention conflicts with a host of U.S. state laws.

Anti-abortion forces also oppose the convention because they believe that the rights it guarantees must be extended to the unborn as well. But the convention is neutral on this question. Regardless of who is right or wrong in the abortion debate, there is virtually no chance on winning a consensus on the rights of the fetus in this country, never mind the rest of the world. The millions of children who would be protected by the convention should not suffer for it, and should not be the pawns in a political debate.

Some members of Congress made fervent appeals to be wary of the line of those who would argue that abortions would be illegal upon ratification of their families unless the separation is judged necessary to ensure the child's best interest.

UNICEF ANNUAL REPORT, supra note 3, at 5.
The Convention recognizes that children are the holders of their own rights. Children, like African-Americans, are not property. The U.S. Constitution's three-fifths clause comes to mind. See U.S. CONST. art. I, § 2, cl. 3.

202. Senator Grams (R-MN) questioning Secretary-Designate Albright during confirmation hearings:
I believe that you signed, in February of 1995, the UN Convention on the Rights of the Child. It is my understanding that England, which is the signatory and had ratified that treaty, is now being held in violation because it allows parents to use moderate corporate discipline in raising their children, and does not require parents to weigh the consent of the child regarding the child's education. This raises an issue in terms of — you know, I'm not an isolationist, but I personally think that decisions about how we raise children might be considered in this country adequately discussed and decided domestically, not internationally.

Nomination, supra note 193 (raising concerns that UN Convention would compromise the sovereignty of the United States) (statement of Sen. Rod Grams R-MN).
Secretary-Designate Albright responds on behalf of the Clinton Administration going into its second term:
... that treaty which you are discussing is one that we are looking at for American purposes to make sure that none of our federal or state regulations and rights are in any way impinged and will be looking at a package of reservations. But I can assure you in the strongest possible terms that I respect American sovereignty and have watched out for it in every available forum where I have been and I will continue to do so.

Id.
Senator Grams responds:
Well, I would hope that we would look at what's happening in Great Britain as an instruction as to what the treaty apparently is being construed to mean by the international convention and the UN itself. It's — I think it's counter to the values that we would hope to see expressed where we want to drive responsibility for decision-making and reinvest our families with a sense of authority and the need to do good things and not to export further and further from them the decision-making on these crucial issues.

Id.

203. Downs, supra note 181.
tion of the Convention, including Rep. Christopher H. Smith's personal appeal to consider the Convention.204

The more than 150 human rights, religious, legal, labor, health and social welfare organizations who continue to support ratification in the United States suggest that all that would be required is a few well-placed reservations, something routinely utilized by State parties.205 In responding to the non-traditional company the United States is keeping206 in opposing tenets of the Convention while espousing support for "traditional values," Bush administration officials are content to respond that U.N. politics makes for "strange bedfellows."207

Ultimately, each article or standard could serve as a benchmark for all societies to measure progress. And when all else fails, as a matter of international law, the United States could certainly file a reservation, if in fact the United States found that even under the textual approach it could not, as a matter of federal policy, justify support for any article based upon the plain meaning of the statute. Therefore, the probative value of the objections to ratification of the Convention seems to be significantly outweighed by the prejudicial effect of rejecting it on behalf of U.S. children.

B. Overcoming (Satisfying?) Criticisms Through the Use of Reservations

More practically, the Convention has no more power over U.S. law than the United States will allow.208 It is not a self-executing


208. Louis Henkin, U.S. Ratification of Human Rights Convention: The Ghost of Senator Bricker, 89 Am. J. Int'l L. 341, 344 (1995). On the off chance that the United States will ratify the Convention during the current administration, wholesale reservations could sustain the charge that the United States "is pretending to assume international obligations but in fact is undertaking nothing." Id.
treaty. It, after all, requires ratification after signature of the President. To be sure, if the United States did ratify the Convention and a future unfriendly amendment would garner the required vote, unless the United States accepted the amendment, it would not be bound by it despite the ratification. Moreover, the Convention’s provisions allow for reservations and this has been exercised by a number of states. Nevertheless, each state who made reservations is a party to the Convention because the reservations do not alter the purpose of the Convention in the wisdom of the Secretary General. Also, the indistinctness of the definition of “child” allowed a number of states to ratify the Convention without altering their domestic views or laws. Finally, the issue of abortion in domestic debates created a number of declarations that were filed to affirm the right to voluntary abortions in those states. In short, the objections were overcome and all states who voiced objections, with exception of the United States, ratified the Convention.

209. See Convention, supra note 15, art. 50 § 2 (two-thirds of the States Parties must accept the amendment for it to be binding).

210. Convention, supra note 15, art. 50 § 3.

211. See Convention art. 51. See also UNICEF ANNUAL REPORT, supra note 3, at 6 (despite declarations and reservations “[t]here is substantial common ground on what the standards of childhood should be”).


213. Admittedly, one could delete wisdom, insert “politics” and be as true in this statement (“[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted”) Convention, supra note 15, art. 51 § 2.

214. See id. art. 51 (Repository for ratification and reservations of the Conventions).

215. See Janoff, supra note 212, at 178 (concluding that the pregnant child has superior rights to the fetus).

216. China, France, Tunisia, and the United Kingdom, each submitted such a declaration. The United Kingdom and China declared the Convention “applicable only following a live birth. See RESERVATIONS, DECLARATIONS AND OBJECTIONS, supra note 205, at 178. France and Tunisia each expressed that the Convention would not interfere with domestic legislation “concerning voluntary termination of pregnancy.” Id. Three states, Botswana, Indonesia, and Luxembourg, submitted reservations. Id. Poland submitted a declaration indicating simply that domestic reproductive health law would supercede Convention provisions. Id.
C. The Ultimate Isolationist Criticism: Fear of the Committee on the Rights of the Child

The criticism that there is some organ in the United Nations that could trump domestic law and thus force or at least impinge upon the rights of the United States is purely isolationist in nature. Detractors of the Convention suggest that the Committee on the Rights of the Child (Committee) is such an entity that would somehow trample on U.S. sovereignty.

However, the Committee was established "[f]or the purpose of examining the progress made by the states' parties in achieving the realization of the obligations undertaken in the . . . Convention." The Committee is one of six treaty-monitoring bodies that report to the General Assembly. The implementation mechanism of the Convention (Part III) calls for state parties to submit regular reports to the ten-member Committee. The General Assembly voted to fund the Committee on the Rights of the Child from the general United Nations budget so that no one state could successfully argue that the Committee was "being bought off" to be soft in their reporting or monitoring. At the same time, no one state would have the ability to manipulate the data to disfavor the United States either.

The primary aim of the reporting procedure has been couched in terms of assisting state parties with their compliance, rather than penalizing or intimidating those that encounter difficulties with compliance. To this end, procedures are in place for the Committee to refer state parties' requests for technical assistance to United Nations "specialized agencies, UNICEF, and other competent bodies." Is this

217. See supra note 46.
218. See Convention, supra note 15, art. 43 § 1.
220. See Cohen, supra note 129, at 1452. The first of these reports were due two years following entry into force for the State Party and every five years thereafter. See Convention, supra note 15, art. 44.
223. See Convention, supra note 15, art. 45, § 1(a)-(b). For example, UNICEF was assigned to assist in the monitoring process along with non-governmental organizations, which are meant to be included within the meaning of the above "other competent bodies." This includes such NGOs as the Red Cross and the Red Crescent.
something the United States should be truly fearful of—enough to deny an international framework as fundamental as the tenets of the Convention?

Practically, the Committee is a monitoring body with no authority over domestic law. The Committee can serve as a bully pulpit, and it is probably an effective way to shame or embarrass those states that are not living up to the tenets of the Convention. Too, the argument that to the extent that the Committee's repeated recommendations would be regarded as general principles or custom in international law will be for the state parties to decide upon adopting such recommendations into practice. However, there are no sanctions, and no apparatus exists for either the Committee or the United Nations itself to cause a state party to change its domestic laws in the face of a Committee report, or to otherwise affect the sovereignty of the United States.

Therefore, it seems that education on the tenets of the Convention as well as its enforcement mechanisms is needed to clear away the misinformation and to give the Convention the vetting it needs to help shore up U.S. federal public policy in respect to its children.

VIII. WHY USE THE CONVENTION AS A LENS TO ENHANCE OR CHANGE OUR VIEW OF CHILDREN?

Because the international community has it right! The gradual transformation of human rights from the Declaration of Geneva, to the Declaration of the Rights of the Child, to the impetus for the Convention, exemplifies the evolution of the heightened awareness perhaps even an evolved consensus of a simple adage, "together we can do more," or even more simply, "two heads (and hearts) are better than one." The sheer task of getting all but two states to ratify a treaty or convention on any level of controversy is enough to give any observer the confidence that anything can be accomplished if only the goal is sited, then sighted and followed through upon.

Despite the dismal state, the Convention is more than mere lip service; it is a foundation that requires active participation to build upon. With the United States behind it and using it, the Convention would be sure to succeed and have a positive affect on U.S. policy as a

224. But see Jonathan Todres, Emerging Limitations on the Rights of the Child: The U.N. Convention on the Rights of the Child and its Early Case Law, 30 COLUM. HUM. RTS. L. REV. 159 (1998) (in fact, the committee appears to have to do more of the work to draft the reports and attempts to involve state parties more in the collection of their data).

225. See Janoff, supra note 212, at 176-77 (discussing the practices of the Committee).

226. See supra Part VI. A.
result by creating a national consensus. One such organization in search of national consensus is the Children's Defense Fund.

IX. THE CHILDREN'S DEFENSE FUND ACTION COUNCIL
2004 ANNUAL REPORT

The Children's Defense Fund (CDF) has been the one advocate for children's rights in the United States that has been tirelessly impartial since its founding. Its latest report calls on federal policy makers to do more. The Children's Defense Fund Action Council 2004 Annual Report (CDFAC Annual Report) is written in a compelling and emotive way.\footnote{227} It exhorts American citizens to become more informed and take an active role in persuading their leaders to consider placing children as one of the foundational security concerns of the future. It is comprehensive, like no other advocacy document on behalf of U.S. children. The CDF enjoys a broad range of support from thoughtful, well-respected advocacy groups, intellectuals, Nobel laureates, and professionals from every field imaginable. It is an organization not to be dismissed. Its track record hews to its core mission—to improve the quality of the life of the child. And, the CDF supports ratification of the Convention.

Still, in the face of the United States merely signifying its intent to ratify the Convention,\footnote{228} statistics with respect to children's health, education, safety, and welfare only grow starker—as the CDFAC Annual Report identifies. It should make incrementalists and ideologues question the legitimacy of either theoretical approach, as the former typically does not provide a goal upon which it can be said "we have achieved it," the other provides no long-term support for meeting its initially stated goal. The CDFAC Annual Report methodically identifies the shortcomings of both theories in statistic after statistic. One such methodology is the analysis on the ideological approach of the tax relief being undertaken by the Bush administration.\footnote{229} The other primary methodology is to identify Senator Dodd's and Representative Miller's "Act to Leave No Child Behind"\footnote{230} and compare it to President

\footnote{227} Since many of the statistics contained in the annual report are used throughout this article, they will not be repeated in this section.

\footnote{228} With President Clinton's signature of the Convention in 1995, one can draw this conclusion.

\footnote{229} See, e.g., CDFAC ANNUAL REPORT, supra note 26, at 38-39 (noting how President Bush's policies lead to corporate welfare in the context of tax relief in relation to the choice made for cutting child care programs).

Bush's "No Child Left Behind Act." The former is arguably an incremental approach, one in which the Children's Defense Fund has no choice but to support in the face of the underfunded, miscued ideological approach of the latter. Choosing to ratify the Convention could be the catalyst that could change all of that. The characteristic of U.S. policy-making makes this a near-utopian proposition at present.

X. SKETCH OF GENERAL CHARACTERISTICS OF FEDERAL POLICY AND PROCESS IN UNITED STATES

One of the primary rationales for the former President Bush's lack of signature to the Convention was the fact that the Convention would conflict with state law. In taking as our premise that when a family cannot support its basic needs, then through taxes, government (on every level) should help ease the burden, the degree to which government assists in this endeavor has historically placed the voting American citizen in the Democratic, Green, Libertarian, or Republican party, or made one an Independent. And so there are any number of cross-philosophical compromises to look at when determining the utility of ratifying a document as the Convention and its effect on local (U.S.) policy. All could be bound together in one analogy.

One analogy for ratification of the Convention as a policy tool would be that of our constitutional system. The U.S. Constitution and its Amendments bind the fifty states with a level of uniformity and predictability, coordination and common understanding, in a way that without it, would not make the United States a republic. As a republic, there are certain uniform policies that must endure the will of any one state over the other. One such policy is healthcare for American citizens. This is also one policy that has splintered.

A. Brief History of Federal Health Policy

Without a unifying health policy, the U.S. health care system has gone from one in which federal strings are attached as carrots to

231. The FRC certainly does not regard the Convention's ratification as toothless. See McNulty, supra note 183.

232. Michael Kraus, The United States to 1865 259-60 (Univ. of Mich. Press, vol. 1 1959) ("[a]pparently Americans outside of the [Constitutional] convention shared the impression that they were getting a quasi monarchy. A Mrs. Powel of Philadelphia asked Benjamin Franklin, 'Well, Doctor, what have we got, a republic or a monarchy?' With no hesitation whatsoever, Franklin responded, 'A republic, if you can keep it'"). See Cleveland Ferguson III, Increasing the number of Lawyer-Legislators begins with an understanding of Campaign Finance Reform, 79 Fla. B. J. 66 (October 2005).
try to induce uniformity from the Sheppard-Towner Act233 or the Hill-Burton Act with varying degrees of frustration and success,234 to the balkanized system in place today wherein states must apply to dozens of categorical programs on the federal level, while cutting the benefits to those the programs purport to serve.235 Government got too big.236 And under President Nixon, began this transfer of power back to the states to decide their own health policies via block grants.237 President Reagan continued this practice and exacerbated the gaps between rich and less economically self-sufficient states with Reaganomics and trickle down theories238—changing the paradigm to support state subsidies of business as opposed to subsidy of the nonprofit sector.239 President Clinton only increased the pressure on the working poor through co-opting the Republican Welfare Reform packages.240

B. Health Policy Direction Today

Under the administration of the younger President Bush, the United States has experienced additional ideological pushes for devolution and privatization—allowing the purchase of private sector services using public sector funds.241 And, of the remaining federal


236. Id. Grant-aid programs grew from 10% in the mid-1950s to as much as 26.5% in the late 1970’s. Id. at 148, 219-20. Roughly two decades later, President Clinton declares “the era of big government is over.” See William J. Clinton, Address Before a Joint Session of the Congress on the State of the Union, 32 Weekly Comp. Pres Doc. 90, 90 (Jan. 23, 1996).

237. Paul E. Peterson et. al., When Federalism Works 22-23 (1986) (arguing that the distinction between categorical and block grants can be illusory).


241. See Robert N. Swidler, Special Needs Plans: Adapting Medical and Managed Care for Persons With Serious Medical Illness or HIV/AIDS, 61 Alb. L. Rev. 1113, 1115 (1998); See, e.g., Richmond L. Williams, Corporate Perspectives on Environmental Policy and Regulation, 16 Del. Law. 31, 37 (Spring 1998) (arguing that federal programs should retain
programs that seem to work, Social Security and Medicaid, Bush wants to pass legislation to privatize components of these.\footnote{242}

Part of the result (unintended or otherwise) is millions of children uninsured or underinsured\footnote{243} and families strained to make ends meet otherwise without adequate funding.\footnote{244} There is an emphasis on families to do more to help themselves, and fewer tools with which to accomplish this. The backdrop to this now is "Thou shall not speak ill of (the Administration's) federal government's policies." Some have a post-September 11th "mentality"\footnote{245} to say that it is un-American and unpatriotic to criticize policies or make changes that require inclusion of foreign partners.\footnote{246} There is a hardening of public opinion that the country is heading in the right direction because the President says it is.\footnote{247} This leaves little substantive debate on seismic shifts in U.S. public policy. Further, this reduces political will for even incremental change. Nevertheless, when the United States as a matter of public policy wants to placate the status quo, it uses an incrementalist approach to social programs.\footnote{248} Often the goal is indeterminable. When it feels, primarily through its President, it has full control of the bully pulpit, it takes an ideological approach. Often the details are considered after the fact. What is incrementalism? What is ideology?\footnote{249}

\footnote{242} See, e.g., Emboldened Bush will Repitch Proposals: 'Golden oldies' like Social Security are also most controversial, ASSOCIATED PRESS, Feb. 1, 2005 (discussing the President's Proposals to be included in his State of the Union Address).

\footnote{243} Children cannot stay on the CHIP program for twelve consecutive months. See, e.g., CHILDREN'S DEFENSE FUND, SIGN THEM UP! (Summer 2001).

\footnote{244} Id.


\footnote{246} See e.g., Steven Michael Ford, Stormy Year Blows to Close, ORLANDO SENTINEL, Dec. 26, 2004, at G1, (noting attack ads painting U.S. Democratic Senatorial candidate as "unpatriotic" and "dangerous" for handling of "terrorism issues").


\footnote{248} Unless one party has ideological majorities, such as with mid-term elections characterized by the Republican "Contract With America." See http://www.house.gov/house/Contract/Contract.html.

\footnote{249} "Think Globally, Act Locally" is (an example of) one such phrase. As with statistics, definitions can be transformed to meet whatever you want them to say. This
XI. Theoretical Sketch to U.S. Federal Public Policy Making

U.S. policy-making at the federal level, by nature, can be schizophrenic. Depending upon how often the administration in power changes,\textsuperscript{250} the country will be lurched through federal policy: incremental, ideological or otherwise. Those changes are supported by, "well the people elected me for what I ran on so this is what I'm going to do."\textsuperscript{251} Then of course there is the (political) need to satisfy core constituencies and their competing interests, though powerful they may be, they are at times completely out of step with the actual needs of those who are not so powerful.\textsuperscript{252} Those who are not as powerful are often in the minority in power and the country. That said, federal public policy can fit into two broad categories as a result: incremental and ideological.

A. Incrementalism as a Methodology for Change in U.S. Public Policy

Theoretically, "incrementalism, (also called "muddling through") means partial or marginal change that does not clearly have as its superordinate goal from the beginning to fundamentally alter the mission, goals, design, control, and results of the whole system."\textsuperscript{253} Conventional wisdom has become "a fix here, a fix there, and eventually it will add up ...."\textsuperscript{254} Comprehensive reform will largely be out of phrase can be turned to defend and/or define incrementalism or ideological approaches to conservation and viewing the environment.

\textsuperscript{250} And how often it changes: every two years in the House of Representatives, every four in the Senate and in the executive. The administrators, cabinet members and the judicial appointees all have an effect on U.S. policy. \textit{See U.S.\textsc{const.} art. I, §§ 2-3.}

\textsuperscript{251} For example, believing a mandate was achieved in the last election, Bush pushes for an even more conservative agenda. Jason Reed, \textit{Nation Election Full of Twists, Turns/After Winning a Second Term, Bush Deals With Cabinet Shuffle, Hous. Ch\textsc{ron.} 18, Dec. 26, 2004, at A18 (Bush declares mandate); \textit{see also} Robert E. Gilbert, \textit{Second-Term Blues, Boston Globe}, Dec. 5, 2004, at D12.

\textsuperscript{252} It has been reported that religious conservatives and moderate Republicans have been nonetheless irked by some of the administration's policies, e.g., deficit spending. \textit{See, e.g.} James T. Murphy, \ldots \textit{Don't Bash Friedman, Orlando Sentinel}, Dec. 11, 2004, at A22. \textit{But see} James O. Goldsborough, \textit{Is America Really a Divided Nation?}, \textit{San Diego Tribune-Trib}, June 21, 2004, at B7.

\textsuperscript{253} Ralph Mullin, \textit{Change the System or Give Incrementalism Another 30 Years?}, \textit{Change}, Oct.-Nov. 2001, at 52-57.

the question under this model in favor of the risk-averse position that only incremental reforms have any chance of 1) being enacted and 2) working. The United States has largely been stuck with "incrementalism, a hallmark of governments and their policies [that] contributes to the existence of these problems and hinders the formulation and implementation of public policies designed to correct them."\textsuperscript{255}

So while a goal may not be uniformly agreed upon and may have no timetable established, the best incrementalist methodology produces the mantra that “if enough incremental changes are woven together,” perhaps one day the problem will be resolved.\textsuperscript{256} The core of the framework of the system that political actors desire to change typically remains, though it may be slightly altered.\textsuperscript{257} There are limits to improving an obsolete system piecemeal by adding improved parts. This could be why the healthcare and child protection systems of so many states do not meet the needs of their constituents.\textsuperscript{258} Too, incrementalism through federal preemption at times leads to more balkanization of healthcare in the United States.\textsuperscript{259}

The stigma or criticism of incrementalism is not just limited to policy discussions.\textsuperscript{260} Business leaders see incrementalism as a detriment to American competitiveness in the world markets.\textsuperscript{261} Pervasive muddling-through will have an even greater detrimental impact to such groups as children, where there is no national goal plotted out to achieve on their behalf.


\textsuperscript{257} Id. at 12-19. (discussing changes to educational curriculum and why incrementalism fails to change the system).

\textsuperscript{258} Mullin, supra note 265, at 55. ("Adding state-of-the-art replacement parts to a Model-A Ford may marginally improve performance, but certainly not to current standards. At some point, the only way to achieve further improvement is to design an entirely new car using new technology").

\textsuperscript{259} See Jesselyn Alicia Brown, ERISA and State Health Care Reform: Roadblock or Scapegoat, 13 YALE L. & POL’Y REV. 339, 349 (1995) (showing state attempts at reforming health care because the federal government has no real consensus or uniform policy to assist the states).

\textsuperscript{260} Some people feel downright cheated by incrementalism. See, e.g., Flip Benham, Incrementalism is a Lie From the Pit of Hell! (2004), http://www.operationsaveamerica.org/articles/articles/incrementalism.html (expressing extreme distemper with the concept).

\textsuperscript{261} Gary Hamel, Strategy as revolution, HARV. BUS. REV., July -Aug., 1996: 71 (noting corporations will find themselves “under the curse of incrementalism”). This article provides quite a metaphor for the Convention and federal ideologies versus local-practice.
Practically, incremental changes seem by default the methodology for solving problems when those in power are in the tacit majority (e.g. Republican president, and control of the United States Senate is relatively even with the majority tipping in Republican control), and where those in the minority have enough power to frustrate the purpose of the majority at crucial or inconvenient times (e.g. judicial confirmations). So both sides compromise to “fix” situations of concern to the other in a way that (temporarily) placates the other side and the constituencies they represent. This does not lead to a major overhaul (regardless of how the spinmasters present the issue), and while it may show some leadership, the changes are relatively risk-averse, thus small. They do not deviate so substantially from the status quo. No one is overly offended because *something* was done to deal with a problem “too complex to solve overnight.”

Incrementalism also seems to work well in making gradual change in heterogeneous societies, because with so many competing perspectives it is virtually impossible to achieve outright change that satisfies all without offending a great many others (perhaps even one’s own base of political support). Incrementalism, therefore, does not require complete access to all data and does not require one to know all of the answers to “address” the problem. The result is on the state level, with little direction from federal policy-makers and decision makers; states are left to deal with their economic and social issues in this way. Thus, in politically balanced climates, if there was a default problem-solving position in U.S. policy-making, incrementalism is the choice *du jour*. This causes great problems for those who do not have access to either political party. This is only exacerbated by the current administration’s policies.

As the current administration continues to tout states’ rights and responsibilities to avoid tough choices on federal policy, the problems of childcare, for example, continue to be foisted on the states. For example, with respect to healthcare, the United States has effectively fifty-one different programs to administer children’s insurance, all with varying degrees of success. In discussing decision making in decentralized environments,

[d]ecision makers adapt to decisions made by others in a decision process, not in a singular event. The overall outcome of the decision process is the collective result of the interactions among the decision makers. The process consists of sequences of many, often rela-

262. See, *e.g.*, Ford, *supra* note 238.
actively small moves made by all players. Decision makers in this environment are said to "incrementally adapt." So states, as decentralized decision makers, compete for federal dollars on an issue that all agree requires some care. This type of "competition in the marketplace" certainly does not serve children or any other constituency having a right to basic needs and services. It reduces the chance of sustained assistance to that of luck. Whether their basic needs are met is based on whether their state has turned in their paperwork on time or spent the most money or face-time advocating in Washington for funding, or who has a brother who is president of the United States, as a methodology of securing much needed funds. In any case, the constituent who lacks access usually gets short shrift in a balanced political system that subscribes to incrementalist methodology.

B. Ideology as a Methodology for Change in U.S. Public Policy

Ideological approaches to federal policy have almost always seemed to fall into two categories: paternalistic or reactionary, regardless of how one defines ideology (value-neutral, exemplifying competing interests, etc.). Many policy changes have been paternalistic and rooted in some form of moral superiority. When applied to foreign actors, ideological action has been characterized as imperialistic. Applied domestically, some U.S. Supreme Court Justices have called ideological reactionary policy towards the federal court system "ill-considered" and "very worrisome."
American ideological approaches have also assumed a high level of homogeneity in thought and perspective among its citizens, sometimes characterizing its own citizen-dissenters as unpatriotic. Of those policy changes that have been reactionary, such as those that occurred as a result of the September 11, 2001, tragedy, homogeneity of thought and perspective seemed uniform—regardless of race, color, creed, or socio-economic status. Americans rose to a spiritual kind of nationalism united behind whatever policies were mustered and presented because there was little time for debate. But when the reaction cools, Americans tend to devolve back into their spheres of comfort and engage in the kind of scrutiny that should bear some level of consensus before our public servants take drastic action. This does not seem to be occurring with respect to children. Our foster care systems are broken. Our adoption programs are under siege, community by community; our children largely remain underinsured or uninsured.

From a practical perspective, ideological changes occur when decision makers and policy makers have strong majorities (e.g. Republican executive and filibuster-proof majority in the United States Senate). This allows for high-handed, paternalistic-in-nature policies with claims of receiving mandates from "the people." Arguably, with the exercise of raw political power, however, neither homogeneity of thought, nor consensus need be achieved. Nevertheless, ideological change probably works in homogenous societies, wherein citizens are similarly situated by some characteristic or set of characteristics. But when they are not unified by some tragedy or crisis, Americans become their heterogeneous, salad bowl society selves. We have our own thoughts and interests that we want to see addressed.

267. We were homogenous for a few weeks after the September 11th tragedy—we were all Americans, rather than our hyphenated selves (Italian-Americans, African-Americans, etc.) During this time, the Patriot Act was enacted. Whether true consensus was achieved or dissenters simply remained silent, formal opposition did not surface in legal disposition for several years later. See, e.g., Hamdi v. Rumsfeld, 316 F.3d 450 (4th Cir. 2003), cert. granted, 124 S. Ct. 981 (2004) (mem.); Padilla ex rel. Newman v. Bush, 233 F. Supp. 2d 564 (S.D.N.Y 2002), 353 F.3d 695 (2d Cir. 2003), cert. granted 124 S. Ct. 1353 (2004) (mem.). See, Camille Gear Rich, Performing Racial and Ethnic Identity: Discrimination By Proxy and the Future of Title VII, 79 N.Y.U. L. Rev. 1134, 1134-35 (2004).


269. See Rich, supra note 267.

270. Id.

When one steps on our political turf, we get upset. The lurching of public policy through exercise of unbridled political power without regard to the effect of attitudes of different actors creates, at minimum, bad feelings and exposes the wounds of our society. One can quickly be forced to see oneself in terms of race or class. "[T]he division of races is the predominant problem that plagues local governments in the United States. The schism between racial groups manifests itself as a schism between the haves and have-nots and the suburb and central city. As this schism worsens, 'obstacles to equality of educational opportunity threaten to become insurmountable.' This makes ideological approaches generally destructive, leaves many disaffected, including those the ideological changes are purported to help. Are more homogeneous (racially, ethnically, and economically) populations able to handle this better (Saudi Arabia, Switzerland, Ukraine, Iraq, Austria, Germany)?

Yet, when dealing with "family," Americans are both homogeneous and heterogeneous in thought depending upon the issue. The family is nevertheless "an agent of the larger order." Families are configured in any number of ways—some configurations, coupled with difficult economic circumstances and other distractions, can cause a family to rely on its community more than others to achieve the "American dream." Practically speaking, the ability to be self-sufficient, and in a career and location of one's choosing, to pursue a positive, productive lifestyle that enables


273. Weiland, supra note 255, at 134 (quoting CHARLES M. HAAR, SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES xii (1996)).

274. By 2054, the United States will have no racial majority. See CDFAC Annual Report, supra note 26, at 7.

275. But see supra note 252 (showing all Republicans do not fit in one mold considering the disapproval of the President's economic policies which is exacerbating the deficit).


277. Isn't this how the Family Research Council and the Children's Defense Fund can purport to help the family with the same level of passion and be united in defeat of terrorism?

278. Coons et. al, supra note 38, at 480. The United States recently attempted to define family in a narrow way in attempting change the language of the optional protocol on armed conflict. See also supra note 63.

279. See Garnett, supra note 271.
one to contribute to one's community, to enjoy the fruits of one's labor, and to prepare a place in one's sphere of influence in a manner that leaves the Earth better for your having lived in it—for the generations not yet capable of managing or making these choices. Arguably, no construct cuts across all organized societies, America's and others, like the need to preserve the family and the child for the ultimate continuation/future of the state. So many children have a chance for permanent priority through social choice theory.

C. Social Choice Theory as a Methodology for Change in U.S. Public Policy

Changes born out of social choice theory theoretically take place for the "best reasons." Society chooses to change because it will be improved as a result. Those from the top-down and the bottom-up participate in the discussion. It is a consensus-building process—not unlike the Working Group that formed the language for the Convention. It is not naively misinformed—politics and movement behind the scenes take place, but the positions come to light and are debated—there is a discussion about where one wants to be (normative analysis), but deals with where we are (positive analysis).

In subscribing to social choice theory, the citizens and the politicians get together and underscore the importance of protecting our children. If the Convention is the lens that reflects the world's consciousness and evolution of the realization that children are legal actors on the international stage, then this is a workable process that we should follow to generate awareness about the vision of the Convention. It would give political legitimacy to our efforts towards children. Currently, as it relates to federal policy, the administration is not choosing to deal with child poverty at a systemic level. This calls

280. Through service, for example.

281. Such as accumulation of personal wealth, securing one's retirement, going on vacation, enjoying a hobby.

282. Be it establishing personal family trusts, one's estate to contributing to the preservation of the environment through life-long participation in a recycling program, conserving water resources, etc.


284. CDFAC ANNUAL REPORT, supra note 26, at 3 ("Child poverty is a national choice, not an act of God"). See also CDF ACTION COUNCIL, STAND UP FOR CHILDREN NOW! STATE OF AMERICA'S CHILDREN ACTION GUIDE (2005), at 23-24, available at http://www.childrensdefense.org/publications/ChildrensActionGuide/Stand_Up_for_Children_Now.pdf. (comparing choices related to education). Whether one's politics require complete support of the Bush Administration's current policies, these statistics are at least thought-provoking,
into question the political legitimacy of the Bush administration’s claims to “compassionate conservatism.”

Social choice is grounded in political legitimacy. “Political legitimacy requires decision making that identifies the realities of a society’s goals.” Presumably, child poverty is not a societal goal embraced by the Bush Administration. However, as 2015 approaches, U.S. policy suffers for the lack of time and the “caprices of politics;” merely mulling over change is not an appropriate methodology. Incrementalists often act because of a lack of information. Ideologues can act in spite of access to information. In either case, there is enough information to make an ontological transformation with regard to children’s rights and ratify the Convention. We should strive to select policy supported by this shift in perspective for the best reasons: those that link rationality with political legitimacy. It is rational to believe that children are the future. It is rational to expect that the ills of child poverty be eliminated to have the most productive and efficient society. It is a legitimate national goal that should not merely shift the burden to states as a result. It is a choice in the best interests of society. “That government decision makers on the federal level appear to ignore this issue, instead choosing policies on preference or self-styled-faith rather than justice or reason, calls into question the legitimacy of those decisions by its citizens and by the world.” “The ideal of legitimacy is the ideal of a government that commands compliance with its dictates, not through the threat of force, but because citizens, insofar as they are rational, see themselves as having adequate reasons to comply.” And since the citizens want children to have basic services,


286. Id. (2015 being the deadline for compliance with the MDG’s).

287. CDFAC ANNUAL REPORT, supra note 26, at 18-19 (a view of federal level incremental approaches to “fixing” a variety of social problems). Notably absent is the “No Child Left Behind Act” proposed by President Bush. The timeline ends at 2001. Id. at 19.


290. Under the current United States framework, citizens are disempowered and busy living from paycheck to paycheck to mount an active resistance to the lack of national, consolidation action on behalf of children. In studying the state of child care and early education programs, the Children’s Defense Fund Action Council notes, “If Bush Administration proposals prevail [tax policies in particular], more than 300,000 children
this level of consensus is met. "The requirement is that a rational, sufficiently informed, and intelligent citizen should, in principle, possess or be able to construct an adequate explanation. Political leaders, political parties, and general political discourse should, but lamentably do not, play leading roles in ensuring that citizens sufficiently closely approximate such an ideally rational, informed, and intelligent citizen."291 How can one not choose the fulfillment of the basic needs of children? How can the United States not ratify the Convention on the Rights of the Child? Must there be a response borne in shock to an epidemic, a crisis? The United States has delivered after-the-fact reactions. Will a universal framework for children finally emerge from a point of no return, leaving a dismal prognosis as the order in which we design our federal public policy or a programmatic, systematized ontological understanding of the rudiments of the needs of children to ensure that 1) our basic services (community by community) are up to a national standard that ensures each child has the tools to be a productive, contributing citizen, and 2) more than basic services—the full panoply of children's needs are being met? These are the social-psychological and emotional needs292 that, unless U.S. public policy is changed to meet them, bring the United States closer to the epitaph.293

XII. AN EXPOSITION OF THE REPORTS AND THEORIES—NOW WHAT?

Does the UNICEF or the CDFAC 2004 Annual Report suggest the demise of the tenets or application of the Convention? No. The Reports beckon U.S. involvement to take the leadership it was destined to hold. For all of the charges of imperialism,294 puppet-manufacturing,295 neo-colonialism,296 malcontent,297 and cross-purposes,298 the

will lose child care assistance over the next five years and 62,000 fewer will receive Head Start." CDFAC ANNUAL REPORT, supra note 26, at 4.

291. See Warner, supra note 285, at 1291. (An apt observation.)
292. See chart, supra note 78 (Framework of Children's Needs).
293. See supra note 43.
297. See David M Rabban, FREE SPEECH IN ITS FORGOTTEN YEARS 13, 256 (1997) (citing Wilson Administration's support for the Espionage and Sedition Acts to rid America of "malcontents").
United States and its federal policies have been undeniably behind among the greatest advances in world leadership, technology, health, engineering, military, and capital markets since its founding. Our presidents have each had some foreign policy, world-leading successes. There is a culture and a talent in the United States for creating and supporting national systems: our Aviation, Commerce, Federal Reserve, Highway Safety, Labor, Interior, Tax, and Treasury systems are the envy of the world despite the political manipulation and general gripes about how the systems are managed. The World Wars and the tragedies of September 11th show that our national system of government and the understanding of the citizens create a rapid adaptability to cope with and overcome unforeseen events that do not always concern Americans directly. Our system enables Americans to grow stronger, if not closer, as a salad bowl community. That said, without making a concerted effort to acknowledge that these "damned lies" are getting worse, the United States' long-term position in the world will undeniably worsen.

If the United States continues to take the incrementalist approach on federal policy regarding children, or recognizes (even in this political climate) that unless a fundamental, permanent realization of the state of children occurs in the priorities of federal policy, children will never be the cornerstone they need to be to ensure a positive future for the United States.

Historically, in cultures where market economy theory does not drive its habits, a family's wealth was measured by the number of healthy children one had; in later times a family's pride and prestige was measured by the accomplishments of its children.

Children carry on the generational line; and, if families are the cornerstones of the community and communities make up municipalities, and municipalities counties, and counties states, and states a na-

299. Cursorily thinking about it, Nixon's China Policy, Ford's détente and continuation of Nixon's policy, Carter's Camp David Peace Accords, Reagan's Cold War Initiatives, George Herbert Walker Bush's Gulf War, Clinton's Dayton Accords, George Walker Bush's push for Pakistan/India nuclear non-proliferation ban come to mind.

300. See, e.g. supra note 20.

301. See Wright, supra note 41. (citing increased innumeracy and reduced math skills); Beth Healy, Middle Class, White Collar Jobs Leaving, Too, Not Just "Grunt" Work, BOSTON GLOBE, Nov. 17, 2004, at D1 (noting the importation of foreign talent in engineering, and computer services and the exporting of high-end jobs and manufacturing jobs widening the wealth gap).

302. See, e.g., supra note 50 (showing the President's primary concern is to direct all resources to the defeat of terrorism at the expense of most social services. Query whether the President's policy positions have been more inclusive of domestic and social needs given his 2006 State of the Union Address?)
tion, how could children—their health, safety, and welfare and protection—not be a centerpiece of federal public policy?

XIII. WHAT COULD U.S. LEADERSHIP DO TO ENSURE THE STATE OF CHILDREN IMPROVES AND THE RIGHTS OF THE CONVENTION ARE ENFORCED?

One of the great features about being an American citizen is the ability to critique the government while at the same time maintain an unwavering faith in our system of government, regardless of who currently is in charge of it. It is in that spirit that many commentators use the constitutional rights to shine the light of scrutiny in some of the darkest corners of American history and policy. It is in part the institutions created in the United States that support both the criticisms and the idealism that we have the ability to change policy. And, that idealism can be reflected in American leadership—even if it takes a while to manifest itself.

That said, the United States has the organizational resources to make dynamic, fundamental shifts in minimal time when a crises is perceived. The ability to work from Congress to empower the administrative agency 303 to utilize federal resources 304 in a thoughtful, productive manner is a key component of national administration. 305 The resilience and coordination of county (or parish) government with its municipalities and the advent of public-private partnerships 306 allow for additional methodologies to ensure that what the president and Congress says should happen, happens. 307

303. In this sense, the agency is the pool of experts trained to deal with the problems, while Congress empowered by the Constitution to legislate, are generalists. With limited oversight committee slots, very few members of Congress can become experts in the nuances (or vagaries) of the system that the agency is created to administer.


305. See, e.g., Ben Feller, 372,000 Students Displaced by Katrina, ASSOCIATED PRESS, Sept. 12, 2005, available at http://blackvoices.aol.com/black_history_education/edart?id=20050914134009990001 (showing Secretary of Education Margaret Spelling’s entertaining plans to approach congress with a plan to provide immediate relief to college students unable to return to school in New Orleans after the Hurricane Katrina disaster).


307. See Feller, supra note 305, explaining that “Universities are absorbing tens of thousands of college students stranded by the hurricane.”
The United States should not merely leave the work of ensuring children’s basic needs and services to NGOs alone. Regulators should not be content with incremental actions padded with banal, soft-sell, surface policy statements to this issue. As federal policy-

308. Cynthia Price Cohen, The United Nations Convention on the Rights of the Child: A Feminist Landmark, 3 WM & MARY J. WOMEN & L 29, 69 (1997) (“NGOs that specialize in either children’s rights or women’s rights tend not to know one another and to be unfamiliar with the other support group’s treaty”). See also Michelle Malkin, The Lost Children of Katrina, MICHELLE MALKIN BLOG, http://michellemalkin.com/archives/003457.htm. (“I feel, instead, like weeping and screaming and holding on extra-tight to my own two kids and praying, praying, praying for the souls of the smallest victims of natural disaster and deadly bureaucratic myopia who were left to die in a hellhole.”) (Reacting to reports of government inefficiency in dealing with the Hurricane Katrina disaster).

309. One of the concepts taught in virtually every legal writing or advocacy program in the United States is the use of policy arguments, particularly when ones rooted in common or statutory law are not available. Policy arguments then are typically the final arguments made when black letter arguments have been exhausted. Certainly however, there are times when policy arguments should be the primary arguments made, when the issues are really those of conscience. Arguments made for the establishment of equal rights and racial justice certainly turned on policy arguments rather than the existing black letter law. An example of basic policy arguments using the framework taught in a first year legal writing program and relating it to ratification of the Convention could appear thusly:

The Convention gives the United States an opportunity to start from square one by completely shifting its paradigm with respect to children. Ratification is supported by a number of positive rights policy analyses. And, children should have their basic needs met in the United States because:

- It is the right thing to do. (moral)
- It will promote a more productive society. (social)
- It will reduce the number of children who will be involved in the juvenile detention and correctional institution systems. (corrective justice)
- It will support a more educated, functioned workforce that makes the U.S. more competitive in the world markets. (economic)
- It will reduce the number of dependents on social and welfare services and there will be less of a need to create additional agencies and programs to handle preventable illnesses and diseases. (institutional)
- The courts will not be overburdened by the consequences of distracted and misguided youth who having had their basic needs met as children would have been more likely not to participate in the judicial system as defendants. (judicial administration)
- It is defensible against a Negative Rights policy point of view.


All of these policy positions are defensible against the objections voiced by conservative advocacy groups in the United States. See supra Part VI.

A more sophisticated use of the majority of these policy arguments follows:

As we entered the 21st century, America’s strength reflects our courage, our compassion, our hard work, our moral values, and our commitment to justice. Today we can extend the American dream of our forefathers and foremothers to every child and family. We have the know-how, the experience, the tools and the resources. And we have the responsibility as mothers, fathers, grandparents, and concerned and sensible people across the country.

We can build a nation where families have the support they need to make it at work and at home; where every child enters school ready to learn and leaves on the path to a productive future; where babies are likely to be born healthy, and sick children
makers continue on their present course, the United States' moral leadership it historically enjoyed continues to be put under strain. But there is always the opportunity to reverse course without the need for a change in government to force the change in the direction towards child health, safety, and welfare policy.

XIV. PROPOSED SOLUTIONS IN THE FACE OF A(N) (UN)RATIFIED CONVENTION: THINK GLOBALLY, ACT LOCALLY

Until federal policy makers are persuaded to rethink their actions toward child health, safety, and welfare, here are a few activities that local governments can engage in.

A. (Inter)national Ombudsperson and National Monitoring Group

Local leaders should advocate for a(n) (inter)national ombudsperson on behalf of children! Locally, states and U.S. businesses employ ombudspersons for rivers and streams, utility rates, shareholder benefits, newspaper reporting, and higher education. Ombudsmanship typically calls for an independent, nonpartisan

have the health care they need; where no child has to grow up in poverty; where all children are safe in their community and every child has a place to call home—and all Americans can proudly say, 'We Leave No Child Behind.'

CDFAC ANNUAL REPORT, supra note 26, Foreward.

Those same legal writing programs teach that if you can determine the policy argument being used, then you should use the opposite policy argument to counter it. For the above, the author cannot locate a legitimate counterargument existing in literature. But see, Barbara J. Nauck, Note, Implications of the United States Ratification of the United Nations Convention on the Rights of the Child: Civil Rights, the Constitution and the Family, 42 CLEV. ST. L. REV. 675 (1994) (noting caution to wholesale ratification for the same reasons advocated above). Of course, the basic counter argument is, could the United States "afford" such a change in policy? The rhetorical response is can the United States afford not to? But now both points talk past each other because the same definition of "afford" is not shared between the debaters. See generally Lois B. Hart, Ed.D., LEARNING FROM CONFLICT: A HANDBOOK FOR TRAINERS AND GROUP LEADERS (2nd ed. Human Resource Development Press, 1991) (noting that values, perceptions, and assumptions about words create forces for and against resolution of conflict).

310. Impatience with U.S. to respond to humanitarian disaster, tests world's view of America. See supra notes 23, 47.

311. See, e.g., Healy, supra note 52 (State attorney of New York taking the ability to affect change on behalf of shareholders as a part of his mandate and now asking the Federal government to step in and continue the work.).

312. The Ombudsman Association (TOA) has thorough materials that are being used by dispute resolution and mediation programs throughout the United States. Others include the U.S. Ombudsman Association, the International Ombudsman Association and the Association of College and University Ombudsmen. Christina M. Kuta, UNIVERSITIES, CORPORATIONS, AND STATES USE THEM—NOW IT'S TIME TO PROTECT THEM: AN ANALYSIS OF THE PUBLIC AND PRIVATE SECTOR OMBUDSMAN AND THE CONTINUED NEED FOR A PRIVILEGED
agent\(^{313}\) that requires those in power to fulfill their responsibilities towards the group the ombudsperson is empowered to represent.\(^{314}\) This proposal failed to be included in the Convention.\(^{315}\) There are several efforts underway throughout the world to further promote this position in as many fields and disciplines possible.\(^{316}\) For the United States, this would likely need to be a highly visible, unencumbered, federal position.\(^{317}\)

In this proposal, the position should be one that either reports directly to the President or to Congress rather than to a cabinet head, and/or be independent enough to report directly to the people at the government's expense.\(^{318}\) It should have the independence, the respect, and the integrity of the Congressional Budget Office,\(^{319}\) for example, but the power to make agencies that have jurisdiction over children take notice in the manner of the Office of Management and Budget (OMB).\(^{320}\) Some nations even have Ombudsman acts, wherein the political establishment can only interfere with the duties of Ombudsman in extreme circumstances.\(^{321}\)

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\(^{313}\) See Larry B. Hill, Professor, Univ. of Okla., Address at the Spring Meeting of the ABA Section of Administrative Law and Regulatory Practice (1997), available at http://www.abanet.org/adminlaw/ombuds/wannabe.html.


\(^{315}\) See supra note 148.


\(^{317}\) Functionally, for the position to work on behalf of children, it must have the requisite authority to take action on the federal level, likely through our federal administrative agency apparatus.

\(^{318}\) The recently created public editor's position at the New York Times comes to mind. The editors must allow space, an e-mail address and the opportunity for letters to the public editor to both be responded to and printed without interference from within.

\(^{319}\) See Wolfgang Munchau, National Accounts Disguise a Bleak Reality, Fin. Times, Oct. 18, 2004, at 17 (discussing "the Congressional Budget Office in the US, a bipartisan agency with a high reputation for quality and independence, whose analysis is widely accepted").

\(^{320}\) By requiring executive agencies to report their budget requests to OMB, for example, the President can exercise a great deal of political power over administrative agencies. In 2004, OMB Director Mitch "The Blade" Daniels became the first Republican Governor of Indiana in sixteen years in part because his "cost-slashing" reputation. See Carrie Hodges, 'Average Guy' Image Worked; Election 2004; the New Governors; Indiana Mitch Daniels, USA Today, Nov. 4, 2004, at A11.

Also felled were proposals for establishment of national monitoring committees. Currently, the Department of Health and Human Services does not do a good job disseminating information and managing improvements to child services. And with the states under pressure by the current administration to maintain even more of the burden for our children's health, the problems outlined herein will only worsen, unless an independent monitoring body of professionals who are responsible to the executive but independent and limber enough to educate the public is implemented, will we move towards positive, systemic change on behalf of children. There are a number of models available in the private sector. If the decisions of public companies' fiscal policies are important enough to enact legislation requiring independent auditing committees to protect shareholder value, and at the same time requiring company chief executive officers and chief financial officers to certify their financial statements, then it is also true that the federal government be held accountable in a similar way for the state of our children.

B. What Can Health Professionals Do?

Using the tenets (unratified) of the Convention as a foundation would still reorient the individual relationship between the health professional and the child. Health professionals educated about the Convention could enable new policies to be established and encourage new approaches to the delivery of health care services. This will also define the role of health professionals as advocates for children. Children need as many advocates as are willing in the face of an unwilling administration.

2. (1) There shall be an Ombudsman for Barbados who shall, in accordance with this Act, investigate and report upon allegations of improper, unreasonable or inadequate administrative conduct.

(2) The Ombudsman shall perform his functions in accordance with his own judgment but shall be responsible to Parliament for the general discharge of his duties.

... (4) An investigation by the Ombudsman shall not be prevented by any provision in any enactment, other than the Constitution, to the effect (howsoever expressed) that any matter or thing shall be final or conclusive or shall not be disputed, reviewed or called into question.

Id.

C. What Can Legal Professionals Do?

With respect to legal professionals, use of the Convention could reorient the individual relationship between the legal advocate, the child, and the child’s familial and community relationships. New legislative policies and approaches to the advocacy of the provision of healthcare and other services by federal, state, and local governments could emerge from local advocacy, testimony at all levels, and scholarship. The Convention could further define the role of legal professionals as advocates for children for public dollars and social care.

Legal and health professionals could increase the dialogue on children’s rights as well as on the related needs of the family, e.g. healthcare. There must be coordination with local departments of health and human services on local legislative policy. Law schools could create stronger linkages with Centers for Justice, Equity, etc., around the country. 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.\(^{323}\) 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.\(^{324}\)

In the face of unwillingness by the current administration to ratify the convention, local governments could adopt local Charters for Children. This has the effect of further educating the community.\(^{325}\) Law schools should continue to educate our law students, who will eventually be members of the local bar and will be a part of the local community as professionals. They will become staff attorneys at legislative and executive committees and policy institutes. They will also become members of branches of government.\(^{326}\)

XV. Conclusion

In an age when the response to any kind of assertion that “it is better to work in alliances than alone in the world” is that “we as a


\(^{324}\) Id.

\(^{325}\) See e.g., supra note 205 (Rockland County Resolution).

\(^{326}\) See Ferguson, supra note 232.
government will not allow any foreign nation to dictate American policy," it is less likely that the United States will be willing to sit down at a discussion table, let alone a negotiating table, on issues determined to be in the interests of “national security.” The U.S. position as represented by the current administration appears to have hardened on this score. However, as to the issues surrounding the life of children and whether one should support the policy that children be entitled to adequate food, adequate clean water and sanitation, adequate clothing, shelter, protection from violence, exploitation and abuse, access to education, a stable social and economic environment, freedom from discrimination and prejudice, to name a few, one would think that there would be universal agreement in the world. These are some of the basic tenets in the United Nations' Convention on the Rights of the Child that are not addressed by a balkanized, muddling through set of regulations spread through any number of federal and state bureaucracies with no goal in sight. Neither will a high-handed ideological “father knows best” approach be the solution to what is a systemic crisis. Ratification coupled with a national— as opposed to a federal—governmental authority (agency, ombudsperson or other) responsible for coordinating with the states' entities responsible for administering health care, with experts and in physical, social, economic, psychological, emotional, and cultural needs, is a solution that could lead to uniform standards to meet the basic needs of our children. Further, the change must occur now. Though the problem is too far gone to call any sort of action preemptive, it should not be left to a traditional reactionary response. By then, it may be too late for many American children to wait to reset our moral compass. Our future depends upon it.


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