

# DUNWODY DISTINGUISHED LECTURE IN LAW

## CHILDREN'S RIGHTS DEBATES, REVISITED

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“Children are the living messages we send to a time we will not see.” — John F. Kennedy, 35th President of the United States

### INTRODUCTION

With deep thanks to Dean Laura A. Rosenbury; to our law review editors Taylor Cavaliere, Juan Valiente, and Wesley Thorp; to the creators and sponsors of this distinguished lecture series; and to the two brothers who inspired it, I begin on a sober note. The COVID-19 pandemic hit people of every age, but its disruption of schooling and socializing activities for children and youth, compounded by the economic and psychological pressures for their parents, will have unknown consequences.<sup>1</sup> Studies already report heightened mental health issues for children and youth.<sup>2</sup> The fragility of democracies globally, including American democracy, will hold particular significance for children and adolescents, although in ways that remain unclear. Of note, democracies do not do better than other nations and, in many instances, fare much worse if measured by scores on international tests alone.<sup>3</sup> The

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1. Eric A. Hanushek & Ludger Woessmann, *The Economic Impacts of Learning Losses*, THE ORG. FOR ECON. CO-OPERATION & DEV. 3 (Sept. 2020), <https://www.oecd.org/education/The-economic-impacts-of-coronavirus-covid-19-learning-losses.pdf> [<https://perma.cc/36D5-K327>].

2. *U.S. Surgeon General Issues Advisory on Youth Mental Health Crisis Further Exposed by COVID-19 Pandemic*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Dec. 7, 2021), <https://www.hhs.gov/about/news/2021/12/07/us-surgeon-general-issues-advisory-on-youth-mental-health-crisis-further-exposed-by-covid-19-pandemic.html> [<https://perma.cc/PAK9-NC5Q>]; Harran Al-Rahamneh et al., *Long-Term Psychological Effects of COVID-19 Pandemic on Children in Jordan*, 18 INT'L J. ENV'T RSCH. & PUB. HEALTH, July 22, 2021, at 1, 2 <https://www.mdpi.com/1660-4601/18/15/7795> [<https://perma.cc/P52U-388B>]. See generally THE STATE OF THE WORLD'S CHILDREN 2021 ON MY MIND PROMOTING, PROTECTING AND CARING FOR CHILDREN'S MENTAL HEALTH, UNICEF (2021), <https://www.unicef.org/media/114636/file/SOWC-2021-full-report-English.pdf> [<https://perma.cc/Q82J-95QP>] (showing the global dimensions of the reports).

3. See Sirianne Dahlum & Carl Henrik Knutsen, *Democracies Are No Better At Educating Students Than Autocracies. This is Why.*, WASH. POST (June 13, 2017, 8:00 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/13/democracies-are-no-better>

war in Ukraine threatens instability and privation for a long time to come and has already displaced many at a level unprecedented since World War II.<sup>4</sup> With uncertain prospects for stability, liberty, and self-governance, the fate of rights for children in the United States remains difficult to forecast. Nonetheless, it is meaningful to review the past several decades through the lens of children's rights and related debates. This can provide a place to stand while suggesting directions for the future—a future that will be in the hands of today's children.

## I. REFLECTING ON THE PAST

As a child growing up in the 1960s, I witnessed and absorbed ideas from the civil rights movement, the women's rights movement, and the Earth Day movement. It was a time when the Supreme Court of the United States decided that even young people have rights under the Constitution, including free speech protections for students who wore black armbands to school to protest the Vietnam War and due process protections in juvenile court proceedings.<sup>5</sup> As I pursued graduate work in education and in law, I came across scholarly and advocacy work on children's rights;<sup>6</sup> I even collaborated with another student to launch a law school clinic devoted to representing children in court.<sup>7</sup> As a law clerk for two federal judges, I worked on several cases involving

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-at-educating-than-autocracies-this-is-why/ [https://perma.cc/D3QD-23XJ]. Such international tests do not necessarily measure many qualities that matter—such as critical thinking and creativity—but they do indicate reading and mathematical skills, as well as scientific knowledge. *See id.*

4. Press Release, UNICEF, “‘Particularly shocking’ - Every single minute, 55 children have fled their country. A Ukrainian child has become a refugee almost every single second since the start of the war.” (Mar. 15, 2022), <https://www.unicef.org/press-releases/particularly-shocking-every-single-minute-55-children-have-fled-their-country> [https://perma.cc/UC5D-NJ69].

5. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* 393 U.S. 503, 503 (1969); *In re Gault*, 387 U.S. 1, 1 (1967).

6. *See generally* THE CHILDREN'S RIGHTS' MOVEMENT (Beatrice Gross & Ronald Gross eds., 1977) (analyzing the rights of children in juxtaposition with traditional parental rights to raise children without outside authorities' interference); HILLARY RODHAM, *Children Under the Law*, 43 HARV. ED. REV. 487, 487–88 (1973); HILLARY RODHAM, *Children's Rights: A Legal Perspective*, in CHILDREN'S RIGHTS: CONTEMPORARY PERSPECTIVES 21–36 (Patricia A. Vardin & Ilene M. Brody eds., 1979) [hereinafter RODHAM, *Children's Rights*]; HILLARY RODHAM, *Children's Policies: Abandonment and Neglect*, 86 YALE L.J. 1522, 1522 (1977).

7. The clinic started as a project supervised by Professors Steve Wizner and Denny Curtis; Kim Landsman and I represented children in contested custody matters, and we also secured foundation funding to support an empirical study of the role of children's counsel in such cases. *See* Kim Landsman & Martha Minow, *Lawyering for the Child: Principles of Representation in Custody and Visitation Disputes Arising from Divorce*, 87 YALE L.J. 1126, 1126 (1978). The clinic at Yale Law School continued to grow, until recently, under the leadership of Professor Jean Koh Peters, who had been my student. *See* Jean Koh Peters, *The Roles and Content of Best Interests in Client-Directed Lawyering For Children in Child Protective Proceedings*, 64 FORDHAM L. REV. 1505, 1505 (1996).

children's issues, and when I became a law professor, I bargained to teach a course on children and the law. However, by then, as the election of President Ronald Reagan reflected, the world had changed, and backlash against rights movements mounted.

In this context, I wrote *What Ever Happened to Children's Rights?* in 1995.<sup>8</sup> I tried to step back and ask why children's rights remained controversial within significant sectors of the United States. I compared five frameworks addressing children and law or government: (1) child protection; (2) child self-determination; (3) children as potential adults; (4) children in need of traditional authority; and (5) social resource redistribution benefitting children.<sup>9</sup> Several of these frameworks would support notions of rights held by children, but opponents, both then and now, have stressed parental authority, privacy of families, limited government capacities, and belief in the self-reliance of individuals and families.<sup>10</sup>

In addition to those reasons for opposition to children's rights, I suggested four further explanations.<sup>11</sup> First, children do not vote, and no

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8. See generally Martha Minow, *What Ever Happened to Children's Rights?*, 80 MINN. L. REV. 267 (1995) [hereinafter Minow, *What Ever Happened*], reprinted in REASSESSING THE SIXTIES 102 (Stephen Macedo ed., 1997) (exploring the evolution of children's rights over history); MARTHA MINOW, *Child Endangerment, Parental Sacrifice: A Reading of the Binding of Isaac*, in BEGINNING ANEW 145 (Gail Twersky Reimer & Judith A. Kates eds., 1997), reprinted in MOTHER TROUBLES 50 (Julia E. Hanigsberg & Sara Ruddick eds., Beacon Press, 1999) (applying a legal and philosophical analysis to a child endangerment biblical story); MARTHA MINOW, *How Should We Think about Child Support Obligations?*, in FATHERS UNDER FIRE 302 (Irwin Garfinkel et al. eds., 1998) (exploring different frameworks regarding child support); Martha Minow, *Children's Studies: A Proposal*, 57 OHIO ST. L.J. 511 (1996) (criticizing children's studies in universities and proposing a different approach to related research); Martha Minow, *Children's Rights: Where We've Been, and Where We're Going*, 68 TEMPLE L. REV. 1573 (1995) (analyzing the history and evolution of children's rights); For more of my scholarship on the topic of children's rights, see generally, Martha Minow, *Preface to JONATHAN TODRES & SHANI M. KING, THE OXFORD HANDBOOK OF CHILDREN'S RIGHTS LAW* (2020) [hereinafter Minow, *Preface*]; Martha Minow, *Afterword to GOVERNING CHILDHOOD* 250, 250–59 (Anne McGillivray ed., Dartmouth Publishing Co., 1997); Martha Minow, *The Welfare of Single Mothers and Their Children*, 26 CONN. L. REV. 817 (1994); Martha Minow, *Home Visiting*, 4 THE FUTURE OF CHILDREN 243 (1994); Martha Minow & Richard Weissbourd, *Social Movements for Children*, 122 DAEDALUS 1 (1993); Martha Minow, *Rights for the Next Generation: A Feminist Approach to Children's Rights*, 9 HARV. WOMEN'S L.J. 1 (1986); Martha Minow, *Are Rights Right for Children?*, 1987 AM. BAR FOUND. RSCH. J. 203 (1987); Martha Minow, 12 J. Health Pol., Pol'y & L. 197 (1987) (reviewing VIVIANA ZELIZER, *PRICING THE PRICELESS CHILD* (1985)); Martha Minow, *Learning to Live with the Dilemmas of Difference: Bilingual and Special Education*, 48 L. & Contemp. Probs. 157 (1985); Martha Minow, *Review of Who Speaks for the Child: The Problems of Proxy Consent by Gaylin & Maclin*, 53 HARV. ED. REV. 444 (1983) (reviewing GAYLIN & MACKLIN, *WHO SPEAKS FOR THE CHILD?* (1983)).

9. Minow, *What Ever Happened*, *supra* note 8, at 295.

10. *Id.* at 281–82. See Martha Minow & Richard Weissbourd, *Social Movements for Children*, 122 DAEDALUS 1, 10 (1993).

11. Minow, *What Ever Happened*, *supra* note 8, at 295.

other lobby has appeared on their behalf.<sup>12</sup> Second, national political processes seemed to experience disillusionment with child-oriented reforms, such as the juvenile court.<sup>13</sup> Third, arguments over children's needs repeatedly connected with and became mired in larger, intractable issues, including economic stratification, gender roles, prejudice against those in poverty, misallocated health care expenditures, failures of public education, and divisive conflicts over abortion and crime control.<sup>14</sup> Finally, both left- and right-wing groups, despite stark disagreements on other issues, expressed resistance to state intervention in families due to government distrust.<sup>15</sup> Some expressed fear of disrupting private traditions; others doubted the government would ever meet children's needs as effectively as private families.<sup>16</sup> I concluded, "we treat other people's children as beyond public concern. Perhaps because of our troubled heterogeneity, with historic racism and intergroup distrust, we do not view other people's children as *ours* in many important ways."<sup>17</sup>

To my surprise, some have found the article helpful. My research assistants have found it cited in varying contexts, such as the rights of caregivers and others who have relationships with children,<sup>18</sup> children's

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12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. Janet L. Dolgin, *The Fate of Childhood: Legal Models of Children and the Parent-Child Relationship*, 61 ALB. L. REV. 345, 347, 350 (1997); Pamela Laufer-Ukeles, *The Relational Rights of Children*, 48 CONN. L. REV. 741, 788 (2016); Pamela Laufer-Ukeles, *The Case Against Separating the Care from the Caregiver: Reuniting Caregivers' Rights and Children's Rights*, 15 NEV. L.J. 236, 237, 239 (2014); Alicia Ouellette, *Shaping Parental Authority Over Children's Bodies*, 85 IND. L.J. 955, 985–86 (2010); Ruth Zafran, *Children's Rights As Relational Rights: The Case of Relocation*, 18 AM. U. J. GENDER SOC. POL'Y & L. 163, 182 (2010); Barbara Bennett Woodhouse, *A Public Role in the Private Family: The Parental Rights and Responsibilities Act and the Politics of Child Protection and Education*, 57 OHIO ST. L.J. 393, 417 (1996); Tanya Washington, *In Windsor's Wake: Section 2 of DOMA's Defense of Marriage at the Expense of Children*, 48 IND. L. REV. 1, 43 (2014); Lynn D. Wardle, *Who Decides? The Federal Architecture of DOMA and Comparative Marriage Recognition*, 41 CAL. W. INT'L L.J. 143, 156 (2010); Jennifer Wriggins, *Marriage Law and Family Law: Autonomy, Interdependence and Couples of the Same Gender*, 41 B.C. L. REV. 265, 279 (2000).

rights to be heard,<sup>19</sup> corporate and employment practices,<sup>20</sup> animal law,<sup>21</sup> and constitutional and political theory.<sup>22</sup> My work is a small contribution to the growing global recognition of rights for children and youth, both in theory and in practice. Scholars and policymakers have contributed to wide-ranging discussions about children's rights and other new forms of legal protections, both in the United States and in global legal debates.<sup>23</sup>

One reason for these developments is the significant expansion of work in neurobiology, epigenetics, and developmental psychology, which have all contributed to legal and policy analyses. Key findings include the demonstrated plasticity of the brains of babies and young children, the importance of supportive and interactive relationships to enable developing capacities to grow, and the decline in capacities if they are not used or supported.<sup>24</sup> Scientists also document the effects of stress

19. Gary A. Debele, *A Children's Rights Approach to Relocation: A Meaningful Best Interests Standard*, 15 J. AM. ACAD. MATRIM. LAWS. 75, 89 (1998); Leslie Feiner, *The Whole Truth: Restoring Reality to Children's Narrative in Long-Term Incest Cases*, 87 J. CRIM. L. & CRIMINOLOGY 1385, 1407 (1997); Gregory A. Kelson, *In the Best Interest of the Child: What Have We Learned from Baby Jessica and Baby Richard?*, 33 J. MARSHALL L. REV. 353, 354–55 (2000).

20. Frederick B. Jonassen, *A Baby-Step to Global Labor Reform: Corporate Codes of Conduct and the Child*, 17 MINN. J. INT'L. L. 7, 28 (2008); Sung Eun (Summer) Kim, Essay, *Corporate Parenthood: Private Equity Duties and Portfolio Company Rights*, 34 REV. BANKING & FIN. L. 317, 321 (2014).

21. Richard L. Cupp Jr., *Children, Chimps, and Rights: Arguments from "Marginal" Cases*, 45 ARIZ. ST. L.J. 1, 9–10 (2013).

22. Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1457 (2018); Rosalind Dixon & Martha C. Nussbaum, *Children's Rights and a Capabilities Approach: The Question of Special Priority*, 97 CORNELL L. REV. 549, 551–52 (2012); Molly O'Brien & Amanda Woodrum, *The Constitutional Common School*, 51 CLEV. ST. L. REV. 581, 637–38 (2004); Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267, 411–12 (1998).

23. See MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS? 244–48 (2005) (warning that children's rights can serve as a screen for the interests of adults and that elevation of children's interests could obscure other important interests); Elizabeth S. Scott, Essay, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 547–49 (2000); BARBARA BENNETT WOODHOUSE, HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE 9 (2008) (examining historical debates and calling for the United States to join the international movement for children's rights). For valuable journal contributions, see Emily Buss, *Constitutional Fidelity Through Children's Rights*, 2004 SUP. CT. REV. 355, 356–57; Anne C. Dailey, *Children's Constitutional Rights*, 95 MINN. L. REV. 2099, 2127–35 (2011); Dailey & Rosenbury, *supra* note 22, at 1480. See generally ROSALIND EKMAN LADD, CHILDREN'S RIGHTS RE-VISIONED: PHILOSOPHICAL READINGS (1996) (analyzing children's rights from a philosophical standpoint); Dorothy Roberts, *Child Protection as Surveillance of African American Families*, 36 J. SOC. WELFARE & FAM. L. 426 (2014).

24. See, e.g., Adele Diamond & Dima Amso, *Contributions of Neuroscience to Our Understanding of Cognitive Development*, 17 CURRENT DIRECTIONS PSYCH. SCI. (Apr. 17, 2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2366939/> [<https://perma.cc/6PA9-9GWL>]; Lara

and trauma on brain development and emotional well-being, as well as the power of early support in helping individuals overcome the consequences of that stress and trauma. Scholars have even assisted political leaders and judges in considering the growing research on neurobiology in the context of human development.<sup>25</sup>

Talk of rights and other legal protections for children are much more prevalent today than in recent decades, but the areas of focus have somewhat changed.<sup>26</sup> Pressing issues in the 1990s included children with

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R. Robinson et al., *CDC Grand Rounds: Addressing Health Disparities in Early Childhood*, 66 MORBIDITY MORTALITY WKLY. REP. (July 28, 2017), <https://www.cdc.gov/mmwr/volumes/66/wr/mm6629a1.htm> [<https://perma.cc/6R6R-6KZN>]. For summaries of relevant research and its applications to policies, see Nat'l Sci. Council on the Developing Child, *Connecting the Brain to the Rest of the Body: Early Childhood Development and Lifelong Health Are Deeply Intertwined* 1–2, (Ctr. on Developing Child, Working Paper No. 15, 2020), [https://harvardcenter.wpenginpowered.com/wp-content/uploads/2020/06/wp15\\_health\\_FINALv2](https://harvardcenter.wpenginpowered.com/wp-content/uploads/2020/06/wp15_health_FINALv2) [<https://perma.cc/LM62-ULW2>]; Susan F. Cole et al., *Helping Traumatized Children Learn: Trauma and Learning Policy Initiative*, 1 MASS. ADVOC. FOR CHILD. 18 (2005); Susan F. Cole et al., *Helping Traumatized Children Learn: Trauma and Learning Policy Initiative*, 2 MASS. ADVOC. FOR CHILD. 21–22 (2013). See also Michael D. De Bellis & Abigail Zisk, *The Biological Effects of Childhood Trauma*, 23 CHILD & ADOLESCENT PSYCHIATRY CLIN. N. AM. 185 (Apr. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3968319/> [<https://perma.cc/CZ3U-P5DJ>] (documenting biological consequences of childhood trauma); Substance Abuse and Mental Health Service Administration, *Understanding Child Trauma*, SAMHSA (Sept. 27, 2022), <https://www.samhsa.gov/child-trauma/understanding-child-trauma> [<https://perma.cc/HS8K-AHYZ>] (identifying signs and effects of childhood trauma); Jon Marcus, *For the Children Who 'Fell Through the Cracks'*, HARV. L. BULLETIN (Nov. 24, 2014), <https://hls.harvard.edu/today/for-the-children-who-fell-through-the-cracks/> [<https://perma.cc/JR7D-EKTL>] (recognizing policy initiatives based on the emerging science about children's brain development and trauma). For a summary of research findings applied to children's needs and relevant practices and policies, see Child Welfare Information Gateway, *Understanding the Effects of Maltreatment on Brain Development*, CHILD'S BUREAU 4–5 (Apr. 2015), [https://www.childwelfare.gov/pubpdfs/brain\\_development.pdf](https://www.childwelfare.gov/pubpdfs/brain_development.pdf) [<https://perma.cc/37E7-BZEN>].

25. See generally Peter J. Benekos & Alida V. Merlo, *A Decade of Change: Roper v. Simmons, Defending Childhood, and Juvenile Justice Policy*, 30 CRIM. J. POL'Y. REV. 102, 104 (2019), <https://journals.sagepub.com/doi/full/10.1177/0887403416648734> [<https://perma.cc/GV2J-3VSS>] (discussing *Roper v. Simmons*, *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana*). On state legislators looking to new neuroscience about child development, see Elizabeth Gehrman, *From Neuroscience to Childhood Policy*, HARV. GAZETTE (Dec. 7, 2007), <https://news.harvard.edu/gazette/story/2007/12/from-neuroscience-to-childhood-policy/> [<https://perma.cc/3X86-CE8A>] (quoting legislators).

26. See generally Minow, *Preface*, *supra* note 8 (acknowledging that scholarship on the rights of children continues to evolve); GUGGENHEIM, *supra* note 23, at xii–xiii, 246–47 (warning that children's rights can serve as a screen for the interests of adults and that elevation of children's interests could obscure other important interests); WOODHOUSE, *supra* note 23, at 7–9, 313 (examining historical debates and calling for the United States to join the international movement for children's rights). For valuable journal contributions, see Buss, *supra* note 23, at 335 (arguing that the U.S. Supreme Court improperly limited children's rights relative to analogous adult rights); Dailey, *supra* note 23, at 2103 (advocating for a development-based theory of child

HIV/AIDS, infants exposed to harmful drugs during their mothers' pregnancies, and the massive spread of guns accessible to—and injuring—children.<sup>27</sup> Greater knowledge and more effective treatments have diminished attention to children with HIV/AIDS and *in utero* exposure to drugs, while public concerns about gun violence against children persist.<sup>28</sup> Whether in their homes, their neighborhoods, or their schools, and whether in urban or rural areas, many children face daily dangers of lethal gun violence. The risks come at the hands of gang members, police, fellow students, and disturbed adults, not to mention the children and youth who injure themselves with guns they come across or possess. For instance, Geoffrey Canada's searing work explains how the flood of guns escalated violence and unraveled codes of honor and protection in urban areas.<sup>29</sup>

Youth as offenders is a perpetual concern, with antecedents in complaints about youth among ancient Greek philosophers<sup>30</sup> as well as leaders in colonial America.<sup>31</sup> Criminal laws applicable to youth and school discipline processes in the 1990s took a punitive turn with counterproductive effects.<sup>32</sup> The result in many communities has been a

constitutional rights); Dailey & Rosenbury, *supra* note 22, at 1451 (suggesting a theory for child-related laws recognizing the interest of children and associated adult authority); Roberts, *supra* note 23, at 427 (explaining that child welfare policies contribute to racial disparities in America); Scott, *supra* note 23, at 550 (advocating for legal recognition of adolescence). Debates over gender-affirming healthcare reflect another frontier in battles over children's self-determination and the rights of parents and others. See Sneha Dey, *Texas Health Providers Are Suspending Gender-Affirming Care for Teens in Response to GOP Efforts*, TEXAS TRIB. (Mar. 22, 2022, 5:00 AM), <https://www.texastribune.org/2022/03/22/texas-transgender-teenagers-medical-care/> [<https://perma.cc/5NAN-HULR>].

27. Minow, *What Ever Happened*, *supra* note 8, at 291.

28. *Gun Violence*, CHILD.'S DEF. FUND, <https://www.childrensdefense.org/state-of-america-children/soac-2021-gun-violence/> [<https://perma.cc/GGV5-89QJ>] (recognizing the risk guns pose to American children); Geoffrey A. Weinberg, *Human Immunodeficiency Virus (HIV) Infection in Children*, MERCK MANUAL (Sept. 2022), <https://www.merckmanuals.com/home/children-s-health-issues/human-immunodeficiency-virus-hiv-infection-in-children/human-immunodeficiency-virus-hiv-infection-in-children#> [<https://perma.cc/8PU9-G28A>] (noting that increased treatment and testing during pregnancy reduced HIV infection in children).

29. GEOFFREY CANADA, *FIST STICK KNIFE GUN: A PERSONAL HISTORY OF VIOLENCE* 35–36, 46 (1995).

30. See KENNETH JOHN FREEMAN, *SCHOOLS OF HELLAS: AN ESSAY ON THE PRACTICE AND THEORY OF ANCIENT GREEK EDUCATION FROM 600 TO 300 B.C.*, at 72 (M.J. Rendall ed., 1907) (paraphrasing Hellenic attitudes towards the youth in 600–300 B.C.).

31. See BERNARD BAILYN, *EDUCATION IN THE FORMING OF AMERICAN SOCIETY: NEEDS AND OPPORTUNITIES FOR STUDY* 26 (1960).

32. See Elizabeth Trejos-Castillo et al., *Learned Helplessness, Criminalization, and Victimization in Vulnerable Youth*, SQUARE ONE PROJECT 13–14 (Dec. 2020), <https://squareonejustice.org/wp-content/uploads/2020/12/CJLJ8562-Vulnerable-Youth-Square-One-Report-201214-WEBv2.pdf> [<https://perma.cc/Z3S9-982E>] (explaining that increased punishment in school disproportionately harms students of color and does not increase school

school-to-prison pipeline with irremediable costs to individuals, families, and communities, and without any notable improvements in the safety of those communities.<sup>33</sup> Children and youth of color are particularly at risk of being treated as older than they are and hence as more culpable and deserving of punishment as adults under the criminal law.<sup>34</sup>

Emerging reforms hold some promise. For example, “restorative justice” efforts advance community responses to harms and wrongs that focus on repairing relationships and remedying harms rather than punishing a wrongdoer.<sup>35</sup> Restorative justice efforts may operate as complete alternatives to criminal prosecutions, school suspensions, and expulsions, or instead may work alongside formal legal mechanisms.<sup>36</sup> Importantly, restorative alternatives involve not only victims and alleged offenders, but also other members of their communities in examining what happened and in devising plans for constructive, reparative steps.<sup>37</sup>

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safety); Daniel Silver, *The Punitive Reality of Juvenile Justice* (Apr. 29, 2020), <https://storymaps.arcgis.com/stories/00ab0818ce7a461a93c23927beb0b9c5> [<https://perma.cc/T73T-AH62>] (describing efforts in the 1990s to make youth offenders subject to adult prosecution that generally harmed students and society); Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 CRIME & JUST. 81, 102 (2000) (showing that Black youths are more likely to be sent to criminal court); Cynthia Godsoe, *Contempt, Status, and the Criminalization of Non-Conforming Girls*, 35 CARDOZO L. REV. 1091, 1108 (2014) (detailing how punitive measures against girls for status-based crimes harm the girls rather than remedying underlying conditions); Alison Powers, Note, *Cruel and Unusual Punishment: Mandatory Sentencing of Juveniles Tried as Adults Without the Possibility of Youth as a Mitigating Factor*, 62 RUTGERS L. REV. 241, 249–50 (2009).

33. See Trejos-Castillo, *supra* note 32, at 13–14. On failures to deal with systemic contexts of violence and failures to hold the criminal process itself accountable, see Nancy Gertner, *Reimagining Judging*, SQUARE ONE PROJECT 13, 15 (Jan. 2021), <https://squareonejustice.org/wp-content/uploads/2021/12/CJLJ9284-Reimagining-Judging-report-211215-WEB.pdf> [<https://perma.cc/54ZW-AZ8T>].

34. See KRISTIN HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH*, at 14–15 (2021) (ebook); Amanda Burgess-Proctor et al., *Youth Transferred to Adult Court: Racial Disparities*, CAMPAIGN FOR YOUTH JUST. 9 (Dec. 1, 2006), <https://www.issuelab.org/resources/423/423.pdf> [<https://perma.cc/Y5U6-M42N>] (analyzing data demonstrating that Black youth were more likely to be adjudicated as adults than white youth); Keshia Dauphin, *Racial Adultification and the American Criminal Justice System 1* (Dec. 2020) (M.S. Thesis, Bridgewater State University), <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1091&context=theses> [<https://perma.cc/GB3N-MBXK>] (noting that disparate treatment and punishment in the criminal justice system for Black boys stems from “adultification” that prevents them from being viewed as children); Kenneth B. Nunn, *The Child as Other: Race and Differential Treatment in the Juvenile Justice System*, 51 DEPAUL L. REV. 679, 681–82, 713 (2002) (explaining that African American children do not experience adolescence because they are considered “other” to their white counterparts and therefore receive greater punishment).

35. Adriaan Lanni, *Taking Restorative Justice Seriously*, 69 BUFF. L. REV. 635, 637 (2021).

36. *Id.*

37. WeAreTeachers Staff, *What Teachers Need To Know About Restorative Justice*, WE ARE TEACHERS (Sept. 2, 2022), <https://www.weareteachers.com/restorative-justice/>



Youth who would otherwise be caught up in school disciplinary processes, criminal law, or both can now often take part in these restorative alternatives that invite a greater focus on current harms and future actions than on nailing down and exacting punishment for what happened in the past.<sup>38</sup> A focus on juvenile justice and school disciplinary issues reflects hopes that young people can learn to manage their emotions and conflicts, shape constructive futures, and prevent their perpetual capture by criminal processes.<sup>39</sup>

Restorative initiatives are recent arrivals in the United States, but criminal and disciplinary treatment of youth have continually attracted attention. In contrast, a distinctive current priority for children's rights addresses digital communications, which were barely in existence in 1995. Online social media platforms have now become ubiquitous in the lives of most young people.<sup>40</sup> Digital resources afford young people access to information and avenues for expression unprecedented in human history. These same digital resources, developed by private platform companies, deploy manipulative techniques to capture the attention and personal information of individuals, including children and youth. For many young people, the platforms produce toxic environments, harboring harassment, bullying, and recruitment to

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[<https://perma.cc/3KFR-FKR7>]; Anne Gregory & Katherine R. Evans, *The Starts and Stumbles of Restorative Justice in Education: Where Do We Go from Here?*, NAT'L EDUC. POL'Y CTR. (Jan. 2020), <https://files.eric.ed.gov/fulltext/ED605800.pdf> [<https://perma.cc/J5MB-CJ45>]; Nakee Yalon Holloway, *Evaluating Restorative Justice: A Guide for Practitioners* vi, 1–2 (2016), <https://opus.govst.edu/cgi/viewcontent.cgi?article=1239&context=capstones> [<https://perma.cc/Q8FM-UNKR>].

38. See, e.g., HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 16 (2002); *What is Restorative Justice?*, RESTORATIVE JUST. EXCH. (2023), <https://restorativejustice.org/what-is-restorative-justice/#sthash.ckZtJMDc.dpbs> [<https://perma.cc/929F-Q5J3>]. For a thorough analysis of restorative justice ideas and assessment of expansion to serious crimes, see generally Lanni, *supra* note 35. Some treat “restorative justice” as a philosophy and “restorative practices” as a set of implemented activities and approaches; the terms will be used interchangeably here.

39. See Lucy Lang, *Restorative Justice in Action: A Man Killed Another Man, Then He Sat in a Circle with His Victim's Family*, N.Y. DAILY NEWS (Dec. 8, 2019, 5:00 AM), <https://www.nydailynews.com/opinion/ny-oped-restorative-justice-in-action-20191208-46mwgyqlsrechmsvnxjyhkaxou-story.html> [<https://perma.cc/W5Y6-5YH5>] (“Studies on the brain indicate that positive social engagement and stimulating environments induce positive changes to the neural circuits that underlie socio-affective skills, such as empathy and emotion regulation, which are significant mediating factors for prosocial attitudes and behavior.”).

40. See, e.g., Linda Searing, *One-Third of Children Ages 7 to 9 Use Social Media Apps, Study Says*, WASH. POST (Nov. 21, 2021), [https://www.washingtonpost.com/health/social-media-young-kids/2021/11/19/3130ce5a-488a-11ec-95dc-5f2a96e00fa3\\_story.html](https://www.washingtonpost.com/health/social-media-young-kids/2021/11/19/3130ce5a-488a-11ec-95dc-5f2a96e00fa3_story.html) [<https://perma.cc/4PC6-HF7W>]; Stefan Ellerback, *Half of US Teens Use the Internet 'Almost Constantly'. But Where Are They Spending Their Time Online?*, WORLD ECON. F. (Aug. 30, 2022), <https://www.weforum.org/agenda/2022/08/social-media-internet-online-teenagers-screens-us/> [<https://perma.cc/BK69-2M9G>].

extremism.<sup>41</sup> The amplification and acceleration of peer communications is associated with rising rates of anxiety and other mental health problems for young people.<sup>42</sup> Rates of depression and even suicide notably increase among young social media users.<sup>43</sup> As global companies continue to target youth when marketing cigarettes, gambling, fast food, and other potentially harmful products, reformers press for state and national legislation, such as the Children's Online Privacy Protection Act.<sup>44</sup> Digital platforms also contribute to child sex trafficking, exploitation, and other abuses.<sup>45</sup>

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41. See, e.g., *Effects of Social Media on Children*, CLEVELAND CLINIC (Dec. 3, 2021), <https://health.clevelandclinic.org/dangers-of-social-media-for-youth/> [https://perma.cc/2ELE-RSUU].

42. Rachel Ehmke, *How Using Social Media Affects Teenagers*, CHILD MIND INST., <https://childmind.org/article/how-using-social-media-affects-teenagers/> [https://perma.cc/C558-YBLQ].

43. Karen Feldscher, *How Social Media's Toxic Content Sends Teens Into 'a Dangerous Spiral'*, HARV. SCH. OF PUB. HEALTH (Oct. 8, 2021), <https://www.hsph.harvard.edu/news/features/how-social-medias-toxic-content-sends-teens-into-a-dangerous-spiral/> [https://perma.cc/XJ7N-F2DZ] (detailing an interview with Bryn Austin); Ehmke, *supra* note 42; *Social Networking's Good and Bad Impacts on Kids*, AM. PSYCH. ASS'N (2011), <https://www.apa.org/news/press/releases/2011/08/social-kids> [https://perma.cc/M25M-3JSB].

44. An FTC Rule implementing the law requires websites to obtain parental consent before collecting or sharing personal information from children under thirteen years of age, such as their names, home addresses, email addresses, or hobbies. See 15 U.S.C. § 6501–05; Cicely Lubben, *Children's Products: An Overview of Advertising Laws and Regulations* (Jan. 27, 2016), <https://s3.amazonaws.com/documents.lexology.com/33e505ad-203f-462a-8c51-0ff32a9b1ecd.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1667863261&Signature=1adzV6tLpd0W31gWhsNsMRWwhps%3D> [https://perma.cc/HH3B-DVVS]; *What is the Impact of Advertising on Kids?*, COMMON SENSE MEDIA (June 4, 2020), <https://www.commonsensemedia.org/marketing-to-kids/what-is-the-impact-of-advertising-on-kids> [https://perma.cc/2s22-H8L5]. Although they are not supposed to target children, cigarette companies still devise ways to attract them to their products. See, e.g., Tobacco Free CA, *Kids are Big Tobacco's "Replacement" Customers*, GLOB. CTR. FOR GOOD GOVERNANCE IN TOBACCO CONTROL (Dec. 3, 2020), <https://ggtc.world/news-and-events/kids-are-big-tobaccos-replacement-customers> [https://perma.cc/AG2Y-NQVY]. But see Ben Sperry, *What's the Harm of Targeted Ads on Children's Content Anyway?*, TRUTH ON THE MARKET (Sept. 12, 2019), <https://truthonthemarket.com/2019/09/12/whats-the-harm-of-targeted-ads-on-childrens-content-anyway/> [https://perma.cc/96WA-923M] (stating that there is “very little” about the 2019 settlement against YouTube for violating COPPA that “normal people would find to be all that troubling”).

45. Nicola A. Boothe, *Traffickers' "F"ing Behavior During a Pandemic: Why Pandemic Online Behavior Has Heightened the Urgency to Prevent Traffickers from Finding, Friending and Facilitating the Exploitation of Youth via Social Media*, 22 GEO. J. GENDER & L. 533, 527–38 (2021); see *Child Exploitation – Sex Trafficking*, DARKNESS TO LIGHT, <https://www.d2l.org/child-sexual-abuse/child-exploitation-trafficking/> [https://perma.cc/8QUW-L7MR].

Parents or other family members can also expose children to harm by sharing private information and images online.<sup>46</sup> And “in real life,” parents and trusted mentors too often victimize children. As exposés of the Boy Scouts and religious institutions reveal, physical and sexual abuse not only result in life-lasting injuries but also in widespread betrayals of trusting relationships.<sup>47</sup> The impact of culture, economic status, and racial and gender identities on daily life, online experiences, and other features of childhood and adolescence are gaining much deserved attention, and some other developments deserve more public and scholarly attention than they currently receive.<sup>48</sup>

Perhaps the most dramatic shift since 1995 appears in social movements around international rights for children. Decades in the making, drafts of the Convention on the Rights of the Child circulated among United Nations member states, nongovernmental organizations, and other interested groups in 1978.<sup>49</sup> The United Nations National Assembly adopted a final version in 1989, nearly a decade after the draft was originally shared.<sup>50</sup> Advocates and scholars involved in the process launched the Child Rights International Network in 1995 to support the Convention’s enforcement.<sup>51</sup> Former First Lady and Senator Hillary Rodham Clinton wrote about and advocated for children’s rights for years before the circulation of the draft Convention.<sup>52</sup> She announced in early 1995 that her husband, President Bill Clinton, would sign the Convention—the United States’ first step toward joining the Convention and the many other nations participating in it.<sup>53</sup>

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46. Stacey B. Steinberg, *Sharenting: Children’s Privacy in the Age of Social Media*, 66 EMORY L.J. 839, 847–54 (2017).

47. See Eliana Dockterman, *These Men Say the Boy Scouts’ Sex Abuse Problem is Worse than Anyone Knew*, TIME (June 1, 2019, 7:00 AM), <https://time.com/longform/boy-scouts-sex-abuse/> [<https://perma.cc/C5S2-WJF7>].

48. See, e.g., Bernard E. Harcourt, *After the Social Meaning Turn: Implications for Research Design and Methods of Proof in Contemporary Criminal Law Policy Analysis*, 34 LAW & SOC’Y REV. 179, 182, 202–03 (2000) (arguing that questions and hypotheses related to the long-term impact of police practices on juveniles demand greater attention).

49. See *History of Child Rights*, UNICEF, <https://www.unicef.org/child-rights-convention/history-child-rights> [<https://perma.cc/J5D4-9FRG>].

50. *Id.*

51. *Id.*

52. See, e.g., Hillary Rodham, *Children Under the Law*, 43 HARV. EDUC. REV. 487, 505–07 (1973). She advised the Children’s Defense fund as a young lawyer and later as a board chair. See *Children’s Defense Fund Celebrates Hillary Rodham Clinton*, CHILD.’S DEF. FUND (Sept. 13, 2016), <https://www.childrensdefense.org/2016/childrens-defense-fund-celebrates-hillary-rodham-clinton/> [<https://perma.cc/4LLP-HN8Q>].

53. John F. Harris, *US to Sign Pact on Child Rights*, WASH. POST (Feb. 11, 1995), <https://www.washingtonpost.com/archive/politics/1995/02/11/us-to-sign-un-pact-on-child-rights/e45e439d-4190-40ba-bff5-f83463e8d77b/> [<https://perma.cc/NZ5E-HYHK>].

Yet the U.S. Senate failed to ratify the Convention. This result surprised me and many others.<sup>54</sup> At this time, more than twenty-five years later, the United States is the only nation that has not done so.<sup>55</sup> Some think that U.S. law protecting children is already comparable or even superior to the Convention—a position associated with some versions of “American Exceptionalism” toward all human rights.<sup>56</sup> In fact, certain policies that the U.S. government enforces, such as separating migrating children from their parents, transparently contravene the Convention.<sup>57</sup>

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54. The failure persisted even after Democrats gained electoral positions. Advocates expressed frustration. *See, e.g.*, Karen Attiah, *Why Won't the U.S. Ratify the U.N.'s Child Rights Treaty?*, WASH. POST (Nov. 21, 2014, 4:12 PM), <https://www.washingtonpost.com/blogs/post-partisan/wp/2014/11/21/why-wont-the-u-s-ratify-the-u-n-s-child-rights-treaty/> [<https://perma.cc/ES5V-BRJ4>]; Amy Rothschild, *Is America Holding Out on Protecting Children's Rights?*, THE ATLANTIC (May 2, 2017), <https://www.theatlantic.com/education/archive/2017/05/holding-out-on-childrens-rights/524652/> [<https://perma.cc/D965-EDXK>].

55. In 1995, with the support of First Lady Hillary Clinton, President Clinton signed the Convention, but Congress did not ratify it. Despite some anticipation of U.S. action under President Barack Obama, nothing happened. *See* LUISA BLANCHFIELD, CONG. RSCH. SERV., THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 1, 4–5 (2015). Somalia was the last hold-out other than the United States but did so in 2015. *See* Press Release, UNICEF, As the Fifth Anniversary of Somalia's Ratification of the Convention on the Rights of the Child Approaches, Protection Violations Against Children Continue to Rise (Sept. 21, 2020), <https://www.unicef.org/somalia/press-releases/fifth-anniversary-somalias-ratification-convention-rights-child-approaches> [<https://perma.cc/XC4A-VNXU>].

56. *See generally* AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS (Michael Ignatieff ed., 2005) (explaining how the United States' approach to human rights differs from that of most other Western nations).

57. *Compare* Elliot Spagat, *US Identifies 3,900 Children Separated at Border Under Trump*, AP NEWS (June 8, 2021), <https://apnews.com/article/az-state-wire-donald-trump-immigration-lifestyle-government-and-politics-54e2e5bbff270019d8bda3e81161c7c7> [<https://perma.cc/3C4X-QZ5T>] (documenting the high volume of children separated from their parents at the U.S.-Mexico border), *with* Convention on the Rights of the Child, Article 9:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

...

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

American objections to joining the Convention have centered on concerns that doing so would jeopardize parental authority and practices such as corporal punishment of children, and the sovereignty of states, which hold *parens patriae* duties and serve as primary regulators of families.<sup>58</sup> Such objections are either misinformed or out of step with the preponderance of judgments about what children need.<sup>59</sup> Professor Barbara Bennett Woodhouse's 2008 book responded to objections to rights for children and developed the case for children's rights: children deserve rights not because they are potential adults, but because of their agency, voice, courage, and creativity.<sup>60</sup>

Nonetheless, elaboration and enforcement of international human rights involving children have grown without the participation of the United States.<sup>61</sup> Notable developments in international human rights for children since 1995 include the International Labour Conference's (ILO) unanimous adoption in 1998 of the Worst Forms of Child Labour Convention (ILO Convention No. 182).<sup>62</sup> Ratified by 182 states by late 2018, it became the most widely ratified convention in ILO history.<sup>63</sup> The Convention requires ratifying states to take immediate action to prohibit and eliminate slave-like practices, commercial sexual exploitation, illicit activities, and other work likely to harm the health, safety, or morals of

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Convention on the Rights of the Child art. 9, Nov. 20, 1989, 1577 U.N.T.S. 3. The United States also would be in violation of the treaty for its use of life without parole for juvenile offenders and failures to address children in poverty and parental work and family conflicts. *See Attiah, supra* note 54.

58. *See Attiah, supra* note 54 (“[A] number of Republican senators, claiming concerns about U.S. sovereignty, have consistently opposed ratification.”); Alison Dundes Renteln, *Who's Afraid of the CRC: Objections to the Convention on the Rights of the Child*, 3 ILSA J. INT'L & COMP. L. 629, 633–34 (1997).

59. *See* Alexandra Gardiner, *Children's Rights: Why the United States Should Ratify the United Nations Convention on the Rights of the Child 16–17* (2017) (M.S.Ed. thesis, Bank Street College of Education) (on file with author). Ironically, the United States, under Presidents Ronald Reagan and George H.W. Bush, had played a leading role in drafting the Convention. *See* BLANCHFIELD, *supra* note 55, at 5. On corporal punishment, see Elizabeth T. Gershoff, *More Harm Than Good: A Summary of Scientific Research on the Intended and Unintended Effects of Corporal Punishment on Children*, 73 LAW & CONTEMP. PROBS. 31, 31–32, 40, 47 (2010), and Elizabeth T. Gershoff & Susan H. Bitensky, *The Case Against Corporal Punishment of Children*, 13 PSYCHOL. PUB. POL'Y & L. 231, 238–40 (2007).

60. *See* BARBARA BENNETT WOODHOUSE, *HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE* 23–47 (2008).

61. Gillian Hannahs provided particularly helpful research informing this discussion.

62. Jo Becker, *The Evolution of the Children's Rights Movement*, in THE OXFORD HANDBOOK OF CHILDREN'S RIGHTS 36 (Jonathan Todres and Shani M. King eds., 2020).

63. *ILO Conventions on Child Labour*, INT'L LABOUR ORG., <https://www.ilo.org/ippec/facts/ILOconventionsonchildlabour/lang--en/index.htm> [<https://perma.cc/GPM4-DGMH>].

children under the age of eighteen.<sup>64</sup> By 2016, the number of children reported to be working as laborers declined more than one-third from the level reported in 2000.<sup>65</sup>

Also in 2000, a global campaign addressing child soldiers succeeded in raising the minimum age from fifteen to eighteen for lawful participation in hostilities and for conscription or forced recruitment by governments or (under an optional protocol to the Convention on the Rights of the Child) by non-state armed groups.<sup>66</sup> More than 165 nations ratified these terms by 2018.<sup>67</sup> And in 2011, a third optional protocol allowed children to bring individual complaints to the Committee on the Rights of the Child when states had violated or failed to protect their rights and when domestic remedies had been exhausted.<sup>68</sup> The Committee is now fully engaged in addressing a variety of alleged children's rights violations.<sup>69</sup> Another notable development, the Global Initiative to End All Corporal Punishment of Children, launched in 2001, contributed to a dramatic increase in countries outlawing corporal punishment.<sup>70</sup>

Further, interest in hearing children's own views about issues affecting their lives has increased due to demands from children and youth themselves, along with some of their advocates. Following the end of the Sierra Leone Civil War in 2001, a group of youths, including fifteen-year-old Chernor Bah, established the Children's Forum Network to pursue a voice in the country's peace process. The Network consulted with children across the country, organized public forums and a weekly radio program, and released a children's manifesto advocating for free education as a priority for the new government.<sup>71</sup> This youth initiative no doubt contributed in part to the adoption of the 2004 Education Act that

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64. *Worst Forms of Child Labour Convention*, INT'L LABOUR ORG. (June 17, 1999), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_decl\\_fs\\_46\\_en.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_46_en.pdf) [<https://perma.cc/K6KE-5XKG>].

65. *Global Estimates of Child Labour: Results and Trends, 2012–2016*, INT'L LABOUR ORG. 7, 9 (2017), [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575541.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575541.pdf) [<https://perma.cc/8PLW-F4HD>].

66. G.A. Res. 54/263, UN Doc. A/RES/54/263, at 4 (May 25, 2000).

67. Becker, *supra* note 62, at 37.

68. G.A. Res. 66/138, UN Doc. A/RES/66/138, at 2–4 (Dec. 19, 2011). By late 2018, fifty-one countries had signed the protocol and thirty-nine had ratified it. Becker, *supra* note 62, at 37.

69. Mary Robinson, *Evaluation of the Work of Child Rights Connect*, CHILD RIGHTS CONNECT, 46 (Dec. 2015), <https://www.childrightsconnect.org/wp-content/uploads/2016/04/Child-Rights-Connect-final-evaluation-report.pdf> [<https://perma.cc/QFQ3-HDBP>].

70. Becker, *supra* note 62, at 39. In 2001, only eleven countries banned corporal punishment; by 2022, this number had risen to sixty-four. An additional twenty-seven states pledged to enact a ban. See *Global Progress Towards Prohibiting All Corporal Punishment*, END CORPORAL PUNISHMENT (Nov. 2022), <http://endcorporalpunishment.org/wp-content/uploads/legality-tables/Global-progress-table-commitment.pdf> [<https://perma.cc/UA92-GX9G>].

71. See *Chernor Bah*, PURPOSEFUL (2021), <https://wearepurposeful.org/who-we-are/our-people/chernor-bah/> [<https://perma.cc/UY57-R9NZ>].

guaranteed free primary and junior secondary education for every child in Sierra Leone.<sup>72</sup> In Malawi, groups of girls have mobilized to end child marriage on a local and national level. These young women successfully lobbied sixty village chiefs to enact local bylaws to protect children from early marriage and secured a change in national law, raising the minimum age for marriage from fifteen to eighteen.<sup>73</sup>

Climate change is another issue where children's voices have made inroads. In 2012, youth in Uganda sued their government for failure to comply with international climate change agreements.<sup>74</sup> In 2015, Children in the Netherlands successfully sued the Dutch government for negligently breaching its policies to halt global warming,<sup>75</sup> resulting in the Dutch court issuing an order to reduce emissions by twenty-five percent within five years.<sup>76</sup> Also in 2015, twenty-one children in the United States sued the U.S. government,<sup>77</sup> arguing that domestic policies on fossil fuel use violated their "constitutional rights to life, liberty and property" and that the government's failure to reduce emissions constituted discrimination against the youth who would "disproportionately experience the destabilized climate system."<sup>78</sup> An appellate court agreed that the issues were compelling but ordered dismissal of the suit for want of standing.<sup>79</sup> The plaintiffs' motion for

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72. Becker, *supra* note 62, at 41.

73. Howard Mlozi, *Information on GENET Malawi's Work in the Fight to End Child Marriage*, GIRLS EMPOWERMENT NETWORK 7–8 (Dec. 2013), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/GENETMalawi.docx> [<https://perma.cc/3J7V-H62B>]; see Denise Dunning & Joyce Mkandawire, *How Girl Activists Helped to Ban Child Marriage in Malawi*, THE GUARDIAN (Feb. 26, 201, 11:45 AM), <http://www.theguardian.com/global-development-professionals-network/2015/feb/26/girl-activists-child-marriage-malawi-let-girls-lead> [<https://perma.cc/LYW5-L4JG>].

74. Ephrat Livni, *Kids Around the World Are Suing Their Governments for Ruining the Planet*, QUARTZ (Dec. 16, 2017), <https://qz.com/1156876/juliana-vs-usa-kids-are-suing-over-climate-change> [<https://perma.cc/TBY5-QBMG>].

75. *Urgenda Foundation v. the State of the Netherlands*, ECLI:NL:RBDHA:2015:7196, Judgment (Dist. Ct. The Hague June 24, 2015) (Neth.).

76. Roger Cox, *A Climate Change Litigation Precedent: Urgenda Foundation v. the State of the Netherlands*, CIGI 1 (Nov. 4, 2015), [https://www.cigionline.org/sites/default/files/cigi\\_paper\\_79.pdf](https://www.cigionline.org/sites/default/files/cigi_paper_79.pdf) [<https://perma.cc/4CZM-S7NX>].

77. *Juliana v. United States: Youth Climate Lawsuit*, OUR CHILD.'S TRUST, <https://www.ourchildrenstrust.org/juliana-v-us> [<https://perma.cc/D6VB-Z7DW>].

78. Karina Brown, *Kids Sue Feds Over Global Warming*, COURTHOUSE NEWS SERV. (Aug. 17, 2015), <https://www.courthousenews.com/kids-sue-feds-over-global-warming/> [<https://perma.cc/7Q8A-B7TB>].

79. Umair Urfan, *21 Kids Sued the Government over Climate Change. A Federal Court Dismissed the Case*, VOX (Jan. 17, 2020, 4:10 PM), <https://www.vox.com/2020/1/17/21070810/climate-change-lawsuit-juliana-vs-us-our-childrens-trust-9th-circuit> [<https://perma.cc/P9WH-34RX>].

leave to file an amended complaint is still pending.<sup>80</sup> Similar lawsuits by children against their national governments have proceeded in Pakistan, India, and the European Court of Human Rights on a range of climate and environmental issues.<sup>81</sup> In these efforts, children and youth are both asserting their rights to hold their governments accountable and elevating distinctive claims by a class of people who will face environmental harms that their elders may well escape.

Students in the United States have organized against gun violence. Students formed Never Again MSD (short for Marjory Stoneman Douglas High School), which in turn organized a national march in Washington, D.C., that drew over two hundred thousand participants.<sup>82</sup> This march inspired over one million students from across the country to take part in a national school walk-out.<sup>83</sup> The student-led movement contributed to meaningful change: Florida's state legislature enacted its first gun control legislation in thirty years, and several national sporting goods retailers stopped selling assault-style rifles and ended gun sales to individuals under the age of twenty-one.<sup>84</sup> Young people—including gun control activist David Hogg, Nobel Peace Prize winner Malala Yousafzai, U.S. National Youth Poet Laureate Amanda Gorman, and Swedish climate activist Greta Thunberg—have garnered international recognition and honors. Their voices and advocacy amplify the concerns of many young people who themselves participate in social media and in-person campaigns.

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80. *Juliana v. United States: Youth Climate Lawsuit*, OUR CHILD.'S TRUST, <https://www.ourchildrenstrust.org/juliana-v-us> [<https://perma.cc/D6VB-Z7DW>].

81. Naeem Sahoutara, *Seven-Year-Old Girl Takes on Federal, Sindh Governments*, EXPRESS TRIB. (June 29, 2016), <https://tribune.com.pk/story/1133023/seven-year-old-girl-takes-federal-sindh-governments> [<https://perma.cc/SRW9-U9FZ>]; *Youth Files Climate Case with Indian Environmental Court*, OUR CHILD.'S TRUST (Mar. 30, 2017), <https://cms.qz.com/wp-content/uploads/2017/12/d5131-2017-03-30indiaclimatecasepr.pdf> [<https://perma.cc/XQ6G-SX2P>]; Global Legal Action Network, *Children -v- Governments of Europe and Climate Change*, CROWDJUSTICE, <https://www.crowdjustice.com/case/climate-change-echr> [<https://perma.cc/8XD2-Y6AS>].

82. CBS News, *How Many People Attended March for Our Lives? Crowd in D.C. Estimated at 200,000*, CBS NEWS (Mar. 25, 2018, 9:01 AM), <https://www.cbsnews.com/news/march-for-our-lives-crowd-size-estimated-200000-people-attended-d-c-march> [<https://perma.cc/Z78A-NXGY>].

83. Arian Campo-Flores, *Gun Violence Protests Drew an Estimated 1 Million Students*, WALL ST. J. (Mar. 15, 2018, 7:41 AM), <https://www.wsj.com/articles/students-plan-national-school-walkout-to-protest-shootings-1521019801> [<https://perma.cc/4HBZ-QSDV>].

84. Matt Vasilogambros, *After Parkland, States Pass 50 New Gun-Control Laws*, THE PEW CHARITABLE TRUSTS (Aug. 2, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/08/02/after-parkland-states-pass-50-new-gun-control-laws> [<https://perma.cc/UJ6K-B6CC>]; Jerry Barca, *Florida School Shooting Prompts Dick's Sporting Goods To End Sale Of Assault Weapons*, FORBES (Feb. 28, 2018, 10:14 AM), <https://www.forbes.com/sites/jerrybarca/2018/02/28/florida-school-shooting-prompts-dicks-sporting-goods-to-end-sale-of-assault-weapons/?sh=4cde718a5cbb> [<https://perma.cc/5QA4-4AGR>].



Despite these efforts, clashes between activists pressing policies in the name of children's expressed desires and the protectionist efforts of some adults are predictable. For example, some child and adolescent workers in Bolivia—perhaps with support from or inducement by industry managers—sought to lower the minimum age for lawful labor due to the need to help support their families while seeking stronger governmental protections.<sup>85</sup> International human rights groups led by adults opposed lowering the age for lawful work, but the Bolivian government ultimately lowered it to age ten.<sup>86</sup> Similarly, a court in the United Kingdom and several state legislatures within the United States, in the claimed interests of child protection, have pursued restrictions on gender-affirming psychological and medical care for transgender youth and youth asserting diverse gender identities.<sup>87</sup>

Where there are divisive politics, adults with competing ideologies often claim to serve the interests of children. One example is the fight over books and curriculum in American schools, with particular flashpoints around treatments of slavery and Black history, sexuality and gender identity, and domestic violence.<sup>88</sup>

Nonetheless, global human rights and national legal treatments of children since 1995 have better recognized children's voices and

85. Becker, *supra* note 62, at 42; Tracey Eaton, *Bolivia Wrestles with Protecting Child Workers as Young as 10*, NBC NEWS (Jan. 26, 2018, 11:58 AM), <https://www.nbcnews.com/news/latino/bolivia-wrestles-protecting-child-workers-young-10-n840616> [<https://perma.cc/EW5V-XFLF>].

86. Tracey Eaton, *Would You Let Your 10-Year-Old Kid Work? It's Perfectly Legal in this Country*, USA TODAY (Jan. 10, 2018, 9:01 AM), <https://www.usatoday.com/story/news/world/2018/01/09/bolivia-lets-10-year-old-kids-work-under-worlds-youngest-child-labor-laws/1011101001/> [<https://perma.cc/7TWC-CZ4B>]. “Best interests” may work as a cover or pretext for adult concerns, though. See Dailey & Rosenbury, *supra* note 22, at 1470.

87. See *Criminalizing Gender Affirmative Care with Minors*, AM. PSYCH. ASS'N (Mar. 2022), <https://www.apa.org/topics/lgbtq/gender-affirming-points.pdf> [<https://perma.cc/Y3MM-VMQ4>]; see also Rachel Savage & Hugo Greenhalgh, *UK Court Rules Against Trans Clinic Over Treatment for Children*, REUTERS (Nov. 30, 2020, 7:13 PM), <https://www.reuters.com/article/us-britain-lgbt-transgender-trfn/uk-court-rules-against-trans-clinic-over-treatment-for-children-idUSKBN28B3AV> [<https://perma.cc/848B-3Q4S>] (explaining that “[c]hildren aged under [sixteen] will need court approval in England and Wales to access puberty blockers”).

88. See Matt Crenson, *School Curriculum Fights Increasingly Put Children in Culture War Crossfire*, ASSOC. PRESS (Feb. 5, 2005), <http://www1.udel.edu/educ/whitson/897s05/files/School%20curriculum%20fights%20increasingly%20put%20children%20in%20culture%20war%20crossfire.htm> [<https://perma.cc/MCR6-2H5D>]; Nick Gillespie, *Want To Stop School Book Battles? Give Parents Real Choice in Education*, REASON (Mar. 29, 2022, 3:30 PM), <https://reason.com/2022/03/29/want-to-stop-school-book-battles-give-parents-real-choice-in-education/> [<https://perma.cc/RZS5-9TKY>]; David Montgomery, *Librarians Fight Back Against Efforts to Ban Books in Schools*, EDUC. WEEK (Jan. 18, 2022), <https://www.edweek.org/teaching-learning/librarians-fight-back-against-efforts-to-ban-books-in-schools/2022/01> [<https://perma.cc/E3E8-KGU8>].

concerns, at least as a topic for debate if not actual policy change.<sup>89</sup> Advocates for international human rights address grave harms to children, such as forced service as soldiers, forced migration due to sea rise and climate change, and a lack of access to education, health care, or food. In the United States, some of these dangers may seem remote, but for many children in America, these are not alien challenges. Gangs coercing participation, fires and hurricanes forcing migration, barriers limiting access to decent—much less, quality—schooling and healthcare, and food insecurity preventing adequate nutrition are daily experiences for over ten million children in the United States.<sup>90</sup>

## II. SECURITY: A PREDICATE FOR ALL CONSTITUTIONAL RIGHTS

Whatever happened to children’s rights? I asked this question in 1995 with recollection of the 1960s and 1970s, and I ask it again now. Political opposition, as well as conceptual challenges, contribute to the standstill. To some, “rights talk” seems impoverished and not up to the task of generating adults’ care, protection, and concern.<sup>91</sup> Nonetheless, the language of rights motivates mobilization of political action, resources, legislation, and judicial enforcement, and the rhetoric of rights remains a central tool for any who seek change in the conditions of children around the world, including in the United States. Nations that have enacted the Convention on the Rights of the Children have overcome the political hurdle of accepting “rights talk,” even if the distance between ideals and reality remains large for too many.

At least two conceptual objections remain salient. The first involves debates over when and how children should be treated as competent, self-determining, or self-reliant, and when instead adults should control

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89. See David D. Meyer, *The Modest Promise of Children’s Relationship Rights*, 11 WM. & MARY BILL RTS. J. 1117, 1119 n.10 (2003); Dailey & Rosenbury, *supra* note 22, at 1456 (explaining that the recognition of children’s civic activities and expressiveness is part of the reconceptualization of children’s rights).

90. See José-Ignacio Castañeda Perez, et al., *Street Love: Why Kids Join Gangs Despite Risks of Arrest and Violence*, KIDS IMPRISONED (Aug. 21, 2020), <https://kidsimprisoned.news/21.com/why-kids-join-gangs/> [<https://perma.cc/2CTE-LVQM>]; Abrahm Lustgarten, *Climate Change Will Force A New American Migration*, PROPUBLICA (Sept. 15, 2020, 5:00 AM), <https://www.propublica.org/article/climate-change-will-force-a-new-american-migration> [<https://perma.cc/Z9B8-DVNQ>]; Heidi Przybyla, *American Schools Are Falling Into Disrepair with No Solution in Sight, Experts Say*, NBC NEWS (June 2, 2021, 10:24 AM), <https://www.nbcnews.com/news/us-news/america-s-schools-are-falling-disrepair-no-solution-sight-experts-n1269261> [<https://perma.cc/F2B9-PVFJ>]; Casey Parks, *The Tragedy of America’s Rural Schools*, N.Y. TIMES (Sept. 9, 2021), <https://www.nytimes.com/2021/09/07/magazine/rural-public-education.html> [<https://perma.cc/47ZZ-TFSS>]; *The State of America’s Children: Child Hunger and Nutrition*, CHILD. DEF. FUND (2021), <https://www.childrensdefense.org/state-of-americas-children/soac-2021-child-hunger/> [<https://perma.cc/J5GM-NVMM>].

91. See MARY ANN GLENDON, RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE 14 (1991).

decisions and duties related to those who the law does not yet recognize as adults. There is no sharp line between the stages of individual development. The same individual may be quite capable in some domains but not in others, or in some moments but not always. The same goes for those that the law recognizes as legal adults, but greater concerns about minors lead many to call for nuanced treatment in considering children's autonomy and competence.<sup>92</sup> Professor Anne Dailey and Dean Rosenbury, for example, helpfully offer the frame of "agency" rather than autonomy.<sup>93</sup>

The second concern stems from the distinction between negative and positive liberties. Do rights for children involve more than freedom from interference by others? Do rights entail governmental obligations, or governmental powers to direct resources, programs, and care for children and youth? If so, what will guard against governmental abuses and failures, and how will children ensure enforcement? By their very legal status and usual economic dependency, children and youth lack both formal rights and means to enforce whatever legal protections they do have.<sup>94</sup> This distinction between negative and positive rights may be a particularly American problem; our Constitution is an old, pre-World War II constitution that reads more in negative liberty terms than more recent legal frameworks do.<sup>95</sup>

One approach international human rights advocates have taken to overcome these challenges is to advance a notion of human security,

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92. See Kevin W. Saunders, *The Role of Science in the Supreme Court's Limitations on Juvenile Punishment*, 46 TEX. TECH L. REV. 339, 349 (2013) ("More complex 'executive' functions of [the] prefrontal cortex such as reasoning, motivation, and judgment appear to develop gradually during childhood and adolescence, perhaps continuing during the adult years.") (quoting Peter R. Huttenlocher & Arun S. Dabholkar, *Regional Differences in Synaptogenesis in Human Cerebral Cortex*, 387 J. COMP. NEUROLOGY 167, 178 (1997)); see also LESLIE J. HARRIS & LEE E. TEITELBAUM, CHILDREN, PARENTS, AND THE LAW: PUBLIC AND PRIVATE AUTHORITY IN THE HOME, SCHOOLS, AND JUVENILE COURTS 494 (2002) (explaining that "[t]he age of majority is arbitrary not in the sense that it is unreasonable but in that it is variable from time to time and is often established to reflect some, but not all, levels of maturity and capacity"); Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Brain Research and the Law*, 22 CURRENT DIRECTIONS PSYCH. SCI. 158, 158 (2013) (explaining that teenagers' higher likelihood of risk-taking should inform law but noting that current knowledge is not yet adequate for legal purposes).

93. Dailey & Rosenbury, *supra* note 22, at 1453.

94. See *id.* at 1484–85, 1512 n.257 (noting the interrelationship of vertical relationships—epitomized by child–parent ties—and horizontal ones—illustrated by educational and medical services—in addressing children); Meyer, *supra* note 89, at 1128 ("Children's dependency on others to articulate and represent their interests poses an obvious and basic dilemma for a program that seeks to empower them independently of their parents, the state, and other holders of power.").

95. See Ran Hirschl, "Negative" Rights vs. "Positive" Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order, 22 HUM. RTS. Q. 1060, 1071 (2000).

relevant to not only children but also adults.<sup>96</sup> The United Nations has turned to “human security” to guide member nations in identifying and responding to challenges to the survival, livelihood, and dignity of their people.<sup>97</sup> Human security calls for attention to the hardships from violent conflicts, natural disasters, persistent poverty, epidemics, and economic hardship that jeopardize peace, stability, and sustainable development.<sup>98</sup> The United Nations and the Government of Japan helped launch an international Commission on Human Security under the leadership of Nobel-prize-winning economist Amartya Sen, and Sadako Ogata, the former United Nations High Commissioner for Refugees. In 2003, Madam Ogata explained that relying on nation-states to ensure the security of individuals was insufficient.<sup>99</sup> Hence, any human rights approach also needed to incorporate direct attention to protecting and empowering people so that they could “take an active role in making their lives and communities more secure.”<sup>100</sup> Kofi Annan, as the United Nations Secretary-General, explained that human security

encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfill his or her potential. Every step in this direction is [moving] towards reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear, and the freedom of future generations to inherit a healthy natural environment—these are the interrelated building blocks of human—and therefore national—security.<sup>101</sup>

Security has particular resonance for children in light of emerging understandings of the development of children’s cognitive, emotional,

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96. See Achim Steiner, Administrator, United Nations Development Programme, Keynote Address at The UNDP’s 25th Anniversary of the Human Security Concept (Feb. 28, 2019), <https://www.undp.org/speeches/25th-anniversary-human-security-concept> [<https://perma.cc/5HF9-V7WC>]; see also G.A. Res. 60/1, 2005 World Summit Outcome (Sept. 16, 2005) (“We stress the right of people to live in freedom and dignity, free from poverty and despair. We recognize that all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential.”).

97. United Nations Trust Fund for Human Security, *What is Human Security?*, <https://www.un.org/humansecurity/what-is-human-security/> [<https://perma.cc/AC6K-XB6L>] (referring to U.N. General Assembly Resolution 66/290).

98. *Id.*; see Comm’n on Hum. Rights, *Human Security Now*, at iv, 14 (2003).

99. Sadako Ogata, *Striving for Human Security*, U.N. CHRONICLE (Sept. 2015), <https://www.un.org/en/chronicle/article/striving-human-security> [<https://perma.cc/MU2W-GYLL>].

100. *Id.* (describing her own thinking and work behind the U.N. Commission report, 2003 report, *Human Security Now*); see Comm’n on Hum. Security, *Human Security Now 4* (2003).

101. Comm’n on Hum. Security, *Human Security Now 4* (2003) (quoting Kofi Annan).

and social capacities.<sup>102</sup> While dependent on others for food, shelter, and learning, children are highly vulnerable to harms and to lost opportunities, rendering fundamental physical security essential.<sup>103</sup> Moreover, development of individual capacities to manage stresses also matters to the viability of self-governance in a diverse society. A sense of emotional jeopardy can impair one's abilities to engage with others, to empathize, and to manage their own experiences of fear and anxiety.<sup>104</sup> And childhood trauma can affect openness to others.<sup>105</sup>

Children's experiences en route to adulthood produce lasting effects on political orientation across the life span.<sup>106</sup> This includes experiences with parents or other caretakers, disruptions from war, and lasting effects of poverty.<sup>107</sup> Preparation for democratic citizenship in a world that bombards youth with digital messages and stresses requires deliberate efforts to manage the "fight-or-flight response" and to cultivate a resilient citizenry.<sup>108</sup> A child's chances to feel secure during childhood can thus carry consequences not just for that individual, but for the others that individual will touch in family life, community, and politics.<sup>109</sup> As former South African President Nelson Mandela put it, "Safety and security don't just happen. They are the result of collective consensus and

102. See *supra* note 24 (citing research about child development and the need for protections against trauma).

103. *Id.*

104. See *Managing the Stress Response*, HARV. HEALTH PUBL'G (July 6, 2020), <https://www.health.harvard.edu/staying-healthy/understanding-the-stress-response> [<https://perma.cc/K426-NWHS>].

105. See Jan-Emmanuel De Neve, *Personality, Childhood Experience, and Political Ideology*, 36 *POLIT. PSYCHOL.* 55, 64–65 (Feb. 2015). On the need to develop political maturity in children and youth, see Andrew Rehfeld, *The Child as Democratic Citizen*, 633 *THE ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. (THE CHILD AS CITIZEN)* 141, 143 (Jan. 2011).

106. See Christopher M. Wegemer & Deborah Lowe Vandell, *Parenting, Temperament, and Attachment Security as Antecedents of Political Orientation: Longitudinal Evidence from Early Childhood to Age 26*, 56 *DEV. PSYCH.* 1360, 1362 (July 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8274710/> [<https://perma.cc/3D8N-W4R6>].

107. See *id.* at 1360, 1366; Brent Bezo & Stefania Maggi, *Living in "Survival Mode": Intergenerational Transmission of Trauma from the Holodomor Genocide of 1932–1933 in Ukraine*, 134 *SOC. SCI. & MED.* 87, 90 (June 2015); Ivone Castro-Vale et al., *Intergenerational Transmission of War-Related Trauma Assessed 40 Years After Exposure*, 18 *ANNALS OF GEN. PSYCH.* 14 (2019); Olga Kasan, *Inherited Trauma Shapes Your Health*, *THE ATLANTIC* (Oct. 16, 2018), <https://www.theatlantic.com/health/archive/2018/10/trauma-inherited-generations/573055/> [<https://perma.cc/89SH-J5MJ>].

108. See Jodi Durr, *The Sensory Processing and Fight or Flight Connection*, *KIDS ACTIVITIES* (Dec. 16, 2019), <https://kidsactivitiesblog.com/87918/sensory-processing-fight-flight-connection/> [<https://perma.cc/L6PK-8YDZ>]; Nancy Eisenberg et al., *Emotion-Related Self-Regulation and Its Relation to Children's Maladjustment*, 27 *ANN. REV. CLINICAL PSYCH.* 495, 507 (2010); Michael Unger, *Will Our Kids Become Fascists or Support Democracy?*, *PSYCH. TODAY* (Nov. 19, 2018), <https://www.psychologytoday.com/us/blog/nurturing-resilience/201811/will-our-kids-become-fascists-or-support-democracy> [<https://perma.cc/WUW8-G89L>].

109. Thanks to Professor Michael Gregory for raising this point.

public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear.”<sup>110</sup>

Does the “human security” approach have any bearing on the United States’ treatment of children? The United States stands alone in its failure to ratify the Convention on the Rights of the Child, but the United States has embraced, and indeed helped to draft, the 1948 Universal Declaration of Human Rights. Its language fully embraces children along with all other human beings and does so using both the language of rights and the notion of security: “Everyone has the right to life, liberty, and the security of person.”<sup>111</sup> This reference to “security of person” provides an understanding of the status of children under U.S. law, which includes the Universal Declaration as well as the U.S. Constitution.

Basic personal security seems both a predicate and a goal of the U.S. Constitution, even though no reference to the concept appears explicitly in its text. Protection against physical jeopardy is implicit in the explicit limitation of governmental interference with life, liberty, and property. Security of the person is also intertwined with freedom of speech, free exercise of religion, the right to assemble, and the right to petition the government, just as security of the person is the core value in protections against self-incrimination, unreasonable searches and seizures, and cruel and unusual punishment.<sup>112</sup>

Yet, for instance, the risk of severe injury or death by guns has escalated across the United States with a disproportionate effect on children and youth.<sup>113</sup> “[M]ore than 3,300 children and teens (ages 0–19) were killed by gun violence in 2019, including over 2,000 by homicide and 1,100 by suicide. An average of nine children and teens were killed by gun violence daily.”<sup>114</sup> Historically, risks of lethal violence against children largely arose in situations involving racism against African Americans by whites. Nothing could more starkly tell of the insecurity experienced by African Americans than the 1955 murder of fourteen-year-old Emmett Till after he allegedly whistled at a white woman; the case galvanized public attention but never led to a successful

110. Catalina Devandas-Aguilar, *Day of the African Child: Protecting All Children’s Rights and Investing in Children is Paramount for Africa*, UNITED NATIONS (June 16, 2016), <https://violenceagainstchildren.un.org/news/day-african-child-protecting-all-childrens-rights-and-investing-children-paramount-africa> [<https://perma.cc/2H2T-63AQ>] (quoting Nelson Mandela).

111. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, Article 3 (Dec. 10, 1948).

112. Cf. U.K. Human Rights Act 1998, c. 42, §1, sch. 1, art. 5 (Gr. Brit.). (“Everyone has the right to liberty and security of person.”)

113. EDUCATIONAL FUND TO STOP GUN VIOLENCE & COALITION TO STOP GUN VIOLENCE, A PUBLIC HEALTH CRISIS DECADES IN THE MAKING: A REVIEW OF 2019 CDC GUN MORTALITY DATA 5, 14 (2021), <http://efsgv.org/2019CDCdata> [<https://perma.cc/5BTP-R2DF>].

114. *Id.* at 5.

prosecution.<sup>115</sup> Renewed focus and broad discussion center around how many more individuals, many of them children or youth, were killed during and even after the Jim Crow period with the knowledge or participation of law enforcement and judicial personnel.<sup>116</sup> These problems continue today. In 2014, a police officer shot and killed twelve-year-old Tamir Rice, who was walking aimlessly in a gazebo while holding a fake, airsoft-like gun.<sup>117</sup> The 911 call that sent the officers to the scene reported that “the gun was ‘probably fake’” and that “the wielder was ‘probably a juvenile.’”<sup>118</sup> However, the dispatcher never relayed this information to the responding officers.<sup>119</sup> Within two seconds of arriving on the scene, a police officer shot Rice, and several minutes passed before anyone attempted to provide medical assistance.<sup>120</sup> Failures in criminal law, especially around the arrest, prosecution, and incarceration of Black youth, persist: that is insecurity.<sup>121</sup> Homelessness among families has reached a historic high, leaving one in every thirty children or youth unhoused: that is insecurity.<sup>122</sup> An estimated twenty-eight percent of American children lack sufficient food: that is insecurity.<sup>123</sup>

The United States has work to do when it comes to children. Children are, after all, the future of the nation. Advocates make this obvious point

115. *The Murder of Emmett Till*, LIBR. OF CONG., <https://www.loc.gov/collections/civil-rights-history-project/articles-and-essays/murder-of-emmett-till/> [<https://perma.cc/B44E-992X>]; see also Adia Robinson, *Family of Emmett Till and More Reflect on His Funeral, Killers' Trial*, ABC NEWS (Jan. 13, 2022, 1:39 PM), <https://abcnews.go.com/US/family-emmett-till-reflect-funeral-killers-trial/story?id=82243182> [<https://perma.cc/5EX5-QBTM>] (establishing parallels to state of racial insecurity in 2022).

116. See, e.g., MARGARET BURNHAM, *BY HANDS NOW KNOWN: JIM CROW'S LEGAL EXECUTIONERS* (2022) (investigating the Jim Crow era and the relationship between formal and background legal norms).

117. See Shaila Dewan & Richard A. Oppel Jr., *In Tamir Rice Case, Many Errors by Cleveland Police, Then a Fatal One*, N.Y. TIMES (Jan. 22, 2015), <https://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html> [<https://perma.cc/L66S-K2ZX>].

118. *Id.*

119. *Id.*

120. *Id.*

121. See *Black Disparities in Youth Incarceration*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/app/uploads/2022/08/Black-Disparities-in-Youth-Incarceration.pdf> [<https://perma.cc/NKR2-7QJY>].

122. *National Center on Family Homelessness*, AM. INST. FOR RSCH., <https://www.air.org/centers/national-center-family-homelessness#:~:text=A%20staggering%202.5%20million%20children,children%20in%20the%20United%20States.&text=Children%20are%20homeless%20in%20every,and%20state%20throughout%20our%20country> [<https://perma.cc/DXH7-HCCA>].

123. *Child Food Insecurity*, FEEDING AM. (2018), <https://www.feedingamerica.org/sites/default/files/research/map-the-meal-gap/2016/2016-map-the-meal-gap-child-food-insecurity.pdf> [<https://perma.cc/87TF-MH4M>].

repeatedly.<sup>124</sup> The predicate of the Constitution, in fact, is that there will be future generations and that those new citizens will be able to exercise the duties and responsibilities that the governing document sets forth. In this light, I suggest a greater focus on what “security of the person” should mean for children and youth. At a minimum, this question should put the epidemics of gun violence, increasing homelessness and hunger among American children, and the too-often discouraging state of American schooling under urgent scrutiny. Then, perhaps thirty years from now, those who are children today will have more strength as adults to tackle the challenges of the children of their times.

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124. See *The Nation's Future: Children and Youth*, in *INFORMING THE FUTURE* 29 (3d ed. 2005); Tamara Carleton, *How Children an Asset for Future Natural Abundance?*, U.S. CHAMBER OF COM. BLOG (Apr. 22, 2013), <https://www.uschamberfoundation.org/blog/post/how-are-children-asset-future-national-abundance/33967> [<https://perma.cc/VG8U-V44R>]; Robert Lee, *Our Children Are Our Nation's Future*, RICHMOND CNTY. DAILY J. (June 29, 2018), <https://www.yourdailyjournal.com/opinion/columns/81675/our-children-are-our-nations-future> [<https://perma.cc/P7DC-P9X7>].