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Child Labor and Cultural Relativism: From 19th Century America to 21st Century Nepal

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ARTICLES

CHILD LABOR AND CULTURAL RELATIVISM: FROM 19TH CENTURY AMERICA TO 21ST CENTURY NEPAL

Michele D'Avolio*

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I. INTRODUCTION

In 1994, the World Trade Organization (WTO) was created at the conclusion of the Uruguay Round of international trade negotiations.¹ Its aspirations include “raising standards of liv-

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¹ See Kristen Weldon, *Piercing the Silence or Lulling You to Sleep: The Sounds of Child Labor*, 7-SPG WIDENER L. SYMP. J. 227, 233 (Spring 2001).

ing, ensuring full employment and a large and steady growing volume of real income . . . and expanding the production of and trade in goods and services"² Today, the WTO, with a membership of 138 sovereign nations, is a stark symbol of the ever-increasing trend of economic globalization.³ Its membership includes countries from every region, culture, and stage of economic development.⁴ WTO member states have agreed to limit their national sovereignty in exchange for the privilege of participating in and reaping the benefits of the global economy.⁵ Along with this trend towards economic globalization, there has also been a trend towards political and cultural globalization. This aspect of worldwide globalization is reflected in the plethora of international human rights instruments that have been drafted since World War II.⁶ These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child, the International Labor Organization's Minimum Age Convention, and the Convention on the Worst Forms of Child Labor.⁷

Unlike the many international human rights conventions, WTO trade agreements are negotiated on a reciprocal basis.⁸ Thus, what a nation gives up in import tariff reductions, it theoretically gains in reciprocal tariff reductions on its exports.⁹ These agreements are enforced via a dispute mechanism procedure, which provides sanctions for non-compliance, giving member states a real economic incentive to comply.¹⁰ Given that WTO agreements are binding and enforceable, many believe

² Marrakesh Agreement Establishing the World Trade Organization, pmbl, WTO (Jan. 9, 2003), <http://www.jurisint.org/pub/06/en/doc/02.htm>.

³ See generally ANDREAS F. LOWENFELD, AN UPDATE: INTERNATIONAL ECONOMIC TRANSACTIONS, Part II, 54-60 (N.Y.U. Publ. Fall 2002).

⁴ See Michael Moore, Opening Address to the WTO's 3rd Ministerial Conference (Nov. 30, 1999), http://www.wto.org/english/news_e/spmm_e/spmm16_e.htm.

⁵ See LOWENFELD, *supra* note 3, at 54-60.

⁶ See LINDA A. MALONE, INTERNATIONAL HUMAN RIGHTS 19 (Black Letter Series, West Group 2003).

⁷ See *id.*

⁸ See LOWENFELD, *supra* note 3, at 54-60.

⁹ See *id.*

¹⁰ See *id.*

that incorporating a labor reform clause into the WTO rules or multilateral trade agreements will ensure that all member states raise their labor standards accordingly.¹¹ "Such a clause would lay down minimum standards of corporate behavior as a condition of doing business globally."¹² This is not necessarily so, however.

At the WTO's first ministerial conference in Singapore in December 1996, some member states proposed adding a core labor standards provision to WTO agreements.¹³ This idea was quickly squelched. The Ministers, while affirming their commitment to internationally recognized core labor standards concluded nonetheless that the role of establishing core labor standards is more properly left with the International Labor Organization (ILO) than with the WTO.¹⁴ Likewise, at the WTO's third ministerial conference in Seattle, the idea was again raised.¹⁵ That conference ended in failure, however, partly due to President Clinton's statements that the WTO should use sanctions to enforce core labor rights throughout the world.¹⁶

Why would such seemingly humanitarian and progressive efforts to regulate core labor rights be doomed to failure? The answer: cultural relativism. The developing world views the western world's desire to use the WTO to enforce international labor standards as just another form of cultural imperialism.¹⁷ By imposing its 'superior' and 'enlightened' human rights' ideology on the rest of the world, developing countries fear that the West will effectively undermine the developing world's process of economic development and thereby further marginalize al-

¹¹ See CAROL BELLAMY, UNICEF, *THE STATE OF THE WORLD'S CHILDREN, IDEAS AND ACTIONS* 69-70 (1997); Kaushik Basu, *Child Labor: Cause, Consequence, and Cure, with Remarks on International Labor Standards*, 37 J. ECON. LITERATURE 1083, 1111 (1999).

¹² BELLAMY, *supra* note 11, at 69-70.

¹³ See Weldon, *supra* note 1, at 236.

¹⁴ See *id.*

¹⁵ See, e.g., Sam Howe Verhovek, *Trade Talks Start in Seattle Despite a Few Disruptions*, N.Y. TIMES, Nov. 30, 1999, at A1.

¹⁶ See, e.g., Steven Greenhouse and Joseph Kahn, *U.S. Effort to Add Labor Standards to Agenda Fails*, N.Y. TIMES, Dec. 3, 1999, at A1; see also Joseph Kahn and David E. Sanger, *Impasse on Trade Delivers A Stinging Blow to Clinton*, N.Y. TIMES, Dec. 5, 1999, at A1.

¹⁷ See Weldon, *supra* note 1, at 239-41.

ready disenfranchised peoples.¹⁸ Thus, the West's children's rights' discourse is perceived by the developing world as really just a thinly veiled form of protectionism.¹⁹ The developing world is able to compete in the global market because it has the 'advantage' of cheap labor. By linking trade agreements to minimum labor standards these countries worry that they will be robbed of their comparative advantage.²⁰ The result, they claim, will be the protection of western economic interests at the expense of developing countries' economic growth.²¹ In fact, they argue that their use of child labor is no different than the West's use of child labor in its early stages of development throughout the nineteenth century.²²

For these reasons, the developing world vociferously opposes western attempts to impose labor standards on them, claiming that once it has reached a desired stage of economic development, it will address its domestic labor concerns internally.²³ It is not within the purview of the WTO for the West to force its labor standards on them, particularly when those standards are detrimental to their economic growth and development.²⁴ These arguments lead us to question whether their development plan is compatible with long term sustainable economic growth. And more particularly, is their use of child labor detrimental to their goals of industrialization and technological advancement?

Studies have demonstrated that economic prosperity, industrialization, and technological development are intricately linked to educational attainment.²⁵ These studies seem to suggest that while a developing country's use of child labor may enhance its short-term economic condition, the practice is nonetheless antithetical to long-term sustainable economic development. This is so because employing children to work in

¹⁸ See *id.*

¹⁹ See BELLAMY, *supra* note 11, at 70; Basu, *supra* note 11, at 1112.

²⁰ See BELLAMY, *supra* note 11, at 70.

²¹ See Basu, *supra* note 11, at 1112.

²² See generally, WALTER I. TRATTNER, CRUSADE FOR THE CHILDREN: A HISTORY OF THE NATIONAL CHILD LABOR COMMITTEE AND CHILD LABOR REFORM IN AMERICA 23-32 (Quadrangle Books, 1970).

²³ See Weldon, *supra* note 1, at 240.

²⁴ See BELLAMY, *supra* note 11, at 70.

²⁵ See *World Development Report*, The World Bank Group, Attacking Poverty, at 49 (Sept. 2000), at <http://www.worldbank.org/poverty/wdrpoverty/report/>.

factories or agriculture necessarily detracts from their educational attainment, ensuring these young victims a life full of menial labor and poverty.²⁶ That being said, it is equally true that most developed countries reached their economic pinnacles on the heels of their histories of exploiting children.²⁷ Thus, developing countries are understandably resistant to what they view as the West's arrogant and hypocritical human rights discourse. Although their outrage at the West's hypocrisy may be reasonable, it does not provide a sufficient justification for allowing exploitative child labor practices to continue, especially where there is both increased awareness of the harm that the practice can cause and there are international resources that can be deployed to address and ideally eradicate this practice.

This leads us to question whether it is realistic to expect that the West can simultaneously respect the developing world's autonomy, assist in its economic development, and aid it in eradicating abusive child labor practices. To help answer this question, I first explore the history of child labor practices in the United States and the factors that led to its demise. I then consider the prevalence of child labor throughout the developing world with a particular emphasis on the situation as it currently exists in Nepal. Against this background, I have tried to juxtapose the debates, approaches, needs, and concerns of nineteenth century America with those of the developing world, while keeping in mind the developing world's specific concerns with regard to economic advancement and its cultural attitudes both towards children's rights and child labor. Finally, I attempt to provide a normative framework by which we can consider not only the causes of child labor, but the role that international organizations and international human rights standards, such as those set forth in the ILO conventions and in

²⁶ See BELLAMY, *supra* note 11, at 54 (indicating that primary and secondary education has been found to enhance the economic development process); Geir Myrstad, Action against Child Labour: The Importance of Free and Universal Primary Education, World Education Forum Dakar, Senegal, at 1 (Apr. 26-28, 2000), in IPEC, Jan. 2004, at <http://www.ilo.org/public/english/standards/ippec/speeches/speech006.htm>; Madeleine Grey Bullard, *Child Labor Prohibitions are Universal, Binding, and Obligatory Law: The Evolving State of Customary International Law Concerning the Unempowered Child Laborer*, 24 Hous. J. INT'L L. 139, 149 (Fall 2001).

²⁷ See TRATTNER, *supra* note 22, at 22-23.

the Convention on the Rights of the Child, can play to help eliminate child labor practices throughout the world.²⁸

II. NINETEENTH CENTURY AMERICA

a. *A Snapshot of Nineteenth Century Labor:*

Throughout the nineteenth and beginning of the twentieth century, child labor was quite common in the United States.²⁹ In the 1860's, children were employed in hazardous agricultural work, in the 1890's, they worked long hours on mechanical looms, and well into the 1920's, they were making and packaging cigars.³⁰ Most children were employed in agriculture and manufacturing work, but they were also employed in mines.³¹ Regardless of the industry in which they worked, these children were paid low wages and worked under terrible conditions.³² They often worked long hours in buildings that were dangerous firetraps with inadequate ventilation and unsafe equipment.³³ Employers sometimes used barbed wires or locked the doors to keep children at work.³⁴

In the nineteenth century, there were no laws that prohibited children from using dangerous machinery at work and accidents were common.³⁵ The accident rates of children were believed to be at least twice as high as those of adults, partly due to the fact that children were more easily distracted and quicker to tire from the long workdays.³⁶ An 1870 report from the Massachusetts Bureau of Labor noted the conditions of children night workers: "the children were drowsy and sleepy; have

²⁸ See generally BELLAMY, *supra* note 11, at 9-22.

²⁹ See Myron Weiner, *Children in Labor: How Sociocultural Values Support Child Labor*, THE WORLD & I, Feb. 1, 1995, vol. 10, issue 2, at 370, available at <http://www.worldandl.com/public/1995/february/ar6.cfm>.

³⁰ See *id.*

³¹ See Carolyn M. Moehling, *State Child Labor Laws and the Decline of Child Labor*, EXPLORATIONS IN ECONOMIC HISTORY, at 74 (1999), available at <http://www.bergen.org/ourstory/Resources/childlabor/webresources/statelaborlaws.pdf>.

³² See Weiner, *supra* note 29, at 370.

³³ See *id.*

³⁴ See Caroline G. Trinkley, *Child Labor in America: An Historical Perspective*, 13 IN PUB. INTEREST 59, 68 (1993).

³⁵ See Edith Abbott, *A Study of the Early History of Child Labor in America*, 14 AM. J. SOC. 15, 34 (July 1908), available at http://www.boondocksnet.com/labor/cl_0807_abbott.html.

³⁶ See Trinkley, *supra* note 34, at 70.

known them to fall asleep standing up at their work.”³⁷ For children who did not comply, punishment was routine. “A witness described to us an instrument for whipping children at a factory in Rhode Island, consisting of a leather strap, eighteen inches long, with tacks driven through the striking end.”³⁸

b. *The Origin of Child Labor:*

Although today there seems to be a consensus in the United States that child labor is exploitative and should be prohibited, this was not always the prevailing view.³⁹ The average person in Colonial America believed that child labor was good for the family and the community.⁴⁰ This belief derived in part from the English custom of requiring pauper children to work for their keep,⁴¹ and in part because the harshness of frontier life meant everyone, children included, had to help to clear the land and build the first settlements.⁴² The belief in child labor was also a natural extension of the Puritan and Quaker religious tenets that preached the virtue of industry and the vice of idleness.⁴³ Work, it was thought, was in the best interest of the child because it would help cultivate wholesome values and good moral development.⁴⁴

The practice was such an accepted part of the culture that various methods were devised to perpetuate it. For instance, in the 1600’s, to prevent hundreds of English orphans from becoming public charges, they were shipped from England to Virginia and bound out as laborers.⁴⁵ A letter from 1627 discloses “there are many ships going to Virginia and with them fourteen or fifteen hundred children.”⁴⁶ Under the Colonial poor laws, these and other poor children were bound out as apprentices and required to work for a master in exchange for being taught a trade.⁴⁷ The reality of this indentured system, however, was

³⁷ Abbott, *supra* note 35, at 34 n.78.

³⁸ Abbott, *supra* note 35, at 34.

³⁹ See Basu, *supra* note 11, at 1089.

⁴⁰ See TRATTNER, *supra* note 22, at 23.

⁴¹ See *id.* at 24.

⁴² See *id.* at 23.

⁴³ See *id.* at 22-25; see also Abbott, *supra* note 35, at 15-17.

⁴⁴ See TRATTNER, *supra* note 22, at 22; Abbott, *supra* note 35, at 19.

⁴⁵ See *id.* at 22, 25; Abbott, *supra* note 35, at 20.

⁴⁶ Abbott, *supra* note 35, at 20.

⁴⁷ See TRATTNER, *supra* note 22, at 24.

that children were not always taught a trade but they were nonetheless required to faithfully serve their master.⁴⁸

During the last quarter of the nineteenth century, the onset of the industrial revolution and the introduction of machinery increased the demand for child labor dramatically.⁴⁹ This dramatically unprecedented industrial growth created a host of unskilled jobs, which could be done by children who employers preferred over their higher paid adult counterparts.⁵⁰ There was also a fear that if businesses had to hire adults at higher wages, they would not be able to survive, which is a belief that is also widely accepted in developing countries today.⁵¹

Another common justification, which is also widely held throughout the developing world, is a belief that unskilled labor is better suited to children.⁵² Given a choice, most employers preferred to hire children to their adult counterparts.⁵³ After all, "they were cheaper . . . more tractable, reliable, and industrious, quicker, neater, and more careful, and, as labor unions developed, less likely to strike."⁵⁴ "Their nimble little fingers, it was said, enabled them to do hand stitching or rolling cigars."⁵⁵

Finally, similar to the living conditions of many families in developing countries today, nineteenth century American families relied on child labor to help meet the family's basic needs.⁵⁶ The large growth in immigration during that period further contributed to the child labor problem.⁵⁷ Most of the immigrants were unskilled laborers who relied upon the labor of their children to survive.⁵⁸ Arguably, however, child labor actu-

⁴⁸ See *id.*

⁴⁹ See Trinkley, *supra* note 34, at 67; TRATTNER, *supra* note 22, at 32.

⁵⁰ See TRATTNER, *supra* note 22, at 23, 25-26, 31; see also Weiner *supra* note 29, at 370; Zehra F. Arat, *Analyzing Child Labor as a Human Rights Issue: Its Causes, Aggravating Policies, and Alternative Proposals*, 24 HUM. RTS. Q. 177, 184 (2002) (Historical studies indicate that between 16-19 percent of the ten to fifteen year olds in the United States worked in the period from 1880 to 1910).

⁵¹ See Weiner, *supra* note 29, at 370.

⁵² See *id.*

⁵³ See TRATTNER, *supra* note 22, at 27.

⁵⁴ *Id.*

⁵⁵ Weiner, *supra* note 29, at 370.

⁵⁶ See Abbott, *supra* note 35, at 36; see also Arat, *supra* note 50, at 184; Kaushik Basu & Pham Hoang Van, *The Economics of Child Labor*, 88 THE AM. ECON. REV., vol. 88, issue 3, at 412-27, 415 (June 1998).

⁵⁷ See TRATTNER, *supra* note 22, at 32.

⁵⁸ See *id.*

ally exacerbated this problem by creating a large supply of cheap child labor that had a downward effect on adult male wages.⁵⁹

Although the practice of using children as laborers was not new to the industrial revolution, with the onset of the industrial revolution, there was a marked deterioration in the conditions under which children worked.⁶⁰ "In the cotton, silk, hat, and ribbon trades, for example, children five, six, or seven years old, deprived of all opportunity for an education, were crowded into airless factories and forced to work all day, or sometimes all night, under tortuous conditions for a tiny wage."⁶¹ "Chained, belted, harnessed like dogs in a go-cart, black, saturated with wet, and more than half-naked - - crawling upon their hands and feet, and dragging their heavy loads behind them - [the children] . . . present an appearance indescribably disgusting and unnatural."⁶² Rather than simply keeping children busy and cultivating good values, child labor produced sick persons with limited education who were greatly dependent on society.⁶³

c. *The Progressive Movement:*

As more children entered the workforce and working conditions continued to deteriorate, opposition movements began to emerge both in the United States and England.⁶⁴ Unlike the opposition that was taking place in England, which was centered upon the appalling conditions under which children worked,⁶⁵ the initial opposition in the United States was centered, not on working conditions, but on the lack of opportunity for education.⁶⁶ These concerns led many states initially to draft legislation compelling school attendance.⁶⁷ Later, in an attempt to garner support for passage of laws actually regulat-

⁵⁹ See *id.* at 27; see also Abbott, *supra* note 35, at 36.

⁶⁰ See TRATTNER, *supra* note 22, at 22.

⁶¹ *Id.* at 22-23.

⁶² *Id.* at 23 (quoting JOHN L. & BARBARA B. HAMMOND, *THE TOWN LABORER* 174 (New York, 1917)).

⁶³ See *id.* at 49.

⁶⁴ See TRATTNER, *supra* note 22, at 28-29.

⁶⁵ See *id.* at 28.

⁶⁶ See *id.* at 28-29.

⁶⁷ See Moehling, *supra* note 31, at 74.

ing the practices of child labor, the opposition movement contended that the practice had a downward effect on adult wages. This contention prompted newly formed labor unions to join the campaign for child labor reform legislation.⁶⁸ The unions pushed for legislation limiting the hours that children could work and for laws setting minimum age requirements.⁶⁹ Unfortunately, however, many of the laws enacted before 1880 had no enforcement provisions⁷⁰ and those that did were still widely violated and rarely enforced.⁷¹ By 1899, forty-four states had some form of child labor legislation, although there were wide variations in the laws.⁷²

Overall, reform proceeded slowly, partly because there was very little data on child labor in the early 1800's, leaving the public largely unaware of the extent of the problem.⁷³ It was not until census data was published in 1870, 1880, and 1890 that the general public was informed of the breadth of child labor and the extent to which it was increasing.⁷⁴ Public awareness was again raised with the publication of the 1900 census, which showed that with rapid industrialization the employment rate of children was again on the rise.⁷⁵ This heightened public awareness led, in the early 1900's, to the emergence of well-organized child labor reform movements.⁷⁶ These movements were linked to the more general socio-economic reform campaigns of the Progressive Movement.⁷⁷

The child labor reform movement found strong allies in national organized labor movements such as the American Federation of Labor and in women's rights organizations, such as the

⁶⁸ See TRATTNER, *supra* note 22, at 30.

⁶⁹ See *id.*

⁷⁰ See *id.*; see also Moehling, *supra* note 31, at 74.

⁷¹ See TRATTNER, *supra* note 22, at 30; see also Abbott, *supra* note 35, at 32-33.

⁷² See Moehling, *supra* note 31, at 75.

⁷³ See TRATTNER, *supra* note 22, at 31.

⁷⁴ See *id.* at 32-36; see also John J. Tierney, *The World of Child Labor*, THE WORLD & I, Aug. 1, 2000, vol. 15, Issue 8, at 54 ("The 1870 census, the first to report [statistics on the employment of children in the United States], found there to be 750,000 workers 15 and under, not including those in family businesses").

⁷⁵ See Moehling, *supra* note 29, at 75; TRATTNER, *supra* note 38, at 41.

⁷⁶ See Moehling, *supra* note 29, at 74; Celeste Corlett, *Impact of the 2000 Child Labor Treaty on United States Child Laborers*, 19 ARIZ. J. INT'L & COMP. L. 713, 716 (2002).

⁷⁷ See TRATTNER, *supra* note 38, at 45.

Women's Christian Temperance Union.⁷⁸ While the early child labor reformers did not call for the eradication of all child labor, they did oppose employment that interfered with the child's physical, mental, or moral growth, such as when children were employed at very young ages, worked long hours, worked in unhealthy conditions, or when work interfered with their schooling.⁷⁹

The child labor reform movement was led by the National Child Labor Committee (NCLC), which was established in 1904.⁸⁰ Its goal was to gather data about the extent of child labor, the conditions under which children labored, and the effect such labor had on children.⁸¹ Armed with this data, the NCLC aimed to garner public sentiment in support of child labor reform and to push for legislation regulating child labor, education, and health.⁸² In pursuit of its goals, the NCLC pioneered the techniques of mass political action, including the widespread use of photography, pamphlets, leaflets, mass mailings, and sophisticated lobbying efforts.⁸³ In particular, the NCLC mastered the use of photojournalism designed to increase public awareness and change public perceptions of child labor. This feat was accomplished largely due to the work of Lewis Hine, a photographer and social reformer hired by the NCLC to document child laborers.⁸⁴ Owen Lovejoy, the general Secretary of NCLC, wrote that Hine's photographs were "more responsible than any or all other efforts to bring the facts or conditions of child labor employment to public attention."⁸⁵

The NCLC directed its efforts at lobbying for state child labor legislation and the creation of a federal agency to collect and disseminate information on the needs of children.⁸⁶ By 1912,

⁷⁸ See *id.* at 51-56; see also Moehling, *supra* note 31, at 74-75.

⁷⁹ See TRATTNER, *supra* note 22, at 49.

⁸⁰ See *id.* at 58; see also Irwin Yellowitz, *Child Labor*, The Reader's Companion to American History, at (E-Library, http://college.hmco.com/history/reader-scomp/rcah/html/ah_016300_childlabor.htm (Jan. 1, 1991).

⁸¹ See TRATTNER, *supra* note 22, at 58-60.

⁸² See TRATTNER, *supra* note 22, at 58-60.

⁸³ See *id.* at 69-79; see also Yellowitz, *supra* note 80.

⁸⁴ See TRATTNER, *supra* note 38, at 105-06; see also Patricia Pace, *Staging Childhood: Lewis Hine's Photographs of Child Labor*, THE LION AND THE UNICORN, vol. 26, no. 3, at 324-26 (John Hopkins University Press, Sept. 2002).

⁸⁵ Pace, *supra* note 84, at 324.

⁸⁶ See TRATTNER, *supra* note 22, at 95-99.

the NCLC had garnered sufficient public support to pressure thirty-four state governments to either pass new child labor laws or to amend their existing state statutes.⁸⁷ The new child labor laws included legislation for compulsory schooling, grade completion requirements, and regulated the age, hours, and type of work children could perform.⁸⁸ Although by that time, most states had passed some form of child labor regulations, the regulations were largely ineffective because they contained relatively weak and inconsistent provisions.⁸⁹ To further complicate matters, these laws were also met with fierce resistance from manufacturers, particularly in southern states where child labor was still relied upon to gain a competitive advantage.⁹⁰ When it became apparent that the powerful influence of manufacturers limited the progress that could be made at the state level, the NCLC began lobbying for federal child labor legislation.⁹¹

The NCLC's efforts were realized in 1916 when, relying on the Commerce Clause, Congress passed legislation prohibiting the interstate transport of articles that were produced in violation of a federal child labor law that restricted the age and working hours of child laborers.⁹² These efforts were soon to be defeated, however, when in July 1918, the Supreme Court declared the legislation unconstitutional.⁹³ In its decision in *Hammer v. Dagenhart*, the Court held that the legislation exceeded Congress' authority under the Commerce Clause and was an interference with states' rights.⁹⁴ This led the NCLC to push for a constitutional amendment giving Congress the power to regulate child labor.⁹⁵ The southern textile industry and the

⁸⁷ See *id.* at 98-99; see also Moehling, *supra* note 31, at 74-75.

⁸⁸ See TRATTNER, *supra* note 22, at 98-99.

⁸⁹ See TRATTNER, *supra* note 22, at 115-16; see also Moehling, *supra* note 31, at 75-78.

⁹⁰ See TRATTNER, *supra* note 22, at 115-16; see also Moehling, *supra* note 31, at 75-78.

⁹¹ See TRATTNER, *supra* note 22, at 125-26; see also Moehling, *supra* note 31, at 75-78.

⁹² See TRATTNER, *supra* note 22, at 131; see also Moehling, *supra* note 31, at 78.

⁹³ See *Hammer v. Dagenhart*, 247 U.S. 251 (1918), *overruled by* *United States v. Darby*, 312 U.S. 100 (1941).

⁹⁴ See *id.* at 276; see also TRATTNER, *supra* note 22, at 136.

⁹⁵ See TRATTNER, *supra* note 22, at 164.

National Association of Manufacturers both lobbied successfully against the proposed amendment.⁹⁶ Consequently, it was not until the Fair Labor Standards Act (FLSA) was passed in 1938 that Congress finally succeeded in passing federal legislation regulating child labor.⁹⁷ The passage of the FLSA was largely due to the new political climate in the aftermath of the Great Depression.⁹⁸ The prevailing view at that time was that government intervention in the economy was necessary to improve both economic and working conditions.⁹⁹ The FLSA set minimum wages, maximum hours, and minimum age requirements for workers whose goods were shipped in interstate commerce.¹⁰⁰ The Act exempted agricultural workers from its protections, however.¹⁰¹ This exemption was largely due to the pressure from southern states where it was widely believed that legislation regulating child agricultural workers would hinder the southern economy, which was largely dependent on agricultural production.¹⁰²

d. *Causes For the Decline in Child Labor in the U.S.:*

Between 1880 and 1930, the occupation rate of children between the ages of ten and fifteen fell by over seventy-five percent.¹⁰³ The dramatic decline in the child labor occupation rate was arguably the result of a confluence of factors. One factor undoubtedly was the child labor reform movement's successful efforts to increase public awareness and modify public perceptions of child labor.¹⁰⁴ The general public's heightened awareness of and increasing dismay with child labor practices was reflected in the passage of many state child labor laws.¹⁰⁵ These laws took two forms: legislation that made primary education compulsory and legislation that regulated child labor.¹⁰⁶ Although the passage of such laws did help by creating a new

⁹⁶ See *id.* at 166-76.

⁹⁷ See *id.* at 204.

⁹⁸ See Corlett, *supra* note 76, at 716-17.

⁹⁹ See Corlett, *supra* note 76, at 716-17.

¹⁰⁰ See TRATTNER, *supra* note 22, at 203-04.

¹⁰¹ See *id.* at 205.

¹⁰² See *id.* at 207.

¹⁰³ See Moehling, *supra* note 31, at 72.

¹⁰⁴ See *id.* at 74-75.

¹⁰⁵ See *id.* at 75.

¹⁰⁶ See *id.* at 78.

normative discourse in opposition to child labor, it is questionable whether these laws actually led to either an increase in educational attainment or a decrease in child labor practices.

A study published in the *Journal of Law and Economics* examined the effect that compulsory school attendance laws had on educational attainment from 1914 to 1939.¹⁰⁷ During that time, the percentage of young adults with high school degrees increased by a factor of five.¹⁰⁸ The study concluded that requiring a child to attend school for one additional year led to an increase in educational attainment by only about five percent.¹⁰⁹ On this basis, the author concluded that while these laws were somewhat effective in their goal of increasing educational attainment, the actual increases could not be attributed wholly to compulsory school attendance laws and were, therefore, presumably due to a multitude of factors.¹¹⁰

Likewise, there does not appear to be a significant link between the passage of child labor reform laws and the dramatic decline in the incidence of child labor. In fact, by the time the most salient child labor legislation, the FLSA, was passed, the employment rate of ten to fifteen year-old child laborers had already fallen to below five percent.¹¹¹ Ostensibly, it appears from these statistics that rather than generating social change, child labor reform legislation seems to have been a response to changes that were already occurring in the socio-economic environment. In other words, changes in socio-economic conditions created a decline in the demand for child labor and a corresponding increase in public opposition to its practice.¹¹² The confluence of these two factors weakened the opposition to child labor reform laws, essentially ensuring their passage.¹¹³

Carolyn Moehling, an economist at Ohio State University, confirmed this theory in a study in which she examined the relationship between child labor reform legislation and the decline in the child labor force participation rate in the nineteenth

¹⁰⁷ See Adriana Lleras-Muney, *Were Compulsory Attendance and Child Labor Laws Effective? An Analysis From 1915-1939*, 45 J.L. & ECON. 401, 402 (Oct. 2002).

¹⁰⁸ See *id.* at 401.

¹⁰⁹ See *id.* at 427.

¹¹⁰ See *id.* at 401, 427.

¹¹¹ See Moehling, *supra* note 31, at 78.

¹¹² See *id.* at 73.

¹¹³ See *id.* at 74, 94-95; see also Basu, *supra* note 11, at 1089-90.

century.¹¹⁴ The focus of her study was the effects of age restrictions in the manufacturing sector.¹¹⁵ On the basis of what she calls a “differences-in-differences-in-differences” test to isolate the effects of age restrictions on manufacturing employment, she determined that state child labor laws prescribing minimum age limits on manufacturing employment had “relatively little effect . . . on the dramatic decline in the occupational rates of children during that time period” and conclude[s] that “these restrictions contributed little to the long run decline in child labor.”¹¹⁶

All in all, it appears from historical studies that have tracked the decline in child labor that the most significant causative factor was neither moral outrage nor legal prohibitions, but rather an actual decrease in the need for child workers.¹¹⁷ This was the result of three main factors. One, technological advances essentially eliminated the importance of and demand for unskilled labor.¹¹⁸ “Many simple tasks done by children were mechanized and semiskilled adults became necessary to make the most efficient use of the equipment.”¹¹⁹ Two, the increase in immigration during this period led to an influx of cheap unskilled adult workers, thereby reducing the importance of child labor.¹²⁰ Three, as the economy developed, the overall standard of living rose and it was no longer necessary for families to send their children to work to meet their basic needs.¹²¹

e. *The Role of International Human Rights Law:*

In the early 1900’s, prior to the United States’ domestic child labor reform movement, there were no international child labor standards. It was not until after the First World War that an international populist movement demanding workers rights

¹¹⁴ See Moehling, *supra* note 31, at 94-95.

¹¹⁵ See *id.* at 74.

¹¹⁶ *Id.* at 72.

¹¹⁷ See generally Basu, *supra* note 119, at 1089-91; see also Yellowitz, *supra* note 80.

¹¹⁸ See Moehling, *supra* note 29, at 73; Yellowitz, *supra* note 80.

¹¹⁹ Yellowitz, *supra* note 80.

¹²⁰ See Lleras-Muney, *supra* note 107, at 401; Moehling, *supra* note 29, at 73.

¹²¹ See Lleras-Muney, *supra* note 107, at 401.

emerged.¹²² This reform movement cumulated in 1919 with the creation of the International Labor Organization (ILO), which has the power to draft and adopt conventions setting forth international labor standards.¹²³ The ILO collaborates with workers, employers, and governments to establish universal core employment standards.¹²⁴ Since 1919, the ILO has sought to limit the use of child labor by adopting standards setting the minimum age for employment and regulating the conditions under which children work.¹²⁵

At its first session, the ILO adopted convention number 5, which prohibited children under the age of fourteen from working in industry.¹²⁶ Although child labor reformers pushed for American involvement in the ILO as a way to circumvent the Supreme Court decisions striking down national labor legislation, the United States did not join the ILO until 1934, well after child labor was on the decline.¹²⁷ Therefore, it appears that the ILO convention had little, if any, impact on the decline in child labor in the United States.

f. *The U.S. Child Labor Situation Today:*

Despite the dramatic declines in child labor practices in the twentieth century, the practice, nonetheless, still persists. Hundreds of thousands of children and teens work each year in the agricultural industry, which is one of the least protected and most hazardous areas of employment in the United States.¹²⁸ The FLSA exempts agricultural workers from mini-

¹²² See Michael A. Toyna, *Baby Steps Towards International Fair Labor Standards: Evaluating the Child Labor Deterrence Act*, 24 CASE W. RES. J. INT'L L. 631, 638 (1992).

¹²³ See *id.* at 638-39.

¹²⁴ See *id.*

¹²⁵ See generally ILO, About the ILO, available at <http://www.ilo.org/public/english/about/index.htm> (last visited Jan. 27, 2004).

¹²⁶ See *id.*

¹²⁷ See About the ILO, *supra* note 125; see also Edward C. Lorenz, *The Search For Constitutional Protection of Labor Standards, 1924-1941: From Interstate Compacts to International Treaties*, 23 SEATTLE U. L. REV. 569, 569 (2000).

¹²⁸ See Human Rights Watch, *Fingers to the Bone: United States Failures to Protect Child Farmworkers*, ch. III (June 2000), at <http://www.hrw.org/reports/2000/frmwkr/index.htm>; see also Human Rights Watch, *Abusive Child Labor Found in U.S. Agriculture: U.S. Law Discriminates Against Child Farmworkers* [hereinafter *Abusive Child Labor*] (June 20, 2000), at <http://www.hrw.org/press/2000/06/farmwrk0619.htm>.

mum age and maximum hour requirements and allows children to engage in hazardous work at the age of sixteen; whereas for all other occupations, the minimum age for hazardous work is eighteen.¹²⁹ This is particularly troublesome given that child agricultural workers are routinely exposed to dangerous pesticides, commonly work twelve-hour days, six or seven days a week, and suffer high rates of injury from farm equipment.¹³⁰ An estimated eighty-five % of these children are racial minorities and only fifty-five % of them will graduate from high school.¹³¹ There is little doubt that such practices violate the 1999 ILO Worst Forms of Child Labor Convention, which the U.S. ratified in December of 1999.¹³²

III. TWENTY-FIRST CENTURY NEPAL

a. *Child Labor Situation Today:*

Currently, it is estimated that approximately 250 million children work throughout the world and ninety-eight % of them are found in developing countries.¹³³ Nepal is certainly no exception. According to the International Labor Organization-International Program on the Elimination of Child Labor (ILO-IPEC) 1996 child labor survey, approximately forty-two % of Nepalese children between the ages of five and fourteen work.¹³⁴ This percentage represents approximately 2.6 million children out of 6.2 million in that age group.¹³⁵ Of the forty-two % of working children, twenty-six % attend school and work, while 16 % only work.¹³⁶ Approximately thirty-two % of all children aged five to fourteen years old are not attending school at all.¹³⁷

¹²⁹ See *Abusive Child Labor*, *supra* note 128.

¹³⁰ See *id.*

¹³¹ See *id.*

¹³² See ILO, International Programme on the Elimination of Child Labour, at www.ilo.org/public/english/standards/ipecc/ratification/map/index.htm.

¹³³ See Bhim Raj Suwal, Bal Kumar KC, Keshab Prasad Adhikari, ILO/IPEC, Child Labour Situation in Nepal, Central Dep't of Population Studies, Kathmandu, Nepal, ch. I, at 1 (Sept. 1997).

¹³⁴ ILO/IPEC Country Profile: Nepal, at 1 (2001), www.ilo.org/public/english/standards/ipecc/timebound/nepal.pdf.

¹³⁵ See *id.*

¹³⁶ See Suwal, *supra* note 133, ch. III, at 27.

¹³⁷ See *id.* ch. III, at 28.

Of the 2.6 million working children in Nepal, it is estimated that 1.7 million are economically active, working in the market economy as opposed to doing work for their families in the home, such as caring for younger siblings.¹³⁸ These children work in a myriad of areas including weaving, brick making, carpet making, garment manufacturing, domestic work, prostitution, and approximately 94.7% work in agriculture.¹³⁹

Just as the industrial revolution led to an increase in child laborers in the United States, the child labor situation in Nepal also appears to be worsening as that country strives to expand its economy.¹⁴⁰ The increase in the number of working children in Nepal is likely due to factors similar to those that led to the increase in child labor in nineteenth century America. These factors include poverty, which necessitates sending children into the workplace to assist in the family's survival.¹⁴¹ Nepal is one of the poorest countries in the world with over half of the population living on less than one dollar a day.¹⁴² In 2000, Nepal ranked 144th out of 174 countries in the United Nations Development Programme (UNDP) Human Development Index, which measures socio-economic development in terms of life expectancy, educational attainment, and adjusted real income.¹⁴³ Nepal's adult illiteracy rate is exceptionally high at approximately sixty % of the adult population.¹⁴⁴ Its low socio-economic development serves to perpetuate Nepal's reliance on child labor by creating a class of unskilled, illiterate adult laborers who desperately rely on their children's labor to survive. Of the total children working in Nepal, fifty-two % are children of illiterate parents.¹⁴⁵

Analogous to the United States' experience in the nineteenth century, another factor which has contributed to Nepal's

¹³⁸ See *id.* ch. III, at 37.

¹³⁹ See *id.* ch. I, at 2, ch. III, at 50; see also ILO/IPEC Country Profile: Nepal, *supra* note 134, at 1.

¹⁴⁰ See Suwal, *supra* note 133, ch. I, at 2.

¹⁴¹ See *id.* ch. I, at 3.

¹⁴² See ILO/IPEC Country Profile: Nepal, *supra* note 134, at 4.

¹⁴³ See *id.*; see also *Human Development Report*, United Nations Development Programme, Deepening Democracy in a Fragmented World, Human Development Index 151 tbl.1 (2002), http://www.undp.org/hdr2002/presskit/HDR%20PR_HDI.pdf.

¹⁴⁴ See ILO/IPEC Country Profile: Nepal, *supra* note 134, at 4.

¹⁴⁵ See Suwal, *supra* note 133, ch. III, at 31.

reliance on child labor is a lack of investment in technology, keeping the country dependent upon unskilled labor.¹⁴⁶ Lack of access to quality education is another major cause of child labor.¹⁴⁷ Moreover, Nepal's adherence to discriminatory social customs, such as the practice of bonded labor, also serves to perpetuate child labor.¹⁴⁸ Under the Kamaiya system, poor farmers who borrow money from local landlords are required to work for the landlord until the debt is repaid.¹⁴⁹ The system is so exploitive that once bonded, it is nearly impossible for the laborer to free himself.¹⁵⁰ Instead of decreasing overtime, the loans increase and the bondage status is passed down over generations.¹⁵¹ Even more disturbing, the landlords have rights over the wife and children of the borrower, not just the borrower himself.¹⁵²

The actual conditions under which Nepalese children work are as hazardous and oppressive as the conditions under which American children worked in the nineteenth century. Nepalese children who work in agriculture work as much as ten hours a day facing risk of injury from operating heavy farm machinery and wielding sharp tools, such as machetes.¹⁵³ The risks these children face are enormous. "Children pick crops still dripping with pesticides or spray the chemicals themselves. They face poisonous snakes and insects and cut themselves on tough stems and on the tools they use. Rising early to work in the damp and cold, often barefoot and dressed in inadequate clothes, they develop chronic coughs and pneumonia."¹⁵⁴ In Nepal, children working on tea estates are paid so little that they must work fourteen-hour days to eke out a meager existence.¹⁵⁵ Children as young as four years old work in brick-kiln opera-

¹⁴⁶ See *id.* ch. I, at 3.

¹⁴⁷ See *id.* ch. III, at 31; see also ILO/IPEC Country Profile: Nepal, *supra* note 134, at 3.

¹⁴⁸ See ILO/IPEC, Nepal: Action Against Bondage: IPEC Support for NGOs (Aug. 13, 2001), <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/facts11.htm>.

¹⁴⁹ See *id.*

¹⁵⁰ See *id.*

¹⁵¹ See *id.*

¹⁵² See *id.*

¹⁵³ See BELLAMY, *supra* note 11, at 38-39.

¹⁵⁴ *Id.* at 38.

¹⁵⁵ See *id.* at 40.

tions, turning over row after row of bricks.¹⁵⁶ Older children carry bricks on their heads from the brickfields to the loading trucks, earning just twenty-five cents for every 100 trips.¹⁵⁷ Children employed in the hand-knotted carpet industry "often work in confined, dimly-lit workshops."¹⁵⁸ "Many develop respiratory illnesses and suffer spinal deformities and retarded growth from long hours of work crouched in dust-filled rooms. Cuts and wounds from sharp tools are common."¹⁵⁹ It is estimated that over 31,000 Nepalese children work as domestic servants.¹⁶⁰ Young girls that work as domestic servants often suffer physical, mental, and sexual abuse.¹⁶¹ It is also estimated that thousands of young Nepalese girls are trafficked into India for prostitution every year.¹⁶² Children also work in the construction industry performing various tasks that include carrying heavy loads and breaking stones.¹⁶³ These children face serious health and safety risks including "falls, exposure to dust, heat, and noise, and numerous accidents and injuries."¹⁶⁴ As porters, children carry up to 150 pounds, work as much as fourteen hours a day, and seldom earn more than \$1.60 per day.¹⁶⁵

These conditions persist despite the fact that Nepal, like most countries, has laws that prescribe the minimum ages for certain work and regulate the conditions of that work. Again, this situation is analogous to the situation that existed in nineteenth century America when state laws regulating child labor were widely violated and rarely enforced. Shockingly, however, these conditions persist despite the fact that the Constitution of Nepal, unlike the United States Constitution, has provisions guaranteeing fundamental rights to children.¹⁶⁶ Article 20 pro-

¹⁵⁶ See BUREAU OF INT'L LABOR AFFAIRS, U.S. DEP'T OF LABOR, BY THE SWEAT AND TOIL OF CHILDREN: EFFORTS TO ELIMINATE CHILD LABOR, ch.II (1998), <http://www.dol.gov/ilab/media/reports/iclp/sweat5/toc.htm>.

¹⁵⁷ See BELLAMY, *supra* note 11, at 35.

¹⁵⁸ BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.II.

¹⁵⁹ *Id.*

¹⁶⁰ See *id.* at 21.

¹⁶¹ See *id.* at 20.

¹⁶² See *id.* at 22.

¹⁶³ See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, at 25.

¹⁶⁴ *Id.* at 26.

¹⁶⁵ See *id.* at 25.

¹⁶⁶ See ILO/IPEC Country Profile: Nepal, *supra* note 134, at 3.

hibits traffic in human beings, slavery, serfdom, and all types of forced labor.¹⁶⁷ That article also prohibits the employment of minors in factories, mines, and other hazardous worksites.¹⁶⁸ In accordance with these constitutional provisions, Nepal enacted the Labour Act of 1992 and the Children's Act of 1992.¹⁶⁹

In February of 1995, the government of Nepal signed a Memorandum of Understanding with ILO-IPEC agreeing to launch a national program to eliminate child labor.¹⁷⁰ In pursuit of this goal, Nepal has developed partnerships with employers and workers organizations and domestic non-governmental organizations (NGO's).¹⁷¹ In May of 1997, Nepal ratified the ILO Minimum Age Convention and prescribed a minimum age for basic work of fourteen years and hazardous work of sixteen years.¹⁷² These minimums are consistent with Nepal's existing law under the Labour Act. The minimum age for basic work is subject to exemptions, however.¹⁷³ For example, work in agriculture, where almost 95% of children work, and work in hazardous enterprises such as brick kilns is excluded.¹⁷⁴ Nepal also has laws limiting the number of hours children can work to six per day.¹⁷⁵

Nepal's Ministry of Labor is responsible for enforcing the country's child labor laws.¹⁷⁶ Currently, the Ministry is focusing its efforts on eradicating the worst forms of child labor.¹⁷⁷ Working with ILO-IPEC, Nepal has initiated several programs to rehabilitate and provide educational opportunities for bonded children.¹⁷⁸ Additionally, in an effort to increase school enrollment and attendance in Nepal, the World Food Program (WFP) and IPEC are providing school children with meals and their

¹⁶⁷ See *id.*

¹⁶⁸ See *id.*

¹⁶⁹ See *id.*

¹⁷⁰ See *id.* at 1.

¹⁷¹ See ILO/IPEC Country Profile: Nepal, *supra* note 134, at 1.

¹⁷² See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.III, at tbl.III-1.

¹⁷³ See *id.*

¹⁷⁴ See *id.* at 6.

¹⁷⁵ See *id.* at 8.

¹⁷⁶ See *id.* at 12.

¹⁷⁷ See ILO/IPEC Country Profile: Nepal, *supra* note 134, at 3.

¹⁷⁸ See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.V.

mothers are given a food contribution.¹⁷⁹ Also in conjunction with ILO-IPEC, the National Society for the Protection of the Environment and Children has established a rehabilitation program for children working in Nepal's carpet industry.¹⁸⁰ ILO-IPEC is also working with the Nepalese Ministry of Women and Social Affairs "to eliminate trafficking and commercial sexual exploitation of children."¹⁸¹ In July of 2000, the government outlawed the practice of bonded labor or Kamaiyas and in January 2002, Nepal ratified the ILO Convention on the Worst Forms of Child Labor.¹⁸² Unlike the experience of child labor reformers in nineteenth century America, who were somewhat isolated in their endeavors, the Nepalese government has sought to integrate its efforts to reform child labor with those of employers, workers, domestic NGO's, and the international community.

Disappointingly however, Nepal has no compulsory educational laws, either mandating that children attend school until they reach a minimum age or attend school for a minimum number of years.¹⁸³ "While there is no compulsory schooling, primary education is free for all children between the ages of six and twelve."¹⁸⁴ That being said, however, there are many obstacles to school attendance including discrimination.¹⁸⁵ In some places in Nepal where discriminatory attitudes are pervasive, minorities and lower-caste children are not permitted to attend the same schools as upper-caste children.¹⁸⁶ The obstacles to school attendance are evidenced by the fact that even with free primary education, the primary school enrollment rate is only about seventy %, and of those children who do attend school, approximately fifty-two % leave school before reaching the fifth grade.¹⁸⁷ This is so despite the fact that Nepal's national expenditure on education is 3.1% of its gross national product and fourteen % of its total government

¹⁷⁹ See ILO, Child Labour and Education: An IPEC Perspective, at 5, http://www.ilo.org/public/english/standards/ipec/publ/policy/childlabour_education.pdf.

¹⁸⁰ See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.V.

¹⁸¹ *Id.* at 17.

¹⁸² See ILO/IPEC Country Profile: Nepal, *supra* note 134, at 4.

¹⁸³ See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.IV tbl.IV-1.

¹⁸⁴ *Id.* at 4.

¹⁸⁵ See *id.* at 17.

¹⁸⁶ See *id.*

¹⁸⁷ See *id.* at 7-9.

expenditures.¹⁸⁸ Of that amount, Nepal dedicates forty-five % to primary education.¹⁸⁹ The low levels of educational enrollment and attainment, however, lead one to question both the accessibility and quality of Nepal's primary educational system.

b. *Cultural Relativism:*

Although child labor continues in both developing and industrialized nations, the vast majority of child labor is concentrated in developing countries.¹⁹⁰ The ILO estimates that approximately 211 million children between the ages of five and fourteen are employed in developing countries.¹⁹¹ Of these children, approximately sixty-one % are employed in Asia, thirty-two % in Africa, and seven % in Latin America.¹⁹² The participation work rate of children between the ages of five and fourteen is about forty-one % in Africa, twenty-two % in Asia, and seventeen % in Latin America.¹⁹³ In Nepal, approximately forty-three % of children ages ten to fourteen years old are employed.¹⁹⁴

Child laborers often work in hazardous conditions where they are exposed to toxic substances and solvents that endanger their health and safety.¹⁹⁵ According to IPEC, there were approximately 186 million children below the age of fifteen working in 2000.¹⁹⁶ About 110 million of these were below the age of twelve.¹⁹⁷ Moreover, of the 246 million child laborers aged five

¹⁸⁸ See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, at 9 tbl.IV-3 (Nepal's educational expenditures have improved over time, for instance in the period from 1985-87, the corresponding figures were 2.2% and 10.4%, respectively. Corresponding figures for the United States during the 1995-97 period were 5.4% of GNP and 14.4% of total government expenditures).

¹⁸⁹ See *id.* (the corresponding figure for the 1985-86 period was 35.7%); see also BELLAMY, *supra* note 11, at 90 tbl.6: Economic Indicators (by contrast Nepal dedicates approximately 6% of its total government expenditures towards its military budget).

¹⁹⁰ See Bullard, *supra* note 26, at 141.

¹⁹¹ See ILO/IPEC, *Action against Child Labour: Highlights 2002*, at 13 (Oct. 2002), http://www.ilo.org/public/english/standards/ipecc/about/implementation/ipecc_report_2002.pdf.

¹⁹² See *id.* at 11, 31; see also Arat, *supra* note 51, at 181 tbl.1.

¹⁹³ See Arat, *supra* note 50, at 181 tbl.1.

¹⁹⁴ World Development Report 2000/2001, *supra* note 25, at 278-79 tbl.3.

¹⁹⁵ See Bullard, *supra* note 26, at 151-53.

¹⁹⁶ See *Action against Child Labour: Highlights 2002*, *supra* note 191, at 13.

¹⁹⁷ See *id.*

to seventeen, approximately 171 million were working in hazardous conditions.¹⁹⁸ These children are frequently both physically and mentally abused by their employers.¹⁹⁹ Shockingly, of the 171 million children working in hazardous conditions, it is estimated that approximately 8.4 million were involved in the unconventional worst forms of child labor that are listed in Convention on the Rights of the Child (CRC) Convention No. 182, Article 3, including forced and bonded labor, armed conflict, prostitution, and pornography.²⁰⁰ Although most countries have laws that regulate child labor similar to the laws that were enacted in nineteenth century America, most of these laws are limited in scope and rarely enforced.²⁰¹

The international community, led by western nations, has recently sought to mandate both higher child labor standards and more effective monitoring and enforcement mechanisms throughout the world.²⁰² One way in which the West sought to do this was by linking social causes, such as child labor reform to trade agreements negotiated under the auspices of the WTO.²⁰³ Much like the United States' child labor reform movement was met with fierce resistance from southern states, the WTO social clause agenda has been met with fierce resistance from the developing world.²⁰⁴ These countries contend that the West's sudden interest in children's rights is not really driven by noble humanitarian aspirations, but rather by self-serving economic motives to protect western trade from the competition of lower priced goods produced in developing countries.²⁰⁵

In support of their position, the developing world advances an argument similar to the one advanced by southern states during the United States' child labor reform movement. That is, they contend that mandating higher labor standards will increase their costs of production, thereby robbing them of their

¹⁹⁸ See *id.*

¹⁹⁹ See Bullard, *supra* note 26, at 150-53.

²⁰⁰ See *Action against Child Labour: Highlights 2002*, *supra* note 191, at 13-14.

²⁰¹ See Bullard, *supra* note 26, at 142-43.

²⁰² See Basu, *supra* note 11, at 1083, 1111-12; see also William E. Myers, *The Right Rights? Child Labor in a Globalizing World*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 38, 42 (May 2001).

²⁰³ See Basu, *supra* note 11, at 1111-12; see also Weldon, *supra* note 1, at 237-40.

²⁰⁴ See Weldon, *supra* note 1, at 240-41.

²⁰⁵ See *id.*

comparative advantage and hindering their economic development.²⁰⁶ Also, just as the proponents of child labor in nineteenth century America justified that practice as an economic necessity, developing countries argue that child labor is indispensable for poor families to meet their basic needs; leaving these families with no alternative to child labor short of hunger, homelessness, and possibly starvation.²⁰⁷ This is especially so where schooling is either inaccessible, of poor quality, or simply viewed as irrelevant to the reality of their lives.²⁰⁸

c. *Role of International Law:*

Given the developing world's concerns regarding the perceived inverse relationship between child labor and economic development, it is crucial that the international community does not simply take the position that all child labor must be eradicated. Two of the three main international conventions that seek to regulate child labor are, in fact, cognizant of developing countries' concerns and seek to address them.²⁰⁹ Briefly, the three main international conventions that address child labor are the ILO Minimum Age Convention (No. 138), the ILO Worst Forms of Child Labor Convention (No. 182), and the Convention on the Rights of the Child (CRC).²¹⁰ Both the Worst Forms of Child Labor Convention and the CRC seek to address the developing world's concerns by calling on states to eliminate only exploitative child labor practices.²¹¹

In 1973, the ILO adopted convention number 138, a comprehensive convention on the subject of minimum age for employment.²¹² This convention, which applies to all economic

²⁰⁶ See *id.*

²⁰⁷ See *id.*

²⁰⁸ See Weiner, *supra* note 29, at 370.

²⁰⁹ See generally ILO, Minimum Age Convention 138, ILOLEX, June 6, 1973, arts. 2(4), 5, <http://www.ilo.org/ilolex/english/convdisp1.htm>; Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, art. 32, at 167, U.N. Doc. A/44/49 (1989).

²¹⁰ See generally Minimum Age Convention 138, *supra* note 211; ILO, Worst Forms of Child Labour Convention 182, ILOLEX, June 1, 1999, <http://www.ilo.org/ilolex/english/convdisp1.htm>; Convention on the Rights of the Child, *supra* note 211, art. 32, at 167.

²¹¹ See Convention on the Rights of the Child, *supra* note 209, art. 32, at 167; Worst Forms of Child Labour Convention 182, *supra* note 212, art. 3.

²¹² See generally Minimum Age Convention 138, *supra* note 209.

sectors, provides for a general minimum age of fifteen years for light work and eighteen years for hazardous work, but allows flexibility to vary the minimum age depending upon the stage of development of a particular country.²¹³ As of December 31, 2002, 120 member states have ratified the Minimum Age Convention.²¹⁴

In 1992, the ILO established the International Program on the Elimination of Child Labor (IPEC), which was designed to mobilize international action in support of national child labor reform programs.²¹⁵ Recognizing that the causes of child labor are complex and deeply rooted in poverty, and that not all types of child labor are harmful to children, the ILO changed its approach from an outright ban on all types of work done by children under the minimum age to a more nuanced approach.²¹⁶ This led to a change in focus to one of giving priority to eliminating only the worst forms of child labor.²¹⁷ Thus, in 1999, the ILO adopted the Worst Forms of Child Labor Convention (No. 182).²¹⁸ This convention requires ratifying states to "take immediate and effective measures to prohibit and eliminate the worst forms of child labour as a matter of urgency."²¹⁹ It applies to all persons under the age of eighteen and includes definitions of the worst forms of child labor.²²⁰ The definition includes all forms of slavery, debt bondage, prostitution, pornography, drug trafficking, and any work which "is likely to harm the health, safety or morals of children"²²¹ As of December 31, 2002, 132 member states have ratified this Convention.²²²

In the past decade, the issues of children's rights and child labor, in particular, have attracted much international attention. The adoption of the Convention on the Rights of the Child

²¹³ See *id.* arts. 2(3), 3(1), 5(1).

²¹⁴ See *Action against Child Labour: Highlights 2002*, *supra* note 191, at 21.

²¹⁵ See ILO/IPEC, *Combating Child Labour: The Global Cause (2001-2003)*, <http://www.ipecpak-carpet.org/about1.html>.

²¹⁶ See *generally* *Minimum Age Convention 138*, *supra* note 209, arts. 2(4), 5(1).

²¹⁷ See *Worst Forms of Child Labour Convention 182*, *supra* note 210, art. 3.

²¹⁸ See *id.* pmb1.

²¹⁹ *Id.* art. 1.

²²⁰ See *id.* arts. 2, 3.

²²¹ *Id.* art. 3(d).

²²² See *Action against Child Labour: Highlights 2002*, *supra* note 191, at 21.

(CRC) by the United Nations General Assembly, and its almost universal acceptance, are illustrative of this trend.²²³ The CRC, established in September 1990, was ratified by 191 states by December 1999.²²⁴ Only the United States and Somalia have failed to ratify it.²²⁵ The CRC established an international monitoring committee where state parties are required to submit reports on their implementation of its provisions.²²⁶ Article 32 of the CRC specifically addresses the issue of child labor.²²⁷ That provision does not ban all child work, but it "recognize[s] the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development."²²⁸ As is evident from this provision, the CRC, unlike the Minimum Age Convention, simply sets forth broad objectives and principles.²²⁹ The actual interpretation and implementation of these objectives and principles are left to the state party's discretion.²³⁰ Other articles of the CRC relevant to the child labor issue include Articles 28 and 29, which guarantee all children the right to an education, Article 31, which guarantees the right to rest and leisure, and Article 3, which provides that "in all actions concerning children . . . the best interests of the child shall be a primary consideration."²³¹

What is apparent from even a cursory review of these international child labor conventions is that twenty-first century Nepal, unlike nineteenth century America, has a plethora of international guidance and assistance at its service. The international conventions and organizations can provide support by helping Nepal to increase public awareness regarding the extent and conditions of child labor, to modify public perceptions

²²³ See Katherine Cox, *The Inevitability of Nimble Fingers?: Law, Development, and Child Labor*, 32 VAND. J. TRANSNAT'L L. 115, 118-20 (Jan. 1999).

²²⁴ See GERISON LANSDOWN, *The Reporting Process Under the Convention of the Rights of the Child*, THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 113 (Philip Alston & James Crawford eds., Cambridge Univ. Press 2000).

²²⁵ See *id.*

²²⁶ See *id.*

²²⁷ See *Convention on the Rights of the Child*, *supra* note 209, art. 32, at 167.

²²⁸ *Id.*

²²⁹ See Myers, *supra* note 202, at 48.

²³⁰ See *id.*

²³¹ *Convention on the Rights of the Child*, *supra* note 209, art. 3.

concerning the acceptability of the practice, and to overcome opposition to child labor reform.

d. *Why Do Children Work?:*

Numerous factors contribute to worldwide child labor practices. The most pervasive of these reasons is the least likely to be remedied, poverty. Children work because they have no choice but to work.²³² According to the United Nations Development Programme (UNDP), in 1999, twenty-three % of the world's population was living in extreme poverty.²³³ The pervasive poverty found in some parts of the developing world, such as Africa, makes the decision whether to send a child to school or to work "simply a question of survival."²³⁴ Likewise in Nepal, thirty-eight % of people live on less than one dollar a day and forty-two % live below the national poverty line.²³⁵ Without the added income from child labor, many families in developing countries would be unable to meet their basic needs.²³⁶ Given their dire economic situation, many parents in the developing world understandably view their children as economic assets, as parents in nineteenth century America did. In fact, families in developing countries have many children so they can increase the family's income by sending the children to work.²³⁷ In other words, "the large family is a conscious, rational decision."²³⁸

Inadequate health care services and lack of access to basic preventive health care education are additional factors that have led to increased child labor. Many children have been orphaned by the death of one or more of their parents from the HIV/AIDS epidemic.²³⁹ Global statistics indicate that 13 mil-

²³² See generally Faraaz Siddiqi & Harry Anthony Patrinos, *Child Labor: Issues, Causes and Interventions*, Human Capital Development and Operations Policy, HCO Working Papers, at 4, available at http://www.worldbank.org/html/extdr/hnp/hddflash/workp/wp_00056.html.

²³³ Human Development Report 2002, *supra* note 143, at 13, 18 tbl.1.2 (extreme poverty is defined as income of less than \$1 a day).

²³⁴ *Action against Child Labour: Highlights 2002*, *supra* note 191, at 29.

²³⁵ See Human Development Report 2002, *supra* note 143, at 158 tbl.3; see also World Development Report 2000/2001, *supra* note 25, at 281 tbl.4.

²³⁶ See Siddiqi & Patrinos, *supra* note 232, at 4.

²³⁷ See *id.*; see also Basu & Van, *supra* note 56, at 425.

²³⁸ Basu & Van, *supra* note 56, at 425.

²³⁹ See *Action against Child Labour: Highlights 2002*, *supra* note 191, at 58.

lion children under age fifteen are AIDS orphans.²⁴⁰ Many of these children will be forced to drop out of school and look for work in order to survive.²⁴¹

Structural adjustment policies have also contributed to the increase in child labor. The conditions that the International Monetary Fund (IMF) and the World Bank set for lending often require draconian cuts in government spending.²⁴² These cuts are generally in social expenditures such as health and education, which have a disproportionately large impact on the poor, especially poor women and children.²⁴³ These cuts reinforce the child's role in the workplace by increasing economic dependency on children while decreasing the accessibility and quality of education.²⁴⁴

Added to these difficulties is the fact that in most countries, primary education is not free, nor is it available for all children.²⁴⁵ The World Bank reported that "in some poor countries most people from the poorest families have no schooling at all."²⁴⁶ According to that report, in Bangladesh, India, Morocco, Pakistan, and eight countries in Sub-Saharan Africa, more than half the fifteen to nineteen year-olds in the poorest forty % of households had zero years of schooling.²⁴⁷ Likewise, the primary, secondary, and tertiary gross enrollment ratio in Nepal is only sixty %.²⁴⁸ Where schooling is available, the poor quality of education and the lack of relevance of the curriculum to their daily lives create the perception that the benefits of education are not sufficient to justify forgoing the extra income that impoverished families will gain by sending their children to work.²⁴⁹ According to the UNDP, of 680 million children of pri-

²⁴⁰ See *id.*

²⁴¹ See *id.*

²⁴² See Arat, *supra* note 50, at 190; see also BELLAMY, *supra* note 11, at 28.

²⁴³ See Arat, *supra* note 50, at 190.

²⁴⁴ See *id.* at 191; see also BELLAMY, *supra* note 11, at 28, 48.

²⁴⁵ See Myrstad, *supra* note 26, at 2; see generally Siddiqi & Patrinos, *supra* note 232, at 4-5.

²⁴⁶ *World Development Report*, *supra* note 25, at 27.

²⁴⁷ See *id.*

²⁴⁸ See *Human Development Report*, *supra* note 143, at 149-52 tbl.I (the rate in most developed countries is in the mid-to-high nineties).

²⁴⁹ See Myrstad, *supra* note 26, at 2; see also Siddiqi & Patrinos, *supra* note 232, at 6.

mary school age, 113 million are not enrolled in school.²⁵⁰ Of these children, ninety-seven % live in developing countries.²⁵¹

The inadequacy of the educational system is reflected by the low literacy rates found in most developing countries. For example, in Sub-Saharan Africa, South Asia, and the Arab States, adult literacy rates are approximately sixty %, whereas developed countries' literacy rates are close to one hundred %.²⁵² By comparison, the adult literacy rate in Nepal is forty-two %.²⁵³ Adults who are illiterate and unskilled are forced to depend on their children to survive, thus creating a cycle of poverty by breeding children who will also grow into illiterate and unskilled adults.

An even more pervasive problem, which also serves to perpetuate child labor practices are the traditional, and often times discriminatory cultural beliefs that many societies still hold. These cultural beliefs fall into three main categories. First, not all countries share the West's paternalistic view of the child.²⁵⁴ Second, within countries there is often a social hierarchy that dictates who will be educated and who will work.²⁵⁵ Third, many societies believe that there is simply no point in educating their female children.²⁵⁶

Overall, the western world adheres to concepts of childhood that differ from those held in many developing societies.²⁵⁷ In the West, we view childhood and adulthood as having a clear demarcation, with children being protected and kept dependent through adolescence.²⁵⁸ Most people in developing countries, on the other hand, stress the family unit and believe that all family members are responsible for the family's survival.²⁵⁹ This is similar to the way the family unit was perceived within the United States prior to the industrial revolution.

²⁵⁰ See *Human Development Report*, *supra* note 143, at 21.

²⁵¹ See *id.*

²⁵² See *id.* at 22, 149-52 tbl.I.

²⁵³ See *id.*

²⁵⁴ See Siddiqi & Patrinos, *supra* note 232, at 4.

²⁵⁵ See *id.* at 7.

²⁵⁶ See *id.*

²⁵⁷ See Myers, *supra* note 202, at 40.

²⁵⁸ See *id.*

²⁵⁹ See *id.*

Another factor that has perpetuated child labor practices is that many societies have deeply imbedded religious and social structures that sanction discriminatory treatment of different ethnicities and social classes. "Experience shows that governments tend to use the system of education as a means to systematically discriminate against ethnic, religious and linguistic minorities as well as other vulnerable groups, such as women or blacks."²⁶⁰ For example, in the Indian caste system it is believed that everyone has a predetermined role in life, and because the role of the lower castes is as unskilled manual laborers no one, including the lower castes, believes that there is any value in educating lower caste children.²⁶¹ A similar social hierarchy exists in Nepal where children in the lower castes frequently do not attend school.²⁶² This leads to dramatic differences in the literacy rates among different ethnicities.²⁶³ For example, literacy rates range from approximately sixty-four % in the Siraha District of Nepal to about four % among the Musahars to zero among the Dom.²⁶⁴

Another factor that has a tendency to affect the incidence of child labor is gender discrimination. In patriarchal societies where discrimination against women is systemic, traditional gender roles are accepted without question, creating an environment where parents fail to see any point in educating their female children.²⁶⁵ Rather than educate female children, they are sent to work, frequently in domestic services.²⁶⁶ For example, in Nepal, only forty-one % of girls were enrolled in primary school in 1995, while the corresponding figure for boys was approximately eighty %.²⁶⁷ The disparity in educational enrollment is reflected in an adult literacy rate for females of fourteen % versus forty-one % for males.²⁶⁸

²⁶⁰ MANFRED NOWAK, *The Right to Education*, ECONOMIC, SOCIAL, AND CULTURAL RIGHTS 259 (Asbjorn Eide ed., 1995).

²⁶¹ See Weiner, *supra* note 29, at 370.

²⁶² See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.IV, at 11.

²⁶³ See *id.*

²⁶⁴ See *id.*

²⁶⁵ See *id.* at 16; see also Siddiqi & Patrinos, *supra* note 232, at 7; see generally *Child Labour and Education*, *supra* note 179, at 4.

²⁶⁶ See BELLAMY, *supra* note 11, at 44-45.

²⁶⁷ See *id.* at 86 tbl.4.

²⁶⁸ See *id.*

e. *How to Stop Child Labor:*

To the extent that a child is engaged in work that either interferes with his or her education or is hazardous or harmful to his or her health and development, it is neither in the best interests of that child, nor is it in the best interests of society, for that work to continue.²⁶⁹ Child labor is not only detrimental to children, but it inhibits the nation's socio-economic growth, breeding hundreds of thousands of illiterate and unskilled adults, ultimately creating a cycle of poverty.²⁷⁰ In addition, because children are paid significantly less than adults, child labor has the effect of displacing adult workers and depressing adult wages.²⁷¹

Given these facts, there is little doubt that exploitative child labor must be eliminated. Unlike the United States' experience, however, ending exploitative child labor does not and should not have to wait until the developing countries are fully industrialized.²⁷² Although the United States eradicated child labor only after it achieved economic prosperity, this experience does not have to be repeated.²⁷³ We now live in an interconnected and interdependent world. Extensive information and data regarding the extent and conditions of child labor is readily available and new research is forthcoming. Further, the international community is committed to eliminating exploitative child labor practices. This heightened international scrutiny can serve as the impetus for change if the international effort is directed not only towards supporting national child labor reform efforts, but also towards pressuring governments to comply with international norms.²⁷⁴

Although there may be disagreement over what is the most effective approach to the child labor problem, no one doubts that the proposed solution must be sensitive to both the complexity of the underlying causes of child labor and the developing world's concerns for their own economic development. With these considerations in mind, the solution should incorporate

²⁶⁹ See *id.* at 27-28; Bullard, *supra* note 26, at 148-49.

²⁷⁰ See Bullard, *supra* note 26, at 149.

²⁷¹ See BELLAMY, *supra* note 11, at 27.

²⁷² See Basu, *supra* note 11, at 1093.

²⁷³ See *generally id.*; see also Arat, *supra* note 50, at 203.

²⁷⁴ See Basu, *supra* note 11, at 1083.

three strategies. First, national projects must seek to increase awareness of the dangers of child labor and to modify discriminatory cultural beliefs that serve to perpetuate child labor practices. These programs should be directed towards those who are most affected by the child labor problem: the poor, minorities, and those people at the margins of society.²⁷⁵ Second, the strategy must include national efforts to enact new child labor laws and to improve enforcement mechanisms on existing laws.²⁷⁶ Although history has shown that simply changing laws without changing attitudes may not lead to a decrease in child labor practices, we should not discount the transformative effect that law can have on our social conscience. In other words, we should use the law to seek to change the normative discourse by making a clear statement as to what practices will not be tolerated. Third, humanitarian and foreign aid should be directed towards national projects that are designed to decrease the poor family's reliance on child labor and towards national projects that seek to create adequate educational opportunities for all children.²⁷⁷

Developing countries have the benefit of being part of a world where there are many international organizations, international conventions, and international NGO's whose sole purpose is to raise awareness and mobilize resources in pursuit of eradicating exploitative child labor practices.²⁷⁸ For example, both ILO-IPEC and United Nations Children's Fund (UNICEF) have developed a myriad of methods to assist governments in their national child labor reform plans.²⁷⁹ This multifaceted international attention can serve to pressure nations to take their obligations and responsibilities regarding their children seriously.

Domestic governments can use international standards as guidelines when drafting national child labor legislation. International standards can be a useful tool for the developing world, but as the United States experience has shown, simply enacting legislation banning child labor in the absence of any other re-

²⁷⁵ See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.V.

²⁷⁶ See BELLAMY, *supra* note 11, at 58-61.

²⁷⁷ See *id.* at 48; see also BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.V.

²⁷⁸ See BELLAMY, *supra* note 11, at 63.

²⁷⁹ See generally *id.* at 46-73.

form mechanisms will not be an effective strategy. Such a strategy not only fails to address the underlying causes of child labor, but it will likely result in unintended consequences: children working illegally, possibly starving, and living on the streets.²⁸⁰ Moreover, just as child labor legislation was largely ignored in the early United States, it is likely that legislation in the developing world will also be ignored unless those laws are perceived as legitimate. Perceived legitimacy can only be accomplished by creating a forum in which all members of the community —elected officials, educators, employers, children, and families— can participate. In the absence of such a democratic process of compromise and negotiation, it is likely that those most affected by child labor laws will simply not perceive those laws as a legitimate form of legislation, and without legitimacy, it is not likely that the laws will be respected.

Changes in the law can also be useful where developing countries seek to modify cultural views. “[A] country’s legal code makes an important statement about what society considers to be acceptable behaviour [sic] . . . provid[ing] another benchmark from which the attitudes of society could spring.”²⁸¹

Another way for a domestic government to modify cultural views is by integrating the media into its national child labor reform plan.²⁸² The media can galvanize public support because it has the ability to widely disseminate information on the atrocities of child labor. Over time, this increased awareness will serve to decrease cultural acceptance of child labor.²⁸³ If you believe that “much of what we consider moral or immoral depends on what we are used to . . . then one way to remove child labor is to try and make it customary for children not to work.”²⁸⁴

Significantly however, a strategy that seeks to modify cultural views cannot be effective by simply imposing western concepts of human rights upon the developing world.²⁸⁵ Rather, the impetus for change must emanate from within the develop-

²⁸⁰ See Arat, *supra* note 50, at 197-99; Basu, *supra* note 11, at 1115.

²⁸¹ BELLAMY, *supra* note 11, at 58.

²⁸² See *id.* at 65.

²⁸³ See generally BELLAMY, *supra* note 11, at 63; see also BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.V.

²⁸⁴ Basu and Van, *supra* note 56, at 422.

²⁸⁵ See Myers, *supra* note 202, at 53.

ing nation with the international community providing informational, educational, financial, and technical assistance. Moreover, modifying cultural beliefs and ultimately changing child labor practices requires developing broad coalitions among domestic governments, international institutions, NGO's, domestic labor unions, community groups, the child laborers themselves, and their families.²⁸⁶

Cultural values that need to be examined to determine what, if any, impact they have on the incidence of child labor include views with respect to education, gender, ethnicity, and social class, along with cultural perceptions of the proper role of the child in society and in the family unit.²⁸⁷ Along these lines, societies must be prepared "to address the powerlessness that often results from class, caste or gender discrimination against a social group."²⁸⁸ One way to reduce this powerlessness and equalize all people is by mandating compulsory, free, accessible primary education for all children irrespective of gender, ethnicity, or social class.²⁸⁹

In this way, the educational system can also be used to divert children from the workplace. This strategy will only be effective, however, if schooling and associated expenses such as school uniforms, lunch, and books are free.²⁹⁰ Additionally, the quality of education must be improved and "the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs"²⁹¹ Moreover, a nation's educational plan must be linked to its socio-economic development policy, so that education leads to work that is appropriate to the level of education attained.²⁹² Creating these conditions is imperative in order for parents, children, and teachers to view education as a meaningful investment of their time.²⁹³ Developing an educa-

²⁸⁶ See generally BELLAMY, *supra* note 11, at 63-67; see also BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, ch.V.

²⁸⁷ See Saddiqi & Patrinos, *supra* note 232, at 7.

²⁸⁸ BELLAMY, *supra* note 11, at 61.

²⁸⁹ See generally *id.* at 51-54; see also BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, conclusion.

²⁹⁰ See Arat, *supra* note 50, at 200; see also BELLAMY, *supra* note 11, at 53.

²⁹¹ Committee on the Rights of the Child, General Comment No. 1 (2000): The Aims of Education, art. 29(1), sec. 9.

²⁹² *Action Against Child Labour: Highlights 2002*, *supra* note 191, at 8.

²⁹³ See *id.* at 5.

tional plan of this nature will require a multi-sectoral approach involving the government, teachers' organizations, employers' organizations, international organizations, and NGO's.²⁹⁴ Humanitarian aid should also be linked directly to domestic education expenditures that encourage and support those efforts.²⁹⁵

Another way to address the underlying causes of child labor is by enacting core national labor standards such as minimum wage requirements, so that adults are paid an adequate wage.²⁹⁶ Government provisions for adult education, training opportunities, and basic health care are also indispensable to alleviate the root causes of child labor.²⁹⁷

IV. CONCLUSION

From nineteenth century America to twenty-first century Nepal, the underlying causes and conditions of child labor are remarkably similar. With regard to eradicating child labor there is one significant difference, however, in that, twenty-first century Nepal, unlike nineteenth century America, has the benefit of a sophisticated international community mobilized to address these issues.

Nonetheless, a meaningful, effective plan to eliminate the root causes of child labor requires more than just support. It requires national governments to spend a lot of money that they claim they simply do not have. So the issue becomes, where does the money come from? There are two main sources that can be used to help fund this endeavor. First, the resources could come from the governments themselves if they simply reprioritize national expenditures, placing education and poverty reduction programs at the top of the list.²⁹⁸ Second, foreign and international aid can be directed towards eliminating the root causes of child labor.

²⁹⁴ See *id.* at 10-11.

²⁹⁵ See Arat, *supra* note 50, at 201.

²⁹⁶ See generally *id.* at 202.

²⁹⁷ See BUREAU OF INT'L LABOR AFFAIRS, *supra* note 156, conclusion.

²⁹⁸ See, e.g. Human Development Report, *supra* note 143, tbl.17, Priorities in Public Spending, at 207-10 (listing by country public expenditures on education as a percentage of GDP for 1995-1998 and public expenditures on the military for 2000 and noting that some countries such as Turkey, Pakistan, the Sudan, and Sri Lanka spent more public monies as a percentage of GDP on the military than on education).

According to UNICEF, educating all of the world's children would cost an additional 6.9 billion dollars per year.²⁹⁹ This money is available if governments spend less on other government programs, such as the military, and more on educating their children. In those situations where a country is allocating as much of its resources as is feasible towards eradicating the root causes of child labor but still needs additional funds, then it may be possible to garner the balance of the necessary funds from the international community. This task can be accomplished by linking foreign and humanitarian aid to national child labor and education reform efforts.³⁰⁰ Foreign and humanitarian aid is a great potential source of funding that was simply not available in nineteenth century America when the child labor reform movement was ongoing. It is infinitely clear that in the absence of prioritizing expenditures and linking foreign aid to social reform programs, child labor will continue to be a fundamental evolutionary stage in economic and social development. What is equally clear, however, is that it needn't be.

²⁹⁹ *Action Against Child Labour: Highlights 2002*, *supra* note 193, at 7 (citing UNICEF, *The State of the World's Children*, 1999); *see also* BELLAMY, *supra* note 11, at 54-55 (stating that in 1997 "it would cost an estimated \$6 billion a year, on top of what is already spent, to put every child in school by the year 2000." That amount is "less than 1 percent of what the world spends every year on weapons.")

³⁰⁰ *See* Arat, *supra* note 50, at 201, 203.