

## CHILDREN'S RIGHTS – IS AMERICA OUT OF STEP WITH THE REST OF THE WORLD?

By Susan H. Bitensky

The short answer unfortunately is yes. Now for the long answer. The situation on the ground here at home looks pretty dismal.

As of 9/05, 17% of our children – that's 12 million kids – were living in poverty, if poverty is defined as \$16,090 annually for a family of 3 or \$19,350 annually for a family of 4.

In 11/06, studies show that 1 in 5 of our children has a diagnosable mental disorder; moreover 75% to 80% of our children need mental health services but do not get them.

Remember that this is the U.S., the world's sole superpower, w/ unparalleled resources.

Shockingly, the plight of American children looks even worse in comparison to children in many other countries.

As of 5/06, the survival rate for newborns in the U.S. ranked near the bottom among modernized nations; indeed, among 33 industrialized nations, only Latvia ranked lower.

On the education front, the predicament of our children is equally troubling. Of the more than 3,000 18-24-year-olds polled on their geographic knowledge in 2002, those in our country scored next to last in comparison to the same age group in Canada, France, Germany, the UK, Italy, Japan, Mexico, and Sweden. In case you are wondering what "the next to the last" really means, consider that nearly 30% of these young American adults could not find the Pacific Ocean on a map. This gross ignorance did not occur overnight, of course. We are talking about the results of impoverished American elementary and secondary schooling.

Things aren't much better in other academic subject areas. According to *Education Week*, as of 12/04:

"In their most recent . . . showing on the world stage, students in the U.S. scored below average in math literacy & problem-solving, in an international comparison of academic skills of teenagers in developed nations."

Well, that's a very incomplete snapshot of conditions. Hardly a panoramic view, but enough to demonstrate that something is amiss with respect to the conditions in which our kids are living and growing.

What accounts for this? Certainly we are a nation awash – perhaps drowning – in sentimental platitudes about cherishing family values and loving children. But words are conveniently cheap. A major problem seems to be that our governmental leaders do not have the political will to put the nation's money where their mouths are. That lack of political will is also manifest in the politicians' failure to make the legal commitments that would mandate treating children as a real national priority. I am referring, naturally, to this country's refusal to ratify the Convention on the Rights of the Child, adopted by the U.N. on Nov. 20, 1989.

The Children's Convention is the most widely ratified of all U.N. human rights treaties. The U.S. has the dubious distinction of being only 1 of 2 countries in the world that has not ratified it. The other holdout is Somalia – not exactly the best of company. Indeed, Somalia, an egregious human rights violator, cannot become a state party because it has no recognized national government.

It should be pointed out that American foot-dragging in relation to the Children's Convention is consistent with our government's traditional modus operandi. For all its lip service paying homage to human rights, the U.S. has a history of failing to ratify human rights treaties or of getting around to it long after other nations have done so. They typically get around to it only when the embarrassment/hypocrisy quotient becomes more than government officials can stand in terms of their personal credibility and political viability. So, arguably the U.S. is not singling out children's rights for brazen neglect, although because the beneficiaries of this treaty are children, the neglect this time seems especially abhorrent.

Actually, on February 16, 1995, the U.S. did sign the Children's Convention, thereby signaling its intention to become a party. However, under international law, mere signature of this sort of treaty does not suffice to make a nation a party. And, as we know, the signaling has led nowhere so far.

U.S. spurning of the Children's Convention adversely affects our children, and adults too, in multifold ways, some obvious and some subtle. Let me begin with what I regard as a subtle but very profound effect.

In my estimation, all laws have a pedagogical role, whether we are conscious of it or not. Laws are the formally adopted, official policies of government. Each such law, i.e., policy, articulates the government's authorized view of a particular matter. Because laws come from governments and governments typically are a primary source of power in a society, laws carry tremendous persuasive weight with the populace. This suasion is further enhanced by the fact that usually the full force of government lurks behind these laws, ready to be marshaled in the interests of assuring compliance. Thus, the view or message contained in a law operates over time to educate people to adopt and even internalize that view or message, in an osmosis-like process.

As part of this pedagogical dynamic, law subliminally conveys how important certain things or persons should be to society. Those things or persons that are afforded strong legal protections, will be understood to be highly valued. By the same token, those things or persons denied strong legal protections, will be understood to be of lower value.

Thus, when the U.S. refuses to ratify the Children's Convention, the government telegraphs to us that children are not highly valued here – or at least not as valued as they are in the rest of the world. To my knowledge, no one has tried to measure the ethical and psychological effects of this message, but I have no doubt that such effects exist. In this sense, then, the government's refusal puts Americans at a serious moral and psychological disadvantage in comparison to the populations of the 192 nations that have ratified the Children's Convention.

For, unlike those populations, American adults' moral advancement is thwarted by lack of sufficient understanding that children are not chattel or lesser beings to be bossed around pretty much as adults please, but that, rather, children are full-fledged members of the human race, imbued with human dignity and the rights attendant thereon, -- and even more that children should not be passive objects of adult paternalism but rather active subjects of their own rights and destinies. That's the adults. The effects on American children are still more iniquitous. The dearth of these concepts in shaping the inner and outer lives of American children, means our kids must develop without this enriching and enabling input. Children's self-esteem, confidence, and

psychic energy necessarily need suffer from the deprivation.

The more obvious effects of U.S. failure to ratify the Children's Convention could undoubtedly fill a 5-volume set. So, I have chosen to focus on one very blatant and palpable way that this failure has impacted on our country and impeded its progress on behalf of children.

The impact that I have chosen concerns the methods of disciplining children. An overarching purpose of the Children's Convention is to protect children from violence. This theme is manifested in numerous provisions of the Convention as well as in its Optional Protocol on child soldiers. In accordance with this goal, the Children's Convention forbids all corporal punishment of children, regardless of who would wield the rod or how lightly.

Although none of its provisions mention corporal punishment explicitly, the Convention's U.N. monitoring committee – the Committee on the Rights of the Child – as well as respected scholars – have interpreted the Convention's language to contain such a ban. For example, the Children's Committee et al. have found the ban to stem implicitly from article 19's requirement that states parties must take "measures to protect the child from all forms of physical or mental violence." As the Committee put it in its General Comment No. 8:

"There is no ambiguity: [the provision against] 'all forms of physical or mental violence' does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them."

Likewise, General Comment No. 8 relies for its conclusion upon the Convention's protection from "cruel, inhuman, or degrading punishment or treatment" (Art. 37(a)) and the Convention's guarantee of "school discipline [that] is administered in a manner consistent with the child's human dignity" (Art. 28(2)).

Nor is this the first time that the Children's Committee has interpreted the Convention's language to bar all corporal punishment of children. In, literally, hundreds of its compliance assessments of individual states

parties, the Committee has repeatedly invoked the aforementioned provisions and a host of others from the Convention (e.g., Arts. 2(1), 3(1), 6(2), 12(1), 24(3), 37©, 39) as mandating that states parties must enact laws and conduct education campaigns against this disciplinary practice. In fact, by my count, the Committee has cited at least ten different provisions in support of this human rights principle.

In the United States, spanking tends to be a hot-button issue, particularly as it bears on parental prerogatives. This situation has not been alleviated any by absence of the Children's Convention in American jurisprudence. Indeed, there is truly prodigious ignorance in our country regarding the human rights law status of such punishment, the various national practices with respect to delegitimizing such punishment, and the scientific and philosophical reasons undergirding law reform against the punishment.

American laws about spanking are almost as retrogressive as American ignorance, comparatively speaking. 28 states in the U.S. prohibit corporal punishment of children at the public elementary and secondary school levels. This represents some progress because thirty years ago only 2 states had such prohibitions. However, don't break out the champagne just yet. These statistics' lose a lot of their luster when it is also considered that 107 of the world's 230 countries and principalities have banned all corporal punishment of children by teachers or school administrators. Indeed, among industrialized countries, only the U.S. and Australia still allow hitting of schoolchildren in some states and provinces.

American laws on corporal punishment of children in the family circle are even more out of sync with the Convention than American laws on the punishment in school. The laws of 49 states give parents power to administer so-called reasonable corporal punishment to their progeny. The one standout is, perhaps, Minnesota, the statutes of which may be read to make these parental corporal punishers liable for criminal assault.

It must be conceded that most countries are as unbudging as the U.S. in clinging to the legality of parental corporal punishment of children. Even so, there is a brave little vanguard of 16 nations, each one having outlawed all corporal punishment of children – including that dispensed by parents. They are Sweden, Finland, Norway, Denmark, Austria, Cyprus, Croatia, Latvia, Germany, Bulgaria, Iceland, Israel, Hungary,

Ukraine, Romania, and Greece. These are the sole nations that, in terms of their domestic laws, are now in full compliance with the edict of the Children's Convention against corporal punishment.

While the old adage that there is safety in numbers may be true, this situation shows that there is not necessarily humanity or legality in them. And, thus, the U.S., instead of taking a leadership role, remains among the large ranks of “rogue nations” permitting “reasonable” parental corporal punishment of children.

The corporal punishment example is, I think, a useful one to highlight American children’s rights against a global backdrop. On the one hand, many of our children are being dreadfully shortchanged of the protection from school corporal punishment that the Children's Convention commands and that a huge proportion of the world’s children enjoy. On the other hand, although almost all of our children are being dreadfully shortchanged of the protection from parental corporal punishment that the Convention also commands, the U.S. is not really out of step with the rest of the world on that one.

The point is this. Our government’s resistance to ratifying the Children's Convention has put our kids at risk in ways that other children do not experience. But, realistically, the Convention is not a panacea; no law ever is – even a human rights treaty as ground breaking as the Children's Convention. This means that children residing in states parties to the Convention presently do share some of the same deprivations as children residing in the U.S. Some equivalency of deprivation is all the more likely because the U.S. is, after all, the wealthiest and most powerful of countries, and may easily outspend its competitors in relation to childhood needs, even when our government doesn’t make children a priority.

Nevertheless, the bottom line is still that nonratification unnecessarily and intentionally prejudices the welfare of our children. That is unforgivable. As the statistics in my opening remarks today demonstrate, our children generally are not doing well by most criteria and as an objective matter. They are not doing as well as children in other countries – even in some poorer, weaker countries – with respect to key things like survival, mental health, and education.

In light of the disparity between U.S. resources and those at the disposal of other governments, there is

only one logical inference. Our government's unwillingness to make the legal commitment, to the Convention and otherwise, to caring for our children is scarring them. In light of our superpower resources, what other inference can there be?

And, without a doubt, American children are spiritually deprived by their government's backwardness. They and their Somalian brothers and sisters, of all the world's children, are deprived of the comfort and security of knowing they live in a nation eager to commit its all to them. In this sense, in spite of all the saccharine platitudes, our children are bereft of being adequately beloved regardless of how much affection and concern we as individuals shower upon them.