

**UNIVERSAL MORAL PRINCIPLES  
AND THE LAW:  
THE FAILURE OF ONE-SIZE-FITS-ALL  
CHILD LABOR LAWS**

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I.	INTRODUCTION.....	2
II.	EVOLUTION OF ANTI-CHILD LABOR SENTIMENT IN THE UNITED STATES.....	6
III.	ATTITUDES TO CHILD LABOR IN INDIA .....	13
	A. <i>Historical Development of Child Labor Laws in India: British Rule to Independence and the CLPRA</i> .....	16
	B. <i>The Causes and Contexts of Perpetual Child Labor in India</i> .....	25
	C. <i>The Failure of Child Labor Laws in India</i> .....	33
IV.	UNIVERSAL MORAL PRINCIPLES AS A BASIS FOR NORMATIVE LAW.....	40

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Since the time of tribes and clans, children have gathered food or helped their mothers clean the caves and camps. Children's help was necessary and expected because it was not enough for just the father to collect food. When market-related jobs became common, children were expected to work, earn money, and give their earnings to their parents to buy food and shelter. From the 1400s until merely a short time ago, the practice of parents giving children to those to whom they were indebted for the purpose of labor, or indentured service, was common. Indentured service fostered child abuse, but it was not until much later that this fact was even considered. In general, from prehistoric times until the 1900s children worked to support their family's income.

This article presents a friendly critique of the efforts of human rights advocates to use the law to accelerate the pace of historical change in the area of child labor. Part I of this article provides an introduction to the various issues and the different approaches in addressing child labor. Part II traces the evolution of attitudes and behavior regarding child labor in the United States as a demonstration of the role of affluence in providing the economic preconditions that contribute to successful child labor statutes. Part III of this article is a similar exploration focusing on India. The purpose of this comparison of experiences is to highlight the importance of context as a basis for effective legal action. Finally, Part IV of this article suggests the danger in applying what one sees as a universal moral principle in diverse, international contexts.

## I. INTRODUCTION

In the span of about one hundred years, from 1900 to 2000, the industrialized, "first world" nations have experienced a dramatic shift in ideological perspective regarding the propriety of child labor.<sup>1</sup> This ideological shift initially manifested itself in the national regulation of child labor, namely, the National Industrial

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1. See Andrew J. Samet, *Child Labor and the New Millennium*, 21 WHITTIER L. REV. 69, 72-73 (1999) (arguing that legal pioneers who drafted child labor laws and created a legal infrastructure conducive to the protection of the child contributed to a shift in U.S. attitudes toward the exploitation of children in the workplace).

Recovery Act (NRA) of 1933,<sup>2</sup> passed as part of Franklin Roosevelt's New Deal.<sup>3</sup> More recently, heightened repugnance to child labor among developed economies has led to an increasing volume of international treaties and conventions regarding the rights of children.<sup>4</sup>

Such international declarations of universal rights are highly attractive in that they appeal to our sense of humanity; indeed, there are very powerful arguments suggesting that certain normative states ought to exist among humans regardless of differences in culture, religion, worldview, geographic location, or economic disposition. However, scholars and policymakers alike must recognize the inherent danger in wholeheartedly embracing and imposing a universal moral vision upon other groups in situations as emotionally, economically, culturally, and developmentally complex as that of child labor, particularly where

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2. *Id.* at 75.

3. *Id.* at 75–76. NRA fixed the basic minimum age for working at sixteen, though a minimum age of eighteen was required for certain work deemed hazardous. *Id.* at 75. While NRA was held unconstitutional within a year of passage, the legislation represented the beginnings of a policy preference regarding child labor. *Id.* at 75–76. The Fair Labor Standards Act (FLSA), enacted in 1938, passed constitutional muster and remains the primary source of federal protection for children. *Id.* at 76. *But see* Jeanne M. Glader, Note, *A Harvest of Shame: The Imposition of Independent Contractor Status on Migrant Farmworkers and its Ramifications for Migrant Children*, 42 HASTINGS L.J. 1455, 1461–67 (1991). Glader notes that despite the apparent policy preference for protection of youth, children engaged in agricultural work were exempted from the FLSA until 1966 and continue to be exploited by growers. *Id.* In particular, Glader argues that widespread assignment of the status of independent contractors allows growers to bypass the protections guaranteed under the FLSA with respect to migrant child labor. *Id.* at 1455, 1465–67.

4. *See* David L. Parker, *Child Labor: The Impact of Economic Exploitation on the Health and Welfare of Children*, 21 WHITTIER L. REV. 177, 180–81 (1999). Parker cites the regulatory structure adopted by the International Labor Organization (ILO), a group formed in 1919, and the United Nations Convention on the Rights of the Child as examples of international agreements that bind signatories to work for a future in which the rights of the child are respected. Convention on the Rights of a Child, G.A. res. 44/45, Annex, 44 U.N. GAOR Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989) *entered into force* Sept. 2, 1990 [hereinafter Convention on the Rights of a Child]. *See also* Susan O'Rourke von Streunsee, *Violence, Exploitation and Children: Highlights of the U.N. Children's Convention and International Response to Children's Human Rights*, 18 SUFFOLK TRANSNAT'L L. REV. 589, 594–627 (1995) (describing the survival, developmental, and participatory rights attributed to children as agreed to by those nations who ratified the UN Convention on the Rights of the Child).

power disparity exists.<sup>5</sup>

Multiple scholars have analyzed the success and failure of the international community in eradicating child labor under the assumption that, because the West has made great strides in ameliorating the problem of child labor, the rest of the world should follow suit. Indeed, one such scholar, Kristin Weldon, concludes that “child labor is deplorable no matter what the situation.”<sup>6</sup> Weldon advocates a renewed commitment to the enforcement of International Labor Organization (ILO) regulations.<sup>7</sup> The ILO is an organization that has ratified numerous conventions regarding the universal rights of workers, including children, to counter the abhorrent nature of child labor.<sup>8</sup> The assumption implicit in Weldon’s normative prescription is that what is good for Cleveland is good for Bangladesh is good for Guatemala and so on.

Other scholars favor taking unilateral action at the national level; one such scholar, Claudia Brewster, favors the passage and rigorous enforcement of the International Child Labor Elimination

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5. This author is particularly concerned with efforts to link universal, one-size-fits-all labor standards to the granting of loans from the International Monetary Fund or the World Bank without careful consideration of the unique circumstances present in the nation requesting the monetary assistance. *See, e.g.*, William H. Meyer & Boyka Stefanova, *Human Rights, the U.N. Global Compact, and World Governance*, 34 CORNELL INT’L L.J. 501, 505 (2001). Given the disparity in power between debtor and creditor nations, the temptation to enforce certain universal ideals regarding the propriety of child labor as a condition of financial aid is likely to be strong. *See, e.g.*, William E. Myers, *The Right Rights? Child Labor in a Globalizing World*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 38, 40–41 (2001) (casting the debate on the propriety of child labor in terms of homogenization of global ideas on child labor versus renewed emphasis on multiculturalism). This author does not argue that conditions should not be imposed, but that lenders should carefully analyze the impact of child labor regulations, asking questions such as: “What will be the impact of imposing a minimum age for laborers on the ability of related family members to acquire health care?”

6. *See* Kristin Weldon, Note, *Piercing the Silence or Lulling You to Sleep: The Sounds of Child Labor*, 7 WIDENER L. SYMP. J. 227, 250 (2001). Weldon argues that the World Trade Organization (WTO) is not the most efficacious forum for the advancement of children’s rights and favors the International Labor Organization (ILO) over the WTO. *Id.* However, Weldon’s argument proceeds on universal assumptions about the evils of child labor. *Id.*

7. *Id.*

8. *Id.*

Act (ICLEA),<sup>9</sup> a measure that “would withhold [U.S.] foreign aid to all countries that do not adopt internationally recognized child labor laws.”<sup>10</sup>

A third scholar, Anjali Garg, takes a position similar to, but distinct from Brewster’s: Garg argues that the United States must take more forceful action in combating transnational violations of children’s labor rights.<sup>11</sup> Garg appeals to the policy preferences enshrined within the proposed Child Labor Deterrence Act (CLDA).<sup>12</sup> The CLDA provides for a ban on imported goods produced by child laborers and the imposition of criminal and civil sanctions upon foreign industries that the Secretary of Labor deems to be in noncompliance with the CLDA.<sup>13</sup>

Weldon, Brewster, and Garg are not alone in their quest to more forcefully use the “long arm” of national and international law to combat the evils of exploitative child labor.<sup>14</sup> Few would argue that the protection of children is not a sound goal. The

9. International Child Labor Elimination Act, H.R. 3812, 104th Cong. (1996).

10. Claudia R. Brewster, Note and Comment, *Restoring Childhood: Saving the World’s Children from Toiling in Sweatshops*, 16 J.L. & COM. 191, 211–13 (1997).

11. Anjali Garg, Note, *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U. J. INT’L L. & POL. 473, 485–92 (1999).

12. *Id.* at 506 (citing the Child Labor Deterrence Act of 1997, S. 332, 105th Cong. (1997)) [hereinafter CLDA]. The CLDA criminalizes all items “a child helped to produce, manufacture, or extract for pay, under involuntary servitude,” or “under exposure to toxic substances or working conditions otherwise posing serious health hazards.” Garg, *supra* note 11, at 506–07 (quoting CLDA).

13. Garg, *supra* note 11, at 506–07.

14. See Timothy P. McElduff Jr. & Jon Veiga, Note, *The Child Labor Deterrence Act of 1995: A Choice Between Hegemony and Hypocrisy*, 11 ST. JOHN’S J. LEGAL COMMENT. 581, 613 (1996) (supporting the immediate adoption of the CLDA as the most pragmatic means of combating the problem of child labor); Joan M. Smith, *North American Free Trade and the Exploitation of Working Children*, 4 TEMP. POL. & CIV. RTS. L. REV. 57, 111–13 (1994) (arguing that, like other trade agreements, the North American Free Trade Agreement provides easy means for multinational corporations to ignore the mandates of universal human rights declarations); James P. Kelleher, *The Child Labor Deterrence Act: American Unilateralism and the GATT*, 3 MINN. J. GLOBAL TRADE 161, 162–63, 193–94 (1994) (advocating the development of more forceful multilateral agreements as a means of combating child labor); Mary Gray Davidson, Note, *The International Labor Organization’s Latest Campaign to End Child Labor: Will it Succeed Where Others Have Failed?*, 11 TRANSNAT’L L. & CONTEMP. PROBS. 203, 212–14, 224 (2001) (suggesting that the narrowly-tailored Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, art. 1, S. TREATY DOC. NO. 106-5, may have more success than the broader campaigns against child labor).

arguments of all three commentators, however, contain the same flaw: They all three proceed under the assumption that certain human rights must be enforced with equal vigor in all situations, regardless of location and circumstance. Declarations of human rights are often a powerful stimulus in focusing attention on severe human problems. But, such declarations' attempts to impose a strict, one-size-fits-all moral regulatory structure, absent an analysis of the underlying national, economic, cultural, and historical factors that might affect the efficacy of such a structure, constitutes an abdication of responsible policy-making.

The next section, Part II of this article, attempts to capture the evolution of American legal attitudes to child labor. As we think about that evolution, it is important to ask whether the changes were in response to newly discovered horrors of child labor, economic incentive structures that benefited existing labor organizations of adult workers, or to a new understanding of what was attainable and normative in affluent countries. This paper asks: Do changed economic conditions alter ethical understandings? Should they?

## II. EVOLUTION OF ANTI-CHILD LABOR SENTIMENT IN THE UNITED STATES

*"If there is any matter upon which civilized countries have agreed – far more unanimously than they have with regard to . . . some other matters . . . it is the evil of premature and excessive child labor."<sup>15</sup>*

From the contemporary perspective of developed nations, one might wonder why it took so long for anti-child labor sentiment to become visible and popular. To begin, we should note that historically the only children who have needed to work have been poor children. Not surprisingly, such children tended to be overlooked by those in society with the power to stop such practices. In addition, as a popular pro-child labor argument contended, work saved children from the "sin of idleness."<sup>16</sup> It was easy for bored children to get into trouble, and work kept them

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15. McElduff & Veiga, *supra* note 14, at 581.

16. WALTER L. TRATTNER, CRUSADE FOR THE CHILDREN: A HISTORY OF THE NATIONAL CHILD LABOR COMMITTEE AND CHILD LABOR REFORM IN AMERICA 24 (1970).

busy.<sup>17</sup> This idea was popular among Puritans and Quakers and spread to the New World when colonization of the Americas began.<sup>18</sup>

In North American colonies, children were an asset—free labor to their families and their new farms. Child labor was seen as a tool to keep children from idleness,<sup>19</sup> as well as a necessity for starting a successful colony and farm. However, as part of the changes necessitated by the American colonists' desire to be independent from England, Americans needed to start producing their own goods, such as clothing.<sup>20</sup> To facilitate this manufacture, the first children began working in American textile and clothing shops. Children were ideal for working in these factories because they worked for a fraction of the cost of comparable adult workers. They also were quick to learn,<sup>21</sup> and their small hands could create the intricate details in the fabrics.

Because children worked long days, they were often uneducated due to a lack of time to attend school. One of the early arguments against child labor focused on the need for children to receive more education.<sup>22</sup> Ironically, it was the Puritans who

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17. *Id.* at 23–25.

18. *See id.*

19. *Id.* at 23–26, 29. *See also* Edith Abbott, *A Study of the Early History of Child Labor in America*, 14 AM. J. SOC. 15, 17–18 (1908).

The Great Law of the Province of Pennsylvania provides that all children “of the age of twelve years shall be taught some useful trade or skill, to the end that none may be idle, but the poor may work to live and the rich if they become poor may not want.”

*Id.* at 20. *See also* NEIL A. COHEN, CHILD WELFARE: A MULTICULTURAL FOCUS 18 (Neil Cohen ed., 2d ed. 2000) (“If necessity justified the labor of young children, religion sanctified it”).

20. Abbott, *supra* note 19, at 21. Several historical factors played into the continuation of child labor into the post-civil war era, most notably, the laissez-faire economy that predominated as the political mindset of the times. TRATTNER, *supra* note 16, at 31–32. Few wanted the government to step in to restrict business. *Id.* As long as people were making money and goods were being sold, people tended to ignore the controversial issues and ethical dilemmas. *See id.* In addition, it was also counter to Biblical teachings to interfere with business choice. *Id.* at 31–32. A popular idea of the late nineteenth century was the Gospel of Wealth, which emphasized that the moral man was he who strove to “acquire property and accumulate riches.” *See id.* Anyone who wanted to hinder the progress of business by taking away its labor force was trying to spread immorality by this view. *See id.* at 32.

21. *Id.* at 27.

22. TRATTNER, *supra* note 16, at 28. Opposition to child labor arose in England

pushed for children to work less and receive an education, despite the fact that it was also the Puritans who believed that work was a tool to fight the sin of idleness.<sup>23</sup> The Puritans' reasoning for education was that children needed to learn to read in order to read the Bible and be able to save themselves from sin.<sup>24</sup>

Legislatively, during the Industrial Revolution the country was increasingly active in protecting child workers.<sup>25</sup> In 1892, the Democratic Party officially announced that they were against the employment of children under the age of fifteen.<sup>26</sup> In 1893, the Illinois Factory Act<sup>27</sup> allowed for state control of industries.<sup>28</sup> Then, in 1904, the Socialist Party fought for a complete ban on child labor.<sup>29</sup> Because of these endorsements by political parties, such legal reforms began to build momentum.

Yet, passage of a law was only a first step toward resolving the problem addressed by the legislation. For example, a Boston law in 1902 enforced an age limit of eleven years old for boys and fourteen years old for girls for the jobs of boot blacking and selling anything.<sup>30</sup> Such laws took years to create but were so specific and

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around the same time as it did in the United States. *Id.* at 28. However, the reason for opposition was quite different across the ocean. *Id.* In England, reformers became concerned with the poor conditions in which the children worked and the resulting health problems. *Id.* This concern was triggered by a group of Manchester physicians. *Id.* The physicians reported a link between a massive fever epidemic and children's working conditions. *Id.* Concern about children's not having enough time for education was secondary to these health concerns. *Id.* A logical question to follow this distinction of motives is why the United States opposed child labor on the grounds that it detracted from education. This motivation for want of education could have its basis in the Puritan belief that people came into direct contact with God and learned His will through reading the Bible. Schooling was therefore necessary to teach children how to read. *Id.* at 28–29.

23. *Id.* at 24, 28–29.

24. *Id.* at 28–29.

25. *Id.* at 30–36.

26. *Id.* at 33.

27. Factories and Workshops, 1893 Ill. Laws §§ 1–11, available at <http://womhist.binghamton.edu/factory/doc13.htm> (“[a]n Act to regulate the manufacture of clothing, wearing apparel, and other articles in this State, and to provide for the appointment of State inspectors to enforce the same, and to make an appropriation therefore”).

28. TRATTNER, *supra* note 16, at 34–35.

29. *Id.* at 33.

30. See EDWARD N. CLOPPER, CHILD LABOR IN CITY STREETS 196 (Garrett Press, Inc. 1970).



contained such minimal authority that the battle to protect children seemed futile.

Until 1938, the laws that were passed were either state or local statutes; victories were few.<sup>31</sup> But the prospects for child labor legislation changed dramatically during the Great Depression when eradicating child labor provided the promise of supplying unemployed adults with the jobs heretofore held by children. When child labor began to have a negative effect on the welfare of adults, the nation began to take notice. In the depths of the Great Depression the Fair Labor Standards Act of 1938 (FLSA)<sup>32</sup> was passed. This law prohibited children under sixteen from working during the school year and prohibited children from working at specific dangerous jobs all year round.<sup>33</sup> This law was a landmark in the child labor battle because it has endured and, unlike its predecessors, was not found unconstitutional.

Although the FLSA was very beneficial to children's welfare, it was hardly all encompassing in protecting child labor. One of the largest loopholes in the law was its lack of applicability agricultural employment.<sup>34</sup> For decades after the FLSA was passed, children continued to work on farms during the harvest season. Furthermore, children who worked in agriculture were not required to attend school.<sup>35</sup>

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31. See TRATTNER, *supra* note 16, at 34–36, 45. The reasons for challenging child labor were present in visceral forms. For example, along the Gulf Coast the shrimping and canning business thrived. *See id.* at 107. The work was dangerous and injury was common. *Id.* at 107–08. In these southern communities, illiteracy was approximately 25% among children aged ten to fifteen who worked in the shrimping and canning industries. *Id.* at 40. There were no childcare programs for the mothers who worked, so young children often wandered about with their mothers while they worked. *See id.* at 109. During this period, the emergence of unions expanded discourse about child labor. *See* S. REP. NO. 61-645, vol. 6, at 41–42 (1910). Working conditions for both adults and children became an issue at the 1832 New England Association of Farmers, Mechanics and Other Workingmen's convention, which produced the following quote: "Children should not be allowed to labor in the factories from morning till night, without time for healthy recreation and mental culture . . . it endangers their . . . well-being and health." TRATTNER, *supra* note 16, at 29.

32. Fair Labor Standards Act, 1952 Stat. 1060 (1938).

33. See RONALD B. TAYLOR, *SWEATSHOPS IN THE SUN: CHILD LABOR ON THE FARM* 7 (Beacon Press 1973).

34. TAYLOR, *supra* note 33, at 7.

35. *See id.* at 7–9 (describing various exceptions carved out by several states for agricultural labor).

World War II revolutionized American industry in many ways. Machines were created to do many of the tedious, monotonous jobs that children once did, and the people who were required to run the machines needed increasingly more and more education. States responded to the decline in child labor by lengthening the school year, requiring more years of education, and enforcing the truancy laws more effectively. In 1949, Congress amended the FLSA to include businesses that were not previously covered.<sup>36</sup> These measures drastically lowered the number of children working.<sup>37</sup>

One of the only areas in the United States where child labor still thrived in the last half of the twentieth century was in the population of poor, migrant farmers.<sup>38</sup> Their frequent moves across the country and problems with their questionable legal status made them particularly susceptible to market pressures encouraging child labor. In addition, this industry had no special need for highly educated workers nor were unions being formed to protect their rights and raise working standards.

The economic plight of the migrant workers often made it crucial for the children to work. The conditions of migrant workers in the 1950s served as a reminder of what life was like for almost all American children when the nation was less affluent. Migrant children were vital providers of income. As before, efforts to reform this situation in the fields were rebutted by references to the fact that child labor teaches children valuable life lessons, such as: the value of a dollar, pride in a job well done, and the joy of recreation outdoors.

Currently, both state and federal laws restrict the work and the occupations or industries in which children can work.<sup>39</sup> Yet certain exceptions remain. The governing sections of the FLSA outline the general guidelines and exceptions in the regulation of child labor.

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36. Fair Labor Standards Amendments Act of 1949, 63 Stat. 910 (1949).

37. See TRATTNER, *supra* note 16, at 224 (describing the 1949 amendments and stating that they “went a long way toward improving the law”).

38. For further reading see Jeanne M. Glader, *supra* note 3.

39. See Douglas L. Kruse & Douglas Mahony, *Illegal Child Labor in the United States: Prevalence and Characteristics*, 54 INDUS. & LAB. REL. REV. 17, 17–18 (2000).

Children under fourteen:

- Can work for their parents in any occupation besides manufacturing, mining, or other Hazardous Occupations.<sup>40</sup>
- Can be employed as actors, performers in theater, radio, or television.<sup>41</sup>
- Can deliver newspapers.<sup>42</sup>
- Can work in non-hazardous agricultural jobs with their parent's consent outside of school hours.<sup>43</sup>
- Can work outside of school hours in non-hazardous agricultural jobs on their parents' farms as long as the farm is not covered by minimum wage requirements.<sup>44</sup>
- Can be granted special waivers to hand-harvest crops outside of school hours as long as no pesticides are being used.<sup>45</sup>

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40. See Dorianne Beyer, *Understanding and Applying Child Labor Laws to Today's School-to-Work Transition Programs*, CENTERFOCUS, Apr. 1995, at 3. See also *Protecting Youth at Work: Health, Safety, and Development of Working Children and Adolescents in the United States* 169 (1998), available at <http://www.nap.edu/openbook/0309064139/html/R1.html> [hereinafter *Protecting Youth at Work*]. The Secretary of Labor prohibits employment of children under the age of 18 at jobs that involve:

- 1) manufacturing or storing explosives; 2) driving a motor vehicle and being an outside helper on a motor vehicle; 3) coal mining; 4) logging and sawmilling; 5) power-driven wood-working machines; 6) exposure to radioactive substances; 7) power-driven hoisting apparatus; 8) power-driven metal-forming, punching, and shearing machine; 9) mining, other than coal mining; 10) slaughtering, meat packaging, or processing; 11) power-driven bakery machines; 12) power-driven paper-products machines; 13) manufacturing brick, tile, and related products; 14) power-driven circular saws; 15) wrecking, demolition, ship-breaking operations; 16) roofing operations; 17) excavation operations.

*Id.*

41. See Beyer, *supra* note 40, at 2.

42. *Id.*

43. See *Protecting Youth at Work*, *supra* note 40, at 167 (referring to children aged twelve or thirteen).

44. *Id.* (referring to children under twelve).

45. *Id.* (referring to children aged ten or eleven).

Children fourteen and fifteen:

- Can be employed in non-manufacturing, non-mining, processing, and non-hazardous jobs (encompasses mainly the operating and repairing of equipment).<sup>46</sup>
- Can only work for three hours on a school day or a total of eighteen hours during a school week.<sup>47</sup>
- Can work no more than eight hours on a school day for a total of forty hours during a non-school week.<sup>48</sup>
- Are prohibited from operating certain machines in agricultural jobs.<sup>49</sup>

Children sixteen and seventeen:

- Are not restricted in the number of hours that they can work.<sup>50</sup>
- May be employed in any industry or occupation outside of Hazardous Occupations.<sup>51</sup>

The history of American attitudes to child labor has not taught American legislators the importance of contextual application of moral principles. For example, several years ago it was discovered that other countries were hiring young children to sew together soccer balls, which received the attention of the sport-loving Americans.<sup>52</sup> In 1999, the Child Labor Free Consumer Information Act<sup>53</sup> encouraged companies to voluntarily label their products as being made without the help of children.<sup>54</sup> The debate surrounding the legislation contains little awareness that moral principles should not be universally applied.

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46. See Beyer, *supra* note 40, at 5.

47. See *Protecting Youth at Work*, *supra* note 40, at 166.

48. *Id.*

49. See Beyer, *supra* note 40, at 5.

50. *Id.* at 6.

51. *Id.* at 5–6 (identifying limited exceptions on certain Hazardous Occupations for apprentices, including working in or around: power-driven wood-working machines; power-driven metal-forming, punching, and shearing machines; slaughtering, meat packaging, or processing; power-driven paper-products machines; power-driven circular saws; roofing operations; and excavation operations).

52. See John J. Tierney, *The World of Child Labor*, THE WORLD & I, Aug. 2000, at 54.

53. Child Labor Free Consumer Information Act of 1999, S. 1549, 106th Cong. (1999).

54. *Id.*

In the United States as elsewhere, historical experience suggests that the main factor explaining the existence of child labor is poverty. When the parents' income is not sufficient to feed, clothe, and shelter the family, then there are rarely clear alternatives to child labor.

### III. ATTITUDES TO CHILD LABOR IN INDIA

Picture a toddler stacking matchboxes in a match workshop even before he has learned to stand. This scenario is not uncommon in the match and fireworks industries in Sivakasi, Tamilnadu. Sivakasi probably has the highest concentration of child laborers in the world, employing numerous children from the villages that surround Sivakasi. A description of the pattern of transportation of these children to and from work is even more appalling than the specter of a toddler working:

The factory bus leaves the factory premises around 6 p.m. It drops the children on the way, while the nearest village is 1 km from the factory, the farthest one is about 20 km. The bus . . . reaches the last village by 8 to 9 p.m. The bus starts from that village between 3 to 4 a.m. with the last child and proceeds towards the factory. It reaches the factory premise around 6 a.m. The sleeping children are thereafter dumped into a hall to sleep up to 7 a.m. After that . . . they have their breakfast and start work.<sup>55</sup>

These conditions outrage us at a visceral level and are seemingly sufficient to elicit unanimous endorsement of any laws that abolish child labor. Regardless of how individualistic a person's analytical framework is, he or she recognizes that children are vulnerable. Children are perceived as innocent and more often than not, cannot avoid being exploited. The term "child labor" almost always evokes the miserable conditions of children employed in sweatshops or the sexual exploitation of child prostitutes in East Asia or, as discussed earlier, the child workers of the match and fireworks industries in India.<sup>56</sup> Even though the

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55. See LAKSHMIDHAR MISHRA, *CHILD LABOR IN INDIA* 46–47 (Oxford Univ. Press 2000).

56. For further reading see JEREMY SEABROOK, *CHILDREN OF OTHER WORLDS: EXPLOITATION IN THE GLOBAL MARKET* (Pluto Press 2001) (describing in macabre detail the

legal meaning of the term child labor goes well beyond these images to potentially include economic activities by minors or persons under the age of eighteen, which could be considered minimally harmful or even benign,<sup>57</sup> the campaign seeking to abolish child labor sometimes considers it to be an evil comparable to slavery.<sup>58</sup>

Moral repugnance to child labor, however, is not solely caused by the increased possibility of exploitation and its detrimental effects on the growth and development of the child, but is also fueled by the belief that any work a child is made to do is “forced” labor.<sup>59</sup> Unlike an adult, a child is not mature enough to make informed decisions about work.<sup>60</sup> This concern emanates from the sense that child labor deprives children of their childhood.<sup>61</sup> Most people in the Western World have an idealistic vision of childhood, one incompatible with the idea of a child toiling away for wages.<sup>62</sup>

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conditions of child labor in Bangladesh and confirming many of the worst images of child labor, likening the practice to that of slavery).

57. ILO Convention No. 138, Minimum Age Convention, 1973, art.1, *available at* [http://www.ilo.org/public/english/employment/skills/recomm/instr/c\\_138.htm](http://www.ilo.org/public/english/employment/skills/recomm/instr/c_138.htm) [hereinafter ILO Convention No. 138] (requiring that ratifying States “pursue national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.”) Neither the United States nor India has ratified ILO Convention No. 138. *See* <http://www.ilo.org/public/english/employment/skills/recomm/instr/c138r.htm> (last visited October 24, 2004).

58. *See* International Labor Conference, Report VI(2), 86th Sess. (June 1998), *available at* <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/rep-vi.htm>.

59. *See* Madiha Murshed, *Unraveling Child Labor and Labor Legislation*, 55 J. INT’L AFF. 169, 173–74, 180. Murshed distinguishes between various forms of child labor. *Id.* at 173. Child labor done on family farms or household chores are generally not harmful to the child and are even beneficial to the development of the child. *Id.* Apprenticeships (or on-the-job training), however, remain a “much debated type of child labor” because of the possible benefits as well as the possibility for great harm. *Id.* Wage labor “is usually more exploitative than apprenticing,” and is of greater harm to the children involved. *Id.* at 173–74. Bonded labor is the most exploitative situation in which children can be involved. *Id.* at 174. This form of labor is most common in families that use the labor of the children to help pay rent or debts. *Id.* at 174. However, as Murshed points out, various “definitions of work differ considerably between countries and have led to a haphazard pattern of national laws.” *Id.* at 180.

60. *See* Katherine Cox, *The Inevitability of Nimble Fingers? Law, Development, and Child Labor*, 32 VAND. J. TRANSNAT’L L. 115, 121–22 (1999).

61. *See* KRISTE LINDENMEYER, *A RIGHT TO CHILDHOOD* 9 (Univ. of Ill. Press 1997).

62. *See* NEIL POSTMAN, *THE DISAPPEARANCE OF CHILDHOOD* 52, 139–42 (Vintage

These sentiments have indeed fueled the activism against child labor in support of laws banning child labor.<sup>63</sup> Laws aimed at abolishing the phenomenon of child labor are one of the most attractive forms of labor market regulation. The rise in global trade has fueled international concern and legislation regarding the use of the child labor.<sup>64</sup>

However, in spite of numerous measures taken to end child labor all over the world, it is history for some nations, and a way of life for others.<sup>65</sup> The United States has successfully resolved the

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Books 1994). Postman outlines the historical ideas and thoughts on what childhood should entail. Using the present notion of what it is to be a child, the author argues that our current ideas about childhood are disappearing because the line between adult and child is thinning. *Id.*

63. See *Protecting Youth at Work*, *supra* note 40, at 110–40 (1998) (arguing that any benefit gained from working during childhood years is often outweighed by the negative consequences, including: poorer education outcomes, hindered relationships, behavioral problems, and problems in personal growth).

64. See Convention on the Rights of a Child, *supra* note 4, art. 32. Human rights activists have brought attention to this phenomenon labeling it as a transgression of the fundamental rights of children. Another position attempting to abolish child labor is that of international trade standards that discourage trade in goods that are produced using child labor. Furthermore, numerous conventions put forth by the ILO encourage member countries to adopt and enforce laws that abolish child labor. See, e.g., Int'l Programme on the Elimination of Child Labour (IPEC), What is IPEC: At a Glance, *available at* <http://www.ilo.org/public/english/standards/ipecc/about/implementation/ipecc.htm> (last visited Oct. 24, 2004). By mid-2000, thirty-three countries held membership with the ILO's IPEC. See IPEC, How IPEC Works with Governments, *available at* <http://www.ilo.org/public/english/standards/ipecc/governments/index.htm> (last visited Oct. 24, 2004).

65. See discussion *supra* Part II (indicating a successful resolution of child labor problems by the United States). For further reading see Kaushik Basu & Pham Hoang Van, *The Economics of Child Labor*, 88 AM. ECON. REV. 412, 413 (1998) [hereinafter *The Economics of Child Labor*]. Child labor is a way of life and major force in many nations' economies. *Id.* (providing a detailed analysis on the economic effects of have a child labor force). According to the ILO, "the less developed a country is, the greater the proportion of the child population who work." INTERNATIONAL LABOR OFFICE, STATISTICS ON WORKING CHILDREN AND HAZARDOUS CHILD LABOUR IN BRIEF (Apr. 1998), *available at* <http://www.ilo.org/public/english/standards/ipecc/simpoc/stats/child/stats.htm>. In Africa and Asia, excluding Japan, child labor rates range from 30% to 60%. *Id.* There are an estimated 250 million children working between the ages of five and fourteen in the developing world. *Id.* 61% of the 250 million children are working in Asia, 32% in Africa, and 7% in Latin America. *Id.* Basu and Van cite parents' daily concern over "household survival" as reason to send their children off to work and not school; consequently if it were not for the economic struggles of the family, children would work much less. See Basu & Van, *supra*, at 413. The article concludes that a total ban on child labor would cause labor shortages,

problem of child labor while India is still struggling with it.<sup>66</sup> Part III examines causes of the high incidence of child labor in India, thereby illustrating the highly contextual nature of the issue of child labor.

A. *Historical Development of Child Labor Laws in India: British Rule to Independence and the CLPRA*

In 1881, while still a part of the erstwhile British Empire,<sup>67</sup> India, introduced its first legislation restricting child labor: The Indian Factories Act.<sup>68</sup> The Act prohibited the employment of children below the age of seven, limited working hours to nine hours a day, and provided four holidays in the month.<sup>69</sup> Even though some humanitarian concern may have prompted this legislation, it also served to reduce production in indigenously owned Indian industries that competed with those of the British Government.<sup>70</sup> A decade later the Government appointed a Factory Commission.<sup>71</sup> The recommendations made by the Commission resulted in the Indian Factories Act of 1891, wherein the “lower age was extended to 9 years, working hours reduced from 9 to 7 hours and children were not allowed to work at night.”<sup>72</sup> Another decade later, the Mines Act<sup>73</sup> was enacted to prohibit children from working in places that might be “dangerous

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raising the price of adult labor, and relieving the need to send children to work in the first place. *Id.* However, the wage of the adult would have to be raised to such a level that it includes the missing wages of the children of the household. *Id.* This is only possible if there is an effective total ban on child labor, and this important qualification is highly unlikely.

66. See U.S. DEPARTMENT OF LABOR, BY THE SWEAT AND TOIL OF CHILDREN (VOLUME V): EFFORTS TO ELIMINATE CHILD LABOR 14 (1998) (reporting statistics on the level of child labor in third world countries, including India). All rates far exceed those of the developed world, including the United States. *Id.* Examples of child labor within the United States in the past twenty years are virtually nonexistent.

67. India gained independence from Britain in 1947. See BBC, *History Timelines*, available at [http://www.bbc.co.uk/history/timelines/britain/post\\_india\\_pstan.shtml](http://www.bbc.co.uk/history/timelines/britain/post_india_pstan.shtml) (last visited Oct. 24, 2004).

68. S.K. TRIPATHY, CHILD LABOUR IN INDIA 48 (Discovery Publishing House 1989).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*



to their health and safety.”<sup>74</sup>

None of these laws were really effective, the reason being ineffectual enforcement. Furthermore, with the advent of electricity, work hours were not restricted to the day but extended into the night as well.<sup>75</sup> With the labor conditions not really improving, the Government of British India appointed the “Freer Smith Committee in 1906 and a Factory Commission in 1907 to make inquires on existing labour conditions.”<sup>76</sup> The result was a new factory bill in 1909 later enacted into a law in 1911.<sup>77</sup> This Act “reduced the working hours of children to 6 hours and provided that all child workers to posses a certificate of age and fitness.”<sup>78</sup> The Act also prohibited children from working at night.<sup>79</sup>

The movement against child labor was given further impetus by the founding of the International Labour Organization in 1919.<sup>80</sup> India was among the first ten founding non-elective and permanent members of the ILO.<sup>81</sup> As part of its attempt to introduce international guidelines regarding the employment of children, the ILO created a Convention on Child Labor in 1919.<sup>82</sup> The Convention was aimed at prohibiting children less than fourteen years of age from working in industrial establishments.<sup>83</sup> It had to be ratified by the Government of British India. The debates concerning ratification were lengthy and divisive.<sup>84</sup> While most of the opponents of the minimum age laws argued that it was

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74. *Id.* The Mines Act of 1901 empowered the Chief Inspector of Mines to restrict child labor to places that did not endanger their safety or health. *Id.*

75. *See id.*

76. *Id.* at 48–49.

77. *Id.* at 49.

78. *Id.*

79. *Id.*

80. Constitution of the International Labour Organization, Treaty of Versailles, 49 Stat. 2713 (1919) [hereinafter Constitution of the ILO].

81. *See* International Labour Organization, *Strategic Objectives of the ILO*, available at <http://webfusion.ilo.org/public/db/bureau/program/objectives/> (last visited Oct 24, 2004).

82. ILO Convention No. 5, Minimum Age Industry Convention, 1919, available at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

83. *See* Constitution of the ILO, *supra* note 80, art.2.

84. *See* NEERA BURRA, BORN TO WORK: CHILD LABOUR IN INDIA 3 (Oxford Univ. Press 1998). The question of raising the minimum age from nine to twelve (and not the required fourteen) created a huge controversy in the Legislative Assembly. *Id.*

an economic and social necessity for children to work,<sup>85</sup> there were those who suggested that compulsory education, and not minimum age laws, should be the first step toward reducing child labor.<sup>86</sup> As a result of the debate,<sup>87</sup> the Convention could not be ratified. Instead, the Indian Factories (Amendment) Act [of] 1922 was enacted, prohibiting the employment of children less than twelve years of age in some but not all places of work.<sup>88</sup>

The new Mines Act of 1923<sup>89</sup> and the Indian Ports (Amendment) Act<sup>90</sup> were further attempts aimed at restricting

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85. *See id.* at 4. One argument, voiced by Sir Thomas Holland was “that if the minimum age were raised it would upset the organizational set-up of most of textile mills.” *Id.* at 3. These mills were “the principal employers of children.” *Id.* Their machinery, which was made with child workers in mind, would be rendered obsolete if children did not work there anymore. *Id.* (It is important to note here that the textile industry was a major source of wealth for the British Empire). Sir Holland suggested, though, that in order to comply with the ILO, no fresh recruitment of children should take place, while allowing those who were already employed to continue doing so. *Id.*

Other arguments in favor of child labor came from factory owners who claimed that they looked after the welfare of the children. *Id.* at 4. According to them, “working children of the poor were the mainstay of their families and not allowing them to work would lead to hardship poverty and misery for them.” *Id.* Furthermore, children worked “fast and were more intelligent and since there was no universal primary education, work was good for the children.” *Id.* Some members even argued “that the parents of working children wanted [them] to work and the State ought not to interfere in the rights of parents.” *Id.* According to Sir L.P. Watson, another member of the Legislative Assembly, “introducing a minimum wage for children . . . would be detrimental to the interests of the children, the people and the country.” *Id.* at 4–5.

86. *See id.* at 4. It is important to note that in India, too, the problem of child labor was addressed in conjunction with that of education. *Id.* at 5. There were those who argued that the solution to the problem of child labor lay in compulsory primary education. *Id.* at 3. Sir Holland, who pointed out that in spite of the Provincial Acts making education compulsory, local authorities did not insist upon primary education, countered these arguments. *Id.* at 3–4. According to him, few “ratepayers” would be “keen on paying for education which [would] steal from them the cheapest form of their labour.” *Id.* at 4.

87. *Id.* at 5. Thirty-two members of the house voted for raising the minimum wage while forty members opposed it. *Id.*

88. *See id;* TRIPATHY, *supra* note 68, at 49 (This Act was applicable to factories employing twenty or more persons, perhaps that number being large enough to signify a formal place of work.). However, the local governments were empowered to include any other establishment where ten or more persons were employed. *Id.*

89. *See* Mines Act (1923) (Ind.), at [http://coal.nic.in/weboflife-minenessafety/ma\\_1952.pdf](http://coal.nic.in/weboflife-minenessafety/ma_1952.pdf) [hereinafter Mines Act (1923)].

90. *See* Indian Ports Act (1908) (Ind.), available at <http://www.indialawinfo.com/bareacts/iports.html>.

child labor in mines and ports.<sup>91</sup> In 1929, the Royal Commission on Labour in India was established as an attempt to survey and report the existing labor conditions in the country.<sup>92</sup> The resulting report illuminated, among other things, the plight of working children in numerous industries.<sup>93</sup> One of the main concerns of the Royal Commission was that of the pledging of children to employers in return for small sums of money.<sup>94</sup> Based on the recommendations of the report, the Children Pledging of Labour Act, 1933,<sup>95</sup> which prohibits parents or guardians from the “pledging of children to employers in return for small sums of money,” was passed.<sup>96</sup> The other legal provision made on the basis of the report was the Employment of Children Act of 1938.<sup>97</sup> This Act fixed the minimum age of employment at fourteen years for those in specified occupations,<sup>98</sup> and work that involved handling

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91. See TRIPATHY, *supra* note 68, at 49.

92. See BURRA, *supra* note 84, at 5.

93. *Id.* at 6. The report states:

Workers as young as five years of age may be found in some of these places working without adequate meal intervals or weekly rest days, and often for ten or twelve hours daily, for sums as low as 2 annas [approx equivalent to 1/66 of a dollar] in the case of those of tenderest years. This recalls some of the worst features of child apprenticeship in England at the time of the agitation prior to passing the first Factory Act, particularly when it is realized that many of the parents of these child workers are in debt to the employer. As a result they are not in a position to enquire too closely into the treatment meted out to their children or to do other than return an absconding child.

*Id.* at 96 (quoting Government of India, *Report of the Royal Commission on Labour in India* (Calcutta: Gov't of India Cent. Publication Branch) (1931)).

94. BURRA, *supra* note 84, at 8. “[I]t is worse than the system of the indentured labour, for the indentured labourer is when he enters on the contract a full agent while the child is not . . . The giving of advances to secure the labour of children and the execution of bonds pledging such labour could both be made criminal offences.” *Id.* at 102 (quoting Government of India, *Report of the Royal Commission on Labour in India* (Calcutta: Gov't of India Cent. Publication Branch) (1931)).

95. Children (Pledging of Labour) Act (1933) (Ind.), at [http://www.panjokutch.com/laws/children\\_act1933.htm](http://www.panjokutch.com/laws/children_act1933.htm).

96. *Id.*

97. BURRA, *supra* note 84, at 8. This legislation was considered to be an important step as it was the first piece of legislation that was specially meant for child labor. It is interesting to note that it was in this same year that the FLSA was passed in the United States. Even so, the situation of child labor in the two countries is extremely different.

98. See *id.* at 10. The occupations are beedi making (tobacco rolling), carpet weaving,

of goods within the limits of any port or railway.<sup>99</sup>

India gained independence in 1947 and the Indian Constitution came into existence on November 26, 1949.<sup>100</sup> Provisions were made within the Constitution to protect children from exploitation and early employment. Article 23 of the Indian Constitution prohibits the trafficking of human beings and forced labor.<sup>101</sup> Article 24 states: "No child below the age of 14 shall be employed to work in any factory or mine or be engaged in any hazardous employment."<sup>102</sup> Other articles intended for the welfare of children, protecting their freedom and dignity against exploitation, were also included in the Constitution.<sup>103</sup> Furthermore, a provision was made for free and compulsory education for children.<sup>104</sup>

To uphold the provisions made in the Constitution, several pieces of legislation were enacted in the years following independence. The first major act after independence was the Factories Act of 1948,<sup>105</sup> restricting the age of employment to fourteen years. Legal judgments made in conjunction with the Factories Act added further restrictions to child labor.<sup>106</sup> Then, the

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cement manufacture, textile manufacture, match manufacture, mica cutting, shellac manufacture, soap manufacture, tanning and wool cleaning. *Id.* at 2-6.

99. See TRIPATHY, *supra* note 68, at 51.

100. INDIA CONST., pmbl.

101. *Id.* art. 23.

102. *Id.* art. 24.

103. *Id.* art. 39. Article 39(e) and (f) require "certain principles of policy to be followed by the State," as follows:

The state shall, in particular, direct its policy securing (e) that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

*Id.*

104. *Id.* art. 45 ("The state shall endeavor to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years.").

105. TRIPATHY, *supra* note 68, at 53.

106. *Id.* at 54. In *Mechnitosh v. First Brook Book Co.* (1904, 34, C.L.T. 370), it was determined that the responsibility of ascertaining the age of an applicant rested with the employer, and a mere statement from the applicant was insufficient evidence. *Id.* In

Plantation Labour Act of 1951 prohibited the employment of children under the age of twelve on plantations.<sup>107</sup> Children over twelve were allowed to work based on a certificate of fitness by a doctor.<sup>108</sup> The Mines Act of 1952,<sup>109</sup> the Merchant Shipping Act of 1958,<sup>110</sup> the Motor Transport Workers Act of 1961,<sup>111</sup> the Apprentices Act of 1961,<sup>112</sup> the Atomic Energy Act of 1962,<sup>113</sup> and the Beedi & Cigar Workers Act of 1966<sup>114</sup> are other statutes concerning child labor in specific occupations.<sup>115</sup> They were all aimed at addressing the different sectors of the economy where child labor existed.<sup>116</sup>

The most comprehensive of all child labor laws passed in India is the Child Labour (Prohibition and Regulation) Act of 1986 (CLPRA).<sup>117</sup> The beginnings of this Act could be traced to a nongovernmental organization based in Bangalore, India. This group argued that “poverty was the main cause of child labour and that, therefore, the attempt should be to regulate the conditions under which children work rather than prohibit such work.”<sup>118</sup>

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*Jhunjhunwala v. B.K.Pattnaik* (II LLJ, Orissa 51, 1964), the Orissa High Court punished the owner a glass factory for employing 14 adolescents in the blowing section of the factory. *Id.* The blowing section was declared hazardous, and therefore the use of adolescents would imply violating the Factories Act, 1948. TRIPATHY, *supra* note 68, at 55.

107. TRIPATHY, *supra* note 68, at 55.

108. *See id.*

109. *See* Mines Act (1952), *supra* note 89.

110. *See* The Merchant Shipping Act (1958) (Ind.), at <http://www.indialawinfo.com/bareacts/mainbare.html> (last visited Oct. 24, 2004).

111. *See* Motor Transport Workers Act (1961) (Ind.), at [http://www.kerala.gov.in/dept\\_labour/act13.pdf](http://www.kerala.gov.in/dept_labour/act13.pdf) (last visited Oct. 24, 2004).

112. *See* The Apprentices Act (1961) (Ind.), at <http://www.indialawinfo.com/bareacts/appren.html> (last visited Oct. 24, 2004).

113. *See* The Atomic Energy Act (1962) (Ind.), at <http://www.indialawinfo.com/bareacts/atomic.html> (last visited Oct. 24, 2004).

114. *See* TRIPATHY, *supra* note 68, at 57; *see also* MISHRA, *supra* note 55, at 177–79. Both books chronicle the legal provisions made with respect to child labor.

115. *See* TRIPATHY, *supra* note 68, at 55–58.

116. As this article later discusses, traditional craft-based industries and family-owned enterprises, although large employers of children, escaped the purview of these laws that essentially targeted formal places of work. *See infra* note 159 and accompanying text.

117. *See* BURRA, *supra* note 84, at 2. *See also* The Child Labour (Prohibition and Regulation) Act (1986) (Ind.) [hereinafter CLPRA], at <http://www.indialawinfo.com/bareacts/cla.html> (last visited Oct. 24, 2004).

118. *See* BURRA, *supra* note 84, at 1.

This argument resulted in widespread discussions between two groups of activists: While one supported the regulation of child labor, the other insisted that prohibition would be the only solution to the problem.<sup>119</sup> Prior to the creation of the Act, “the Child Labour (Prohibition and Regulation) Bill was introduced in both houses of Parliament” with the following statement of objects and reason:

There are a number of Acts which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are under exploitative conditions.<sup>120</sup>

The introduction of this Bill generated a debate in the Indian Parliament with some members voicing their apprehensions and reservations with regards to different aspects of the Bill.<sup>121</sup> Even so, the CLPRA was passed in 1986, and it continues to be the principal enactment on the issue of employment of children.<sup>122</sup> This Act does not call for an outright ban on child labor, but instead permits employment of children in industries that are not specified in the Act. Although the Act has been criticized for the

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119. *Id.* at 2.

120. *See* MISHRA, *supra* note 55, at 170–71.

121. *Id.* at 171. One particular aspect of the Bill that members took exception to was the proviso in clause 3, part 2: “provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from Government.” *Id.* They argued that hazardous work could be carried out at home; therefore this process should not be excluded. *Id.* Furthermore, any scheme of exemption will definitely be “misinterpreted” and “misused.” *Id.* Other objections were that child labor should not be regularized just because it exists, and banning labor in some industries, while merely regulating it in others, would result in a lopsided approach to resolve the problem of child labor. *Id.*

122. *See* CLPRA, *supra* note 117. In spite of being the most comprehensive of all child labor laws passed in India, the CLPRA has been criticized on numerous grounds. *See* BURRA, *supra* note 84, at 2 (arguing that the provisions of the act differ very little from those of the Employment of Children Act of 1938); MISHRA, *supra* note 55, at 173–76 (pointing out many conceptual, definitional, and operational shortcomings of the law that, in effect, do little to improve the lot of working children).

above reason, it must be noted that the attempt to contextually address the problem of child labor in India is evident in this Act.<sup>123</sup>

In the year following the passing of the CLPRA, the Government of India announced a National Child Labour Policy, following which a project-based plan of action was adopted.<sup>124</sup> Some industries<sup>125</sup> were identified to promote non-formal education for children, employment, and income generation schemes for poor parents of working children. These projects now constitute seventy-six industries,<sup>126</sup> a big step from the initial nine. The individual projects have been largely effective in removing child labor from hazardous industries and rehabilitating them, while improving the socioeconomic conditions that prevail in these industries.<sup>127</sup>

A large network of Non-Governmental Organizations (NGOs) work in close association with the National Child Labour Projects as well as with child labor projects initiated by the ILO and other organizations.<sup>128</sup> These NGOs work at the grassroots level and are able to initiate programs that improve the lot of working children

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123. See BURRA, *supra* note 84, at 2–5. The numerous influences of the ILO and the United Nations (UN) through directives to member states to take necessary legal steps to abolish child labor are unmistakable. *Id.* Moreover, unilateral trade bans have also exerted a similar influence. However, the fact that an outright ban may not work within the Indian context has been admitted in part by the legislators of the Child Labor Act. *Id.* Even so, organizations such as the ILO do have an agenda that seeks to universally ban child labor to clash with the contextual approach necessitated by the socioeconomic conditions of child labor in India. *Id.*

124. See *id.* at 2.

125. See *id.* at 2–3. These include the match making industry in Sivakasi, Tamil Nadu; the diamond polishing industry in Surat, Gujarat; the precious stone polishing industry in Jaipur, Rajasthan; the glass industry in Firozabad, Uttar Pradesh; the hand-made carpet industries in Kashmir and Uttar Pradesh; the lock making industry in Aligarh, Uttar Pradesh; the slate industry in Markapur, Andhra Pradesh; and the slate industry in Mandasaur, Madhya Pradesh.

126. Embassy of India (Washington, D.C.), *Policy Statements: Child Labor and India*, Present Coverage Under National Child Labor Project, at [http://www.indianembassy.org/policy/Child\\_Labor/childlabor.htm](http://www.indianembassy.org/policy/Child_Labor/childlabor.htm) (last visited October 24, 2004); Ministry of Labour, *The Gazette of India Extraordinary: Child Labour Law in India*, Position on the Implementation of the Directions of the Supreme Court of India Writ Petition (Civil) No. 495/1986, Part II-Section 3-Subsection (ii) (1996), at [http://www.indianchild.com/child\\_labour\\_law\\_in\\_india.htm](http://www.indianchild.com/child_labour_law_in_india.htm) (last visited Oct. 24, 2004).

127. See MISHRA, *supra* note 55, at 214–17.

128. See *id.* at 340–47.

on a far more interactive basis.<sup>129</sup> The challenge faced by most organizations, however, is their limited scope and resources.<sup>130</sup> Nevertheless, these organizations are an important part of the movement against child labor in India. Furthermore, they are the breeding grounds for social activism and community awareness. These organizations help garner support and initiate legal action<sup>131</sup> against businesses that continue to exploit child labor.

Not only have efforts of this kind helped defend the rights of the poor and voiceless, they have also encouraged wide-ranging interpretations of the various legal and constitutional provisions.<sup>132</sup> For instance, in *M.C. Mehta v. State of Tamil Nadu*,<sup>133</sup> the noted social activist M.C. Mehta sought to improve the conditions of the children working in the match and fireworks industries of Sivakasi, Tamil Nadu.<sup>134</sup> The Supreme Court of India decided that the employers offending the CLPRA must be required

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129. *Id.* at 278–89. Mishra identifies some Non-Governmental Organizations (NGOs) and their attempts to eradicate child labor. *Id.* The efforts of these organizations have helped release numerous children from situations of bonded labor as well as other appalling conditions at work. *Id.* Furthermore, attempts have been made to rehabilitate these children through formal or nonformal education, thereby improving literacy rates as well social awareness. *Id.*

130. See Olga Nieuwenhuys, *By the Sweat of Their Brow? 'Street Children', NGOs and Children's Rights in Addis Ababa*, 71 AFRICA 539, 540–41 (2001) (stating that UN aspirations of providing aid are undercut by a lack of personnel and resources).

131. See MISHRA, *supra* note 55, at 226. In an influential decision, the Supreme Court of India reformed its procedures to allow “social action groups to bring social action[s] litigation on behalf of the poor[,] . . . who cannot . . . approach the court because of poverty or disability.” *Id.* Also, the process of filing a writ petition through a lawyer was eliminated and the social activist could do so with just a letter to the judge of the Supreme Court or High Court. *Id.* The latter provision made it extremely easy for social activists to petition cases for the poor. See *id.*

132. *Id.*

133. (1996) 6 S.C.C. 756; see MISHRA, *supra* note 55, at 226–33.

134. See Hemamalini Moorthy, *The Abolition of Child Labour in India – Theory Versus Practice: Mehta v. State of Tamilnadu (Supreme Court of India)*, 3 CAN. INT'L LAW 85, 85–86 (1998). “The petition was filed pursuant to Article 32 of the Indian Constitution, which confers upon the court the power to issue directions for the enforcement of certain constitutional rights, including the child’s right against exploitation as expressed in Article 24.” *Id.* M.C. Mehta, the petitioner in this case, essentially “focused on the breach of Article 24 by the factories of Sivakasi, Tamilnadu.” *Id.* Although the petition only focused on Article 24 of the Indian Constitution, the Supreme Court reviewed all the statutory provisions concerning child labor, including the Child Labor Prohibition and Regulation Act (1986), thereby broadening the scope of its decision. See *id.*



to pay compensation for every child employed in contravention of the Act.<sup>135</sup> Furthermore, the Court suggested that the parents of the children employed in hazardous conditions be provided with employment so as to compensate for the prospective lost income of the child.<sup>136</sup> While the Supreme Court judgment was considered a landmark in the movement against child labor, the situation in Sivakasi, Tamilnadu has not vastly improved.<sup>137</sup>

### *B. The Causes and Contexts of Perpetual Child Labor in India*

How do we explain the resistance of child labor to so many well-intentioned efforts? Are the enforcement mechanisms only half-hearted? Gathering from the movement against child labor in India, it certainly cannot be concluded that the nation is unconcerned or apathetic.<sup>138</sup> Part III.B explores the causes and contexts of child labor in India in an attempt to understand why child labor is a piece of history for a nation such as the United States, but a continuing reality for a country like India.

Accounts of children in ancient Indian society<sup>139</sup> often allude to their participation in work rather early in life.<sup>140</sup> Children are

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135. *Id.* at 87. See MISHRA, *supra* note 55, at 231–32.

136. See MISHRA, *supra* note 55, at 226–33. While recognizing that the compensation paid to the children may not be sufficient to dissuade parents from sending their children to work, and that the State Government of Tamil Nadu “had an obligation to ensure the implementation of the Constitution,” the Supreme Court also acknowledged that providing parents with employment, or compensation via the Child Labour Rehabilitation-cum-Welfare Fund for lack thereof, might be a considerable strain on state resources. Moorthy, *supra* note 134, at 87. Therefore, the Court did not specifically direct the state government to provide such employment or compensation, and only suggested the steps that the government may take to address the child labor issue. *Id.* at 87–88.

137. See MISHRA, *supra* note 55, at 231–32.

138. *Contra* MYRON WEINER, CHILD AND THE STATE IN INDIA: CHILD LABOUR AND EDUCATION POLICY IN COMPARATIVE THE PERSPECTIVE 195 (Princeton Univ. Press 1991) (arguing that the Indian middle class and government officials are unwilling to change the status quo with regards to child labor and providing primary education).

139. Although recorded history has few accounts specifically alluding to child labor, epics like the Mahabharata and Ramayana, which chronicle the events of an era in Indian history, serve to enlighten us about the prevalent societal norms. See TRIPATHY, *supra* note 68, at 76.

140. Krishna, one of the main characters in the epic Mahabharata, was sent away to graze cattle, assuming the duties of cowherd at merely six years of age. *Id.* Similarly, many royal princes, while learning from sages participated in the domestic chores of the sage’s

indulged in and taken care of only in their initial years, following which they are typically assigned work suited to their abilities.<sup>141</sup> Almost nowhere in ancient Indian treatises is it mentioned that childhood was restricted to play and education.

Although a lot has changed since ancient times, it is still not uncommon to find children working in most parts of India. Numerous studies have been conducted investigating the extent and conditions of child labor in India.<sup>142</sup> Estimates suggest that approximately eleven million children in India work full-time.<sup>143</sup> Child labor is essentially a rural phenomenon with “[c]ultivation, agricultural labour, forestry and fisheries account[ing] for 84.9 per cent of child labour.”<sup>144</sup> “In urban areas, [the children work in] manufacturing, service and repairs.”<sup>145</sup> The factories (registered manufacturing units) account for a very small percentage of child labor; child labor, in rural, semi-urban and urban areas is almost entirely a feature of the informal and unorganized sectors.<sup>146</sup> Moreover, studies indicate that the incidence of child labor, in various states is highly correlated to the level of poverty.<sup>147</sup> Not only is poverty a direct cause of child labor,<sup>148</sup> poverty is also the

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household. *Id.* Although they did not pay for their education, they did contribute their labor to the running and upkeep of their institution. *Id.*

141. *Id.* at 77. From an early age, children became “productive members of the family and the community,” but they also were “toiling as slaves.” *Id.* at 76.

142. BURRA, *supra* note 84, at ix-x (conducting an in-depth study of child labor in five different industries). Many other reports by NGO’s and the ILO document the nature of child labor in India. *See, e.g.*, International Labour Organization, Subregional Office for South Asia, at <http://www.ilo.org/public/english/region/asro/newdelhi/index.htm>.

143. MISHRA, *supra* note 55, at 23–24.

144. *Id.* at 25.

145. *Id.*

146. *Id.*

147. *See, e.g., id.* at 25–26. In the case of the children in the match and fireworks industries that were mentioned at the start of this article, most come from families that live a hand-to-mouth existence. *Id.* at 43. Although agriculture is the main occupation, most parents do not own any land and work on land owned by wealthier farmers. *See id.* at 42–43. In most cases they too are exploited because of their marginalized economic status. *Id.* at 42–43. The parents prefer to send their children to work rather than school, primarily because of their need for supplementary income. *Id.* at 43. Almost all the books describing child labor in India suggest poverty as the primary reason that children need to work. *Id.*

148. Luis F. López-Calva, *Child Labor: Myths, Theories and Facts*, 55 J. INT’L AFF. 59, 65 (2001). López-Calva argued for several variables that effect the amount of child labor

genesis of many other causes of child labor.<sup>149</sup> For instance, the demand for child labor often originates on account of the low profit margins of the small firms in the unorganized, informal sector.<sup>150</sup> As we examine the other aspects of child labor in India, the thread of poverty linking all of the causes becomes apparent.

An essential feature of the informal sector is the lack of technology and automation implying the non-requirement of highly skilled workers.<sup>151</sup> The low skill requirement increases the substitutability of adults with children in the workforce. This substitution is made more attractive by the low wages that are paid to children.<sup>152</sup> In what forms a vicious cycle, the low wages paid to children further depress the adult wage, consequently reducing adults' incentive to work. Unemployed parents send their children out to work so as to augment the now impoverished

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in the market, and the number one cause was poverty. *Id.* The following are the other variables identified by López-Calva: "ii) the wages of children and their parents; iii) the adult unemployment rate; (iv) the education of the head of the household; v) the social norms and interactions; vi) the legal framework and restrictions against child labor; vii) the credit market imperfections; and viii) the fertility rates and household size." *Id.*

149. See S. L. Bachman, *A New Economics of Child Labor: Searching for Answers Behind the Headlines*, 53 J. INT'L AFF. 545, 555 (2000). Bachman argues that poverty is both a cause and consequence of child labor; however, "the term 'poverty' is a catchall term for a variety of deprivations and conditions that contribute to a child's decision to work." *Id.* For this reason, Bachman suggests that economists and anthropologists both need a better understanding and knowledge of the nature of poverty. *Id.*

150. CENTER FOR OPERATIONS RESEARCH AND TRAINING, *ECONOMICS OF CHILD LABOUR IN HAZARDOUS INDUSTRIES OF INDIA* 13–14 (Richard Ankler et al. eds., 1998). In his introductory chapter, Ankler argues that industries that employ children have very little capital equipment, implying that entry of other firms into the industry is very easy. *Id.* at 12. This creates "considerable competition[, and a]s a result, owners of [the] informal sector . . . remain poor and . . . have a strong incentive to use and exploit child labour . . . to . . . marginally increase profits." *Id.*

151. See BURRA, *supra* note 84, at 154, 184. The brassware industry in Moradabad, India provides a good example for this argument. Formerly a preserve of skilled craftsmen, the brassware industry is now a semi-mechanized industry, with less machinery to require highly skilled workers, but enough to aid the mass production of brassware. *Id.* at 154. This has only facilitated the use of child labor due to the low wages that are paid to them. *Id.* at 155. Increased mechanization as in the case of the brass industries in Korea and Taiwan, would indeed serve to discourage the use of child labor, but the incentive for the entrepreneur to take such decision is limited. *Id.* at 183–84. With the ample availability of cheap labor, the production cost at the current rate of technology is more desirable. *Id.* at 185.

152. See Peter Lee-Wright, *Where There's Brass There's Muck: India's Industrious Infants*, in *CHILD SLAVES* 30, 40 (1990).

family income.<sup>153</sup> Furthermore, the low levels of technology imply easy entry into the industry, leading to high levels of competition and, hence, lower profit margins that only discourage any incentive to upgrade to better technologies.<sup>154</sup> Even if manufacturers could invest in laborsaving technology, child labor still remains the cheapest form of production.<sup>155</sup>

In some industries, the use of child labor is justified by the argument that only children can carry out the specific tasks and adults cannot accomplish them as well. This argument pervades the “nimble fingers” justification used in many industries.<sup>156</sup> Also, the use of child labor is further justified based on the argument that children need to learn and acclimatize themselves to work so that they can support themselves in the future.<sup>157</sup> However, none of these arguments would be as defensible were it not for the fact that child labor is much cheaper, more subservient, and therefore better exploited by employers. The need for cheap labor calls for an inquiry into the wage structures of the industries employing

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153. See Faraaz Siddiqi & Harry Anthony Patrinos, *Child Labor: Issues, Causes and Interventions*, at [www.worldbank.org/html/extdr/hnp/hddflash/workp/wp\\_00056.html](http://www.worldbank.org/html/extdr/hnp/hddflash/workp/wp_00056.html) (last visited Oct. 24, 2004).

154. See BURRA, *supra* note 84, at 185.

155. See Jonathan Silvers, *Child Labor in Pakistan*, ATLANTIC MONTHLY, Feb. 1996, at 79, 84. Many of the factories in Pakistan, which already has twelve million children working under the age of fourteen, are being retooled with less technology and so that only children are able to work in the factory. *Id.* at 81, 84. Pakistan, similar to India, has an all but inexhaustible pool of child laborers. *Id.* at 81. Children thus become expendable where, if one becomes too weak by the long hours and little food, another child is ready to fill the position. *Id.*

156. MISHRA, *supra* note 55, at 96. This argument is predominantly used in the carpet industry; wherein the nimble fingers of the children can supposedly tie knots closer, thereby producing better quality carpets. *Id.* at 95–96. In the tea plantations, children are preferred because of their ability to pluck the more tender leaves that produce better tea. WEINER, *supra* note 138, at 51. See also BURRA, *supra* note 84, at 43 (stating that one employer suggested that the industry could not function without children, and that some factory owners estimate that production would diminish by 25% in the absence of child labor).

157. MISHRA, *supra* note 55, at 98 (“Families of artisans . . . whose children are inducted into weaving want their children to learn the craft with skill so that they are eventually able to establish their own loom and start off on their own.”); see also BURRA, *supra* note 84, at 35, 48 (citing claims that child workers in the glass industry need to work, as it is a hereditary occupation, and they also need to get acclimatized to the intense heat that one is exposed to while working with glass).

child labor.<sup>158</sup>

Most of the industries are organized on a tier basis. The manufacturer or exporter contracts the production out to small production units or workshops, which in turn employ workers and laborers more often than not on a piece-rate system.<sup>159</sup> This structure allows for the presence of many middlemen and contractors and therefore a profit-maker at each level.<sup>160</sup> More often than not, the employers of child labor cannot afford to employ adults because of the marginal profits they make.<sup>161</sup> Although the informal sector does not constitute formal workplaces, such as large factories, it is not representative of household production units either.<sup>162</sup> Consequently, a large

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158. The question that arises here is: If the wages paid to children were the same as those paid to an adult, would employers not use child labor? Although the answer to this is unclear, the wage structures of the industries that employ child labor do add insight. See WEINER, *supra* note 138, at 51.

159. See MISHRA, *supra* note 55, at 84, 105. In effect, the industries are organized such that most of the production processes are carried out at different workshops. *Id.* at 105. These industries are, therefore, a sum of small, informal work units, each unit contributing in part to the entire output. *Id.* at 104. While in cases such as the carpet industry, each loom unit produces an entire carpet, in other cases, such as the lock making industry, each unit is responsible for one aspect of lock making, such as polishing or electro-plating. *Id.* at 77, 105. These small workshop units do not hesitate when employing child labor, as they often escape the purview of the law, which focuses mainly on the more formally organized work places. *Id.* at 29–30.

160. See MISHRA, *supra* note 55, at 81–83. See BURRA, *supra* note 84 (describing variations of this wage/industry structure).

161. See MISHRA, *supra* note 55, at 45. An interesting feature of this structure is demonstrated in the carpet industry. “The entire trade/production process is based on mutual confidence.” *Id.* at 87. “There is no written agreement either between the master weaver and the exporter nor any agreement between the loom owner/master weaver and other weavers/workers.” *Id.* The payments are mostly in the form of advances and commissions, very often leading to work under debt and conditions akin to bondage. *Id.* Furthermore, if the product being manufactured is highly price-sensitive, as in the case of traditional crafts such as carpets, the case for child labor is further strengthened. See BURRA, *supra* note 84, at 202. If a product is price-sensitive the only means of product differentiation is price. International demand for carpets is highly price-sensitive and this in turn forces exporters to rely heavily on the low costs of the informal sector looms (employing children). MISHRA, *supra* note 55, at 87–88.

162. See BURRA, *supra* note 84, at 151–52. In her study of the brassware industry, Burra notes that the manufacture of brassware has moved away from the cottage industry, wherein each artisan worked with the help of his family with virtually no hired help. *Id.* She quotes from a report by the Industrial Development Services:

*There has been an organizational change in terms of (i) an increase in the*

number of women who participated in the production processes earlier as part of the household are now displaced from the labor force because of the social stigmatization faced by women working outside the house.<sup>163</sup> This effect causes parents to send children to work to make up for the lost income.

Societal pressures have worked in more ways than in the displacement of women from the work force to encourage the use of child labor. In a society that is largely illiterate and unaware of the benefits of education, the emphasis on child labor is far greater.<sup>164</sup> While some parents suggest that a child going to work will stay out of trouble, others see no merit in educating their children who will ultimately have to work in a field doing work that does not require any formal education.<sup>165</sup> Furthermore, the poor health facilities combined with the poor nutrition in poverty stricken areas greatly decrease life expectancy rates. Often children have to assume the responsibility of the breadwinner because of the ill health, or in some cases, the demise of a parent who is more often than not the father.<sup>166</sup> Religious preferences, especially in the case of Muslims, also seem influential in the decision to send children to work.<sup>167</sup>

But why is illiteracy so widespread when education has been

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*average number of workers per establishment. . . (ii) an increase in the number of multi-process establishments (karkhanas) (iii) decline in the category in the category of workers described as 'self-employed' (iv) an increase in the number of manufacturers, suppliers and exporters who co-ordinate the completion of a number of operations through different sets of artisans . . . Even allowing for a margin of error or a definitional discrepancy, it supports the decline in the self-employed category and an increase in the proportion of wage earners among the craftsmen.*

*Id.* at 152–53 (emphasis added) (quoting *Moradabad Art Metalware Industry – Impact of Exports on Its Structure of Workers* 4, 5–6 (1983) (India).

163. *See id.* at 208–09. This condition is especially common in industries where there are a large number of male workers. *See id.* Some industries such as the tea plantations or the lace making units, however, encourage women workers. *See id.* at 215; WEINER, *supra* note 138, at 51.

164. *See* BURRA, *supra* note 84, at 179; MISHRA, *supra* note 55, at 42–43.

165. *See* ACTION AGAINST CHILD LABOR 278 (Nelien Haspels & Michele Jankanish eds., 2000).

166. *See* MISHRA, *supra* note 55, at 88.

167. *See* BURRA, *supra* note 84, at 57; MISHRA, *supra* note 55, at 39–40. “Muslim children have much higher dropout and nonattendance rates than those of children belonging to other religious communities.” BURRA, *supra*, at 57.

made free and compulsory for children up to age fourteen?<sup>168</sup> While in some cases the opportunity cost of sending children to school is too high,<sup>169</sup> in other cases the peripheral costs associated with educating a child discourage parents from sending children to school.<sup>170</sup> A closer look at the system of education in India and its shortcomings also helps to explain the above-mentioned paradox. “The educational system at all levels, in particular at the primary, upper primary, and elementary level, is fragmented, and largely nonfunctional.”<sup>171</sup> Also, schools are located too far

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168. See INDIA CONST. art. 45.

169. Murshed, *supra* note 59, at 183; See also Kaushik Basu, *Child Labor: Cause, Consequence, and Cure, with Remarks on International Labor Standards*, 37 J. ECON. LIT. 1083, 1115 (1999). Basu distinguishes between two types of intervention—legal interventions and collaborative interventions. *Id.* Collaborative intervention is any “public action which alters the economic environment such that parents of their own accord prefer to withdraw [their] children from the labor force.” *Id.* Basu cites the availability of good schools and free meals to schoolchildren, which help to decrease the peripheral costs of sending a child to school as examples of collaborative interventions. *Id.* To help alleviate the opportunity cost, Basu suggests increasing adult wages. *Id.* Free education, by itself, is not enough to significantly decrease child labor in developing countries like India. See *id.* Both the peripheral and opportunity costs of schooling need to be taken into account if education is to successfully rescue children from the work force. See *id.*

170. See BURRA, *supra* note 84, at 224 (“[E]conomic contribution of the child to the income of the family—whether by bringing in a wage or by doing household maintenance work and thus releasing adults for productive work—is so important that the family cannot afford to lose this economically productive time for his or her schooling”). In spite of numerous concessions and virtually free tuition, parents still have to pay some money for books and uniforms, which are too expensive for some families. *Id.* at 100. See also Bachman, *supra* note 149, at 556–58. The Bangladeshi garment industry worked with the ILO and UNICEF to phase out child labor in efforts to get children into schools where they would receive a stipend to make up a portion of their lost wages. See Christian von Mitzlaff, *Monitoring and Verification Systems in Garment Factories and the Placement of Child Workers in Education Programmes*, ILO Technical Paper (No. 1), at <http://www.ilo.org/public/english/region/asro/bangkok/download/yr2000/dhaka/tpaper1.pdf> (Oct. 2000). The program was funded by the manufacturers of export garments and the ILO. See *id.* However, this noble attempt ultimately failed because the loss of income, however small, was enough to cripple families and their ability to survive. See *id.* Similar programs that supplement the opportunity cost of attending school are being tested in Sialkot, and Lahore, Pakistan. See *id.*

171. See Mishra, *supra* note 55, at 16. See also BURRA, *supra* note 84, at 253; WEINER, *supra* note 138, at 5 (arguing that cultural attitudes, more so than poverty, are the leading causes of child labor). *Id.* Weiner writes that, unlike other developing nations, India has not been able to increase schooling and decrease child labor because of a reluctance of leaders in government, trade, religion, and the influential middle class to change the current social order. *Id.* See also Emily Delap, *Economic and Cultural Forces in*

away from some villages for children to attend. There are not enough teachers for each of the schools and no system to regulate their work. Furthermore, the skills taught at most schools are of little use to children who ultimately return to occupations that require mostly unskilled labor.

The above-mentioned points are not exhaustive in their treatment of the causes of child labor; they are only an attempt to illuminate the socioeconomic contexts that encourage child labor.<sup>172</sup> Poverty and economic necessity stand out as the primary causes, and although not enough to encourage an apologist's view of child labor, they do merit some thought.<sup>173</sup>

Although inadequate law enforcement<sup>174</sup> and lack of political zeal have often been cited as the main causes for persistence of

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*the Child Labour Debate: Evidence from Urban Bangladesh*, 37 J. DEV. STUDIES 1, 3 (2001) (discussing cultural determinants of children's work).

172. See Delap, *supra* note 171, at 16–17. Likewise, Delap explores and seeks to illuminate both the economic and cultural complexities that cause child labor. *Id.* Using Bangladesh as a case study, Delap underscores the importance of context and that “economic and cultural forces cannot be viewed in isolation, as the two often interact.” *Id.* at 17. Delap concludes by noting the importance of understanding “that both community and country-specific norms and values can shape behaviour” with respect to child labor. *Id.*

173. See CLARK NARDINELLI, CHILD LABOUR AND THE INDUSTRIAL REVOLUTION 154 (1990). Nardinelli advocates economic rationality and necessity as the causes of child labor. *Id.* Nardinelli argues that, during the latter half of the British Industrial Revolution, the decline in child labor was a consequence of changes in the demand for child laborers. *Id.* As the need for skilled workers increased, the demand for child labor decreased. *Id.* at 153–54. Nardinelli cites the increasing adult wages as further reason to keep the children at home or in school. *Id.* at 154. Nardinelli writes:

The rise in family income led to the decline in child labor in the long run; factory legislation merely provided (at most) a short-run impetus to the movement. Indeed, the passing of child labor legislation may well have signaled that child labor was becoming less important or that close substitutes had become available.

*Id.*

174. See *Legislation and Enforcement*, ILO, International Conference on Child Labor, at [http://www.ilo.org/public/english/comp/child/conf/oslo/leg\\_is.htm](http://www.ilo.org/public/english/comp/child/conf/oslo/leg_is.htm) (Oct. 1997). See also ILO Convention No. 81, Labor Inspection Convention, 1947, at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C081> (Nov. 1947). Since the Labor Convention in 1947, 118 countries have ratified the Convention, yet the ratification in many cases is simply a symbolic gesture. See Murshed, *supra* note 59, at 182. The 1997 Convention found that many of the developing countries lack labor inspectors and are understaffed and overburdened with functions other than labor inspection. *Id.* The resources simply do not exist to adequately enforce the various national or international labor laws. *Id.*



child labor in India, even by many who are well aware of the conditions that surround child labor, these causes conceal a much more complicated scenario.<sup>175</sup> Furthermore, the success that the U.S. child labor laws have achieved might not be replicable in India given the vast differences in context.

### C. *The Failure of Child Labor Laws in India*

There are many reasons why child labor laws have failed to regulate and reduce the incidence of child labor in India.<sup>176</sup> First, the laws do not reach the workplaces where children are employed. Either the unorganized sectors of the economies and makeshift workshops that employ children do not fall under the purview of child labor legislation, or the laws are difficult to enforce under such conditions.<sup>177</sup> Second, in the cases where the

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175. Both MISHRA, *supra* note 55, at 13–14, and BURRA, *supra* note 84, at 249, argue that enforcement of laws banning hazardous child labor should be made effective. Mishra also suggests that schooling and work cannot be carried out simultaneously and that the education system in India should be improved to make it more attractive to all children. See MISHRA, *supra* note 55, at 16–17. Burra, too, emphasizes the role of the state in preventing child labor both through stricter enforcement and better education. See BURRA, *supra* note 84, at 254. Although the state's intervention in the removal of child labor is imperative, it must be noted that the state is also restrained by economic conditions that dictate the nation's growth. For instance:

V.R. Sharma, a large-scale carpet manufacturer, wrote in 1985 that the major cost in the production of carpets was the labour cost. He argued that if the government were to try to bring this industry under protective labour laws and impose a cess on employers of child labour, it would be disastrous for the industry. He noted that a major part of the work in the carpet industry was done by children below fifteen years. He said that such legislation would bring an end to the flexibility that existed. That wages would rise by at least 50 per cent and that consequently the industry would close. He also felt that such legislation, besides being impossible to implement would increase corruption amongst the labour laws enforcement staff.

*Id.* at 202. The need for economic growth through the survival of industries is the cause for the state's cautious approach to child labor. *Id.* at 1–10.

176. See López-Calva, *supra* note 148, at 69–70 (“Public policy experiments, however, show that it is difficult to have a real impact on child labor through legislative measures alone.”). López-Calva asserts that “[a] second [myth] is that legal intervention banning child labor would *per se* have an effect on child labor, yet historical and contemporary data support the idea that improving the economic conditions of the families is a necessary condition for the elimination of child labor.” *Id.* at 72.

177. See Murshed, *supra* note 59, at 182.

child labor laws are enforceable, employers and parents risk getting caught in order to earn marginal profits or income as the case may be. As Gerry Rodgers and Guy Standing point out in their work on child labor, “[I]t is one of the ironies of child labour that, where it is protected by law, the law is likely to leave child workers unprotected, since legally they do not exist.”<sup>178</sup> In some cases, the entire industry is dependent on child labor; and therefore, law enforcers have to consider the health of the industry and the trade before enforcing a law that might cause considerable harm to both.<sup>179</sup> The nature of the legislation<sup>180</sup> concerning child labor and its failure to improve the lot of working children in India question the validity of this approach in its attempt to ameliorate the problem of child labor. While passing legislation may be an approach that has been successful in removing child labor in developed nations like the United States, the same may not be true for a developing nation like India.<sup>181</sup>

Pressures in the form of human rights movements both within India and abroad, as well as trade interventions that restrict the import of goods that have been produced using child labor require that nations such as India take steps toward the abolition of child labor.<sup>182</sup> Child labor is increasingly linked both directly and indirectly to the global business world.<sup>183</sup> Consequently, international business is placed in the global spotlight by social activists and trade unions seeking to find solutions to end exploitative child work as well as to help those children receive

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178. Christiaan Grootaert & Ravi Kanbur, *Child Labour: An Economic Perspective*, 134 INT'L. LAB. REV. 187, 200 (1995) (quoting *Child Work, Poverty and Underdevelopment*, ILO (Gerry Rodgers & Guy Standing eds., 1981).

179. See Murshed, *supra* note 59, at 179–80.

180. The nature of legislation passed in India is indicative of the reluctance of the state to pass an overarching ban on child labor. See Zehra F. Arat, *Analyzing Child Labor as a Human Rights Issue: Its Causes, Aggravating Policies, and Alternative Proposals*, 24 HUM. RTS. Q. 177, 184–85 (2002). In fact, employment of children is banned only in a handful of industries, with the laws actually permitting children to work in others. *Id.*

181. See Murshed *supra* note 59, at 183.

182. See Arat, *supra* note 180, at 179.

183. See S. L. Bachman, *supra* note 149, at 30. Bachman identifies three dimensions that international business can contribute to child labor: (1) directly employing children in hazardous or exploitative ways; (2) selling the goods and services that are produced by children to other firms; and 3) externally shaping opinions and policies concerning child labor in the local economy. *Id.* at 31–33.

useful education and training to better their situation.<sup>184</sup>

Yet, questions remain: Is child labor legislation the means to achieving better conditions for working children? Are the toiling children truly better off because of these laws, or do supporters of such statutes risk losing sight of the larger goal of what is good for the children while attempting to ban the use of child labor?<sup>185</sup> Sometimes, an outright ban on the use of child labor has resulted in children being pushed into worse forms of labor for even lower pay.<sup>186</sup>

Because of the possibility of further harming children by banning all forms of child labor, a complex approach is required to take into account the context of a particular community or family.<sup>187</sup> The immediate elimination of the most hazardous labor conditions should be dealt with separately from other forms of child labor.<sup>188</sup> Separate legislation or programs more able to

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184. *See id.* at 31.

185. *See* Murshed, *supra* note 59, at 173.

186. Hugh D. Hindman & Charles G. Smith, *Cross-Cultural Ethics and the Child Labor Problem*, 19 J. BUS. ETHICS 21, 29 (1999).

Nowhere is this clearer than in the case of the Harkin Bill [referring to the CLDA, *supra* note 12], introduced into Congress in 1992, which would have prohibited the import of products made by children under 15. Mere discussion of the bill panicked the garment industry of Bangladesh, 60% or \$900 million of which was exported to the U.S., into the summary and massive dismissal of child workers, many of whom were forced into more hazardous work for even lower pay; significant numbers were forced into prostitution.

*Id.* (citation omitted); *see also* Kaushik Basu, *International Labor Standards and Child Labor*, 42 CHALLENGE 80, 86 (1999) (discussing how child labor laws implemented in one sector can force children into working in other sectors that are much more dangerous for children).

187. *See* Christiaan Grootaert & Harry Anthony Patrinos, *The Policy Analysis of Child Labor*, in *THE POLICY ANALYSIS OF CHILD LABOR: A COMPARATIVE STUDY* 1, 8–11 (Christian Grootaert & Harry Anthony Patrinos eds., 1999). Both authors argue that zero-tolerance approaches to child labor are harmful to the very children the zero-tolerance approaches are trying to help. *Id.* at 8. The authors recommend multiple policies that seek to gradually reduce abusive child labor practices. *Id.* at 11. For example, they suggest increasing the effectiveness of educational systems to decrease the number of hours per day children can spend at work. *Id.*

188. *See* ILO Convention No. 182, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, art. 1, S. TREATY DOC. NO. 106-5 [hereinafter ILO Convention 182]; *see also* ILO Recommendation No. 190: Recommendation Concerning the Prohibition and Immediate

integrate the context into the solution could then address the non-hazardous child labor.<sup>189</sup> Poverty and income needs should be particularly addressed to insure that the family is able to survive without the income of the child. Programs and legislation should consider economic incentives for families to leave behind child labor for alternatives, such as schooling.<sup>190</sup> To justify the family sacrifices required to eliminate child labor, a significant alternative, such as a high quality education for the child, is essential.

The ILO accepts that developing nations cannot be held to the same labor standards as developed nations.<sup>191</sup> However, the ILO tries to acknowledge contextual differences by imposing slight age differentials between developing and developed nations. This attempt to address the difference in labor standards can be seen in the 1973 Minimum Age Convention.<sup>192</sup> That few developing

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Action for the Elimination of the Worst Forms of Child Labor, June 18, 1999, § 1, S. TREATY DOC. NO. 106-5.

189. See Richard Anker, *The Economics of Child Labour: A Framework For Measurement*, 139 INT'L LAB. REV. 257, 275 (2000). Anker states that:

Elimination of non-hazardous child labour should be approached from a life-course perspective and be at the centre of anti-poverty orientation to development, in order to promote children's best interests. Problems arise with non-hazardous child labour when it interferes with a child's ability to learn in school. This possibility should be addressed using a holistic, life-course perspective, since whether or not non-hazardous work is bad for children depends on the context in which a child is placed and the options available to him/her (e.g. the family's poverty and its need for income; the nature of the child's work . . . ; the availability and attractiveness of the schooling option for poor families).

*Id.* at 278 (emphasis in original).

190. *Id.* at 276. However, poor countries often do not have the financial resources to provide such incentives or make schooling a more valuable alternative to child labor. *Id.* Similarly, countries that are plagued with the problem of child labor often lack the resources necessary to enforce the ban on the most hazardous child labor conditions. See Murshed, *supra* note 59, at 182. The backing of the developed nations becomes all the more important. *Id.* at 188–89.

191. See Karen A. Porter, *An Anthropological Defense of Child Labor*, 46 CHRON. HIGHER EDU. B11 (1999). Anthropologists, Porter argues, "can provide valuable perspectives on the human experience through their cross-cultural, cross-temporal, holistic discipline . . . [a]nd they should educate Americans about the problems that many children face in the United States and other countries, and how Americans can help find solutions." *Id.*

192. ILO Convention No. 138, *supra* note 57. ILO Convention No. 138 and ILO

nations have ratified this convention suggests that the age differentials do not properly reflect the differences in labor standards between developing and developed nations.

Most developing nations such as India agree that the worst forms of child labor should be banned and have national laws that make illegal such forms as prostitution, employment in hazardous industries, and bonded labor.<sup>193</sup> However, these nations cannot be expected to establish labor standards equivalent to those in the developed world.<sup>194</sup> These standards have been established only recently in the developed world<sup>195</sup> and were definitely not in

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Recommendation No. 146, Concerning Minimum Age for Admission to Employment (June 26, 1973), are the most recent ILO pronouncements on the issue of child labor. See ILO Convention No. 138, *supra* note 57. Although the preamble to this convention emphasizes a need for a general instrument to replace other existing ones, in hopes of completely abolishing child labor, the instrument claims flexibility by allowing for lower minimum ages in the case of developing countries. *Id.* art. 2, § 4. However, the minimum ages are only lowered by one year. See *id.* art. 2, §§ 3, 4. That is, while the normal requirement is a minimum age of fifteen for general work and thirteen for light work, the developing nations are allowed a minimum age of fourteen in general and twelve for light work. See *id.* art. 7, § 4. India has not ratified the convention because of an inability to sanction a uniform minimum age of entry to employment throughout the nation. See India and ILO, *Reasons for Non-Ratification: Convention No. 138*, at <http://www.labour.nic.in/ilas/indiaandilo.htm> (last visited Oct. 24, 2004).

193. Another ILO Convention prohibits the use of forced or compulsory labor, defined as “work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” ILO Convention No. 29, Concerning Force or Compulsory Labor, 1930, art. 2 [hereinafter ILO Convention No. 29] at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>. ILO Convention No. 29 was ratified by India on November 30, 1954. See Gov’t of India, Ministry of Labour, Bonded Labour System (Abolition) Act, 1976 at [http://www.labour.nic.in/dglw/Bonded\\_labr.html](http://www.labour.nic.in/dglw/Bonded_labr.html) (last visited October 24, 2004). Although the Bonded Labour System (Abolition) Act was passed in both houses of parliament only in 1996, it was made effective from 1975, the date when the Bonded Labour System Ordinance was promulgated. *Id.* As noted earlier, the CLPRA, *supra* note 117, bans the use of child labor in hazardous occupations. ILO Convention No. 182 and ILO Recommendation No. 190 seek the immediate elimination of the most hazardous conditions for children under the age of eighteen. See ILO Convention No. 182, *supra* note 188, arts. 2–3; ILO Recommendation No. 190, *supra* note 188, § I. Slavery, forced labor, sale of children, prostitution, pornography, and hazardous work are examples of the worst forms of child labor. ILO Convention 182, *supra* note 188, art. 3(a), (b). The legislation concerning child labor in India is indicative that the nation does decry the worst forms of child labor, including prostitution and slavery.

194. Anthony G. Freeman, *Child Labor’s Impact on Free Trade*, Cong. Testimony Oct. 22, 1997, 1997 WL 14152423.

195. See *id.*

existence when these nations were at a stage of development comparable to that of developing nations today.

Developing nations and some economists argue that the prevalence of child labor reflects a stage of a nation's economic development. To take this argument further, the developed world has also undergone a period of heavy use of industrial child labor. One economist observes:

We know of no case where a nation developed a modern manufacturing sector without first going through a "sweat shop" phase. How long ago was it that children could be found working in the textile factories of Lowell, Massachusetts, of Manchester, England, or of Osaka, Japan? Should the developing economies of today be any different? If child labor is a necessary evil of industrialization, then a nation should be judged on how quickly it passes through this phase.<sup>196</sup>

Those who believe that the use of child labor is part and parcel of economic development<sup>197</sup> suggest that the only solution is for developing nations to pass through this stage of development as quickly as possible.<sup>198</sup> Thus, the demands made of developing nations to abolish child labor may be premature and even harmful in that their pace of development may be hindered, slowing their rise out of poverty, and thereby removing the foremost cause of child labor.<sup>199</sup>

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196. Martha Nichols, *Third-World Families at Work: Child Labor or Child Care?*, HARV. BUS. REV., Jan.-Feb. 1993, at 7 (quoting David L. Lindauer).

197. *Contra* Bachman, *supra* note 149, at 563.

This argument is refuted, at least partially, by the rapid growth of South Korea, Taiwan, Hong Kong and Singapore over roughly 1960–1990. Among the many contributors to their rapid growth, the one that affected children and labor most directly was not a laissez-faire attitude toward child labor; instead, the critical factor was widespread primary education.

*Id.* at 564.

198. *See* Hindman & Smith, *supra* note 186, at 31–32. *See also* Silvers, *supra* note 155, at 85 (using Pakistan as an example to point out that the view of child labor as a phase in a country's development is a major blunder). Pakistan, like India, allocates far more energy to military build up than to any social service. *Id.* How long should one wait for a country to end child labor?

199. *Contra* Bachman, *supra* note 149, at 39. In response to the claim that all industrialized nations must pass through a period in which children are a part of the work force, Bachman writes: "[H]istory need not predict the future. It should be possible to

Yet another argument put forth by developing nations is the lack of resources to address the problem of child labor. Not only do developing nations have to enforce laws regulating child labor, resources also have to be funneled into alternatives to work, such as schooling and vocational training, so as to make the shift from work a lucrative one for children and their families. Lack of adequate resources make it difficult for developing nations to use this multi-pronged approach to removing child labor.

Even so, many within the developed world, frustrated by the marked increase in child labor in the developing world, are afraid that developing nations are exploiting children in a way that cannot be redressed by development alone.<sup>200</sup> Moreover, they argue that globalization is one of the prominent causes for child labor<sup>201</sup> and, therefore, the same system of world trade should apply standards to curb the use of child labor. Thus, the setting for a linkage between world trade and labor standards is created. The developing world has traditionally been wary of such a linkage.<sup>202</sup>

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employ workers at competitive wages without also exploiting the youngest and weakest workers—and without robbing them of a chance to gain an education.” *Id.* at 39. Bachman argues that if a country could effectively outlaw child labor without waiting for the country to struggle through a period of child labor there would be three consequences:

- (1) the families (and the economy) would lose the income generated by their children; (2) the supply of labor would fall, driving up wages for adult workers; and (3) the opportunity cost of a child’s working time would shrink, making staying in school (assuming schools were available) much more attractive. In principle, a virtuous circle would follow: with more schooling, the children would get more skills and become more productive adults, raising wages and family welfare.

*Id.* at 34.

200. See, e.g., SEABROOK, *supra* note 56.

201. See Bachman, *supra* note 149, at 30.

202. See David M. Smolin, *Conflict and Ideology in the International Campaign Against Child Labour*, 16 HOFSTRA LAB. & EMP. L.J. 383, 387–94 (1999) (stating that underlying tensions between developed and developing nations, which he refers to as a “North-South” divide, might be brought to the fore with the introduction of international child labor standards). Smolin argues that the developing world (the South) has been through an era of exploitation during Northern colonization and regards the world trade rules developed by the developed world as a means to further exploit the developing world. *Id.* at 389–90. Furthermore, the developing world is made to feel more vulnerable to organizations such as the World Bank and IMF, which are dominated by the richer Northern nations. *Id.* at 390. Since child labor is predominantly a feature of the South, the boycotting of goods produced using child labor or using labels signifying the use of child labor, both methods used by the developed nations, can cause significant harm to the trade

This controversy of associating child labor standards with trade is further fueled by the conflict of free trade and protectionism. While developing nations argue that the low cost of child labor constitutes a comparative advantage, which the world trade system should respect, developed nations argue that these lower costs are a means of illegitimate protectionism.<sup>203</sup>

Developing nations worry that these low cost advantages may be prematurely liquidated by the imposition of labor standards through trade and may not whole-heartedly support the child labor movement, fearing the possible repercussions and disadvantages to their own nations. Thus, the linkage recommended by the developed world may actually work in contradiction to the child labor movement by jeopardizing the welfare of child laborers.

Attempts to remove child labor may not work as intended, and although the international child labor movement is well intentioned, care must be taken to avoid situations wherein the welfare of children is actually jeopardized by legal action intended to assist them. While there might be universal acceptance that child labor is morally reprehensible, the approach to resolve the issue is not through overarching laws or trade restrictions banning child labor, but rather a more contextual approach identifying and addressing the causes and contexts within which child labor flourishes.

#### IV. UNIVERSAL MORAL PRINCIPLES AS A BASIS FOR NORMATIVE LAW

When we look at the face of a child at work in a not so pleasant environment, it is tempting to feel reflexive disapproval; such a response is a compliment to our sensibilities. But, studying the economic context for child labor might suggest that certain stages of economic development create preconditions where child labor should be tolerated.

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of the developing nations. *See id.* at 384, 387.

203. *See* Bachman, *supra* note 149, at 38 (quoting Egyptian trade minister, Youssef Boutros-Ghali, who asked after WTO ministerial talks failed in 1999, "Why, all of a sudden, when third world labor has proved to be competitive, do industrial countries start feeling concerned about our workers?").



Law is frequently, if not always, guided by prescriptive assumptions. But should not those assumptions be modified by contextual differences that shape the need and prospects for success of resulting statutes and legal interpretations? This article concludes by briefly examining the inclination of well-intended people to move from the blackboard logic that generates universal moral principles to the diverse worlds in which those principles are then applied.

The psychology of morality provides insights into our resolution of complex moral dilemmas.<sup>204</sup> Early research in this area was concerned primarily with describing the process of moral development.<sup>205</sup> More recently, however, empirical research examining the nature and universality of the fundamental premises that drive moral decision-making has been conducted. But, when universal principles are applied to guide behavior, how are judgments affected?

The proposition that humans possess a set of universal moral principles appears to be a well-accepted presupposition in virtually all disciplines that examine the nature and origins of human morality.<sup>206</sup> For example, acts of infanticide, incest, and cannibalism are generally considered reprehensible.<sup>207</sup> Initial

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204. See John Macnamara, *The Development of Moral Reasoning and the Foundations of Geometry*, 21 J. THEORY SOC. BEHAV. 125, 125 (1991).

205. See, e.g., JEAN PIAGET, *THE MORAL JUDGMENT OF THE CHILD*, 324 (M. Gabain trans., 2d ed. 1965) (1932); L. Kohlberg & R. Kramer, *Continuities and Discontinuities in Childhood and Adult Moral Development*, 12 HUM. DEV. 93, 100–01 (1969).

206. Michael Ruse & Edward O. Wilson, *Moral Philosophy as Applied Science*, 61 PHILOSOPHY 173, 178 (1986) (“Human beings, all human beings, have a sense of right and wrong, good and bad.”); Tamara Horowitz, *Philosophical Intuitions and Psychological Theory*, 108 ETHICS 367, 367 (1998) (describing the task of “uncovering moral norms,” which presupposes that those norms or beliefs do exist); FRANZ BRENTANO, *THE ORIGIN OF OUR KNOWLEDGE OF RIGHT AND WRONG* 6 (Oscar Kraus & Roderick M. Chisholm eds., Humanities Press 1969) (1889) (proposing a theory of morality that presupposes unlearned moral intuitions); LAWRENCE KOHLBERG, *From Is to Ought: How to Commit the Naturalistic Fallacy and Get Away With It In the Study of Moral Development*, in COGNITIVE DEV. & EPISTEMOLOGY 151, 175 (Theodore Mischel ed., 1971) (“[A]ll groups have something called morality which has common formal and functional properties.”).

207. Lewis Petrinovich et al., *An Empirical Study of Moral Intuitions: Toward an Evolutionary Ethics*, 64 J. PERSONALITY & SOC. PSYCHOL. 467, 467 (1993) (“Cannibalism, incest, and parricide are considered generally to be repugnant”); Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 PSYCHOL. REV. 814, 814 (2001) (describing research participants’ negative reactions to

attempts to characterize the underlying premises that serve as a basis for these moral judgments were undertaken primarily by evolutionary biologists and moral philosophers.<sup>208</sup> They began by identifying dimensions of moral judgment that appeared in a variety of cultures.<sup>209</sup> For example, scholars observed that virtually “[a]ll human societies have rules that protect and favor kin and members of the ‘chosen’ groups to which one belongs (e.g., village, tribe, city, country, race, and religion).”<sup>210</sup> Likewise, failure to reciprocate or be loyal to members of one’s primary group who have acted with generosity is universally discouraged.<sup>211</sup>

Scholars have distilled these rules into basic principles that appear to guide human moral decision-making. These include the justice ethic,<sup>212</sup> the care ethic,<sup>213</sup> the autonomy/individual rights

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a scenario describing consensual sexual relations between siblings).

208. See, e.g., IMMANUEL KANT, *FUNDAMENTAL PRINCIPLES OF THE METAPHYSIC OF MORALS* (Oscar Pietsch ed., 1949); R. M. HARE, *THE LANGUAGE OF MORALS* (1952); WARREN QUINN, *Actions, Intentions, and Consequences: the Doctrine of Doing and Allowing*, in QUINN’S *MORALITY AND ACTION* (CAMBRIDGE 149 (1993)).

209. See, e.g., KOHLBERG, *supra* note 206, at 155. By performing cross-cultural research, researchers can begin to differentiate those concepts of morality that are unique to a particular culture and those that appear in a diverse population of humans. See Patricia O’Neill & Lewis Petrinovich, *A Preliminary Cross-Cultural Study of Moral Intuitions*, 19 *EVOLUTION & HUM. BEHAV.* 349, 362–63 (1998).

210. See Petrinovich, *supra* note 207, at 467.

211. *Id.*

212. See Lawrence Kohlberg, *Preface to Essays on Moral Development*, in 1 *ESSAYS ON MORAL DEVELOPMENT: THE PHILOSOPHY OF MORAL DEVELOPMENT, MORAL STAGES AND THE IDEA OF JUSTICE* ix, xiii (1981) (“[T]he first virtue of a person . . . is justice—interpreted in a democratic way as equity or equal respect for all people.”). The justice ethic is perhaps the most well known in Western culture. See Lawrence Kohlberg, *Moral Stages and the Idea of Justice*, in 1 *ESSAYS ON MORAL DEVELOPMENT: THE PHILOSOPHY OF MORAL DEVELOPMENT, MORAL STAGES AND THE IDEA OF JUSTICE* 97, 100 (1981) [hereinafter Kohlberg, *Moral Stages*] (discussing the Golden Rule as “a principle recognized as the core of morality in almost every culture and religion”). Kohlberg’s theory of moral development is based on an individual’s reliance on concepts of justice and fairness in moral decision-making, as the following describes:

Right is defined by the decision of conscience in accord with self-chosen *ethical principles* appealing to logical comprehensiveness, universality, and consistency . . . . At heart, these are universal principles of *justice* of the *reciprocity* and *equality* of the human *rights* and of respect for the dignity of human beings as *individual persons* (emphasis in original).

Kohlberg & Kramer, *supra* note 205, at 101.

213. The care ethic is described as the moral imperative that requires others to

ethic,<sup>214</sup> the do no harm ethic,<sup>215</sup> and the group loyalty ethic.<sup>216</sup>

Research addressing the universality of these moral principles has only recently been conducted. Petrinovich and his colleagues found strong support for the principles of group loyalty<sup>217</sup> and do no harm,<sup>218</sup> in both American and cross-cultural research. John Snarey, in a review of the numerous studies of Kohlberg's moral development theory, found that while the justice ethic was strongly supported, other values such as collective solidarity, were excluded.<sup>219</sup> Other moral principles, such as the principle of

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reduce or eliminate physical or psychological harm by providing needed care. Some debate has arisen over the validity of this ethic. See Kohlberg, *Moral Stages*, *supra* note 212, at 232 (arguing that justice and care do not represent two different moral orientations existing at the same level of generality and validity); Cf. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* 73 (1982) (arguing that justice and care are distinct moral orientations).

214. See JONATHAN BARON, *JUDGMENT MISGUIDED: INTUITION AND ERROR IN PUBLIC DECISION MAKING* 8 (1998) ("People should be allowed to make their own decisions, control their own bodies, their own properties, and so on."). From this ethic evolves certain rights, for example, free speech and property ownership. *Id.*

215. See O'Neill & Petrinovich, *supra* note 209, at 351 (noting that the distinction between taking action and doing nothing, thereby permitting an action to occur is known as the "action/inaction ethic").

216. See Petrinovich, *supra* note 207, at 467 (describing the idea that humans will be loyal to groups based on kinship, community, or other important identifiers such as race, religion, or nation and will chose outcomes that benefit the responder, kin, or friends). This idea is also known as the "inclusive fitness ethic." See *id.* at 467-68. Subsumed under this broad category are the principles of protecting one's offspring and the weaker members of one's society. See *id.* at 468.

217. See Petrinovich, *supra* note 207, at 474; O'Neill & Petrinovich, *supra* note 209, at 355-63 (noting that in these studies, the researchers further distinguished between group loyalty and "speciesism," which they defined as the tendency to make judgments that benefited other humans over any other species). In this author's view, however, this represents one group (that is, the species) to whom research participants are loyal. Therefore, the finding that speciesism exerted a strong effect on moral decision-making provides additional support to the strength of the group loyalty ethic.

218. O'Neill & Petrinovich, *supra* note 209, at 360 (noting that in the American study, this ethic was not initially found to exert a strong effect; however, improvements were made to the instrument and some items were eliminated). Reanalysis of the data in the American study was conducted, and the authors found that the do no harm or action/inaction ethic did play an important role in participant decision-making. *Id.*

219. John R. Snarey, *Cross-Cultural Universality of Social-Moral Development: A Critical Review of Kohlbergian Research*, 97 *PSYCH. BULL.* 202, 226 (1985) ("[O]ther values, such as collective solidarity, that are commonly stressed in either traditional folk cultures or in working-class communities are missing . . .").

autonomy, await empirical examination.

Evolutionary biologists offer a plausible explanation for the universality and strength of moral principles. They suggest that universal moral principles are an evolutionary adaptation designed to ensure the reproductive success of the individual and the species and are built into multiple areas of the brain and body.<sup>220</sup> By exhibiting, for example, loyalty to one's kin, rejecting incestual relationships, and protecting one's offspring, individuals ensure personal reproduction and reproduction of non-descendant kin.<sup>221</sup> From this theoretical perspective, the universality of these moral principles and the reluctance to violate the "biological moral universals"<sup>222</sup> can be understood.

Other ethical principles seem to be shaped by culture practices and have not developed universally.<sup>223</sup> For example, Anglo-American ethics of justice, autonomy, and rights have dominated the literature and been given status as universal.<sup>224</sup> Shweder has identified the "big three" domains of moral principles that includes the Anglo-American ethic of autonomy, but also recognizes the ethic of community—represented by ideas of community, interdependency, and duty—and the ethic of divinity, that focuses on sanctity, sin, pollution, and sacredness.<sup>225</sup> Imposition of one ethic onto a culture that has adopted an alternative ethic is unlikely to be successful due to the conflict of values that would result.

Where humans act on the basis of universal moral principles, the expected outcomes are tenuous. Jonathan Baron has demonstrated that people applying their moral intuitions often bring about disastrous consequences in matters of public policy,

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220. See Haidt, *supra* note 207, at 826.

221. See Petrinovich, *supra* note 207, at 476.

222. *Id.*

223. See Haidt, *supra* note 207, at 827 (arguing that moral intuitions are innate and shaped by culture, noting that "[c]ultures seem instead to specialize in a subset of human moral potential"). He contends that cultures modify the innate potential of children to develop moral intuitions by selective loss, immersion in custom complexes, and peer socialization. *Id.*

224. See Richard A. Shweder, *The Surprise of Ethnography*, 25 *ETHOS* 152, 155 (1997) ("[M]uch of what goes on in developmental, social, and personality psychology reflects Anglo-American cultural assumptions . . .").

225. *Id.* at 158.

public health, and the tort system.<sup>226</sup> He illustrates his premise that bad outcomes are often the result of well-intentioned moral intuitions with numerous case studies. To improve decision-making he recommends that policies, both individual and collective, be decided based on optimal outcomes, and encourages quantitative thinking about risk and use of critical thinking skills to combat the errors of moral intuitions.<sup>227</sup>

While this research is still in its early stages of development, it does mesh with the dubious effects of protective legislation attempting to restrict child labor in India. Apparently, the solidity of the moral principles *in the context* where the outsiders' moral principles are encouraging *improved* social behavior provides a resistant counterforce that is anything but insignificant. The target population of people has its own moral principles that push back against the imposition of change and work to frustrate the noble intentions of those who are trying to improve the condition of children.

The thrust of the argument in this article is far from crude ethical relativism and its attendant toleration for local practices. As we hoped to have made clear in earlier sections, we should all work toward a world in which child development is a cooperative venture between family and school. The extent of child labor in our world is an affront to our aspirations. At the same time, aspirations are by their nature anticipatory. The basic poverty that sustains child labor does not wane just because those of us who are anything but poor pass laws requiring developing nations to follow our newly acquired patterns of nurturing children.

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226. See BARON, *supra* note 214, at 2–3 (blaming the failure of many parents to vaccinate their children on the do no harm ethic that involves a bias against causing harm through action versus harm through omission). He concludes that many parents are biased against vaccinations because of the small likelihood that administration of the vaccine could produce serious side effects, which would be a direct result of their decision to act. *Id.* They are less influenced by the risk of disease despite its greater likelihood, because the harm results independent of their actions. *Id.*

227. *Id.* at 7–8, 179–202.