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THE CHILD'S RIGHT TO A BEST INTERESTS PSYCHOLOGICAL DEVELOPMENT UNDER THE DECLARATION OF THE RIGHTS OF THE CHILD: POLICY SCIENCE REFLECTIONS ON INTERNATIONAL LAW, PSYCHOLOGICAL WELL- BEING AND WORLD PEACE

JOHN BATT*

I. INTRODUCTION

This work is a law, science and policy¹ contribution to the emerging jurisprudence of children's human rights.² The arena of emphasis is the world community. The position taken is that in order to secure human dignity, world peace and human survival, the world community must guarantee the children of the planet the right to a best interests psychological development.³

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1. The reference here is to the policy science jurisprudence created by Prof. Myres S. McDougal and Prof. Harold Lasswell. Law, science and policy jurisprudence is derived from the legal realist tradition, the Western humanist tradition, and the theories and findings of the human sciences. Law, science and policy jurisprudence defines law as a process of decision, and stresses the fact that scholars and decision-makers must acknowledge their creative roles if sound policy is to be made and implemented. See Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943); M. McDougal & W. REISMAN, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE* (1981).

2. Although children's rights have not been dealt with in a comprehensive manner by international law scholars, see E. BOULDING, *CHILDREN'S RIGHTS AND THE WHEEL OF LIFE* (1979), an excellent general work on children's rights which makes use of international law materials.

3. The "best interests" language is derived from family law. The psychological best interests of children are important in child custody disputes and other family law contexts. The "best interests" approach, at a high level of abstraction, indicates a policy preference for the well-being of children. Well-being is posited as a key value in law, science and policy jurisprudence: a value which all psychologically and physically sound human beings consider important. On the importance of well-being as a valued goal, see Caldwell, *Well-Being: Its Place Among Human Rights*, in *TOWARD WORLD ORDER AND HUMAN DIGNITY* 169 (1976). See also J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (1973) (on the law, and the psychological well-being of the child).

In this article, I shall seek to demonstrate that this view is a jurisprudentially and scientifically based policy preference derived from fundamental sources of human rights jurisprudence and the accumulated wisdom of such relevant human sciences⁴ as clinical psychiatry, psychoanalysis, human development, and psycho-history. A careful evaluation of the work product of these scientific disciplines, I contend, leads the empathic observer⁵ to the conclusion that significant psychological damage during childhood invariably produces psychologically fragmented "adults" whose disturbances of self make them incapable of acting to affirm, respect, promote and secure human dignity and world peace.⁶

Structurally, the intellectual core of this article will be divided into three constituent components. In the first textual component, it will be made manifest that there already exists a documented world community human rights preference for the child's right to a best interests psychological development. This policy preference will be demonstrated via a careful examination of the juridical contents of the Declaration of the Rights of the Child,⁷ the United Nations Charter, the Universal Declaration of Human Rights,⁸ the International Covenant on Economic, Social and Cultural Rights,⁹ and the International Covenant on Civil and Political Rights.¹⁰ It should be kept in mind by the reader that I see the Declaration of the Rights of the Child¹¹ as a human rights Magna Carta for children. After the completion of the analysis and discussion of the applicable legal policy statements I turn, in the second part of this paper, to the findings of the most relevant human sciences in order to confirm the juris-

4. The "science" of this law, science and policy effort.

5. See generally H. KOHUT, *THE ANALYSIS OF SELF* (1971); Sullivan, *The Psychiatric Interview*, in 1 *THE COLLECTED WORKS OF HARRY STACK SULLIVAN* (W. Norton ed. 1965) (on empathic observation).

6. See E. FROMM, *THE ANATOMY OF HUMAN DESTRUCTIVENESS* (1973).

7. G.A. Res. 1386, 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959) [hereinafter cited as *Rights of Child*].

8. G.A. Res. 217, U.N. Doc. A/810, at 71 (1948) [hereinafter cited as *Human Rights*].

9. G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 62, U.N. Doc. A/6316 (1967) [hereinafter cited as *International Covenant*].

10. G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 64, U.N. Doc. A/6316 (1967) [hereinafter cited as *Civil and Political Rights*].

11. See *Rights of Child*, *supra* note 7.

prudential vision of the Declaration of the Rights of the Child. This part of the article will be directed at providing scientific support for the best interests ideas put forth in the Declaration of the Rights of the Child.¹² In this section, I shall make available the findings and conclusions of many of the pre-eminent experts who have examined the vicissitudes and outcomes of the psychological development of children. This material will do much to underline the best interests significance of the Declaration of the Rights of the Child.¹³ Finally, in the third section of this paper, I develop a paradigm which, in a coherent form, "indicates" how the world community might implement the child's right to a best interests psychological development. This section of the paper, which is based in part on the scholarship of Marshall McLuhan,¹⁴ contains a model of human rights dissemination that not only applies to the psychological best interests right, but, in addition, affords those who take human rights jurisprudence and law, science and policy seriously, the opportunity to re-think promotional¹⁵ and implementational strategy and tactics. At this juncture, we move to a discussion of the formal documents which support my policy position.

II. INTERNATIONAL JURISPRUDENTIAL "NORMS" AND THE ARTICULATED POLICY PREFERENCE

The Declaration of the Rights of the Child¹⁶ articulates a clear-cut policy preference.¹⁷ The child of the species, owing to physical and psychological immaturity, is to be the recipient of very special protection. In addition, inherent in the Declaration, there is a distinct preference for what is best-termed human

12. *Id.*

13. *Id.*

14. M. McLuhan, *UNDERSTANDING MEDIA* (1964).

15. Promotion, as used here, refers to the advocacy of general policy. M. McDougal, H. Lasswell & L. Chen, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* 87 (1980).

16. Rights of Child, *supra* note 7.

17. Policy preference refers to the favoring of a valued goal. In policy science jurisprudence, goals are arrived at through the goal-clarifying task, in which the policy science scholar asks: What should be preferred? The answer depends, at least in part, on one's views as to how, for what purpose, and to which people values should be made available. The primary values posited by law, science and policy jurisprudence are power, well-being, affection, respect, wealth, enlightenment, skill, and rectitude. H. Lasswell, *A PRE-VIEW OF POLICY SCIENCES* 40-44 (1971).

generativity. Generativity produces well-being.¹⁸ Generativity is an attitude critical to the child's psychological and physical development. Generativity embodies the caretaker's nurturing concern for the life of the young. In its broadest sense, it is a real concern for all up and coming generations. Generativity is a very important force in promoting human well-being.¹⁹ From the law-science-policy perspective, well-being is an infrastructural value, as it is critical to the acquisition of all other values.²⁰ Thus, the Declaration of the Rights of the Child is a well-being-oriented document expressing a deep concern for the child's right to a best interests developmental experience. The Declaration clearly recognizes the critical relationship between child and parent or other nurturers.²¹ Moreover, the Declaration definitely contemplates the necessity of creating an obligation to provide appropriate indulgences and deprivations.²² As indicated in the introduction, our focus of attention in this paper is on the right to a developmental experience that gives one a truly *human* personality (self).²³ One should keep this in mind as we consider the intent and content of the Declaration. Obviously, the Declaration deals with more than the best interests development of the self. However, our point of convergence is the Declaration and the right to an appropriate psychological development.

The General Assembly, in the preamble of the Declaration, has posited as a goal a "happy childhood."²⁴ A "happy childhood" is clearly integral to the healthy psychological evolution of the self.²⁵ A reading of the Declaration leads one quickly to

18. Well-being refers to the general and specific best interests of the individual. It is a value that encompasses the cultural, social, psychological, and organic facets of existence.

19. On generativity, see E. ERIKSON, *THE LIFE CYCLE COMPLETED* 67-68 (1982) and E. ERIKSON, *CHILDHOOD AND SOCIETY* 266-268 (2d ed. 1963).

20. Power, affection, respect, wealth, enlightenment, skill, and rectitude. H. LASSWELL, *supra* note 17.

21. Rights of Child, *supra* note 7.

22. See *supra* note 17, at 20.

23. Self, I believe, is preferable to the term "personality": it is more personal and better suited to a humanist policy science perspective. Moreover, it fits well within the system of "self" psychology. On the "self" concept, see generally H. KOHUT, *supra* note 5; H. KOHUT, *THE RESTORATION OF SELF* 171-190 (1977); and R. LIFTON, *THE LIFE OF THE SELF* (1976).

24. Rights of Child, *supra* note 7, at 129.

25. *Id.*

the conclusion that the General Assembly expressed a clear preference for the creation of psychologically normal adults.²⁶ The Declaration makes it clear that the child is to enjoy this state for his or her personal good and for the general good of society.²⁷ The General Assembly, in this Declaration, calls upon individuals, voluntary organizations, nation-states and local authorities to recognize the rights of the child and to use legislation and *other means*²⁸ to act in the best interest of the child. The Declaration states that efforts to establish and secure the child's rights should be progressively undertaken.²⁹ But so much for the general and introductory; let us turn to those specific provisions of the Declaration that are relevant to this discussion.

Principle Two of the Declaration shall be our point of commencement.³⁰ This principle provides that the child shall have special protection. Through legal and non-legal avenues, the child is to be guaranteed such protection.³¹ Special protection is to be ensured so that the child will develop "physically, mentally, morally, spiritually and socially in a healthy and normal manner in conditions of freedom and dignity."³² In making law requisite to the carrying out of the principle's purpose, "the best interests of the child shall be the paramount consideration."³³ I add here that when I refer to human personality, the self and the development of the child in this paper, I mean to semantically encompass the integrated mental, emotional and cognitive, moral, spiritual, and social³⁴ levels of being. As all five are critical to human personality development, it should be understood that I treat them all as integrated components of that whole

26. This conclusion is readily derived from a careful analysis of the whole Declaration.

27. The General Assembly would clearly equate "world community" with "society."

28. "Other means" surely can be held to encompass promotion of this human right. Promotion is discussed in the final section of this paper.

29. Not only is this a recognition of the realities of attempting to widely distribute well-being, but it is also an acknowledgment of the need to act.

30. Rights of Child, *supra* note 7, at 129.

31. Thus, all arenas of policy affectuation are authorized sites of promotional endeavor.

32. Rights of Child, *supra* note 7, at 129.

33. *Id.*

34. My usage is semantically "congruent" with the language and the meaning of the Declaration.

called human personality (the self).³⁵

A number of other principles in the Declaration demonstrate the General Assembly's policy preference. Principle Four declares that the child shall be entitled to develop in a condition of health.³⁶ Reading Principles Two and Four together, it becomes clear that health is used in its broadest sense. The term is not limited to physical health alone. The term "health" is meant to encompass the human psyche and its human contents. Principle Four, in addition, states that the mother as well as the child shall receive special protection and care. The principle specifically declares that adequate pre-natal and post-natal care are a part of the contemplated security. In Principle Four, the General Assembly recognizes the child's need for a nurturing generative adult capable of acting to secure the child's best interests development.

Principle Five of the Declaration makes special mention of children who are mentally and socially handicapped. These children are to have the right to special care, treatment and education.³⁷ This principle creates a restitutional right related to the development of human personality potential. Principle Five spotlights the existence of children with very clear-cut best interests needs.

Principle Six of the Declaration further elaborates on what might appropriately be called the "best interests" essence of the Declaration. This principle asserts that for the optimal development of his or her *personality* the child needs love and understanding.³⁸ In the text of this principle, the General Assembly makes it clear that the preferred situation is that the child grow up with his or her parents. If this is not possible, it is anticipated that the child shall grow up in an alternative "atmosphere of affection and of moral and material security. . . ."³⁹ Principle Six also includes a tender years preference.⁴⁰ It is advanced as

35. See *supra* note 23.

36. Rights of Child, *supra* note 7, at 129.

37. *Id.*

38. *Id.*

39. *Id.*

40. The "tender years" preference is familiar to those who are trained in the family law of the United States. This terminology means that the mother is the preferred custodian of very young children. On this point, see Batt, *Child Custody Disputes: A Developmental-Psychological Approach to Proof and Decision-Making*, 12 WILLAMETTE L.J.

the preferred situation that, except under extraordinary conditions, the child of tender years should not be separated from the mother. In the case of children without families, it is the declared policy that society and public authorities have the duty to provide care and support. The jurisprudential content of Principle Six is very familiar to those versed in the family law of our culture.⁴¹

Principles Nine and Ten of the Declaration are of interest to us. Principle Nine declares that the child shall be protected against cruelty, neglect and exploitation.⁴² The principle also states that no child shall be caused or allowed to perform work that would interfere with his or her "mental or moral"⁴³ development. It is clear that the protection provisions of this principle further the "best interests" development of human personality. Abuse and exploitation are in no way conducive to an appropriate developmental experience. Principle Ten, the last principle of the Declaration, asserts a preference for what can best be called a humanistic growth experience.⁴⁴ This principle states that the child is to be "brought up in a spirit of understanding tolerance, friendship among peoples, peace and universal brotherhood and in full consciousness that his/her energy and talents should be devoted to the service of his fellow men."⁴⁵ Persons brought up in such a manner would be the kind of human beings capable of living in peace and reciprocity with the peoples of the world. This ends my examination of the specific relevant provisions of the Declaration. At this point I will make a general and brief jurisprudential comment.

In many ways the Declaration of the Rights of the Child is an astonishing document. For a juridical declaration promulgated in 1959, the level of psychological and sociological sophistication displayed is extraordinary. Its creators assuredly knew a great deal about the nature of human development and its impact on social, cultural and political life. It is definitely the case

491, 493-98 (1976).

41. For a list of the cases on these preferences, see H. CLARK, *THE LAW OF DOMESTIC RELATIONS* § 17.4 (1968).

42. Rights of Child, *supra* note 7, at 130.

43. This language is definitely psychological and well-being oriented.

44. Rights of Child, *supra* note 7, at 130.

45. *Id.*

that the world of human life is made by man. And the child is surely parent to the human person.⁴⁶ Further, what children around the world become determines what the collective state of world order existence will be. From the anthropocentric perspective, the Declaration is a jurisprudential marvel.⁴⁷

My view is that the Declaration manifests the kind of imaginative understanding of human states of being essential to the making of sound policy and "informed law." The rights of the child articulated in this international law instrument are meaningful, because the instrument's creators demonstrated empathic awareness of the child's condition and comprehended the enormous world-culture importance of a positive developmental experience. The preamble to the Declaration and the principles of the Declaration are authentically related to the developmental world of the child. The Declaration demonstrates a comprehension of the child's bio-psychic vulnerability and the special conditions that must be guaranteed if the child is to evolve normally. Moreover, the Declaration is compatible with the very best available scientific knowledge. From a law, science and policy perspective, the Declaration promotes many important values. For example, the Declaration stresses the important role of well-being, human respect and affection⁴⁸ in creating a universal order which maximizes human dignity.⁴⁹ Furthermore, it is my personal jurisprudential view that the widespread distribution of well-being is the essence of human justice. There can be no real human dignity unless the well-being of individuals is assured.

Having thus far confined my discussion to the Declaration of the Rights of the Child, I now go beyond the legal policy advanced in the Declaration and seek to demonstrate that the best interests right I champion in this paper receives juridical support from a number of other international law instruments. In

46. The most comprehensive work demonstrating this human truth is T. LIDZ, *THE PERSON* (1968).

47. Law, Science and Policy is a anthropocentric jurisprudence that owes much to the rights-of-man jurisprudence of the eighteenth century. See generally T. PAINE, *THE RIGHTS OF MAN* (1791), in *THE SELECTED WORKS OF TOM PAINE* 93-279 (H. Fast ed. 1945).

48. See *supra* note 18.

49. Human dignity is discussed in M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 15, at 375-78. Human dignity refers to a shaping and sharing of values derivative of a scientifically informed humanism.

the next section of this article I examine these relevant sources of international law.

The Declaration of the Rights of the Child is, in the deepest structural sense, genetically determined by that monumental first cause—the United Nations Charter.⁵⁰ Other human rights sources such as the Universal Declaration of Human Rights,⁵¹ the International Covenant on Economic, Social, and Cultural Rights,⁵² and the International Covenant on Civil and Political Rights⁵³ are a part of the field of human rights forces lending jurisprudential standing to the Declaration of the Rights of the Child. All of these documents are clearly part of a milieu lending support to the cause of the child's right to a best interests psychological developmental experience. At this juncture I will emphasize the United Nations Charter, as it is the most important element in the relevant field of jurisprudential forces. Later in this paper, I will have a few words to say about jurisprudential documents of secondary significance.

The preamble to the Charter states that the members of the United Nations reaffirm their faith in "fundamental human rights, human dignity, and the worth of the human person."⁵⁴ Furthermore, the preamble asserts that the nations in the association are dedicated to the promotion of "social progress and better standards of life."⁵⁵ In addition, the preamble specifically states that international machinery is to be employed to promote the "social advancement of all people."⁵⁶ The preamble to the Charter makes a connection between the promotion of human dignity and world peace. Activities directed at the promotion of the child's right to a best interests personality development are surely aimed at achieving human dignity, promoting human rights, advancing human society, and securing peace and world security. We now leave the preamble and turn to particular articles of the charter.

50. U.N. CHARTER. The United Nations Charter is unquestionably a work of prescriptive and aspirational jurisprudence.

51. Human Rights, *supra* note 8.

52. International Covenant, *supra* note 9.

53. Civil and Political Rights, *supra* note 10.

54. U.N. CHARTER preamble.

55. *Id.*

56. *Id.*

Article 1(3) sets forth the purposes of the United Nations.⁵⁷ In this article it is declared, among other things, that the United Nations has the category of purpose of achieving international cooperation so that "international problems of a social, cultural, or humanitarian character"⁵⁸ can be solved. Additionally, Article 1(3) lists the promotion of respect for human rights and fundamental freedoms as an important organizational aim.⁵⁹ Article 1(4) states that the United Nations is to be a center dedicated to the carrying out of harmonizing action directed at attaining such ends.⁶⁰

Article 13(1) of the United Nations Charter charges the General Assembly to "initiate studies and make recommendations"⁶¹ related to the promotion of "international co-operation in the social, cultural, educational and health fields."⁶² The General Assembly is also directed to initiate studies and provide recommendations directed at "the realization of human rights and fundamental freedoms for all. . . ."⁶³ Article 55 of the Charter states the collective view in regard to the relationship between "friendly relations among nations"⁶⁴ and the necessity of solving international "social, health and related problems."⁶⁵ Article 55 clearly recognizes the operational relationship between and among human well-being, respect for human rights and freedom, and the establishment of world peace.⁶⁶ Article 55 indicates that the member nations acknowledge the existence of the above-stated relationship and agree to act to bring about world peace by promoting human well-being and human rights.⁶⁷ Under Article 56, all members pledge themselves to take joint and separate action in cooperation with the United Nations so as to carry out appropriate action efforts.⁶⁸ Article 57(1) of the Charter makes reference to a class of specialized agencies which will act to dis-

57. U.N. CHARTER art. 1.

58. U.N. CHARTER art. 1, para. 3.

59. *Id.*

60. U.N. CHARTER art. 1, para. 4.

61. U.N. CHARTER art. 13, para. 1.

62. *Id.*

63. *Id.*

64. U.N. CHARTER art. 55.

65. *Id.*

66. *Id.*

67. *Id.*

68. U.N. CHARTER art. 56.

charge international responsibilities relating to matters social, cultural, educational and health-related.⁶⁹ These agencies, of course, are to aid in the implementation of United Nations policy in the above jurisdictional realms.

Article 62(1) of the Charter draws the Economic and Social Council into the arena of policy-making. Under Article 62(1), the Economic and Social Council (ECOSOC) is empowered to study social, cultural, educational and health-related matters.⁷⁰ This article provides that the Council may make recommendations in regard to the above matters to the General Assembly. In addition, under Article 62(2), the Economic and Social Council has the power to make recommendations to the General Assembly for the purpose of promoting human rights and fundamental rights.⁷¹

An analysis of the above Charter material leads one to the following very specific conclusions: the Charter of the United Nations, a constitutive and organic juridical document, stresses the obligation of member nations to act to support the causes of human rights, fundamental freedoms, human dignity and human well-being. The Charter affirms the importance of social, cultural, health and humanitarian values. These values are to be respected and promoted. Promotion of these values, human rights, and human dignity is viewed as critical to the ensuring of world peace. It is contemplated that, under the Charter, the General Assembly shall play a central role in tasks of evaluation, policy-making and action. The Economic and Social Council and certain specialized agencies are also held to be important in acting to promote the advancement of the above basic human and social interests.

A fair reading of the above discussed parts of the Charter leads one to the position that the child's right to a best interests personality development is clearly within the aspirational design of the Charter. It is also readily contended that a reasonable interpretation of the term "fundamental freedoms" would include the child's freedom to evolve in natural liberty without the burden of destructive and negative forces impinging upon his or her

69. U.N. CHARTER art. 57, para. 1.

70. U.N. CHARTER art. 62, para. 1.

71. U.N. CHARTER art. 62, para. 2.

psychological development. Given the dependent status of the child, he or she will need to be protected through social, cultural, humanitarian and health-aimed efforts. All four of the above Charter-named efforts, when focused on the child, can significantly promote the child's psychological-developmental best interests and our collective best interest. The last part of this paper will mention some of the efforts that the United Nations, specialized agencies and member states can make to promote the child's right to a psychologically normal development. I shall prove in the next section of this paper that there is a critical relationship between the human child's psychological development and a world order system that promotes peace.

Finally, it should be noted that the Declaration of the Rights of the Child makes manifest the very clear-cut relationship between the Charter and the Declaration. The Declaration makes specific reference to the Charter and its human rights, human dignity and social progress value positions. The Declaration states that "mankind owes to the child the best it has to give."⁷² Immediately following this pronouncement, the General Assembly calls on mankind and organizations of all kinds to act to promote the child's best interests. The relationship between the Declaration, which speaks for the child's developmental interests, and the Charter is beyond contravention.

Like the United Nations Charter, the Universal Declaration of Human Rights adds formal normative support to the child's right to a best interests psychological development. It is an important constituent in the field of forces giving jurisprudential potency to the Declaration of the Rights of the Child. This Declaration, adopted and proclaimed by the General Assembly in 1948, is a fundamental international human rights document. In this document's preamble, the General Assembly expresses the view that human rights are fundamental to the existence of freedom, justice and world peace.⁷³ Moreover, it is made manifest that the Declaration focuses on human rights, human dignity and fundamental freedoms.⁷⁴ Through the medium of the preamble, the General Assembly establishes the Declaration as a

72. *Id.* at 114.

73. Human Rights, *supra* note 8.

74. *Id.*

"common standard of achievement for all peoples and nations."⁷⁵ The rights and freedoms described in the Declaration are to be promoted by "progressive measures."⁷⁶

The specific articles of this Declaration demonstrate the collective intent. Article 1 declares that all "human beings are born free and equal in dignity and rights."⁷⁷ Article 3 states that all human beings have the right to "life, liberty and security of person."⁷⁸ Article 16 refers specifically to matters familial. This article asserts that the family is the natural and fundamental unit of human society. The article states that the family is entitled to be protected by society and the nation-state.⁷⁹ Article 22 speaks very specifically in regard to the matter of human development. This article declares that all human beings have the right to realization of self and the free development of human personality.⁸⁰ Article 25 states that everyone has the right to an adequate standard of living so as to ensure the "health and well-being of himself and his family."⁸¹ The article, in addition, declares that childhood and motherhood "are entitled to special care and assistance."⁸² Article 26 states that education is to be aimed at "the full development of human personality."⁸³

The position taken by the Universal Declaration of Human Rights is indisputable. The child is entitled to a best interests developmental experience. Such an experience is a matter of right. The Universal Declaration emphasizes the supreme importance of the family. The Declaration's viewpoint is that the family is the birthing place of the free human being. The generative relationship between mother and child is recognized as a fundamental state of being. Well-being, self-realization, human personality and development are all specifically mentioned in the Declaration.⁸⁴ The Declaration of the Rights of the Child is clearly dynamically related to the Universal Declaration of

75. *Id.* at 1.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 2.

80. *Id.*

81. *Id.* at 3.

82. *Id.*

83. *Id.*

84. *Id.* at 1.

Human Rights as well as to the United Nations Charter.

It is my opinion that the preceding discussion of the Declaration of the Rights of the Child, the United Nations Charter and the Universal Declaration of Human Rights categorically establishes the developmental right that is the subject of this paper. However, I believe amplification at this point is worth the effort. Amplification will enhance the reader's jurisprudential base and better prepare the reader for the section of this paper that treats the matter of implementation (promotion). Thus, I will consider two additional international jurisprudential documents. They are the International Covenant on Economic, Social and Cultural Rights⁸⁵ and the International Covenant on Civil and Political Rights.⁸⁶

First we examine the International Covenant on Economic, Social and Cultural Rights. Opened for signature in 1966, the Covenant is a fundamental human rights instrument. The preamble to the Covenant states that the foundations of peace, freedom, and justice in the world community will be created through the recognition of human dignity and the rights of all human beings. Furthermore, the preamble asserts that the ideal of "free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights"⁸⁷ Under Article 9, the states parties specifically recognize "the right of everyone to social security."⁸⁸ A reading of the Covenant makes it clear that social security means much more than social insurance. Article 10 of the Covenant deals particularly with the family. It states that the "widest possible protection and assistance should be accorded to the family . . . particularly . . . while it is responsible for the care and education of dependent children."⁸⁹ In addition, this article states that mothers should be provided special protection for a reasonable time pre- and post-birth.⁹⁰ Article 10 declares that working mothers should receive a socially-secured leave to pro-

85. International Covenant, *supra* note 9.

86. Civil and Political Rights, *supra* note 10.

87. International Covenant, *supra* note 9, at 3.

88. *Id.* at 5.

89. *Id.*

90. *Id.*

vide the necessary protection.⁹¹

The Covenant articulates a clear-cut policy position. Special protections are to be provided so that the child's best interests development is assured. The family, that cradle of development, is given especial juridical status so that healthy human development can be achieved. The development to be promoted is obviously psychological as well as physical.

In summary, it can be said that this Covenant, like the United Nations Charter and the Universal Declaration of Human Rights, upholds the child's right to a best interests psychological development. We consider next another covenant of jurisprudential moment. This is the International Covenant on Civil and Political Rights.

Although focusing primarily on the traditional western types of civil and political rights and freedoms, the International Covenant on Civil and Political Rights does place special emphasis on the family and the child. Article 23(1) of the Covenant recognizes the family as the basic unit of society and states that the family is entitled to protection by the state and society.⁹² Article 23(4) provides that in cases of marital dissolution, the child should receive the necessary protection.⁹³ Article 24(1) declares that all children are entitled to the protection required by their special status.⁹⁴ Protection obviously is related in part to the importance of providing the children opportunity for normal psychological development. Families, society and the nation-state are obligated to provide this support. It is, from our perspective, interesting to see a best interests developmental right mentioned in a document which, in the main, deals with political and civil rights. The mention of the developmental matter is a strong indication of the importance of the right to a positive developmental experience. Protection for free and positive human development is a theme that permeates all basic rights instruments.

It certainly would be possible to discuss additional human rights instruments which support the view that the right to a best interests psychological development is widely recognized in

91. *Id.*

92. *Id.* at 11.

93. *Id.*

94. *Id.* at 11-12.

the jurisprudence of international law. However, the preceding material dealing with very fundamental human rights documents, I believe, satisfactorily makes the case. It is certain that a clear-cut policy preference, expressed in human rights language, does exist. It is, moreover, well recognized that a direct relationship exists between the developmental experience, human dignity and world peace. In the next section of this paper, I seek to demonstrate that modern clinical and academic disciplines give support to the thesis put forth in the relevant human rights instruments. We seek now the scientific infrastructure that supports sound policy and wise lawmaking. The next section of this article is an effort to utilize the interdisciplinary approach pioneered by Professors McDougal and Lasswell.⁹⁵ In the following part of this paper we emphasize the scientific underpinnings of sound legal policy.

III. THE HUMAN SCIENCES BASIS OF THE CHILD'S RIGHT TO A BEST INTERESTS PSYCHOLOGICAL DEVELOPMENT

In order to comprehend fully the scientific sophistication and the importance of the psychological development best interests dimension of the Declaration of the Rights of the Child, one must turn to the pertinent scientific literature. This is the literature of child (human) development, psychoanalytic psychology and psycho-history. An analysis of both data and theory clearly indicates that the drafters of the Declaration of the Rights of the Child were quite accurate in their assessment of the pivotal character of human childhood. To develop this point further, let us turn first to the findings brought to light by the workers in the arena of child development. Our special emphasis is on the literature of developmental deprivation.

Developmental deprivation studies demonstrate that the human condition depends in very large part on what human beings experience in childhood.⁹⁶ A brief explication of the best work is provided so that the reader will be fully aware of the consequential significance of promoting as a human right the child's psychological-developmental best interests.⁹⁷ I seek to es-

95. See *supra* note 1.

96. See *supra* note 46.

97. Two first-rate books taking a rights approach to one's psychological "best inter-

establish the nexus among international law, human rights and developmental psychology. My focus will be scientific support for the establishment of the best interests right.

A host of clinicians and researchers have established decisively the critical role of the child's psychological development in the creation of individual personality. Personality may, of course, be normal or pathological. Perhaps the most outstanding work in child development has been done by Erik Erikson,⁹⁸ John Bowlby,⁹⁹ Anna Freud,¹⁰⁰ Margaret Mahler,¹⁰¹ Bruno Bettelheim,¹⁰² Heinz Kohut,¹⁰³ Selma Fraiberg,¹⁰⁴ and René Spitz.¹⁰⁵ Sigmund Freud¹⁰⁶ was, of course, the pioneer of developmental studies. In law and psychology (including psychoanalytic psychiatry) Andrew Watson,¹⁰⁷ Joseph Goldstein,¹⁰⁸ Albert Solnit,¹⁰⁹

ests" in early life are M. RIBBLE, *THE RIGHTS OF INFANTS* (1965), and S. FRAIBERG, *EVERY CHILD'S BIRTHRIGHT: IN DEFENSE OF MOTHERING* (1978).

98. Erik Erikson is a world-renowned figure in psychoanalysis. See *supra* note 19.

99. John Bowlby, M.D., is a pre-eminent expert on mental health of children and a long-time consultant to the World Health Organization. See 1 J. BOWLBY, *ATTACHMENT AND LOSS: ATTACHMENT* (1969); 2 J. BOWLBY, *ATTACHMENT AND LOSS: SEPARATION* (1973).

100. Anna Freud was a pioneer in child psychoanalysis. She is also well-known for her work in family law. See *supra* note 3.

101. Margaret Mahler is a psychoanalyst and researcher in child development. See her fascinating book, *THE PSYCHOLOGICAL BIRTH OF THE HUMAN INFANT* (1975), which she co-authored with Fred Pine and Anni Bergman.

102. Bruno Bettelheim, Ph.D., is a psychoanalyst who has specialized in the treatment of psychologically disturbed children. See his outstanding books on the results of the communal rearing of children in the Israeli kibbutz system, *THE CHILDREN OF THE DREAM* (1969).

103. Heinz Kohut, a psychoanalyst, was a pre-eminent figure in the development of self-psychology. See *supra* note 5.

104. Selma Fraiberg was a well-known psychoanalyst and researcher in child development. Her book *THE MAGIC YEARS* (1959), is excellent for the policy scientist who has little background in the area of best interests psychological well-being.

105. René Spitz, M.D., was an early pioneer in child development studies. His classic paper is *Hospitalism: An Inquiry Into the Genesis of Psychiatric Conditions in Early Childhood*, 1 *PSYCHOANALYTIC STUDY OF THE CHILD* 53 (1945).

106. Freud was also the first clinician to take seriously the vicissitudes of child development. His insights into human development and the implications of deprivation can be found throughout all 24 volumes of J. STRACHEY, *THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD* (1971).

107. Andrew Watson, M.D., is the author of *PSYCHIATRY FOR LAWYERS* (rev. ed. 1978). This is an outstanding text on law and psychiatry. It contains much material on development and deprivation.

108. Joseph Goldstein is co-author of *BEYOND THE BEST INTERESTS OF THE CHILD*, *supra* note 3. He is a professor of law and non-medical psychoanalysis.

109. Albert Solnit, M.D., is co-author of *BEYOND THE BEST INTERESTS OF THE CHILD*, *supra* note 3. Dr. Solnit is a well-known child psychiatrist.

and Anna Freud¹¹⁰ have made the results of the research available to the legal community and helped to integrate developmental information into the family law decision-making process.¹¹¹ These workers in law and psychology have done much to bring child custody adjudication into conformity with the results of child development research.¹¹²

The consensus of the clinicians and the most outstanding researchers has been well-expressed by John Bowlby. Bowlby states the central truth succinctly: "the quality of the parental care which a child receives in his earliest years is of vital importance for his future mental health."¹¹³

Bowlby and many others believe that mental health can result only if the child experiences a "warm, intimate and continuous relationship with his mother (or permanent mother-substitute)"¹¹⁴ This view, which is widely supported, is the product of extensive first-hand contact with mothers and children. In addition, the reconstruction of childhood achieved during adult psychotherapy supports the consensus expressed by Bowlby.¹¹⁵ Moreover, experimental work with animals has substantiated the findings of the child development specialists.¹¹⁶

The great mass of available high quality data indicates that the child must be inextricably involved with an effective nurturer (or nurturers) in early childhood if the child is to evolve toward psychological normalcy.¹¹⁷ For the first year to eighteen months of life, the nurturer (usually the mother) and the child

110. Anna Freud is co-author of *BEYOND THE BEST INTERESTS OF THE CHILD*, *supra* note 3. She was one of the great researchers in the realm of the psychoanalytic study of childhood. She, through her association with the Yale Law School, contributed a great deal to the development of family law jurisprudence.

111. Those involved in the family law decision-making process utilize psychological data and theory more effectively than those involved in the making of criminal justice decisions.

112. Consequently, child custody adjudication is a much more "sophisticated" process of decision making than it was fifteen years ago. See Batt, *supra* note 40.

113. J. BOWLBY, *MATERNAL CARE AND MENTAL HEALTH* 11 (1966). This work was prepared for the World Health Organization.

114. *Id.*

115. See L. HILL, *PSYCHOTHERAPEUTIC INTERVENTION IN SCHIZOPHRENIA* (5th ed. 1973).

116. See H. HARLOW, *LEARNING TO LOVE* (1973). Harlow's research with monkey mothers and their offspring has done much to verify the clinical data of the psychoanalysts.

117. Normalcy is, of course, not an absolute—it is a relative, being dependent upon culture and history.

must function as a relatively closed system.¹¹⁸ In some cultures, the system will be more closed than it is in certain other cultures.¹¹⁹ Within the dyadic universe of mother (or mother surrogate) and child, a relatively harmonious human relationship must be maintained in order to facilitate normal psychological development. Above all, the child must receive substantial emotional and physical input.¹²⁰ The child must be touched, cuddled, fed, talked to and, in general, stimulated by the nurturer. Deprivation produces pathological development.

Evolution has programmed this biological, psychological and social relationship between nurturer and child.¹²¹ It is the quality of this relationship that determines our humanity. Our basic humanity—specifically, our capacity to form human attachments—derives from this experience in early childhood.¹²² Through the relationship with a successful nurturer, we learn to live, love and let live or, in the alternative, we become stunted in our development as human beings. Our psychological self-development is rooted in this experience.¹²³ Let us consider this process of psychological evolution in more detail.

Attachment behavior in childhood is the critical activity the child manifests in relationship to the nurturer.¹²⁴ The child seeks connection, conjunction, affixation. Nature has programmed the child with this need. This need operates to promote the child's individual development. The child's behavior elicits nurturing behavior from psychologically healthy nurturers. If, in early life, the child's need for attachment is adequately satisfied, then the child is well on the road to psychological well-being.

The child's need for attachment is very strong during the first few years of life. Gradually, it is reduced and the child uses the nurturer as a secure base from which to venture into the

118. See Batt, *supra* note 40, at 494-98.

119. The system will be less closed in such settings as tribal Uganda and in the kibbutzim of Israel, certainly by comparison to the nuclear family of the United States.

120. See Batt, *supra* note 40, at 494-98.

121. See H. HARLOW, *supra* note 116.

122. Our humanity is, in great measure, determined by our capacity to form attachments. See 1 J. BOWLBY, ATTACHMENT, *supra* note 99.

123. See S. FRAIBERG, EVERY CHILD'S BIRTHRIGHT: IN DEFENSE OF MOTHERING 10 (1978).

124. See *supra* note 122.

world and form new attachments.¹²⁵ And, as John Bowlby has made clear, attachment behavior continues from "the cradle to the grave."¹²⁶ Attachment behavior is, in fact, absolutely essential to social living.

I do not mean to suggest that the first two or three years are the only determinants of the human self. With Erik Erikson, I believe that we can experience positive and negative changes in the self throughout our whole life cycle.¹²⁷ I accept Erikson's model,¹²⁸ which is made up of eight life stages extending from birth to death. Included below is a much-simplified description of the first five states. This is included because I am focusing on the precursor of the adult, the child.

Stage I—(approximately the first year of life). The child has the opportunity to develop *basic trust* (confidence in the nurturer). This attachment experience prepares the child for attachment in subsequent states of evolution.

Stage II—(about the second and third years of life). The child is developing some significant *personal autonomy* and is exploring the home environment.

Stage III—(about ages four and five). The child begins to take a serious interest in the world outside of the home. Attachments to persons outside the home are made.

Stage IV—(approximately the sixth through the eleventh years). The child is immersed in acquiring knowledge and skills deemed important by his culture.

Stage V—(about twelfth through eighteenth year). The child further consolidates the emerging self. Cultural and gender identities are elaborated.¹²⁹

In Erikson's stages I and II the relationship with the nurturer is most critical. Much of what happens in stages I and II will strongly influence experience and development in stages III, IV and V, and in adult life (stages VI, VII, and VIII).¹³⁰ I believe that the right to a psychological best interests experience should

125. J. BOWLBY, *THE MAKING AND BREAKING OF AFFECTIONAL BONDS* 132 (1979).

126. *Id.* at 129.

127. See E. ERIKSON, *THE LIFE CYCLE COMPLETED*, *supra* note 19.

128. See E. ERIKSON, *CHILDHOOD AND SOCIETY*, *supra* note 19, at 247-74.

129. *Id.*

130. See E. ERIKSON, *THE LIFE CYCLE COMPLETED*, *supra* note 19.

be promoted through all of Erikson's first five stages or their cultural equivalents in non-western settings.¹³¹ My position is consistent with the language and clearly-manifested intent of the Declaration of the Rights of the Child. A few more words on Erikson's work are important because it points us in the direction of that key matter, human values.¹³²

Erikson takes the position that an appropriate developmental experience provides the child with a view of life that allows the child to develop a truly human identity. He contends, and I believe demonstrates, that such a positive psychological experience creates a person who affirms fundamental human values and relates affirmatively to the life experience.

According to Erikson, the above-described person has the capacity to trust and to hope—to hope, for example, for a world of peace. Further, such a person has will power, a sense of purpose, a feeling of competence, a sense of positive identity, and fidelity to a core of pro-human values. A person with an affirmative developmental experience will be able to empathize, care for others and love. As such a person moves through life, he or she will acquire a very human kind of wisdom.¹³³

Developmental deprivation, on the other hand, produces a person who is psyche- and value-impaired. In cases of large-scale deprivation the individual will be extremely mistrustful, without real hope, alienated, devoid of purpose, and incapable of anything but superficial attachment to other persons. If such people achieve political power they can be dangerous to world peace and harmony.¹³⁴ In addition, even if they do not become leaders, they are potentially dangerous to mankind's best interest because they are ready recruits to movements led by disturbed types.¹³⁵ Desperation created by developmental deprivation creates true believers.

The positions of Erikson and Bowlby are strengthened by

131. Erikson's model explicitly considers cultural variability and its relationship to child development. See E. ERIKSON, *CHILDHOOD AND SOCIETY*, *supra* note 19, at 114-86. See Rights of Child, *supra* note 7.

132. Erikson, like Professors McDougal and Lasswell, is particularly interested in human values. See E. ERIKSON, *THE LIFE CYCLE COMPLETED*, *supra* note 19, at 32-33, 55-57.

133. See E. ERIKSON, *CHILDHOOD AND SOCIETY*, *supra* note 19, at 274.

134. *Id.* at 326-58.

135. *Id.*

the findings of Heinz Kohut.¹³⁶ Kohut has declared that a coherent, psychologically-integrated, value-rooted human self is the product of empathic interaction between the child and a relaxed, self-integrated nurturer. Without the nurturer's empathy and involved affirming attention, the child's self will be impaired.¹³⁷ A child so impaired is not truly at home in a world of human beings and human values. In his essay "Psychoanalysis in a Troubled World"¹³⁸ Kohut discusses self pathology and the historical and political problems of the modern era. Like Erikson, Kohut holds that developmental deprivation erodes our ability to work together to promote peace, justice and human solidarity. But let us shift for a moment from particular workers and theorists to a wider realm.

Modern clinical psychiatry as a scientific corpus of work attests to the validity of regarding deprivations in a developmental position.¹³⁹ Neuroses,¹⁴⁰ affective psychoses,¹⁴¹ schizophrenia,¹⁴² paranoid psychoses,¹⁴³ psychophysiological disorders and personality disorders¹⁴⁴—in fact, psychiatric disorders of virtually every type—are closely correlated with failures in development produced by inadequate nurturing.¹⁴⁵

Like those people experienced in clinical psychiatry, those experienced in criminal law and the juvenile system have had extensive contact with the disturbing products of early life deprivation. The type that has impressed us greatly is the "anti-social personality."¹⁴⁶ These people often express their psychopathology through violent criminal action.¹⁴⁷ But this is not al-

136. See H. KOHUT, *supra* note 23.

137. See H. KOHUT, *supra* note 23, at 85.

138. 2 P. ORNSTEIN, *THE SEARCH FOR THE SELF, SELECTED WRITINGS OF HEINZ KOHUT, 1950-1978* 511-46 (1978).

139. See generally L. KOLB, *MODERN CLINICAL PSYCHIATRY* 63-81 (9th ed. 1977).

140. *Id.* at 501.

141. *Id.* at 457.

142. *Id.* at 387.

143. *Id.* at 481.

144. *Id.* at 611.

145. See L. KOLB, *supra* note 139.

146. See generally Batt, *The New Outlaw: A Psychological Footnote to the Criminal Law*, 52 KY. L.J. 497 (1964). The author still claims this article but with reservations and a significant degree of ambivalence. It is still a very useful work for those concerned about the dangerous offender. See also L. KOLB, *supra* note 139, at 611-18. Anti-social personality is a new term for psychopath, also called sociopath.

147. See Batt, *supra* note 146; see also L. KOLB, *supra* note 139, at 611-18.

ways the case. The anti-social personality is in general aggressive, manipulative, unfettered by guilt, without moral inclinations and incapable of strong emotional attachments.

In virtually every case involving anti-social adult offenders, delinquents or non-offender anti-socials, there is an early history of pathological, neglectful or abusive parenting.¹⁴⁸ Defective parenting of the above kind produces people who are either at war with society or ethically and morally oblivious to society's (local, national or international) interest.¹⁴⁹ Unfortunately, all too many of these people achieve positions of local, national and even international political power.¹⁵⁰ It is a certainty that at the national and international level they can be very dangerous to the world community's best interests. They are, of course, dangerous as followers as well as leaders.

Clinical psychiatrists and workers in criminal law have also learned that certain psychotics,¹⁵¹ especially paranoid schizophrenics, certain schizoid types¹⁵² and certain narcissistic¹⁵³ types are a threat to individual and potentially a threat to collective security.¹⁵⁴ If persons with such disorders participate in high-level decision-making, the results of the decision process can often be irrational and contrary to the interests of mankind and the world community. The psychological types referred to above are all the damaged end-products of developmental deprivation. They are psychopathological selves.

Having considered the link between developmental deprivation and certain serious psychological disturbances of the human self, let us turn to the findings of two psychological professionals and a psycho-historian. These men have discussed the linkage between developmental deprivation and the matter of war and peace. These experts are Erich Fromm,¹⁵⁵ Robert Jay Lifton¹⁵⁶

148. L. KOLB, *supra* note 139, at 611.

149. See R. WAITE, *THE PSYCHOPATHIC GOD: ADOLPH HITLER* (1977).

150. See generally H. LASSWELL, *WORLD POLITICS AND PERSONAL INSECURITY* (1965).

151. L. KOLB, *supra* note 139, at 407-10.

152. *Id.* at 122-23.

153. See AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 315-17 (3rd ed. 1980).

154. See E. FROMM, *supra* note 6. See also F. FORNARI, *THE PSYCHOANALYSIS OF WAR* (1974).

155. See E. FROMM, *supra* note 6. See also F. FORNARI, *supra* note 154.

156. Most relevant to this part of the discussion is R. LIFTON & R. FALK, *INDEFENSIBLE WEAPONS* (1982).

and Lloyd de Mause.¹⁵⁷

Erich Fromm, in his work *The Anatomy of Human Destructiveness*,¹⁵⁸ surveys and evaluates what is known about the human capacity for destructiveness. Ethology, behaviorism, neuroscience, anthropology and psychoanalysis are scrutinized by Fromm in his effort to determine the etiology of destructiveness. Fromm scrutinizes not only individual destructiveness, but also destructiveness produced by the nation-state. It is clear that Fromm views destructiveness, i.e., malignant aggression, as the critical world system problem. Fromm examines the cases of Heinrich Himmler,¹⁵⁹ Joseph Stalin¹⁶⁰ and Adolf Hitler.¹⁶¹ Fromm's evidence and analysis demonstrates convincingly that all three of these historically important figures suffered from distorted and pathological developmental experiences in early life: none of them developed a truly human self system. All grew up to become promoters of what Fromm labels malignant aggression. Malignant aggression, defined succinctly, is maniacal aggression used to destroy psychically and/or physically the lives of other human beings. Malignant aggression is aggression in the service of what might best be called "evil."

Fromm argues that malignant aggression, which is a clear and present danger to world peace, is the product of a personality warped by an extremely negative developmental experience. Relying on the data of neuroscience, he states that the root of psychopathology is in brain process. His view is that brain processes, brain development¹⁶² and human self are to a great degree the output of interaction between the nurturer and the child.¹⁶³ Pathological upbringing produces atypical brain processes, at times abnormal brain structures and resulting disturbances of the self.¹⁶⁴ Fromm believes that failure in the nurturing/attachment process produces a person exceedingly alienated from others.

157. De Mause, *The Evolution of Childhood*, 1 Hist. of Childhood Q.: The J. of Psychohistory 503-75 (1974).

158. See E. FROMM, *supra* note 6.

159. *Id.* at 333-61.

160. *Id.* at 318-21.

161. *Id.* at 411-81.

162. *Id.* at 290.

163. *Id.*

164. *Id.*

According to Fromm, many of the people who suffer such developmental deprivation "adapt" to life through the use of extremely abnormal techniques of coping. In order to compensate for diminished feelings of personal power, a feeling derived from the defective developmental experience, they seek to dominate others.¹⁶⁵ Alternatively, they attach themselves to persons they perceive to be powerful.¹⁶⁶ These powerful persons are often psychopathological. The deprived person seems to seek what he knows best—the disturbed other. Neither those who seek to dominate nor those who follow the powerful who are psychologically disturbed are friends of human freedom and human justice. Often such people are ripe for recruitment into anti-human political causes.¹⁶⁷ If the child's upbringing is extremely pathological he or she will become a malignant aggressor. He or she will fight the fear produced by everyday existence by attacking and destroying others.¹⁶⁸ Adolf Hitler is, of course, the ultimate case history.

Fromm's paradigm is scientifically and sociologically comprehensive and politically meaningful. He holds that the developmental experience in conjunction with the forces of culture produce a social character.¹⁶⁹ This social character, in a sense, is a personality that one projects into political, economic and social arenas. Fromm sees the human social character as playing a major role in the arenas of local, national and international affairs. This is of obvious importance. It is equally significant that Fromm's findings indicate that a person's social character can be either predominantly necrophilic¹⁷⁰ (anti-life) or predominantly biophilic¹⁷¹ (pro-life). Certainly, matters of degree and mixture are important, but for our purpose it is enough to understand the two antipodal orientations.

Fromm describes those with the necrophilic orientation as being not really open to the experiences of life. Such persons are narcissistic, that is, psychologically self preoccupied. There is no

165. *Id.* at 262.

166. See generally R. LINDNER, *REBEL WITHOUT A CAUSE* (1944). See also R. LINDNER, *FIFTY MINUTE HOUR* 119-55 (1956), for an arresting case study.

167. *Id.*

168. See E. FROMM, *supra* note 6, at 262.

169. *Id.* at 283.

170. *Id.* at 367.

171. *Id.* at 406.

true balance in regard to self/other orientation. Such persons are convinced that political, psychological, or physical force and often violence are the only ways to solve conflict. Moreover, they are possessively (monopolistically) oriented to property, aloof, stiff, pedantic, anti-pleasure, rule-focused, bureaucratic, control-oriented, thing-attached rather than person-attached, overtly and/or covertly hostile, potentially pathologically aggressive, technique-addicted and extremely authoritarian.¹⁷²

The biophilic type is a very different being. He or she loves life in all its forms. The biophilic is pro-growth, interested in the new, rejects certainty, sees the whole rather than just the details, attempts to resolve conflict through negotiations emphasizing reason as a tool, rejects control, prefers democratic process, and sees as evil that which serves psychological or physical death.¹⁷³

Fromm's work indicates that the necrophilic orientation "is the outcome of un-lived life, of the failure to arrive at a certain stage beyond narcissism and indifference."¹⁷⁴ In other terms, there has been a major failure in the development of the self. Biophilia is the obverse etiologically. The person with the biophilic orientation has had a fully human developmental experience.¹⁷⁵ Positive interaction with the nurturer has produced a human being supportive of the life principle.¹⁷⁶

Fromm's study demonstrates that the human developmental experience determines our character and in a very real sense our fate.¹⁷⁷ Our developmental experience will largely determine our social character, our values and our future. Our future is determined, in addition, by the social character of other persons, especially those with political and economic power. More than anything else, our experience as infants and children influences us in our view of the value of life and life forces. It is those who suffer major developmental damage who jeopardize life, peace and existence for the rest of us. It is a reasonable inference from

172. *Id.* at 362-410.

173. *Id.* at 406.

174. *Id.*

175. *Id.* at 407.

176. *Id.*

177. The distinguished American novelist, Saul Bellow, has said something quite similar: "But a man's character is his fate says Heraclitus, and in the end there isn't any way to disguise the nature of the knocks. . . . Everybody knows there is no finesse or accuracy of suppression" S. BELLOW, *THE ADVENTURES OF AUGIE MARCH* 3 (1953).

Fromm's work that civil, political, economic, social, cultural and all basic human rights cannot exist if collective social character is pre-eminently influenced by the anti-life orientation. Further, the anti-life attitude threatens the very existence of the earth as our home.¹⁷⁸

Another scholar-clinician, Robert Jay Lifton, has reached a congruent position. Lifton is well-known for his studies on Hiroshima atomic bomb victims,¹⁷⁹ post-Vietnam War syndrome,¹⁸⁰ self psychology,¹⁸¹ and what he has called nuclearism, or the irrational attachment to weapons of destruction.¹⁸² Lifton posits a direct link between deprivation of development, psychological disturbances of the self and the collective insecurity of our time.¹⁸³

Lifton takes the position that the ability to control the use of weapons and the will to keep world peace is threatened by "psychic numbing."¹⁸⁴ This psychological numbing of the self anesthetizes us to the horrific reality of the nuclear condition. Lifton tracks this defensive psychological state to conditions of developmental deprivation.¹⁸⁵ The deprived person, early in life, copes by deadening the self. Anxiety, fear and other emotions are defended against by this action. Such people not only suffer from a deficit of emotional experiences but an "impoverishment of human relationships."¹⁸⁶ One who is psychologically numbed is unable to perceive adequately the psychological and political realities of our nuclear dilemma. Numbing has constricted awareness, leaving one depressed and incapable of mobilizing oneself to face nuclear reality.¹⁸⁷

As Erikson and Fromm would say, the psychological status of those who are numbed has impaired their ability to develop a

178. This is essentially the main point of Fromm's classic on destructiveness. See E. FROMM, *supra* note 6.

179. R. LIFTON, *DEATH IN LIFE: SURVIVORS OF HIROSHIMA* (1969).

180. R. LIFTON, *HOME FROM THE WAR* (1973).

181. See R. LIFTON, *supra* note 23.

182. See *supra* note 156.

183. See R. LIFTON, *THE BROKEN CONNECTION* 408-09, 419-32 (1979). This work provides the clinical and theoretical infrastructure for Lifton and Falk's book *INDEFENSIBLE WEAPONS*, *supra* note 156.

184. R. LIFTON & R. FALK, *supra* note 156, at 100-10.

185. R. LIFTON, *supra* note 183, at 408-09.

186. *Id.* at 408.

187. R. LIFTON & R. FALK, *supra* note 156, at 100-10.

pro-human set of values. Moreover, the lives of such people are empty, devoid of love, and intruded upon by anxiety and fear. Behind the numbing and manifest psychological symptoms there is a rage which if unleashed can produce violent acting-out.¹⁸⁸ If these persons are high-level decision-makers or field-level personnel who control the actual use of nuclear weapons, the acting-out can result in a nuclear catastrophe. Of course, if these persons are supporters of high-level leaders, they help to create a public climate which can lead to collective numbing. Collective numbing further jeopardizes our continued existence.

Lifton asserts that the psychically numbed exist psychologically somewhere on the border of the realm of death.¹⁸⁹ They are all too prepared to opt for anti-life solutions¹⁹⁰ to world-wide and other problems. Although Lifton's paradigm is personal, there is much of it that is compatible with Fromm's model. For example, both Lifton and Fromm emphasize developmental deprivation and the resulting warping of human personality, anti-life orientation, absence of pro-human values and the person's willingness to use massive destructive power to resolve conflicts. Both Lifton and Fromm are aware that culture and history are important outcome-determining factors. Above all, it is clear that both assign very significant weight to the determining value of the vicissitudes of human development and the social character of the self. At this point we will turn from our consideration of the findings of psychology to consideration of a relatively new discipline, psycho-history,¹⁹¹ focusing on the work of Lloyd de Mause.¹⁹²

De Mause and his followers have dedicated themselves to the psychoanalytic and historical study of childhood and the re-

188. Numbing produced by developmental deprivation can lead to the malignant aggression and destruction described by Fromm.

189. R. LIFTON, *supra* note 183, at 283-87. Recall Fromm's use of the term "necrophilic." Lifton's work strongly confirms Fromm's position.

190. R. LIFTON & R. FALK, *supra* note 156, at 13-124.

191. Psycho-history seeks to combine the psychological and historical approaches. The psychology most often used successfully in psycho-historical work is psychoanalysis. For example, see E. Erikson's outstanding study, *YOUNG MAN LUTHER: A STUDY IN PSYCHOANALYSIS AND HISTORY* (1958).

192. De Mause's fundamental theoretical work is *The Evolution of Childhood*, *supra* note 157. Another important theoretical work by de Mause is *The Psychogenic Theory of History*, 4 *JOURNAL OF PSYCHO-HISTORY* 253 (1977).

lationship between childhood and history.¹⁹³ Perhaps more than any other worker in this emergent discipline, de Mause has successfully established the connection between developmental deprivation, pathology of the self and the historical/political consequences. De Mause has convincingly demonstrated to many scholars that historical phenomena to an enormous extent are products of the evolving pattern of parent-child relationships.¹⁹⁴ De Mause has indicated that history is to a large degree determined by the evolution of child-care practices. De Mause is, of course, sensitive to variations from culture to culture.

De Mause contends that, early in man's history, parenting was primitive. All too often parents killed their children. By the fourth century A.D. the parenting style becomes less homicidal but still quite primitive, demonstrating from today's informed perspective significant psychopathology. During the historical period from the fourth century A.D. until the end of the thirteenth century A.D. children were frequently abandoned by their parents. Between the fourteenth century and seventeenth century, parenting reached a level of "relative benevolence." The dominant mode, however, is best described as ambivalent. Children were frequently victimized, but child care was viewed as having significance. During the eighteenth century the parenting style altered to a great extent. The child was not often assaulted or abandoned, but was dealt with through interference, prohibition and strict regulation. The parenting approach was intrusive. During the nineteenth century and into the mid-twentieth century there was a further shift in the direction of benign parenting. There was an emphasis on guidance and socialization. By the 1960's, a concern for the child's developmental needs emerged. Parents came to be viewed as facilitators of development. More parents became more tolerant, more humane and more responsible.¹⁹⁵

The preceding describes only a limited segment of the world's population, and de Mause is aware of this reality. This reality, however, does not reduce the importance of de Mause's

193. The term "followers" means simply those who "share" theory with de Mause. These psycho-historians publish much of their work-product in the *JOURNAL OF PSYCHO-HISTORY*.

194. *Id.*

195. This model can be found in table form in de Mause, *supra* note 157, at 555.

work. This work is of great significance because it allows us to view ourselves historically, with special emphasis on psychological evolution. Moreover, de Mause's model allows us to evaluate the here and now and the past, giving us a research approach which can be used to make projections.¹⁹⁶ De Mause's findings have important applied significance. De Mause has demonstrated that psychological health is best promoted by the nurturer assuming the helping role and acting so as to meet the child's developmental needs. He has demonstrated this by making full use of the historical materials. In addition, he has made especial use of biographical-cultural sources. Above all, de Mause has made a convincing case for the idea that world peace and peaceful human interaction substantially depend upon the developmental experience of the world's children.¹⁹⁷ De Mause and his co-workers, in a series of publications, have demonstrated that irrational political behavior, above all violence, sanctioned and perpetrated by authorized decision-makers, is in the main derivative of self pathology produced by developmental deprivation.¹⁹⁸ De Mause's thesis is that failures in development produce not only less than rational individuals, but irrational collectives (groups) composed of a great number of developmentally disturbed persons. To put it accurately, people who do not have their best interests developmental rights ensured during early life can grow up to be a threat to world-wide peace, human security, human justice and the best interests of all. The articulation of this position leaves us with the question of what is to be done.

IV. IMPLEMENTATION OF THE CHILD'S RIGHT TO A BEST INTERESTS PSYCHOLOGICAL DEVELOPMENT: HEREIN OF ELECTRONIC MEDIA, PROMOTION, AND THE ROAD TO SECURING THIS HUMAN RIGHT

In this last section, I focus attention on the implementation of the child's right to a best interests developmental experience.

196. De Mause's work should be integrated into a reformulated law, science and policy paradigm. See Lasswell & McDougal, *supra* note 1; M. McDougal & W. REISMAN, *supra* note 1.

197. De Mause, *supra* note 192.

198. See, e.g., the essays contained in JIMMY CARTER AND AMERICAN FANTASY: PSYCHOHISTORICAL EXPLORATIONS (L. de Mause & H. Ebel eds. 1977).

Implementation here is to be understood as a term carrying with it a process-oriented connotation. Implementation refers to those processes related to putting the right into effect—in a sense the carrying through of a commitment to a jurisprudential value. I do not emphasize enforcement as that term is *too* much associated with the philosophy of coercion, compulsion and obedience.

An accurate and perceptive evaluation of the status of the human rights condition has been offered by Professors McDougal, Lasswell and Chen:

The aggregate achievement in the formulation of transnational human rights is impressive, as witness the emerging global bill of rights, which includes a multiplying host of specific human rights conventions and declarations. The policy content of the human rights prescription is being clarified in greater and greater detail, attendant expectations of authority are being generated and solidified, and expectations of control are gradually being affected.¹⁹⁹

There is no doubt that this is an accurate assessment of conditions. Moreover, it is certain that world-wide social, economic and cultural rights are receiving great attention.²⁰⁰ Political and civil rights are still very much matters of concern, but they are a part of, not the whole of, the human rights thrust. However, in the western industrial cultures, there is still a strong resistance to human rights projects that focus on social, economic and cultural rights. Before I move directly to the matter of implementing the developmental best interests right, I will discuss this resistance. The comprehending and overcoming of this resistance will do much to promote the developmental best interests right and make the world more secure. Such a discussion is a matter of jurisprudential necessity.

Resistance is, I believe, a product of two things. One is observer and actor ethnocentrism and the other is the order-of-systems fallacy.²⁰¹ Observer and actor ethnocentrism exists when

199. M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 15, at 276.

200. *Id.* at 833-38.

201. Ethnocentrism as used here has a sociological meaning. It refers to an, at least, implicit faith in the superiority of one's "system." It is programmed consciously and

one's identifications are fixated.²⁰² Under the influence of this condition, one is inclined to evaluate things by comparative reference to the values and institutions that dominate his or her culture.²⁰³ In matters of international justice, this means that scholars and decision-makers evaluate world process conditions and situations by reference to spatially "local" and culturally delimited juridical models. As a consequence of this referential tendency, non-"local" decision-making approaches are often strongly criticized because they do not possess the characteristics of one's system of allegiance. Ethnocentrism results in a bias which can substantially impair one's ability to make and implement appropriate policy.

The order-of-systems fallacy can produce a similar outcome, and although it is logically related to ethnocentrism, it is a problem of a somewhat different type. The order-of-systems fallacy occurs when the observer, and often the actor, is unable to differentiate between and among levels of complexity. He or she makes the mistake of operating from an intellectual "base" which is of a relatively low order of complexity. He or she then tries to generalize from that to the exceedingly complex. To exaggerate: one whose model is the county courthouse and its legal lines into the local community applies this "model" of this system's operations to the enormous complexity of the social decision-making processes of the world order system. The cultural, economical, psychological, political and jurisprudential differences between the courthouse model and the world order system(s) is so incredibly great that one who cognitively "possesses" only the courthouse model cannot hope to comprehend and work within the greater, more complex world milieu. The cognitive owner of the courthouse, or any analogic paradigm, cannot ever begin to map the global system of interdependence, interaction and decision-making. As one moves in ascending analytical fashion from the "local" level (whatever "local" level it is) of authoritative decision process to the global level, affairs become more and more complex. The range of phenomena, par-

unconsciously by society. An identification is an "association" with. It is a psychological connection to an individual, a group, a symbol, etc. It is essentially a psychoanalytic concept.

202. The act of fixation interferes with one's ability to evolve as analyst and actor.

203. Such a condition can often be altered by immersion in an alternative culture.

ticipants, interactions, behaviors, traditions, rituals, institutions, organizations, interest groups and values to be made part of an inclusive decision context evaluation becomes something just short of infinite.²⁰⁴ It is essential that at the world process level all efforts to map the social and decision process must be as inclusive and as comprehensive as is humanly possible.²⁰⁵ It is certainly true that the mapping of the social and decision processes within the nation-state is a task of immense magnitude; however, the degree of difficulty related to this endeavor simply does not parallel the task of mapping the multiple processes of the world system.

It is my contention that observer ethnocentrism and the order-of-systems fallacy are both inherent in the ancestral jurisprudential models of all nations.²⁰⁶ For example, our addition to western Lockean jurisprudence enslaves us to a social and decision process standard which impairs our capacity to be jurisprudentially creative. We are trapped in the paradigm's net by our ethnocentrism and our inability to overcome our habituation to the all too simplistic nature of the paradigm.

If we are to succeed in the effort to create a system of world justice and world order, the intellectual and psychological impediments of ancestral forms of jurisprudence must be cast off. And the truth is that if we are to promote and secure human rights (political, civil, economic, social and cultural) we must create new jurisprudential paradigms.²⁰⁷ If this is not done, we will not have human justice and world security. We must change the way we think.²⁰⁸ The words of Professor Richard Falk are relevant: "The language and the sensibility of the law tend to be static. New modes of thought, new orientations are needed if law and lawyers are to achieve a dynamic processive perspective."²⁰⁹ Things have changed; it is a world vastly different from the one that existed when our ancestral paradigms of jurisprudence were

204. H. LASSWELL, A PRE-VIEW OF POLICY SCIENCES 14-33 (1971).

205. *Id.* at 30.

206. Ancestral jurisprudence is "received" jurisprudence; therefore, it is never a scientific jurisprudence. It is invariably "parochial," "prejudiced" and regressive.

207. See Falk, *A New Paradigm for International Legal Studies: Prospects and Proposals*, 84 YALE L.J. 969, 974 (1974-75).

208. Changing the way we think is no small task. It is time for a "quantum gravitational" leap in jurisprudence. Law, science and policy should supply the energetic force.

209. Falk, *supra* note 207, at 974.

developed. We live in a world of new states,²¹⁰ new interactions, new ideologies, new technologies, new allegiances, new women and new men. Above all, we live in that time when the quest is for human dignity.²¹¹ Human values are much on the agenda. The rule of law is still fundamental, but men and women demand much more than "order" under the law.

National law, in many nations, is structured to ensure conditions of social welfare and human justice. The task of our time is to create conditions of social welfare and human justice throughout the world community. The old international law built on a no-longer-valid ancestral paradigm is not adequate to this task.²¹² For many years, the old international law was effective in maintaining Great Powers co-existence. But world culture has changed dramatically. We live in a world of new actors, new values, new demands and new expectations.²¹³ Original jurisprudential paradigms must be developed to serve the realities of the new world system. All forms of anachronistic resistance must be jettisoned.

In the United States and in Western Europe, the human rights focus of attention has been on civil and political rights.²¹⁴ A similar preoccupation has been noted in connection with the activities of the United Nations Commission on Human Rights, the Economic and Social Council of the United Nations, and, at times, the General Assembly.²¹⁵ One must emphasize, however, that United Nations organizations have demonstrated much more concern for economic, social and cultural rights than have the nations of the industrialized West.

In the industrialized western countries, such things as an affinity for the adversary process, a strong inclination toward constitutional political democracy, a widespread negative attitude toward socialism and the failure to give credence to the case put

210. See R. ANAND, *NEW STATES AND INTERNATIONAL LAW* (1972).

211. M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 15, at 376-78.

212. R. ANAND, *supra* note 210, at 101.

213. See W. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* 64-67 (1964).

214. Godenker, *Livelihood and Welfare*, in 6 *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* 248-67 (Black & Falk eds. 1972). See specifically n.2 at 248.

215. Moskowitz, *Implementing Human Rights: Present Status and Future Prospects*, in *HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION* (Ramcharan ed. 1979).

forward on behalf of the developing nations have all acted to force economic and social rights issues to the periphery of consciousness. However, I contend that the actuality of world social process will in all probability dictate that "the full flowering of civil and political rights must await the enjoyment of economic, social and cultural rights"²¹⁶ Economic, social and cultural justice will be the dominant issues of the near future.

When we focus on economic, social and cultural rights, it becomes obvious that cooperation, participation, utilization of consensus and planning are the appropriate avenues of approach.²¹⁷ Adversary methods geared to the traditional fora will achieve very little. Economic, social and cultural rights differ so substantially from civil and political rights, that bringing the former to fruition cannot be achieved by mimicking the processes used to assure the latter. Norms of abstention accompanied by threat of sanctions, traditional under "antecedent" international law,²¹⁸ can do almost nothing to promote economic, social or cultural rights.²¹⁹ The best interests developmental right which I champion in this paper is surely a human right. In character, however, it is best described as a social right. Its character smacks more of the social than the political or civil.²²⁰ Thus, it can be promoted and realized only through the use of methods that recognize world system realities and the special nature of such a right.

It is time now to turn to the matter of implementation. I do not use the term "enforcement," as it is a term best avoided when we discuss a right such as the best interests developmental right.

Admittedly, implementation of this best interests right will not be an easy matter. Post-detente conditions, self-oriented elites, economic realities, fears related to the possible loss of sovereign political authority, and the centrifugal effects of interna-

216. *Id.* at 125-26.

217. W. FRIEDMANN, *supra* note 213, at 64-67.

218. "Antecedent" international law is primarily "Great Powers" international law.

219. To promote these rights there must be affirmative order of system action.

220. This right, although it is really a social (human) right, is within the jurisprudential ambit of the International Covenant on Civil and Political Rights, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), *reprinted in* R. LILICH, A COMPILATION OF TREATIES, AGREEMENTS, AND DECLARATIONS OF ESPECIAL INTEREST TO THE UNITED STATES 170.1-170.15 (1983).

tional institutions in competition all combine to make it certain that efforts aimed at implementation will meet frustration and resistance. The existence of diverse obstacles, however, should not deter us from making a vigorous effort. Human justice, world peace and global well-being are fundamental humanist aspirations that dictate that we make the requisite effort.

Resistance to the implementation of the developmental best interests right is, however, at a very significant disadvantage. This best interests right carries with it universal imagery rooted in a paradigmatic biological, psychological and social situation.²²¹ The child has a special place in human existence.²²² Carl Jung, the analytical psychologist, after the study of ethnology, comparative mythology, comparative literature and the history of human civilization, concluded that there is a child archetype that has enormous significance for all of mankind.²²³ Jung has made it clear that for all human beings the image of the child functions as a link to our past.²²⁴ In a certain very real sense, the child lives on within each of us.²²⁵ The child is an important part of our self system, even when we are well into mature adulthood.²²⁶ In addition, the child archetype connects us to the future and the life and world that will be.²²⁷ We are concerned about the lives of the children to come. Moreover, Jung's view is that the child archetype supplies the vitality necessary for an energized state of being and continuity of human existence. Erik Erikson, operating with clinical material and historical evidence, sees the generations as being bound together, because the young need support and adults and older children are bio-psychically programmed to act generatively.²²⁸ The image of the child and his needs, according to Erikson, is a key element in the human program of species and specimen existence. Jung, Erikson and

221. In a very real sense we are talking about a bio-psychosocial human right.

222. See generally, E. ERIKSON, *supra* note 19.

223. C. JUNG, *The Psychology of the Child Archetype*, in *THE ARCHETYPES AND THE COLLECTIVE UNCONSCIOUS* Vol. 9, I, *THE COLLECTED WORKS OF C.G. JUNG* (2d ed. 1977).

224. *Id.* at 160.

225. The best clinical evidence on this can be found in the work of the transactional analyst Eric Berne, M.D. See E. BERNE, *WHAT DO YOU SAY AFTER YOU SAY HELLO?* (undated).

226. *Id.*

227. C. JUNG, *supra* note 223, at 164-65.

228. See *supra* note 19.

many others have given the child and imagery related to childhood a central place in modern psychological science.²²⁹ Observation of the familiar behaviors and images of everyday life support the position of the psychological experts. This is true of all cultures. Because the image of the child is central to existence world-wide, it is undoubtedly the case that the developmental best interests right has a very special human rights position. The image of the child is fundamental because it appeals to the essence of our humanity.

At this point, I wish to raise a question in order to make my point. Who would stand and publicly oppose the promotion of the child's best interests developmental right? The answer: only a very alienated human being. With that answer in mind, let us turn to the essentials of the program of implementation. As we consider implementation, one should remember that the Declaration of the Rights of the Child speaks of promoting the child's position through legislation or "other means."²³⁰

The program I recommend, to implement the child's right to a best interests development, contains two components. The first is an "in the present" component oriented to action under prevailing world system and world institutional conditions. The second component is "utopian." By utopian, I mean that I am offering constructs compatible with the intellectual tradition pioneered by the participants in the World Order Models Project (W.O.M.P.).²³¹ The Project works with the tradition of what I call relevant utopias: utopias functionally bound to contemporary policy analysis and planning. The utopian aspect relates, in the main, to revenue raising for implementation. This analysis is grounded in the policy science jurisprudential approach of the "Yale School."²³² This approach is the product of the work of Professors Myres McDougal and Harold Lasswell. My view is that their jurisprudential approach provides us with the only

229. One of the best of a multitude of "others" is Erich Neumann, author of the classic *THE CHILD: STRUCTURE AND DYNAMICS OF THE NASCENT PERSONALITY* (1973).

230. Rights of Child, *supra* note 7.

231. For a detailed discussion, see Mendlovitz, *Editor's Introduction to KOTHARI, FOOTSTEPS INTO THE FUTURE* (1974).

232. The term "Yale School" refers to the law, science and policy "group" that maintains an intellectual affinity for the work of Professors Lasswell and McDougal. Often these are people who have been law students (graduate and undergraduate) at Yale Law School.

comprehensive framework available for in-depth inquiry into world systems problems. I fully accept Professor Richard Falk's view that the Lasswell-McDougal paradigm is the great traditional model which can move us forward to a comprehensive consensus future-world systems paradigm.²³³ Where necessary for the purposes of my analysis, I take necessary liberties with the law, science and policy paradigm. This is acceptable jurisprudential behavior within the law, science and policy tradition. Professor McDougal has made it clear that "[a]ny derivations by others which support our postulated goals are regarded as acceptable."²³⁴ We move now to operational implementation itself.

The intellectual task geared to the description and articulation of the authoritative basis of the developmental best interests right has been set forth above. The legal principle, I contend, is authoritatively established. To initiate the process of implementation, we must project the authoritative community policy in such a way that it can be accepted as an authoritative predicate for action. The first step would be advocacy of the policy on a world-wide basis. The mass of the world's population must be made aware of the existence of the best interests developmental right. It must be conveyed to them that this is an absolutely fundamental human right. The process I am speaking of is the process of promotion.²³⁵ It is a process of intense advocacy. Advocacy refers to the calculated spread of information and images from the source of emanation to people all over the planet. The focus is on propagation phenomena. The goal is the mobilization of world public opinion in support of the best interests developmental right.

Effective promotion is not a purely spontaneous process. From the functional standpoint, it is certainly the case that there must exist participants (persons and groups) who work to capture the attention of the designated audience. Attention is, in a sense, force-focused on messages, ideologies, symbols, images, norms, etc. But at this point, let us confine ourselves to a discus-

233. See Falk, *supra* note 207, at 974.

234. McDougal, *Some Basic Theoretical Concepts about International Law: A Policy-Oriented Framework of Inquiry*, 4 J. CONFLICT RESOLUTIONS 337, 343 (1960).

235. I am here drawing on the terminologic base of the law, science and policy system. On promotion, see M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 15, at 256-61.

sion of the participants in the promotion process. The rest can wait until we have dealt with the actors who will be promoting the right. In truth, there are a great number of potential participants who could be effective in implementing the best interests developmental right. I shall first discuss non-governmental organizations (NGOs)²³⁶ as potential participants in the promotion process.

Non-governmental organizations have been on the United Nations human rights "scene" since the organizational conference held in San Francisco in 1945.²³⁷ Article 71 of the United Nations Charter declares that non-governmental organizations may have consultative status. Non-governmental agencies with or without consultative status are very much involved in assuring human rights. There are thousands of operating non-governmental organizations. A very significant number of these organizations focus on human rights issues. And it is assuredly true that they are more vigorous proponents of human rights than are nation-states. The latter are all too often obsessed with or hampered by the fetters of international power politics. The reality is that coordinated promotional activity carried out by NGOs could do much to effectuate the implementation of the developmental best interests right. The significant number of human rights-oriented NGOs constitute a network which could intensify dramatically the demand for the implementation of the developmental best interests right. In all probability, the appropriate initiators of the promotional program in support of the developmental right are those groups that concern themselves primarily with grass roots economic and social development. These associations already have made a commitment to well-being maximization.²³⁸ They emphasize respect²³⁹ and human dignity²⁴⁰ through social, economic and human development endeavors.

Non-governmental organizations that have specialized in ec-

236. Again, I have drawn on the work of Professor McDougal and the "Yale School." *Id.* at 259-61.

237. See Green, *NGOs*, in *HUMAN RIGHTS AND WORLD ORDER* 90-99 (Abdul Aziz Said ed. 1978).

238. See Caldwell, *supra* note 3.

239. M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 15, at 451-67.

240. *Id.* at 376.

onomic and social development have an expertise derived from experience and sensibility which permits them to be effective in a cultural context. They not only comprehend the complexity of diverse types of developmental problems, but also understand that actions must "fit" within the norm context of the culture where development is to take place.

There are many NGOs competent to promote the developmental best interests right. Some of these are: The World Council of Churches,²⁴¹ Christian Aid,²⁴² Methodist Church (Divisions of Social Responsibility),²⁴³ Third World First,²⁴⁴ War on Want,²⁴⁵ Survival International and the Pontifical Commission and "Justitia et Pax."²⁴⁶ The above is not an exhaustive list. It aims only at providing examples. It is certain that all of the above-listed non-governmental organizations, through orientation and experience, would be appropriate participants in the promotion effort.

Other associations not as specialized with regard to operations and orientations, but still potentially important to the task of promotion, include: The International Committee of the Red Cross,²⁴⁷ The Women's League for Peace and Freedom,²⁴⁸ Lelio Basso International Foundation for the Rights and Liberation of Peoples,²⁴⁹ the World Federation of United Nations Associations²⁵⁰ and the Catholic Institute for International Relations.²⁵¹ These non-governmental associations, because of their more general orientation and lesser focus on development, might be less adept in promoting, but, owing to breadth of experience and extensive world-wide culture contacts, would be in general quite effective in the dissemination of promotional messages.

Of course, it is possible that associations dedicated to the protection of "traditional" civil and political rights would also be

241. See M. GARLING, *THE HUMAN RIGHTS HANDBOOK* 254 (1979).

242. *Id.* at 41-44.

243. *Id.* at 44-45.

244. *Id.* at 46-47.

245. *Id.* at 47-48.

246. *Id.* at 253-54.

247. *Id.* at 245-46.

248. *Id.* at 250-51.

249. *Id.* at 250.

250. *Id.* at 251.

251. *Id.* at 40.

effective in the promotional endeavor. Amnesty International,²⁵² the Lawyers Committee for International Human Rights,²⁵³ the Human Rights Network,²⁵⁴ the Fund for Free Expression,²⁵⁵ and the Work Group on the Internment of Dissenters in Mental Hospitals²⁵⁶ are examples of associations with a civil and political rights orientation. However, with a certain quantum of reorganization, these groups might become partners in the process of promotion.

I suggest that concerned NGOs be the ones to initiate the promotion process because they are not bound by the prototypical institutional and political constraints that influence the views and behavior of nation-states. Many of them have demonstrated a significant ability to raise funds.²⁵⁷ Further, although substantial funds will be necessary to initiate and maintain the promotion of the best interests developmental right, such child-oriented projects have the capacity to attract significant fiscal support.

Let us for the moment briefly consider a key matter related to NGO promotional activity, namely, the securing and processing of "content" information relevant to the task of promoting the developmental right.²⁵⁸ Childhood misery and the impairment of human development early in life are well-known facts.²⁵⁹ This information can be readily accessed. Processing and packaging, however, will be complex, and can be done only with the aid of experienced consultants.²⁶⁰ Continuous effective promotion of the best interests right will depend on maintenance of a steady stream of information relating to deprivations of well-being, as well as publicity of opportunities for the implementation

252. *Id.* at 7-12.

253. *Id.* at 232.

254. *Id.* at 15-16.

255. *Id.* at 203-04.

256. *Id.* at 128-29.

257. *E.g.*, Amnesty International, *id.* at 11.

258. M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 15, at 248-56.

259. An excellent essay on this matter is Burgess, *An International Perspective on Children's Rights*, in *CHILDREN'S RIGHTS: CONTEMPORARY PERSPECTIVES* 99 (P.A. Vardin & I.N. Brody eds. 1979).

260. Of course, certain performances of the intelligence function by non-governmental organizations is to a large extent reliant upon the cooperation of nation-states. M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 15, at 252. The resistance of nation-states to certain areas of information gathering is notorious. *Id.* at 254.

of the right. NGOs working at the promotion task would gather and process information derived from such sources as the United Nations General Assembly, the Economic and Social Council, the World Health Organization, the United Nations Children Fund, regional governmental associations, and nation-states.

Professors McDougal, Lasswell and Chen have made the following comment on the promotion endeavor in its modern context:

The promise of the promoting function resides in the ease, in the context of the present communications revolution, by which private groups and the individuals who entertain strong demands about human rights can organize groups (including transnational groups) to take the initiative, to agitate and propose alternatives. A most important task is that of finding and forging sufficiently inclusive symbols to attract, manage, and mobilize world public opinion. Fortunately, in an interdependent, dynamically changing world, effective power groups are increasingly mobile and changing. Hence it is increasingly possible to assemble the resources and to organize the activities necessary to change peoples' perception of common interest.²⁶¹

There is no question that the authors are correct in their evaluation. The modern revolution in world communications has created a whole new informational arena. This revolution has resulted in the creation of new opportunities for those NGOs and others who seek to promote human rights. Collectives and individuals who favor the implementation of human rights, however, have not taken advantage of the favorable conditions created by the communications revolution. The advocacy approach used by the proponents of human rights has not moved much beyond the Gutenberg style.²⁶² Human rights promoters have failed to take advantage of the fact that we live in the age of electronic icon

261. *Id.* at 261.

262. Gutenberg, a 15th century German printer, is credited with the invention of movable-type printing. The term "Gutenberg style" refers to the use of print as a medium of communication.

and archetype.²⁶³ At the present time, human rights champions have been, in the main, wedded to forms of communication based on the phonetic alphabet. Activists have drafted declarations, penned resolutions, produced reports, written books, filed complaints, held meetings and read statements.²⁶⁴ They have not systematically used electronic media to promote human rights. Implementors of the psychological developmental best interests right can be most effective only if NGOs utilize the power of electronic media to project messages that shape human demands for values and motivate human action directed toward the distribution of essential values.

Marshall McLuhan²⁶⁵ has explained how and why electronic media, especially television, can help make the world into a global village.²⁶⁶ Relying heavily on McLuhan's work, I shall present an abbreviated argument for the use of electronic media to promote the developmental best interests right. I begin with an examination of television. Television is a medium of enormous power because it produces in-depth involvement—there is a high degree of participation by the viewer. In truth, the viewer becomes immersed in the continuous message milieu offered by television. As McLuhan says, "we have extended our central nervous system itself in a global embrace, abolishing both space and time as far as our planet is concerned."²⁶⁷

As a medium, television differs radically from the linear and constricted form of the printed page. It turns on virtually all sensory channels. I believe, however, that its massive impact on humans comes from its engaging what Dr. Paul MacLean has named the triune brain.²⁶⁸

MacLean believes that the brain is composed of three systems which he conceptualizes as "three interconnected biological computers, each having its own intelligence, its own subjectivity, its own sense of time and space, and its own memory and other

263. See G. GOETHALS, *THE T.V. RITUAL, WORSHIP AT THE VIDEO ALTAR* (1981). The classic work on electronic communications media is by M. McLuhan, *supra* note 14.

264. There is no doubt that there have been results. M. McDougal, H. Lasswell & L. Chen, *supra* note 15, at 102-06, 722-36.

265. M. McLuhan, *supra* note 14.

266. McLuhan sees the world becoming a global village tribalized by television. *Id.*

267. *Id.* at 19.

268. See R. Restak, *THE BRAIN, THE LAST FRONTIER* 51 (Warner Books ed. 1979).

functions.”²⁶⁹ One biological computer, the Neomammalian brain, is the site of our higher cerebral activity (language processing, etc.). The second biological computer, the Paleomammalian brain, can be equated with the limbic system, that part of the human brain responsible for a wide range of emotional responses. The third biological computer, the Reptilian brain, is responsible for relatively fixed behavior patterns related to biological survival.

My experience as a sometime researcher in neuropsychiatry²⁷⁰ leads me to accept MacLean’s model and to conclude through inferential reasoning that television is effective in a multilevel manner because it engages the attention of all three biological computers. Television plugs into our central nervous system in a way that no other medium can. It gets inside our deep, complex human self. McLuhan has made us aware that television connects us with the world tribe. I suggest here that it is, at present, the most effective technological stimulator of the human self as well, because its output flows through all three biological brains. These three brains together are surely the site of the human self. Such a total engagement of the self means that the potency of such communications is extraordinarily high. The impact value of television is enhanced further by the fact that the viewer, the three-brained human, need not possess traditional literacy. This means that the potential population susceptible to message propagandizing is an enormous mass of human beings.

Certainly, the phonetic alphabet is a valuable technology.²⁷¹ Phonetic technology has been a useful tool in the western tradition of written and published law.²⁷² Our addiction to this linear form, derivative of print, as most-favored “technology,” however, has constricted our jurisprudential and decision-making range of awareness.²⁷³ The reality is that there is very little that

269. *Id.* at 52.

270. Drew & Batt, *A Contribution to the Evolutionary Theory of Dreaming: An Hypothesis on the Role of the Pineal in Species and Specimen Protection*, 4 BIOLOGICAL PSYCHIATRY 131 (April 1972); Drew, Weet, DeRossett & Batt, *Effects of Hippocampal Brain Damage on Auditory and Visual Recent Memory: Comparison with Marijuana-Intoxicated Subjects*, 15 BIOLOGICAL PSYCHIATRY 841 (December 1980).

271. M. McLuhan, *supra* note 14, at 86.

272. *Id.* at 86-89.

273. *Id.* at 87-88.

is linear about experience, and certainly the gestalts of and the totality of human consciousness is not linear-verbal.²⁷⁴ Modern science has made this abundantly clear.²⁷⁵ The above discussion, related to the power of television, leads me to conclude that the child's right to a best interests psychological development can be widely and effectively promoted through the use of television.

Promotion of the best interests right requires an ideological strategy if appropriate results are to be produced. As Professors McDougal, Lasswell and Chen have stated, "[i]deological strategy . . . uses symbols as the principal means of action."²⁷⁶

Television with its triune brain targeting is surely a medium that can effectively disseminate symbols that can, in turn, produce the desired ideological impact. The content of symbol-rooted messages in regard to the best interests right to psychological development under international law should vary so as to take into account the cultural differences of the receivers. In general, however, it can be said that symbol packets should carry messages emphasizing the juridical existence of the right, the fundamental human need for an optimal psychological developmental experience, and the relationship between psychological development and world peace. Supplemental symbol packets might carry communications dealing with the biological parent-child relationship, the psychological parent-child relationship, the need for continuity of relationship, parent-child dyadic reciprocity, stage-appropriate psychological development, the parent's need for social support, the right to parenting, and how defective parenting produces people who are psycho-socially impaired.²⁷⁷ The foregoing communications must be translated into appropriate and effective cultural imagery and vocalization.

In addition to an ideological strategy, a basic technological strategy must be followed. This technological strategy is dictated by the reality of the world-wide distribution of television transmitters and receivers. Since we have entered the age of satellite television signal transmission, it is the world-wide distribution of receivers that is of signal significance. The bulk of land-based transmitters and receivers are found in the developed world.

274. *Id.* at 87.

275. R. RESTAK, *supra* note 268, at 256-82.

276. M. McDUGAL, H. LASSWELL & L. CHEN, *supra* note 15, at 135.

277. *See generally* J. GOLDSTEIN, A. FREUD & A. SOLNIT, *supra* note 3.

Television must, therefore, be resorted to primarily in the developed world and will be most effective delivering symbol packets to the population of the developed world. For the present, radio is the vehicle of choice for use in transmitting best interests image (in this case verbal) messages to the people of the developing world.

In the developed world, television can be used to sensitize large groups of relatively affluent people. In fact, an enormous number of television audience members in the developed nations are potential political and financial supporters of the best interests right. Special promotional packages must be created in order to effectively target persons in the developed world who may be counted upon to provide influence and resources to continue and extend the promotional program. Television will be important in promoting the relevant symbols throughout the developing world. Satellite transmissions hold great potential for promotional behavior. Moreover, television receivers are already available at the village level in developing nations. Urban centers in developing countries are, at this moment, technically "open" to receive transmissions directed at the promotion of the best interest rights to optimal psychological development.²⁷⁸

Radio, like television, is an extension of the human nervous system. Although radio is not as "potent" a medium as television, it can produce the desired results. Listening to radio can have a tribalizing effect.²⁷⁹ Radio can bring people out of isolation and help them overcome their alienation from the important human issues and movements of their time. For people who do not possess traditional literacy, radio can be a true technology of liberation. Sean MacBride,²⁸⁰ formerly Assistant Secretary-General of the United Nations and a winner of the 1974 Nobel Peace Prize has portrayed the situation concerning radio:

As far as the Third World is concerned, radio is, of course, the most important medium. Television is expen-

278. The rate of technological advance is difficult to predict, but I believe that television will be important to promotion in the relatively near future.

279. M. McLuhan, *supra* note 14, at 259-68.

280. MacBride acted as the president of the International Commission for the Study of Communications Problems, a UNESCO-associated group that performed its work between 1977-80. The Commission produced an outstanding volume on world information and communications entitled *MANY VOICES, ONE WORLD* (1980).

sive and much more limited. Everyone has a transistor in any part of India, Pakistan, Viet Nam, Brazil, Zambia, they all have their transistors, and they listen to foreign radio stations. Their own news services are usually inadequate, so they turn to foreign broadcasts. A man working in a field, in say, Zambia, or in Pakistan . . . [can hear] the BBC World Service, the Voice of America, Radio Moscow and Radio Peking. He will listen and form his opinion based on what he hears from a variety of competitive services. This can produce strange results. A person in a very underdeveloped country can be better-informed than his counterpart in a developing country.²⁸¹

MacBride's description is accurate. Reality dictates that radio be used to promote the best interests right to psychological development in developing countries. Through the use of radio, it will be possible to demonstrate to individuals and communities the world-wide impact of developmental psychological deprivation. Radio can be used to provide information and to express collective preferences for human well-being. Moreover, the medium can be used to explain how individual psychological well-being is related to the acquisition of other important values.²⁸² Promotion through radio communications can greatly increase the number of persons and groups making well-being demands on decision-makers. Assuredly, certain power elites in developing or developed countries will oppose the effort to promote the child's right to psychological well-being. The political reality must not inhibit our efforts. For the sake of world order, survival and human justice, the effort must be made.

It is my view that the effort to promote the developmental best interests right is, in a very real sense, a contribution to the construction of a New World Moral Order.²⁸³ By the term New World Moral Order, I refer to an evolving humanistic value order aimed at securing individual and social justice. Such a moral order has the potential to become the basis for a new world legal order. I believe that non-governmental bodies, religious and sec-

281. See MacBride, *North-South Dialogue*, 4 THIRD WORLD Q. 359, 389-90 (1982).

282. See *supra* note 17.

283. My views on this matter are much influenced by G. MISCHE & P. MISCHE, *TOWARD A HUMAN WORLD ORDER* (1977).

ular, will make the greatest contribution to the establishment of a new moral order for the world. Nation-states at this time in history are too absorbed in power politics to act effectively on a continuous basis to achieve a new moral framework emphasizing human dignity. The creation of such a framework is essential to the ensuring of world peace.

Up to this point, I have focused on how NGOs, through the use of appropriate technology, can engage in the implementation process. Now we shall consider other participants that are important to carrying out the task of implementation. The reader should keep in mind, however, that NGOs will, on a continuous basis, engage in promotion. Moreover, NGOs will at the appropriate time engage in the actual delivery of social support calculated to provide optimal developmental psychological experiences for infants and children. NGOs are protagonists, but they are not the only actors who will move the action forward.

At a suitable moment relatively early in the promotional campaign, NGOs must use ideological strategies to mobilize support from the membership of the United Nations General Assembly.²⁸⁴ Members of this intergovernmental body are important participants in the best interests development project because the General Assembly provides a structure of authority essential to the functions of promoting, establishing and implementing the right to a best interests psychological development. The General Assembly focuses attention on matters of world-wide concern. Further, the General Assembly's activities and declarations provide image and verbal content for dissemination by electronic and print media. In addition to targeting the general membership, particular General Assembly committees should be vigorously lobbied by NGOs. The General Committee that recommends agenda structure and "measures for the organization of work"²⁸⁵ is an important target. The Third Committee, which has been traditionally concerned with social, humanitarian and human rights issues should receive considerable attention.

The Economic and Social Council is an authoritative body

284. The U.N. General Assembly occupies a paramount position in the creation of international policy making. See J. KAUFMANN, *UNITED NATIONS DECISION MAKING* 1, 24-42 (1980).

285. *Id.* at 30.

that must be the object of sustained promotional efforts by NGOs and General Assembly members dedicated to the cause of the best interests developmental right. The Economic and Social Council is a major power center within the United Nations system. The Council acts to advance economic, social and humanitarian justice.²⁸⁶ From the perspective of implementational emphasis, one should keep in mind that the work of the Economic and Social Council is of great concern to the developing nations.

The Commission on Human Rights, which operates within the ECOSOC structure, is a body that can contribute much to the cause of promotion. The Commission has already created an informal open-ended working group authorized to study the rights of the child.²⁸⁷ Work on a draft convention on the rights of the child is in progress. My reading of the recent work product of the group leads me to conclude that it is a certainty that the working group and the Commission on Human Rights would support the promotion of the child's right to a best interests psychological development.²⁸⁸ Particular specialized bodies associated with the Economic and Social Council should receive substantial promotional attention from concerned NGOs. Among these bodies are the United Nations Children's Fund²⁸⁹ and the World Health Organization.

Promotional behaviors and messages directed at the U.N. Children's Fund would in all probability produce a favorable response, resulting in cooperation flowing from that organization to the NGOs. In the past, the U.N. Children's Fund has made substantial efforts to provide children and mothers with support in the form of aid and services. It has been estimated that "70 million people, mainly mothers and children are being served by clinics equipped by UNICEF."²⁹⁰ Funds have also been provided to build day care centers and playgrounds.²⁹¹ Moreover, the fund has also made aid available to support teacher training. Further,

286. *Id.* at 53.

287. See Commission on Human Rights Report in the Thirty-eighth Session, United Nations Economic and Social Council, E/1982/12/add. 1 ECN. 4/1982/30/add. 1, March 1982. This report deals with the subject of a draft convention on the rights of the child.

288. *Id.* at 56-57, 69, 72, 74-75.

289. This fund is popularly known by its acronym UNICEF.

290. E. LUARD, INTERNATIONAL AGENCIES: THE EMERGENCY FRAMEWORK OF INTERDEPENDENCE 181 (1977).

291. *Id.*

the organization is a proven fund-raiser. It has an annual budget of \$100 million which is raised entirely through voluntary contributions.²⁹² The U.N. Children's Fund would be a valuable ally in the effort to promote and establish the child's right to a best interests psychological development.

The World Health Organization (W.H.O.) is another specialized body that should be targeted by NGOs engaged in promoting the best interests development right. W.H.O., like the U.N. Children's Fund, has a relatively large operating budget.²⁹³ There is no doubt that W.H.O. has a commitment to humanitarian causes. Over the many years of its existence, W.H.O. has waged innumerable campaigns against physical diseases that have impaired human development.²⁹⁴ Participation by W.H.O. can also add much to the on-going process of assessing the impact of the psychological best interests effort. W.H.O. has access to progress data because the organization has a presence all over the globe. W.H.O. is a technical non-political authority with credentials based on humanitarian missions.²⁹⁵ W.H.O. should be an early recruit to the psychological best interests project.

Several other bodies within the structure of the ECOSOC should also receive a certain reasonable level of promotional attention. These bodies include the Commission for Social Development, the Commission on the Status of Women, the International Research and Training Institute for Women, the United States Development Programme, the Food and Agriculture Organization of the United Nations and the International Fund for Development Alternatives. These bodies have the potential to make important contributions to securing the establishment of the psychological best interests right.

At this point, let me make a general comment about the totality of the United Nations system, since a significant part of that system is critical to the success of the human rights endeavor championed in this article. One must keep in mind that the whole United Nations system has undergone and is undergoing a "re-creation." Change within the system is a product of the shift of power to the developing countries and the concomitant

292. See *supra* notes 289-90.

293. E. LUARD, *supra* note 290, at 157.

294. *Id.* at 160.

295. *Id.* at 162.

emphasis on economic, social, cultural and humanitarian issues. Today, more than ever, the role of the General Assembly is policy formation, priority setting and over-all strategy planning.²⁹⁶ It is the Economic and Social Council that monitors and evaluates the carrying out of General Assembly policy aimed at bringing about economic, social, cultural, and humanitarian change. In addition, the Council acts to ensure the coordination of the activities of the various bodies within the United Nations system.²⁹⁷

Promotional endeavors directed at appropriate bodies within the system would produce influence that would flow "up" to the Economic and Social Council. In addition, promotional efforts aimed at the General Assembly could produce influence that would flow to the Economic and Social Council. This movement of promotional messages and images can create an energy grid resulting in an ideological climate, which in turn can give rise to a United Nations system "consciousness," which would then lead the system to comprehend the compelling necessity of the psychological best interests right project. The creation of such an ideological circuit within the system could give rise to the necessary support from developed and developing countries. I strongly believe that the United Nations system is a potentially potent energy field of influence which can create value demands around the planet. Further, the system can generate strategies and tactics to be used in implementing the psychological best interests right. The preceding discussion should convey a rather concrete sense of what United Nations system effects could be produced by promotional work. It is contemplated that NGO promotional activity, aimed at the United Nations system, would result in the propagation of additional multiple promotional messages which would spill out across the world community.

In addition to bodies within the United Nations system, there are intergovernmental entities outside the system having a relationship²⁹⁸ to the system that should be targets of promotional behavior. These intergovernmental organizations should

296. J. KAUFMANN, *supra* note 284, at 67.

297. *Id.*

298. *Id.* at 95.

be the recipients of relevant images and verbal messages because they have significant amounts of influence in the developing world. These organizations include the Islamic Conference, the League of Arab States, the Organization of African Unity, and the Organization of American States. All of the above could aid in the implementation of the psychological best interests right.

Liberation movements should also be targeted and apprised of the need for the recognition and implementation of the best interests right. Liberation movements are potential precursors of new governments in the areas that they seek to free.²⁹⁹ Some liberation movements have obtained status within the United Nations. Among them are the PLO (Palestine Liberation Organization) and SWAPO (South West Africa People's Organization).³⁰⁰ Liberation movements are often forceful participants in the world political, social and cultural process and should be the objects of vigorous promotional efforts.

The powerful and effective Group of 77 is a major decision-making body that should be on the list of entities to be recruited to the cause of the right to a best interests psychological development. The Group of 77 speaks for most of the developing world.³⁰¹ Over the years, the Group has become an important power-wielding and influence-applying body. It exerts very significant influence within the United Nations system and in a multiplicity of other areas.

The preceding depiction of the necessary promotional undertaking is a relatively comprehensive overview. It would be possible to expand this material into a manual of operations. However, that is not my basic aim. What I have attempted to do is to apprise the reader, in both a theoretical and a concrete way, of the importance of promotional strategy and tactics. My emphasis has been on the use of promotion to provide the dynamic drive for the implementation process. I have argued that electronic media can be instrumental in the process of creating a favorable world climate for the child's right to a best interests psychological development. I contend that human rights and fundamental freedoms will be fully served only when their pro-

299. *Id.*

300. *Id.*

301. *Id.* at 98.

ponents learn to construct and mount efficacious McLuhanesque electronic promotive campaigns.

We turn now from the promotion process to certain other important subjects. As we do so we should remember that the implementation of the psychological best interests right is a herculean task. I am not so naive as to believe that anything other than fractional success can be achieved in the short run. I am, however, convinced that the failure to achieve psychological human development condemns us to global misery and ultimate disaster.³⁰² Thermonuclear strategies, "Star Wars" security systems,³⁰³ paper bills of rights, free market economic models, and the use of psychological denial to keep our anxiety down cannot stave off the catastrophe of psychological entropy.³⁰⁴ Only psychologically and physically healthy people oriented to human values, human survival, and peace on the planet can save us all. Only a mentally healthy human family can construct a new world community capable of guaranteeing a state of existence consistent with human potential.

Promotion is a process that must never cease. NGOs, inter-governmental bodies, governmental organizations and individuals must perpetuate the dissemination of images and messages that promote the best interests psychological right. It is essential, however, that at a certain point a system be developed that can lead to the delivery of appropriate psychological development support for the child.

Assuming that promotion has been efficacious, it should be possible to influence ECOSOC to establish a Commission to Secure Children's Well-Being. Like the Human Rights Commission, the Commission to Secure Children's Well-Being would be a functional group. The creation of such a commission would be the first step in the fabrication of a coordinated, dynamic system designed to plan for and allocate resources to provide for the well-being of the world's children. The Commission would be concerned with more than the implementation of the child's right to a psychologically optimal development, but that would

302. See *supra* note 156.

303. See D. GRAHAM, *HIGH FRONTIERS* (1983); D. RITCHIE, *SPACE WARS* (1982).

304. "Entropy's catastrophe" here is used in a metaphorical sense to suggest the situation that would be produced by our failure to overcome the tendency to nuclear disaster.

be its fundamental and first task.

The creation of such a commission would give the developmental psychological best interests right the special status to which it is entitled. In addition, the existence of such a commission will also be the impetus for specifically assigning responsibility for data collection, data analysis and reporting, and recommendation of action to ECOSOC. Once the Commission to Secure Children's Well-Being has been created, it would be appropriate for ECOSOC to direct the Commission to give its full consideration to the developmental experiences of the world's children. Special emphasis should be placed on the spiritual, moral, social and emotional development of the child. All the preceding dimensions of development are critical to the appropriate psychological development of a pro-human self. ECOSOC should emphasize that the work of the Commission is critical to the creation of peace in the world community.

It is important that ECOSOC empower the Commission to call upon and involve in its work non-governmental bodies and individual experts of distinction. The Commission to Secure Children's Well-Being, like the Human Rights Commission, should be authorized to establish special working groups to deal with the matter of children's psychological development. Further, the Commission should be encouraged to open and maintain communications with all agencies, universities, bodies, groups and individuals capable of making a contribution to the furthering of the program for psychological best interests development. Stated at the highest level of abstraction, the Commission should conduct assessments, make reports, submit plans, provide information, and, in general, do all those things reasonably related to the carrying out of fundamental policy.

The Commission to Secure Children's Well-Being would provide necessary input to the Economic and Social Council. It is contemplated that the Economic and Social Council would assimilate the work of the Commission to Secure Children's Well-Being into its decision-making process. The existence of the work product of the Commission would make the Economic and Social Council a generator of systemic (United Nations) energy which could result in significant support for the child development project. The Council could exert appropriate influence throughout the General Assembly, the Second Committee (Eco-

nomic and Financial) and the Third Committee (Social, Humanitarian and Cultural). Influence would also flow from those entities to the Commission to Secure Children's Well-Being. The result would be reciprocal reinforcement of values related to the child's right to a best interests psychological development. In any event, the critical point is that the Commission to Secure Children's Well-Being, functioning as a United Nations system unit, would be an effective promoter of the child's best interests cause.

Having put forth the preceding views, which relate to efforts within United Nations system, let us shift our focus of concern. I suggest that there be established the World Children's Authority. This Authority would have existence independent of, but affiliated with, the United Nations system. This Authority would be created by international agreement. Its primary purpose would be to act in the developmental best interests of the world's children. This Authority would act as a policy, research and strategic action body. The Authority should be the outcome of the joint efforts of human development oriented NGOs and nation-states dedicated to fundamental human development endeavors. It would be member-funded. The Authority would be governed by an appropriate constitutive organic document.

An assembly should be created and empowered to act as the Authority's parliamentary body. The Assembly would be made up of a membership drawn from participating member NGOs and participating member states. Each member would be entitled to one vote. Decisions related to matters of substance would be based on a two-thirds majority vote. The Assembly would be the supreme organ of the World Children's Authority. The Assembly would establish policy in conformity with the principles of its empowering document. It would have the duty of electing an Executive Council and a Secretary-General. The Executive Council would be responsible for the conversion of the more general Assembly policy into specific policy and programs. The Executive Council would have continuing responsibility for decision-making with respect to the articulated policies pronounced by the Assembly. The Secretary-General would head a Secretariat. The Secretariat would be composed of an Authority staff and the Secretary-General. The staff would carry out the day-to-day practices necessary to the effectuation of Authority pur-

poses. The above-outlined institutional material should give the reader a general idea as to the structure of the Authority. At this point, let me shift my emphasis to the "why" of the Authority.

The Authority, as envisaged here, would be a uniquely melded entity. It would have a private membership (NGOs) and a public membership (nation-states). I suggest such a membership mix for a number of reasons. First, I believe that NGO membership would reduce to a certain extent the possibility that the Authority would become overly involved in the traditional world system power process. The result would be that developmental values related to well-being would receive emphasis. Second, NGO membership would provide broad world-wide private-body affiliation, which would guarantee a flow of communication from participants who are not immured within governmental systems. Third, NGO membership has the potential for maximizing the amount of donative funding from private associational and individual sources. NGO members and nation-state members would be assessed so that Authority expenses could be met. Finally, nation-state participation is essential, since the Authority would seek to project policy and programs across national borders.

My complete scenario calls for the Authority to *promote* the creation of a specialized agency. For our purposes, let us call this entity the World Children's Assistance Agency (WCAA). This agency would conduct best interests development programs. It would be affiliated with the Authority by agreement. Recall that the Authority, although independent, would maintain an affiliation with the United Nations system. Thus, there would exist a link between the Agency and the United Nations system.

The World Children's Assistance Agency would be created by states-parties to a constitution similar to that of the World Health Organization. The Agency's constitution would contain appropriate details in regard to matters essential to Agency operation. From a general policy perspective, the Agency would seek to assure the existence of the highest realistically attainable level of psychological child development. Its activities would be directed at assisting individuals, families, communities, private associations, and governments in the creation of high levels of "self" development. Technical and administrative services would be central to WCAA operations. The WCAA would be pivotal in

assuring the *actual* delivery of the necessary best interests services. The Agency would engage in activity that would result in the delivery of services to children, mothers, fathers and others who are the architects of the child's socially produced self system. From a world systems mission perspective, WCAA would be devoted to promoting peace through the maximization of the child's right to a best interests psychological development. Further, WCAA would act in cooperation with other specialized agencies and, in fact, all concerned entities to promote the psychological well-being of the world's children.

Having set forth a basic institutional design, let me turn to the vital matter of operating revenues. It is obvious that we are concerned with operations and programs which will require the allocation of very large amounts of wealth.³⁰⁵ Development resources must be made available to bring community policy to fruition. In order to capitalize the project, a system of funding must be worked out. Current assessment systems adhered to by the United Nations and specialized agencies do not produce the wealth needed to fund the psychological best interests program. Another approach must be developed and there must be a strong commitment by the world community to the funding of the best interests effort.

I will now outline a possible over-all approach to the matter of funding for support. I begin with a discussion of near-term funding. I consider first the task of supporting the World Children's Authority. Recall that Authority membership is composed of NGOs and nation-states. NGOs and nation-states could fund the Authority through agreed assessments. NGOs could conduct public-focused contribution campaigns to provide revenue to support payment of their portion of the assessments. Nation-states can use the traditional forms of domestic taxation to raise the revenue to be used to make assessment payments. The Authority itself could engage in fund-raising by soliciting contributions from international business, various domestic business entities, foundations, and wealthy individuals. It is suggested, however, that the Authority not compete with members in revenue raising. If the Authority in any substantial way reduces a

305. H. LASSWELL, *supra* note 17. Wealth here is used in the general law, science and policy sense of economic value with resource leverage.

member's resource reservoir, the member would receive an appropriate credit against its assessment. Moreover, all revenues paid to the Authority in excess of its needs would be held in trust for WCAA. The WCAA would be able to make withdrawals from this special fund to conduct its developmental best interests operations and projects.

As for the Agency, it is suggested that in the short term the Agency receive funding via the assessment of the nation-states who have through agreement decided to sponsor the Agency. In addition, as earlier indicated, certain Authority funds could be made available to the Agency.

At this point, we turn from wealth acquisition in the short-run for the doing of best interests "business" to a long-term approach to the funding problem. When we speak of development projects, human or otherwise, the power to tax or the power to acquire wealth is the power to implement. Efforts at development have always been constrained by the fact that no duly constituted central authority has the power to raise the required revenue. If the project to enhance "self" development is to succeed, an effective revenue-raising program must be created. What I recommend here may have a Utopian ring, but something in this vein must be done if we are to avoid a world-wide nightmare. I suggest that those willing members of the United Nations enter into a revenue-raising agreement in order to fund the child development best interests undertaking. The agreement should create the United Nations Children's Development Trust. The Trust would be that body which would be charged with collecting and disbursing revenues received. Disbursement would be primarily to WCAA. The members' agreement should establish appropriate guidelines for disbursement.

Under the agreement, states-parties would have the responsibility of meeting a revenue contribution quota. The agreement should be conceptualized essentially as an agreement to raise revenue through the fiscal mechanics of taxation. A revenue formula should be developed and accepted by the signatories. The formula should establish a revenue obligation for each participant. Obligations should be differential. This would result from the structuring of the formula. The determinative formula should take into account the relative wealth of the obligors. I suggest that the formula could produce a revenue obligation

geared to a percentage of the obligor's GNP, which would take the form of a progressive tax tied to an acceptable world community definition of GNP.³⁰⁶ An initial ceiling tied to a specific percentage of GNP, e.g. 0.1%, might serve as a cap for the tax. I select GNP as a reference measure because it is a familiar standard used to discuss transfer payments.

Certainly, I contemplate that revenue would be raised via the domestic tax systems of the involved nations. It might be agreed by all participants that a particular number of specified events, conditions and things would be subject to taxation.³⁰⁷ The states-parties might choose from among the following: taxes on international investment, taxes on hydrocarbons and minerals, taxes on international trade, taxes on the arms trade, taxes on energy consumption, taxes on the income of foreign multinational corporations operating within the host state, taxes on multinationals based in the host state, and taxes on the wide variety of property held by foreign multinational corporations operating within the host state. The possibilities are not infinite in number, but there are numerous avenues of approach.

In addition to the above revenue-raising approach, I would recommend that the Law of the Sea Treaty³⁰⁸ be amended. It should be provided by amendment that a certain percentage of the income earned by the Enterprise³⁰⁹ from the mining of the "common heritage"³¹⁰ be turned over to the United Nations Children's Development Trust. This income would, of course, be channeled into programs to support the self-development of children. Further, I suggest that business enterprises mining the Area be required to pay a percentage of profits to the Trust.

It is certainly contemplated that states-parties would impose taxes consistent with national tax policy and structure. It may be that a certain uniformity of approach might be of value. The approach in developing countries might fall into a certain policy and operational cluster. Developing countries might im-

306. My thinking on this matter has been much influenced by INDEPENDENT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES, NORTH-SOUTH: A PROGRAM FOR SURVIVAL 22-24. (W. Brandt, chairman, MIT Press paperback ed. 1981).

307. *Id.* at 244-45.

308. K. SIMMONDS, U.N. CONVENTION ON THE LAW OF THE SEA, 1982, at B1-B220 (1982).

309. *Id.* at B102-03.

310. *Id.* at B25.

pose property taxes, extraction taxes, production taxes, payroll taxes, joint venture participation taxes, sales taxes on imported products, income taxes on international carriers, taxes on the distribution of foreign media-created material, taxes on multinational corporation advertising, taxes on multinational investment income, taxes on nonresident income and taxes on imports. Developed countries might impose a special doing-foreign-business tax on multinational corporations originating in the taxing nation. The tax could be progressive and tied by formula to the intensity of international business activity. Developed countries might also consider gross profits tax as a way of raising the necessary revenue.

The above-elaborated model for revenue-raising is meant primarily to initiate serious thought about the wealth acquisition policy aspect of the best interests-self development-human rights project. It will take economists, scholars expert in the ways of multinationals, tax specialists, United Nations technical specialists and informed government staff to construct a program that can become successful.

V. FINAL JURISPRUDENTIAL REFLECTIONS

In the preceding pages, I have undertaken a comprehensive analysis of a critical human rights-world peace-jurisprudential problem. Here the term "problem" is used in its Myrdalian sense: a complex and important human situation worthy of intense scrutiny by concerned scholars and decision-makers.³¹¹ It should be clear that I hold that the articulating and securing of the developmental psychological best interests right of the child is a problem worthy of attention by scholars and decision-makers. In this paper, the policy-oriented jurisprudence developed by Professors McDougal and Lasswell has been employed to evaluate the problem and to suggest the manner in which appropriate policy may be implemented. The extant international law norms and policy have been integrated with certain relevant human sciences, in the quest for solution. The intellectual outcome is a whole that indicates how fundamental policy preference can be implemented to further important individual, familial and world community values. This is the intended over-all

311. See G. MYRDAL, *OBJECTIVITY IN SOCIAL RESEARCH* 10 (1969).

thrust of this article. In closing, I wish to emphasize that part of this paper has a general theoretical significance that must be underlined. This is the section focusing on the *promotion* of the child's best interests psychological right. This constituent element of the article stands on its own as a minor but perhaps useful contribution to the law, science and policy theory of promotion. It contains information and analysis relevant to many varieties of world community-oriented promotional endeavors. This section of the paper presents and synthesizes, and projects from, the contributions of McLuhan (electronic media), MacLean (triune brain) and MacBride (communications and the developing world). This part of the paper makes it clear that electronic icon, image, symbol and message are communications realities which can well serve those who seek to make demands related to the securing of essential values. The ideas of Marshall McLuhan and Sean MacBride must be taken seriously by scholars and decision-makers. The neuroscience research of Dr. Paul MacLean makes it clear that the complex and sophisticated biological computers of the central nervous system stand ready to link up with the world of messages. Electronic media are available to direct human value-oriented promotional packets to the collective triune brain of mankind. If used humanistically in the service of human rights, human well-being and human dignity, electronic media can substantially further the causes of human justice and the protection of species.

Further, I believe that the communications revolution of our time dictates that international law scholars and decision-makers come to grips with the new technology, its psychology and its cultural impact. The Gutenbergian age of print and paper is past. We scribes of jurisprudence and the decision-makers of today must step into the Siddharthian river³¹² of image, icon, archetype, symbol and message. We must learn to "flow" into the newly-described circuits of media and mind. The message is now electronic and biological: it is in the ether and in the mind. Pol-

312. This reference is to the novel by H. HESSE, *SIDDHARTHA* (New Directions ed. 1957). Siddhartha, absorbed in a search for meaning, became aware only when he became one with the river of existence.

icy science jurisprudence must assimilate the new knowledge, and use it.³¹³

313. After completing this paper, the author discovered two extraordinary works by Alice Miller, a Swiss psychoanalyst, which are most relevant to the thesis put forth herein. From her European psychoanalytic perspective, Miller provides valuable insight into parenting and threats to world peace. The works are *THOU SHALT NOT BE AWARE: PSYCHOANALYSIS AND SOCIETY'S BETRAYAL OF THE CHILD* (1984) and *PRISONERS OF CHILDHOOD* (1981).