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The primary purpose of the *Illinois State Education Law and Policy Journal* (formerly *Illinois School Law Quarterly On-Line*) is to provide a forum for the interchange of ideas, theories, and issues on various aspects of school law among practitioners, professors, and attorneys. The emphasis is on analyzing issues in school law for the purposes of developing new theories to explain current and past developments in the law and to provide the theoretical framework which can be used to anticipate and predict future developments in school law.

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SPECIAL EDUCATION

Jefferson Cnty. Sch. Dist. R-1 v Elizabeth E., No. 11-1334 (10th Cir. Dec 28, 2012): Elizabeth E. suffered from a number of psychiatric and emotional disorders. She had been receiving special education services from Jefferson County School District for several years. In November 2008, Elizabeth's parents unilaterally placed her in a residential treatment center and sought reimbursement from the school district. The district refused to pay saying that the placement was for medical rather than educational reasons. The hearing officer found in favor of the family. This decision was affirmed by an administrative law judge and the federal district court. Upon appeal to the 10th Circuit, the court acknowledged that the parents' initial motivation for the placement may have been to address psychiatric needs, therefore was made for medical rather than educational reasons. However, the court stated that was not the crucial issue. Rather, the issue was "whether the education provided by the private school is reasonably calculated to enable the child to receive educational benefits." In affirming the lower court's decision in favor of the parents, the court found the placement reimbursable under the plain language of the IDEA. The court developed a four-part test to "determine whether a unilateral private school placement without the consent of or referral by the school district is reimbursable." Specifically, the court must decide the following: (1) whether the school district provided or made a FAPE available in a timely manner; if "yes" the placement is not reimbursable; (2) whether the private placement is a state-accredited elementary or secondary school, if "no" the placement is not reimbursable; (3) whether the private placement provides special education; if "no" the placement is not reimbursable; and (4) whether additional services provided by the institution are 'related services' under the IDEA; if "no" the placement is not reimbursable. When the court applied this four-part test to Elizabeth's situation, it found that the school district failed to provide her with FAPE, that the residential institution was an accredited educational facility which provided special education and related services.

Phillip C. v Jefferson Cnty. Bd. Of Educ., No. 11-14859 (11th Cir. Nov. 21, 2012): A.C. received special education services. After a reassessment, his parents disagreed with the assessment and obtained an assessment from a private facility. When the district refused to reimburse A.C.'s parents for the assessment, they requested a due process hearing. The hearing officer told the district that, under state and federal law, it was required to reimburse the parents. The district refused to do so. The parents filed suit in federal district court. The district court ordered reimbursement. The district appealed to the Eleventh Circuit, which affirmed the lower court's decision. 34 C.F.R. §300.503 (1983) expressly provides "the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency." The fact that Congress had reauthorized the IDEA in 1990, 1997, and 2004 "without altering a parent's right to a publicly financed IEE," was evidence of Congressional intent for that right to continue.

Knudsen v Tiger Tots Cmty. Child Care Ctr., No. 2-1011/12-0700 (Iowa Ct. App. Jan. 9, 2013): Knudsen wanted to enroll her daughter in Tiger Tots, but after revealing that her daughter suffered from a tree nut allergy, Tiger Tots said they could not enroll the child because it lacked the staff to meet the child's special needs. Knudsen filed suit alleging discrimination on the basis of a disability under state law. A state trial court granted Tiger Tot's motion for summary judgment, finding that the state law's definition of a disability was not as expansive as that found in the ADA. Tree nut allergy was not included as a disability. Knudsen appealed. The Iowa

Court of appeals reversed and remanded for a decision as to the issue of whether the student's allergy would substantially limit a major life activity "when active." "Federal law establishes the framework for an analysis of 'disability' under state law." Since the ADA had been amended to include under disabilities "an impairment that is episodic or in remission if it would substantially limit a major life activity when active."

D.L. v Baltimore City Bd. Of Sch. Comm'rs., No. 11-2041 (4th Cir. Jan 16, 2013): D.L. had been attending private school for several years when his parents requested an evaluation from the public school district to see whether he was eligible for special education services. Baltimore City Schools determined that he was eligible for Section 504 services, but that since he attended a private school that the services would not be provided. The parents filed an administrative complaint. The hearing office found for the school stating that he was only eligible for the services if he was enrolled full-time in the public school. The parents appealed to federal court and then to the Fourth Circuit. The Fourth Circuit affirmed the district court's decision for the school district. The court determined that neither the wording of Section 504 nor its implementing regulations make it clear whether public schools are under an affirmative duty to provide services to private school students. The court turned to the wording of the 1997 amendments to the IDEA which stated: "No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." The court concluded that if D.L. would not be eligible for special education services as a private school student, then it was logical that he not be eligible for Section 504 services either.

EMPLOYEE RIGHTS

Greer v Detroit Pub. Sch., No. 11-2249 (6th Cir. Dec. 6, 2012): The Plaintiffs were 178 union members employed as security guards by the Detroit Public Schools under a master contract negotiated in 1999. In 2006 the union accepted wage concessions in return for a promise of continued employment. In 2009, twelve security officers were laid off and replaced by private security members. In 2010, the Detroit Public Schools notified all of the Plaintiffs that they would be terminated at the end of the month. The Plaintiffs exhausted their administrative remedies and then filed suit in state court alleging a breach of the school's duty of fair representation and unfair labor practices, as well as their 14th Amendment Right to due process and liberty interest. The district court granted the school's motion for judgment on the pleadings and dismissed the case with prejudice, stating that the Plaintiffs had not alleged a cognizable property right to continued employment or any cognizable injury to their liberty interests because the "Discharge and Discipline" provisions of the master contract only applied to disciplinary terminations, not lay-offs for financial reasons. The court also considered the applicability of Michigan's Public Employment Rights Act (PERA) which prohibited public school employers and unions from bargaining over the employers' right to contract with third parties for non-instructional support services. "PERA does not permit the creation of property rights to continued employment for non-instructional support staff, as PERA expressly precludes such a discussion." The court also found the claim of a deprivation of their liberty interest to be unpersuasive. On appeal, the Sixth Circuit affirmed the district court, stating that a legitimate claim of a protected property interest must exist through a source independent of the constitution itself, such as state law or "mutually explicit understandings" supporting an individual's claim of entitlement. The court found that "The

process outlined in the CBA and the process provided by the state of Michigan was adequate because those proceedings gave plaintiffs a meaningful opportunity to challenge DPS's actions." As regarding the Plaintiff's claim of a violation of their liberty interest, the circuit court applied a five-prong test. In order to prevail, the Plaintiffs had the burden to prove (1) the stigmatizing statements were made in conjunction with their termination from employment; (2) the statements must have been more than mere allegations of improper or inadequate performance, incompetence, neglect of duty, or malfeasance; (3) the statements needed to have been made in public; (4) the charges made were false; and (5) public dissemination must have been voluntary. The court concluded that the Plaintiff's claim failed as a matter of law because they could not establish the second element. "DPS's press release, citing general problems with absenteeism, was not so charged with a moral stigma as to foreclose plaintiffs from seeking alternate employment."

In re Tenure Hearing of Jennifer O'Brien, No. A-1452-11T4 (N.J. Super. Ct. App. Div. Jan. 11, 2013): O'Brien was employed as a first grade teacher when she posted comments on her Facebook page that were critical of her students referring to them as "future criminals." Several parents complained. She was dismissed for conduct unbecoming a teacher. In a hearing O'Brien argued that her comments were entitled to First Amendment protection because she was talking about student misconduct, which is an issue of public concern. The ALJ disagree and found that her comments were personal expressions of dissatisfaction with her job. On appeal, the decision of the ALJ was affirmed and O'Brien's dismissal was upheld. The court agreed that O'Brien's comments were not protected speech, but rather were personal statements. The court went on to say, that even if some of the statements were of public concern, the school district's interest in the efficient operation of its schools outweighed her right to free speech.

Wisconsin Educ. Ass'n Council v Walker, Nos. 12-1854/12-2011/12-2058 (7th Cir. Jan. 18, 2013): Under Wisconsin Act 10, which amended the state collective bargaining law, two new classes of public employees were created: general employees and public safety employees. Certain restrictive provisions only apply to general employees and their unions: (1) limitations on the permissible collective bargaining subjects; (2) stricter annual recertification requirements; and (3) prohibition on voluntary payroll deduction of union dues. A coalition of labor unions filed suit in federal district court challenging Act 10's creation and treatment of the two new classifications. The district court found the provisions dealing with recertification and due withholding unconstitutional in violation of the First and Fourteenth Amendments. The Seventh Circuit unanimously held that restrictions on the right to collectively bargain do not violate the U.S. Constitution, nor are the requirements on annual recertification a violation of the Equal Protection Clause. As for voluntary withholding, however, the court concluded that "the use of the state payroll system to collect union dues is a state subsidy of speech. As such, the distinction between public safety and general employees only violates the First Amendment if it discriminates on the basis of viewpoint." Using the rational basis test the court rejected the union's claim of a violation of the First Amendment. Act 10 was found constitutional.

Connelly v Steel Valley Sch. Dist., No. 11-4206 (3d Cir. Jan 24, 2013): Connelly came to Steel Valley Schools with nine years of teaching experience in Maryland. Because his teaching was out of state, Steel Valley only credited him with one year of teaching when placing him on the salary scale. He filed suit in federal district court alleging a violation of his right to interstate travel under the Privileges and Immunities Clause of the U.S. Constitution, and a denial of Equal Protection. The district court granted Steel Valley's motion to dismiss stating the Connelly failed

to state a cognizable Fourteenth Amendment claim. On appeal the Third Circuit affirmed the lower court's decision. The court stated that the right to travel included three components: (1) the right of a citizen of one state to enter and leave another state; (2) the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily in another state; and (3) once the traveler becomes a resident of the other state, to be treated as all other citizens. It was this third component that was at issue. The court found that the school district's classification was based on the location of the teaching experience, not the duration of the teacher's residency. "Because Steel Valley's salary classification treats citizens differently based only on their teaching experience irrespective of their residency, strict scrutiny does not apply." Using a rational basis review, the court concluded that experience-based salary classification was "sufficiently tied to the legitimate state purpose of promoting an efficient and effective public school system to pass the rational basis test."

SCHOOL REFORM

California Charter Sch. Ass'n v Los Angeles Unified Sch. Dist., No. B242601 (Cal. App. Ct. Dec. 5, 2012): Under Section 47614 of the California Education Code (Prop 39), "Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district." The California Charter Schools Association (CCSA) filed two suits against the LAUSD alleging violation of Prop 39. CCSA claimed that LAUSD's facilities offers failed to provide facilities to charter schools in the same ratio of classrooms to average daily attendance as those provided to students in the school district. The CCSA objected to LAUSD's use of norming ratios used for the school district's students. The trial court found for the CCSA and ordered LAUSD to refrain from using "norming ratios" in the future. The appellate court reversed the trial court's decision. It found that the LAUSD's use of norming ratios "furthers the goal of ensuring that public school facilities are being shared fairly among all public school pupils and that the charter school's in-district students are being accommodated in conditions reasonably equivalent to those in which those students would be accommodated if they were attending other public schools of the district."

Moore v Tangipahoa Parish Sch. Bd., No. 12-31218 (5th Cir. Jan. 14, 2013): TSPD is currently under a federal district court desegregation order working toward unitary status. Under Louisiana's private voucher program, students at TSPD are permitted to attend alternative public or private schools instead of attending their assigned under-performing public school. Obviously this would interfere with the desegregation order, so the federal district court issued a preliminary injunction barring the state from implementing the program with TSPD. The Fifth Circuit granted the State's motion for a stay from the injunction, agreeing that the State had a strong likelihood of success because the district court's exercise of authority violated Louisiana's Eleventh Amendment sovereign immunity. The court found that, although the district court was claiming that its injunction was to protect the desegregation order, in reality it was "affecting a state's sovereign decision making about state spending ... [which] conflicts with the State's sovereign immunity by requiring it to answer what is essentially a claim for contribution from one of its subdivision in federal court." The court also pointed out that the voucher program had also been declared in violation of the state constitution and that case was pending before the

Louisiana Supreme Court. If the state's high court invalidated the program then the question as to whether the voucher program violated the desegregation order would become moot.

SCHOOL FINANCE

***Carr v Koch*, 2012 IL 113414 (January 2013):** The Illinois Supreme Court ruled unanimously that property taxpayers “do not have standing” to sue the state for a school funding scheme which causes inequitable tax burdens on citizens of the state of Illinois. In March 2010, taxpayers sued State Superintendent Christopher Koch, the ISBE, and Gov. Pat Quinn alleging that the Illinois school funding laws had an unequal effect on taxpayers. The court stated that “although the funding statute endeavors to provide school district with financial support sufficient to equal or exceed the prescribed per-pupil foundation Level, the statute does not expressly require a school district to reach the Foundation Level of funding, and imposes no penalty on a school district that does not meet the Foundation Level. Therefore, ultimately it is the taxpayers themselves that decide whether or not to levy higher or lower taxes, not the state.

ACTIONS IN THE ILLINOIS GENERAL ASSEMBLY

SB 641 Bullying: This bill is alive and continues to be worked on in the Senate. One amendment would clarify what a bullying policy would need to contain. The drafting of a policy would be mandated, but the specific provisions would be left to the local school board.

STUDENT RIGHTS

***A.H. v Northside Indep. Sch. Dist.*, No. 12-1113 (W.D. Tex. Jan. 8, 2013):** A.H. attended the John Jay Science and Engineering Academy at John Jay High School, one of two schools in the district participating in a pilot program known as the “Smart ID Card Student Locator Project.” Under this pilot project, student ID cards would contain a “locator” chip which would allow school staff to locate the student while on campus. The purpose of the project was to increase safety and improve attendance counts, on which funding is calculated. A.H. and her parents initially objected to wearing the ID badge with the chip on the grounds that it violated their free exercise of religion; the chip was “the mark of the beast.” In response, officials at the school offered to remove the chip from her ID, at which time she claimed that wearing an ID at all was a violation of her free exercise of religion. At that point, the district said that if she refused to wear the ID at all, she would be transferred back to her home school which was not participating in the pilot program. A.H. and her parents filed suit in state court, which granted them a temporary restraining order from the badge requirement. The suit was then removed to federal district court. The district court denied A.H.'s motion for a preliminary injunction to bar her from being required to wear the badge. On the issue of her First Amendment free exercise of religion claim, the court determined that the badge requirement was a neutral regulation of general applicability and only needed to be rationally related to a legitimate government interest. Applying the “rational basis” test, the court found the badge requirement was “neutral in both purpose and application, as the entire student body is subject to the requirement.” The court found that nothing about the requirement touched upon religious beliefs or practices. Moreover, the court noted that even if A. H. could show a substantial burden on her free exercise, the district had established a

compelling state interest in providing a safe and secure environment for all students, teachers, administrators, parents, and visitors on campus. “One could envision many different methods of ensuring safety and security in schools, and the requirement that high school students carry a uniform ID badge issued for those attending classes on campus is clearly one of the least restrictive means available.” Finally, even if the badge program could not pass strict scrutiny, the issue was moot because A.H. had been given the option to wear the badge without the chip. As regarding the First Amendment free speech claim, the court found that no speech/expression was implicated by the badge requirement because “wearing a student ID badge does not communicate support for the pilot program, or convey any type of message whatsoever.” Finally, as regarding Due Process and Equal Protection claims, the court concluded that A.H. had no constitutionally protected liberty or property interest in attending a particular school of her choice, upon which her due process claim rested.

Zeno v Pine Plains Cent. Sch. Dist., No. 10-3604 (2d Cir. Dec. 3, 2012): Zeno, who is bi-racial was subjected to three and a half years of harassment because of his race and color by other students at the high school. The harassment was both verbal and physical. After the first incident of harassment, Zeno’s mother spoke to the principal who told her “this is a small town and you don’t want to start burning your bridges.” The students involved were disciplined, but no other remedial measures were instituted in response to the harassment. The harassment continued. Zeno obtained Orders of Protection twice. Zeno’s attorney requested a shadow who would accompany him at school, and to implement racial sensitivity programs to underscore the district’s zero tolerance of racism and bias. A member of the Dutchess County Human Rights commission and the NAACP also requested the same remediation measures and even offered to provide those options at no cost to the school. The school declined both requests. The harassment was never investigated nor followed up on the complaints. The district also failed to notify Zeno’s mother of a planned mediation between her, her son’s harassers and their parents. In an attempt to get away from the harassment, Zeno decided to graduate early with an IEP diploma even though it severely limited his post-secondary education options. After graduation, Zeno filed suit in federal district court against the school district alleging discrimination in violation of Title VI. The jury returned a verdict in favor of Zeno and awarded him \$1.25 million in damages. The district requested a new trial and one was granted where the award was reduced to \$1 million. The district appealed on two issues: (1) that the district court erred in denying the district’s motion for judgment as a matter of law; and, in the alternative, (2) the damages award was excessive. The Second Circuit affirmed the district court’s denial of the district’s motion for judgment as a matter of law and the \$1 million damages award. The court stated that a school district’s actions are only deliberately indifferent if they were “clearly unreasonable in light of the known circumstances.” The court found that reasonable jurors could have found the harassment to be severe, pervasive, and objectively offensive based on the facts of the case—it went beyond verbal harassment, continued for over three years, and because of the harassment Zeno was deprived of certain educational benefits. The record showed that the district had actual knowledge of the harassment, reports having come from various sources. The district’s response was inadequate and deliberately indifferent in three respects: (1) it delayed implementing any non-disciplinary remedial action for more than a year; (2) the remedial actions were “half-hearted”; and (3) its poor response allowed the continued harassment.

Doe v Clenchy, No. 09-201 (Me. Nov. 20, 2012): Doe was a transgendered student who was biologically male but identified as female. In elementary school, Doe was allowed to use the girls bathroom until someone complained, at which point Doe was directed to use the staff bathroom. When Doe moved to middle school, Doe was still not allowed to use the girl's bathroom. Doe's parents filed suit in state court alleging unlawful discrimination in education on the basis of sexual orientation, unlawful discrimination in public accommodations on the basis of sexual orientation, and the state claim of intentional infliction of emotional distress. The district filed a motion to dismiss all three counts. The court granted the school's motion as to the "unlawful discrimination in education" allegation, granted in part and denied in part the "unlawful discrimination in public accommodations" allegation, and denied the state tort claim. The court found no state law or regulation which obligated the district to allow Doe to use the girl's bathroom. The school was under no affirmative duty to accommodate Doe's transgender status by permitting Doe to use the girl's bathroom. Doe filed an amended complaint with additional allegations of harassment. The court granted the school district's motion for summary judgment. Under Maine law, bathrooms can be segregated by gender. The school, therefore, had the right to segregate its restrooms by gender. "A school could not permit transgendered students to use the restroom of their gender identity and still follow a policy of segregating restroom usage by sex." The court did not find that the district had been deliberating indifferent, noting that the school had developed a Section 504 plan to facilitate Doe's needs, regularly solicited the parents' suggestions, and considered their concerns.

ADMINISTRATION

Freedom From Religion Foundation v New Kensington-Arnold Sch. Dist., No. 12-1319 (W.D. Pa. Jan. 22, 2013): The FFRF filed suit on behalf of parents against the NKASD seeking the removal of a 6-foot tall Ten Commandments monument on the school property on the grounds that its presence violates the separation of church and state. The FFRF sought a declaratory judgment that the monument was unconstitutional. NKASD filed a motion to dismiss stating that the U.S. Supreme Court had already addressed the issue in *Van Orden v Perry*, 545 U.S. 677 (2005). The district court denied NKASD's motion to dismiss. The court stated that "a fair reading of the Complaint at this stage of the proceedings leads to the conclusion that the factual allegations provided by Plaintiffs extend beyond conclusory, ipse dixit assertions to at least having state a facially plausible claim. ... The Plaintiffs have adduced sufficient support to permit the Court to draw the reasonable inference that the claim Plaintiffs advance has sufficient merit under our current jurisprudence."

Conditional Welfare Grants to Address Truancy and Child Educational Neglect: United States' Experiments and Ecuador's Mandates

William M. Fischer, J.D.

"If our American way of life fails the child, it fails us all."¹

Introduction

Although greatly underreported,² "neglect is the most common type of child maltreatment,"³ and occurs more frequently in poor families than in those of better means.⁴ Child neglect can include lack of access to education (educational neglect),⁵ as, for example, "allowing chronic truancy [or] failing to enroll the child in school as required by law."⁶

Researchers have borne out the many negative impacts that truancy, including as a manifestation of educational neglect, have on children's future lives. Relatedly, the high school drop out rate is recognized as an important factor for evaluating child well-being.⁷ Truancy, more generally, is one of the primary ways educational neglect manifests itself, triggering mandatory reporting by educational figures.⁸ Since truancy directly manifests itself to school figures, it is one of the more easily observed signs of child neglect and represents a prime target for interventions.

Both Ecuador and the U.S. place a high value on education, but only the former's federal constitution recognizes it as a fundamental right, and equates denial of that right with a form of proscribed child neglect.⁹ The U.S. Constitution, on the other hand, gives no mention to education of youth, instead leaving it to state and local governments, and, to some extent, families.¹⁰ Rather than federal mandates as in Ecuador, the U.S.'s federalist government has wide variations amongst states in terms of policing truancy and neglect.

Notwithstanding numerous important differences between the two nations, policies to reduce truancy are either underway experimentally, or have been firmly established, in each. Programs providing cash payments conditioned on regular school attendance recognize the potential of relatively small per child investments, and address various indirect costs to society.¹¹ These costs add to the already stifling economic drag of child poverty due to lower earnings, higher crime rates, and greater health problems.¹²

The long-standing Bono de Desarrollo Humano ("BDH") program in Ecuador, and the nascent public-private partnerships established and funded under U.S. federal government programs, form the basis of this comparative discussion of conditional assistance programs aimed at reducing truancy, educational neglect, and their negative downstream effects to children and society. In doing so, similarities and differences between the two nations' legal and policy foundations for such initiatives are outlined and discussed under their respective constitutions, and legal and institutional structures.

Throughout this paper, the two nations' existing systems to address truancy and educational neglect are also compared within the broader context of child welfare systems. Finally, a recommendation is made that a uniformly and nationally implemented system like Ecuador's BDH program be initiated in the U.S. as a federally funded mandate. This would, in some respects, mimic the U.S. food stamps program, and could be administered under existing systems with minimal transformation. Such a program represents a more cost-effective means of reducing truancy and educational neglect in the interests of long-term and sustainable economic development and child well-being.

I. Truancy and Educational Neglect as Child Welfare Problems

Neglected youth risk low high school graduation rates, adult drug abuse, and adult criminality at rates 25%, 50%, and ~30% higher, respectively, than their non-neglected counterparts.¹³ Pre-high school truancy also strongly correlates to high school drop out rates.¹⁴ Maltreated youths, therefore, risk “physical, psychological, and behavioral health problems,”¹⁵ both as juveniles and as adults.¹⁶

Although poor parents are not “necessarily poorer parents, their children come under the scrutiny of the child welfare system at much higher rates given poor families’ lack of resources for successful parenting,”¹⁷ including ensuring adequate schooling. Entrenched poverty and poor educational achievement is part of a cycle which all too often passes from one generation to the next.¹⁸ In both nations, encouraging school attendance through high school graduation is key to breaking this cycle.¹⁹

Truant youths often come from low-income families.²⁰ They are often victims of neglect and, without the provision of tools for success, primarily educational, they are at great risk of exhibiting similar problems that their impoverished parent(s) experienced.²¹ The poverty experienced by families of truant youth contributes to the problem.²² Parents’ long work hours, for example, may make it difficult for them to ensure adequate attendance, and difficulty paying bills may lead to frequent moves to new school districts.²³

Poverty is one of the so-called “family factors” contributing to truancy, and can cause related difficulties like lack of access to transportation to school.²⁴ Research has shown that, compared to the second strongest predictor, poverty is twice as powerful a predictor of high school graduation rates of school districts.²⁵ Poor urban districts experience the highest drop out rates.²⁶ Another factor correlated with higher drop out rates is the number of children in the home.²⁷ Impoverished families also have more family conflict and child neglect, which add to the mix of factors contributing to truancy.²⁸ For them, something as seemingly simple as ensuring school attendance is but one of a slew of difficult-to-escape challenges they face on any given day.

The rising child poverty rate in the U.S. is often blamed on major cutbacks in welfare programs.²⁹ Interestingly, the timeframe for these welfare reform initiatives roughly corresponded to the inflection point of the transition to the “new” global economy, with reforms justified by assumptions about poor parents’ ability to earn a suitable living.³⁰ With sharply more adverse employment prospects requiring ever more educational attainment, poor families’ ability to ensure their children’s adequate schooling was similarly squeezed.³¹ As stressors accumulate, poor families who garner the attention of child protective authorities by, for example, their children’s truancy, may be further oppressed economically due to negative community perceptions and legal troubles.

The prolonged U.S. economic downturn has affected poor families directly and indirectly through cuts in social services.³² Commentators decry this trend as crimping safety valves for poor children,³³ and criticize the fact that, despite the U.S.’s position as the wealthiest of nations,³⁴ education of children has not achieved the standing it deserves in the U.S. Constitution.³⁵ Just as startling to many is the U.S.’s standing on child well-being measures—“[o]ut of [] 21 developed nations . . . , the U.S. ranked 20th based on overall child well-being[, and] . . . 25 out of 27 for the rate of child deaths resulting from abuse and neglect.”³⁶ This state of affairs is not new—throughout U.S. history, women and children have always been most vulnerable to poverty.³⁷

As a manifestation of educational neglect, truancy is one of the many symptoms of poverty

in both Ecuador and the U.S. In both countries, child poverty continues to be a major problem,³⁸ and their citizens are feeling the growing pains of the “new” global economy.³⁹ “School attendance is [obviously] critical to graduation,”⁴⁰ and few jobs remain, especially in the U.S., with which to earn an adequate living without a high school education.⁴¹ Truancy is a warning sign that a child is “in trouble and need[s] help if they are to keep moving forward in life.”⁴² As one of the most ascertainable signs of child neglect—given the inescapable observation by school figures—truancy, and any child neglect contributing to it,⁴³ can, and should, be detected and corrected early on.

Successful interventions to reduce truancy and increase high school completion result in long term savings to scarce state resources.⁴⁴ The most successful truancy interventions move away from strictly punitive measures toward parents and children.⁴⁵ This sentiment is readily apparent in the school attendance-conditioned welfare programs embodied in Ecuador’s BDH program and newer United States’ Workforce Investment Act (WIA) public/private partnerships. The continued existence of these programs will at once reduce truancy while positioning future workers for higher standards of living.

“In general, the causes and outcomes of truancy are much more thoroughly researched than the effectiveness of various interventions;” what is clear, however, is “that truancy is an outgrowth of other underlying problems.”⁴⁶ The following sections will outline the general legal frameworks for addressing truancy and educational neglect in the U.S. and Ecuador, and describe various research and practical approaches to the problem which improve child and family well-being while achieving more efficient utilization of state resources through relatively modest investments in conditional welfare programs.

II. Discussion of Truancy and Educational Neglect Policies in the United States

U.S. children spend much of their waking hours in schools, which, from an early age, assume *quasi*-parental roles in light of the break from the traditional family structure where a parent was almost always at home.⁴⁷ With the rise of dual-earning parents and increasing child poverty, more focus was placed on educational neglect and truancy as child welfare problems.⁴⁸

As of the middle of 2009, about 24% of the U.S. population are children.⁴⁹ After the age of 16, most U.S. youths “are either in school, in the workforce, or in the military[, b]ut far too many are disconnected from the roles and relationships that set young people on pathways toward productive adult lives.”⁵⁰ Despite a modest decline in recent years, as of 2006, the average high school graduation rate in the United States is only about 70 percent.⁵¹ For poor youth, employment and otherwise contributing to family responsibilities have been cited as reasons for dropping out.⁵² Such factors are also thought to contribute to in-school issues which further compel youths to drop out (e.g., too many absences due to out-of-school responsibilities and/or problems).⁵³ Thus, helping to correct child and family issues at home which contribute to truancy before youth drop out of high school, with the many attendant downstream costs, is in society’s collective interest.⁵⁴

Such has been the goal of the various legal and policy reforms undertaken by state and local governments. Local agencies including schools and courts, as well as community groups, run various initiatives to “improve the attendance and achievement of struggling students.”⁵⁵ Despite their relative lack of standardization, many have been quite successful and others “show great promise.”⁵⁶ School attendance problems are best corrected with early and prompt interventions

which, rather than solely punish, attempt to “correct the causal problems” in students’ lives.⁵⁷ “Combinations of supports, sanctions and rewards reduce truancy, and pay off for individual students and for society.”⁵⁸

A. The Legal and Policy Landscape

1. Truancy and Educational Neglect Laws

In U.S. colonial times, poor children were often placed in involuntary apprenticeships when their educational needs were neglected.⁵⁹ Over time, the abuses of this *parens patriae* policy became evident,⁶⁰ leading to the modern state-governed educational structure geared to provide foundations for proper youth development into productive adult citizens. In recent years, however, commentators have noted a relative lag between educational and economic innovation, and called for greater focus on youth education as national law- and policy-making priorities.⁶¹

Individual U.S. states determine their education laws, and most call for mandatory school attendance from age 6 to 16.⁶² Variation between states range from requiring attendance for only 9 years to as many as 13 years, while only 16 states require attendance through “the age typical of high school graduation.”⁶³ Generally, minors must attend public or private school,⁶⁴ or be given sufficiently equivalent home schooling. Most U.S. states provide entitlement to public education until 21 years of age.⁶⁵

Like mandatory age/length of attendance statutes, states’ statutory definitions of truancy also vary.⁶⁶ If a school or law enforcement official identifies a youth as a truant, they may file a truancy petition in a juvenile court.⁶⁷ In Colorado, for example, such courts have jurisdiction, and a child is considered truant under the law, if he or she “missed four days in one quarter or ten days in one school year due to unexcused absence.”⁶⁸ The procedures and timing of such petitions also exhibit variations amongst school districts.⁶⁹

While truancy focuses on the conduct of youths, educational neglect focuses on conduct of parent(s) or caregiver(s); intrinsically, the two are closely, and, often, causally interrelated.⁷⁰ Educational neglect may be found “[i]f the parent does not send the child to school or is unable to enforce school attendance.”⁷¹ Although parent(s) may not be the cause of truancy in all cases, especially among older youth, caregivers may be responsible for neglect under state statutes for failing “to meet [] basic [educational] needs.”⁷² Educational neglect may rise to the level of psychological maltreatment where the neglect of such basic needs includes “ignoring, preventing, or failing to provide treatments or services for...educational needs.”⁷³ The penalties for educational neglect and/or truancy (on account of children) can include fines and time off to attend hearings, potentially leading to further financial stress on poor families.⁷⁴ The costs to children, families, and the state and society at large, of interventions, including detentions, removals, and placements, are high in such cases, further justifying initiatives aimed at reducing educational neglect and truancy.

School districts throughout the U.S. have put in place programs aimed at reducing truancy that provide extra-judicial alternatives via increased utilization of social services agency resources.⁷⁵ Greater staffing levels necessarily increase associated costs for these interventions.⁷⁶ However, associated savings may be realized in other areas such as the judicial and penal systems. These costs can be high: in Colorado, for example, truant youth may be sent to a juvenile detention center for not complying with a judge’s order to attend school,⁷⁷ at a rate of \$135 per day.⁷⁸

A 2006 Denver, Colorado study “found that less than 3% of students who met the state statute ended up in truancy court.”⁷⁹ This fact, at least in part, points to an over-burdened state

mechanism. With concerns like that in mind, a Jacksonville, Florida pilot which employed non-judicial interventions, and judicial only as a last resort, achieved a large improvement in its school district's truancy problem.⁸⁰ Similarly, a Tulsa, Oklahoma system providing parenting support, and not just legal responsibility, achieved increased enrollment and attendance along with substantial cost savings.⁸¹ Given these success stories, a more standardized and more consistently funded nationwide program to achieve similar ends makes sense for the poorest citizens in the most at-risk school districts.⁸²

On the federal level, the No Child Left Behind Act requires school districts to report attendance rates as a precondition for federal education aid.⁸³ Yet, despite this requirement, commentators have noted that reporting methods, like statutes defining truancy and educational neglect, are inconsistent, leading to possible over- or under-characterization of the most at-risk students and districts.⁸⁴ A simple fix, however, may be better integration and standardization of data reporting methodology and technology.⁸⁵

In the case of California schools, districts are funded "by average daily attendance, so every day of attendance earns money for the school budget."⁸⁶ These, and other direct costs of truancy, along with the numerous society-wide downstream costs discussed supra, give schools an incentive to decrease truancy: "truant students are expensive to educate; they use more counselor time, generate more disciplinary referrals, and require more tutoring."⁸⁷ Schools' attendance rates thus have direct economic implications in terms of the level of federal funding they receive.⁸⁸ If follows, then, that more standardization of truancy-specific definitions, laws and policies on the local, state, and federal levels can achieve at once a greater savings, and a greater impact on child well-being.

2. Truancy Reduction Initiatives

School districts have implemented a wide variety of programs to reduce truancy.⁸⁹ Their goals are similar: raise attendance rates and encourage students to graduate high school.⁹⁰ Multi-disciplinary "community based" programs with redundancies of public and private funding,⁹¹ and which couple early interventions to build on students' positive educational experiences, are believed to reduce high school drop out rates the most.⁹²

The federal government has also become involved in truancy reduction. High school drop out prevention initiatives under the Carl Perkins Vocational Education Act and School Dropout Demonstration Assistance Program in the late 1980s to mid-1990s are considered by many to be false starts.⁹³ Those with the most success shared attributes of small group settings and more individualized attention,⁹⁴ but such characteristics necessarily cost more given higher staffing and facility needs.⁹⁵ Commentators have noticed such inefficiencies, calling for more collaboration and sharing of responsibilities amongst students, parents, and school figures.⁹⁶ This approach builds understanding of the unique perspectives and needs of each stakeholder,⁹⁷ and seeks to find common ground in, for example, "connecting [] current schooling with future opportunities."⁹⁸

Although much evolved over the earlier initiatives, this approach is still consistent with social contract theory guiding modern U.S. welfare reform in that it engenders personal obligations to strive to bring oneself and one's children out of poverty with the assistance of the state.⁹⁹ U.S. programs have yet to find the right balance of "carrot and stick," as researchers have also noted the lack of attendance incentives in truancy reduction programs in favor of punitive policies.¹⁰⁰ According to the Denver-based National Center for School Engagement: "It's not enough to get students to school. They need to have support to stay at school and be engaged in learning."¹⁰¹ Thus, directly incentivizing students and/or families with conditional welfare payments places

more weight on individual responsibility, and may ease the administrative burdens and costs to states in administering such programs (so, appealing to both sides of the aisles of legislatures).

The longer-term and more collective common ground of society-wide cost reduction, although perhaps not as enticing for many truant students, is, nevertheless, the most powerful for the continued success and propagation of such initiatives. In this vein, another Denver study showed that for a truancy reduction program with a per student cost of \$640, realized government savings over the student's life who completed high school is \$215,649, with an investment break even time of 4 years.¹⁰² Adding conditional welfare payments to these initiatives which target the poorest students—those which are known to be most at risk of educational neglect, truancy, and dropping out of high school—should be another approach for reformers and law makers hoping to continue the progress. Several such incentives and conditional welfare programs in the U.S. are highlighted below.

3. U.S. Conditional Welfare Programs Aimed at Reducing Truancy and Educational Neglect

Incentive based programs in child protection systems in the U.S. are not entirely new. Federal laws exist “to encourage adoption of children in foster care by setting up a permanent system of subsidies to help adoptive parents secure services for ‘special needs’ children[;] yet, despite the subsidies, the adoption of foster children decreased sharply.”¹⁰³ The U.S. federal and state laws governing adoptions are complex,¹⁰⁴ which may explain the lackluster success of this incentive program. For truancy and educational neglect, the ease of measuring the problem and the opportunity for more directly involving children and families are among the factors which make conditional incentives attractive for addressing these child welfare problems.

Unlike mainly punitive schemes, truancy reduction programs which address root causes and support rational solutions are “likely to be highly cost-effective as well.”¹⁰⁵ However, existing examples highlighted above tend to involve higher staffing and facilities needs, and so tend to cost more.¹⁰⁶ Those that incentivized attendance at school used non-monetary awards like a VIP lunchroom for “students with perfect attendance the previous month.”¹⁰⁷ In these, and other examples, the risk factor of poverty is not directly confronted, and although that is but one of many factors leading to truancy problems, modest and conditional money benefits hold the potential of changing problem behavior more quickly and permanently than non-money incentives.¹⁰⁸

Conditional welfare programs for school attendance also address the “work over welfare” movement in the U.S, as well as concerns over fraud.¹⁰⁹ These debates and criticisms of welfare programs have loomed large ever since passage of the Social Security Act, including food stamps, modernized in 1962 during the “War on Poverty.”¹¹⁰ In keeping with the still-dominant social contract theory of welfare reform, these initiatives serve the longer term goal of breaking welfare dependency and putting more people to work.¹¹¹

Focus on children in such “War on Poverty” programs was attenuated somewhat with the conversion of Aid to Dependent Children to Aid to Families with Dependent Children (AFDC).¹¹² The Family Support Act of 1988 did add transportation expense support, but not tied to assurance of school attendance.¹¹³ This period also shifted welfare administration from the federal to state governments, and allowed for waiver of federal beneficiary qualifications for state-initiated policy experiments.¹¹⁴ States also found ways to reduce payments under these waivers to encourage recipients to find work.¹¹⁵

Also around this time, states began to make aspects of federally-funded welfare programs conditioned on certain encouraged behavior like school attendance by recipients' children.¹¹⁶

Initiatives dubbed “Learnfare” were based on a different, but related premise than “welfare to work”; according to Senator Patrick Moynihan (D-NY, 1977-2001), “just as parents have the responsibility to support their children, so, too, welfare parents have the responsibility to assure their children attend school.”¹¹⁷ Other rationales drew on experiences of the Civil Rights movement concept of “Equal Educational Opportunity.”¹¹⁸ Although Learnfare programs met challenges on several fronts, including litigation¹¹⁹ and the courts of public opinion,¹²⁰ many continue to survive and function (under Temporary Aid to Needy Families (TANF), rather than AFDC) in several U.S. states.¹²¹

As of September 1995, 15 states had implemented Learnfare programs.¹²² Wisconsin’s Learnfare, approved in 1987, identified completion of high school as a way for youth to avoid the cycle of poverty.¹²³ It conditioned receipt of the full or bonus welfare amount on a defined acceptable level of school attendance by dependent children; if too many days were missed, “AFDC payments were cut.”¹²⁴ The program applied to youths aged 6 to 17 and drew upon Wisconsin’s pre-existing truancy and school attendance laws.¹²⁵ Similarly, payment amounts to student families for whom social services interventions were initiated due to truancy were conditioned on their full participation.¹²⁶

Presumably, Learnfare administrative costs were kept low because no additional social services infrastructure was contemplated.¹²⁷ Instead, case management was initiated only at the point of excessive absences from school.¹²⁸ This separation of the payment mechanism and the easily measurable receipt condition simplifies program administration for defined goals like truancy and educational neglect reduction, and places more of the onus on students and families.

Wisconsin’s Learnfare results have been studied at length. In Milwaukee, it was found that, after being sanctioned for truancy issues, 30% of students were in school, and about 34% of their families had left the AFDC system.¹²⁹ One drawback (or, perhaps, an advantage in detecting child welfare issues) in Learnfare was revealed by another Milwaukee study which found that 60% of families sanctioned under Learnfare were coded for possible child abuse or neglect.¹³⁰ Improvements to Learnfare programs could, therefore, have included more instruction to at-risk families of the consequences of the truancy sanctions. The Wisconsin experience was, however, widely successful in less adverse school districts, and further study determined that the poor outcomes in Milwaukee were due mainly to unintelligent implementation and lack of enforcement of the conditional monetary sanctions,¹³¹ which, after all, was the point of Learnfare.

Learnfare programs are the first to recognize the close relation between educational neglect, truancy, and poverty, and how important it is to address both “the symptoms [and] root causes of poverty.”¹³² They placed great weight on research findings that “family, more than anything else, predicted [academic] achievement.”¹³³ Senator Moynihan was pleased “to see these two subjects come together—welfare and education—because... [w]e are talking about the achievement of children and the performance of adults.”¹³⁴ Researchers have since noted that effects on grades were trumped by reduction in truancy.¹³⁵ Many of the same and other studies have found lack of effect on grades unsurprising, as it is thought that financial incentives, as well as penalties (as in Learnfare), have the greatest impact on goals people believe are reasonably achievable in the short term.¹³⁶

The Learnfare trend appears to have fizzled out in the wake of what is, perhaps, an over-emphasis on grades and standardized test results (as in the No Child Left Behind Act). Although packaged with child welfare in mind and some empirical data to justify them, such premises in AFDC waiver initiatives like Learnfare faded amid renewed bipartisan budgetary and fraud concerns during the 1990s.¹³⁷ The “welfare to work” movement thus eliminated AFDC, instead

initiating TANF and provisioning states with block grants rather than blank federal funding to administer these welfare programs.¹³⁸ Therefore, except insofar as federal education funding is tied to attendance and standardized test scores, the focus on “making work pay” drew attention further away from youth as among the originally intended beneficiaries of the Social Security Act.

Truancy remains a problem for many schools in the U.S. More recent initiatives funded by public/private partnerships under the Workforce Investment Act (WIA) of 1998 have begun to make direct assistance payments to students and/or families conditioned on school attendance. WIA replaced the Job Training Partnership Act and, like the AFDC to TANF reforms, “mandates more local involvement and [] control.”¹³⁹ The goal of WIA is to increase employability and earning potential of beneficiaries while improving the quality, productivity, and competitiveness of local workforces.¹⁴⁰ “This vision moves the workforce development system away from short-term interventions by emphasizing the long-term development of young people.”¹⁴¹ Funding for such WIA programs was re-authorized under the American Recovery and Reinvestment Act of 2009.¹⁴²

Like TANF, states have fairly broad discretion to use WIA funds. WIA provides for a Workforce Investment Board, or several of them, in each state to “direct federal, state and local funding to workforce development.”¹⁴³ Local laws and policies dictate specific use of WIA funds.¹⁴⁴ Among the various WIA provisions are the establishment of youth programs which address “barriers to employment,” either in the present or later in life.¹⁴⁵ Under “Youth Formula-Funded Grants,” overseen by Boards’ Youth Councils,¹⁴⁶ and carried out by public or private service providers,¹⁴⁷ supports for at-risk youth (14 to 21 years old and from poorer families)¹⁴⁸ include assistance in graduating high school like tutoring,¹⁴⁹ and more targeted and discretionary dropout prevention strategies.¹⁵⁰

In addition to the WIA-enumerated “barrier to employment” criteria (already dropped out, high poverty area, not enrolled, homeless, runaway, offenders, or foster child),¹⁵¹ WIA provides eligibility to youth identified as requiring “additional assistance to complete an educational program” (defined locally by the Board).¹⁵² The WIA therefore counts high school drop out and truancy, like an aging workforce,¹⁵³ “as among the challenges to maintaining strong economic infrastructure and comparative advantages,”¹⁵⁴ and grants localities broad discretion to initiate “systems that are quicker on their feet.”¹⁵⁵

Adding to the discretion and creativity with which state Boards may use WIA funds, youth programs may draw on other funding sources like TANF, local, and private sources to address truancy and drop out problems.¹⁵⁶ Boards’ contracting with charter schools under the WIA and other funding sources, for example, has been common in several states in the recent past.¹⁵⁷ For students, especially high schoolers, who struggle to maintain attendance and progress in traditional settings, alternative pathways like charter schools may be advantageous.¹⁵⁸ A recent WIA public/private partnership in a disadvantaged school district in Cincinnati, Ohio recently garnered significant national media coverage.

There, Dohn Community High School, a charter school for “dropout recovery...and other at-risk students,”¹⁵⁹ and an official “academic emergency” on account of its truancy problem and 86% drop out rate, initiated a conditional cash transfer (CCT) program to encourage better attendance.¹⁶⁰ Grade requirements are not part of the program,¹⁶¹ consistent with the recent research on Learnfare.¹⁶² Using a combination of WIA and private funding,¹⁶³ under- and upper-classmen receive \$10 and \$25, respectively, for maintaining adequate attendance.¹⁶⁴ Along with these weekly cash rewards, weekly deposits of \$5 are made to individual savings accounts available to students only upon graduation.¹⁶⁵

Analysts point out that Dohn's \$40,000 initiative targets 170 of its most truant students,¹⁶⁶ which equates to \$235 per student. Reported interviews of a Dohn administrator and student provide additional support to the various social and economic justifications for conditional money incentives based on school attendance, as well as the data on long range society-wide savings discussed supra:

It may not sound like much, but a[n] administrator said, 'Our student population is 90[%] poverty... Money is important to them. We can't teach them if they're not here.' A student added, 'I'm very excited to get the money... It makes me want to come to school.... But some students don't have the money and this will help them. It's a good idea.'¹⁶⁷

As of mid-February 2012, just one week after implementing this WIA initiative, attendance at Dohn has improved 15%.¹⁶⁸

Dohn's WIA program resembles Learnfare in form and goals, but departs from Learnfare in important ways: 1) payments are made to students, not their parent(s), and 2) they are positive incentives, rather than negative penalties. In this regard, it more resembles Ecuador's BDH conditional cash transfer program, despite the lack of payment to parent(s) of the youth participants. Yet, Dohn's program keeps to the spirit of the WIA by solving the truancy problem at the local level utilizing innovative networking,¹⁶⁹ and local partnerships with combined funding sources, to achieve outcomes that increase at-risk youths' probability of becoming productive citizens as adults.¹⁷⁰ While these aspects bode well for continued funding under WIA, additional time and research is needed to assess the program's longer term benefits, as was the case for Learnfare in Wisconsin.

WIA youth programs, more generally, have already attracted criticism. The comprehensive services are said to be overlapping and potentially redundant with existing institutions,¹⁷¹ and, along with "a fragmented funding environment,"¹⁷² render WIA youth programs inefficient.¹⁷³ Like for Learnfare, lack of standardized data collection and reporting has also been noted as an area of improvement.¹⁷⁴ Other critiques stem from the involvement of private youth services organizations and charter schools in that they may be reluctant to service the most difficult youth due to cost considerations.¹⁷⁵

Although not present in the WIA literally, high school completion is implicitly recognized as a "barrier to employment." Lack of standardization and comprehensive reform in this area, along with the attendant downstream consequences of truancy and dropping out, has been described by experts as "the price of delayed investment in education."¹⁷⁶ According to a school principal interviewed in one Colorado study, "schools 'need kids in class for schools to do their jobs.'"¹⁷⁷ This sentiment is fitting in light of the Dohn experiment—for the poorest U.S. families, as well as their school districts, treating school attendance as "jobs" for such youth may provide the level of engagement necessary to lower high school drop out rates and the many associated costs to society.

Programs like Dohn's appear to be cost effective, and should provide a basis for standardizing federal funding based on simple income-qualification like the food stamps program. Indeed, high school completion is typically the minimal qualification for substantial gainful employment in the U.S.,¹⁷⁸ and, like a minimal level of nutrition, federal support to all of the poorest families with school age children can improve school attendance among this population. Decades of research, in the U.S., as well as in Ecuador and elsewhere, strongly supports the effectiveness of conditional welfare to reduce truancy (whether as applied to parent(s), students, or both). Although U.S. programs are still largely experimental, they involve simple models that can, with minimal improvements enacted, be easily administered locally, state-, or federal-wide, as the

case may be. By expanding upon experimental programs like Dohn in Ohio, and collecting the lessons learned from the many local initiatives, the U.S. has an opportunity to address truancy and educational neglect with new tools requiring comparatively little investment per student to provide long-range benefits in far-reaching sectors of society.

III. Discussion of Truancy and Educational Neglect Policies in Ecuador

Latin America is a place where, “most of the region’s children are poor and most of the poor are children”—minors are “42 percent of the [] population and 43 percent of all persons living below the poverty line.”¹⁷⁹ In addition, negative stereotypes of poor youth persist, including simultaneous perceptions of danger to the upper- and middle-classes, and a “notion that the children of the poor [can] be perfected and shaped to the ideals that the dominant classes [believe] necessary for the development of the nation-state.”¹⁸⁰ Constant economic inequality throughout Latin America’s social history, exacerbated more recently by neoliberal economics, is said to be the root of the problem.¹⁸¹

Like in the U.S., economic reforms cutting back social welfare programs in the midst of high unemployment due, in part, to “concentration of investment in capital- and knowledge-intensive enterprises,”¹⁸² have tended to isolate poor youth, including educationally.¹⁸³ These entrenched ways of life and their ideological justifications render difficult the problems of truancy and educational neglect, and create a significant disconnect between sweeping rights and actual implementation.¹⁸⁴ Despite these challenges, the BDH CCT program has operated to the benefit of poor families mainly apart from child protective systems,¹⁸⁵ which themselves experience mixed success in effectuating Ecuadorian children’s constitutional right to education.¹⁸⁶

A. Truancy and Educational Neglect Laws

Symptoms of poverty increased during the rapid urbanization of Latin America in the mid- to late-20th century, and corresponded to the establishment of the formal “framework of the child welfare system.”¹⁸⁷ Among the most visible symptoms were street children attempting to contribute income to their families, rather than attending school (if they were able to afford necessary uniforms or other materials).¹⁸⁸ Like truants generally, they are at higher risk of numerous evils,¹⁸⁹ despite the fact that “their aspirations for the future are only somewhat more muted than for their counterparts in conventional family settings.”¹⁹⁰ Despite the difficulty in mounting widespread rehabilitative programs, the dominant view of Latin American social workers regarding truant street children was that they “have been damaged by the circumstances of their lives and human programs that stress[, for example,] education[,]. . . will prepare them for a meaningful future.”¹⁹¹

Earlier, truant children were subject to parochially-assisted Junta regulation to combine domestic work in higher class families with “basic practical education. . . [in] a process of ‘human refinement’[,] civilization and moralization.”¹⁹² The “child as a subject of value” concept¹⁹³ in 1920s to 1950s institutions “emphasized the economic productivity of the child[,]. . . weigh[ing] the economic value generated by children’s capacity to work against the caring work that adults invested in the child through their upbringing.”¹⁹⁴ Akin to social contract theory as applied in the U.S., children receiving such beneficial intervention and education were expected to compensate with work and further development “of their productive potentials.”¹⁹⁵ The perhaps unintended, but beneficial, consequences of these programs were the generation of enhanced child protection sentiments and philanthropy to poor, truant youths:

The first [major development] was the emergence of a philanthropic approach in the work of benevolence[,] advocat[ing] the strengthening of the human potential of the urban poor through moral advice and education. The second major development concerned a professional turn in public assistance through the implementation of the first Ecuadorian child code and the establishment of an integrated system of child welfare under the Ministry of Social Welfare in 1938. Informed by international currents channelled through the Pan-American Child Congresses, the Instituto Interamericano del Niño and the U.S. Children's Bureau, child protection became a scientific public concern. The profession of social work implemented these new principals of childhood [] in practice."¹⁹⁶

The new Children's Codes established courts and councils with protective, as well as educational roles, and lessened emphasis on punitive measures.¹⁹⁷ Establishing the institutional structure under these early reforms was slow and divergent,¹⁹⁸ appearing first in urban centers, and preoccupied "with what [has been labeled], 'the pathology of children in its dual form: children in danger—those whose upbringing and education leaves something to be desired, and dangerous children, or delinquent minors.'"¹⁹⁹

Later legal reforms starting in the 1980s shifted the approach from children as "objects of protection" to children as "subject[s] of rights," as well as "receiver[s] of welfare and security."²⁰⁰ Education-related child welfare legal reforms in Ecuador were rapid:

The 1998 Constitution included a chapter on the right to education with 14 articles, from 66 to 79, which stress[] education as the inalienable right of individuals and the duty of the State, society and family. It is a priority area of public investment, a requirement for national development and a guarantee of social equity. It is provided that public education will be secular at all levels, compulsory through the primary level, and free through high school or its equivalent. Public establishments will provide, without cost, social services to those in need. Students living in extreme poverty will receive specific subsidies. Moreover, the budget allocation must be at least 30 per cent of the total current revenue of central Government.²⁰¹

In 1990, Ecuador also became the first Latin American nation to ratify the U.N. Convention on the Rights of the Child, which prompted revision of the Children's Code,²⁰² despite strongly adverse opposition.²⁰³ A state priority of Ecuador is to become "a model for Latin America with regard to implementing and applying the Convention."²⁰⁴

Parents or legal guardians of school age youth may be sanctioned for forms of educational neglect that violate the constitution through "negligent treatment or grave or repeated neglect in fulfilling obligations towards children and adolescents relating to provision of [] education."²⁰⁵ More generally, under the Children's Code, such neglect is a breach of parents' "duty to respect, protect and develop the rights and freedoms of their children[, which] they are therefore obligated to make appropriate provision to meet."²⁰⁶

Under Ecuador's modern decentralized child welfare system,²⁰⁷ the constitutional rights to education may be enforced by either local courts or by Juntas (Municipal Councils).²⁰⁸ The child protective system, like the U.S.'s,²⁰⁹ operates under the best interest of the child principal, and has broad jurisdiction and enforcement powers over each and every public and private entity in Ecuador.²¹⁰ The right to education is found in the constitution, updated in 2008, and, like pertinent provisions of the Children's Code, is nearly identical to the U.N. Convention.²¹¹ The new constitution, and laws promulgated thereunder, mandate that youth finish 14 years of education through high school.²¹² Unlike the U.S., all Ecuadorians have a duty to report suspected viola-

tions of children's rights of any kind.²¹³

The Children's Code provides for an advisory National Council for Child Protection, which, along with Ministries (i.e. Education, and Social & Economic Inclusion) and other institutions in the National Independent Protectional System for Children and Adolescents (SPIDNA), formulated a Good Living and Well-Being Plan to be effectuated by Municipal Councils.²¹⁴ Pursuant to the Plan, these local independent bodies protect and vindicate rights to education, though only courts may declare them.²¹⁵ They also may coordinate with private, non-governmental organizations (NGOs) in an integrated fashion.²¹⁶ While each locality's Municipal Council is unique, they generally consist of social workers, lawyers, psychologists, and their support staff, and take a holistic, multi-disciplinary approach to ensuring schools', parents', and others' compliance with children's right to education.²¹⁷

Municipal Councils are the preferred venue to courts for poorer families because attorneys are not required, the Councils are, perhaps, more attuned with local conditions and people, and turnaround times are faster.²¹⁸ Despite their less formal, alternative dispute resolution nature, the Councils' authority includes sanctioning parties who they find to have violated children's rights; for example, parent(s) found to have negligently contributed to their children's lack of enrollment or excessive unexcused absence from school may be fined \$100 to \$500.²¹⁹ Post-sanction follow up surveillance is also within the purview of the Council, and one or the other, or both, may be ordered in such cases.²²⁰

In Quito, Council sanctions against parents for educational neglect are rare; more often, it is schools that are sanctioned for denial of children's right to education.²²¹ Commonly, and due to resource constraints like school shortages and a frequent need (or want) for families to pay private school tuition, children may be denied admittance or may be expelled for minor rule violations without adequate due process.²²² For example, parents who, due to financial hardship, stop paying tuition at private schools midway through the year can seek Council intervention to provide continuity through the remaining term until alternate arrangements are made.²²³

Such education cases may also involve violations of other children's rights, as where a child's private school publically announced her parents' tuition arrears, an offense to personal integrity under the constitutional right to life.²²⁴ Others beside families and children may also come to the attention of Councils. For example, employers may violate children's right to education and be sanctioned by Councils under various Labour Code regulations "limiting the workday for adolescents [to ensure proper] school attendance."²²⁵ Municipal Councils, however, tend to defer to courts where, after an initial hearing, greater than two rights violations are alleged.²²⁶

Unlike the U.S., truancy is not a juvenile penal offense in Ecuador.²²⁷ However, given the statutory requirement that youths attend school, Municipal Councils may intervene with the child and the family to ensure they adequately attend school.²²⁸ If, upon investigation, the parent(s) are found to have not been a causal factor in the child's truancy, then no sanctions are imposed on them.²²⁹

Apart from the monitoring order, discussed above, the Council also has at its disposal various ancillary supportive services set up under the national child protection scheme.²³⁰ However, unlike the Councils themselves, these aspects of the "operative" portions of child protection are considered to be widely non-existent to the many citizens in need of them.²³¹ This has not escaped the attention of lawmakers, who have executed various decrees designed to mobilize resources to improve education and child protective systems in the recent past.²³² However, as in earlier reform experiences, the declaration and enforcement of the new constitutional rights of children has not necessarily translated to reality for child protective systems.²³³

B. Bono de Desarrollo Humano Conditional Cash Transfers

After colonial tribute systems vanished from Ecuador in 1857, ruling classes called for full citizenship for all, yet exclusionary practices toward the poor majority remained entrenched, including in so-called “civilizing projects.”²³⁴ Following WWII, Latin American policymakers incorporated a flavor of Keynesianism, recognizing that enhanced standards of living do not necessarily and automatically come about from economic development—state-mediated interventions are required.²³⁵ Around this time, attempts were made to more specifically address symptoms of poverty, and integrate them “into an overall development strategy.”²³⁶ Completed in the middle of the last century, the new state-funded and operated child welfare systems of Latin America largely consisted of merged, already existing institutions in both the public and private sectors.²³⁷

Unlike in the developed world, Ecuador’s welfare state is, and has been, comparatively weak and under-funded relative to the vast numbers of youth living in poverty there.²³⁸ As a result of these challenges,²³⁹ innovative (and, what some call, “manipulative”) approaches under a neo-liberal model developed to attempt to make the most of what limited resources were available.²⁴⁰ While many such initiatives addressed criticisms ranging from excessive and prolonged youth institutionalization to lack of preparation for adult livelihood,²⁴¹ those that replaced them met many of the same, and other, charges, despite improvements made.²⁴²

Nevertheless, child poverty rose sharply in the 1980s, resulting in calls “for new social development initiatives...stress[ing] the household as the basic unit of economic analysis against which development should be measured and at which projects should be targeted.”²⁴³ For the truancy and educational neglect problems, for example, UNICEF stressed “structurally-oriented policy solutions” and self-help approaches to effectuate, for example, children’s “right[s] to education, ...and [] full citizenship.”²⁴⁴ This approach appears to persist in modern initiatives and investments aimed at increasing utilization of children’s right to education to yield sustainable “human capital” and improved individual opportunity.²⁴⁵

In the 1990s, this household-based economic focus brought about widespread use of CCT programs designed to both provide financial welfare assistance, and to incentivize individual behaviors like parents ensuring their children attend school, which are beneficial to individual and collective economic growth.²⁴⁶ All but three Latin American nations had implemented CCTs by 2008—Ecuador’s BDH CCT covered 100% of its poorest citizens by that time²⁴⁷—with CCTs amounting to 8 to 30% of per household money inflows, at a cost of 0.1 to 0.6% GDP in the region.²⁴⁸ Similar to their involvement in opening new global markets to Latin America, the World Bank and related bodies have been instrumental in better integrating successful programs like BDH across government sectors, improving benefit access to families, assessing goals and impact, and helping to ensure appropriate beneficiaries are not excluded.²⁴⁹

Through school attendance incentives to “ensure greater access to this basic service that increases the chances of escaping poverty,” the objectives of Ecuador’s BDH program are the reduction of both individual and structural poverty in the poorest fifth of families with school age youth.²⁵⁰ These bonos (as they are colloquially called in Ecuador) were also meant to address malnutrition in children—a re-emerging issue in the U.S., as in food deserts²⁵¹—by encouraging access to school-provided meals set up through the efforts of various state actors including the Ministry of Education’s School Food Programme.²⁵²

Ecuador’s CCT program was designed by UNICEF, is administered by the Social Protection Programme of the Ministry of Economic and Social Inclusion,²⁵³ and is funded through taxation.²⁵⁴ After some refinements and combinations of earlier programs (Bono Solidario, Beca

Escolar, and Programa de Alimentacio Escolar), BDH in its current form was established by decree on April 25, 2003.²⁵⁵ In addition to initial income qualifications, continued eligibility for BDH is conditioned on enrollment and at least 90% attendance, aside from excused absences, for dependent youth students over age 6.²⁵⁶ The BDH “bonus” welfare accounts for 10% of such families’ financial input for the poorest households in Ecuador,²⁵⁷ and was increased from \$15 to \$30 per month in February 2007.²⁵⁸ Recently, the state has made additional targeted grants of school uniforms and books.²⁵⁹

As in analogous U.S. debates, CCTs like BDH have met vociferous opposition since they began. Aside from the work-over-welfare ideal and an aversion to substantial and direct social welfare spending—which, critics argue, may be spent or bartered on illicit goods—budgetary and economic stability grounds are also cited.²⁶⁰ As administered, BDH is also considered by some to be either over- (benefiting students’ families who are not statutorily eligible), or under-inclusive (as by relying on simpler qualification schemes like geographical areas where, in fact, pockets of poverty may exist).²⁶¹ BDH proponents, themselves, cite, *inter alia*, more responsive inflationary adjustments, efforts to lessen stigmatization, and more efficient administration as areas of improvement.²⁶²

Despite opposition, significant research demonstrates BDH’s effectiveness in both its target populations and child welfare outcomes. Over the last decade, several evaluations of BDH-incentivized enrollment increases among 12 to 17 year old students revealed that, despite family-supportive work responsibilities exerting great pressure against the desired end result, and other restrictive factors, along with negative correlative effects of various observable family/demographic risk factors, BDH CCTs consistently reduced truancy among the poorest fifth of families.²⁶³ Enrollment in that age group rose by 10%, while lowering student work pressures by 17%.²⁶⁴ Although the rise in enrollment is not of great magnitude, considering that primary school enrollment was already approaching 90% despite the “broken” state of operative portions of Ecuador’s child protective system,²⁶⁵ this is a significant achievement. Other supportive studies have found that the majority of BDH recipients are receptive to the policy goal of reducing truancy, they use the bonos for essentials like food, medicine, or education, and they consider them to have a considerable positive impact on their standards of living.²⁶⁶

Conclusion

The research discussed above reveals a number of commonalities between laws and policies in the U.S. and Ecuador with regard to dealing with truancy and educational neglect. For both nations, these child welfare problems are causes for great concern, and interventional mechanisms are firmly in place. Both nations recognize that poverty, and its related risk factors,²⁶⁷ lead to greater likelihoods that poor youths will exhibit truancy problems, drop out of high school, and be subject to educational neglect at higher rates,²⁶⁸ with their resulting long term costs to society. Moreover, state child protection systems continue to be overburdened in both the U.S.²⁶⁹ and Ecuador,²⁷⁰ leading to innovations in policies and practices in hopes of more efficient utilization of scarce financial and human resources, and better outcomes.

Although recent attention by experts (e.g., Columbia University’s 2010 Opportunity Nation Conference) has focused on adopting developing nations’ programs like microfinance²⁷¹ and social policy bonds²⁷² to address U.S. poverty, conditional positive incentives like Dohn Community High School’s WIA program are relatively recent innovations.²⁷³ They also resemble Ecu-

dor's BDH CCTs in a number of ways. Both draw upon substantial research showing the power of positive financial incentives to influence human behavior. The Dohn program, and others like it, also appear to have considered Learnfare's drawbacks by abandoning conditional penalties in favor of conditioned positive incentives.²⁷⁴ Despite their variety, such programs, like Learnfare, have shown substantial improvements in these education-related measures of child well-being.

What is remarkable about these U.S. initiatives, from a comparative law perspective, is how well-aligned their ultimate goals and policy justifications are with Ecuador's BDH CCT: reduce poverty, improve human capital for sustainable economic growth, reduce truancy and drop out rates, discourage educational neglect, and improve child welfare generally. Moreover, the "obstacles preventing [poor youth] from coming to school on a consistent basis"²⁷⁵ in both nations are very similar: logistical and material challenges such as transportation, lunch, clothes, and supplies.²⁷⁶ As they have in Ecuador, modest CCTs, on top of existing welfare programs—to either U.S. parents, students, or both—when effectively monitored and enforced, can provide poor families the additional means to ensure school attendance. Considering the lessons learned from BDH, Learnfare, and early data on Dohn's WIA program, positive financial incentives to both parents and students appear to show the most promise.²⁷⁷

A uniform, federally funded, school attendance-conditioned CCT program in the U.S. can yield similar success for education-related child welfare problems as food stamps have for malnourishment. While other initiatives like WIA Youth Grants and Learnfare can continue to play a role, their lack of uniformity, and inconsistent competitive funding processes have been the bases of many criticisms. As they are irregularly implemented, they yield irregular results,²⁷⁸ and their quantifiable experiences are difficult to compare in a standardized fashion across states and localities. They also may suffer from the under- and over-inclusion defects cited as one of BDH's areas for improvement. As for food stamps, standardizing eligibility and availability of school attendance-conditioned CCTs under a federal scheme is needed to realize their full effect.

The BDH CCT has been said to be not comprehensive enough to provide the necessary support to Ecuador's at-risk youth.²⁷⁹ Contrasting this critique to WIA Youth Grant programs', which some have said can be redundant and inefficient, provides a fitting segue to envisioning new truancy and educational neglect reduction strategies for the U.S. and Ecuador which draw upon the experiences of both. What makes CCTs attractive is not only their effectiveness, but also their administrative simplicity.²⁸⁰ Ecuador's BDH CCT relies upon "an independently verified proxy-means-testing targeting system" called Sistema de Seleccion de Beneficiarios (SelBen) which includes an interview, rather than wholly self-reports as in the past.²⁸¹ This has been shown to properly target the intended poorest fifth of families with school age children.²⁸² Importantly, the administrative burden of monitoring and reporting attendance has been cited as a barrier to further progress of school attendance CCTs in both countries.²⁸³ As the U.S. has done with the No Child Left Behind Act, which requires school reporting of attendance as a condition of federal funding, Ecuador may adopt a similar strategy, along with improved and streamlined data systems, to ensure the conditional BDH incentives continue to operate as intended.

With improved data infrastructure, and better access to information by beneficiaries and administrators, information about family income, age, and school enrollment and attendance status of children can be integrated into existing welfare qualification schemes, as in Ecuador's SelBen and the U.S.'s food stamps. This can reduce the need for intrusive and stigmatizing home visits, which may detract from compliance and goals. All U.S. states rely on such systems for targeting and administering federal TANF and WIA funds.

To make the conditional incentive really matter in the lives of the poorest U.S. families, the school attendance data required under No Child Left Behind can be made available to local TANF administrators. As in Learnfare, education-related child welfare interventions would occur after continued non-compliance signals deeper problems. The research presented here suggests that, with such CCTs, the need for interventions on account of truancy and educational neglect may be significantly reduced, and resources freed to focus on more immediate and egregious child abuse and neglect cases.²⁸⁴ This has been the experience of the food stamps program,²⁸⁵ which, like BDH, is credited with greatly reducing child malnourishment, and even abuse, in the U.S.²⁸⁶

The placing of conditions upon receipt of state-funded welfare also has the potential to appeal to a broader spectrum of political ideals in both nations (i.e., work-over-welfare and social contract theories).²⁸⁷ Additionally, bonuses for teachers who work to enhance the attendance and graduation rates of their students may augment BDH²⁸⁸ and U.S. CCT programs in an analogous manner to U.S. teacher pay-for-performance proposals.²⁸⁹ These, and similar lines of thought place more of the responsibility upon families, which may influence other child welfare-supportive behaviors. They provide greater stakes for citizen participation in their communities. They recognize that, while state child welfare institutions serve essential functions when interventions are necessary for children's best interests, innovative policies which reduce the strain on such resources by solving issues related to school attendance and completion serve the best interests of society.²⁹⁰

Endnotes

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² Anne Kellogg, *America's Children—The Well-being of America's Children*, in *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases 1–2* (Donald N. Duquette & Ann M. Haralambie eds., 2d ed. 2010) [hereinafter *Child Welfare Law and Practice*] (citing Centers for Disease Control and Prevention, *Understanding Child Maltreatment: Fact Sheet 2010*, available at <http://cdc.gov/violenceprevention/pdf/CM-factsheet-a.pdf>).

³ *Ch. 2: Definition and Scope of Neglect*, in *Child Neglect: A Guide to Prevention, Assessment and Intervention* (2006), <http://www.childwelfare.gov/pubs/usermanuals/neglect/chaptertwo.cfm> (internal citations omitted); see also Diane DePanfilis, *Child Neglect: A Guide to Prevention, Assessment and Intervention 3* (2006), <http://www.childwelfare.gov/pubs/usermanuals/neglect/chaptertwo.cfm>.

⁴ See, e.g., Steven M. Cytryn, Note, *What Went Wrong? Why Family Preservation Programs Failed to Achieve Their Potential*, 17 *Cardozo J.L. & Gender* 81, 89 & n.57 (2010) (In the U.S., child “[n]eglect is 44 times more common in poor families.”); Andrea Charlow, *Race, Poverty, and Neglect*, 28 *William Mitchell L. Rev.* 763, 779 (2001) (“[I]ntractable problems (lack of education and poor job skills) that cause extreme poverty contribute to maltreatment.”).

⁵ See, e.g., D.C. Code Ann. § 16-2301(9)(B) (2001) (“stating that a neglected child is one who is without proper . . . education as required by law, . . . and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian”); *Definition and Scope of Neglect*, supra note 3 (providing links to relevant state statutes); Kathleen A. Bailie, *The Other ‘Neglected’ Parties in Child Protective Proceedings: Parents in Poverty and the Role of Lawyers Who Represent Them*, 66 *Fordham L. Rev.* 2285, n.83 (1998) (N.Y. Fam. Ct. Act § 1012(f)’s neglect definition is similar to D.C.’s, while Ind. Code Ann. § 31-32-1-1 does not qualify it with “not due to financial means”); see also United Nations, *Convention on the Rights of the Child, Consideration of Reports Submitted by States Under Article 44 of the Convention, Ecuador, CRC/C/Ecuador/4*, 68 at ¶ 307, 95 at ¶ 417 (July 10, 2009), available at www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.Ecuador.4.doc [hereinafter *CRC Ecuador 4*].

⁶ Cynthia R. Mabry, *Second Chances: Insuring that Poor Families Remain Intact by Minimizing Socioeconomic Ramifications of Poverty*, 102 *W. Va. L. Rev.* 607, 611 (2000).

⁷ Kellogg, *supra* note 2, at 1–2 (citing Annie E. Casey Foundation, 2009 Kids Count Data Book (July 28, 2009), available at <http://www.aecf.org/kidscount>).

⁸ See, e.g., Marvin Ventrell, *The History of Child Welfare Law*, in, *Child Welfare Law and Practice* 191.

⁹ CRC Ecuador 4, 68 at ¶ 307, 95 at ¶ 417.

¹⁰ U.S. Const.; David Boaz, *Education and the Constitution*, Cato@Liberty (May 1, 2006, 10:25 AM), <http://www.cato-at-liberty.org/education-and-the-constitution/>

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¹² *Id.* (citing *The Economic Costs of Poverty: Testimony Before the U.S. House Committee on Ways & Means*, 110th Cong. (2007) (statement of Harry J. Holzer, professor and visiting fellow at the Georgetown Univ. Urban Inst.), available at <http://www.urban.org/publications/901032.html>).

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¹⁴ See Laura Faer & Catherine Krebs, *Counting All Children: ABA Conference Focuses on Truancy* (Nov. 12, 2010), <http://apps.americanbar.org/litigation/committees/childrights/content/articles/111210-truancy.html>.

¹⁵ E.g., Kellogg, *supra* note 2, at 12 (citing Rebecca A. Colman & Cathy Spatz Widom, *Childhood Abuse and Neglect and Adult Intimate Relationships: A Prospective Study*, 28/11 *Child Abuse & Neglect* 1133 (2004)).

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¹⁷ *Id.*

¹⁸ Jesse Lubin, Note, *Are We Really Looking Out for the Best Interests of the Child? Applying the New Zealand Model of Family Group Conferencing to Cases of Child Neglect in the United States*, 47 *Fam. Ct. Rev.* 129, 137 (2010); see also Mabry, *supra* note 6, at 625.

¹⁹ See, e.g., Peter Whoriskey, *U.S. Manufacturing Sees Shortage of Skilled Factory Workers*, *Wash. Post* (Feb. 19, 2012), http://www.washingtonpost.com/business/economy/us-manufacturing-sees-shortage-of-skilled-factory-workers/2012/02/17/gIQAo0MLOR_story.html; Harry J. Holzer & Robert I. Lerman, *Georgetown Univ. Urban Inst., America’s Forgotten Middle-Skill Jobs: Education and Training Requirements in the Next Decade and Beyond* (2007), available at http://www.urban.org/UploadedPdf/411633_forgottenjobs.pdf; Catherine Rampell, *Preparing Today’s Workers for Tomorrow’s Jobs*, *N.Y. Times* (July 13, 2009, 6:59 PM), <http://economix.blogs.nytimes.com/2009/07/13/preparing-todays-workers-for-tomorrows-jobs/>.

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²³ *Id.* at 3 (both are known truancy risk factors).

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²⁶ Robert Hauser et al., *High School Dropout, Race/Ethnicity, and Social Background from the 1970s to 1990s*, in, *Dropouts in America 85–106*.

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²⁸ *Truancy Jigsaw 4–6*.

²⁹ Daan Braveman & Sarah Ramsey, *When Welfare Ends: Removing Children from the Home for Poverty Alone*, 70 *Temp. L. Rev.* 447 (1997).

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³¹ See, e.g., Mabry, *supra* note 6, at 638, 648.

³² Reynolds, *supra* note 1.

³³ *Id.*

³⁴ Kellogg, *supra* note 2, at 1 (citing World Bank, World Development Indicators Database (Gross Domestic Product 2008) 1 (2010), available at <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf>).

³⁵ Krysten Urchick, U.S. Education Law: Is the Right to Education in the U.S. in Compliance with International Human Rights Standards? (2007), available at <http://www.law.msu.edu/king/2007/Urchick.pdf>. Various court cases have breached, but not corrected, this concern. Notably, the U.S. Supreme Court took on what many consider the fullest examination of the issue, yet did not elevate education to a fundamental constitutional or substantive due process right, in striking down, on Equal Protection grounds, a state statute requiring children of undocumented aliens to pay tuition for public schools. The Court cited the numerous ill-effects on child well-being from lack of education for this, often among the poorest, segment of the U.S. population. See *Plyler v. Doe*, 457 U.S. 202 (1982) (Brennan, J.).

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⁴² U.S. Dep't of Education, *supra* note 13.

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⁴⁸ *Id.* at 3; see Thomas Dee, *Conditional Cash Penalties in Education: Evidence from the Learnfare Experiment*, at 1 (NBER Working Paper Series, July 2009), available at <http://www.virginia.edu/economics/Workshops/Spring2010/dee.pdf>.

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⁵⁴ *Truancy Jigsaw* 19-20.

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⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* (a concept often referred to as the “carrot and the stick”).

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⁶³ *Id.*

⁶⁴ Ann M. Haralambie, *Physical, Sexual, and Emotional Child Abuse and Neglect*, in, *Child Welfare Law and Practice* 36 (citing *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)).

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⁷⁶ Dee, *supra* note 48, at 22.

⁷⁷ Heilbrunn, *supra* note 68, at 2, 10.

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⁷⁹ *Prevalence of Truancy* 67.

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⁸² Dee, *supra* note 48, at 21.

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⁸⁸ Implications of Truancy 3.

⁸⁹ *Truancy Jigsaw* 1.

⁹⁰ *Id.*

⁹¹ Implications of Truancy 4.

⁹² *Prevalence of Truancy* 1.

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⁹⁴ *Id.*

⁹⁵ Dee, *supra* note 48, at 22.

⁹⁶ *Denver Public Schools* 3.

⁹⁷ *Id.*

⁹⁸ *Id.*

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¹⁰⁰ Denver Public Schools 3.

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¹¹⁰ See *id.* at 23–24.

¹¹¹ *Cf. id.* at 42–43.

¹¹² *Id.* at 24.

¹¹³ *Id.* at 40–41.

¹¹⁴ *Id.* at 41–42.

¹¹⁵ *Id.* at 42.

¹¹⁶ *Id.*

¹¹⁷ *Wisconsin Learnfare Program*, Hrg. before the Subcomm. on Soc. Sec. and Family Pol'y of the Comm. on Finance, U.S. Senate, 101st Cong. 2, S. Hrg. 101–1194, at 1–2 (June 18, 1990).

¹¹⁸ *Id.* at 4, 7 (“[I]t’s not only a problem for minorities, it’s a problem for Americans.”).

¹¹⁹ See Dee, *supra* note 48.

¹²⁰ See, e.g., Alexander Nguyen, *No Fanfare for Learnfare*, *The American Prospect* (Dec. 7, 2001), <http://prospect.org/article/no-fanfare-learnfare>.

¹²¹ See, e.g., Ohio Rev. Code § 5107.28, available at <http://codes.ohio.gov/orc/5107.28>; N.Y. Health Code § 351.12, available at <http://w3.health.state.ny.us/dbspace/NYCRR18.nsf/56cf2e25d626f9f785256538006c3ed7/1ee2356fd3bdde018525672200768bd2?OpenDocument>; Wisconsin Works (W-2)—Learnfare, Wisc. Dep't of Children & Families, <http://dcf.wisconsin.gov/w2/learnfare.htm> (last visited May 5, 2012); Learnfare Program: Education Fact Sheet 2010-11, Florida House of Representatives, http://www.myfloridahouse.gov/FileStores/Web/HouseContent/Approved/Web%20Site/education_fact_sheets/2011/documents/2010-11%20Learnfare%20Program.3.pdf (last visited May 5, 2012).

¹²² J. Larry Brown, Tufts Univ., *Summary of State Welfare Waiver Requests* 7 (1995) (AR, CA, FL, DE, IN, MA, MS, NE, NY, OH, OK, SC, VA, WI, WY).

¹²³ *Wisconsin Learnfare Program*, *supra* note 117, at 4, 8, 73.

¹²⁴ Gustafson, *supra* note 37, at 380.

¹²⁵ Wisconsin State Legislative Council, *Compulsory School Attendance and Truancy Laws*, Information Memorandum 98–27, at 36–37 (1998).

¹²⁶ *Id.*

¹²⁷ *Wisconsin Learnfare Program*, *supra* note 117, at 89.

¹²⁸ *Id.* at 8.

¹²⁹ *Id.* at 83.

¹³⁰ *Id.*

¹³¹ Dee, *supra* note 48, at 6–7, 20–21.

¹³² *Wisconsin Learnfare Program*, *supra* note 117, at 5.

¹³³ *Wisconsin Learnfare Program*, *supra* note 117, at 4.

¹³⁴ *Id.*

¹³⁵ Dee, *supra* note 48, at 21.

- ¹³⁶ *Id.* at 21.
- ¹³⁷ Gustafson, *supra* note 37, at 42–44.
- ¹³⁸ *Id.* at 44.
- ¹³⁹ Workforce Investment Act (WIA), County of Maui Hawaii, <http://www.co.maui.hi.us/index.aspx?NID=1769> (last visited May 5, 2012).
- ¹⁴⁰ Nevada’s Workforce Investment System, Nevada Dep’t of Employment, Training & Rehabilitation, http://detr.state.nv.us/worforce_investment_pages/workforceinvestment.htm (last visited May 5, 2012).
- ¹⁴¹ Wisc. Dep’t of Workforce Devel., Part 2—Workforce Investment Act Program Guide, at 2–102, *available at* http://dwd.wisconsin.gov/dwdwia/workforce_guide/part2/part2_chi.pdf.
- ¹⁴² DOL Information Related to the American Recovery and Reinvestment Act of 2009, U.S. Dep’t of Labor, <http://www.dol.gov/recovery/implement.htm> (last visited May 5, 2012).
- ¹⁴³ Eric Krell, *Retool Your Public-Private Partnership*, Society for Human Resource Management (Apr. 1, 2012), <http://www.shrm.org/Publications/hrmagazine/EditorialContent/2012/051>.
- ¹⁴⁴ Nanette Relave, *The Finance Project, Finding Resources to Support Workforce Development Services for Youth 12 (2006)*, *available at* <http://www.eric.ed.gov/PDFS/ED499564.pdf>.
- ¹⁴⁵ Workforce Investment Act (WIA) Youth Program, Arizona Dep’t of Econ. Sec., <https://www.azdes.gov/main.aspx?menu=322&id=2052> (last visited May 5, 2012).
- ¹⁴⁶ Relave, *supra* note 144, at 5.
- ¹⁴⁷ *Id.*; Annie E. Casey Foundation, *Workforce Investment Act (WIA)—Title I, Youth: Funding Integrated Service Delivery 2 (2010)*, *available at* http://www.clasp.org/admin/site/documents/files/CWF_WIA-youth.pdf (in most cases, through competitive grants).
- ¹⁴⁸ Annie E. Casey Foundation, *supra* note 147, at 2; Youth Services, U.S. Dep’t of Labor, Employment & Training Admin., http://www.doleta.gov/youth_services/ (last visited May 5, 2012).
- ¹⁴⁹ Arizona Dep’t of Econ. Sec., *supra* note 145.
- ¹⁵⁰ *Id.*
- ¹⁵¹ *Id.*
- ¹⁵² Wisc. Dep’t of Workforce Devel., *supra* note 141, at 2–104.
- ¹⁵³ Arizona Dep’t of Econ. Sec., *supra* note 145.
- ¹⁵⁴ Public Policy Priorities, *Workforce Solutions—Capital Area (Austin, TX)*, http://www.wfscapitalarea.com/index.php?option=com_content&task=category§ionid=11&id=123 (last visited May 5, 2012).
- ¹⁵⁵ Krell, *supra* note 143; Kat Aaron, *Skills and Jobs Don’t Line Up* (Investigative Reporting Workshop, American Univ. School of Comm’n, May 12, 2011), <http://www.americawhatwentwrong.org/story/skills-jobs-and-education-dont-line/>.
- ¹⁵⁶ Relave, *supra* note 144, at 7.
- ¹⁵⁷ *Id.* at 19–20.
- ¹⁵⁸ *Id.*
- ¹⁵⁹ Martha C. White, *Ohio School Uses Gift Cards to Bribe Kids to Attend Class*, *TimeMoneyland* (Feb. 16, 2012), <http://moneyland.time.com/2012/02/16/ohio-school-uses-gift-cards-to-bribe-kids-to-attend-class/>.
- ¹⁶⁰ Shauna Wright, *Ohio School Is Paying Students For Showing Up In Class*, *TheFW* (Feb. 16, 2012), <http://thefw.com/school-pays-students/>.
- ¹⁶¹ White, *supra* note 159.
- ¹⁶² *See* Dee, *supra* note 48, at 21.
- ¹⁶³ White, *supra* note 159.
- ¹⁶⁴ Wright, *supra* note 160; cf. Erica Meltzer, *Boulder County Drug Court Seeks Help from Public to Pay for Rewards*, *Daily Camera* (Apr. 25, 2012), http://www.dailycamera.com/boulder-county-news/ci_20479951/boulder-county-drug-courts-seek-help-from-public.
- ¹⁶⁵ Wright, *supra* note 160.
- ¹⁶⁶ White, *supra* note 159.
- ¹⁶⁷ Wright, *supra* note 160.
- ¹⁶⁸ *Id.*
- ¹⁶⁹ Krell, *supra* note 143.
- ¹⁷⁰ Relave, *supra* note 144, at 1, 6.
- ¹⁷¹ Krell, *supra* note 143.
- ¹⁷² Relave, *supra* note 144, at 2.

¹⁷³ Annie E. Casey Foundation, *supra* note 147, at 1.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 3.

¹⁷⁶ Aaron, *supra* note 155.

¹⁷⁷ Denver Public Schools 2.

¹⁷⁸ See, e.g., David L. Silvernail et al., Center for Education Policy, Applied Research, and Evaluation, Increasing Maine's High School Graduation Rate: Necessary but Not Sufficient 1 (2011), available at http://www.usm.maine.edu/sites/default/files/Center%20for%20Education%20Policy,%20Applied%20Research,%20and%20Evaluation/Increasing%20Maine%20Graduation%20Rates_F10_11RI.pdf. "As unskilled jobs become a smaller proportion of the labor market, the problem of an inadequate education becomes more critical. Those without high school degrees are encountering an ever-narrower range of job possibilities, increasing the risk of unemployment and decreasing the wages of those who do find unskilled employment." Heilbrunn, *supra* note 68, at 2.

¹⁷⁹ Francisco J. Pilotti, *The Historical Development of the Child Welfare System in Latin America: An Overview*, *Childhood*, Vol. 6(4), 408, 417 (1999) (citing UNICEF, *Los Niños de las Americas*, Santa fe de Bogata (1992)).

¹⁸⁰ *Id.* at 418–19 (citing F. Pilotti, *Crise e Perspectivas da Assistencia a Infancia na America Latina*, in *A Arte de Governar Crianças 13-45* (F. Pilotte & I. Rizzini eds., Instituto Interamericana del Niño, Universidade Santa Ursula e Amais Editora, 1995)).

¹⁸¹ *Id.* at 416-19.

¹⁸² *Id.* at 419.

¹⁸³ *Id.* ("profound social divide").

¹⁸⁴ *Id.* at 417, 420 (citing B. Glauser, *Street Children: Deconstructing a Construct*, in *Constructing and Reconstructing Childhood 145–164* (A. James & A. Prout eds., 1997)); Child protection lecture and breakout group discussion, Professor Farith Simón, Univ. San Francisco de Quito Law School, Quito, Ecuador, Mar. 27, 2012 (translated by interpreter Peter Newton-Evans).

¹⁸⁵ Oosterbeek et al., *The Impact of Cash Transfers on School Enrollment: Evidence from Ecuador 1* (World Bank 2008), available at <http://www.givewell.org/files/DWDA%202009/Cash%20Transfers/Oosterbeek%20et%20al.pdf>; cf. Pilotti, *supra* note 179, at 410.

¹⁸⁶ Sr. Andres Patron, Attorney General's Office, Quito, Ecuador, lecturing via Skype at Univ. of Colorado Law School, Feb. 6, 2012 (Ecuador's child protection system can be an "irregular system [that] yields irregular results.").

¹⁸⁷ Pilotti, *supra* note 179, at 412.

¹⁸⁸ Irene Rizzini & Mark W. Lusk, *Children in the Streets: Latin America's Lost Generation*, *Children & Youth Services Review*, Vol. 17(3), 391–93 (1995) (citing M.W. Lusk, *Street Children in Rio de Janeiro*, *International Social Work*, Vol. 35, 293–305 (1992); B. Larmer, *Mexican Street Children Opt for 'Misery with Freedom'*, *The Christian Science Monitor*, Jan. 12, 1988, at 1; W. Hoge, *UNICEF Does What it Can to Help Latin America's 40 Million Abandoned Children*, *N.Y. Times*, Sept. 11, 1983).

¹⁸⁹ *Id.* at 393.

¹⁹⁰ *Id.* at 395 (citing Lusk, *supra* note 188, at 293–305).

¹⁹¹ *Id.* at 397.

¹⁹² Esben Leifsen, *Adoption and the Governing of Child Welfare in 20th Century Quito*, *Journal of Latin American and Caribbean Anthropology*, Vol. 14(1), 70 (2009).

¹⁹³ *Id.* at 69 (citing Viviana A. Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (1994); Igor Kopytoff, *The Cultural Biography of Things: Commoditization as Process*, in *The Social Life of Things: Commodities in Cultural Perspectives 64-91* (1986)).

¹⁹⁴ *Id.* at 70–71 (2009) (citing Eduardo Kingman Garces, *De la Antigua Caridad a la Verdadera Beneficencia: Formas Historicas de Representacion de la Pobreza*, in *Antigua Modernidad y Memoria del Presenta: Culturas Urbanas e Identidad 281–309* (T. Salman & E. Kingman eds., Quito FLASCO, 1999)).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 71.

¹⁹⁷ Pilotti, *supra* note 179, at 412.

¹⁹⁸ *Id.* at 413, 416–17.

¹⁹⁹ *Id.* at 410 (quoting J. Donzelot, *The Policing of Families* (1997)).

²⁰⁰ Esben Leifsen, *Child Welfare, Biopower and Mestizo Relatedness in Quito, Ecuador*, in *Parenting After the Century of the Child 111* (Tatjana Thelen & Haldis Haukanes eds., 2010) (citing Prof. Farith Simón, *Proceso de Ad-ecucion de las legislaciones a la Convencion Internacional de los Derechos del Niño*, in *Memorias: Foro Latino-*

Americano Permanente por la Infancia 116-120 (Quito DNI, 1991)) (protectionist and paternalistic views toward childhood remained).

²⁰¹ CRC Ecuador 4, 95 at ¶ 417 (emphasis added); cf. Pilotti, *supra* note 179, at 417 (After Convention ratification across Latin America, though not necessarily in Ecuador, this was a “frenzied rush.”).

²⁰² United Nations General Assembly, Human Rights Council, Application of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council, Report of the Working Group on Arbitrary Detention, Addendum: Mission to Ecuador, A/HRC/4/40/Add.2, at 12 (Oct. 26, 2006).

²⁰³ *Id.* at 22; Pilotti, *supra* note 179, at 415-16 (citing Francisco J. Pilotti, *Algunas Características Generales de los Organismos No-Gubernamentales que Trabajan por la Infancia en América Latina y el Caribe*, Boletín del Instituto Interamericano del Niño, Vol. 229, 75-82 (1988)) (NGOs were instrumental in the Convention’s rapid ratification and related legal reforms).

²⁰⁴ Sr. Patron, *supra* note 186.

²⁰⁵ CRC Ecuador 4, 68 at ¶ 307.

²⁰⁶ CRC Ecuador 4, 50 at ¶ 199.

²⁰⁷ CRC Ecuador 4, 21 at ¶ 48; Leifsen, *supra* note 200, at 105, 108 (discussing an example of the role of a well-known NGO, Holt, in the system).

²⁰⁸ Ecuadorian child protection law group discussion, Professor Farith Simón, Univ. San Francisco de Quito Law School, Quito, Ecuador, Mar. 27, 2012 (translated by Ashley Counsineau).

²⁰⁹ Ventrell, *supra* note 8, at 195–96 (citing 42 U.S.C. § 5106(a)) (“States may not substitute judgment of a child’s interests except in rare circumstances.”); Lander, *supra* note 47, at 3; Donald N. Duquette & Mark Hardin, *Guidelines for Public Policy and State Legislation Governing Permanence for Children* (1999).

²¹⁰ CRC Ecuador 4, 32 at ¶ 97.

²¹¹ Group discussion, Junta Municipal de Quito, Dra. Grimanesa Erazo, Quito, Ecuador, Mar. 28, 2012 (translated by interpreter Peter Newton-Evans); Prof. Simón, *supra* note 208.

²¹² Dra. Erazo, *supra* note 211.

²¹³ CRC Ecuador 4, 68 at ¶ 306.

²¹⁴ CRC Ecuador 4, 12 at ¶ 18, 20 at ¶ 45, 21 at ¶ 48; Prof. Simón, *supra* note 208.

²¹⁵ Prof. Simón, *supra* note 208; Dra. Erazo, *supra* note 211.

²¹⁶ Pilotti, *supra* note 179, at 414; Dra. Erazo, *supra* note 211.

²¹⁷ Prof. Simón, *supra* note 208; Dra. Erazo, *supra* note 211.

²¹⁸ *Id.*; cf. Pilotti, *supra* note 179, at 416–417.

²¹⁹ Dra. Erazo, *supra* note 211.

²²⁰ *Id.*; Sr. Patron, *supra* note 186.

²²¹ Dra. Erazo, *supra* note 211.

²²² Prof. Simón, *supra* note 208; Dra. Erazo, *supra* note 211.

²²³ Dra. Erazo, *supra* note 211.

²²⁴ *Id.*

²²⁵ CRC Ecuador 4, 119-20 at ¶ 543.

²²⁶ Prof. Simón, *supra* note 208; Dra. Erazo, *supra* note 211.

²²⁷ Criminal law lecture, Professor Javier Andrade, Univ. San Francisco de Quito Law School, Quito, Ecuador, Mar. 27, 2012 (translated by interpreter Peter Newton-Evans).

²²⁸ Dra. Erazo, *supra* note 211.

²²⁹ *Id.*

²³⁰ Prof. Simón, *supra* note 208; Dra. Erazo, *supra* note 211.

²³¹ *Id.*; Pilotti, *supra* note 179, at 408, 410, 417 (“child welfare agencies [] are ill-equipped to embark on the institutional reform required by the new legislation”).

²³² *See, e.g.*, CRC Ecuador 4, 13 at ¶ 23.

²³³ Pilotti, *supra* note 179, at 408, 417; Prof. Simón, *supra* note 208; see also Leifsen, *supra* note 200, at 84 (“In this sense rights discourse and its implementation into public policy [] has increased the distance between public understandings and popular practices.”).

²³⁴ Leifsen, *supra* note 192, at 69–70.

²³⁵ Glenda Viviana Calvas Chavez, *Evaluación de Impacto del Bono de Desarrollo Humano en la Educación 6* (Master’s Thesis, Latin American Faculty of Social Sciences, Ecuador Headquarters, April 2010), available at <http://flacsoandes.org/dspace/bitstream/10469/2405/4/TFLACSO-2010GVCC.pdf> (Google Translator).

²³⁶ *Id.* at 6, 8–9.

²³⁷ Pilotti, *supra* note 179, at 410 (citing F. Pilotti, Plan of Action for Strengthening Child Welfare Systems in Latin America and the Caribbean, Occasional Paper Series (1989)).

²³⁸ *Id.* at 409–10 (citing G.A. Cornia, *Economic Reforms and Child Welfare: In Pursuit of Adequate Safety Nets for Children*, in *Children and the Transition to the Market Economy* 91–119 (G.A. Cornia & S. Sipos eds., 1991)).

²³⁹ *Id.* at 410 (citing S. Draibe, *Una Perspectiva de Desarrollo Social en Brasil*, in *Los Años Noventa: Desarrollo con Equidad?* 215–56 (A. Gurrieri & E. Torres Rivas eds., 1990)).

²⁴⁰ See generally Patrick C. Wilson, *Neoliberalism, Indigeneity and Social Engineering in Ecuador's Amazon*, *Critique of Anthropology*, Vol. 28(2), 128–29 (2008).

²⁴¹ Pilotti, *supra* note 179, at 410 (citing Pilotti, Plan of Action, *supra* note 237).

²⁴² *Id.* at 410, 416–417.

²⁴³ Rizzini & Lusk, *supra* note 188, at 397 (citing A. Lowenthal, *Latin America: Ready for a Partnership?*, *Foreign Affairs*, 72, 74–92 (1993) (44% of the Latin American population lived below UN's poverty level in 1993), M.W. Lusk, *New Directions in International Social Work Consultation*, InterEd: Notes from the CSWE International Commission 13, 2–3 (1993); World Bank, *World Development Report 1990* (1990)).

²⁴⁴ *Id.* at 397–98 (citing UNICEF, *Preventive Program for Children and Youths, Ages 7 to 18, with Community Participation* (1986); UNICEF, *Programa No Convencional de Atención al Niño de la Calle* (1985)) (demonstrating social contract theory's influence, and, presumably, the U.S.'s); see also Pilotti, *supra* note 179, at 414 (“community participation and self-help [is a] key approach for adequate and permanent problem solving”).

²⁴⁵ Calvas Chavez, *supra* note 235, at 8–12, 18 (In Ecuador, these social policies recognize that education is one aspect of full realization of children's potential and participation as citizens in a democratic society.).

²⁴⁶ *Id.* at 48; James W. McGuire, *Social Policies in Latin America: Causes, Characteristics, and Consequences*, ACSPL Working Paper Series, Vol. 1(1), 13–15 (Sept. 13, 2011), available at <http://wescholar.wesleyan.edu/cgi/viewcontent.cgi?article=1001&context=wps>.

²⁴⁷ McGuire, *supra* note 246, at 13–15.

²⁴⁸ *Id.*

²⁴⁹ Calvas Chavez, *supra* note 235, at 35–36.

²⁵⁰ *Id.* at 47–48, 51 (also citing the element of state control, as discussed *supra* for U.S. social welfare programs).

²⁵¹ *The Top 9 U.S. Urban Food Deserts*, *NewsOne* (Sept. 22, 2011), <http://newsone.com/1540235/americas-worst-9-urban-food-deserts/>.

²⁵² CRC Ecuador 4, 92 at ¶ 408; World Bank, *Bono de Desarrollo Humano*, Project Appraisal Document at 10, 86–87 (2006), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/05/12/000112742_20060512122806/Rendered/PDF/35064.pdf.

²⁵³ CRC Ecuador 4, 50 at ¶ 200.

²⁵⁴ Calvas Chavez, *supra* note 235, at 50. In the past several years, the Ecuadorian government has, despite major obstacles, nearly doubled its tax revenue, mainly by improving enforcement of existing tax codes. See Gonzolo Solano, *Assoc. Press, Ecuador Creating Alternative to Neo-Liberal Model*, theREALnews.com (Jan. 25, 2012), http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=7866.

²⁵⁵ Calvas Chavez, *supra* note 235, at 51; Ben Turner, *Policy Analysis of Ecuador's Bono de Desarrollo Humano Program*, MSFS-517, *Policies for Poverty Reduction*, at 3, 6 (undated), available at <http://www.scribd.com/doc/14987880/Ecuadors-Bono-de-Desarrollo-Humano-Conditional-Cash-Transfer-Program>.

²⁵⁶ Calvas Chavez, *supra* note 235, at 48, 52.

²⁵⁷ *Id.* at 48.

²⁵⁸ CRC Ecuador 4, 50 at ¶ 201; Maxine Molyneux & Marilyn Thomson, *CCT Programmes and Women's Empowerment in Peru, Bolivia and Ecuador* 20 (2010).

²⁵⁹ Solano, *supra* note 254.

²⁶⁰ McGuire, *supra* note 246, at 13–15; Calvas Chavez, *supra* note 235, at 17, 26, 48, 62; *Cash Transfers in the Developing World: In a Nutshell*, GiveWell, http://www.givewell.org/international/technical/programs/cash-transfers#footnoteref171_h1h69o2 (last visited May 8, 2011).

²⁶¹ Discussion with Mr. Alejandro Caiza Villagómez, Coordinador del Proyecto Justicia Penal Ecuador, American Bar Association (ABA) Rule of Law Initiative, Quito, Ecuador, Mar. 26, 2012; McGuire, *supra* note 246, at 13–15; Calvas Chavez, *supra* note 235, at 17, 26, 48, 62; GiveWell, *supra* note 260.

²⁶² McGuire, *supra* note 246, at 13–15; Calvas Chavez, *supra* note 235, at 62; GiveWell, *supra* note 260.

- ²⁶³ Prof. Simón, *supra* note 208; Calvas Chavez, *supra* note 235, at 48, 69, 76, 79, 81, 84; Oosterbeek et al., *supra* note 185; Turner, *supra* note 255, at 7, 11–12.
- ²⁶⁴ Maria C. Araujo & Norbert Schady, Cash Transfers, Conditions, School Enrollment, and Child Work: Evidence from a Randomized Experiment in Ecuador (World Bank 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=917501##; Turner, *supra* note 255, at 7, 11–12.
- ²⁶⁵ Prof. Simón, *supra* note 208; Pilotti, *supra* note 179, at 408, 410, 417 (“agencies [] are ill-equipped to embark on the institutional reform required by the new legislation”); Turner, *supra* note 255, at 4.
- ²⁶⁶ Calvas Chavez, *supra* note 235, at 57–60; Turner, *supra* note 255, at 11–12.
- ²⁶⁷ Kellogg, *supra* note 2, at 9–10.
- ²⁶⁸ See, e.g., Truancy Jigsaw 24; Turner, *supra* note 255, at 2, 5.
- ²⁶⁹ See, e.g., *Governor Has the Right Idea*, USA Today (Mar. 6, 2012), http://www.usatoday.com/USCP/PNI/Editorial/2012-03-06-PNI0306opi-tue-edit-1PNIBrd_ST_U.htm; Anne Elizabeth Rosenbaum, *Embracing the Strengths and Overcoming the Weaknesses of Child Protection Mediation*, 15 U.C. Davis J. Juv. L. & Pol’y 299, 326 (2011); Rebecca Aviel, *Restoring Equipose to Child Welfare*, 62 Hastings L.J. 401, 404-05, 435 n.188, 452 (2010); Clare Huntington, *Rights Myopia in Child Welfare*, 54 UCLA L. Rev. 637, 659, 698 (2006); Pilotti, *supra* note 179, at 420-421 (“Delaying th[e] task of [improving child protection systems in Latin America] can only jeopardize the delicate democratic process, which cannot survive if [much] of the population is denied full citizenship.”).
- ²⁷⁰ Dra. Erazo, *supra* note 211; Sr. Patron, *supra* note 186.
- ²⁷¹ Josh Sanburn, *Opportunity Nation: How Those Below the Poverty Line Can Move Up*, TimeMoneyland (Nov. 7, 2011), <http://moneyland.time.com/2011/11/07/opportunity-nation-how-those-below-the-poverty-line-can-move-up/>.
- ²⁷² Ronnie Horesh, *Injecting Incentives into the Solution of Social Problems: Social Policy Bonds*, Economic Affairs, Vol. 20(3), 39-42 (Sept. 2000) (“harness[ing] self-interest[.]. . . these bonds [are] tradable and [can] be redeemed only when a specified social objective ha[s] been achieved”).
- ²⁷³ Although practitioners of child welfare law have long recognized the beneficial role of modest financial incentives to procure parties’ commitment to youth interventions, see, e.g., Colene Robinson, *Child Welfare Law Office Guidebook*, 78 U. Colo. L. Rev. 1119, 1186 (2007), they are a relatively recent development in widespread truancy and educational neglect prevention programs.
- ²⁷⁴ Ecuador’s modern BDH CCT also recognized the power of positive financial incentives to effect the desired outcomes after learning lessons from its previous versions of school attendance-conditioned bonos. Turner, *supra* note 255, at 3, 5–6.
- ²⁷⁵ Hannah McCartney, *When Pizza Doesn’t Work: Fixing Dohn Community High School* (Feb. 14, 2012), http://www.citybeat.com/cincinnati/blog-2940-when_pizza_doesnt_wo.html (quoting Principal Ramone Davenport, Dohn Community High School).
- ²⁷⁶ Mr. Villagómez, *supra* note 261; Turner, *supra* note 255, at 14.
- ²⁷⁷ To date, this approach does not appear to have been evaluated in either the U.S. or Ecuador.
- ²⁷⁸ Cf. Sr. Patron, *supra* note 186.
- ²⁷⁹ Turner, *supra* note 255, at 8–9, 12.
- ²⁸⁰ *Id.* at 12.
- ²⁸¹ *Id.* at 6.
- ²⁸² *Id.* at 7.
- ²⁸³ Oosterbeek et al., *supra* note 185, at 1.
- ²⁸⁴ Cf. Leifsen, *supra* note 200, at 83.
- ²⁸⁵ See, e.g., Florida Dep’t of Health, *Prevention Pays 10* (2010), http://www.doh.state.fl.us/planning_eval/phstats/PrevPays/PreventionPays.pdf.
- ²⁸⁶ See, e.g., *Research—Federal Study on Effectiveness of Food Stamps Nearly Absent from TV News*, MediaMatters For America (Apr. 18, 2012), <http://mediamatters.org/research/201204180006>.
- ²⁸⁷ Russell Rumberger, *What Can be Done to Reduce the Dropout Rate*, in *Dropouts in America* 243-55; Turner, *supra* note 255, at 8-10.
- ²⁸⁸ Cf. Turner, *supra* note 255, at 9.
- ²⁸⁹ John Hechinger, *Obama Pushes \$5 Billion in Grants to Revamp Teacher’s Pay*, Bloomberg Businessweek (Feb. 23, 2012), <http://www.businessweek.com/news/2012-02-23/obama-pushes-5-billion-in-grants-to-revamp-teachers-pay.html>.
- ²⁹⁰ “Truancy reduction is a small investment with a big payoff.” National Center for School Engagement, *supra* note 86, at 9;

Governments need to examine whether it would be cheaper to act to avoid the contingency of unemployment or sickness, for example, or to pay for unemployment insurance and health benefits. This brings into sharp focus the relation between social security and food relief, intervention in the labor market, and other health and education programs.

Ehtisham Ahmad, *Social Security and the Poor: Choices for Developing Countries*, *The World Bank Research Observer*, Vol. 6(1), 110 (1991).