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# ALL CHILDREN ARE CREATED EQUAL TOO: THE DISPARATE TREATMENT OF YOUTH RIGHTS IN AMERICA

*Travis Johnson*†

## INTRODUCTION

Children and adolescents are the most vulnerable members of our society. From the time they are born until they reach the age of majority/adulthood, they are dependent on others for economic resources, guidance, education, and protection. The trajectory of the rest of a young person's life is often determined by the quality of the guidance, education and protection from harm they receive as minors. It is the result of this vulnerability that laws are created defining who minors are, restricting what they can do, establishing how they are to be treated, and defining the level of care and responsibility required by their parents or caregivers.<sup>1</sup>

The entire body of child welfare law in this country has been created, in large part, as a response to the reality of how vulnerable children are and their need for protection.<sup>2</sup> In addition, if one considers the disproportionate number of youth of color from low-

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<sup>1</sup> See, e.g., *Roper v. Simmons*, 543 U.S. 551, 569 (2004) (holding that the execution of a 17-year-old violated the Eighth Amendment prohibition on cruel and unusual punishment because the young person did not have the mental capacity to reflect on his or her actions as compared to an adult); *In re Winship*, 397 U.S. 358, 367 (1970) (establishing that juveniles, like adults, are entitled to the standard of proof beyond a reasonable doubt in criminal proceedings and not the standard of a preponderance of the evidence); *In re Gault*, 387 U.S. 1, 4, 13 (1967) (establishing a landmark precedent that juveniles accused of crimes in delinquency proceedings should be afforded the same constitutional protections as adults). See also William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA") of 2008 § 235(a)(4), 8 U.S.C.A. § 1232 (2012) (establishing legislation to combat trafficking in persons whose victims are predominantly women and children who are disproportionately affected by poverty, lack of access to education, chronic unemployment, and discrimination).

<sup>2</sup> See Kasia O'Neill Murray & Sarah Gesiriech, A Brief Legislative History of the Child Welfare Systems, The Pew Charitable Trust (Nov. 1, 2004), [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster\\_care\\_reform/Legislative\\_History2004.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/Legislative_History2004.pdf) (providing a chronological outline of the legislative development of child welfare laws and explaining that the law shifted from meeting children's needs to focusing on the impacts of abuse and neglect of children).

income or poor families involved in our nation's child welfare systems,<sup>3</sup> it becomes clear that race and poverty—as well as sexuality and gender—work to multiply the ways in which children who are poor, of color, female or LGBT, are vulnerable to being harmed. These factors also multiply the ways in which marginalized children are left without the necessary resources that would enable them to lead empowered, self-determined lives.<sup>4</sup>

Our country's historical reliance on the civil rights movements as a model of reform<sup>5</sup> has had negative consequences in achieving equal justice and protection for all youth.<sup>6</sup> This can be seen across our seemingly well-developed child welfare and legal systems that were created to respond to the needs of youth populations. As a result of our reliance on the civil rights model, our country has a very narrow understanding of human rights as a concept solely dealing with issues in poor, developing nations. We often fail to

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<sup>3</sup> African-American children comprise 42% of the children in foster care, while they comprise only 17% of the nation's children. Jessica E. Marcus, *The Neglectful Parens Patrie: Using Child Protective Laws to Defend the Safety Net*, 30 N.Y.U. REV. L. & SOC. CHANGE 255, 259 (2006). In urban areas, the racial disparity is greater. In New York City, one out of every 22 African-American children and one out of every 59 Latino children was placed in foster care. See Andrew White et al., *Race, Bias & Power in Child Welfare*, CHILD WELFARE WATCH, Spring/Summer 1998 Number 3, at 1, [http://www.nycfuture.org/images\\_pdfs/pdfs/Race%20Bias%20&%20Power%20in%20Child%20Welfare%20CWW%2098.pdf](http://www.nycfuture.org/images_pdfs/pdfs/Race%20Bias%20&%20Power%20in%20Child%20Welfare%20CWW%2098.pdf).

<sup>4</sup> See generally Frances Gragg et al., NEW YORK PREVALENCE STUDY OF COMMERCIALY SEXUALLY EXPLOITED YOUTH, N.Y. OFFICE OF CHILDREN AND FAMILY SERVS. 4 (2007), <http://www.ocfs.state.ny.us/main/reports/CSEC-2007.pdf> (emphasizing that youth are more vulnerable to sexual exploitation because they have low self esteem, poor judgment, and greater neediness); Symposium, *Mischief and Mayhem: A Symposium on Legal Issues Affecting Youth in the Child Welfare and Juvenile Justice Systems*, 14 CARDOZO J. L. & GENDER 609 (2008) (elaborating on the dire situation faced by LGBT youth in state custody and explaining how foster care systems across the states did not have laws prohibiting gender discrimination, which exacerbated the problem).

<sup>5</sup> See MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 211–17 (2010) (discussing how civil rights organizations have been relatively silent on the crisis of mass incarceration and how their response to the problem has been inadequate); William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2064 (2002) (“People of color, women, and gay people all came to resist their social and legal disabilities in the civil rights movement seeking to end apartheid; various feminist movements seeking women’s control over their own bodies and equal rights with men; and the gay rights movement, seeking equal rights for lesbian and transgendered people. All these social movements sought to change positive law and social norms.”).

<sup>6</sup> See generally Lisa Miller, *The Invisible Black Victim: How American Federalism Perpetuates Racial Inequality*, 44 LAW & SOC’Y REV. 805, 833 (2010) (“The promise of civil rights is the promise of inclusion; yet the vast disparity in incarceration rates between blacks, Latinos, and whites stands as an ugly reminder of the nation’s long history of race-based exclusionary practices.”).

connect the way in which our own American values promote oppression and exploitation of youth populations in ways similar to the nations we denounce and organize against as “human rights violators.” The United States as a global power is quite vocal and active in opposing the abuse and exploitation of children abroad, while being blind to the human rights violations of youth here at home.

The perfect example of the disparate consideration given to the notion of youth human rights between U.S.-born youth and those born abroad can be found in a consideration of commercially and sexually exploited youth. The United States has committed a great deal of resources to find, arrest, and prosecute individuals involved in human trafficking.<sup>7</sup> Further, it has created immigration remedies and supportive services for foreign-born, child-victims of commercial and sex trafficking.<sup>8</sup> However, many states, New York for example, have a history of arresting and prosecuting children, not even old enough to legally consent to sex, for crimes such as prostitution.<sup>9</sup> Only recently, after years of advocacy on the part of juvenile rights workers, did New York State begin to consider the idea that children living in the United States could be the victims of domestic sex trade like similarly situated youth abroad whom we have treated sympathetically for nearly a decade.<sup>10</sup> To illustrate at least part of this point further, consider the

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<sup>7</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2011, 372–73 (2011), available at <http://www.state.gov/documents/organization/164458.pdf> (describing the U.S. involvement and active participation to combat human trafficking including civil law enforcement, continued task forces through the Department of Justice, heightened prosecution for traffickers and those that work in the modern slave trade).

<sup>8</sup> The Violence Against Women Act (VAWA) created special provisions in United States immigration law to protect victims of abuse who are not citizens of the United States. See, e.g., 8 U.S.C. § 1101(a)(15)(T)(i) (2010) (creating “T Visa” for victims of trafficking); 8 U.S.C. § 1101(a)(15)(U)(i) (2010) (creating “U visa” for victims of crime); 8 U.S.C. § 1101(a)(27)(J) (2010) (creating “special immigrant” juvenile status for abused, neglected, or abandoned children). Youth who have been commercially and sexually exploited may also find remedies in asylum. See 8 U.S.C. § 1158 (2009).

<sup>9</sup> See, e.g., Hon. Fernando Camacho, *Sexually Exploited Youth: A View from the Bench*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 141 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 2011) (“In the past we have based our criminal justice policies on the false assumption that all women who enter the world of prostitution are free to leave at any time.”).

<sup>10</sup> Safe Harbor for Exploited Children Act, N.Y. SOC. SERV. LAW § 447-b (McKinney 2011) [hereinafter Safe Harbor Act] (governing the protection that must be afforded to sexually exploited children by designating funds and services available to them); N.Y. FAM. CT. ACT § 311.4(3) (McKinney 2011). See also *GIRLS EDUC. & MENTORING SERVS.* (GEMS), <http://www.gems-girls.org> (last visited Oct. 21, 2011). GEMS is the leading organization in New York City devoted to delivering comprehensive and holis-

experiences of two young women,<sup>11</sup> Khadijia and Tasha who were placed in the custody of the New York City child welfare system.

## I. A TALE OF TWO YOUNG GIRLS

### A. *Khadijia*

Khadijia was born in the West African nation of Mali in 1990. From the time she was born until she was five, she was raised in a home with her mother, father, and older sister. Khadijia's family was comparatively well-off financially, as her father had a significant amount of education. Khadijia does not remember what her father did for a living, but she has fond memories of going to work with him to "an office job where there was a secretary that answered the phone for him."

Khadijia's father died just after she turned five, which made her family vulnerable in a number of ways. As the man of the house, Khadijia's dad protected his daughters from a number of cultural practices in Mali that he did not wish to inflict on them, such as genital mutilation and forced marriage. In his absence, Khadijia's paternal family—through violent intimidation—sold her 12-year-old sister to be married to a much older man. Khadijia never saw her sister again.

When Khadijia approached the age that her paternal family believed that she should also be married, the violence against her mother started again. They even attempted to kidnap Khadijia at one point. Desperate, Khadijia's mother sought the help of a wealthy woman she had begun house-cleaning for to make ends meet. The woman assured Khadijia and her mother that she could help by getting Khadijia out of Mali to the United States to live with her friends, a childless couple in Philadelphia, where Khadijia could live in a large home, go to school, eventually work, and send money home to her mother. The woman's generosity seemed too good to be true. But when she showed Khadijia's mother a passport and a valid-looking visa for her daughter, they trusted her.

Khadijia arrived in Philadelphia at the age of 15. But she did not live in a big house. She did not go to school. She was not able to send money home to her mother. She was not even allowed to speak to her mother. She lived and worked in a hair salon. When it closed at night, the owners—the friends her mother's boss had

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tic services to address the needs of commercially and sexually exploited girls and young women through a variety of programming and direct advocacy.

<sup>11</sup> The names and other identifying information of children in this article have been changed to protect their identities.

told them about—would make Khadijia sleep on the floor. She could go nowhere unsupervised and whenever she complained they beat her and threatened to have her locked up for being in the country illegally. In the year and a half that Khadijia lived in Philadelphia, not only was she repeatedly forced to have sex with men who paid the couple for her, but she was also sexually assaulted by the husband.

The only reason Khadijia was released is because the wife learned of her husband's "affair" and threw Khadijia out on the streets in the winter of 2009. Khadijia, through the most random acts of kindness, made her way to New York City. There, she came to the attention of child welfare and was placed in foster care. In attempting to locate Khadijia's mother in Mali, the Administration for Children Services learned that her mother had passed away.

Thus, Khadijia was alone in the world, but finally free of a long history of abuse and instability. Khadijia's experience as a victim of human trafficking made her eligible for a visa, which may lead to permanent legal residence. As a young person in foster care and with a judge that was moved by her story, Khadijia has been able to receive a great deal of therapeutic services to help her deal with her grief and trauma. As a result, she is working and going to school part-time at Hunter College. She wants to be a social worker to help other girls who have also experienced the trauma of exploitation and sex trafficking.

#### *B. Tasha*

Tasha was born in the Bronx in 1992. Her father is unknown and her mother abused drugs. In fact, Tasha was born with drugs in her system. She was removed from her mother right out of the hospital and spent most of her life being raised by her grandparents.

Tasha was very close to her grandfather who died when she was eight, but she also got along with her grandmother. Problems did not arise in their relationship until Tasha was a teenager. She became interested in hanging out with her friends and boys. She did not come straight home from school anymore and would spend all night talking on the phone.

Tasha's grandmother was in her mid-70s by this time and just did not have the energy or desire to chase behind a teenage girl. So, she placed Tasha in foster care by claiming that she was a Per-

son in Need of Supervision<sup>12</sup> and beyond her lawful control.

Tasha, only 14, was devastated the day she was taken into care and experienced her placement as a complete rejection. She was placed in a group home in Queens, New York, which may as well have been Mars as far as Tasha was concerned. Except for very special occasions, she had never left the Bronx in her life. And now she was taken away from her friends, her school, and her family. In addition, other girls in her group home were constantly stealing Tasha's clothes, shoes, and makeup. Someone even managed to steal money from Tasha's purse that she had taken to keeping under her pillow.

Life for Tasha was awful, until one day Tasha met Derek, a handsome man about 10 years older than her, standing right on the corner in front of her group home. He smiled at her. He told her she was pretty. And, to make a long story short, he started dating her. Derek bought Tasha things, took her to nice places, picked her up after school in nice cars, and gave her a cell phone. It would have been impossible to tell Tasha that she was not in love. Derek was there for Tasha when her grandmother gave up on her. When foster care caseworkers did not care that others were stealing from Tasha, Derek replaced whatever was taken.

For Tasha, it was a fairytale until about four months into their relationship. At that point, Derek asked Tasha to do him a favor. He said he owed some dangerous people money and if he did not get it to them, they would kill him. He thought that maybe she would want to help him, since he had spent so much money buying her nice things and taking her places. All she had to do was have sex with this guy Derek had met for money.

Tasha refused at first. But when Derek disappeared for a few days, Tasha was afraid those people he had owed money had hurt him. So when he finally returned her call, Tasha agreed to do it, but just the one time. Then there was another time, and when Tasha refused, Derek did not plead with her or tell her his life depended on it. Instead, he beat her and told her he would kill her if he had to ask her again. So, she did it.

Derek would often pick her up from her group home in Queens and drive Tasha to meet men in New Jersey, Connecticut,

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<sup>12</sup> A child under the age of 18 who does not attend school, or behaves in a way that is dangerous or out of control, or often disobeys his or her parents, guardians or other authorities, may be found to be a Person In Need of Supervision or "PINS". *New York City Family Court, Persons in Need of Supervision (PINS)*, N.Y.S. UNIFIED COURT SYSTEM, [http://www.nycourts.gov/courts/nyc/family/faqs\\_pins.shtml](http://www.nycourts.gov/courts/nyc/family/faqs_pins.shtml) (last updated Jan. 31, 2008). See also N.Y. FAM. CT. ACT art. 7 (McKinney 2011).

Delaware, and Pennsylvania. And when he had no such men for her to meet, he would make her solicit on the street in areas of New York City known for prostitution. And that was her life until she got arrested for soliciting an undercover cop.

Tasha was 15 when she was prosecuted in Family Court. Because of her history of truancy, disobeying her grandmother, and her habit of staying away from her foster home for days at a time with Derek, a Family Court judge placed her in a secure juvenile facility for an initial period of 12 months. While in the juvenile facility, Tasha received no counseling or therapy to address her history of sexual exploitation or the other underlying circumstances that led to her arrest and placement.

Although she was generally compliant with the rules, Tasha continually attempted to make contact with Derek through some rather ingenious means. She would send Derek letters through friends or make calls to her cousins and ask them to conference call him.

But her desire to be with Derek cost her. In New York State, when a young person is placed on a juvenile delinquency case, at the end of their initial sentence, if the juvenile prison does not feel that they are ready to return to the community, they can petition the court for an extension on a year-by-year basis until the young person turns 18.<sup>13</sup> Attempting to stay in touch with her pimp was all the proof that the facility and her judge needed to keep Tasha locked up on a misdemeanor solicitation arrest for nearly three years.

Tasha was released on her 18th birthday. Since then, she has held various jobs at clothing stores and fast food restaurants, but only for very short periods of time. Those jobs always end with her going back to Derek and the life he manipulated and forced her into when she was 15 years old.

## II. DISPARATE TREATMENT

Khadijia and Tasha's experiences illuminate some of the major issues that prevent protection of domestic juvenile human rights. On the one hand, everyone involved in Khadijia's case understood that they were dealing with a human rights violation. However, the same was not true of Tasha.

Khadijia was obviously and without a doubt a victim of human trafficking, forced servitude, sexual assault, and exploitation. With-

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<sup>13</sup> N.Y. FAM. CT. ACT § 355.3 (McKinney 2011).



out question everyone in Khadijia's case was willing and able to see her as a victim. She was a young woman born in an African country where they engage in genital mutilation and force little girls to marry pedophiles. She was trying to escape that life and was manipulated into an arguably even worse situation by despicable people. All the parties involved in her case were willing and able to consider and understand the economic and cultural pressures that led to her victimization in such a way that made her deserving of sympathy and support.

The system refused to see Tasha as a victim. Certainly it was understood that she had been mistreated, abused, and violated. Certainly there were arguments made that there was something unjust and perhaps even unconstitutional about prosecuting a minor who could not legally consent to sex for prostitution. But none of that advocacy encompassed an argument that Tasha had been deprived of her rights as a human being and was deserving of compassion and support just like Khadijia.<sup>14</sup>

Quite conceivably, the reason for this difference is simply because of the fact that Tasha is American-born. Though she certainly had obstacles to overcome, the belief underlying her case is that because she is American, she simply must have had more options than someone such as Khadijia and therefore is not really a "victim." Prosecutors and caseworkers placed the fault on Tasha. They argued that if Tasha had gone to school and obeyed the rules of her home, her grandmother would not have placed her in foster care. They stated that she should not have let Derek manipulate her in the first place, and that she should have reported him to the police at the first instance of domestic violence. It was also expressed that she certainly should not have kept in contact with Derek once she was placed in a juvenile detention facility.

The belief underlying all of these judgments of Tasha's behavior is that because she was born and raised in the United States, Tasha had choices available to her and made the wrong ones, therefore she is not a victim. She should have been more empowered to make different decisions and therefore, even as a child, she was more responsible for her circumstances and "choices" than Khadijia.

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<sup>14</sup> GEMS, *supra* note 10 (providing advocacy with the understanding that each girl and young woman is deserving, and needs support and services to treat the trauma and violence that each has experienced).

## III. PORTRAYING MARGINALIZED AMERICAN YOUTH AS CRIMINALS

Tasha's experience also illuminates the fact that when a marginalized and exploited youth comes in contact with the law in the United States, it is often in the context of the criminal or juvenile justice system.<sup>15</sup> One result of failing to recognize and protect youth human rights domestically is that, not only is the young person exploited and victimized, but then also determined to be a criminal which often works to further disempower them in all the ways in which a criminal conviction can marginalize a citizen.<sup>16</sup>

The marginalized youth as a criminal requiring punishment rather than a victim of neglect needing support has a decades-old history in New York State.<sup>17</sup> New York is one of only two states in the country, North Carolina being the other, which currently prosecutes 16- and 17-year-olds as adults in its criminal justice system instead of having their cases dealt with by its juvenile justice system.<sup>18</sup>

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<sup>15</sup> See, e.g., Hon. Cheryl Chambers, *The Disproportionate Number of Minority Youth in the Family and Criminal Court Systems: Introduction*, 15 J.L. & POL'Y 907, 908 (2007) (describing how youth of color are disproportionately impacted by the criminal and juvenile justice system and how these young people grow up at risk and in poverty). See generally ALEXANDER, *supra* note 5 (framing the crisis of mass incarceration as the creation of a racial undercaste in which African-American and Latino/a youth are disproportionately targeted by law enforcement and then they are legally discriminated in almost all aspects of social, political, and economic life).

<sup>16</sup> The social consequences attached from a criminal conviction range from discrimination in employment, in housing, in obtaining public benefits, in health care, and disenfranchisement. See, e.g., KATHERINE IRENE PETTUS, *FELONY DISENFRANCHISEMENT IN AMERICA: HISTORICAL ORIGINS, INSTITUTIONAL RACISM, AND MODERN CONSEQUENCES* (2005). See also Margaret Colgate Love, *RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE 4* (2005), <http://sentencingproject.org/doc/file/collateral%20Consequences/execsum.pdf> (concluding that most state jurisdictions have inaccessible and unreliable mechanisms to mitigate the collateral consequences of a criminal conviction, which further serves to disempower citizens).

<sup>17</sup> New York passed the Juvenile Justice Reform Act of 1976 partly as a response to the sentiment that juvenile justice was too soft on violent kids and also to institute the new category of "designated felony" that began treating children the age of 14 as adults for murder. See Merrill Sobie, *The Juvenile Offender Act: Effectiveness and Impact on the New York Juvenile Justice System*, 26 N.Y.L. SCH. L. REV. 677, 686 (1981) (providing a historical overview of the juvenile justice system in New York emphasizing how the Juvenile Justice Reform Act was a move away from delinquency toward criminalization).

<sup>18</sup> See Linda Szymanski, *How Does Age Impact the Way States Handle Juvenile Delinquency Cases?*, NAT'L CTR. FOR JUVENILE JUSTICE (NCJJ) SNAPSHOT (2011), [http://www.ncjj.org/pdf/Snapshots/2011/vol16\\_no7\\_How%20does%20age%20impact%20the%20way%20states%20handle%20delinquency%20cases.pdf](http://www.ncjj.org/pdf/Snapshots/2011/vol16_no7_How%20does%20age%20impact%20the%20way%20states%20handle%20delinquency%20cases.pdf) (reporting that North Carolina and New York end original juvenile court jurisdiction in delinquency matters at age 15).

The decision by New York lawmakers to be tough on youth crime and prosecute teenagers as adults was made in large part as a reaction to alarmingly high crime rates of the late 1970s and two highly publicized subway murders committed by 15-year-old Willie Bosket.<sup>19</sup> Under the law at the time, Willie Bosket could only be incarcerated at a juvenile facility for a total of five years for his crimes, a reality that caused a public outcry for tougher laws on youth crime.<sup>20</sup> The Juvenile Offender Act of 1978<sup>21</sup> was passed in record time establishing that in New York kids as young as 13 could be tried as adults for murder, symbolizing a reversal of 150 years of American legal history.<sup>22</sup>

An interesting and disturbing fact of Willie Bosket's life history is that he had, for a bulk of his childhood, been the victim of severe physical and sexual abuse and spent a great deal of time in the custody of New York's juvenile justice system for committing minor crimes.<sup>23</sup> Despite having been confined to their care, almost every opportunity to rehabilitate him and address his needs was missed.<sup>24</sup>

Instead of viewing him as a young man who had experienced severe abuse and whose very rights as a human being had been violated for years—Willie Bosket was physically abused by his mother and sexually abused by multiple caregivers—he was cast as a murderer with no context other than the background of the 1970s lawlessness that plagued New York City. It is inside this conversation of youth crime without any socio-political context that

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<sup>19</sup> Willie Bosket is currently incarcerated at the Woodbourne Correctional Facility in New York State. At the age of 13, Willie had committed two murders and was considered the most dangerous inmate who began his criminal career at age five. Willie spent the greater part of his life in juvenile correctional facilities. Throughout those years he was always denied a proper program of rehabilitation. Willie changed the face of New York's juvenile justice system as a result of the outcry when he was sentenced to four years of detention for committing two murders at the age of 13. See FOX BUTTERFIELD, *ALL GOD'S CHILDREN: THE BOSKET FAMILY AND THE AMERICAN TRADITION OF VIOLENCE* (1995) (providing a thorough examination of Willie Bosket's life and how that life was shaped by the culture of violence in America, the juvenile justice system, and the disparities of treatment suffered by poor African-Americans in that system). See also Sobie, *supra* note 17, at 686.

<sup>20</sup> BUTTERFIELD, *supra* note 19, at 226.

<sup>21</sup> JUVENILE JUSTICE REFORM ACT OF 1978, 1978 N.Y. Laws, ch. 478.

<sup>22</sup> BUTTERFIELD, *supra* note 19, at 227.

<sup>23</sup> Willie had been designated a "destructive child" since the age of six when he was enrolled in the first grade. He would later develop a reputation of uncontrollably violent behavior for which he would be sent to numerous juvenile correctional institutions. One of the ironic facts is that Willie's father had been sent to the same facilities and nobody at the time, not even psychiatrists or judges, had connected that history of institutionalization that profoundly marked all of Willie's life. *Id.* at 144–53.

<sup>24</sup> *Id.*

the current juvenile justice and child welfare systems that failed Tasha were created.<sup>25</sup>

These myopic views of poor American youth are based on cultural stereotypes and a vast lack of understanding of the impact of youth exploitation. These views illustrate in a very specific way the major barrier to protecting youth human rights in the United States. That obstacle is simply the fact that Americans do not fully understand what *human* rights are and therefore, do not understand what human rights *violations* are or how they look when translated to an American context.

We have come to rely, almost exclusively, on the language of *civil* rights—that is rights created, defined, and interpreted by lawmakers and the courts. We look to them to decide who a victim is, who a perpetrator is, and how each should be treated. We look to them to define even what a right is, how to determine if one has been violated and what the remedy for that violation should be. The idea that there are human rights we have as people—not as citizens—that are inviolable and worthy of defense and protection even if our government does not define or recognize them, has never completely entered our collective consciousness here in the United States.<sup>26</sup>

#### IV. OTHER EXAMPLES OF YOUTH HUMAN RIGHTS VIOLATIONS AND WHY WE ACCEPT THEM

The conversation around domestic human trafficking of children is not the only example of our failure to observe and protect the human rights of American youth. Further examples can be found in the existence of systems we support and take for granted

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<sup>25</sup> Hon. Fernando Camacho, *supra* note 9, at 141 (“I have since come to appreciate that this [punitive] approach to cases involving teenagers charged with prostitution is, to a large degree, shaped by certain misconceptions that continue to impact the criminal justice system’s treatment of sexually exploited youth.”).

<sup>26</sup> See TAINA BIEN-AIMÉ & LEAH RUTMAN, *International Law in Human Trafficking*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 63, 69 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 2011) (“The steps the United States has taken to combat human trafficking have been substantial, but fall short of compliance with international standards set by various conventions . . .”). See also HUMAN RIGHTS WATCH, *UNITED STATES RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES* 1 (2009), [http://www.hrw.org/sites/default/files/related\\_material/Treaty%20Ratification%20Advocacy%20document%20-%20final%20-%20Aug%202009.pdf](http://www.hrw.org/sites/default/files/related_material/Treaty%20Ratification%20Advocacy%20document%20-%20final%20-%20Aug%202009.pdf) (“The US has not ratified any international human rights treaties since December 2002, when it ratified two optional protocols to the Convention on the Rights of the Child. Since that time, important new treaties have been adopted and other long-standing treaties have gained new member states. Unfortunately, the US has too often remained outside these efforts.”).

every day.<sup>27</sup>

Our nation, for example, has fully accepted a public education system that is funded in such a way that virtually guarantees that if a young person is born to poor or working class parents in a low-income community, he or she will receive a worse education than a peer receiving a public education in a more affluent community.<sup>28</sup> We fully recognize the disadvantages associated with this disparity including the exposure of youth to violence that often occurs in, or near, under-funded schools serving low-income communities. Further, these schools are over-policed and highly punitive, as seen in their suspension rates.<sup>29</sup> This disparity is often recognized as a civil-rights issue, but not in such a way that has provided any vast change in the education received by poor youth in this country.<sup>30</sup>

Consider, also, our sympathy for youth in war-torn countries of Africa who are forced to fight in wars they are too young to understand.<sup>31</sup> Consider youth in Central and South American nations who are pushed into gangs.<sup>32</sup> A great deal of academic and popular literature has been written that provides us with insight into how these young people are brainwashed or coerced into those groups

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<sup>27</sup> See, e.g., Besty Krebs & Paul Pitcoff, *Reversing the Failure of the Foster Care System*, 27 HARV. WOMEN'S L.J. 357, 357-59 (2004) (describing the overall failures of the foster care system, in particular with respect to preparing teenagers for a successful future); Bart Lubow, *Minimizing Youth Incarceration: Civilizing Aspirations?*, 6 N.W. J. L. & SOC. POL'Y 285, 286 (2011) ("But the history of youth corrections is so bad—so rife with sordid scandal, persistent abuse, and unfilled promises of remediation—as to strongly imply, if not definitely prove, that we do not know how to operate humane and safe, much less rehabilitative and secure, facilities for juveniles."); N.Y. CIVIL LIBERTIES UNION, EDUCATION INTERRUPTED: THE GROWING USE OF SUSPENSIONS IN NEW YORK CITY PUBLIC SCHOOLS (2011), [http://www.nyclu.org/files/. . ./Suspension\\_Report\\_Final\\_noSpreads.pdf](http://www.nyclu.org/files/. . ./Suspension_Report_Final_noSpreads.pdf) (reporting that disproportionate denial of education to students of color violates internationally-recognized human rights laws).

<sup>28</sup> *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 54 (1973) (5-4) (holding that a school-financing system based on property taxes did not violate the Fourteenth Amendment's equal protection clause).

<sup>29</sup> N.Y. CIVIL LIBERTIES UNION, *supra* note 27.

<sup>30</sup> Susan Hamill, *A Moral Perspective on the Role of Education in Sustaining the Middle Class*, 24 NOTRE DAME L. REV. 309, 320 (2010) (discussing how inadequate funding of K-12 education in high-poverty school districts shrinks the middle class which presents a moral issue for all of us to reverse the trend).

<sup>31</sup> U.N. Office for the Coordination of Humanitarian Affairs, *Special Report: Child Soldiers*, INTEGRATED REG'L INFO. NETWORKS, NATIONS 1 (2003), <http://www.irinnews.org/pdf/in-depth/Child-Soldiers-IRIN-In-Depth.pdf> (reporting on the status of children who are abducted and forced into combat and on the inadequacy of existing regulations to effectively address this humanitarian crisis).

<sup>32</sup> Clare Ribando Seelke, CONG. RESEARCH SERV., GANGS IN CENTRAL AMERICA 5 (2011), <http://www.fas.org/sgp/crs/row/RL34112.pdf> (discussing the current anti-gang strategy deployed by Congress to combat the growing number of gangs, emphasizing MS-13 and M-18 as the main expanding gangs).

in order to gain a sense of family and, in many instances, simply for protection.<sup>33</sup> Our federal government has dedicated resources to provide help for foreign-born youth seeking to escape such lives.

Government institutions respond very differently to young people in poor communities of our own country who are pressured, socialized, or drawn into gang culture for a sense of family and protection. Further, there are no sustained resources implemented to provide an alternative to gang affiliation or support a young person looking to leave a violent street gang. We simply criminalize gang involvement and leave such young people to fend on their own.<sup>34</sup>

What is at work here is an almost unshakeable rhetoric that has been created regarding the United States' righteousness, morality, and equal access to prosperity. The result of this rhetoric is this belief that everyone—even children—are solely responsible for their circumstances. They must, in essence, overcome the obstacles our culture and politics place in their way and pull themselves up by their own bootstraps. We fail to recognize and take responsibility for the ways in which our own values, similar to those of countries we readily denounce as human rights violators, allow for: 1) the sexualization of children and adolescents;<sup>35</sup> 2) the existence of pockets of poverty in our inner-cities as well as remote rural areas so severe that people are desperate, hopeless, and willing to do almost anything to make money;<sup>36</sup> and 3) the exploitation of

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<sup>33</sup> See, e.g., Luz Nagle, *Child Soldiers and the Duty of Nations to Protect Children from Participation in Armed Conflict*, 19 CARDOZO J. INT'L & COMP. L. 1 (2011) (providing different scenarios of how child soldiers are recruited, coerced, and torn apart from their families and into servitude).

<sup>34</sup> See K. Babe Howell, *Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention*, 23 ST. THOMAS L. REV. 620 (2011) (discussing gang databases and the harsh consequences of the gang affiliation label on bail determinations and emphasizing that youth of color are disproportionately impacted by the mistreatment and the mislabeling).

<sup>35</sup> See AM. PSYCHOLOGICAL ASSOC., REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS (2010), <http://www.apa.org/pi/wpo/sexualizationrep.pdf> (providing a detailed report on the sexualization of girls and noting how it is harmful and has negative consequences for girls and for the rest of society).

<sup>36</sup> See Casey Kovacic, *Creating a Monster: MS-13 and How United States Immigration Policy Produced "The World's Most Dangerous Criminal Gang"*, 12 GONZAG. INT'L LAW. REV. 2 (2009) (discussing how the federal laws aimed at immigrant gang members are directly responsible for creating the gang and exacerbating its growth); Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L. J. 2249, 2258 (1998) (describing how the history of vagrancy laws reveals the dangerous implications for racial minorities and other disadvantaged communities of broad police discretion in crime prevention).

marginalized groups.<sup>37</sup> The failure to recognize and take responsibility for our own human rights violations leaves American-born youth like Tasha just as vulnerable to exploitation as her foreign-born counterparts and just as deserving of sympathy, protection, and support when her rights as a human being are violated.

## V. CONCLUSION

Despite the grim circumstances created by our failure to fully protect the human rights of young people, there is reason to be hopeful. Much of the work needed to resolve the tensions discussed here and protect the human rights of youth, as well as other vulnerable groups, in the United States is well underway.<sup>38</sup>

For example, as a result of years of consistent grassroots efforts by juvenile rights advocates, The Safe Harbor Act for Exploited Children went into effect in New York in 2010.<sup>39</sup> The landmark legislation is a start to recognizing that all children, including American-born youth under the age of 18 who are forced into the commercial sex industry are victims in need of comprehensive services as opposed to incarceration.<sup>40</sup> The law mandates the creation of safe houses, crisis intervention, community-based programming for survivors, and allows for the training of law enforcement to identify and help exploited youth.<sup>41</sup> In short, the Safe Harbor Act provides law-enforcement with an option to treat these young victims humanely instead of as criminals.

Many of the strategies utilized to bring about the very recent and ongoing change in the way sexually exploited youth in the United States are viewed and treated can be expanded upon to

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<sup>37</sup> Jonathan Todres, *The Importance of Realizing "Other Rights" to Prevent Sex Trafficking*, 12 CARDOZO J.L. & GENDER 885 (2006) (discussing how systemic issues like racism, sexism, and poverty contribute to commercial sexual exploitation, which mostly affects women and children across the board).

<sup>38</sup> *Chief Judge Lippman Calls for Juvenile Justice Reform Based on Rehabilitation and Best Interests of the Child Rather than Punishment and Incarceration*, LEGAL AID SOC'Y, <http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/chiefjudgelippmancallsforjuvenilejusticereform.aspx> (last visited Nov. 12, 2011) (discussing Chief Judge Lippman's plan to establish an adult court part dedicated solely for cases of 16- and 17-year-olds to show that the age of responsibility should be raised in New York). See *Providers by State*, GEMS, <http://www.gems-girls.org/what-we-do/service-providers-by-state> (last visited Nov. 12, 2011) (listing organizations throughout the country that provide services to commercially sexually exploited children).

<sup>39</sup> Safe Harbor Act, *supra* note 10. See also Barbara Goldberg, *New Yorker Expunges Prostitution Record Under Trafficking Law*, REUTERS (Sept. 21, 2011, 6:53 PM), <http://www.reuters.com/article/2011/09/21/us-sextrafficking-idUSTRE78K7Q320110921>.

<sup>40</sup> Safe Harbor Act, *supra* note 10, § 447(a)-(b).

<sup>41</sup> *Id.* § 447(b)(1).

impact domestic human rights of youth in other areas.<sup>42</sup> To achieve this, our nation must first become well-versed in what human rights are and provide extensive education at the community level on our commitments to this arena.<sup>43</sup> Human rights education should be included as part of our public schools' civics and history courses.

Additionally, legal and social services providers must articulate the parallels between the work they do here with human rights efforts occurring abroad.<sup>44</sup> This will facilitate the opportunity for global movements to be created and a broader support of social justice responses. It would also allow for domestic human rights advocates to elevate the discourse around their work from a mere social service and civil rights framework, to one with a much broader, human rights scope.<sup>45</sup>

The value of this elevation is that our conversation will then create the necessary space that allows us to confront all the ways in which we, as a nation, violate the human rights of vulnerable populations. Once our deficiencies in this area become clear to us, we

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<sup>42</sup> See *Human Rights*, AMERICAN CIVIL LIBERTIES UNION, <http://www.aclu.org/human-rights> (last visited Nov. 12, 2011) (The Human Rights Program is dedicated to holding the U.S. government accountable to universal human rights principles and is part of a reemerging movement of U.S. based organizations that uses the international human rights framework in domestic rights advocacy); *Bringing Human Rights Home Lawyers' Network*, HUMAN RIGHTS INITIATIVE: COLUMBIA LAW SCHOOL, [http://www.law.columbia.edu/center\\_program/human\\_rights/HRinUS/BHRH\\_Law\\_Net](http://www.law.columbia.edu/center_program/human_rights/HRinUS/BHRH_Law_Net) (last visited Nov. 13, 2011) (over 390 members encourage U.S. compliance with international human rights law, including through the U.N. and Inter-American Human Rights systems and the development of strategies to use human rights law in U.S. courts and domestic policy-making and debate); *Human Rights at Home Campaign*, U.S. HUMAN RIGHTS NETWORK, <http://www.ushrnetwork.org/content/campaignproject/human-rights-home-campaign> (last visited Nov. 13, 2011) (the Human Rights Campaign at Home aims to build a human rights movement in the United States). See also Bien-Aimé & Rutman, *supra* note 26, at 73 ("National and community-based non-governmental grassroots organizations that work with trafficking victims and promote legislative and policy changes are key players in assessing the realities and complexities of human trafficking and in developing strategies to end it.").

<sup>43</sup> HUMAN RIGHTS INITIATIVE: COLUMBIA LAW SCHOOL, STATE AND LOCAL HUMAN RIGHTS AGENCIES: RECOMMENDATIONS FOR ADVANCING OPPORTUNITY AND EQUALITY THROUGH AN INTERNATIONAL HUMAN RIGHTS FRAMEWORK (2000), [http://www.iaohra.org/storage/State\\_and\\_Local\\_Human\\_Rights\\_Agencies\\_Report1.pdf](http://www.iaohra.org/storage/State_and_Local_Human_Rights_Agencies_Report1.pdf) (outlining how communities can raise awareness of human rights law).

<sup>44</sup> See *Human Rights Education*, AMNESTY INT'L, <http://www.amnestyusa.org/resources/educators?id=1102117> (last visited Nov. 13, 2011) (discussing Amnesty International's Human Rights Education training program).

<sup>45</sup> Bien-Aimé & Rutman, *supra* note 26, at 63 (providing an overview of how international law can be a critical tool in the fight against human trafficking).



will then be able to authentically (re)commit ourselves to domestic human rights and work towards tangible resolutions that ensure justice for our children.