A Fickle Formulation: U.S. Plays Nursemaid to the Marketplace

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A FICKLE FORMULATION
U.S. plays nursemaid to the marketplace

Colleen A. Brown

I. GLOBAL CONCERN WITH “BABY-BOTTLE SYNDROME” LEADS TO THE WHO CODE

On May 21, 1981, the United States was the only nation in the 125-member World Health Organization (WHO) to cast a vote against the adoption of the International Code of Marketing of Breastmilk Substitutes (the Code). The U.S. government had long been involved in the process of developing the Code and had led the Assembly to believe that it fully endorsed the movement to prohibit marketing practices which caused “baby-bottle syndrome,” a serious type of malnutrition associated with improper use of infant formula. But on May 16 the United States announced its intention to vote against the Code. By then it was too late for WHO to undo the last-minute concessions the U.S. had secured as a condition of its support. Besides destroying the human rights program cultivated by Jimmy Carter, the new administration was sending an explicit message to the international corporate community: your interests are our interests. Additionally, this action illustrated the U.S. government’s tacit support of the marketing of infant formula, regardless of the consequences to the health and lives of the children who subsist on this food.

The marketing of infant formula to poor, uneducated women follows the same pattern as the marketing of other types of “First World” products in “Third World” environments. The growing populations of the underdeveloped nations have been seen as new, large clienteles for transnational food conglomerates. The difficulties of marketing modern technology in these countries are numerous and complex. The use of promotional techniques which instill a belief that infant formula is better than breastmilk has led to the devastation of an alarming number of infants through malnutrition.

The typical sequence of events leading a rural, uneducated woman to “choose” to bottle feed her infant is as follows: She may have noticed signs and posters advertising infant formula which depict a loving and well-to-do woman bottle feeding a very healthy-looking child. Since she has
always seen members of her community and family breastfed she may become somewhat confused. Yet she also knows that many of the children born around her die before reaching their first birthday. When she goes to the community clinic to give birth to her next child she sees more bottle-feeding publicity. After the child is born, a woman dressed in a white uniform comes into her room with a baby bottle filled with formula. The woman explains how to use the bottle and reassures her that mothers in the modern countries feed their babies formula and virtually all of those children grow up to live long, healthy lives. The woman tries feeding the formula to her child and discovers that he likes it. When she leaves the hospital, the nice woman in the white uniform gives her some free formula.

It is only when the free formula is gone and she has to buy the formula herself that she realizes that it is extremely expensive. If the mother has bottle-fed exclusively for more than three days, she is probably no longer lactating and, thus, has no alternative to the formula. The economical, concerned mother "stretches" the formula by diluting it. No one has told her that the water must be sterile or the bottle clean. She may have no access to clean water. Some mothers believe that it is the bottle, not its contents, that brings health to the child and, thus, just fill the bottle with (dirty) water or with the gruel the rest of the family eats. The diluted, contaminated formula causes the child to have severe diarrhea.

Due to the absence of proper medical attention, thousands of infants die each year of malnutrition contracted in this way. The appalling irony of it all is that the mothers do not understand why their children have died. They have done just as they were told. Mothers have been known to place packages of infant formula upon their children's graves to let the world know that the child died despite their best efforts to nourish him in the modern way.

Thousands of women have become "hooked" on breastmilk substitutes in this way. The hospitals have brought so many new ways of helping and saving children to these poor communities that the women would not consider questioning a product promoted by hospital personnel. (It was not until very recently that these "milk nurses" were required to identify themselves as being employees of the formula industry and not of the clinic.)

When government experts on infant nutrition began to notice the sudden and steep increase in formula use alongside a continually rising rate of infant morbidity and mortality, some studies were begun. The studies culminated in a UNICEF–WHO conference held in Bogota, Colombia, in 1970.

A follow-up meeting was held in 1972 under the auspices of the Protein Advisory Group (PAG) of the United Nations. It was here that a statement was drafted setting forth the belief that continued promotion of infant formula in the Third World threatened infant health.

In 1974, the World Health Assembly (WHA), the governing body of WHO, unanimously adopted a resolution which blamed misleading marketing practices for the precipitous decline in breastfeeding. This decline was identified as being directly related to the rise in infant malnutrition and death.

The United States' direct and continuing involvement in the controversy was highlighted in 1978 when the U.S. Senate held hearings on the marketing practices of the infant formula industry, chaired by Senator Edward Kennedy. Experts from pediatric, obstetric, public health, corporate policy, and industry groups were heard. As a result of the hearings, Senator Kennedy requested the Director-General of WHO to convene an international conference where all concerned parties could discuss what could be done to eliminate infant malnutrition related to the use of breastmilk substitutes.

At the October 1979 WHO conference, the participants decided to draw up an international code of conduct for the industry, a code that would be general enough to stand a reasonable chance of being adhered to by the manufacturers and be strong enough to reduce the malnutrition problem.

If adopted as a regulation, the Code would be registered with the U.N. Secretariat in accordance with Article 102 of the U.N. Charter as an international agreement and would be binding by law. However, if the Code were adopted as a recommendation, as indeed it was, it would not be legally binding on the member states, per se. A recommendation can become binding only if the member state chooses to make it so by giving effect to it within the nation's legal framework—that is, by enacting statutes. Even without this action, the WHA views its recommendations as carrying some moral/political weight, in that they constitute the judgment of the collective membership of the organization.

The Code was adopted as a recommendation in order to maintain as wide a base of support as possible. As a recommendation, the Code sets forth what WHO believes each member state should do. It is then up to each nation to decide to what extent, if any, it will enact legislation to attain the goals of the Code.

The Code's provisions concentrate on the problem of how formula advertising leads to a decline in breastfeeding. Yet the Code is not worded very strongly. For example, the aim of the Code (Article 1) is:
to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breastmilk substitutes. . . .

Regrettably, the Code concentrates on the intent of manufacturers; whereas human rights activists are more concerned with the effects.

It is apparent from the facts that the Code was not directly aimed at forcing the industry out of Third World markets. Nevertheless, it was meant to underscore the necessity of breastfeeding to good infant nutrition and to signal to the manufacturers of breastmilk substitutes that nations would now begin to enact statutes to limit marketing practices that health experts believed were responsible for "baby-bottle syndrome"; a unanimous international statement, even if not threateningly strong, provides a very important standard.

II. ARRIVAL OF A NEW AMERICAN PRESIDENT

On May 15, 1981, it was announced that the United States government intended to vote against the Code. The confusion this announcement generated indicated that U.S. officials in Geneva had either been deceiving foreign diplomats or that there had been a communications breakdown with the White House, as the new U.S. position was totally inconsistent with all previous American indications and actions—even under the new president.

It was soon revealed that the White House had chosen to act unilaterally for its own political reasons. The new U.S. position was contrary to all informed advice from the experts who had been delegated to amass information on the use of formula. President Reagan was willing to suffer a loss of respect from experts in Geneva, international health organizations, and even his own Congress in order to demonstrate his unequivocal alignment with (American) big business. His priorities have always been apparent, but in this case Reagan's steadfast adherence to those priorities was carried out in a diplomatically sloppy way, which caused political turmoil both within his administration and between the U.S. government and its allies.

To fully appreciate the great contradiction in policy manifested by the May 15 decision, it is necessary to examine it in the context of the actions of the U.S. government subsequent to its introduction to WHO by Senator Kennedy in early 1979. It is clear that a conscious decision was made early on to demonstrate a strong U.S. commitment to the spirit of the WHO efforts to reduce "commerciogenic" infant malnutrition. Once the work on the Code was underway, groups such as the Infant Formula Action Coalition (INFACT), the Interfaith Center on Corporate Responsibility (ICCR), the National Women's Health Network, and Infant Formula Manufacturers' lobbyists launched into a very active information campaign in the United States.

Interestingly, these efforts do not seem to have been discouraged by the arrival of a new, conservative president. In fact, more hearings were held in Congress and an Interagency Task Force of experts began to investigate the impact of the industry's marketing tactics shortly after Reagan's inauguration. At the close of the hearings and at the termination of the Task Force's search, these groups advised the White House that the United States should cast its vote in favor of the Code.

As late as April 9, 1981, Dr. John Bryant, the Deputy Assistant Secretary for International Health under President Reagan, submitted a memorandum on "Studies of Relationships Between Use of and/or Marketing of Infant Formula and Breast Feeding" to the members of the Interagency Task Force on Marketing of Breastmilk Substitutes. Dr. Bryant is employed by the Department of Health and Human Services, undoubtedly the single most influential department in the U.S. government on any question of infant health and nutrition. In this memorandum, Dr. Bryant summarized the content and conclusions of three major studies of the issue.

The first study indicated that (Canadian) women who received infant formula at the time of discharge from the hospital were "more likely to terminate breast feeding early and more likely to add solid foods within the first eight weeks." Dr. Bryant noted that the difference between the two groups studied were even more pronounced when the women were less educated or ill. He explicitly pointed out that this study "appears to contradict the industry's position that there are no scientific studies that show a cause-and-effect relationship between marketing practices and declines in breastfeeding."

The second study concerned Papua New Guinea legislation, which banned the advertising of milk for bottle-feeding and imposed requirements that feeding bottles, teats, and dummies be available only with a prescription from an authorized health worker. The law also mandated that health workers give instructions on the proper proportions needed to prepare the milk and on the hygienic measures necessary for safe feeding.

Dr. Bryant found that this New Guinea legislation had a major impact in promoting breastfeeding and in diminishing morbidity and mortality rates due to gastroenteritis
associated with bottle-feeding. His report noted that:

[prior to this legislation, in 1975 and 1976, a survey of Post Moreby showed that one-third of the children under two had been artificially fed and that 69 percent of the artificially fed children were malnourished (weight-for-age less than 80 percent of the standard) compared with 26 percent of breastfed children.

In 1979, twenty months after the legislation, the proportion of breastfeeding had increased to 88 percent with a reduction in malnutrition. There has also been a marked decrease in the number of infants under six months admitted to the hospital with gastroenteritis, together with a similar decline in deaths from gastroenteritis associated with bottle-feeding.

The third study was one designed to ascertain the reasons for the decline in breastfeeding in the low-income population of Brazil. The findings of this research project included the following: (1) of infants admitted to the hospital, 95 percent had been weaned and only 5 percent exclusively breastfed through the sixth month; (2) 81.8 percent of the doctors serving these populations believed that free distribution of milk might have been contributing to the reduction of the breastfeeding period, but all regarded such distribution as essential; (3) only 6 percent of the mothers interviewed received information on breastfeeding at the maternity clinics; (4) between 1974 and 1979, advertising expenditures for the marketing of milk in Brazil, using the mass media, exceeded that for all other categories of food and was surpassed only by cigarettes and soap, the outlays rising elevenfold from 1974 ($151,000) to 1979 ($1,637,000).

Dr. Bryant was convinced that the “Brazil study associated the very high rates of bottle-feeding and infant malnutrition with a combination of factors, including advertising of milk products through the mass media and the role of health professionals, presumably influenced by the industry, who discourage women from breastfeeding.”

Other high-ranking Administration officials under Mr. Reagan also investigated the question and became convinced that the United States ought to endorse the Code. Early in 1981 the Department of Justice informed the director of WHO Legal Division, Claude-Henri Vignes, that:

...If the U.S. producers were to adhere to the Code on a unilateral basis [as opposed to some manufacturers joining together to agree on restraints that have adverse competitive effects], or if the Code were to be adopted under U.S. law, there would be no concern under the U.S. anti-trust law. [emphasis added]

The Code recommends that each government take responsibility for ensuring that manufacturers take the necessary action to meet the goals of the Code without violating national law and that each country adopt the Code within its own legal framework (Article XI).

In the end, the Reagan White House chose to ignore the findings and advice of its own Interagency Task Force and to base its actions on grounds that were wholly inconsistent with the statement issued by its own Justice Department officials. The rationale given by the White House to explain the anti-Code vote was not persuasive. The press release indicated that the United States could not support international regulation of business—a kind of regulation that was not needed and would not be imposed in the United States—and further that interference with advertising and marketing of infant formula was in violation of the First Amendment of the U.S. Constitution and the U.S. anti-trust laws. (Congress, after holding hearings on these specific questions, which included testimony from the respected D.C. attorney, Stewart Pierson, had come to the opposite conclusion.)

Internal State Department memoranda (which were made available to Jack Anderson and to INFACT) reveal that in March of 1981 the Administration began to perceive the serious political ramifications of a “no” vote. It was then that Secretary Haig sent a cable to all U.S. embassies in industrial countries outlining the possible U.S. options in order to offset the possibility that a vote against the code would isolate the United States from the international community and jeopardize American foreign policy objectives.

[Even] in the form of a recommendation, the Code contains certain problems for the U.S. Government and particularly for U.S. industry. ... From the industry point of view, the Code also recommends against a number of current marketing practices that industry believes have no effect on trends in breastfeeding and/or are valuable to public health interests. Even if the U.S. Government made a statement saying it had no intention of adopting laws or regulations to implement certain provisions because they are inapplicable in the U.S. or of debatable validity in the current controversy, companies feel they would nevertheless be under severe moral pressure to conform to these provisions. ... There is a possibility that this Code could set a precedent for other Codes relating to other aspects of international business, and we wish this Code brought to the attention of trade and economic affairs ministries in that context.
The shift in the United States' position reflects the intimate relationship between big business and the White House. In late April 1981 the State Department sent Elliot Abrams (then the Assistant Secretary of State for International Organizations—now the Assistant Secretary of State for the Human Rights Division) to Geneva to persuade Halfdan Mahler, WHO Director-General, to alter the Code so that it would be more acceptable to the United States. The two concessions requested (and later granted) were (1) the Code would be defined as strictly voluntary and (2) it would be applicable to infant formula only—not to any other baby food. According to Jack Anderson's report of this mission, Abrams had been instructed by Deputy Secretary of State William Clark (who was acting Secretary of State in Alexander Haig's absence, now National Security Advisor) that if these two concessions were granted the United States would abstain instead of voting against the Code.

State Department cables indicated that the Abrams conference with Mahler had produced positive results and that Mahler was "visibly relieved" to hear of the United States' intention not to vote against the Code. The situation was not at all as it appeared, however. This fragile negotiation conceded by WHO was to be undermined by Ed Meese. Clark had apparently failed to clear the U.S. position with the President's chief counselor.

It is reported that on May 1 Ed Meese, Richard Allen, Lyn Nofziger, and Martin Anderson met to discuss the situation at the WHO assembly. They reached the conclusion "that the United States should cast a negative vote on the Code," regardless of whether the two conditions negotiated by Abrams had been met. These advisors perceived the concerns of Bristol-Myers, Abbott Laboratories, American Home Products (the three U.S. manufacturers/marketers of infant formula), and Grocery Manufacturers of America (represented by former Senator Sam Ervin) to be more compelling than the diplomatic/political commitments pending in Geneva—to say nothing of the human rights concerns of infants and mothers around the world.

These businesses had long urged that the Code's adoption would give ammunition to the critics of big business, whereas a U.S. rejection would discredit the Code. Moreover, they claimed that the Code's adoption would set a precedent which might lead to action in other fields like pharmaceuticals. Nor was it a small consideration that infant formula represented a $7 billion international market that was increasing by 20 percent annually.

When it first became apparent that the United States might not vote in favor of the Code, one human rights advocate commented that:

The United States companies have asked the Administration to go further [than just suspending consumer protection from industry]: to protect industry from consumers.

The definitive response to the industry's plea for protection was given in our bold vote of May 21.

One of the most striking reactions to the U.S. vote was the resignation of two outstanding members of the American delegation to the WHA: Stephen Joseph, M.D., a pediatrician and the U.S. Agency for International Development's (AID) highest ranking medical professional; and Eugene Babb, deputy assistant Administrator for the food and nutrition department of AID. They resigned in protest against the vote and to reiterate the view that the Reagan Administration was acting in total disregard of human rights and of the advice of American officials who had the expertise to decide such issues.

Dr. Joseph aired his disgust in a statement to the press on May 18, 1981.

The United States has rightfully earned a high degree of credibility in the World Health Organization. We are now about to throw away that credibility and to isolate ourselves and to do this needlessly. There is no significant principle here of protection of national sovereignty or free speech. There is no major national economic or political interest to be gained. These are shallow and specious arguments, seeking to create adversaries that do not exist, in an international forum where we have been welcome and even honored members. The major emotion among our partners in health was not hostility but sadness-regret that the United States could adopt so base a position.

I want to send a clear message to our colleagues throughout the world that health professionals in this free society stand against the position being proposed. I am calling on all health professionals and all those with a concern for child health and development to make their voices forcefully heard, to seek the same access and responsiveness at the White House that a small vested-interest group [the formula manufacturers] has gained. Make yourself heard, and do it now, before our country disgraces itself this week in the World Health Assembly.

III. MOST SIGNIFICANT RAMIFICATIONS: DOMESTIC PRESSURE TO IMPLEMENT THE CODE IN THE UNITED STATES

In addition to the international repercussions the United States may suffer as a result of the negotiations and the
final vote, the policy position we took against the code entails some impressive political gambles at home. The pressure to actually implement the recommendations may be stronger now than it would have been had the United States quietly voted “yes.”

The Reagan Administration, with this action in Geneva, seriously undermined any policy to promote human rights as an ultimate American priority. The message that Mr. Reagan transmitted on May 15, 1981, was unmistakable: we think infant nutrition is important; it’s heartbreaking that women are being misled by formula overpromotion, but we cannot let Third World ignorance and backwardness justify an interference with the rising profits of the enterprising companies.

That sounds dreadfully close to saying that human rights are only defensible when their defense doesn’t hurt big business. Interestingly, this latter statement is not entirely inconsistent with other “human rights” positions taken to date by this administration. Consider the appointment of Ernest LeFevre to the post of Secretary of the Human Rights Division (which was unsuccessful, in part, because of the publicity of Mr. LeFevre’s “Nestle’s Connection”), increased military and food aid to right-wing repressive regimes, and an economic policy that slashes food stamps, welfare, medicaid, and school lunch programs in order to increase defense spending and continue subsidies for oil and tobacco producers.

This administration may be in error in concluding that health officials and human rights activists, like the poor, have little political clout. There was broad-based support and involvement in the formula controversy during the Senate hearings, and the Nestle’s boycott in this country has already grown powerful enough to alter the Swiss corporation’s advertising schemes. Had it not been for the fact that the regrettable human rights decision took place at a time when Reagan was still popular and still unveiling new socio-economic programs, the vote against the Code might have attracted the media attention necessary for the public backlash this action deserved. But the absence of a true public backlash does not signal apathy or surrender.

Three weeks after the vote, on June 16, 1981, hearings were held (before the Subcommittee on Oversight and Investigation of the House Committee on Energy and Commerce) to reconsider the WHO vote cast by the United States. It was on this same day that the House of Representatives passed H.J. Resolution 287 (by a vote of 301 in favor to 100 against), wherein the Congress (1) expressed its dismay at the negative vote cast by the United States on May 21, 1981 . . . ;
(2) urged the Administration to promptly notify the W.H.O. that the U.S. government would fully cooperate with other nations in the implementation of the Code;
(3) urged the United States infant formula industry to abide by the guidelines of that code, particularly with respect to exports and the activities of subsidiaries in developing countries; and
(4) reaffirm the dedication of the United States to the protection of all of the world’s children and the support of the United States for efforts to improve world health.

On June 17, 1981, hearings were held (before the Subcommittee on Oversight and Investigation of the House Committee on Energy and Commerce) to learn more about the domestic infant formula industry.

And, on June 18, the U.S. Senate adopted Section 118 of the Department of State Authorization Act, as amendment 72 (by a vote of 89 in favor and 2 against). Yet, after quoting much of the language of H.R. 287, noting the superiority of breastmilk and the rising concern over improper use of breastmilk substitutes, the last three sentences provide a disappointing shift of focus:

(2) endorses the work being done by the Agency for International Development (AID), WHO, and UNICEF across the broad front of problems associated with infant and young child nutrition;
(3) encourages the international health organizations, and their member-states, to continue combatting infant illness by improving sanitation and water quality; and
(4) urges the United States government and breastmilk substitutes industry to support the basic aim of the Code and to cooperate with the governments of all countries in their efforts to develop health standards and programs designed to implement the objectives of the Code.

The Senate appears to endorse the goals of the Code. What remains at issue is the means. The United States will not commit itself to the attainment of these goals when the method of eliminating the problem is not improvement of sanitation but rather prohibition of overpromotion. The U.S. government will not concede that the malnutrition in question is “commericiogenic.” It is not the aim of the Code to modernize all nations of the world such that breastmilk substitutes can be used more safely, for that is neither possible nor desirable. The aim of the Code is to give infants the best nourishment available—breastmilk—and to con-
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"They are trying to create a need from which they will profit, with little regard for the added 'price' consumers pay in infant disease and mortality."

IV. DOMESTIC IMPLICATIONS OF THE CODE

True, the United States would have shown compassion for all of the world’s children by voting for the Code, but it would have also been committed to the enactment of national legislation to regulate marketing practices of U.S. formula manufacturers within the United States. What remains understated is that problems such as the lack of resources necessary for the proper preparation of formula, the inability to read instructions, and the alarmingly high rates of fatal infant malnutrition which were cited by Congress as present in “a variety of developed and developing nations,” are also affecting the users of formula in this country. The domestic problem dictates that a concerned effort to fight growing commerciogenic malnutrition is necessary.

The Public Advocates law firm has found the domestic problem so compelling that they have filed an administrative rule-making petition, which pits the National League of United Latin American Citizens, INFANT, National Council of Negro Women, National Women’s Health Network, Women of All Red Nations, Mexican-American Legal Defense and Education Fund, Coalition to Fight Infant Mortality, American Public Health Association, Women’s Dance Health Group, National Council of Jewish Women, National Association of Parents and Professionals for Safe Alternatives in Childbirth, ICCR, and International Childbirth Education Association against HHS Secretary Richard S. Schweiker, FDA Administrator Arthur H. Hayes, Defense Department Secretary Caspar Weinberger, Defense Department Assistant Secretary for Health Affairs Dr. Thomas Moxley Ill, and Department of Agriculture Secretary John Block. The “Petition to Alleviate Domestic Infant Formula Misuse and Provide Informed Feeding Choice” was filed by Lois Salesbury and Angela Glover Blackwell, attorneys for the Petitioners, on June 17, 1981. The various federal agencies named as respondents have acknowledge receipt but have not yet made any deci-
The claims made by the detailmen and often transmitted by the physicians are not scientifically inaccurate, but it is easy to see how they are designed to have the effect of undermining breastfeeding. The themes that are repeated include: (1) formula is supported by medical experts; (2) formula is supported by science; (3) formula makes for healthy babies; (4) formula fights mothers' fears [about whether their children are eating enough]. (It is worth noting that there is an extremely small number of women who are not physiologically capable of nourishing their children perfectly well for several months.)

Public Advocates found that the role of hospitals in pushing the use of formula was at least as important as that of each woman's physician. Hospitals are architecturally designed (often with the technical and financial assistance of the industry) to facilitate formula feeding; babies are in nurseries away from their mothers and are routinely put on a four-hour schedule. A child will be brought to its mother at times other than those chosen by the hospital only if the mother is adamant in her demands.

Additionally, the discharge packs of free samples given to all mothers, regardless of their choice of feeding methods, provides subtle but very effective advertising for formula makers. The mother views this as the hospital condoning, recommending, or prescribing at least partial bottle feeding. Some manufacturers even provide special "gift packs" for mothers who have chosen to breastfeed, underscoring the necessity of formula for even those women.

The goal is to get women "hooked" on what they are given at the hospital. Sometimes this convinces mothers that ready-to-use formula (the most expensive type) is the kind their children need. When the mothers receive little support for breastfeeding from their physicians, see formula advertising in doctors' offices, maternity clinics, and delivery areas of the hospital, and then receive the gift pack in the hospital, the temptation to question breastfeeding is almost irresistible. Breastfeeding is a learned response for both mother and child. If no one assists and supports a new mother, she will almost inevitably fail and turn to the bottle-feeding method.

The costs of growing infant formula use in the United States is staggering. It is particularly important to bear in mind that the majority of infant formula users in the United States are lower-income, less-educated women. According to a "crude but conservative estimate" of Dr. Allan Cunningham (based on 1979 births) about five thousand U.S. infants could be saved yearly if every woman breastfed. The Public Advocates note that:

The greater morbidity and mortality rates for bottle-fed babies translates directly into greater expense for hospitalization, out-patient care, and emergency room services. Additionally, the greater expense of formula as opposed to breastmilk must be added to the costly lifetime effects of bottle feeding, including greater tendencies to obesity, more allergies, dental caries, psychological problems from the absence of bonding. Finally there is the significant role that bottle feeding plays in the infant mortality rate in the United States, a rate much higher than many other industrialized countries and nearly three times greater (4.6/1000) than the rate in the 1930s for welfare infants in the United States who were breastfed (1.4/1000). Some of these expensive consequences for the [annual] health bill can be calculated.

<table>
<thead>
<tr>
<th>Service</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospitalization</td>
<td>$117,342,000.00</td>
</tr>
<tr>
<td>Emergency Room</td>
<td>28,000,000.00</td>
</tr>
<tr>
<td>Outpatient Services</td>
<td>60,000,000.00</td>
</tr>
<tr>
<td>Extra expense of formula</td>
<td>173,250,000.00</td>
</tr>
<tr>
<td><strong>Total Estimated Savings</strong></td>
<td><strong>$378,592,000.00</strong></td>
</tr>
</tbody>
</table>

Also noteworthy is the fact that WIC (welfare food program for women, infants, and children) is the largest single purchaser and distributor of infant formula in the world. The government picks up the tab for children in this program to be formula fed for up to two years, at the full market price.

National surveys found that substantial numbers of low-income mothers, presented with accurate information, will, like their middle- and upper-income counterparts, choose what is best for their infant's health and well being: breastfeeding. Contrary to the common presumption, the cause of the increase in bottle feeding among low-income women is not work but rather misinformation.

The strategy for remedying the commerciogenic malnutrition problem in the United States is an information campaign. The Public Advocates are attempting to place the burden of countering formula overpromotion upon government agencies, with the hope that the persuasive scientific data they have so eloquently presented will be compelling.

The facts, figures, and information discussed in the Petition demonstrate that any delay in remedying the current situation is costly not only in terms of human suffering caused by unnecessary illness, but in the ever-increasing burden of expenditure borne by taxpayers for easily preventable hospital visits and medical treatment. These are expenditures which can be averted if the federal government uses its power and
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authority to act decisively.

Although this economic argument could be balanced by possible loss of profits to big business, this economic appeal should nevertheless carry great weight with the Reagan Administration. Present indications are that it will not.

The specific remedies prayed for in the above-mentioned petition include: (1) development and wide distribution of easily understood and inexpensive pamphlets proclaiming the unquestionable superiority of breastfeeding; (2) mandate of policy changes in federal grant money to health programs such that obstetric and pediatric facilities not receive funds unless they distribute unbiased educational materials emphasizing the advantages of breastfeeding, and have a full-time lactation counselor who can ensure that women are making informed feeding choices; (3) impose certain packaging/labeling requirements; and (4) hearings where federal agency action can be discussed by experts, the public, and other concerned parties.

Many of these remedies are either very inexpensive or would actually bring a significant savings, so there remains a chance that economically minded agencies will grant some form of relief. Meaningful efforts to reduce improper formula use and the malnutrition associated with it in the United States will be greatly appreciated by human rights advocates, even if undertaken for nonhuman rights reasons, and regardless of whether motivated by moral pressure from the Code or convincing arguments by advocates such as Lois Salisbury, Angela Blackwell, INFANT, ICCR, et al.

V. CONCLUDING OBSERVATIONS

The subtle but crucially fundamental human rights issue underlying the infant formula/malnutrition question is that of free choice. Will women be given thorough and accurate information upon which to formulate important and irreversible infant feeding decisions? The United States has a moral obligation imposed by a constitutional/legal framework to guarantee freedom from promotional coercion which has been proved to be a major cause of infant morbidity and mortality in this country.

If the appeal to moral concerns on the basis of scientific data does not persuade the Reagan Administration, the final alternative available is tort law. The United States tort law imposes liability upon products manufacturers for foreseeable harm. There can be little doubt left now, even within the Administration, that improper use of formula is foreseeable. It is that approach which I expect will be attempted soon if some decisive action is not taken upon the petition by the federal agencies.